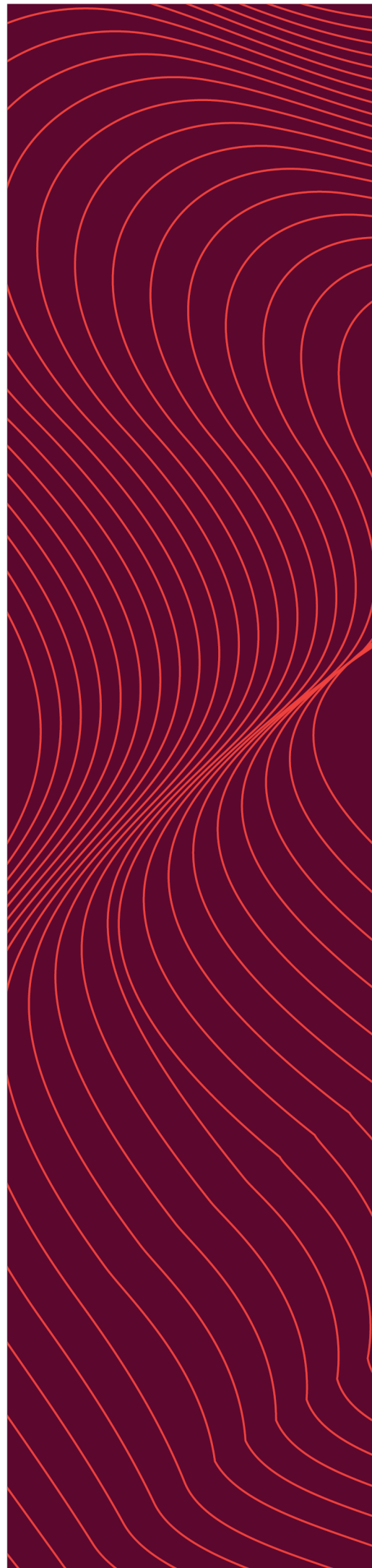


Panel Submission – Part B

Planning Scheme Amendment C143latr
Public Acquisition Overlay

Latrobe City Council
Circulated 28 April 2025

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ATTACHMENTS

Attachment No.	Description
Attachment 1	Table of Properties Affected
Attachment 2	Response to Submissions
Attachment 3	WR-04 Drainage Strategy 2017
Attachment 4	Main Catchment Drainage Strategy 2016

1. Introduction and Overview

1. Latrobe City Council (Council) is the Planning Authority for Amendment C143latr (the Amendment) to the Latrobe Planning Scheme.
2. Council initiated the Amendment to reserve land in the Latrobe Planning Scheme required for 12 Development Contributions Plan (DCP) projects which have been identified as being at risk of not being delivered due to land fragmentations and landowner intentions.
3. The Amendment applies to parts of the 23 properties shown in Figure 1, Figure 2 and Figure 3. Details of the application are outlined in **Attachment 1**.
4. For the purposes of this report the following terms are used:
 - Development Plan - DP
 - Lake Narracan growth area – Lake Narracan
 - Precinct Structure Plan - PSP
 - Morwell North West growth area – Morwell NW
 - Traralgon North growth area – Traralgon Nth
 - Public Acquisition Overlay – PAO
 - Latrobe Planning Scheme – the Scheme
 - The Urban Growth Zone – UGZ
 - *Land Acquisition and Compensation Act 1986* – LAC Act
 - *Planning and Environment Act 1987* – PE Act

Figure 1: Affected land in the Lake Narracan growth area.

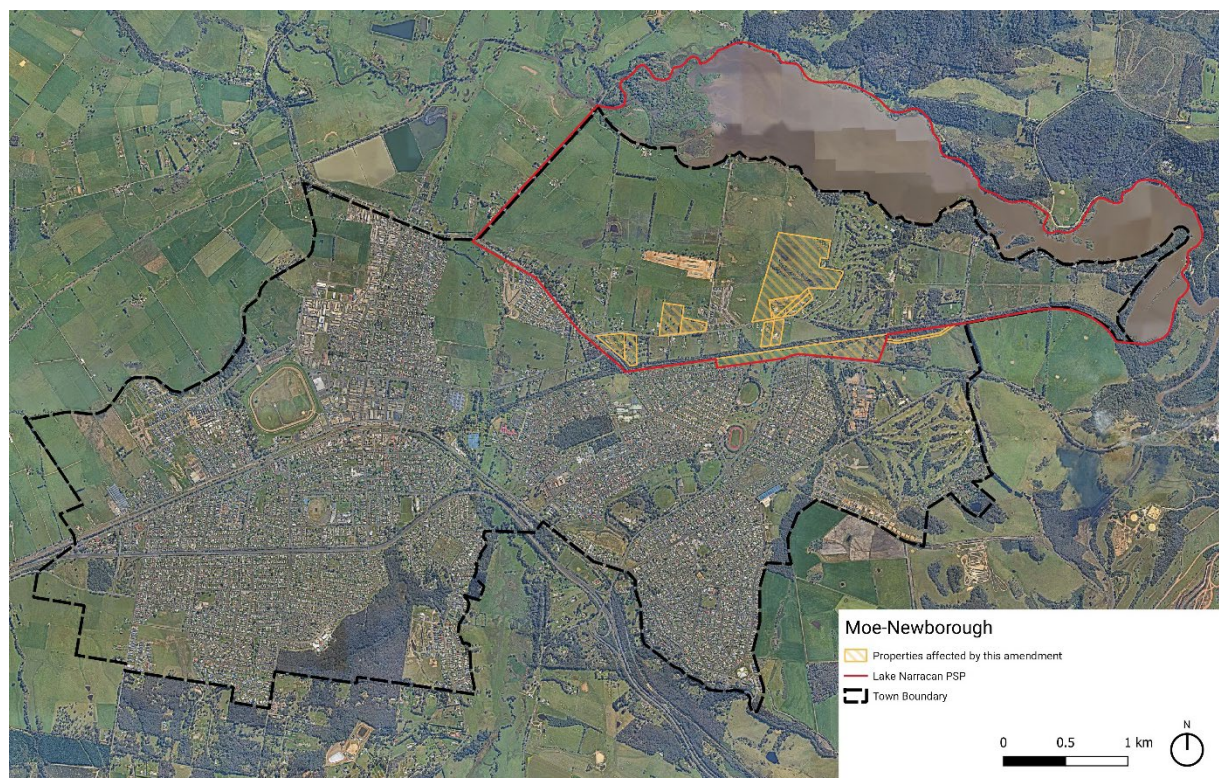


Figure 2: Affected land in the Morwell North West growth area.

