

Latrobe Planning Scheme Amendment C143latr

Panel Report

Planning and Environment Act 1987

5 June 2025

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

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

Panel Report pursuant to section 25 of the PE Act

Latrobe Planning Scheme Amendment C143latr

5 June 2025



Sarah Raso, Chair

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Glossary and abbreviations

Council	Latrobe City Council
DTP	Department of Transport and Planning
LAC Act	<i>Land Acquisition and Compensation Act 1986</i>
Morwell DP	Morwell North West Development Plan
Morwell DCP	Morwell Development Contributions Plan
PE Act	<i>Planning and Environment Act 1987</i>
PAO	Public Acquisition Overlay
PAO2	Public Acquisition Overlay Schedule 2
PAO3	Public Acquisition Overlay Schedule 3

Overview

Amendment	
The Amendment	Latrobe Planning Scheme Amendment C143latr
Brief description	Application of the Public Acquisition Overlay to parts of 23 properties across Newborough, Morwell and Traralgon
Planning Authority	Latrobe City Council
Authorisation	1 July 2024 with conditions
Exhibition	21 November to 23 December 2024
Submissions	Number of Submissions: 7

Panel process	
The Panel	Sarah Raso
Directions Hearing	Online, 25 March 2025
Panel Hearing	In person at Kernot Hall, 50-70 Princes Drive, Morwell, 20 May 2025
Site inspections	Accompanied, 20 May 2025
Parties to the Hearing	Latrobe City Council, represented by Stewart Saunders Tony Salvatore
Citation	Latrobe PSA C143latr [2025] PPV
Date of this report	5 June 2025

Executive summary

Latrobe Planning Scheme Amendment C143latr (the Amendment) seeks to apply the Public Acquisition Overlay to parts of 23 properties across three growth areas, Newborough, Morwell and Traralgon. The Amendment will allow for the acquisition of land required for public purposes including road and drainage infrastructure and active open space.

Key issues raised in submissions included application of the Public Acquisition Overlay, including concerns about its alignment, extent and implications.

The Amendment applies the Public Acquisition Overlay in accordance with the relevant Precinct Structure Plan, Development Plans and Development Contributions Plans. This approach is strategically justified and will help facilitate the timely delivery of intersection, road widening, drainage and active open space projects. Changes sought by submitters to the location or extent of the Public Acquisition Overlay are inconsistent with this strategic intent and would have consequential impacts on other land parcels whose owners have not had an opportunity to comment on the changes sought.

More specifically, submitter 4 sought the relocation of the Public Acquisition Overlay from a position which, as proposed, dissects through the relevant land, to a position which follows the title boundary. While this alignment is logical from a subdivision perspective, changing the location of the Public Acquisition Overlay at this point in time would have significant implications for the drainage infrastructure which is planned to be built on the land and follow the natural drainage line. No evidence was produced to indicate whether a relocated drainage reserve is possible or what the potential costs might be.

The Panel concludes:

- the Amendment is well founded and strategically justified
- the location and extent of the PAO as exhibited is appropriate and justified.

Recommendation

Based on the reasons set out in this Report, the Panel recommends that Latrobe Planning Scheme Amendment C143latr be adopted as exhibited.

1 Introduction

1.1 The Amendment and subject land

The Amendment seeks to apply the Public Acquisition Overlay to part of:

- 11 properties in the Lake Narracan Growth Area (Figure 1)
- 11 properties in the Morwell North West Growth Area (Figure 2)
- one property in the Traralgon North Growth Area (Figure 3).

