

Amendment C143 Public Acquisition Overlay

Summary of Submissions and Planning Comment Table

Sub No.	Name / Organisation	Support / Objection	Summary of Issues	Planning Comment	Changes to Plan Required? Yes / No	Date submission received
1(a)	Buildcap Heritage Pty Ltd	Support with assurances	<p>Buildcap Heritage Pty Ltd (Buildcap) are the developers of Heritage Place Estate (planning permit 2011/116/C).</p> <p>Summary of issues raised in submission:</p> <ul style="list-style-type: none"> a) Concerned that the gazettal of the Amendment would delay their process to reach commercial agreements to acquire land required for wetland project WR_04 from neighbouring properties. b) Council should only act on the Public Acquisition Overlay (PAO) once applied to the property if Buildcap cannot reach a commercial agreement to acquire the land. c) The extent of PAO to be applied for WR_04 should be reviewed prior to implementing into the scheme. This is to ensure it is in the correct location. 	<ul style="list-style-type: none"> a) Officers do not intend for the Amendment to prevent the development industry from reaching commercial agreements to facilitate development. Officers preference is for the development industry to deliver Development Contributions Plan projects, such as WR_04, where it is financially viable. b) This amendment does not start the acquisition process. The decision to start the acquisition process will be made by the Council separately and would only come about if it became plainly obvious to Council that acquiring the land is required to ensure approved planning permits can be acted on. It could be considered 'plainly obvious' if the development industry has made a request for Council to undertake acquisition. c) Council has located the PAO based on the design which has been adopted by Council. This is the design proposed by the Morwell North-West DCP Drainage – WR04 Drainage Review, July 2017, by Parossien Grant & Associates Pty Ltd. We are unlikely to alter the location of the PAO unless Council approves updated design drawings for this wetland (prepared by Council or a private party). Council has not undertaken this process as it is outside the remit of the amendment and outside the funds available for this project. As required by the Land Acquisition and Compensation Act 1986, Council will prepare more detailed construction designs and surveyed drawings before commencing any compulsory acquisition processes. Council would then seek to acquire the land required for the 	No	22/11/2024

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				updated design. Council can attempt to acquire any additional land through negotiating compensation as part of the compulsory acquisition process for the land under the PAO.		
1(b)	Buildcap Heritage Pty Ltd	Support	Satisfied with Council's assurances provided on the 19/12/2024	Submission of support noted.	No	03/02/2025
2	West Gippsland Catchment Management Authority (WGCMA)	Support	No issue – supports the amendment as it will facilitate the delivery of projects associated with drainage, road construction and open space in a timely manner.	Submission of support noted.	No	11/12/2024
3	Department of Energy, Environment and Climate Action (DEECA)	Do not object	DEECA have considered the amendment and do not oppose it.	Submission of not opposing noted.	No	12/12/2024
4(a)	Landowner	Objection	<ul style="list-style-type: none"> a) Location of the PAO will separate the property in two “creating an awkward and unusable rear lot with no road access.” b) Proposed location of drain [to be protected by the PAO] appears to have been based on using the location of the existing drain without sufficient consideration of land ownership or property boundaries. This has resulted in the awkward small parcel without road access. c) Drainage reserve appears to serve a “precinct-wide function, benefiting other landowners while disproportionately affecting us.” d) Request Council to review the Morwell North-West DCP Drainage Report to investigate relocating the drainage reserve to the eastern (rear) boundary of the property. 	<p>a) Council officers acknowledge that the location of the waterway would split the property in two if Council acquired the drainage reserve as a ‘reserve on title’. Council officers have discussed with the submitter in meetings prior to this submission that Council could acquire the drainage reserve as an ‘easement on title’ rather than a ‘reserve on title’. Some form of physical crossing of the drainage would also be provided to maintain access to the rear of the property.</p> <p>Council officers have also advised that the intricacies of acquisition are not dealt with at the planning scheme stage. We have advised that if the Amendment is implemented, Latrobe City has the right to compulsorily acquire the land within the PAO, however we still have to negotiate the exact area of acquisition and the compensation. It is not in accordance with the <i>Land Acquisition and Compensation Act 1986</i></p>	No	22/12/2024

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				<p>for Council to determine the compensation and exact area of acquisition at this step in the compulsory acquisition process.</p> <p>b) Council officers have advised the submitter that whilst the location does look awkward and seems to ignore existing boundaries, it actually is the opposite. The location of the drainage reserve was set as part of the Development Plan (whose purpose is to determine the best location of infrastructure such as drainage reserves to facilitate development). The Development Plan contains policy that streets should form the interface with drainage reserves, not the side or rear fences. The location of the drainage reserve has thus been determined by projecting a standard density lot (of approximately 35 metres deep) and road reserve (15m wide) from the eastern property boundary. Council officers consider that the small awkward lot, which is 50m x 110m, would be to be further subdivided into 6 lots (18m x 35m). The further subdivision would likely occur once the land at 65 or 75 English Street has developed as road access would then be available.</p> <p>c) By its nature the drainage reserve does serve a wider precinct function and benefit others in the precinct while constraining the development potential of those with the waterway on their land. The purpose of the drainage reserve is to carry stormwater away from the precinct to the Morwell River. The size of the flows in a high-flow event are anticipated to be too large for a pipe to handle, therefore a vegetated channel</p>		

