



# **Site Assessment: Public Acquisition Overlay 3 (Drainage / Open Space Reserves)**

Latrobe City Council July 2024

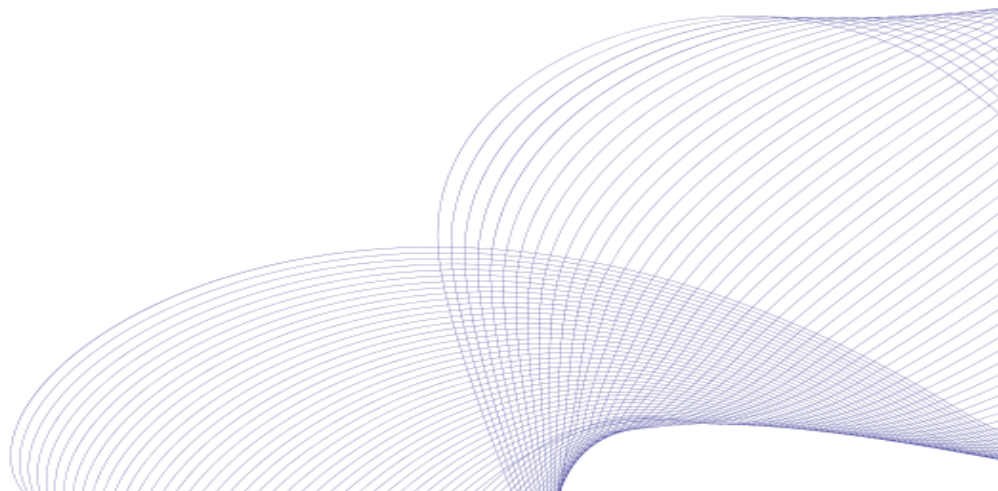
## 1.0 Summary

Latrobe City Council, like most councils in Victoria, has experienced a significant increase in development activity since 2020 and the Covid-19 Pandemic. Much of this activity is occurring in our three main growth areas which are each covered by a Development Contribution Plan (DCP). These DCPs aim to equitably share the cost of infrastructure required to service the growth areas. Whilst the DCP outlines land and projects required to facilitate the delivery of the growth areas, it does not provide a mechanism for Council, as the Delivering Authority of the DCPs, to acquire the land should development not occur in a timely and orderly manner.

This Amendment proposes to resolve this issue by amending the *Schedule to clause 45.01 Public Acquisition Overlay (PAO)* in the Latrobe Planning Scheme to introduce PAO3. PAO3 names Latrobe City Council as the *Acquiring Authority* and that the purpose of acquisition is for open space reserves. The Amendment will also apply PAO3 to parts of 13 properties in Newborough, Morwell and Traralgon which are respectively subject to the Lake Narracan Precinct Structure Plan (PSP) and Development Contribution Plan (DCP), Morwell North West Development Plan (DP) and Development Contribution Plan, and the Traralgon North Development Plan and Development Contribution Plan. The application of PAO3 in these growth areas will facilitate the delivery of critical stormwater infrastructure in Newborough and Morwell and an active open space reserve (sports field) in Traralgon.

### 1.1 Subject Land

The subject land comprises 13 parcels of land spread across three towns in Latrobe – Newborough, Morwell and Traralgon. All land is part of a DCP which Latrobe City Council (the Council) has adopted. The location of the affected land can be found in Figure 1 (Newborough), Figure 2 (Morwell), and Figure 3 (Traralgon). All parcels are in private ownership with a range of development intentions. The parcels affected are listed in Table 1 below. Detailed maps of the proposed extent of PAO to be applied can be found in Figure 4 (Newborough), Figure 6 (Morwell), and Figure 5 (Traralgon).



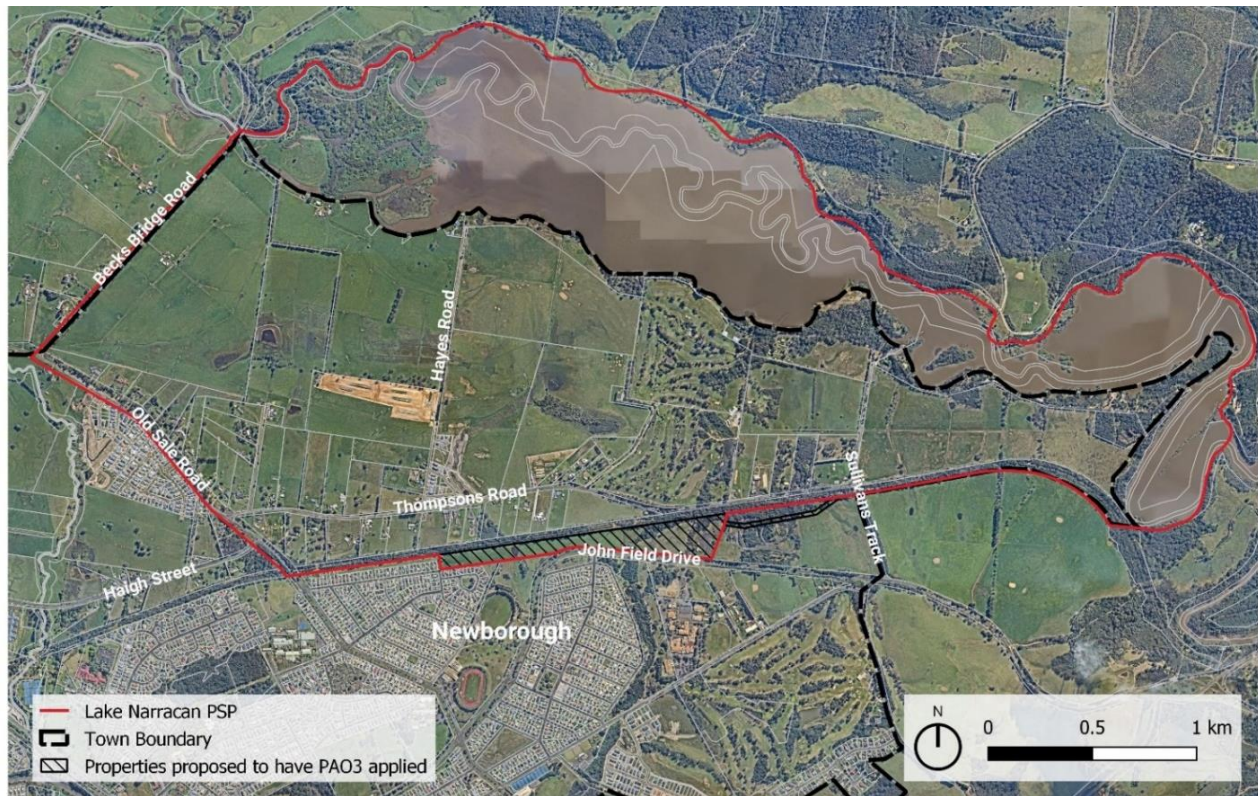


Figure 1: Location of affected properties in Newborough.

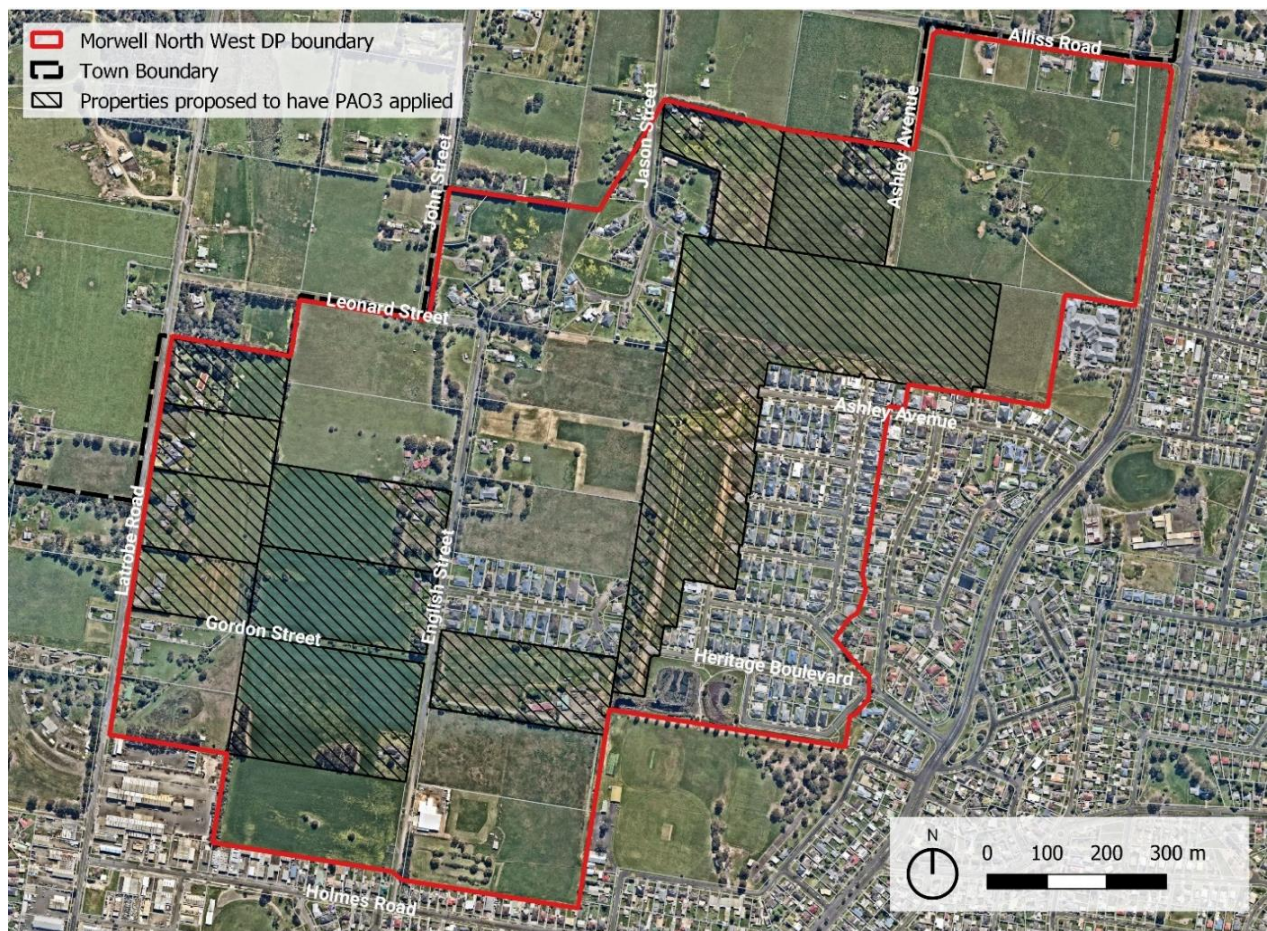
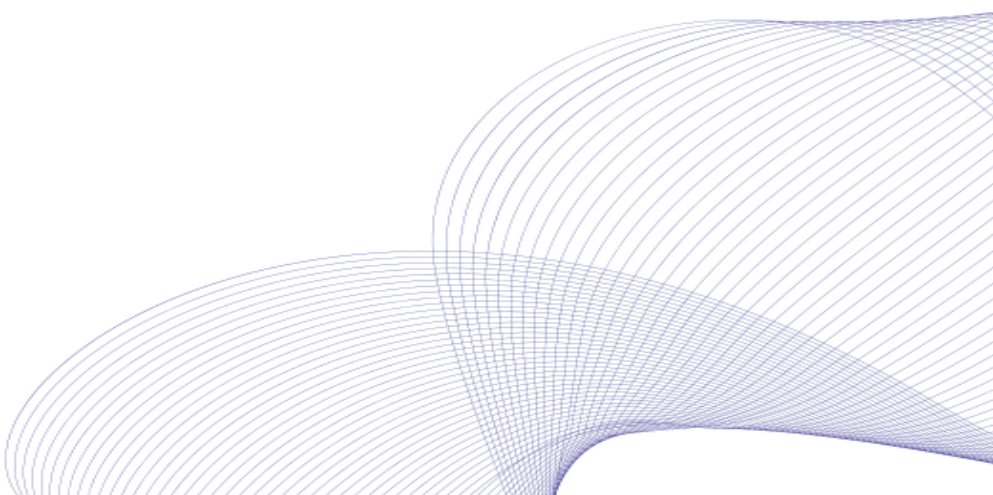


Figure 2: Location of affected properties in Morwell.



Figure 3: Location of affected properties in Traralgon.