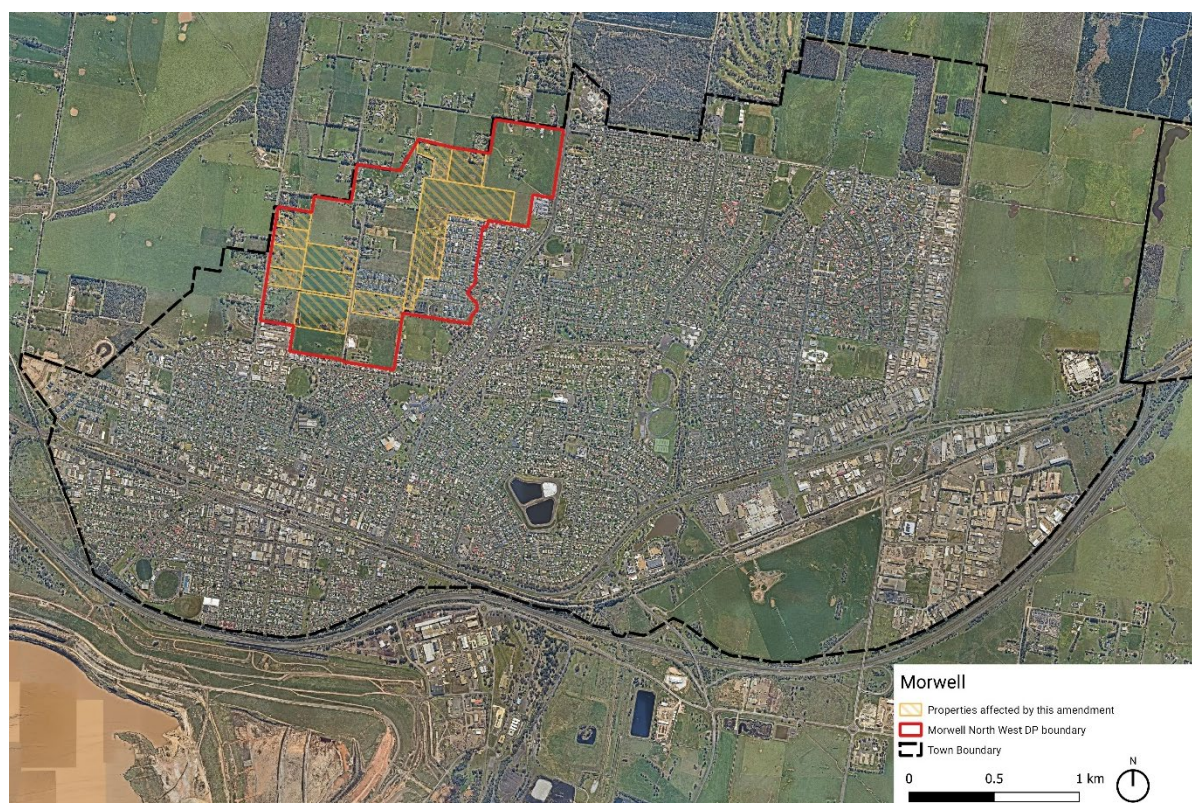


Figure 3: Affected land in the Traralgon North growth area.



5. On 16 April 2025 Council circulated its Part A submission to the Amendment in accordance with the Panel's directions. Part A contained:
 - Background to the Amendment including a chronology of events;
 - The Strategic Context and Assessment of the Amendment;
 - A Summary of the issues raised in submissions, including which (if any) had been resolved and how;
 - A Summary of post exhibition changes Council proposes to make and associated reasons;
 - Other strategic matters Council intends to rely upon; and
 - Additional documents requested to be provided by the Panel.
6. This is Council's 'Part B' submission to Amendment C143latr. The submission seeks to address the issues raised in direction 7 of the Panel's Directions including:
 - a) *Its response to submissions and evidence*
 - b) *Its final position on the Amendment*
 - c) *Any further changes to the Amendment documentation.*
7. Council's response to the submissions will be structured based on the themes of the

submissions. The following five themes have been identified in the submissions:

- i. Support the Amendment because the application of the PAO will support infrastructure delivery by facilitating land acquisition in a timely manner;
 - ii. The application of the PAO would interfere or delay a permit holders' ability to come to their own 'commercial arrangements' to acquire land for DCP projects;
 - iii. Concerns regarding the age of the Morwell North West Development Plan (DP) and Development Contributions Plan (DCP) and the associated drainage reports which inform this DP and DCP;
 - iv. Issues with the location, size or area of where the PAO is proposed on a property; and
 - v. Site specific issues.
8. This submission includes a set of Attachments to support Council's position. **Attachment 1 and 2** have been previously circulated to all parties as part of Council's part A submission.
9. At the end of the hearing 30 April 2025 Council will present closing submissions. This will address:
- Council's response to any questions raised by the Panel throughout the hearing;
 - Council's response to any matters raised by submitters which require a response; and
 - Council's final position on Amendment C143latr ahead of receiving the recommendations of the Panel.

2. Panel Directions

10. A Directions Hearing was held for Amendment C143latr on 25 March 2025.
11. A letter of directions was provided to Latrobe City Council by the Panel on 26 March 2025.
12. Section 3 of the Part B submission address the directions by the Planning Panel. Specifically:
- **Section 3.2: Councils Response to submissions**
 - Direction 7 a) Councils response to submissions and evidence.
 - **Section 3.3: Post Exhibition Changes**
 - Direction 7 c) Any further changes to the Amendment documentation.
 - **Section 3.4: Post Exhibition Changes**
 - Direction 7 b) Councils final position on the Amendment.

