Gippsland Environment Group Inc.

Planning Objection to:

11 Western Boulevard RAYMOND ISLAND 3880
Lot: 2 LP: 145640

(App. No. 5.2023.209.1)

Critically Endangered Swift Parrot

Photo credit: Birdlife Australia

Executive Summary

The development application for 11 Western Boulevard, Raymond Island (herein referred to as: 'the project area') is on balance, inconsistent with the East Gippsland Shire's - Municipal Planning Strategy, Our Community Vision 2040, the Council Plan and the Planning Policy Framework.

The purpose, objectives and strategies of the following planning controls are not readily supported by this subdivision proposal:

- Vegetation Protection Overlay (VPO)
- Design & Development Overlay (DDO),
- Bushfire Management Overlay (BMO)

Moreover, the development application is also inconsistent with numerous planning scheme clauses, including:

- Settlement,
- Biodiversity,
- Environmental Risk & Amenity, and
- Native Vegetation.

The proposed subdivision and removal of native vegetation will result in the consequential loss of 100% of established native trees and understorey vegetation, which is not sympathetic to the well vegetated, coastal character of the area. The complete loss of native vegetation will also significantly impact the island's biodiversity, eco-tourism and aesthetic values.

Key issues

The coastal bushland character, quiet lifestyle and flora and fauna values of Raymond Island that are so cherished by residents and visitors alike, need to be preserved and enhanced by regulating development to a level that will sustain the island's unique natural values. The development proposal is neither sympathetic to, nor sustains the island's unique natural values and bushland character inherent to the DDO and VPO objectives.

The project area contains one of the largest and most contiguous surviving patches of remnant native vegetation within the General Residential Zone, and possesses exceptionally high conservation values. The established native trees provide important habitat for at least 5 threatened species listed under the EPBC Act 1999 and FFG Act 1988. The most significant listed species most recently recorded in the development site by BirdLife East Gippsland, is the critically endangered and iconic Swift Parrot (recently voted Australia's Bird of the year), and the endangered Gang Gang Cockatoo. Other notable threatened species listed as vulnerable that are regularly recorded within the project area include; the White throated Needle Tail, Square-tailed Kite and the Grey headed Flying Fox.

The subdivision proposal is inconsistent with the Bushfire Management Overlay's strategies to direct development to low risk locations and avoid critically important biodiversity areas. Moreover, the development application is clearly at odds with one of the key priorities for the future of *Our Community Vision 2040*, which sees "the resilience of our ecosystem is enhanced through **management of the impact of growth and minimisation of fragmentation of important habitats and vegetation corridors** (Our Community Vision 2040, p.11).

The proposed development and native vegetation removal will:

- **adversely affect landscape and environmental values** and incorporates **no measures to protect those values**.
- Does not seek to **retain existing native vegetation**, with 100% of the native trees and vegetation assumed lost for planning purposes.
- Does not protect and maintain **the well vegetated coastal settlement** character of Raymond Island.
- Does not avoid impacts of land use and development on **important areas of biodiversity**
- Does not support land use and development that contributes to **protecting and enhancing habitat for indigenous plants and animals in urban areas**.
- Failed to identify important areas of biodiversity, including **key habitat for rare or threatened species and communities**, and **strategically valuable biodiversity sites**.
- Did not consider the **cumulative impacts** of the development on an important area of biodiversity, and **contributes to further fragmentation of critical habitat important for the survival of several rare and threatened species**.
- The removal, destruction or lopping of native vegetation will result in a **net loss to biodiversity**.
- Does not ensure important natural features are protected and enhanced.
- Fails **to protect and enhance the overall extent and condition of native habitats and species diversity distributions** across public and private land in the marine and coastal environment.
- Does not **minimise direct, cumulative and synergistic effects on ecosystems and habitats**.
- Cannot ensure development approvals can implement bushfire protection measures **without unacceptable biodiversity impac**ts

The proposed development does not meet the decision guidelines of the Vegetation Protection Overlay – Schedule 2; in that it clearly **does not** :

- conserve and enhance areas of high conservation value vegetation
- preserve existing trees and other vegetation where it contributes to high landscape and aesthetic values on Raymond Island.
- conserve and enhance fauna habitat and habitat corridors by minimising the extent of vegetation loss and encouraging regeneration of indigenous species.