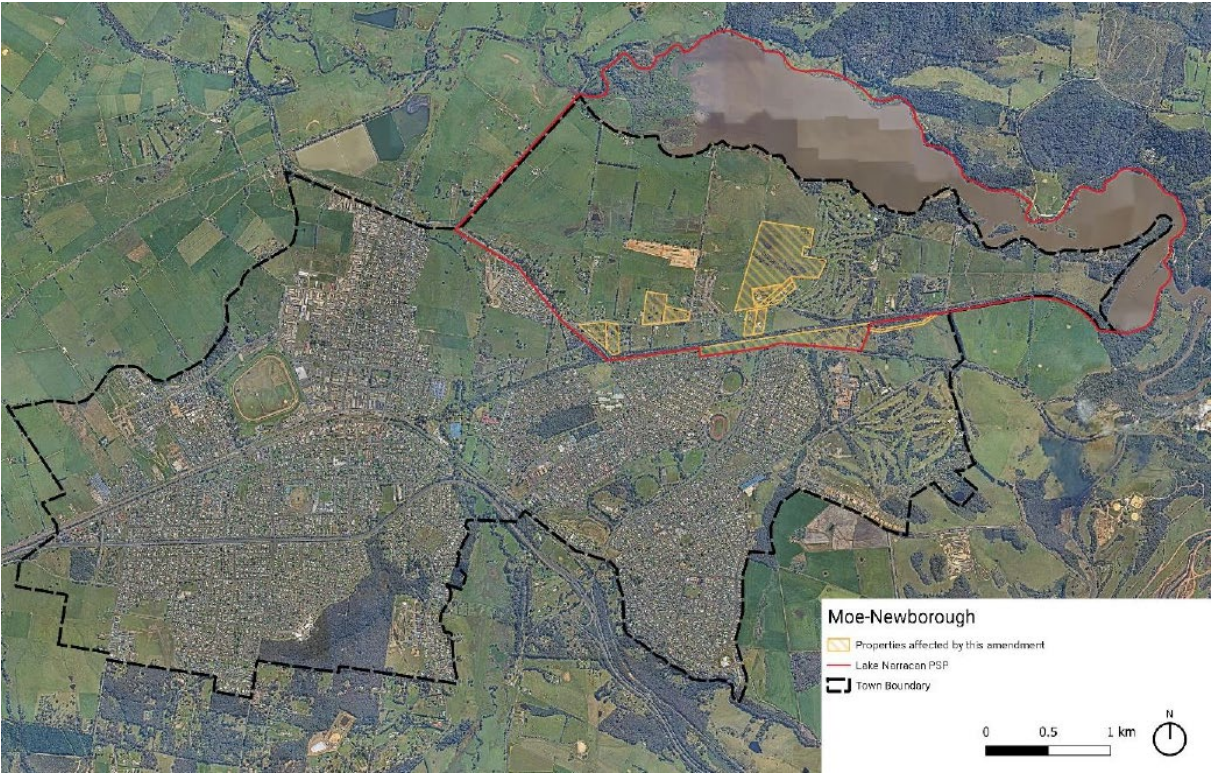
Latrobe City Council (Council) is the Planning Authority.

The Amendment will allow for the acquisition of land required for public purposes including road and drainage infrastructure and active open space identified in the Lake Narracan Precinct Structure Plan and Development Contribution Plan, the Morwell North West Development Plan (Morwell DP) and Development Contribution Plan (Morwell DCP), and the Traralgon North Development Plan and Development Contributions Plan.

Specifically, the Amendment proposes to:

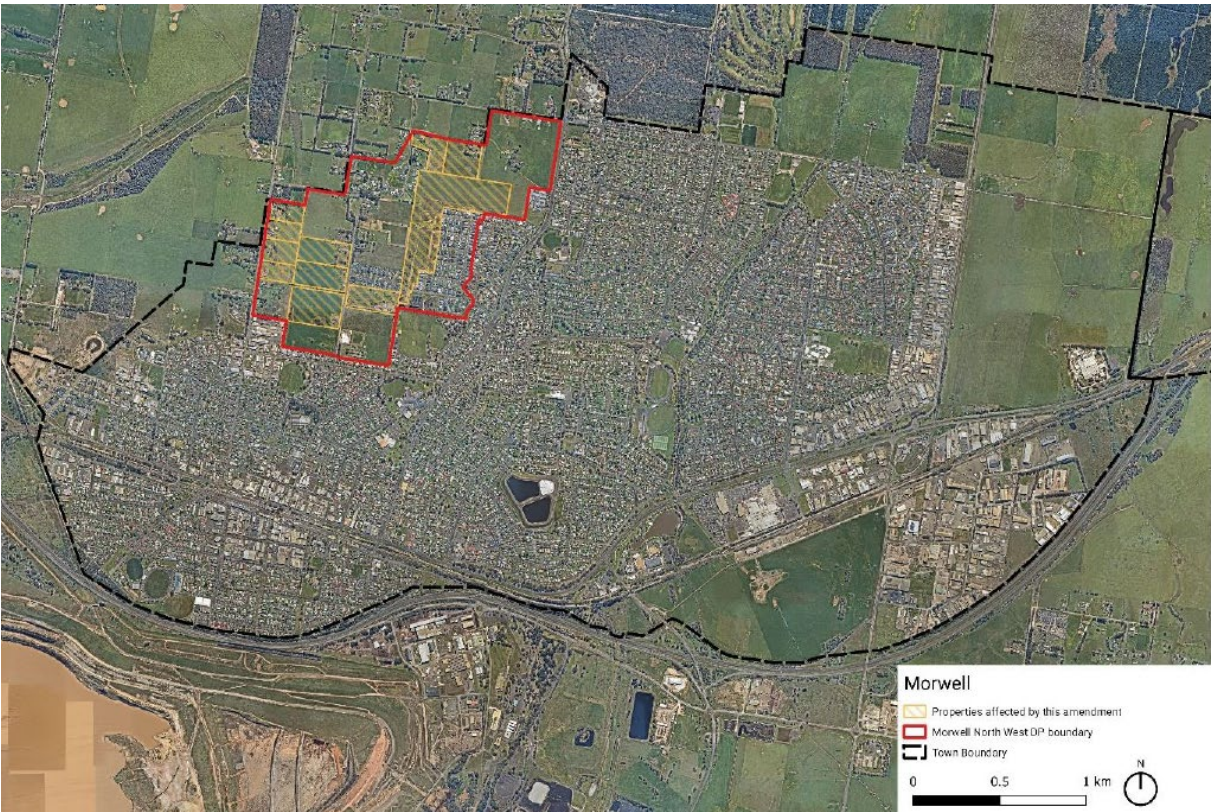
- insert Planning Scheme Maps 24PAO, 25PAO, 30PAO, 50PAO, 71PAO, and 76PAO to apply the Public Acquisition Overlay Schedule 2 (PAO2) and Public Acquisition Overlay Schedule 3 (PAO3)
- amend the Schedule to Clause 45.01 (Public Acquisition Overlay) to make Council the acquiring authority for the:
 - PAO2 for the purpose of the 'Road Projects' acquisition
 - PAO3 with the purpose of the 'Drainage / Open Space Reserves' acquisition
- amend the schedule to Clause 72.03 – What does this planning scheme consist of? to reference 24PAO, 25PAO, 30PAO, 50PAO, 71PAO, and 76PAO
- amend the schedule to Clause 74.01 – Application of zones, overlays and provisions to outline how the Public Acquisition Overlay (PAO) implements the Municipal Planning Strategy.

Figure 1 Lake Narracan Growth Area



Source: Explanatory Report

Figure 2 Morwell North West Growth Area



Source: Explanatory Report

Figure 3 Traralgon North Growth Area

Source: Explanatory Report

1.2 Background

Table 1 Chronology of events

Date	Event
1 July 2024	Minister authorised the preparation of the Amendment subject to conditions
21 Nov to 23 Dec 2024	Amendment exhibited
24 February 2025	Council resolved to appoint a Planning Panel
25 March 2025	Directions Hearing
20 May 2025	Panel Hearing

1.3 Procedural issues

The Panel was appointed on 4 March 2025. Due to an availability issue the Panel was reconstituted on 13 May 2025 with Sarah Raso replacing Lisa Kendle.

1.4 The Panel's approach

Key issues raised in submissions included application of the PAO, including concerns about its alignment, extent and implications.

Some submissions raised matters which are outside the remit of the Panel, including issues relating to the process and timing of land acquisition and compensation once the PAO is in place. The Panel has not dealt with these issues.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from its site visit, and submissions and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Strategic issues
- Public Acquisition Overlay.

2 Strategic issues

2.1 Planning context

Table 2 Planning context relevant to the Amendment

	Relevant references
Victorian planning objectives	- section 4(1)(d) of the PE Act
Municipal Planning Strategy	- Clause 2
Planning Policy Framework	<ul style="list-style-type: none"> - Clauses 11.01-1I (Moe-Newborough), 11.01-1L (Morwell) - Clause 13.06-1S (Air quality management) - Clauses 14.02-1S (Catchment planning and management), 14.02-2S (Water quality) - Clause 18.01-1S (Land use and transport integration), 18.01-2S (Transport system), 18.01-2R (Transport system-Gippsland), 18.02-4S (Roads) - Clauses 19.03-1S (Development and infrastructure contribution plans), 19.03-2S (Infrastructure design provision), 19.03—3S (Integrated water management)
Other planning strategies and policies	- Plan Melbourne Outcome 4, Direction 4.4, Policies 4.4.1 and 4.4.4
Planning scheme provisions	<p>Lake Narracan Growth Area:</p> <ul style="list-style-type: none"> - Urban Growth Zone Schedule 1 - Public Parks and Recreation Zone - Public Acquisition Overlay Schedule 2 and 3 - Development Contributions Overlay Schedule 1 <p>Morwell North West Growth Area</p> <ul style="list-style-type: none"> - General Residential Zone Schedule 3 - Development Plan Overlay Schedule 1 - Floodway Overlay <p>Traralgon North Growth Area</p> <ul style="list-style-type: none"> - General Residential Zone Schedule 3 - Development Plan Overlay Schedule 7
Ministerial directions	- Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice and advisory notes	<ul style="list-style-type: none"> - Planning Practice Note 46: Strategic Assessment Guidelines for preparing and evaluating planning scheme amendments - Guide to Victoria's Planning System (Chapter 6: Acquisition and Compensation)