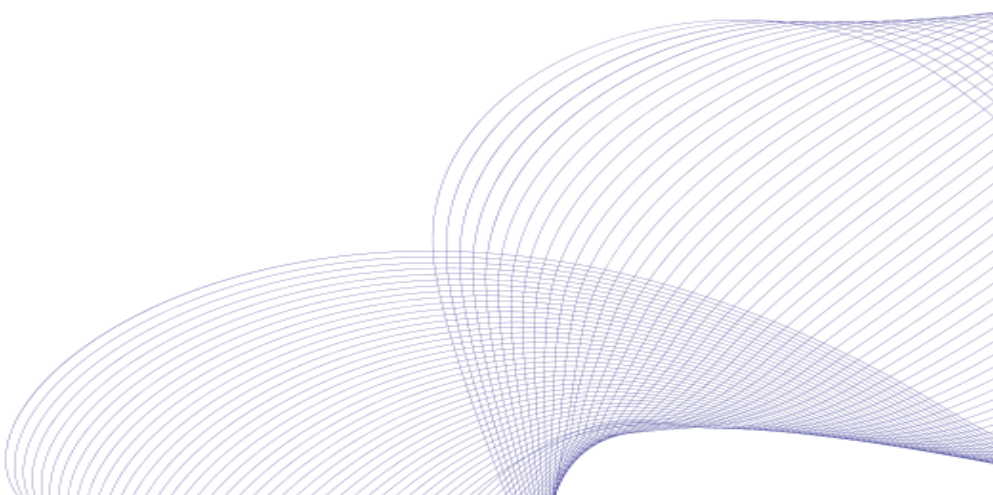


**Table 1: Properties proposed to have PA03 applied (to part of).**

Property Details	Development Contribution Plan (DCP)	DCP Property Identifier	DCP Project Identification
710 John Field Drive, NEWBOROUGH - 34\LP121048	Lake Narracan	66	WL-09
130 Latrobe Road, MORWELL - 70E\PP3072	Morwell North West	4	CH-03
140 Latrobe Road, MORWELL - 70D\PP3072	Morwell North West	3	CH-03 WR-02
150 Latrobe Road, MORWELL - 70C\PP3072	Morwell North West	2	CH-03 WR-02
160 Latrobe Road, MORWELL - 70B\PP3072	Morwell North West	1	CH-03 CV-03
25 English Street, MORWELL - 70L\PP3072	Morwell North West	12	CH-04
40 English Street, MORWELL - 1\TP211967	Morwell North West	17	CH-05
55 English Street, MORWELL - 14\LP11865	Morwell North West	11	CH-03
65 English Street, MORWELL - 70H\PP3072	Morwell North West	10	WR-02
23 Jason Street, MORWELL - 1\PS404523	Morwell North West	19	WR-04
77 Ashley Avenue, MORWELL - 19\LP111605	Morwell North West	20	WR-04
Heritage Boulevard, MORWELL - H\PS739559	Morwell North West	22	WR-04
50 Glendale Road, TRARALGON - 1\PS329021	Traralgon North	9	DI-LA-2 DI-OS-1



Figure 4: Location of proposed PAO in Newborough and facilitated projects.



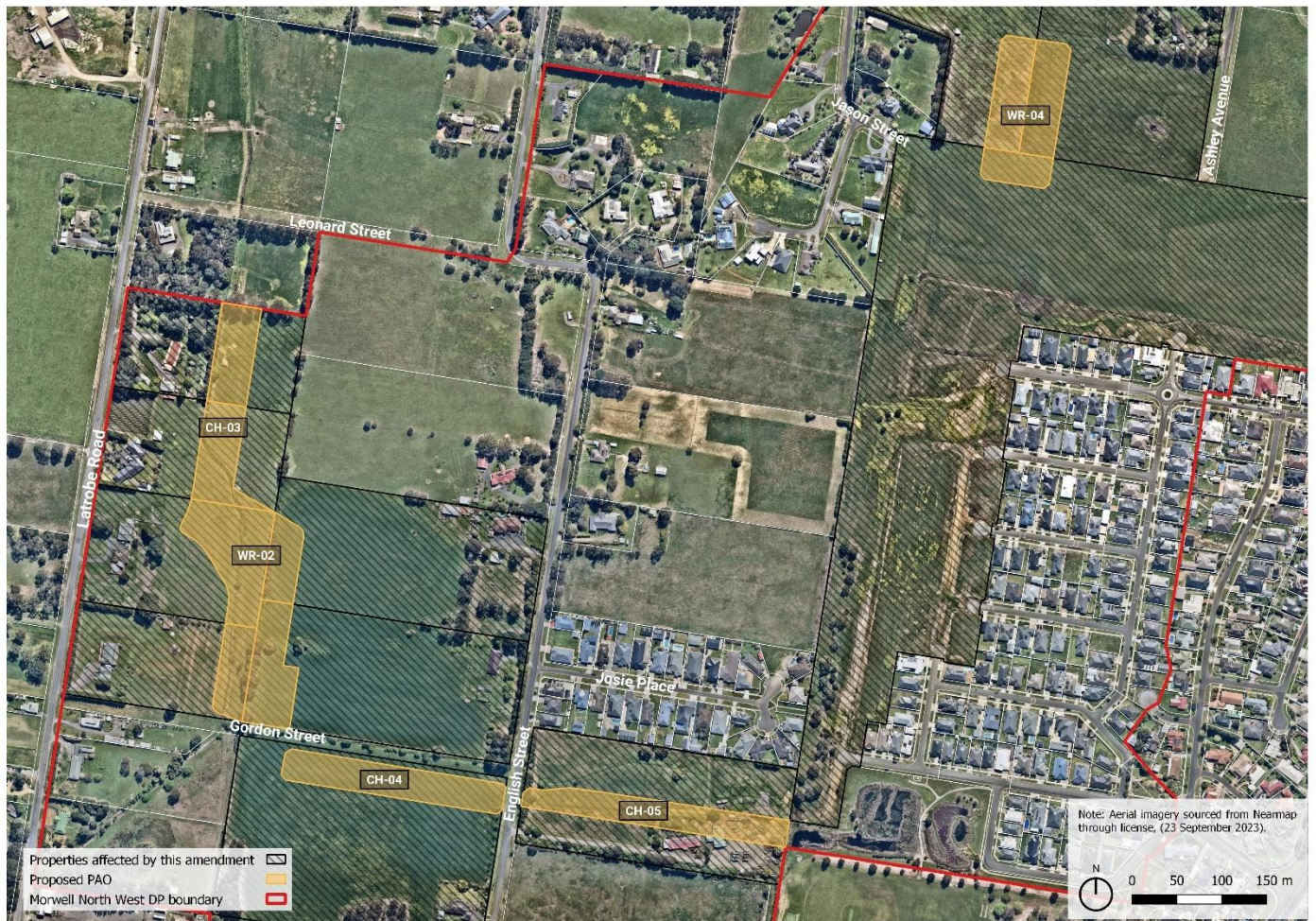


Figure 6: Location of proposed PAO in Morwell and facilitated projects.



Figure 5: Location of proposed PAO in Traralgon and facilitated projects.

## 1.2 Current Zone

### 1.2.1 Lake Narracan current zone

The land is currently zoned Urban Growth Zone Schedule 1 (UGZ1)(Figure 7). This Schedule enforces the Lake Narracan Precinct Structure Plan. Clause 2.2 of Schedule 1 outlines the *applied zone provisions*. The use of applied zones ensures development is assessed under the ultimate zone intended for the land once the growth area is delivered. Table 2 outlines the *applied zone provisions* currently in UGZ1 clause 2.2. The current zone was adopted into the scheme by Amendment C86 which was gazetted on 17 December 2015.



Figure 7: Current Zone of affected properties.

Table 2: Applied zone provisions in UGZ1.

Land use/ Development (Carried out or proposed) generally in accordance with the precinct structure plan applying to the land.	Applied zone provisions
Village Centre	Clause 34.01 – Commercial 1 Zone
Arterial road	Clause 36.04 – Transport Zone 2
Connector street	Clause 36.04 – Transport Zone 3
Land or any lot wholly contained within, 200 metres distance from a village centre	Clause 32.07 – General Residential Zone 1
All other land	Clause 32.08 schedule 1 – General Residential Zone 3



### 1.2.2 Morwell North West current zone

The land is currently zoned General Residential Zone Schedule 3 (GRZ3) (see Figure 8 below). GRZ3 is Latrobe City's preferred zone for residential growth areas. The current zone was adopted into the scheme by Amendment C105 which was gazetted on 21 November 2019.

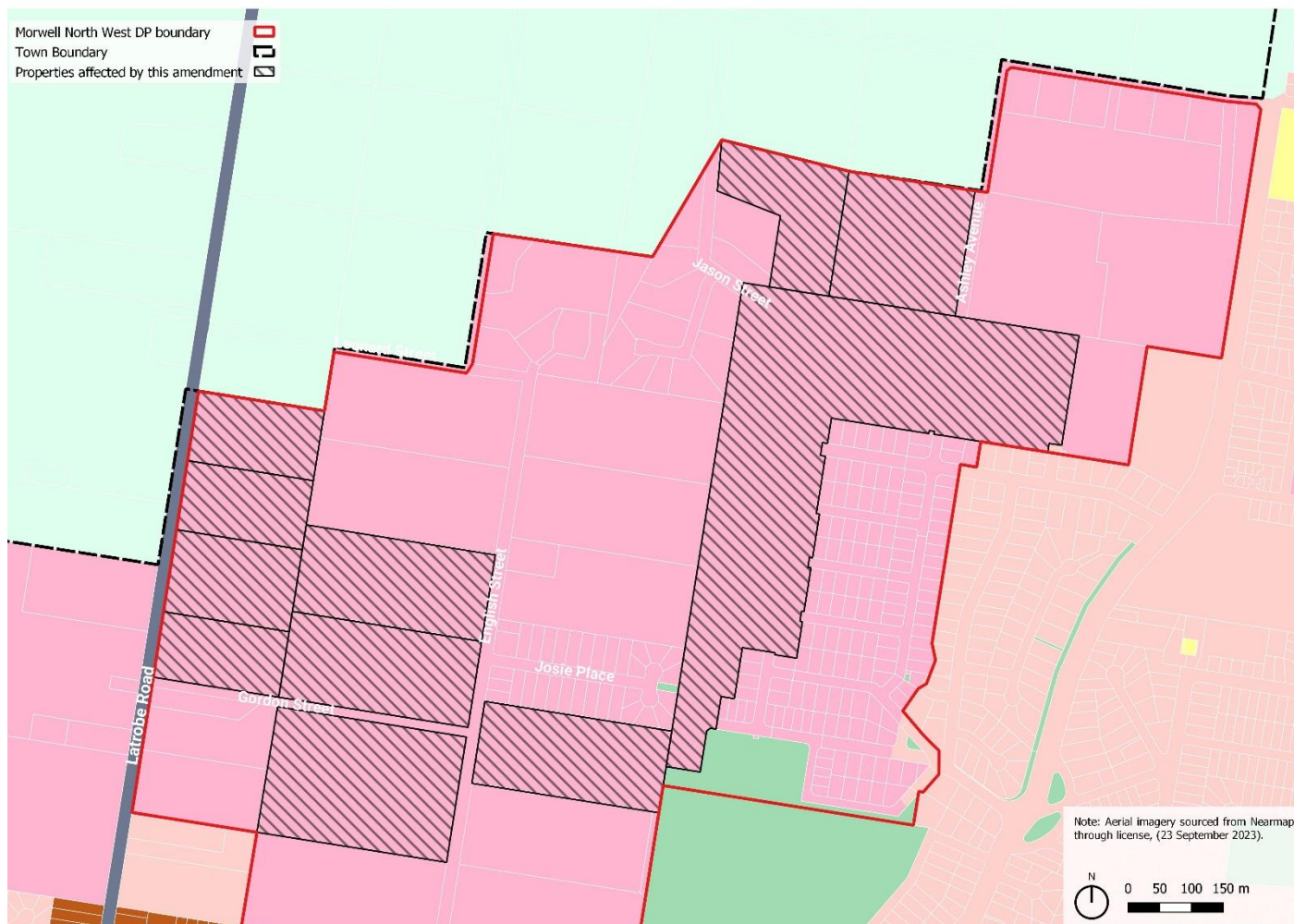


Figure 8: Current Zone of affected properties.

### 1.2.3 Traralgon North current zone

The land is currently zoned General Residential Zone Schedule 3 (Figure 9). GRZ3 is Latrobe City's preferred zone for residential growth areas. The current zone was adopted into the scheme by Amendment C105 which was gazetted on 21 November 2019.

The land to the north of the DP was rezoned to residential, from Farming Zone, by amendment C138 on 18 October 2023. This amendment created a new growth area separate to the Traralgon North Development Plan.

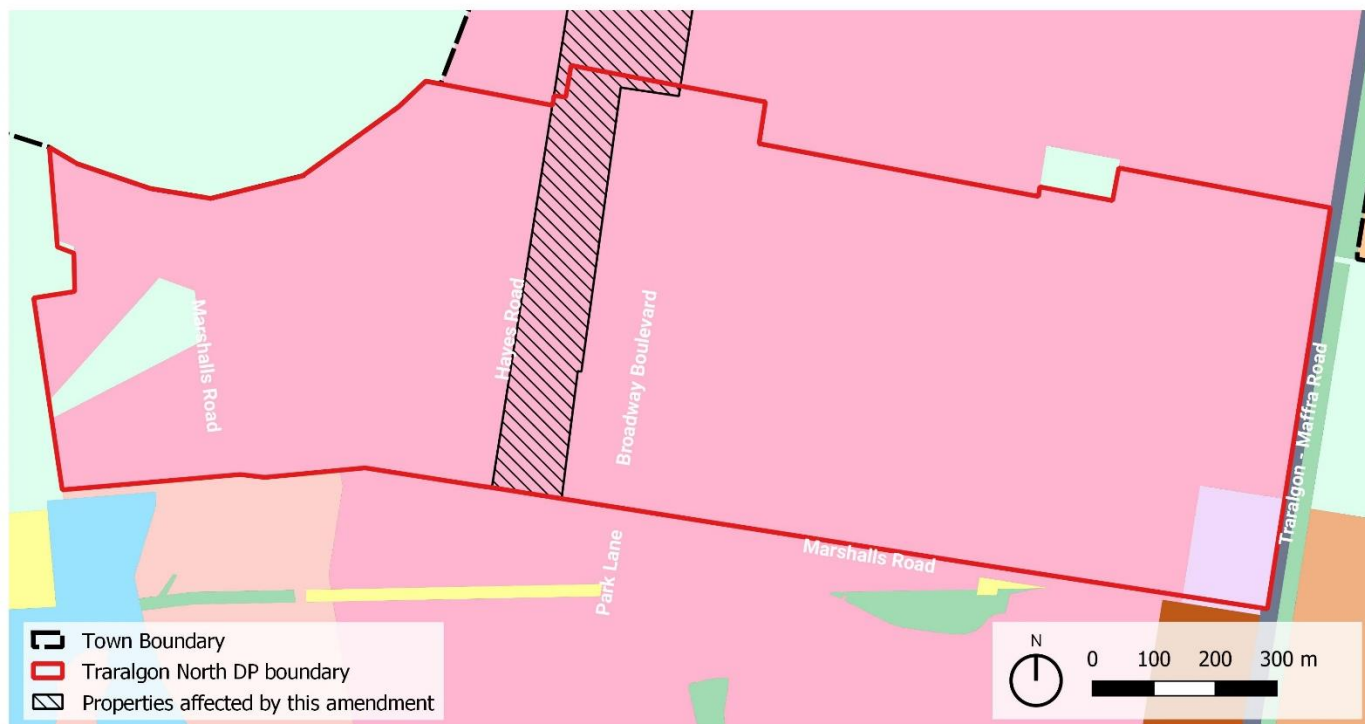


Figure 9: Current Zone of affected properties.