3. Submissions Received to Amendment C143latr

3.1 Summary of Exhibition

13. Amendment C143latr was on exhibition from 21 November 2024 to 23 December 2024. Council gave notice in accordance with the requirements of the *Planning and Environment Act*

1987.

14. Council received 7 submissions in relation to the Amendment, this includes 2 late submissions. All submissions were considered by Council at the 24 February 2025 Council Meeting.
15. Further details regarding the exhibition process can be found in Council's Part A submission.

3.2 Council's Response to Submissions

16. Council's response to submissions is documented in **Attachment 1**. It has previously been circulated to all parties as **Attachment 8** to Council's Part A.
17. This section of Council's submission provides an expanded response to key themes raised by submissions and responds to direction 7(a) by the Planning Panel.
18. Table 1 - Table 5 provides an overview of the theme being responded to, the submissions in which the theme relates to and whether the Council officers' response resolved the concerns of the submitter(s).

3.2.1 Infrastructure delivery and timely land acquisition

Table 1: Theme (i) Overview

<i>Theme (i): The application of the PAO will support infrastructure delivery by facilitating land acquisition in a timely manner.</i>	
Area of Relevance:	Submissions(s):
Morwell North West	2, 3, 6 and 7
Lake Narracan	Withdrawn/resolved submissions:
	N/A
Council Response: Submissions of support are noted.	

19. Comments of support from the West Gippsland Catchment Management Authority (WGCMA) (submission 2) and submitter 7 are noted. The WGCMA are the designated Catchment Management Authority for land reserved for drainage that is impacted by the Amendment.
20. Submission 7 states that the acquisition will provide certainty and clarity on providing critical infrastructure required to make the PSP function.
21. While submission 7 does not specify where the submission applies to, as only one PSP is involved in the Amendment, it is assumed that submission 7 is in relation to the Lake Narracan PSP and DCP.
22. The Department of Energy, Environment and Climate Action (DEECA) (submitter 3) and Country Fire Authority (CFA) (submitter 6) also made submissions to the Amendment. As the submissions made no clear indication of objection or support to Amendment, Council

considered the submissions as 'comments' on the Amendment. As comments they show the CFA and DEECA have reviewed the Amendment and do not consider the Amendment to cause any issues relevant to their expertise.

23. In addition to the support, it is noted that the Amendment facilitates the timely acquisition of land by naming Latrobe City Council as the Acquiring Authority for land which has PAO2 or PAO3 applied to it. As the Acquiring Authority, Latrobe City Council is legally allowed under the LAC to compulsorily acquire the reserved land when the Acquiring Authority deems it necessary in the future.
24. No changes were made to the Amendment in response to submissions received under this theme.

3.2.2 Private Agreements and the Public Acquisition Overlay

Table 2: Theme (ii) Overview

<i>Theme (ii): That the application of the PAO would interfere with or delay a permit holders' ability to come to their own 'commercial arrangements' to acquire land for DCP projects.</i>	
Area of Relevance: Morwell North West	Submissions(s): 1 and 5 Withdrawn/resolved submissions: 1
Council response: No changes to the Amendment are proposed regarding this theme. It is believed by Council that the application of the PAO will not interfere with or delay a permit holder or landowner to buy and sell land.	

25. Two submissions to the Amendment raised the concern that the application of the PAO would interfere with or delay a permit holders' ability to come to their own 'commercial arrangements' to acquire land for DCP projects. Submission 5 also raises the area the PAO is applied to, which is addressed in section 3.2.3.
26. This section is split into two parts to discuss two separate aspects of the theme; the additional permit triggers created due to the application of the PAO and, Councils powers once the land is reserved by the Amendment.

Additional permit triggers and implications for 'commercial arrangements'
27. Council accepts that by applying the PAO, additional permit triggers will be applied to the land beyond those already specified in the Scheme.
28. Clause 45.01-1 specifies that under the PAO, a permit is required to:

- *Use land for any Section 1 or Section 2 use in the zone.*
- *Construct a building or construct or carry out works, including:*
 - *A domestic swimming pool or spa and associated mechanical and safety equipment if associated with one dwelling on a lot.*
 - *A pergola or verandah, including an open-sided pergola or verandah to a dwelling or a small second dwelling with a finished floor level not more than 800mm above ground level and a maximum building height of 3 metres above ground level.*
 - *A deck, including a deck to a dwelling or a small second dwelling with a finished floor level not more than 800mm above ground level.*
 - *Damage, demolish or remove a building or works.*
- *Damage, remove, destroy or lop any vegetation. This does not apply:*
 - *If the vegetation has been planted for pasture, timber production or any other crop.*
 - *To any action which is necessary to keep the whole or any part of a tree clear of an electric line provided the action is carried out in accordance with a code of practice prepared under Section 86 of the Electricity Safety Act 1998.*
 - *If the vegetation presents an immediate risk of personal injury or damage to property.*
- *Subdivide land.*

29. Council also accepts that applying the PAO creates an additional referral which is required when a permit is triggered under the PAO. The referrals triggered under the PAO do have 'determining' status under Clause 66.03. This means the referral response does have the power to dictate the future of an application i.e. that the Responsible Authority may refuse a permit if it is not in accordance with the application of the PAO.
30. Council also acknowledges that it is an accepted practice to include conditions in the terms of sale (a type of commercial agreement) to require a planning permit be granted before a sale settles.
31. In this way, it could be seen that the addition of further permit triggers to the Scheme could have implications for commercial arrangements. However, Council does not believe that this will be the case as the PAO is proposed in accordance with the relevant PSP, DPs, and DCPs which are already enforced through the Scheme.
32. Morwell NW DP and DCP and Traralgon Nth DP and DCP are enforced through Schedule 5

and 7 respectively of the DPO (Clause 43.04). 43.04-2 requires a planning permit to be generally in accordance with the DP applying to the land before it can be issued.