2.2 Strategic justification

(i) Issue

The issue is whether the Amendment is strategically justified.

(ii) Background

A planning scheme may designate land as being reserved for a public purpose. Land reserved for future compulsory acquisition is identified by including the land in a PAO.

The objectives of the PAO include *“to reserve land for a public purpose and to ensure that changes to the use and development of land do not prejudice the purpose for which the land is to be acquired”*.

The PAO indicates that, for the purpose of the *Land Acquisition and Compensation Act 1986* (LAC Act), any land included in the overlay is reserved for a public purpose. This satisfies the requirement in section 5 of the LAC Act that an authority cannot commence to acquire the land *“unless the land has been first reserved by or under a planning instrument for a public purpose”*.

To facilitate development in the Lake Narracan, Morwell North West, and Traralgon North growth areas, land is required for public purposes including road infrastructure, drainage infrastructure and active open space. This infrastructure is identified in the Lake Narracan Precinct Structure Plan and Development Contributions Plan, the Morwell DP and Morwell DCP, and the Traralgon North Development Plan and Development Contributions Plan.

All three growth areas are at differing stages of development. Approximately 9.2 per cent of private properties in Lake Narracan have subdivision approval and are in some state of development, 12.2 per cent of properties in Morwell North West either have subdivision approval or have a permit application for subdivision under assessment, and 75 per cent of properties in Traralgon North have subdivision approval and are in some state of development.

The planning permit and subdivision processes have not been able to secure all the necessary public land identified in the relevant Development Contribution Plans in a timely manner. Therefore, a formal acquisition process is required to secure the land necessary to deliver three intersection projects, two road widening projects, nine drainage projects and two active open space projects.

(iii) Discussion and conclusion

The application of the PAO has been informed by the three Development Contributions Plans, the relevant Development Plans and Precinct Structure Plan for each growth area.

To facilitate the timely delivery of three intersection projects, two road widening projects, nine drainage projects and two active open space projects, a PAO is necessary. The LAC Act requires land to be first reserved in a planning scheme before compulsory acquisition can occur (noting there are some exemptions). The PAO is the appropriate tool to facilitate this.

Applying the PAO to land, reserves the land in the planning scheme and allows for a compulsory acquisition process to be undertaken by the Acquiring Authority (Council) at a future date.

Council explained that each of these projects is critical to the ongoing development of the key development areas and that a future acquisition would be required. The key projects which the PAO will ultimately facilitate will lead to the timely delivery and completion of three key growth areas within the Latrobe region.

The Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified

- should proceed subject to addressing the more specific issues raised in submissions.

3 Public Acquisition Overlay

3.1 Application of the Public Acquisition Overlay

(i) The issue

The issue is whether the proposed location of the PAO is appropriate and justified.