### 1.3 Current Overlays

#### 1.3.1 Lake Narracan current overlays

One overlay affects the subject land, Development Contribution Plan Overlay Schedule 1. This schedule was specifically created to implement the Lake Narracan Development Contribution Plan (DCP). The schedule allows Council to collect contributions as outlined in the Lake Narracan DCP without the need for entering into section 173 agreements. The Development Contribution Plan Overlay was adopted into the scheme by Amendment C86 which was gazetted on 17 December 2015.

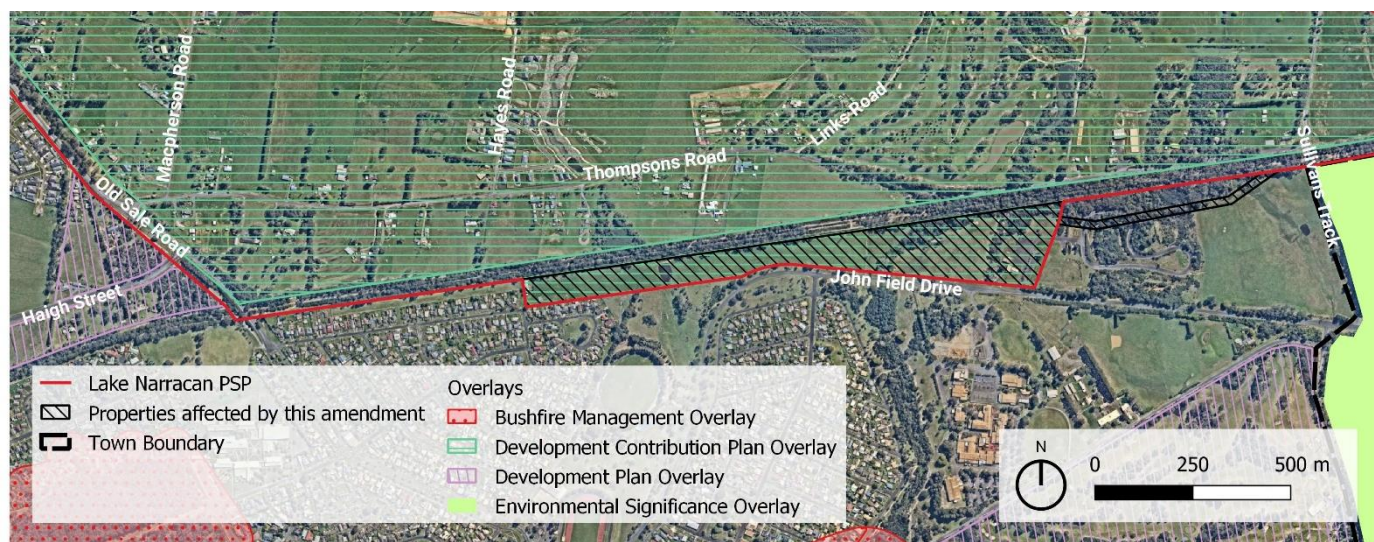


Figure 10: Current Overlays on affected properties.

### 1.3.2 Morwell North West current overlays

One overlay affects the subject land, Development Plan Overlay Schedule 1. This schedule was specifically created to implement the Morwell North West DP and DCP. A specific schedule was considered necessary to tailor the DP and DCP to the particular constraints of this growth area. The schedule allows Council to collect contributions as outlined in the Morwell North West DCP via section 173 agreements (to be entered into at the time of subdivision permits being written).

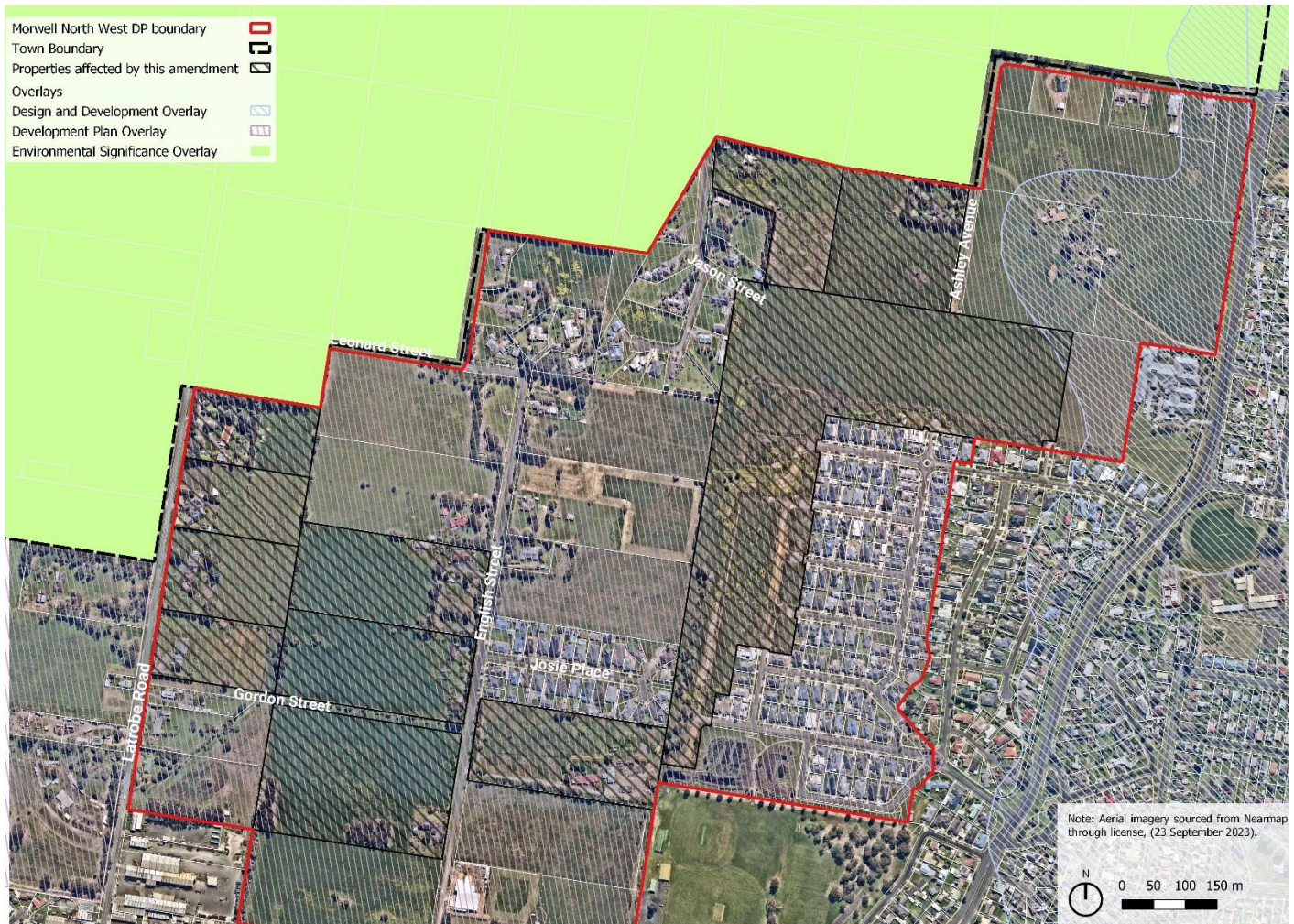


Figure 11: Current overlays on affected properties.

### 1.3.3 Traralgon North Current Overlays

Two overlays affect the subject land in Traralgon North, Development Plan Overlay Schedule 7 (DPO7) and Buffer Area Overlay Schedule 1 (BAO1)(see Figure 12 below).

DPO7 was specifically created to implement the Traralgon North DP and DCP. A specific schedule was considered necessary to tailor the DP, DCP and development conditions to the particular constraints of this growth area. The schedule allows Council to collect contributions as outlined in the Traralgon North DCP via section 173 agreements (to be entered into after a permit is granted but prior to commencement of the permitted development).

BAO1 applies to the northern areas of the subject land. A pipeline easement parallels the northern boundary of the Traralgon North DP. The BAO applies to an area 175 metres either side of the pipeline easement. BAO1 was introduced into the Scheme on 21 December 2023 by Amendment C121. The purpose of the

overlay is to identify areas where there is potential for off-site impacts or risks to human health, safety, or amenity and to restrict development rights to avoid creating new risks to health, safety or amenity. The land identified in this proposal is located on the southern boundary of the property and therefore not subject to BA01.

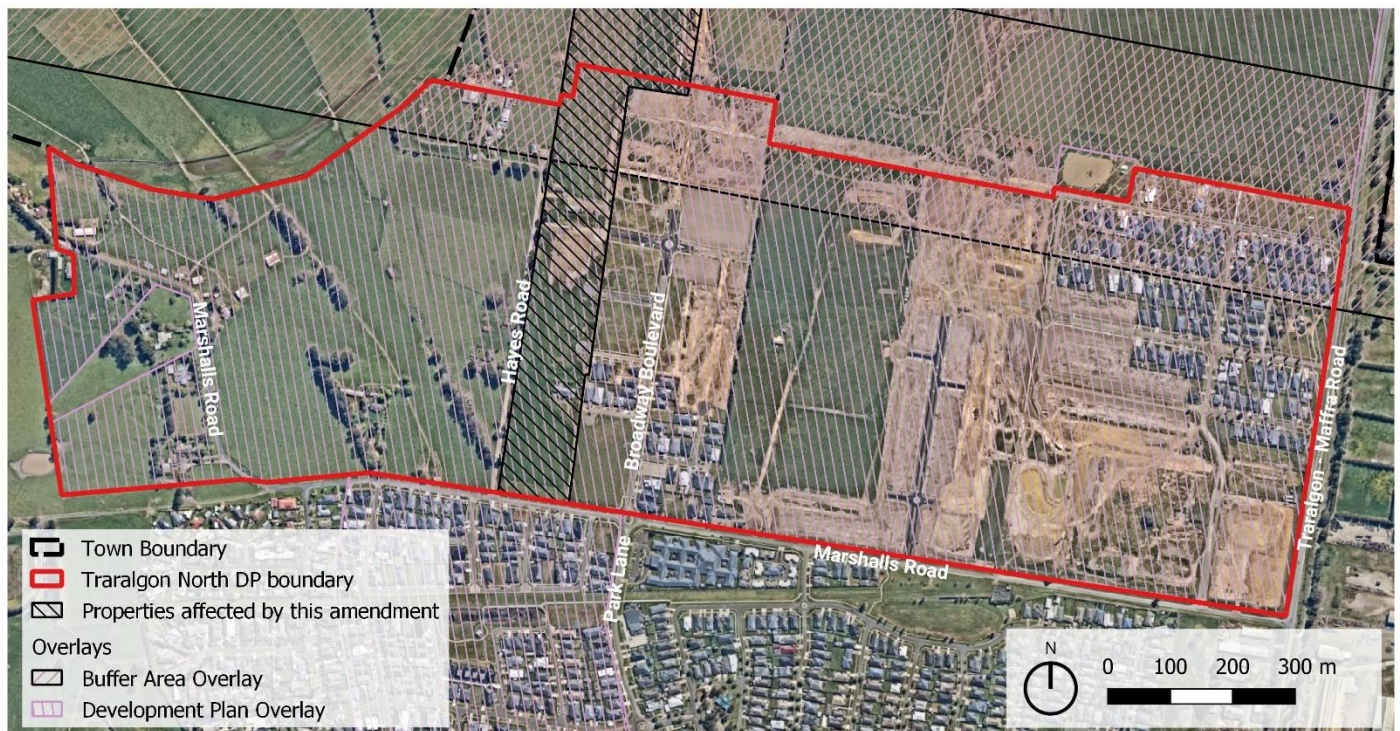


Figure 12: Current Overlays on affected properties.