Similarly, the Bushfire Management Overlay requirement for development approvals that "can implement bushfire protection measures **without unacceptable biodiversity impacts** by discouraging settlement growth and development in bushfire affected areas that are important areas of biodiversity" is not met by the subdivision proposal.

Municipal Planning Strategy

The Municipal Planning Strategy (MPS) identifies Raymond Island as "a unique village and rural residential locality set within the heart of the Gippsland Lakes". The *Coastal Towns Design Framework (2007)* provided a strategic approach "to managing development in coastal settlements based on **the protection of high value environmental resources within or adjoining settlements**, the **nature and protection of local character** and the

capacity of infrastructure." The biodiversity (and potential eco-tourism) values of the land proposed for development are particularly significant, providing verifiably *important habitat* for several threatened species.
The proposed subdivision and removal of significant native vegetation does not accord with the Council Vision (Clause 02.02) which supports "proactive leadership and strategic partnerships [that] protect and enhance our quality environment" and "investment and visitation [that] develop a sustainable and prosperous economy".

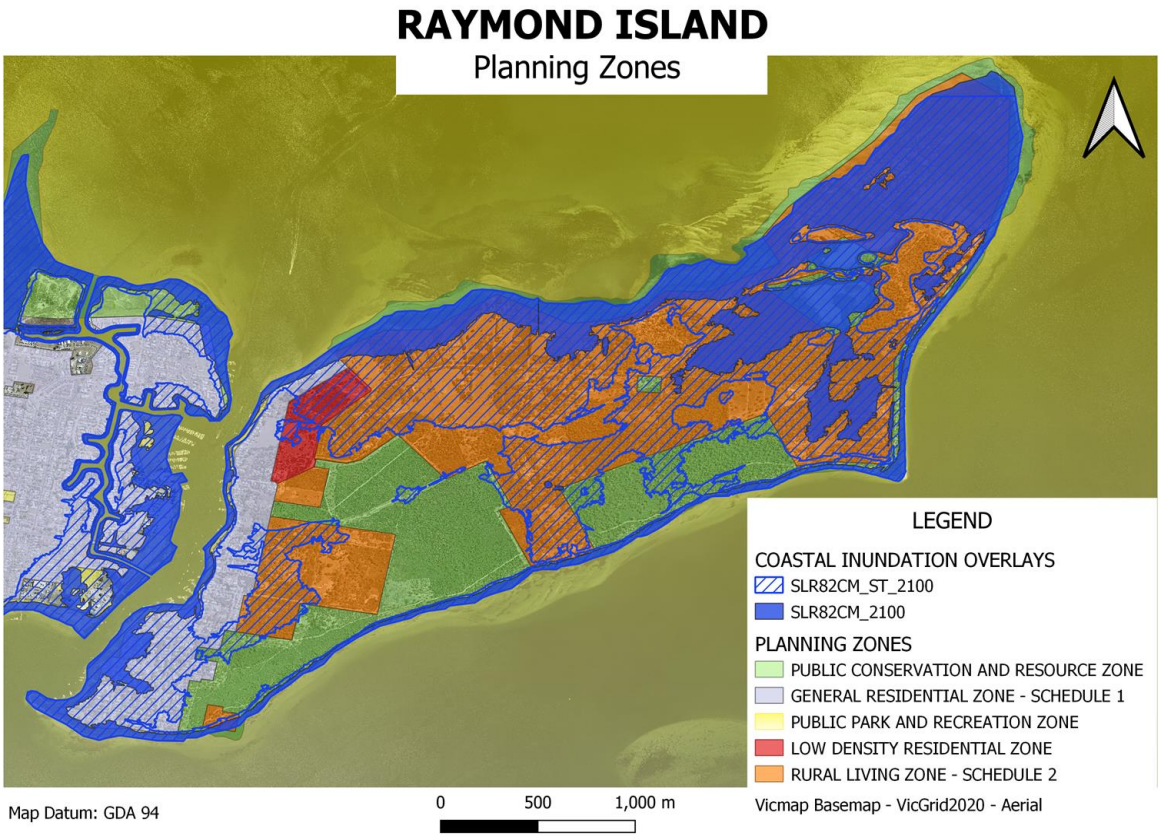
Similarly, the proposed subdivision is at odds with the Council's strategic directions for environmental and landscape values, particularly:

- Protecting sites of significance by encouraging **sensitive development**, **sympathetic to the character of the area and its aesthetic values.**

PLANNING CONTROLS – ZONES AND OVERLAYS

GENERAL RESIDENTIAL ZONE (GRZ1)

The purpose of the GRZ includes to provide for a diversity of housing types and moderate growth in locations offering good access to services and transport. Raymond Island offers no public transport and limited access to community services (no medical centre, schools or shopping centre) other than in Paynesville on the mainland which requires a ferry trip to access. Much of the GRZ is subject to significant natural hazard risks, particularly sea level rise, storm/tide surge, coastal inundation, drought and bushfires (see Figure 1). Long term, the combination of the island's significant natural hazard risks, high conservation values, and its considerable access and servicing constraints; make this particular GRZ not a very



sustainable, nor resilient location for housing growth in response to the multitude of threats posed by climate change.

Figure 1: Coastal inundation impacts on Raymond Island's planning zones to 2100.

42.02 VEGETATION PROTECTION OVERLAY (VPO) – Schedule 2

Purpose:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To protect areas of significant vegetation.
- To ensure that development minimises loss of vegetation.
- To preserve existing trees and other vegetation.
- To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.
- To maintain and enhance habitat and habitat corridors for indigenous fauna.
- To encourage the regeneration of native vegetation

VPO Statement of nature and significance of vegetation to be protected

Raymond Island is located in the Gippsland Lakes and comprises large areas of remnant native vegetation. Much of the island constitutes a Site of Biological Significance, whilst significant areas of native vegetation are located across the remainder of the island, including the residential area. Remnant native vegetation contributes significantly to aesthetic values of the island and provides for a unique rural and urban character in a lake-shore setting resulting in a highly attractive area to both local residents and visitors. Remnant native vegetation on the island, including important examples of coastal forest/ woodland and wetlands, is of high conservation value and provides important fauna habitat.

The Raymond Island Vegetation Protection Overlay seeks to **conserve high conservation value vegetation** and vegetation with high aesthetic and landscape value.