33. Lake Narracan PSP is enforced through Schedule 1 of the UGZ (Clause 37.07). Clause 37.07-9 requires a 'use' permit to be generally in accordance with the PSP applying to the land, 37.07-10 requires a 'subdivision' permit to be generally in accordance with the PSP applying to the land, and 37.07-11 requires a 'building and works' permit to be generally in accordance with the PSP applying to the land.
34. Therefore, if an application is not 'generally in accordance' with the relevant PSP, DP and DCP, the permit must be refused under the DPO or UGZ – whichever is relevant.
35. This is why the Amendment has been proposed in accordance with the Lake Narracan PSP and DCP, the Morwell NW DP and DCP, and the Traralgon North DP and DCP. If the PAO requires land in a manner not in accordance with the relevant PSP or DP, a structural conflict would be created in the scheme.
36. By proposing the PAO in accordance with these plans, any permit which is considered to be in accordance with the with intent of PAO, will likely be considered to be in accordance with the relevant PSP/DP/DCP and vice versa.
37. If a permit were to be refused on the grounds it is not 'generally in accordance' with the PSP/DP/DCP, it is the requirements of the UGZ and DPO, not the PAO which effect commercial arrangements.
38. The relevant PSP/DP/DCPs are already implemented in the Scheme through the UGZ and DPO. The application of the PAO does not create additional interference. Rather, as an Overlay which will appear on the property, the PAO makes plan to see the larger strategic need identified for the affected land.

Latrobe City Councils powers under PAO.

39. The primary purpose of applying the PAO is to facilitate the transfer of ownership of land identified in a DCP for public infrastructure to Latrobe City Council. Council has not included all land required under the three relevant DCPs. Council has only included land which it considers as at risk of not being transferred due to meeting one or more of the following criteria:
 - Is land required from multiple properties to deliver the project;
 - Is it likely that there will be a subdivision application in the near future for the land; or
 - Is the land required to support a permitted development located in the precinct but not on the land in question.
40. To Council's knowledge, the LAC Act does not provide any limitations on owners regarding the

sale and purchase of land which has been reserved for public purposes in a planning scheme. Once the land has been reserved, the landowner is still able to apply for a planning permit which would see the identified land transferred to Council. This would negate the need for Council to compulsorily acquire the land.

41. Council acknowledges that under the Section 12 (1) of the LAC Act, if Council issues a Notice of Intention to Acquire (NOITA), restrictions are placed on the landowner which restricts their ability to sell, lease and improve land without the consent of the Acquiring Authority.
 - *while the notice is in force, without the consent of the Authority— (a) enter into any sale, transaction or arrangement, or obtain or grant any licence or approval with respect to the land; or (b) make any improvements of a durable nature to the land.*
42. At this time the Council has not made any resolution to start the compulsory acquisition process for any land that is part of this Amendment and therefore no NOITA can issued at this time.
43. Therefore, to Councils knowledge, Council has no power to intervene in the reaching of commercial agreements until the compulsory acquisition process is commenced.
44. By undertaking the Amendment, Council intends to facilitate development. Not to hinder it.
45. The PAO is a planning control and therefore its influence is limited to matters concerning to the Scheme. The proposed application of the PAO is in accordance with the three relevant DCPs. Commercial arrangements are a civil matter and sit outside the Scheme. As such, no changes have been made to the Amendment relating to this theme.

3.2.3 The age of the Morwell North West DP and DCP.

Table 3: Theme (iii) Overview

Theme (iii): Concerns regarding the age of the Morwell North West Development Plan and Development Contributions Plan and the associated drainage reports which inform this DP and DCP.	
Area of Relevance: Morwell NW	Submission(s): 4 & 5 Withdrawn/resolved submissions: None
Council response: The Morwell North West DP and DCP were reviewed by Council between 2016 and 2018. An updated DP was adopted by Council in December 2018. Council believes that the DP and DCP are still relevant and are appropriate justification for the application of the PAO.	

46. Submissions 4 and 5 raised the age of the Morwell NW DP and DCP as a reason why the application of the PAO by the Amendment should be changed.
47. The Morwell North West DP and DCP (the DP for the purposes of this section) was first adopted by Council in October 2010.
48. The DP identifies at page 17 that it will provide approximately 25 years of land supply for Morwell (as at the time of adoption). It can be considered, therefore, the DP has a design life of at least 25 years.
49. Council has a *Strategic Plan Review Cycle Program* which reviews all strategic planning documents every 10 years to identify changes in related policy and if intended outcomes are being achieved. The Morwell NW DP and DCP was last reviewed in 2016/2017. The updates were adopted in 2018. The next 10 year review will be due around 2028.
50. In 2016/17 Council engaged Paroissien Grant Pty Ltd and Water Technology Pty Ltd to review the strategy for the DP. Enlargements to the main drainage reserve (comprising DCP projects CH-03, CH-04, CH-05, CH-06, WR-02 and WR-03) and to northern treatment reserve (DCP project WR-04) were identified as being required to manage updated flow estimates. Council implemented the recommendations of the review in December 2018 by amending the Morwell North West DP and DCP in accordance with the updated drainage strategies. The current DP can be seen in Figure 4 and the original DP can be seen at Figure 5. The changes to the drainage reserves have been highlighted in the figures with dashed lines.
51. The 2018 review of the DP increased the amount of Drainage Reserve required for WR-04 by increasing the wetland area from 0.32 hectares to 0.52 hectares (relevant to submission 5) (**Attachment 3**). The 2018 DP did not alter the drainage reserve (CH-03 and WR-02) as far as is relevant to submission 4. The enlargement of CH-03 affected 55 English Street and was accommodated by removing the local road between the drainage reserve and unencumbered open space (**Attachment 4**).
52. Neither submission 4 or 5 provided expert evidence i.e. a drainage study, to show that Councils adopted drainage strategies for the DP are outdated in its assumptions or recommendations. Therefore, council officers are using the best available information to inform the Amendment.
53. It is also noted that Council has recently completed Amendment C131 (exhibited most recently between 29 February 2024 - 5 April 2024 and gazetted on the 20 December 2024) which applied the Floodway Overlay in accordance with the post development modelling identified in the 2016/17 stormwater strategy for the precinct. Amendment C131 did proceed to panel and the age of the strategy was not questioned or commented on.