## 2.0 History

### 2.1.1 Developing the Lake Narracan growth area and rezoning to residential

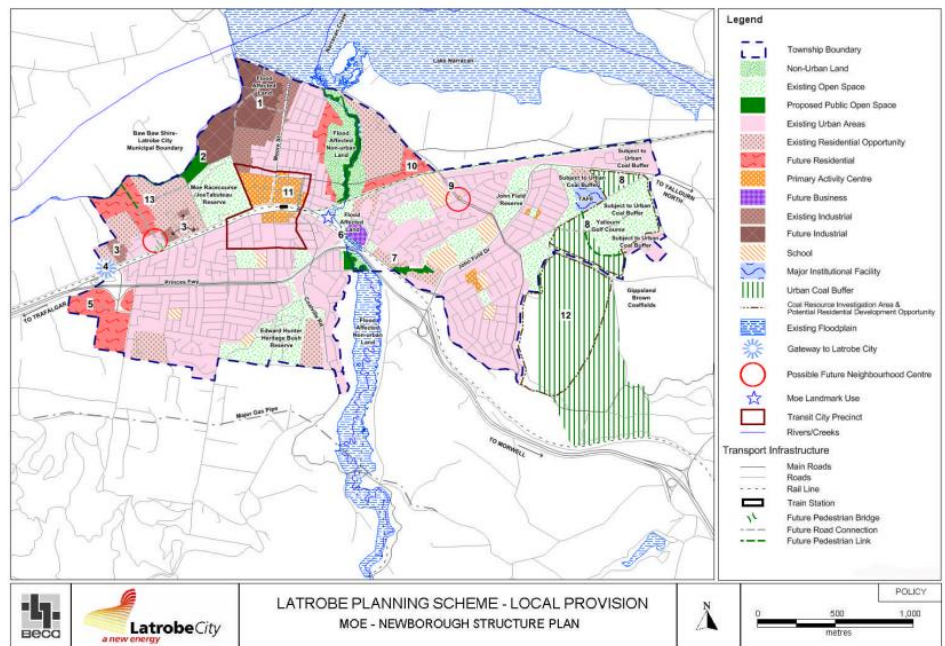
710 John Field Drive was first rezoned to residential on 5 May 2011 by Amendment C56. This Amendment was prepared by the Minister for Planning at the request of Latrobe City Council. It rezoned six sites identified as 'future residential' in the Churchill, Moe/Newborough, Morwell and Traralgon Town Structure Plans. At the time, land supply in Moe/Newborough was considered to be critically short as no new land had been rezoned since the *Residential and Rural Residential Land Assessment (2009)* identified that Moe / Newborough and Traralgon had a shortage of residential zoned lots for development.

In accordance with the General Practice Note *Ministerial Powers of Intervention in Planning and Heritage Matters (2004)* the Minister prepared Amendment C56 and adopted it without exhibition. The Amendment was not placed on exhibition as it was considered to be in the best interests of the Latrobe Valley to immediately increase residential land supply by rezoning land identified for future residential.

On 11 July 2012 the State Government released *The Latrobe Valley Industry and Employment Roadmap*, which responded to a submission by Latrobe City. This submission, amongst other things, requested assistance in planning Latrobe's growth areas. The roadmap responded by identifying Strategic Direction 6: Enhancing Liveability, New Planning Support for Regional Growth Areas. This direction aimed to accelerate structure planning of new growth areas in regional councils to facilitate land supply and ensure sufficient supply of housing in regional areas.

Council and the Metropolitan Planning Authority (MPA), then Growth Areas Authority (GAA), first reviewed the strategic viability of a growth area on the banks of Lake Narracan in 2013. The GAA's report, published in August 2013, acknowledged that Moe-Newborough was growing but that the planning scheme identified sufficient supply to meet state policy regarding land supply. To ensure the town maintained adequate supply, the report advised that it would be better to plan the growth area now rather than later. It argued that beginning planning early would help ensure that the negative impacts of a land supply shortage would be avoided.

At the time clause 21.05 identified that residential growth should be accommodated in areas 5, 10 and 13 of the Town Structure Plan and to resolve issues with the Environmental Significance Overlay to allow residential growth in areas 8 and 12 (see Figure 13). With the exception of area 12, the areas identified for growth were all within the then town boundary. Moe-Newborough had limited opportunities to grow the town boundary due to a range of environmental factors and State objectives in the planning scheme.



**Figure 13: Moe-Newborough Town Structure Plan prior to Amendment C86.**

The Environmental Significance Overlay defines the eastern edge of Newborough. This overlay is designed to keep urban development a safe distance from Yallourn Coal Mine and power stations.

The southern edge is defined by hilly terrain which is heavily vegetated with native vegetation. This area, if developed, would be exposed to significant fire hazard, and require significant loss of native vegetation. Expansion westward can be accommodated but is limited due to the close proximity of the municipal boundary to Moe and the hilly terrain to the south.

Expansion north west is not possible due to the town already abutting the municipal boundary and floodplain. Clause 21.05 (Municipal Strategic Statement – Main Towns) contained written policy to maintain a non-urban break between Moe and neighbouring settlements to the west in Baw Baw Shire.

North east in contrast, is relatively flat cleared farmland gently sloping down to Lake Narracan, with native vegetation confined to the banks of the lake and distinct patches. Therefore, growth north east towards Lake Narracan was identified as the only practical option for Moe-Newborough to grow. The concept of lake side living was also seen as a major selling point with the potential to introduce a unique lifestyle to Latrobe City. This unique lifestyle would be further enhanced by the fact that the Moe Golf Club already existed on the banks of Lake Narracan.

At the November 2013 Ordinary Council Meeting, Council resolved to undertake preliminary community consultation from 11 November 2013 to 13 December 2013. This consultation informed a background report on the growth area prepared by the MPA. The background report identifies a range of opportunities

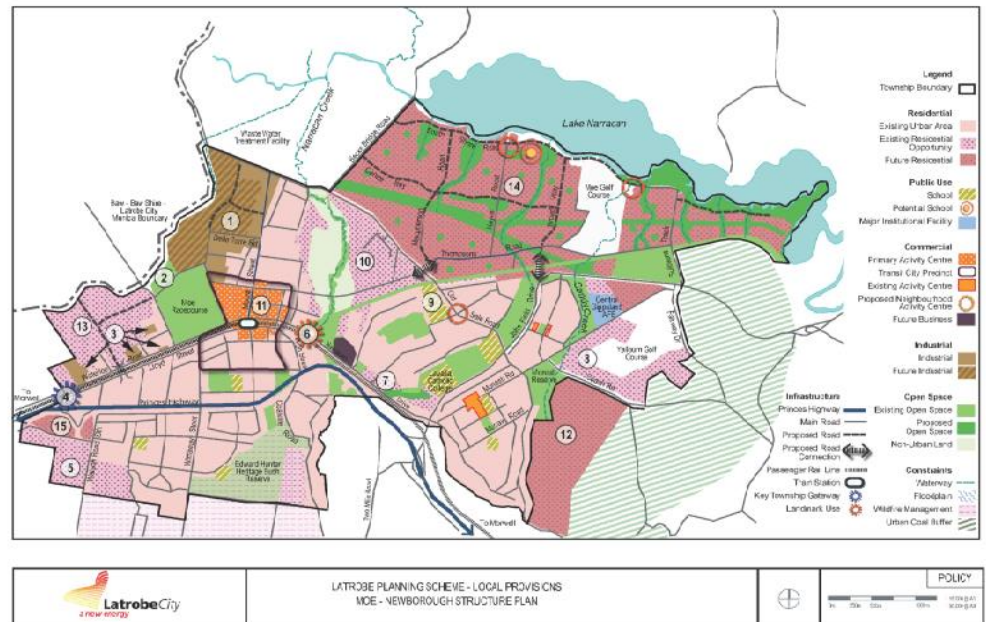
and restrictions including landscape and character, servicing and infrastructure requirements, and environmental factors. The MPA published their background report on Lake Narracan in June 2014.

Council and the MPA undertook public consultation on the draft Lake Narracan PSP, DCP and NVPP from 1 August 2014 to 29 August 2014. The final documents were adopted by Council at the 15 December 2014 Ordinary Council Meeting.

At this meeting Council also resolved to request the Minister for Planning to prepare a Planning Scheme Amendment under Section 20(4) of the Planning and Environment Act 1987 to implement the Lake Narracan PSP into the Latrobe Planning Scheme. Section 20(4) of the Planning and Environment Act 1987 allows the Minister for Planning to undertake amendment without exhibition or notification.

Council requested this due to the extensive consultation undertaken while preparing the Lake Narracan PSP and associated documents previously discussed.

The current zone was implemented into the Latrobe Planning Scheme by Amendment C86. Amendment C86 rezoned all the land within the Lake Narracan PSP to Urban Growth Zone Schedule 1, applied the Development Contribution Plan Overlay Schedule 1, and updated the Moe-Newborough Town Structure Plan (Figure 14). Amendment C86 was gazetted on the 17 December 2015.



**Figure 14: Moe-Newborough Town Structure Plan adopted by Amendment C86.**

### 2.1.2 Rezoning Morwell North West to residential and developing the DP

This precinct has been zoned for residential use since at least the 1988 planning scheme, with the 1981 scheme identifying the land as Rural zone. By the early 2000s a significant portion of the precinct remained undeveloped. To encourage development, Council prepared a development plan in 2006. Between April and May 2007, Council exhibited the draft development plan and proposed Development Plan Overlay Schedule 1 as part of Amendment C48. Due to objections received, the Amendment progressed to a planning panel in March 2008 with the report published in June 2008.

During the panel hearing, Council indicated the proposed development plan was to be revised due to limitations identified. The planning panel accepted this advice and provided their recommendation in relation to the proposed schedule. The panel report recommended the adoption of the schedule with the minor recommended changes contained within the panel report. C48 was gazetted on the 2 October 2008.

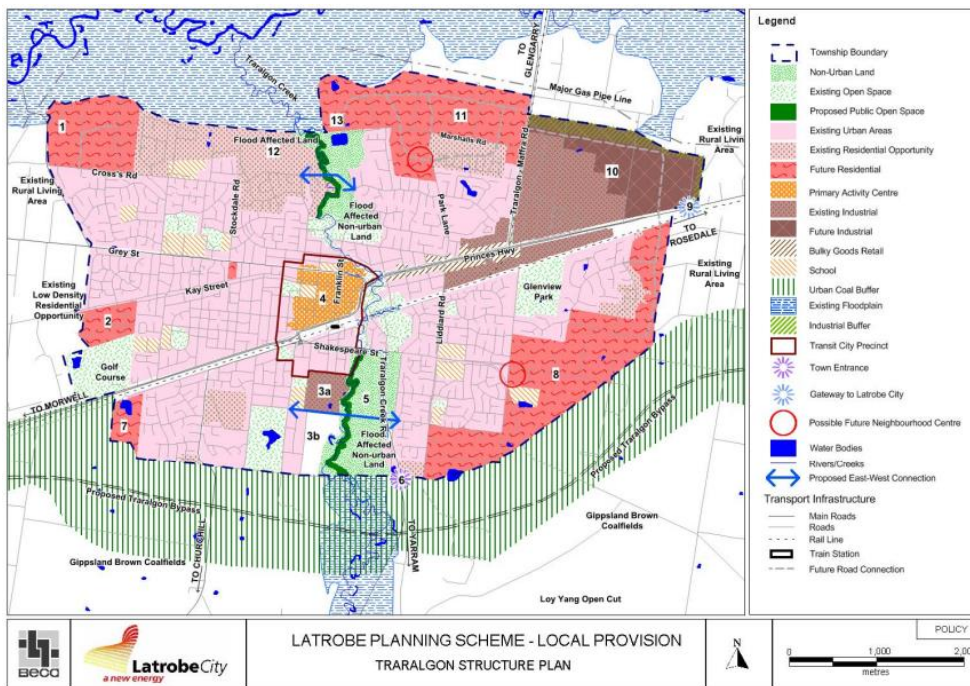
Council undertook 20 one-on-one consultation sessions with the landowners in November 2008 to workshop the proposed DP. Between November 2008 and August 2010, workshops were undertaken with

the various Council departments and referral authorities and agencies to further refine the DP. The revised Morwell North West Development Plan and Development Contribution Plan was presented to the 4 October 2010 Council Meeting and adopted.

The current zone (GRZ3) was adopted into the scheme as part of Amendment C105 on the 21 November 2019. This amendment resulted in significant alterations to the Municipal Policy Statement and zone application across Latrobe. These changes implemented the findings of the Housing Strategy, Industrial and Employment Strategy, and Rural Land Use Strategy prepared by Council as part of the *Live Work Latrobe* report. The *Live Work Latrobe* report and proposed amendment C105, were adopted by the Council at the 21 August 2017 Council Meeting.

### 2.1.3 Rezoning Traralgon North to residential and developing the DP

The area which comprises the Traralgon North DP was first zoned for residential use by Amendment C56 which was gazetted on the 5 May 2011. This amendment was undertaken by the Minister for Planning with the purpose to increase residential land supply for the municipality. It rezoned five areas in the municipality which were identified for future residential use on a town structure plan. In Traralgon, two areas were rezoned, areas 1 and 11, as identified on the Town Structure Plans (clause 21.05) at the time.



The Minister for Planning approved the amendment under Section 20(5) of the Planning and Environment Act 1987. This means the Minister undertook limited consultation with the Planning Authority and affected landowners.

The amendment also applied Development Plan Overlay Schedule 5 to the rezoned land. This schedule required a development plan to be prepared for the growth area prior to any development being approved.

Figure 15: Traralgon Town Structure Plan prior to Amendment C56

At the 7 October 2013 Council

Meeting, the councillors authorised officers to endorse the Traralgon North Development Plan and Development Contribution Plan after Amendment C78 was gazetted. Amendment C78 was gazetted on the 21 November 2013, and the Traralgon North Development Plan and Development Contribution Plan were endorsed on the 29 November 2013. Amendment C78 removed DPO5 and applied DPO7. Through the process of preparing the DP, officers identified that development contributions would be required to ensure fair and orderly development of the precinct and that DPO5 did not allow for the collection of development contributions. DPO7 was proposed to provide a schedule specially tailored to the unique development conditions of Traralgon North and introduce a permit condition requiring a section 173 agreement to be entered into as part of any subdivision permit for the purpose of collecting development contributions.

The current zone (GRZ3) was adopted into the scheme as part of Amendment C105 on the 21 November 2019. This amendment resulted in significant alterations to the Municipal Policy Statement and zone application across Latrobe. These changes implemented the findings of the Housing Strategy, Industrial and Employment Strategy, and Rural Land Use Strategy prepared by Council as part of the *Live Work Latrobe* report. The *Live Work Latrobe* report and proposed amendment C105, were adopted by the Council at the 21 August 2017 Council Meeting.