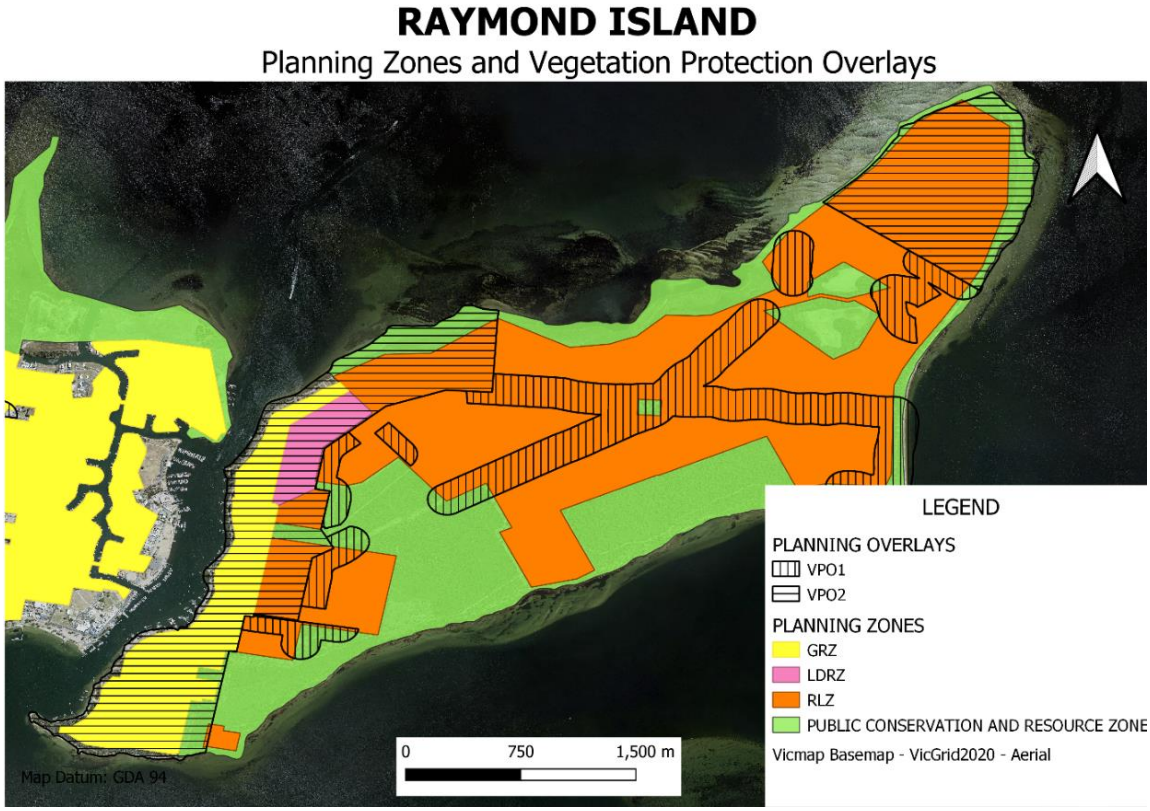


Figure 2. Raymond Island Planning Zones and Vegetation Protection Overlays.

The VPO02 overlay objective is to ensure that development occurs so as:

- To conserve areas of high conservation value vegetation by minimising the extent of vegetation loss.
- To preserve existing trees and other vegetation where it contributes to high landscape and aesthetic values on Raymond Island.
- To conserve and enhance fauna habitat and habitat corridors by minimising the extent of vegetation loss and encouraging regeneration of indigenous species.
- An application must also be accompanied by the following information, as appropriate: including, any native fauna known to be present on or near the subject land.

Decision guidelines – VPO2

The following decision guidelines apply to an application for a permit under Clause 42.02, in addition to those specified in Clause 42.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The extent to which the vegetation sought to be removed or cleared contributes towards the need to:
    - **Conserve and enhance areas of high conservation value vegetation**.
    - **Protect and enhance the visual amenity and landscape quality of Raymond Island.**
    - **Conserve and enhance fauna habitat and habitat corridors.**

    - Minimise the risk of soil erosion, sedimentation and degradation of water quality.
- The need to assess alternative options regarding the removal of vegetation to better achieve the Overlay objectives.
- The need to undertake revegetation with appropriate indigenous species to offset any loss of environmental values resulting from the works or development.

The Ethos NRM flora and fauna assessment found 14 EPBC-listed terrestrial threatened species were known to occur within 2km of the project site, and fifteen terrestrial Victorian FFG-listed threatened species were recorded on the Victorian Biodiversity Atlas (DELWP VBA Records 2023) within 2 km of the project site, in the last 40 years.

Among the list of listed threatened species known to occur within 2km of the project site, where:

- Swift Parrot (*Lathamus discolor*) – **Critically Endangered**, EPBC-listed & FFG-listed
- Gang-gang Cockatoo (*Callocephalon fimbriatum*) – **Endangered**, EPBC-listed
- White-throated Needletail (*Hirundapus caudacutus*) – Vulnerable, EPBC-listed
- Grey-headed Flyingfox (*Pteropus poliocephalus*) – Vulnerable, EPBC-listed
- Square-tailed Kite (*Lophoictinia isura*) – Vulnerable, FFG-listed

The following threatened species were also confirmed by the Ethos NRM records search of the Victorian Biodiversity Atlas (see Ethos NRM Report - Appendix 7; pg.29):

- Swift Parrot (*Lathamus discolor*) – **Critically Endangered**
- Gang-gang Cockatoo (*Callocephalon fimbriatum*) – **Endangered**
- Square-tailed Kite (*Lophoictinia isura*) – Vulnerable

Despite **identifying all five threatened species** in their desktop-based assessment, the Native Vegetation Report by Ethos submitted with the planning application overlooked the high conservation value of the subject land for threatened species.