Figure 4: Morwell North West DP 2018 (current)

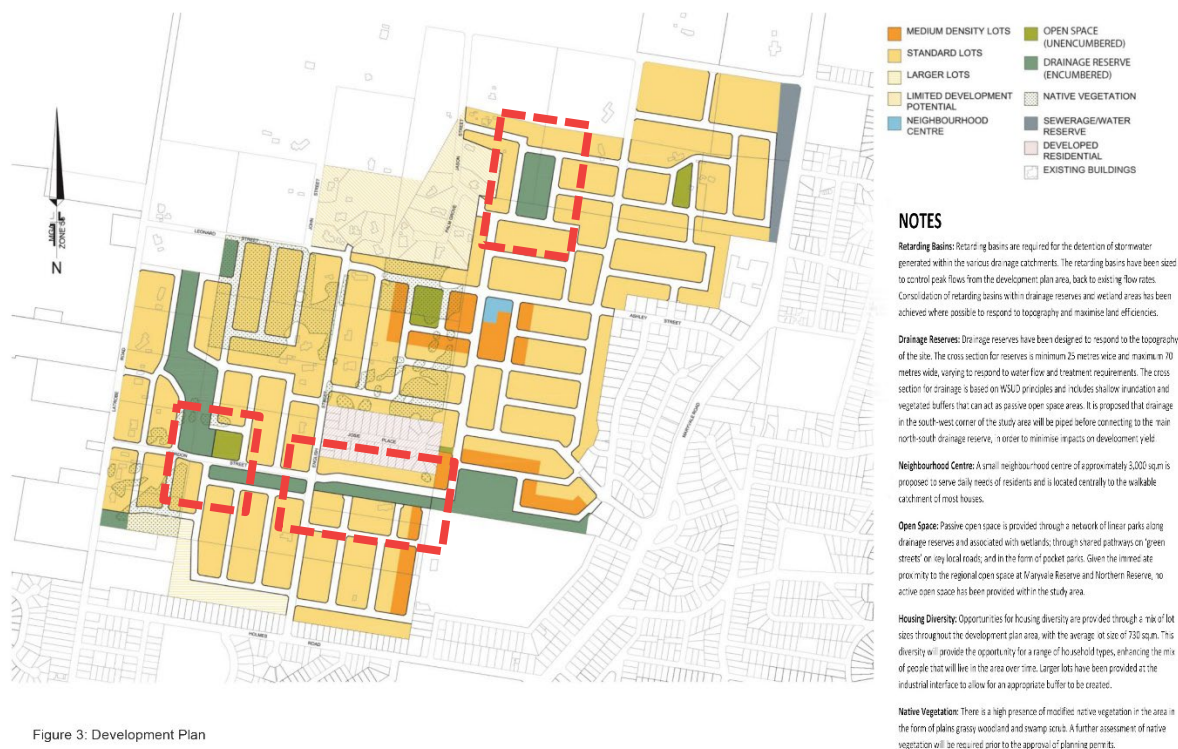


Figure 3: Development Plan

16 © CPG

Figure 5: Morwell North West DP 2010 (original)