## 2.2 Development Activity in the precincts

Residential development activity in Latrobe has generally increased since 2020 and the Covid-19 pandemic.

### 2.2.1 Lake Narracan PSP

Historically, development activity in the precinct has been limited. Council received two staged multi-lot subdivision permit applications in 2016 – within 12 months of the PSP being adopted into the scheme. These permits were granted in December 2016 (670 residential lots) and June 2018 (314 residential lots). A third multi-lot staged subdivision was received in 2021 and granted in May 2022 (316 residential lots). The first lots titled under these permit approvals were issued in September 2022. Council currently has 5 stages (203 residential lots in total) undergoing approval with more expected to be lodged over the next 12 months. Council Officers are aware of at least three properties whose owners are likely to apply for development permits in the next 12 months. Council Officers are also aware of three properties on the market being advertised based on their subdivision potential. Council Officers have handled multiple enquiries from prospective purchasers seeking to understand the planning requirements of the land. The current state of activity in the precinct is displayed in Figure 16.

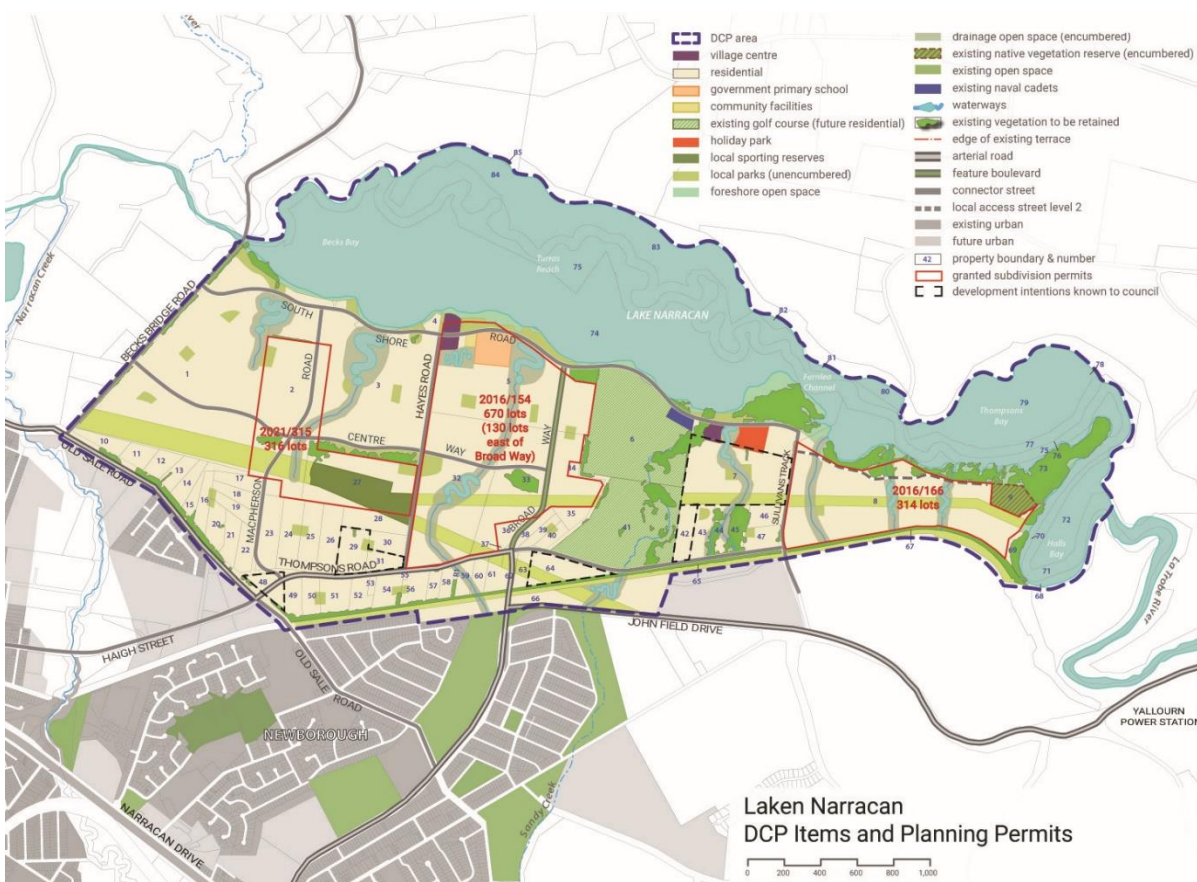


Figure 16: Development activity in Lake Narracan



### 2.2.2 Morwell North West DP

Development in the precinct has been very limited but since 2020, it has increased (see Figure 17). Currently there are two endorsed planning permits (granted in October 2011 and September 2021), with a yield of 288 and 14 residential lots respectively. The 2011 permit (2011/116) was of sufficient scale to be able to fund its own stormwater management infrastructure, in accordance with the DCP, and therefore did not require Council to acquire any land. Development under this permit did stall around 2016 due to issues around capacity of the sewer network, but in 2023 development restarted. The smaller permit is located in an area of the DP which is not subject to the DCP. This area was excluded at the time of preparing the DCP as it was considered lots in this area would have insufficient yield to justify collecting development contributions.

In 2023 the Victorian Health Building Authority completed an ambulance station at 10 English Street. Development contributions were provided as a cash payment. As this development did not take up all of the property, the State Government identified the remainder of the site as the preferred location for the 2026 Commonwealth Games athletes village. These games have since been cancelled and Latrobe City Council are waiting on advice from the State Government as to their intentions for the site.

Council is currently assessing a further two subdivision permits along English Street. Neither of these developments are of sufficient scale to deliver their own stormwater infrastructure and are therefore expected to provide cash contributions in accordance with the DCP.

To date Council has not seen any indication of land ownership consolidation or development intentions for the land identified to provide drainage infrastructure. Therefore, it is appropriate Latrobe City seek the ability to acquire all land required for stormwater infrastructure identified in the DCP via the PAO.

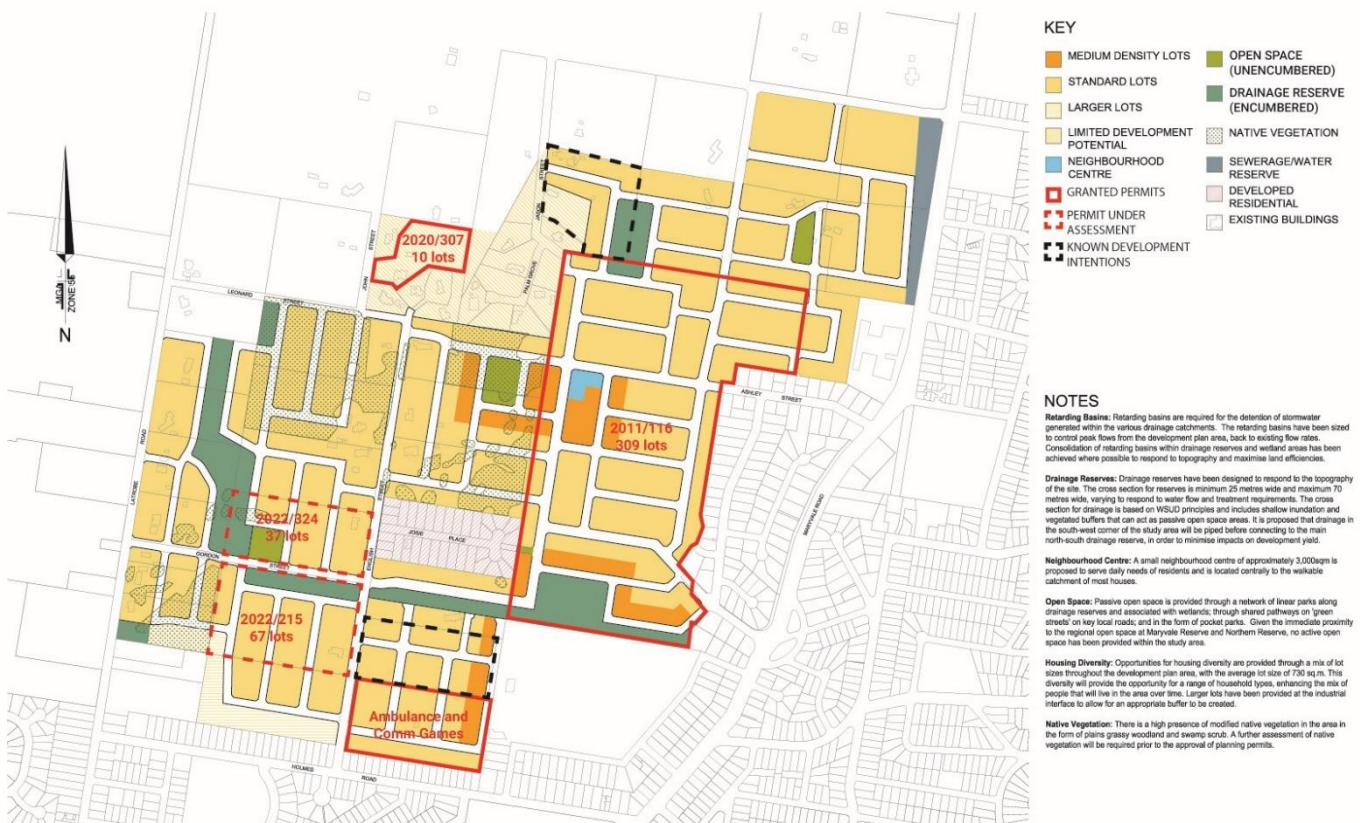


Figure 17: Development activity in Morwell North West

### 2.2.3 Traralgon North DP

Traralgon North has been one of Latrobe’s most active precincts due to the limited number of growth fronts in Traralgon and the popularity of Traralgon as the commercial and cultural centre in the municipality. Since the adoption of the Traralgon North DP and DCP, Latrobe City have issued 10 subdivision permits totalling 790 new residential lots. The first permit for a multi-lot subdivision in the precinct was granted in June 2014 with the most recent permit granted in December 2023. Currently there are 11 stages undergoing the subdivision process which will create 303 lots.

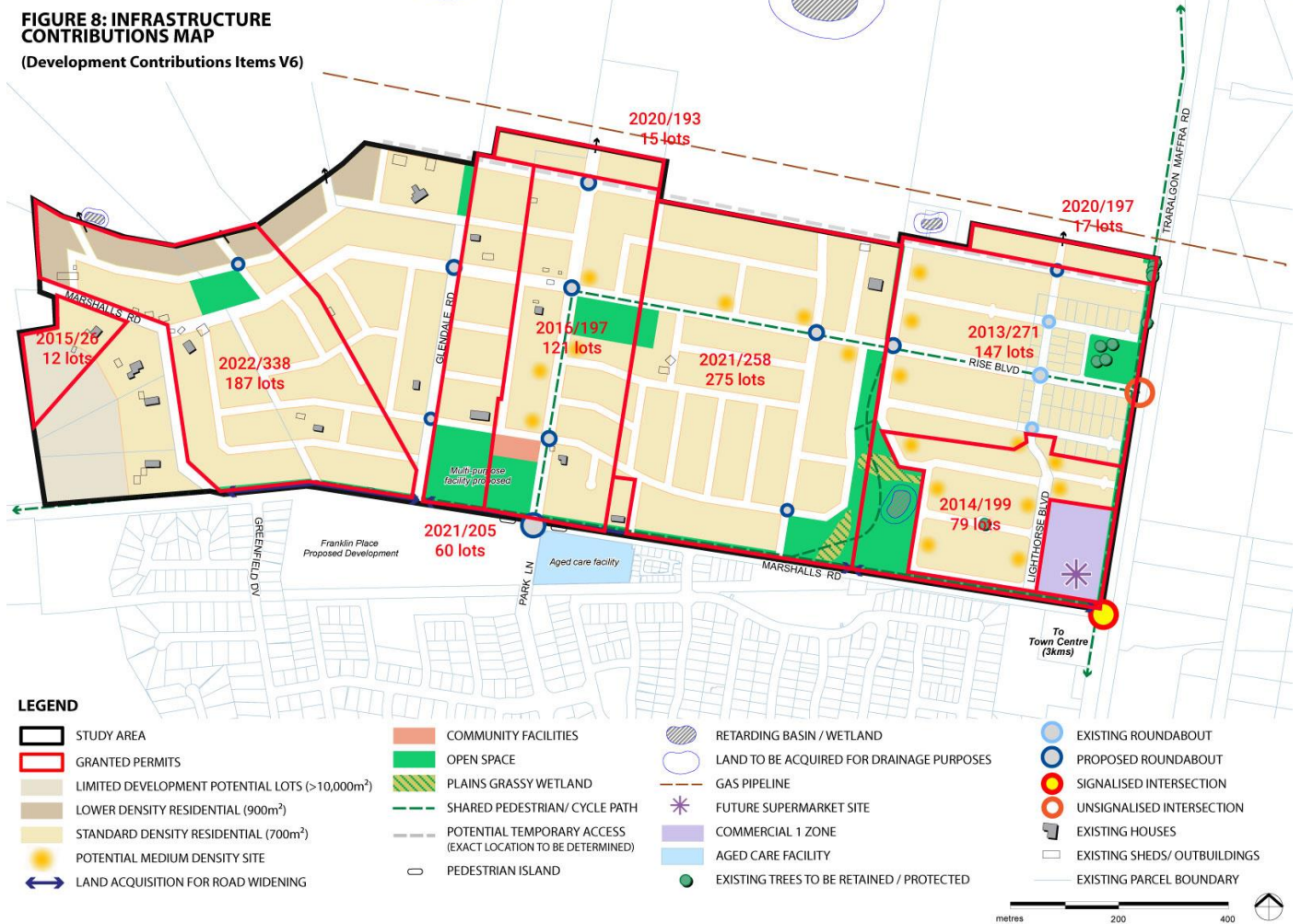


Figure 18: Development activity in Traralgon North

## 2.3 Property Titles

Having reviewed the property titles for the affected properties (listed in

Table 1), there are no restrictions on the property titles which would detrimentally affect the acquisition of land via a PAO.