The Ethos Vegetation report concluded:

> The subject land is not high quality habitat for Koalas or any threatened species and is not an endangered EVC nor contains any wetland values. Hence the objectives of the overlay will not be compromised by the proposed subdivision (Ethos NRM Report; pg.7).
>
> Removal of less than 0.5 hectares of native vegetation in this location will not have a significant impact on any habitat for a rare or threatened species (Ethos NRM Report; pg.4).

However, BirdLife East Gippsland data in the process of being uploaded onto the VBA, confirms **the high conservation value of the project area for five threatened species**, noting:

- 70 reports of **Swift Parrot, totalling 268 individual birds recorded** in the past 8 years (15/4/2015 – 25/09/2023).

- 230 reports of **Gang Gang Cockatoos, totalling 607 individual birds recorded** in just the past two years (11/3/2022-13/09/2023).

- 100+ observations of White-throated Needletail in a single day (28/12/2022).

- 2-3 Square-tailed Kites (since 2017 regular summer visitor, 2 parents and juvenile).

- up to 25 Grey-headed Flyingfox visit yearly when trees are flowering.

It's clear the Ethos NRM Native Vegetation Report was not privy to the above data at the time of its assessment. Though Andrew Bould of the Bairnsdale & District Field Naturalist Club was consulted for information on protected flora (Ethos NRM Report; pg.4), no equivalent check was made for fauna values despite the VBA records indicating threatened species were known to occur in the vicinity of the development site. Had BirdLife East Gippsland (or even Birdata online) been consulted, the Ethos Report would have had to reach vastly different conclusions to those outlined in its report. Firstly,

- Ethos NRM has a professional responsibility to inform their client that an EPBC self-referral was highly advisable, given the likely impacts to important habitat for the critically endangered Swift Parrot (EPBC & FFG listed) and the endangered Gang Gang Cockatoo (EPBC listed only).
- Secondly, a referral to DEECA notifying them of the rare and threatened species in the project area was necessary. Once notified, the referring authority could then apply *Decision guideline 10 for rare & threatened species* to the Intermediate Assessment Pathway when assessing the application for removal of native vegetation, in accordance with Appendix 5a of the *Assessors Handbook 2018*.

BirdLife Australia are members of the *National Swift Parrot Recovery Team*, and BirdLife East Gippsland helps implement the *National Recovery Plan for Swift Parrots*. According to the *National Recovery Plan for Swift Parrots 2019 (s4.4 pp.10-11)*, **habitat critical to the survival of the Swift Parrot** includes:

- **Any** nesting sites or foraging areas where the species is known or likely to occur.
- **Any newly discovered** breeding or important foraging areas.
- Habitat critical to the survival of the Swift Parrot occurs across a wide range of land tenures.

The Swift Parrot Recovery Plan states unambiguously that "it is essential that the **highest level of protection** is provided to these [critical habitat] areas and that enhancement and protection measures target these productive sites" (p.11). Furthermore, Action 2.2 (Priority 1) of the National Recovery Plan (mirroring earlier calls by the Swift Parrot FFGA Action Statement) requires that:

> New information on breeding and foraging locations is incorporated into the existing regulations, codes of practice, management recommendations, and **planning tools and procedures** to better manage the Swift Parrot population across its range.

At the landscape scale, a significant portion of the tiny surviving but declining total population of the Swift Parrot passes through Raymond Island each year on its annual migration from Tasmania, going north in April to early May and south in late Sept / Oct. On Raymond Island they feed on psyllids and lerps on the Island's eucalypts, mainly Forest Red Gum (*Eucalyptus tereticornis subsp. mediana*), endangered Coastal Grey Box (*Eucalyptus bosistoana*), mature Southern Mahogany trees (*Eucalyptus botryoides*) and occasionally on Banksia or Swamp paperbark flowers.

> The Swift Parrot faces imminent extinction in the wild. Removal of mature foraging trees is a major factor in its decline (CoA, *National Recovery Plan for the Swift Parrot*

2019; p.11).

BirdLife East Gippsland have indicated the patch of mature native vegetation dominated by Southern Mahogany interspersed throughout the project area, represents **critical habitat for several threatened species**; the most notable being the Swift Parrot and Gang Gang Cockatoo (Russell, pers comm 2023).