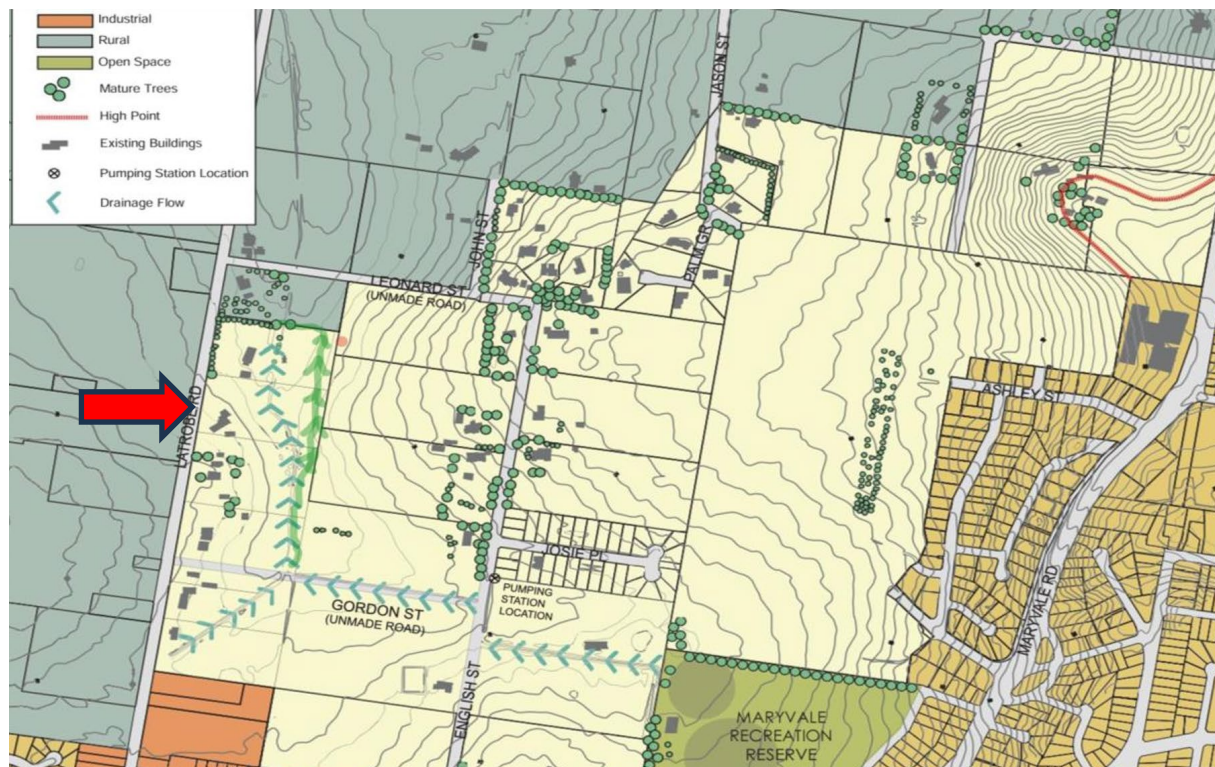
(ii) Submissions

A number of submitters sought changes to the location, or extent of the PAO.

Submitter 4 sought the relocation of the PAO from a position which, as proposed, dissects through the land *“creating an awkward and unusable rear lot with no road access”*. It submitted:

- the proposed location of the drainage infrastructure (subject to the PAO) appears to have been established using the location of the existing drain without sufficient consideration of land ownership or property boundaries
- this has resulted in an awkward small land parcel without road access
- the drainage reserve serves a *“precinct-wide function, benefiting other landowners while disproportionately affecting us”*.

Figure 4 Submitter 4 land (red arrow) showing proposed drainage flow and PAO line and preferred drainage flow and PAO line (hand drawn in green)



Source: Submitter 4 submission to Council

Council did not support moving the PAO as sought and highlighted that doing so would be inconsistent with the background strategic work, principally the Morwell DP and Morwell DCP. Council submitted:

- the changes sought would impact six other properties, three of which are not presently subject to the proposed PAO and have not been notified in relation to the Amendment
- no evidence had been produced to justify the relocation of the drainage asset.

Council indicated that the changes proposed by submitter 4 had been discussed with its own engineers, and also the West Gippsland Catchment Management Authority. It referred to the following advice received:

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.

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 gravity to the drainage reserve. The change would significantly increase the scope of works and result in the project 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.

The West Gippsland Catchment Management Authority are open to considering the alternative alignment but would require a new stormwater study and flood study to identify the impacts of the design.

Submitter 5 wanted to extend the area of the PAO so that it aligned with the northern boundary of two land parcels. It submitted that increasing the size of the PAO would increase the flexibility to design the relevant stormwater asset and subdivision layout. Council indicated that the PAO will not prevent the consideration of alternative designs for the development contributions infrastructure which do not align the PAO land area and there is a legislative process in place for this situation.

(iii) Discussion

The Amendment applies the PAO in accordance with the relevant Precinct Structure Plan, Development Plans and Development Contributions Plans. The Panel has already concluded that this approach is strategically justified and sees no reason to depart from this position.

More specifically, the Amendment as it relates to submissions 4 and 5, seeks to reserve land which has been identified in the Morwell DP for drainage infrastructure.

The land appears as 'Drainage Reserve (Encumbered)' on the maps within the Morwell DP. Page 3 of the Morwell DP states that the purpose of this development plan 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 reserved for these purposes and not lost in favour of maximising individual Development interests.