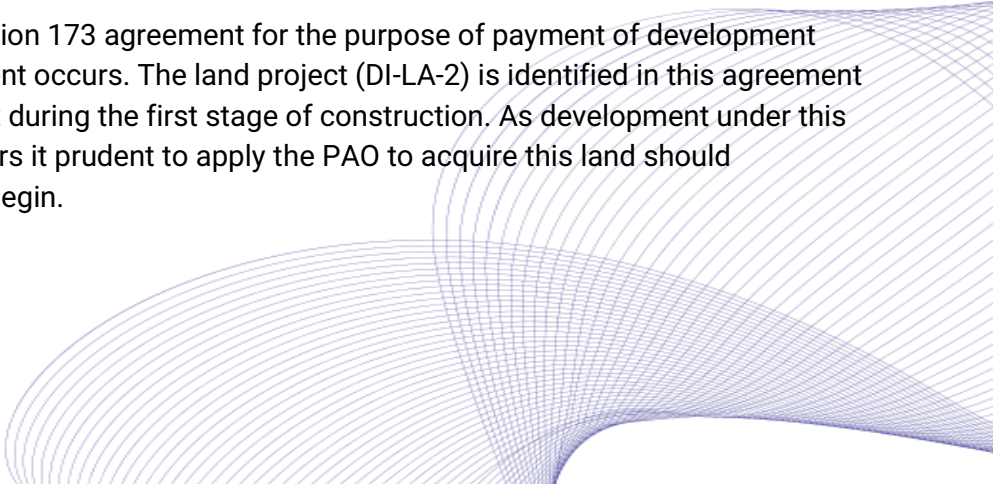
55 English Street does contain a Section 173 agreement on title. This agreement relates to an expired planning permit for subdivision of the land. The agreement will be replaced by a revised agreement as part of its current application for a subdivision permit. This agreement relates to the payment of development contributions and the transfer of land for DCP projects. The application of the PAO will act as a fail-safe option to allow Council to acquire the required land should the permit not be granted or development fail to start if the permit is granted.

Heritage Boulevard is a large block currently in the process of subdividing. It has a Section 173 agreement on title entered into as part of its permit application. This S173 agreement does provide for the land identified in the PAO to be handed over to Latrobe. The land is identified in the agreement to be handed over in stage 11. The subdivision is currently up to stage 7. Council may require this land sooner if 23 Jason Street or 7 Ashley Street have permits granted, as they would be required to provide the wetland identified in the DCP. Therefore, it is appropriate for Council to apply a PAO to the land to allow Council to acquire all land required for the identified infrastructure.

The properties along Latrobe Road and 40 English Street contain easements on title in favour of Latrobe City Council for the purpose of drainage. These easements will be superseded by the acquisition of land under the PAO and accordingly removed from the titles at the time of acquisition.

23 Jason Street also has easements identified on title in favour of Latrobe City for the purpose of drainage. These easements would be reviewed as part of the issuing of new titles once the PAO has been applied to the land and Council has acquired the land.

50 Glendale Road also contains a Section 173 agreement for the purpose of payment of development contributions to Council as development occurs. The land project (DI-LA-2) is identified in this agreement as to be provided to Council at no cost during the first stage of construction. As development under this permit has not begun, Council considers it prudent to apply the PAO to acquire this land should development under this permit never begin.

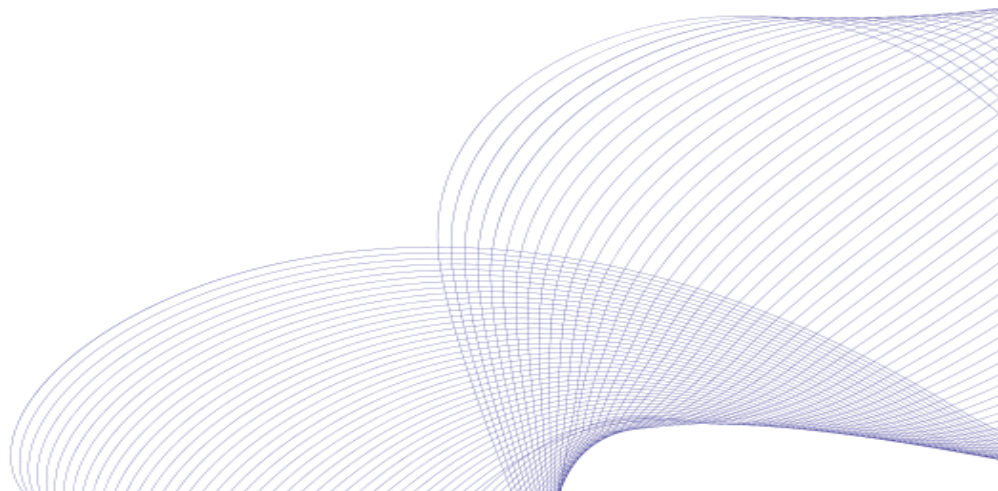


### 3.0 Proposed Change

The proposal is to amend the Latrobe Planning Scheme by:

- Introducing PA03 into the Schedule to Clause 45.01 PUBLIC ACQUISITION OVERLAY, naming Latrobe City as the acquiring authority for this number, and to specify the purpose of acquisition as for 'Drainage / Open Space Reserves.'
- Applying PA03 to 13 properties, listed in Table 1, spread across maps 25, 50, 71 and 76.
- Altering the schedule to Clause 72.03 WHAT DOES THIS PLANNING SCHEME CONSIST OF? to reference PAO on maps 25, 50, 71 and 76.
- Altering the schedule to Clause 74.01 APPLICATION OF ZONES, OVERLAYS AND PROVISIONS to outline how the Public Acquisition Overlay implements the Municipal Planning Strategy.

The location of PA03 on each property can be seen in Figure 19 (Lake Narracan), Figure 20 (Morwell North West), Figure 21 (Morwell North West) and Figure 22 (Traralgon North).