> In 2015**, flocks of up to 40 Swift Parrots were recorded** foraging in the canopy of the Southern Mahogany trees inside the development site, feeding on the abundant psyllids and lerps of the largest trees (Wright, pers comm 2023).
>
> More recently, **20 Swift Parrots were recorded** in the tree canopy of the subject area on the 3/3/2020 (Wright, pers comm 2023).

BirdLife East Gippsland consider the project area to be a "**priority site**" where Swift Parrots have a high level of site fidelity (recorded every year since 2015), and have occurred in large flocks (Russell, pers comm 2023). When one considers the following;

- an estimated 300 to 750 Swift Parrots remain in the wild (Heathcote, 2020; DCCEEW 2023),
- only the critically endangered Orange-bellied Parrot (*Neophema chrysogaster*) has a smaller total population,
- Raymond Island is located in a significant migration pathway between Tasmania and Victoria,
- the project area is itself among one of the most important foraging and staging areas for Swift Parrot in East Gippsland, if not Victoria.

The above factors strongly indicate the project area is critical habitat for the **survival of an ecologically significant proportion of the total surviving population of the Swift Parrot** and therefore has extremely high conservation value. Notably, the proposed subdivision will effectively result in the full extent of native vegetation being removed, and therefore **all the critical habitat within the project area being lost**, offering no level of protection to habitat critical to the survival of the Swift Parrot. Moreover, given the significant threats to remnant mature native trees (esp. development, over foraging, disease, climate stress and dieback) and dwindling mature tree numbers across the island, **all suitable remnant native vegetation on Raymond Island requires urgent protection**.

44.06 BUSHFIRE MANAGEMENT OVERLAY (BMO) – Schedule 2

Purpose:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
- To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
- To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

The Bushfire Planning report that accompanied the development application notes that at a landscape scale, Raymond Island has a moderate to high bushfire hazard rating (Bushfire Planning Report, p.10). This risk is reflected in the total coverage of Raymond Island by a BMO, with the GRZ itself impacted by three different BMO Schedules (see figure 3). The Bushfire Management Overlay (BMO) triggers specific building and planning requirements that give priority to the protection of human life over all other policy considerations. Specific exemptions apply in clause 52.12 of Victorian planning schemes that allow residents to clear vegetation around property to create or maintain defendable space for bushfire protection without a planning permit.

> **Residential growth in areas with high conservation values that are subject to a BMO will result in further native vegetation removal; and consequently, contribute to greater habitat fragmentation and cumulative biodiversity loss.**

Housing development in fire prone areas is therefore incompatible with the protection of environmentally sensitive areas, especially where critical habitat for threatened species is at risk. This is recognised by the *National Recovery Plan for Swift Parrot (2019)*:

> **Urban and rural residential developments pose a significant threat to habitat** throughout the range of the species, with important breeding areas in Tasmania and **key foraging areas in Victoria**, New South Wales and Queensland being of particular concern. Where potential breeding [and foraging] habitat is retained adjacent to developments there is an increased likelihood that potential nest [and foraging] trees could be removed for 'human safety reasons', including as part of establishing and maintaining fire breaks (National Recovery Plan for Swift Parrot 2019; p.7).

Further discussion of the BMO in relation to the State Bushfire Policy framework inherent to Clause 13.02-1S and Clause 71.02-3, is provided in the section on the Policy Planning Framework of this submission (see 13.02-1S Bushfire Planning; p.17).