The changes sought by submitters 4 and 5 would result in an outcome that is inconsistent with the strategic intent identified in the Morwell DP. Equally, as Council identified, the changes proposed would have consequential impacts on other land parcels and those land holders have not had an opportunity to comment on the changes sought.

In relation to submitter 4, changing the location of the PAO and consequently the drainage infrastructure, would have significant flow on effects. While the location of the PAO is not ideal given it intersects the property (rather than following the title boundary), changing its location at this point in time would have significant implications for the drainage infrastructure which is planned to be built on the land. No evidence was produced to indicate whether a relocated drainage reserve is possible or what the potential costs might be. The proposed drainage infrastructure is located to follow the existing natural drainage line on the land. Indeed, page 9 of the Morwell 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 affected properties. The subdivision layout has been appropriately managed to reflect this location.

While the land remains undeveloped, there are options open to both the landowner and Council when the acquisition occurs, such as acquiring the drainage reserve as an easement on title, rather than a reserve on title. Council would equally need to ensure that a physical crossing of the drainage infrastructure is provided so the landowner's smaller parcel of land does not end up landlocked in the event it remains undeveloped¹.

In relation to submitter 5, it is not ideal to apply a PAO to a larger parcel of land than what is technically required. Part 5 of the LAC Act allows a landowner to be compensated for the PAO which has been applied to their land and then later removed with no acquisition. The compensation payable would reflect the landowners restricted ability to use their land while the PAO is in place. The Panel therefore agrees with Council that it would be irresponsible for Council to apply the PAO to land that is unlikely to be acquired. If additional land is required, there is still flexibility in the acquisition process under the LAC Act for this to occur.

(iv) Conclusion

The Panel concludes the location and extent of the PAO as exhibited is appropriate and justified and should not be amended.

3.2 Other issues

(i) Private agreements

Two submitters were concerned the application of the PAO would interfere with or delay a permit holder's ability to come to their own commercial arrangements to acquire land for development contribution projects.

Council confirmed that it is still Council's intention that the infrastructure items are delivered by developers/landowners and application of the PAO will not interfere with this process. Council explained the PAO was being applied to ensure that a "*fair and prudent process*" to acquire land is in place should private arrangements not materialise. The Panel concurs with this approach.

(ii) Age of strategic documents

Submitters 4 and 5 took issue with the age of the Morwell DP, Morwell DCP and a relevant Drainage Study, and suggested the PAO areas should be revisited as a result. Council indicated that while the Morwell DP and DCP were first adopted by Council in 2010, the Morwell DP is

¹ As required by section 43(2) of the LAC Act.

intended to provide for approximately 25 years of land supply and therefore has a design life of at least 25 years. Council said it reviews all strategic planning documents every ten years to identify changes in policy and if intended outcomes are being achieved. Council advised the:

- Morwell DP and Morwell DCP were last reviewed in 2016/2017
- updates were adopted in 2018
- next ten year review will be due around 2028.

Council submitted:

- the Morwell DP and Morwell DCP and the relevant Drainage Study were of an appropriate age to be used as background documents to this Amendment
- it was satisfied the Morwell DP is still relevant to sufficiently guide orderly development
- no evidence had been produced to demonstrate the drainage study was no longer relevant or its assumptions were outdated.

The Panel agrees and sees no reason to delay the application of the PAO in such circumstances.

Appendix A Document list

No	Date	Description	Presented by
2025			
1	5 Mar	Directions Hearing letter	Planning Panels Victoria (PPV)
2	26 Mar	Panel Directions and Hearing Timetable (version 1)	PPV
3	16 Apr	Part A submission with attachments: 3a - Properties affected by the Amendment 3b -Directions and timetable 3c - Table of relevant planning permits 3d – Explanatory Report 3e - Completed strategic assessment 3f - Letter of authorisation 3g – Submissions 3h - Summary of submissions 3i – Attachment 2 to 24 February 2025 Council Minutes	Council
4	28 Apr	Part B submission with attachments: 4a – Drainage strategy 2017 4b – Main catchment drainage strategy 2016 4c – Morwell submissions map	Council
5	29 Apr	Submission	Submitter 4
6	29 Apr	Panel correspondence – rescheduled site inspection	PPV
7	7 May	Hearing Timetable (version 2)	PPV
8	14 May	Panel correspondence – panel reconstitution	PPV
9	20 May	Part B presentation	Council
10	20 May	Part C presentation	Council