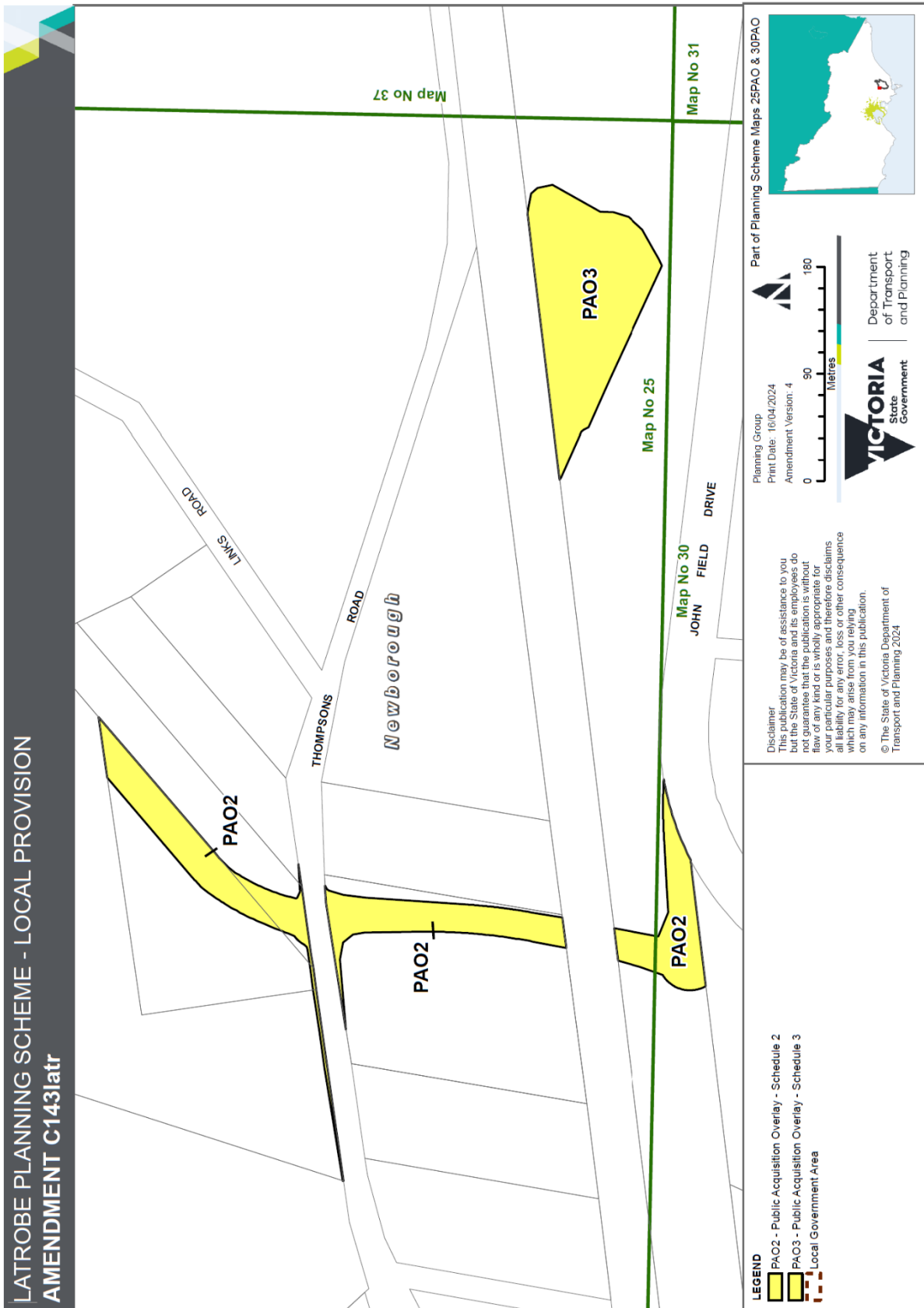


Figure 19: Extent of PAO required for DCP projects WL-09

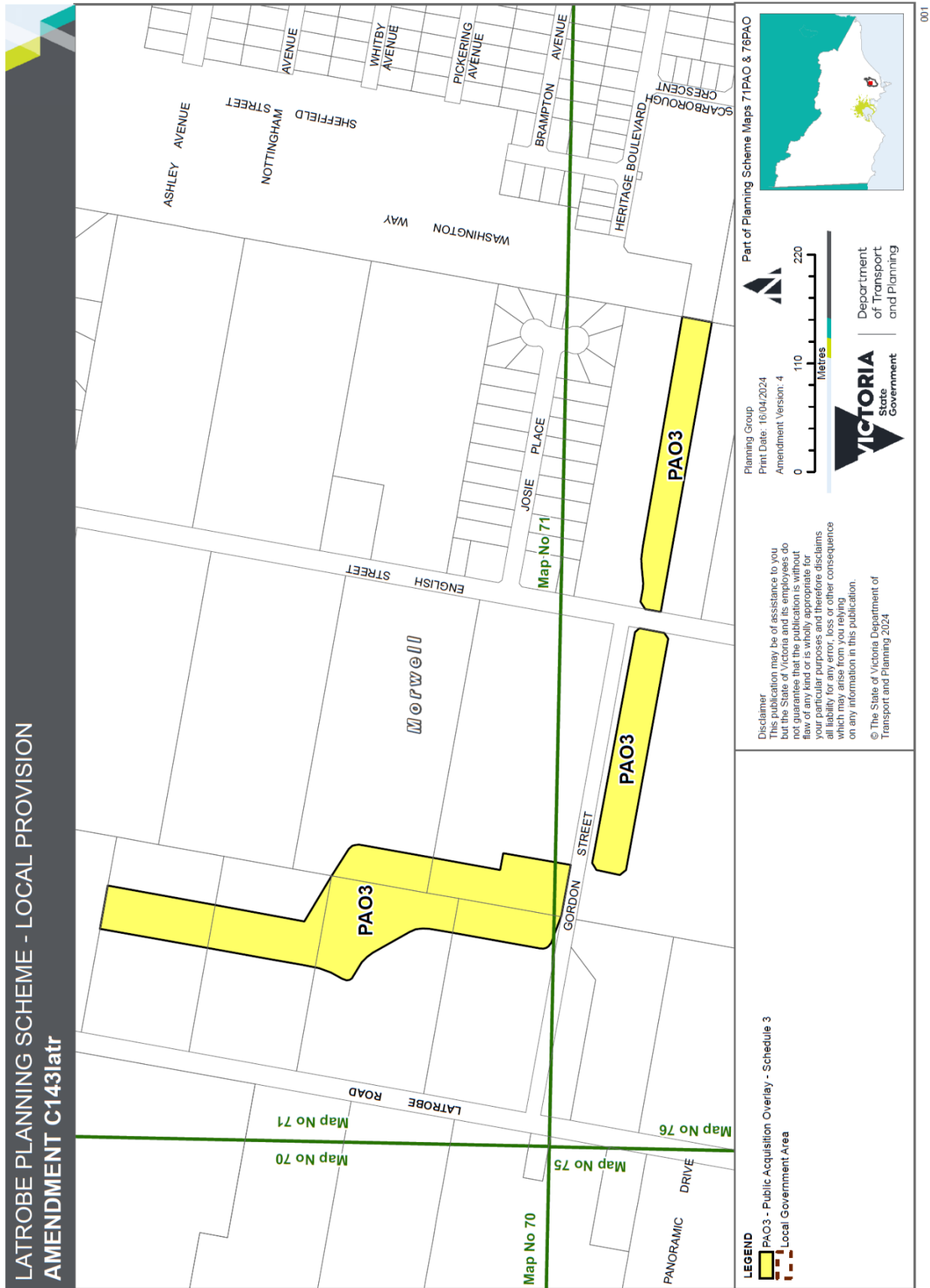
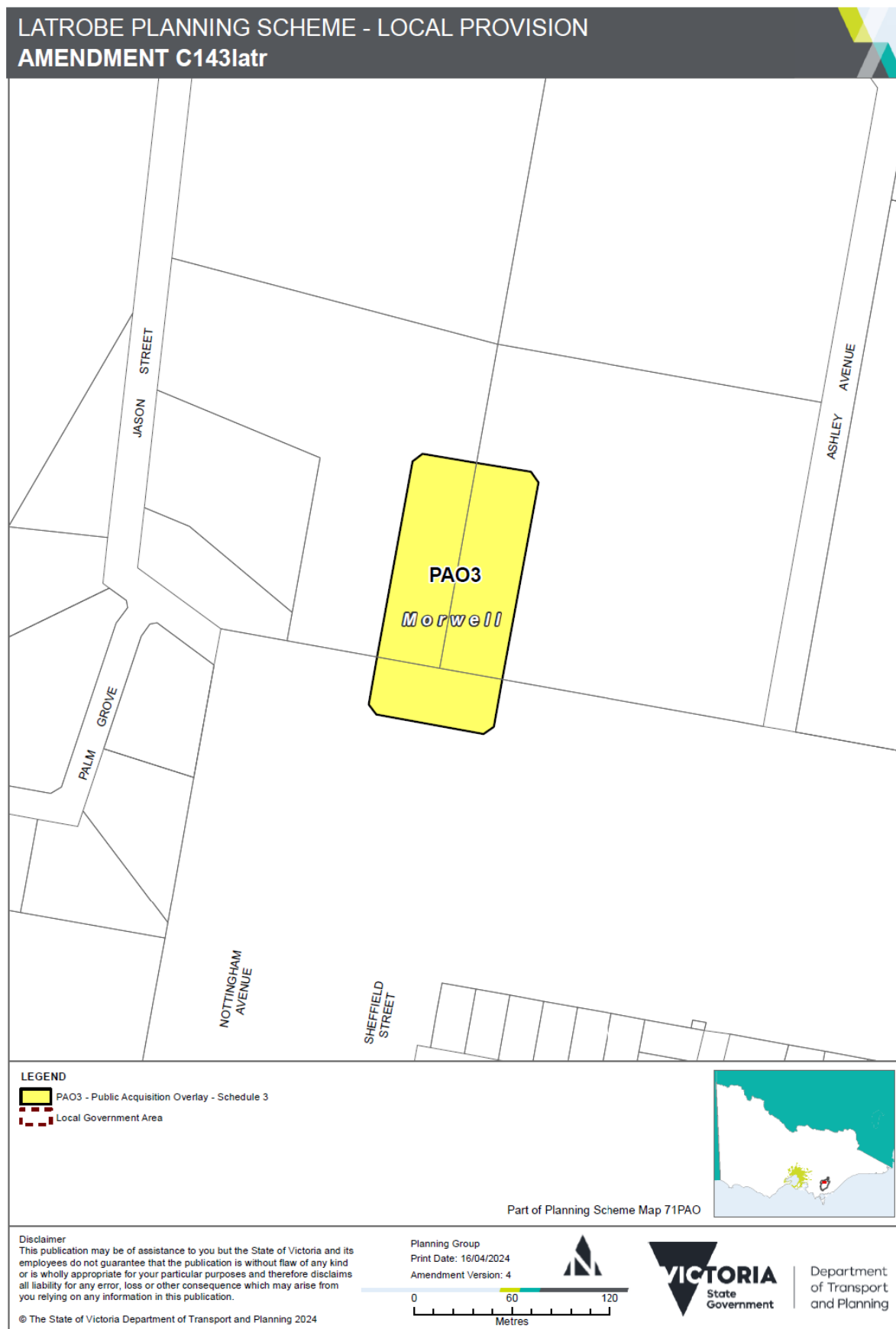
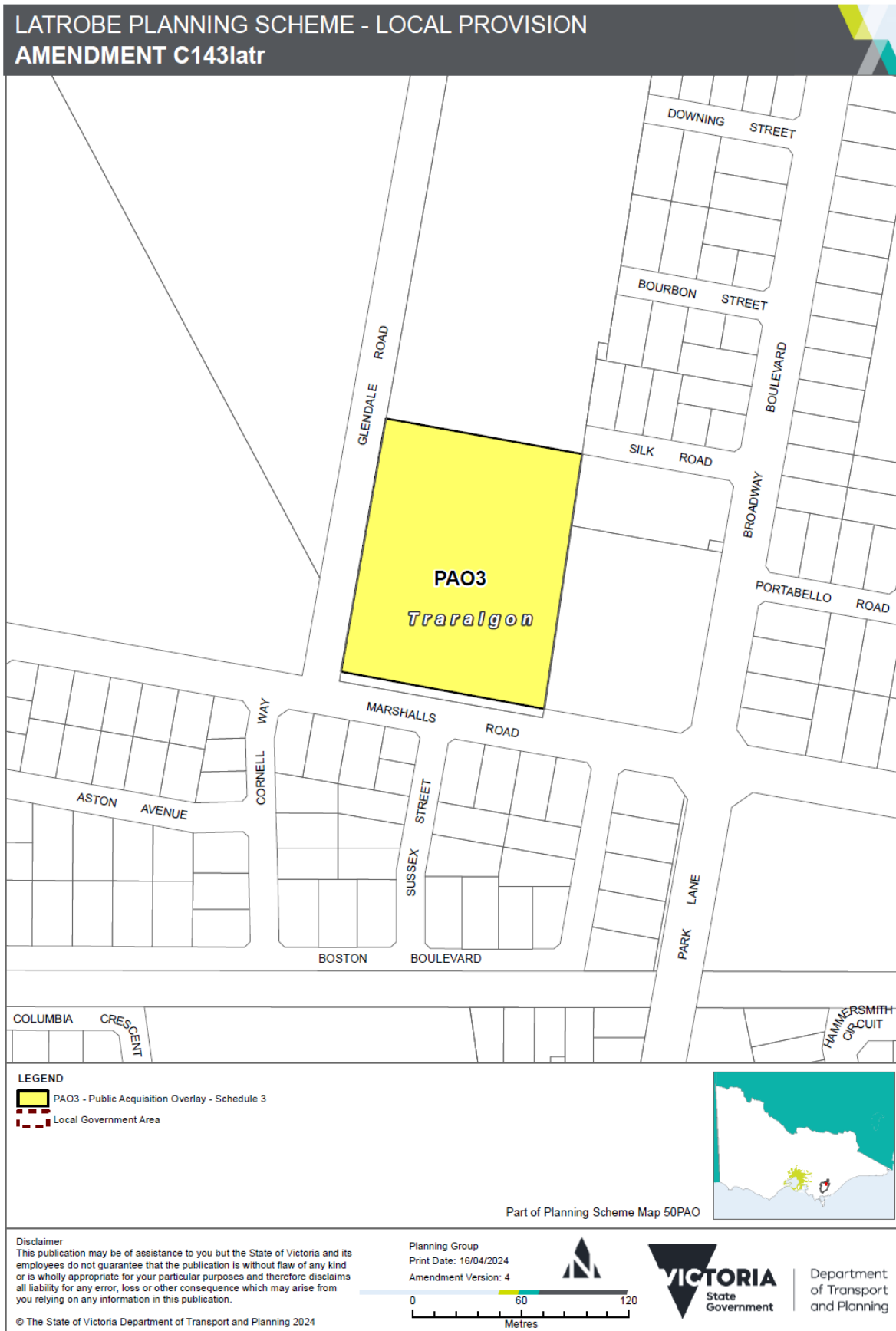


Figure 20: Extent of PAO required for DCP projects WR-02, CH-03, CH-04, CH-05, CV-01, CV-02 and CV-03.



002

**Figure 21: Extent of PAO required for DCP projects WR-04.**



003

Figure 22: Extent of PAO required for DCP projects DI-LA-2 and DI-OS-1.



## 4.0 Relevant Policy

### 4.1 Lake Narracan Precinct Structure Plan and Development Contribution Plan

The Lake Narracan PSP and Lake Narracan DCP are each an incorporated document in the Latrobe Planning Scheme – Clause 72.04. As these documents are incorporated documents, they must be addressed like any other requirement in the scheme if triggered.

Lake Narracan PSP and DCP were prepared by the Metropolitan Planning Authority (MPA), now Victorian Planning Authority (VPA), in partnership with Latrobe City Council, agencies and authorities, and the local Moe-Newborough community. The PSP covers approximately 604 hectares of land along the banks of Lake Narracan. The PSP is bounded by Lake Narracan to the north and east, Becks Bridge Road and Old Sale Road along the west and Moe – Yallourn Rail Trail and John Field Drive along the south. The PSP primarily provides for residential development and is estimated to accommodate 3,723 dwellings.

The PSP will also provide for 3000 square metres of commercial land across two ‘village centres’, 33.148 hectares of public open and recreation space, 104.388 hectares of restored waterways and habitat, and a school and a community hub. The PSP provides a significant population increase to the Moe-Newborough town. By significantly expanding the local population the PSP aims to improve the commercial viability of the Moe Activity Centre and, by extension, improve local employment opportunities.

The DCP allows Latrobe, as the nominated collecting authority, to collect a Development Infrastructure Levy towards 36 projects and a Community Infrastructure Levy towards a further five (5) projects. These projects are spread across seven categories: Intersections, roads, culverts, open space, community facilities, wetlands, and waterways. These projects are key to ensuring the new urban area will have a high liveability standard.

The natural environment will also be improved through the provision of new wetlands and upgraded waterways which will improve the quality of water running into Lake Narracan and the greater Latrobe River system. The collecting authority is then required to spend the collected contributions as described in the DCP as and when the DCP identifies a project will be triggered. Most projects are triggered at the time of subdivision. Other projects have specific indicative triggers outlined in the DCP.

Costs in the DCP have been calculated on the basis of 337.66 developable hectares which will yield 3,723 dwellings. Costs in the DCP are reviewed annually with updated costs and levies published to Councils website in accordance with the Planning and Environment Act 1987 and relevant State Government guidelines.

Lake Narracan PSP and DCP incorporate eight wetlands sized and are located to clean stormwater generated by developments in the growth area. These wetlands are located on private land.

It is proposed to apply PA03 to part of one property in Newborough as Council Officers have come to the belief that WL-09 will be required by development in the wider precinct.

**Table 3: Lake Narracan DCP projects facilitated by PA03.**

Identifier	Item	Description
WL-09	Purchase land from property 66 (beyond 60m waterway corridor) and construction of stormwater quality treatment wetland.	Land area approximately 1.4ha.

## 4.2 Morwell North West Development Plan and Development Contribution Plan

Latrobe City Council approved the Morwell North West Development Plan and Development Contribution Plan on the 4 October 2010. The development plan estimates that the precinct will yield 1,280 new housing lots, 0.33 hectares of commercial land via a local activity centre, and 4.03 hectares of public open space.

The development plan contains within it a development contribution plan which is enforced by a requirement in DPO1 that planning permits for subdivision include a Section 173 agreement to provide for the collection of development levies in accordance with the development plan. The precinct is considered by Latrobe to be a highly fragmented area due to the smaller than ideal lot size (for greenfield development) and lack of ownership consolidation. Only properties which are considered to have sufficient subdivision potential to afford development levies have been included in the DCP (23 properties). Only three properties identified in the DCP are larger than 8 hectares. The 20 other properties are under 4 hectares, with 9 of these properties smaller than 3 hectares.

The DCP aims to share the cost of providing infrastructure in the precinct which, due to the smaller than ideal lot size, would have financial difficulty providing the required infrastructure. Key infrastructure identified in the DCP relate to road widening, intersection upgrades, and provision of new collector roads; wetlands and channels to implement a holistic stormwater management system for the growth area; and embellishments for new parks within the precinct.

The land identified for acquisition (Table 4) will accommodate the infrastructure required to treat stormwater generated by the subdivision of land within the precinct and convey this water to the Morwell River. To the best of Latrobe City's knowledge, six of the eight properties identified currently have no intention to subdivide. The other two properties identified (25 and 55 English Street) are currently going through the planning permit process for subdivision. However, their ultimate ability to act on their permits (if granted) is dependent on Latrobe City acquiring land downstream to accommodate the centralised stormwater infrastructure identified in the development plan. Council acquisition is the only feasible option to acquire the land as there is no single developer of sufficient scale which would have the funds capable to acquire the required land.

**Table 4: Morwell North West DCP projects facilitated by PA03.**

Identifier	Item	Description
WR-02	Wetland/Retarding basin north of Gordon street.	Land area approximately 0.75ha.
WR-04	Wetland/Retarding basin east of Jason Street.	Land area approximately 0.52ha.
CH-03	Drainage channel, Low flow conveyance channel through basin WR-02. Inlet and outlet from WR-02.	Channel of 320m in length and average of 10m width.
CH-04	Drainage channel, conveyance of water from CH-05 to CH-03	
CH-05	Drainage channel, conveyance of water from existing wetland to CH-04	

### 4.3 Traralgon North Development Plan and Development Contribution Plan

Latrobe City Council endorsed the Traralgon North Development Plan and Development Contribution Plan on the 29 November 2013. The development plan covers a total area of 123.83 hectares and is designed to provide an estimated 1,111 new dwellings. The growth area will also provide 8.88 hectares of open space, 0.35 hectares of community facilities, and 1.97 hectares of commercial land in a neighbourhood activity centre.