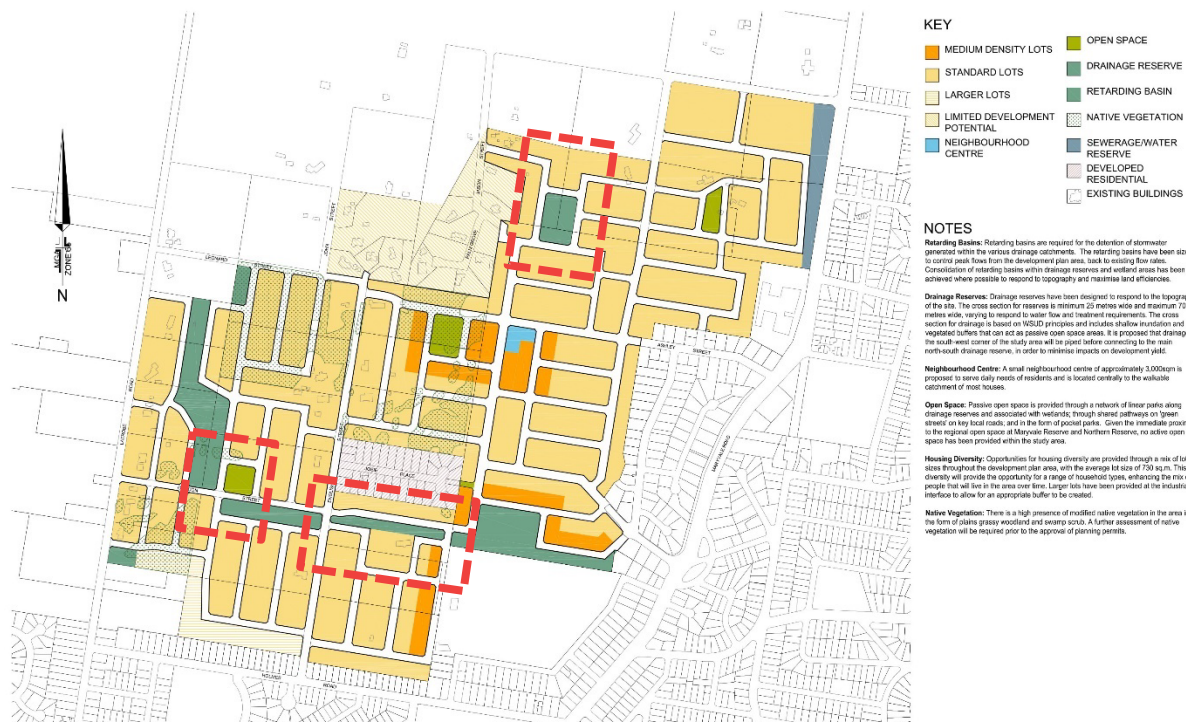


Figure 3: Development Plan

16 © CPG

54. Submission 5 also cited bushfire policy (Clause 13.02) when it raised concerns that the DP was out of date.
55. Council accepts that the DP does not address bushfire. That said the DP generally is consistent with the strategies in Clause 13.02 which relate to settlement planning:
- The DP proposes population growth in a “low risk” location. This is evident by the site being in a Bushfire Prone Area (BPA) as designated under the *Building Act 1993*. Minor areas in the north east of the precinct are in the Bushfire Management Overlay which shows a level of heightened risk. However, this land is mostly identified for open space or has been developed as large lots and has a perimeter road (Aliss Road).
 - The DP provides for a detailed street network with many routes away from the rural edge to established areas of Morwell which are low-threat due to their highly developed nature.
 - The DP generally provides for perimeter roads along rural interfaces and around the drainage reserves – the areas of greatest risk.
56. It is of relevance that the CFA did not make any comment about the age of the DP and did not raise any concerns regarding bushfire risk (either that posed to the precinct or how it is managed by the DP).
57. Council is satisfied that the ability to approve planning permits which are ‘generally in accordance’ (Clause 43.04-2) will provide sufficient discretion for Planning Permits to be approved which bridge inconsistencies between the DP and the Scheme (i.e. revised road networks internal to a development which provide perimeter roads).
58. Council believes that our review program will continue to ensure that the development plan can continue to meet relevant policies over the lifespan of the DP.
59. Council believes the Morwell North West DP and DCP and associated drainage strategies are of an appropriate age to be used as background documents to this Amendment. Council is satisfied that the development plan is still relevant to sufficiently guide orderly development.

3.2.4 The Location of the Public Acquisition Overlay

Table 4: Theme (iv) Overview

Theme (iv): The location, size or area of where the PAO was proposed on a property	
Area of Relevance:	Submission(s):
Morwell NW	1, 4 & 5
	Withdrawn/resolved submissions:

	1
<p>Council response: The Amendment has proposed to apply the PAO in accordance with the relevant PSP/DP/DCP. It is not considered to be justified, or orderly planning, to apply the PAO in a manner inconsistent to the relevant PSP/DP/DCP. This is because the PSP/DP/DCP set an intent for what will happen on a property which is public knowledge. Further, Amendment C131latr recently updated flood mapping to reflect the post-development scenario in Morwell NW.</p>	

60. Three submissions to the Amendment raised the location, size or area of where the PAO was proposed on a property as a concern. All submissions are in regard to land which is subject to DPO1 and the *Morwell North West DP and DCP* (the DP for the purposes of this section).
61. The submissions 4 and 5 requested the PAO to be placed in a manner which is inconsistent with the DP. Submission 1 sought clarification from Council regarding the location of the PAO on their property given they have an approved planning permit for residential subdivision.
62. Some of the issues with locating the PAO inconsistent to PSP/DP/DCP have been discussed in 3.2.2. The following information addresses other aspects relevant to the submissions and theme.
63. In regard to submission 1, Council was able to resolve their concern with the location of the PAO by clarifying that:
- Both their approved planning permit and the PAO were consistent with the DP in locating the drainage reserve; and
 - If compulsory acquisition is required, the LAC Act provides the opportunity to refine the exact area of acquisition by requiring the area be surveyed first. Council is confident that any variation will be minor given that conceptual drainage designs were prepared as part of the 2016/2017 drainage review. Any additional land take required can be negotiated through the compensation determination process set by the LAC Act.
64. The Amendment (as far as is relevant to submission 4 and 5) seeks to reserve land which has been identified in the DP for drainage infrastructure. The land appears as 'Drainage Reserve (Encumbered)' on the maps within the DP (such as the map at Figure 4).
65. The purpose of DP is to plan for the needs of the precinct in a manner which serves the greater good. Page 3 of the DP states that the purpose of this specific DP is to "...provide direction to ensure a logical subdivision pattern across separate allotments to achieve an outcome that is best for the growth area as a whole.

The plan identifies where roads, parks, wetlands and physical infrastructure should be located,

without prejudice. That is, the Development Plan is based on best practice design that is responsive to topography, drainage, vegetation and the location of key land uses, to ensure land is reserve for these purposes and not lost in favour of maximising individual Development interests.”

66. The DP is also freely available to the public via the Latrobe City Council website.
67. As a freely available document designed to coordinate developments, there is a reasonable expectation that there is common knowledge of what will be located where.
68. The changes proposed by submissions 4 and 5 undermine the common knowledge by requesting the PAO be applied inconsistently with the direction identified in the DP.
69. The changes proposed by submission 4 would impact 6 other properties, 3 of which have not been notified of the Amendment as no land is proposed to be acquired from them. These properties are 170 Latrobe Road, 95 English Street and 75 English Street, Morwell.
70. The changes requested by submission 5 would impact 2 other properties. Both properties were notified of the Amendment when it was exhibited. In particular the change proposed by submission 5 increases the area the PAO would be applied to 77 Ashley Avenue.
71. Neither submission 4 nor 5 have provided evidence of discussion with the land owners affected by their changes. Nor has any evidence of consent by the additional affected landowners to the variation of the DP been provided.
72. Council officers do not consider it to be with in the requirements of the PE Act to make the changes requested without the views of the additional affected landowners being provided.
73. In relation to the specific areas nominated by the submissions, no evidence has been provided to justify the stated areas. Changing the location and shape of the PAO has real implications for the infrastructure which is planned to be built on the land which has not been adequately considered through this amendment process.
74. No documentation which outlines the drainage standard which informed the requested area has been provided. Therefore, Council is unable to determine if the requested area can perform to the same or better standard than currently proposed by the DP.
75. No costings of the revised drainage infrastructure have been provided. Therefore, Council is unable to determine if the DCP would become more or less expensive to deliver.
76. It is noted, had a Planning Permit application been submitted during the Amendment process by submitter 5, Council would have reconsidered if the application of the PAO was required. However, no application was submitted.
77. Submitter 4 identifies an alternative drainage alignment which equally burdens all properties located between Latrobe Road and English Street. It has been discussed that no

documentation for this alignment has been provided. As noted in section 3.2.3, Council has recently completed Amendment C131latr which applied the Floodway Overlay in accordance with the post development modelling i.e. where flows are confined to the drainage reserve identified in the DP (**Attachment 4**). The proposed change would have an impact on the DP, DCP and Flood Overlay application, all of which are outside the scope of this amendment and would require further work if it was considered appropriate to relocate the drainage channel.