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				<p>was chosen. The vegetated channel also cleans the stormwater before it joins the wider river network as required by State policy in the Latrobe Planning Scheme. A pipe cannot achieve this.</p> <p>Because the drainage reserve benefits the whole precinct, the cost of constructing the drainage project is part of the Morwell North West Development Contributions Plan (DCP). This means whoever constructs the drainage reserve is entitled to a payment/credit from Council equivalent to the cost specified in the DCP. The submitters are not proposing to build the drainage channel so they cannot realise the credit.</p> <p>d) The proposed change has been discussed with council's engineers and the West Gippsland Catchment Management Authority (WGCMA). The following conclusions were reached:</p> <ul style="list-style-type: none"> i. The proposed route is still possible as the correct slope could in theory be achieved, however it would be achieved at a much higher cost due to significantly increased earthworks required. ii. The scope of earthworks required would be significantly increased because the channel would not sit at the bottom of the valley but on the side. This means the valley bottom would need to be filled in (west of the new alignment) and additional cutting would be needed on the east side of the alignment to grade the current ground level down to the channel. Additional fill and cut works are required to ensure all stormwater can drain by 		

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				<p>gravity to the drainage reserve. The change would significantly increase the scope of works and result in the project to affecting more landowners than it currently does. Because the cost of each DCP project is shared by the precinct, the increased cost of the project would see the DCP levy increase too.</p> <p>iii. The WGCMA are open to considering the alternative alignment but would require a new stormwater study and flood study to identify the impacts of the design.</p>		
4(b)	Landowner	Objection	<p>In response to written response provided by officers on 10 February 2025, additional questions were asked of Council regarding:</p> <p>Compensation:</p> <p>How will the compensation amount be determined, and what methodology will be used for valuation?</p> <p>What specific "loss" and "inconvenience" factors will be considered in compensation?</p> <p>Property Access & Usability:</p> <p>Who is responsible for ensuring that the physical vehicle crossing is built and maintained?</p> <p>What guarantees can the Council provide that the rear lot will remain accessible and developable in the future?</p> <p>Would there be any additional costs to the property owner in maintaining or upgrading this access?</p>	<p>Most of the requested information relates to the acquisition process which will occur if the PAO is applied to the property and therefore is not a consideration relevant to the planning scheme amendment process.</p> <p>Council officers are not in the position to answer all questions relating to the compensation process and what compensation can cover as we are not specialists in the acquisition process. Officers have recommended that the submitter seek their own advice from a suitably qualified professional experienced in compensation under the public acquisition overlay.</p> <p>The following advice can be provided:</p> <p>Compensation:</p> <p>Council officers cannot advise the exact process as it is not our area of expertise.</p> <p>Councils first offer will be based on our understanding of the impact the acquisition will have on the property and owners. A landowner can include a range of other impacts in their</p>		

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			<p>Drainage Reserve & Development Plan:</p> <p><i>(DCP levy be significantly increased)</i> Can a cost-benefit analysis be conducted to compare the proposed drainage plan vs. the alternative alignment?</p> <p>Would Council consider financial support or incentives for the property owner if the rear lot is deemed less viable for development?</p> <p>Future Development & Legal Considerations:</p> <p>If the rear lot remains undeveloped for a long period, are there any legal obligations or restrictions imposed on the landowner?</p> <p>Would the property owner have any say in the timing of compulsory acquisition, or is it set by the Council?</p> <p>Are there any opportunities to negotiate additional compensation beyond land value, considering the long-term impact on property usability?</p>	<p>counteroffer which they believe should be compensated. Professional advice should be sought by the landowner to ensure their counteroffer is in accordance with the <i>Land Acquisition and Compensation Act 1986</i>.</p> <p>Property Access & Usability:</p> <p>Council is likely to be responsible for maintaining the vehicle crossing as it will be across a drainage reserve which Council is responsible for. The terms of the access, maintenance, etc will be negotiated as part of the Compulsory Acquisition Process. Council officers are not authorised to come to agreements on behalf of Latrobe City Council at this time.</p> <p>Drainage Reserve & Development Plan:</p> <p>The submitter is welcome to submit a cost-benefit analysis as part of their submission. Council officers have not undertaken a formal cost-benefit analysis. Officers are not in a position to quantify the costs of the benefits identified.</p> <p>Financial support or incentives would be the compensation payable if compulsory acquisition were undertaken.</p> <p>Future Development & Legal Considerations:</p> <p>Officers expect there would be no legal obligations or restrictions imposed on the owner to develop their rear land.</p> <p>It is up to the Acquiring Authority to determine when they want to start Compulsory Acquisition. Once the Acquiring Authority has issued its <i>Notice of Intention to Acquire</i>, the legislation specifies the Acquisition must be completed before the notice expires. Notices are valid for 6 months. The terms</p>		