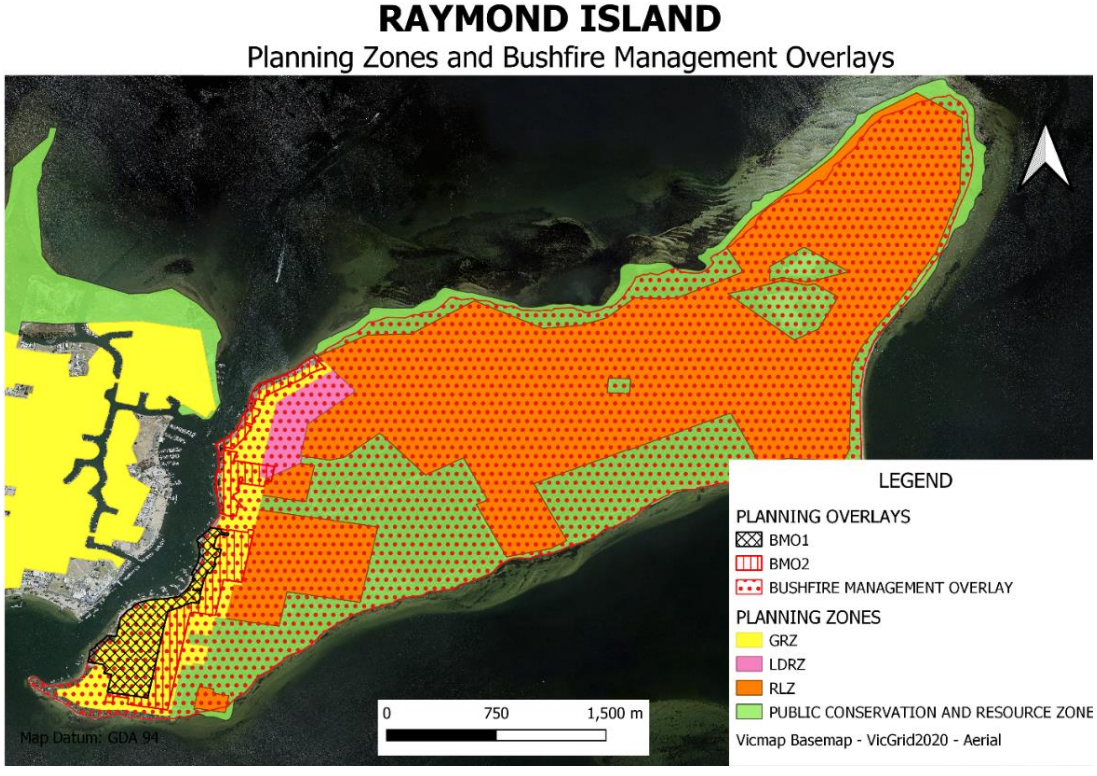


Figure 3: Raymond Island Planning Zones impacted by Bushfire Management Overlays

DESIGN & DEVELOPMENT OVERLAY (DDO) – Schedule 11

RESIDENTIAL DEVELOPMENT IN COASTAL SETTLEMENTS

Relevant design objectives

- To protect and manage the township character of coastal settlements.
- To ensure that new development is designed to minimise visual impacts on the natural landscape.
- To ensure that new development is visually and physically integrated with the site and surrounding landscape.
- To ensure that new development is sited and designed to be visually unobtrusive through and above the surrounding tree canopy when viewed from nearby streets, lakes, coastal areas, or other distant viewpoints.
- To protect the vegetated character of the landscape, particularly where it is a dominant visual and environmental feature.