The development plan contains within it a development contribution plan which is enforced by a requirement in DPO7 that planning permits for subdivision include a Section 173 agreement to provide for the collection of development levies in accordance with the development plan.

The DCP allows Latrobe, as the nominated collecting authority, to collect a Development Infrastructure Levy towards 28 projects and a Community Infrastructure Levy towards a further two projects. These projects are spread across six categories: roads & intersections, trails, open space, community facilities, drainage, and recouping DCP preparation costs. These projects are key to ensuring the new urban area will have a high liveability standard. The collecting authority is then required to spend the collected contributions as described in the DCP as and when DCP identifies a project will be triggered. Most projects are triggered at the time of subdivision or unless otherwise negotiated with Council.

Costs in the DCP have been calculated on the basis of 104.82 developable hectares which will yield 1,111 dwellings. Costs in the DCP are reviewed annually with updated costs and levies published to Councils website in accordance with the Planning and Environment Act 1987 and relevant State Government guidelines. The Community Infrastructure Levy is fixed at \$900.00.

Table 5 identifies the projects which will be facilitated by the application of the PA03. These projects are already part of an approved planning permit (2021/205). This permit was granted in December 2022, however no applications under this permit have been received. Council received half of the land required for the projects in Table 5 in September 2023 as this area was under a separate planning permit (2016/197). During the annual indexation process, Latrobe City Council's *Recreational and Open Space Team* advised that there is a high demand for a new active open space reserve in Traralgon and that they would like to utilise the reserve identified in Traralgon North DP. Council has therefore included these projects in the proposed amendment as a safeguard to ensure Council can acquire the land if development has not started on 2021/205 by the time the amendment is gazetted.

**Table 5: Traralgon North DCP projects facilitated by PA03**

Identifier	Item	Description
DI-LA-2	Active Open Space reserve	Land question for Active Open Space. Approximately 1.586Ha
DI-OS-1	Active Open Space reserve	Improvements to the Active Open Space reserve to Councils specification.

## 4.4 Guide to Victoria's Planning System (Chapter 6: Acquisition and Compensation) and relevant legislation

The *Guide to Victoria's Planning Scheme* is a document published by the State Government which outlines administrative procedures and technical interpretations of the Planning and Environment Act, functions and requirements of planning schemes and other supporting Acts. Chapter 6 specifically outlines:

- who can compulsorily acquire land;
- when compulsory acquisition is allowed;
- how to compulsorily acquire land;
- when compensation is required; and how it is to be calculated; and
- when and how to use the Public Acquisition Overlay.

### Who can compulsorily acquire land?

The Land Acquisition and Compensation Act 1986 defines that only Authorities can compulsorily acquire land. In this Act, an Authority is defined as a person or body authorised under the special Act to acquire land. The special Act is not a specific Act, rather it is a clause in either an Act or regulation which states that the Act or regulation is the special Act for the purposes of the Land Acquisition and Compensation Act 1986.

Section 172(3) of the Planning and Environment Act 1987 designates the Planning and Environment Act 1987 as the special Act for the purposes of the Land Acquisition and Compensation Act 1986. It also states that both the Minister for Planning and the responsible authority can be the Authority under the Land Acquisition and Compensation Act 1986.

### What land can be compulsorily acquired?

Section 172(1) of the Planning and Environment Act 1987 states that:

*"The Minister for Planning or the responsible authority may compulsorily acquire—*

*(a) any land which is required for the purposes of any planning scheme even if the scheme or an amendment to the scheme including the requirement has not been adopted or approved by the relevant planning authority or approved by the Minister; or*

*(b) any land which—*

*(i) is used for any purpose not in conformity with, whether or not actually prohibited by, the planning scheme; or*

*(ii) is vacant and unoccupied—*

*if in the opinion of the Minister or the responsible authority to achieve the proper development of any area in accordance with the planning scheme it is desirable that the use should not be continued or (as the case requires) that the land should be put to appropriate use; or*

*(c) any land in an area in respect of which a declaration under subsection (2) is in force."*

Subsection 2 is for when the Governor in Council (Governor of Victoria) has issued a notice in the Government Gazette to declare an area where it is desirable for the Minister for Planning or a responsible authority to compulsorily acquire land.

Latrobe City Council is the responsible authority for the Latrobe Planning Scheme and therefore can, under section 172, acquire land for the purposes of the planning scheme. This report outlines that the projects

identified are for the purpose of the planning scheme as they are part of an incorporated document in the Latrobe Planning Scheme (Lake Narracan DCP). Therefore, it is appropriate to identify the land for compulsory acquisition to ensure proper development as per the planning scheme.

Latrobe City Council is not proposing to act under Section 112 of the Local Government Act 2020. Section 112 nominates the Local Government Act 2020 as a special Act and allows Councils to compulsorily acquire land for the purposes of performing its functions i.e., the provision of stormwater systems or local roads. Whilst this report does identify the acquisition of land for road projects, these projects are required because of the planning scheme. Acting under Section 112 would be appropriate if Council desired to expand an existing wetland or road to aid its normal functions.

### **How to compulsorily acquire land**

The Land Acquisition and Compensation Act 1986 outlines the process to legally compulsorily acquire land. If the process is not followed the acquisition is not legal.

Before compulsory acquisition can begin, the land must first be reserved “under a planning instrument for public purposes” (Section 5 (1)). The Guide specifies that the practical meaning of this section is that the Public Acquisition Overlay (PAO) has been applied to the relevant land. The Victorian Planning Provisions (VPP) contain a number of options to identify land for public purposes i.e. Public Use Zone, however they can only be applied when the land is owned by a public authority. The PAO is one of two tools in the VPP which can reserve land for a public purpose where the land is privately owned. The other tool is an Infrastructure Contributions Plan (ICP). The projects Council has identified are not part of an ICP and therefore, the only tool available, is the Public Acquisition Overlay.

Regulation 6 of the Land Acquisition and Compensation Regulations specifies two exemptions where land is not required to be reserved before beginning. These are:

*“(a) land to be acquired for a road widening or the deviation of a road if the land is only part of an allotment and-*

*(i) the area of the land to be acquired is less than 10 per cent of the total area of the allotment; and*

*(ii) the total value of the interest to be acquired is less than 10 per cent of the value of the unencumbered freehold interest in the total area of the allotment;*

*(b) land over which an easement is to be acquired if the acquisition of that easement will not reduce the value of the unencumbered freehold interest in allotment by more than 10 per cent.”*

## **4.5 Municipal Planning Strategy**

### **Clause 2.03-1 Settlement**

Clause 2.03-1 outlines municipal policy relating to settlements. In this clause Morwell is identified as one of four primary population centres in Latrobe and identified for further growth. The proposed change will facilitate the delivery of residential subdivisions thereby supporting the aim of clause 2.03-1 to encourage residential growth in the four primary population centres.

### **Clause 2.03-6 Housing**

Clause 2.03-6 notes that Latrobe aspires to a population of 100,000 by 2050. Lake Narracan PSP contributes to the significant supply of residential land needed to accommodate 100,000 people. The Lake

Narracan DCP, Morwell North West DCP and, Traralgon North DCP identify the projects, listed in Table 1, as being critical to the delivery of these growth areas. Therefore an amendment which facilitates the delivery of these growth areas facilitates housing and thus is in accordance with 2.03-6.

### **Clause 2.03-9 Infrastructure**

Clause 2.03-9 highlights that development in Latrobe is constrained by many *infrastructure assets* which need to be protected from development which would compromise their efficient functioning. Stormwater infrastructure is critical to the good functioning of growth areas and, due to being a gravity-based system which often uses the natural topography, have limited locations where they can go. As the location in Morwell North West has been defined through the adoption of the development plan, the planned alignment needs to be protected to ensure it can be delivered cost effectively when required.

2.03-9 also seeks to direct the planning of open space networks. Whilst the primary purpose of the reserves identified to be acquired is for stormwater treatment and conveyance, they do have a secondary purpose of providing vegetated open space and habitat. The bulk of the PAO proposed to be applied in this area will form a key linear corridor of green space through the precinct.

## **4.6 Planning Policy Framework**

### **Clause 11 Settlement**

At a high level, clause 11 outlines that planning's purpose is to "*facilitate sustainable development that takes full advantage of existing settlement patterns...*". Morwell North West is a natural extension of the northern fringe of Morwell which seeks to define a finer grain within the existing road and lot network currently present. It also seeks to take advantage of existing topography when planning the alignment of stormwater infrastructure. Therefore, the proposed change is in accordance with clause 11 as it seeks to protect land identified in a development plan which is in accordance with clause 11.

### **Clause 11.01-1L Morwell**

Under clause 11.01-1L Morwell has a defined Town Structure Plan. In this plan, the land proposed to have the PAO applied is identified as 'future public open space.'

### **Clause 14.02-1S Catchment planning and management**

This clause is aimed at protecting and restoring waterways and catchments. The main catchment in the precinct is proposed to follow a natural drainage line which is currently little more than a swale drain. Under the DP and DCP, this drainage line is proposed to be upgraded and revegetated to the satisfaction of the local catchment management authority. This revegetation will result in the restoration of the waterway within the precinct and improved water quality within the wider catchment.

### **Clause 14.02-2S Water quality**

Clause 14.02-2S objective is to protect water quality by ensuring appropriate siting of development and ensuring any land use which could discharge potentially contained runoff into waterways manages and minimises the runoff. The proposed stormwater treatment which will be delivered on the land acquired via this PAO will manage and minimise runoff from subdivision development and treat that runoff to the standards required by the local waterway catchment management authority.

## Clause 19 Infrastructure

The key aim of clause 19 is to ensure social and physical infrastructure is planned in a way such that is efficient, equitable, accessible and timely. The application of the PAO3 is key to ensure that the stormwater treatment infrastructure is provided in a timely manner.

### Clause 19.03-1S Development and infrastructure contributions plans

This clause aims to ensure the timely provision of planned infrastructure to communities through the use and implementation of DCPs. Council has prepared a DCP and is seeking to implement the infrastructure contained in it when it is identified as necessary. However, some infrastructure is located on land yet to receive development permission. Therefore, the application of the proposal will allow Council to acquire the necessary land when planned infrastructure is required.

### Clause 19.03-2S Infrastructure design and provision

The objective of this clause is to *“provide timely, efficient and cost-effective development infrastructure that meets the needs of the community”*. Relevant strategies identified in the scheme are to *“provide an integrated approach to the planning and engineering design of new subdivision and development”*. The proposed change is critical to achieving this integration as the DP is designed based on a precinct wide stormwater system. Council needs to acquire this land to facilitate the delivery of the stormwater system at the time of development. By acquiring the land now, Council will be prepared to provide the land for stormwater treatment when developments want to deliver infrastructure.

### Clause 19.03-2L Infrastructure design and provision

This clause directs Council to ensure development in urban areas are connected to mains utilities including stormwater. At this point in time, this cannot be achieved because Council does not have the appropriate means to acquire the land identified to accommodate stormwater infrastructure. The change proposed will allow Council to acquire the land require when it is required.

### Clause 19.03-3S Integrated water management

This clause identifies the management of stormwater through on-site measures and developer contributions as a key strategy to achieve the objective of the clause. Applying the change proposed will allow Council to acquire the land for the necessary stormwater infrastructure which will allow us to minimise stormwater impacts downstream and improve water quality in the area through natural filtration systems (wetlands).

## 4.7 Clause 45.01 Public Acquisition Overlay

Clause 45.01 outlines four key purposes of the Public Acquisition Overlay.

- *To implement the Municipal Planning Strategy and the Planning Policy Framework* – how the proposal achieves this has been outlined in sections 4.3 and 4.4.
- *To identify land which is proposed to be acquired by a Minister, public authority or municipal council* – this proposal seeks to amend the scheme such that the land required for active reserves and drainage projects in the Lake Narracan DCP, Morwell North West DCP, and Traralgon North DCP is shown clearly by the use of the PAO on the land.
- *To reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired* – the application of the PAO now while land in the precincts is still relatively undeveloped, will minimise the loss landowners experience when

land is acquired as the PAO will provide a clear expectation that no development is to occur on the reserved land.

## 5.0 Interest and Advice

West Gippsland Catchment Management Authority (WGCMA) is the relevant Catchment Management Authority in the area. Advice was sought from the WGCMA as part of the initial DP approval process completed in 2010. Further advice was sought as part of the DP review which was completed in 2018. One of the key focuses for the review was the adequacy of the proposed stormwater infrastructure which was identified as under sized. The review increased the size of stormwater infrastructure and updated the DCP accordingly. Due to WGCMA approval being attained as part of the endorsement and review of the DP, no further advice is considered necessary by Council Officers as the application of the PAO to the land will not change the endorsed SWMS. Rather it will facilitate its further delivery. The WGCMA will be further consulted at the time of construction of the proposed waterways and wetland, once the land has been acquired by Council.

No other authority is considered relevant to the proposed change.

## 6.0 Recommendation

This report identifies that the proposal to apply the Public Acquisition Overlay to the required parts of 13 properties in Newborough, Morwell and Traralgon for the purposes of reserving land for active reserves and drainage projects identified in the Lake Narracan DCP, Morwell North West DCP, and Traralgon North DCP is in accordance with relevant objectives, strategies and provisions outlined in the Latrobe Planning Scheme and is in accordance with relevant State Government guidelines. It is therefore recommended that the proposal be adopted by Latrobe City Council as a planning scheme amendment and that Council seeks the authorisation from the Minister for Planning to prepare and exhibit an amendment to implement the proposal.