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				<p>of compensation and when the acquiring authority can enter the property can take longer to resolve.</p> <p>Land value is the basic component of any Compulsory Acquisition compensation. The terms 'loss' and 'inconvenience' can mean many things and were used in our original advice as broad terms. Council and the landowner can make two offers each, after this, the Victorian Civil and Administrative Tribunal will determine the compensation after a hearing.</p>		
5(a)	Nobelius Land Surveyors	Change requested	<p>Nobelius Land Surveyors (Nobelius) have designed a subdivision layout for properties 23 and 29 Jason Street. The design has not been submitted to Council for planning approval yet, but Nobelius advise in their submission that a planning permit application is expected to be lodged within three months (i.e. March 2025).</p> <p>Change requested:</p> <p>a) Extend the PAO to the northern boundary of 23 Jason Street (left property) and 77 English Street (right property).</p> <p>Reason for change:</p> <ol style="list-style-type: none"> 1. Drainage in this area flows north/northwest. 2. Increasing the size of the PAO will increase flexibility for 23 Jason Street and 77 English Street when designing the stormwater asset to be located within PAO3. 3. It would be easier and thus better to oversize the PAO now, rather than having to negotiate the purchase of more land at the time of acquisition if the wetland could not be accommodated. 	<p>a) Council officers preferred method for Council to acquire the drainage reserve is through subdivision permits. We will only undertake compulsory acquisition if it becomes necessary to acquire the land to facilitate the completion of permits which have been granted but have stalled due to being unable to acquire the drainage reserve by private agreement. For Council to undertake compulsory acquisitions in this instance, we would first require a request from the development industry for Latrobe City Council to use our powers of compulsory acquisition conveyed under the PAO.</p> <p>The applying of the PAO as proposed by the Amendment does not prevent the development industry from proposing designs which do not align with the PAO. Ultimately any subdivision proposed needs to be generally in accordance with the Development Plan as under the Development Plan Overlay, Council is required to refuse any permit which is not generally in accordance. The term 'generally in accordance' allows Council to grant permits which do not exactly follow the DP. This could include a</p>	No	19/12/2024

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				<p>change in shape or location provided justification is made for why the proposed outcome still performs just as well as the original design.</p> <p>Because council has not assessed the proposed subdivision design and its support stormwater strategy, officers do not believe we have the strategic justification for changing the shape of the PAO.</p> <p>This advice was communicated via phone on the 14/01/2025.</p> <p>This advice was communicated via email on the 16/01/2025.</p>		
5(b)	Nobelius Land Surveyors	Change requested	<p>Not satisfied with council officers response provided on the 16/01/2025.</p> <p>Outstanding concerns are that:</p> <ul style="list-style-type: none"> a) Not making the PAO for WR-04 larger as proposed in their original submission is short-sighted as it means Council may not be able to acquire additional land because the landowner has the ability to refuse. This could mean the developer who goes first must compromise and therefore be unduly burdened; and b) Strategic documents (the Development Plan and Drainage Strategy) are outdated and lacking some policy areas in the scheme – i.e. bushfire is not addressed in the Development Plan. These documents should be updated before proceeding with the amendment. 	<p>Council officers still do not support the proposed change because:</p> <ul style="list-style-type: none"> a) It is true Council cannot compulsorily acquire land not under the PAO but it is unlikely they will cause negotiations to get stuck if the landowner refuses. An Acquiring Authority (Latrobe City Council) has the opportunity to make two offers of compensation as part of their attempt to compulsory acquire land. In this offer, Council can include additional land not under the PAO. This would normally happen if it was identified that the compulsory acquisition would create an awkward or unacceptably small parcel or if the design of the infrastructure had evolved to require slightly more land. The landowner can in their counteroffer refuse to sell the additional land requested by Council. If Councils second offer is not accepted, then the negotiation is required to be referred to 	No – unless the only outstanding submission.	22/01/2025