78. The WGCMA allowed Council to apply the Floodway Overlay based on the post development scenario as:
- Council had the flood modelling for pre and post development scenarios in this precinct. No risk to dwellings was identified in the predevelopment scenario;
 - There is a DP in place to require development be built to achieve the post development scenario; and
 - Council was in the process of preparing Amendment C143latr to apply the PAO to the drainage reserve and had identified that the delivery of the main drainage reserve is a high priority to facilitate the general delivery of the DP.
79. The alternative alignment that submitter 4 has identified, would mean the mapping implemented by Amendment C131latr cannot be achieved.
80. Applying the PAO as proposed by the Amendment will ensure the PAO and Floodway Overlay align correctly to ensure the drainage reserve is built where the Floodway Overlay has mapped the risk.
81. Submitter 5 asks for the PAO to be oversized so that it allows for greater flexibility in the design of the wetland. Their submission specifically says it is *“easier to over-extend the PAO now and use less at the time of the acquisition”*.
82. Oversizing a PAO now may seem easy, but it is not risk free. The LAC Act recognises the heavy burden properties bear when land is reserved for public purposes in a planning scheme. Part 5 of the LAC Act specifically addresses when a landowner is entitled to compensation due to the land having had the PAO 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 Scheme.
83. It would be irresponsible of Council to place itself in a position where compensation is required to be paid because the PAO was applied to land that was never acquired or required.
84. Submission 5 has not provided documentation to support the proposed drainage reserve and Council has received no planning permit application for the land. Therefore, Council has no reasonable expectation that development will occur as proposed by the submission.
85. In addition, under Section 44 of the LAC Act it states:

In assessing the amount payable under subsection (1), there must be taken into account all relevant circumstances applicable to the claimant including, without limiting the generality of the foregoing—

- (a) the interest of the claimant in the acquired land; and*
- (b) the length of time during which the claimant had occupied the land; and*
- (c) the inconvenience likely to be suffered by the claimant by reason of removal from the land; and*
- (d) the period of time after the acquisition of the land during which the claimant has been, or will be, allowed to remain in possession of the land; and*
- (e) the period of time during which, but for the acquisition of the land, the claimant would have been likely to continue to occupy the land; and*
- (f) the age of the claimant; and*
- (g) where the claimant at the date of acquisition is occupying the land as the claimant's principal place of residence, the number, age and circumstances of other people (if any) living with the claimant.*

86. Section 44 of the LAC Act relates to both submission 4 and 5.
87. Council considers that, in relation to the location, sizing and shape of the PAO to be applied, insufficient evidence has been provided to justify changing the application of the PAO. Not proceeding with the Amendment as proposed will undermine the common knowledge provided by the DP, create conflict between PAO mapping and Floodway Overlay mapping on certain properties, and open Council to compensation claims it had specifically planned to not trigger.

3.2.5 Site Specific Issues

Table 5: Theme (v) Overview

Theme (v): issues raised by individual submitters	
Area of Relevance: Morwell North West	Submissions(s): 4 and 5 Withdrawn/resolved submissions: N/A
Council response: No changes to the Amendment are proposed regarding this theme. It is believed by Council that the application of the PAO is consistent with the adopted Morwell NW DP and DCP.	

88. Submitter 4 and 5 raised a number of site specific issues that have not been addressed in the above four themes including:
- Property owners being disproportionately affected by encumbered land;
 - Lack of adequate consideration of relocating drainage;

- Useability of the land if the land is acquired; and
- Drainage flows are not adequately covered.

89. Latrobe City Council has addressed the interaction with private agreements, age of the documents, and the size and location of the PAO and in sections 3.2.2 – 3.2.4.

150 Latrobe Road, Morwell

90. Submitter 4 raised in their submission that they appeared to have been unfairly encumbered by the Morwell North West DP compared to other properties in the precinct. Council officers' understanding is that this comment is based on the presence of a drainage reserve on the property and its location which splits the property in two.
91. Officers acknowledge that the DP does encumber 150 Latrobe Road however the identified drainage channel represents the existence of a natural drainage line on the property which requires protection under the Scheme (Clause 12.03-1S) in its current state.
92. Page 9 of the DP acknowledges that one of the constraints facing the DP is the natural location of the main north-south drainage line and the impact on development potential for the properties along Latrobe Road.
93. The Land Budget for the DP (page 51) identifies that 150 Latrobe is 2.23 hectares in size and 0.53 hectares is required for the drainage reserve leaving 1.70 hectares unencumbered for development. This area is significant at almost 23.7% of the properties original area, however Council has undertaken every effort to minimise the land take required for the waterway. Clause 12.03-1S recommends providing buffers of 30m either side of a marked waterway. The Morwell NW DP requires a drainage reserve of approximately 44m wide in total.
94. The location of the drainage reserve is not centred on the current waterway. The location was determined by projecting a standard density lot (of approximately 35 metres deep) and road reserve (15m wide) from the eastern property boundary. This means that the land on the eastern side of the water is approximately 50m x 110m 0.55 hectares. Officers estimate it is further subdividable into 6 lots (18m x 35m). The further subdivision would have to wait for the land at 65 or 75 English Street to develop to bring services and road access to this land. The land on the western side of the waterway is unconstrained for development purposes.
95. Ultimately though, the benefit of a DP is to plan for this kind of situation where land may become isolated if developed by itself, but if developed with considerations of its neighbours it can be integrated over time.
96. Submission 4 also contended that the development plan did not consider other options for the waterway. Based on the text at page 3 of the DP, the DP and DCP took an approach to infrastructure which aimed to respect the natural topography and to minimise the earthworks required to deliver the precinct.

The plan identifies where roads, parks, wetlands and physical infrastructure should be located, without prejudice. That is, the Development Plan is based on best practice design that is responsive to topography, drainage, vegetation and the location of key land uses, to ensure land is reserve for these purposes and not lost in favour of maximising individual Development interests.”

97. The alignment requested to be investigated by submission 4, does not respect the natural topography and drainage of the precinct. The alignment the DP uses follows the natural low points, whereas the suggested alignment does not. It follows the side of the valley at a higher altitude which will necessitate earthworks being required to ensure all stormwater can reach the new low point. The earthworks required are likely to affect multiple properties.
98. Submitter 4 raised concerns about how the rear lot would be accessed if the drainage reserve was built by Council. Officers advised that this is something which will have to be determined before the drainage infrastructure is built but have advised a crossing suitable for a car or animal could feasibly be provided.
99. Section 43 (2) the LAC specifically address the provision of alternative access arrangements where the acquisition of land creates ‘difficulty’ to access the remaining land. Section 43(2) allows for the Acquiring Authority to issue a notice of its intention to create alternative access arrangements i.e. a bridge. Section 43(3) continues advising that where such a notice is issued, it is the responsibility of the Acquiring Authority to maintain the access arrangements created. More broadly, the compensation negotiation process created under the LAC Act , provides the Acquiring Authority the opportunity to make two offers, and the claimant is provided the opportunity to make two counter offers. If the two parties cannot agree, after the two rounds, the claim is referred to the Victorian Civil and Administrative Tribunal (or the Supreme Court depending on value) for determination. Both parties will be given the opportunity to state the reasoning behind their positions.
100. Council officers therefore consider the appropriate time to resolve issues over access is during the Compulsory Acquisition process as the LAC Act provides a process to resolve compensation claims.
101. As previously outlined in paragraph 83, the aspects required to be considered under Section 44 of the LAC Act when determining compensation are broad.
102. Council is satisfied that the DP was prepared in the best interests of all landowners in the precinct and that the DP has done its best to minimise the encumbrance placed on 150 Latrobe Road. A waterway does exist on the property and the Scheme requires this waterway to be protected. Submitter 4 has not provided sufficient evidence to justify that their preferred location will provide better benefit to the precinct.

23 and 29 Jason Street, Morwell

103. Submitter 5 identified in their submission that natural overland flows on the property (23 and 29 Jason Street) travel in a north/northwest direction. Due to the drainage generally being to the north, the submission proposed narrowing and lengthening WR-04 to reach the property boundary.
104. The direction of flows in the submission is inconsistent with Councils own drainage studies for WR-04 which identify that flows generally fall to the west/northwest on 23 and 29 Jason Street **(Attachment 3)**
105. Council notes that no drainage study was provided by the submitter to support their submission.
106. Council considers the appropriate forum to discuss the drainage reserve and overland flows on the property is as part of a planning permit application where all the evidence can be considered.

3.3 Post Exhibition Changes

107. Latrobe City Council has not made any changes to the Amendment post Exhibition in response to submissions.

3.4 Councils Position on the Amendment

108. Council believes the Amendment as Exhibited is strategically justified and the PAO is proposed to be applied in the most appropriate manner.
109. Council believes the changes requested by submissions are not sufficiently strategically justified and do not represent orderly planning.
110. Council acknowledges there are generally three ways to acquire land:
 - The Subdivision Process – where a permit requires land to be transferred to Council;
 - Private Sale – where Council negotiates the purchase of land; and
 - Compulsory Acquisitions – where Council acquires ownership of land in accordance with the LAC Act and pays compensation for the loss experienced.
111. Compulsory acquisition is considered the most appropriate for the land identified in the Amendment as:
 - There are land takes required from multiple properties for some projects. If anyone landowner refuses to sell, the project cannot be delivered;
 - There is unlikely to be a subdivision application in the future for the land and therefore Council cannot plan for the transfer of land; or
 - The need for the land is known, but the exact timing of when the land is required by

Council is not known.

112. The power to Compulsory Acquire land is controlled by the LAC Act. Section 5 (1) of the LAC Act requires the land to have been *“reserved by or under a planning instrument for a public purpose.”* Clause 45.01-6 of the Scheme states that *“any land included in a Public Acquisition Overlay is reserved for a public purpose within the meaning of the Planning and Environment Act 1987, the Land Acquisition and Compensation Act 1987 or any other act.”*
113. The PAO is therefore an appropriate tool to apply to the land to facilitate compulsory acquisition.

4. Conclusion

114. The Amendment applies the Public Acquisition Overlay to facilitate the acquisition of land by Latrobe City Council where Council has identified that certain DCP projects are at risk of not being delivered due to the landowner development intentions.
115. It is considered that the Amendment has significant strategic justification through the Site Assessments prepared for PAO2 (Road Projects) and PAO3 (Open Space and Drainage Reserves) and is supported by the Development Contribution Plans for Lake Narracan, Morwell North West and Traralgon North growth areas.
116. The Amendment is considered to be consistent with the objectives of the Planning Policy Framework and Municipal Planning Strategy contained within the Latrobe Planning Scheme.
117. The Amendment ensures that the scheme is updated correctly to reserve land as required by the *Land Acquisition and Compensation Act 1986* before compulsory acquisition can occur.
118. Latrobe City Council respectfully requests that the Planning Panel support Planning Scheme Amendment C143latr as exhibited.
119. This completes the Part B submission for the Planning Authority.



Stewart Saunders
Latrobe City Council