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				<p>the Victorian Civil and Administrative Tribunal (VCAT) for determination. At VCAT, Council would make our case on why the additional land is necessary to be acquired and why our terms are fair and in accordance with the <i>Land Acquisition and Compensation Act 1986</i>. Council may be unsuccessful but that is a risk which is more appropriately considered when Latrobe City Council is considering whether or not to start compulsory acquisition.</p> <p>Oversizing a PAO is not risk free. Under the <i>Land Acquisition and Compensation Act 1986</i> a landowner is entitled to compensation where a PAO was applied to their property and then removed with no acquisition having occurred. This compensation reflects the owners restricted ability to use their land while the PAO was in the planning scheme. As council officers are yet to review or approve an alternative drainage strategy we cannot determine if we would likely need the additional land proposed to be included in the overlay by this submission. Based on the lack of justification and increased risk the proposed change would make, council officers believe it not appropriate to change the PAO.</p> <p>b) Council officers believe the documents are not old enough to be out of date. Council undertook a review of the drainage study for WR-04 in 2016-17. This report identified changes to the design which were</p>		

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				<p>implemented in the 2018 update of the Development Plan.</p> <p>The Development Plan Overlay clause 43.04 (DPO) only requires that a Development Plan must:</p> <ul style="list-style-type: none"> - Meet the requirements of Clause 56 (for a residential development); - Describe the land to which the plan applies; - Describe the proposed use and development of each part of the land; and - Any other requirements specified for the plan in a schedule to this overlay. <p>DPO1 does not specify any requirements relating to meeting state or local policy.</p> <p>No where is it specified that a DP must be consistent with the policy of the scheme. The amended Development Plan is consistent with the requirements of the DPO as otherwise it would not have been approved.</p> <p>If the submission cannot be resolved but all other submissions are, council officers are open to removing this PAO from Amendment C143 as a post exhibition change. Council officers are open to this because it was always intended for Amendment C143 to facilitate development if the developers could not acquire the land. As one of the three properties involved is actively subdividing and its owner made a submission seeking assurances the Amendment would not delay their development, officers are confident that this asset will not need Council assistance to acquire the land.</p>		

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				Before such a change is made, the views of submission 1 (the party actively subdividing) should be sought. If they do not object to the removal of the PAO, then it should be actively considered.		
5(c)	Nobelius Land Surveyors	Change requested	<p>Does not believe the PAO is going to resolve the issues foreseen by Council and will lead to further confusion and negotiation.</p> <p>Requested Changed</p> <ul style="list-style-type: none"> - Further design the wetland to refine the area the PAO should be applied to; or - Don't apply the PAO for WR_04 	<p>As set out in the planning comment to 5(b), officers believe the PAO will not result in further confusion or further negotiation.</p> <p>As stated in 5(b), council officers are confident that the PAO can be applied as proposed based on the drainage strategy prepared to date. The compulsory acquisition process will require further detailed design to be completed before acquisition can occur. If additional land is required after the detailed design, then this can be acquired as part of the terms of compensation.</p> <p>Officers are willing to consider removing WR_04 from the Amendment if all other submissions are resolved.</p>	No	6/02/2025
Late Submissions						
6	CFA	Do not object	No issue – understands the amendment is to facilitate development in three existing growth areas.	Submission of not opposing noted.	No	27/12/2024
7	NBA Group	Support	NBA Group are acting on behalf of the owners of 1 Thompsons Road, Newborough.	<p>This land is located in the Lake Narracan DCP and is required for intersection project IN-02. IN-02 will see Thompsons Road become the fourth leg of the Old Sale Road – Haigh Street roundabout. The DCP indicates that this project is required once 250 new dwellings are approved west of Broad Way (a new collector road central to the precinct) or when there are 400 turning movements at the existing intersection on Old Sale Road.</p> <p>94 lots have been titled west of the proposed Broad Way which means 94 houses could be built.</p>	No	15/01/2025

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			 <p>Summary of issues raised in submission:</p> <ul style="list-style-type: none"> a) That the Amendment will provide surety to their client that the acquisition will occur in a timely manner. b) That the acquisition is much needed to support the development of the precinct. c) Their client wants assurances that the acquisition will occur, and that the DP does this. 	<p>Council is currently assessing a further four Certification applications which will see titled an additional 143 lots over the next 12 months. Therefore, this project is becoming increasingly close to the trigger for the project outlined in the Lake Narracan DCP.</p> <p>Based on the above, officers agree with point b), that the acquisition is growing increasingly needed.</p> <p>In response to part a), applying the Amendment does provide increased surety that the acquisition will occur, however there is no requirement that acquisition will occur within a specified time after the PAO has been applied. Under the <i>Land Acquisition and Compensation Act 1986</i>, the Acquiring Authority (Latrobe City Council) are liable for compensation to landowners where a PAO is removed which was never utilised. Because of this requirement, council officers are only proposing PAO which we have a strong need and justification for.</p> <p>Council officers are currently seeking legal advice to identify options possible to come to an agreement now about compensation at the time of acquisition in the future.</p>		