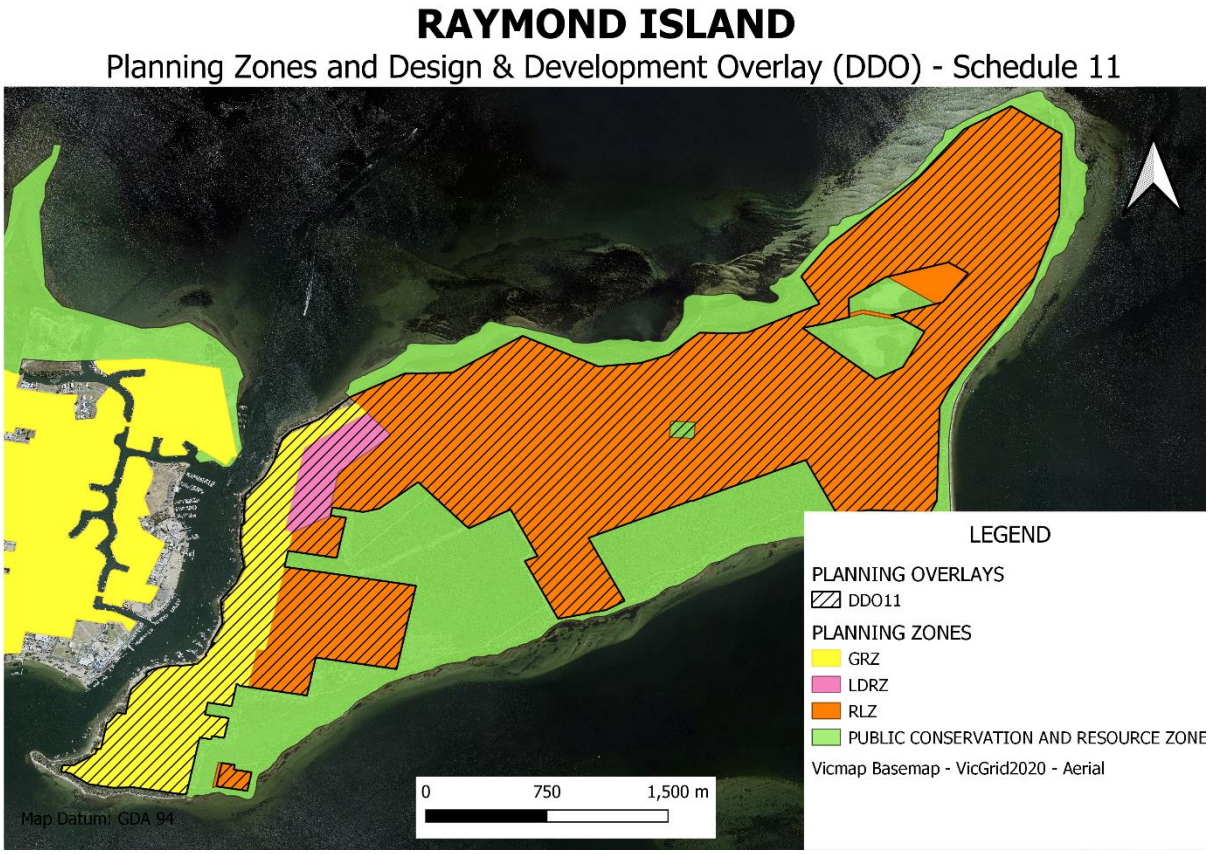


Figure 4. Raymond Island Planning Zones and the Design & Development Overlay (DDO011)

The Design and Development Overlay (DDO011) seeks to control development in coastal areas, by protecting and managing the 'township character' of a settlement. The township character of Raymond Island is predominantly defined by the Raymond Island Framework Plan as a "**well vegetated** coastal settlement. The *Raymond Island Urban Design Framework (2007*), which is a significant "background document" in the East Gippsland planning scheme for the DDO; outlines how "the **existing local character** of each

settlement **should be protected and / or improved** where appropriate" (pg. 25). The Urban Design framework also emphasizes that "the coastal environments within which these settlements are located are important ecosystems that **must be conserved for the future"** (p.25) and help sustain "nature based tourism" (p.29); which is still supported by the current Municipal Planning Strategy, Community Vision and Council Plan.

The Urban Design Framework's Vision for the island highlights;

> **its bushland setting, natural values and quiet lifestyle will be maintained** and it will be recognised as a destination where sustainability is a key element in all activities conducted on the Island (Raymond Island Urban Design Framework 2007; p.32)

The landmark *Raymond Island Strategy 1992,* has helped guide the development of Raymond Island and the protection of its unique bushland character and natural values to this day. This study concluded that the "natural bush character of the Island and its flora and fauna values will be preserved and enhanced by regulating development to a level that will sustain the natural values." The contribution the island's extensive remnant native vegetation makes to its 'natural bush character', is further reflected in the Vegetation Protection Overlay (VPO). The island's VPO "statement of nature and significance of vegetation to be protected" describes how:

- significant areas of native vegetation are located across the remainder of the island, including the residential area.
- remnant native vegetation contributes significantly to aesthetic values of the island and provides for a unique rural and urban character in a lake-shore setting resulting in a highly attractive area to both local residents and visitors.
- remnant native vegetation on the island, including important examples of coastal forest/ woodland and wetlands, is of high conservation value and provides important fauna habitat

The significance given to the island's remnant coastal native vegetation cover is further reflected by the protective DDO011 provisions that trigger a building permit for proposed works greater than 150m^2 (excluding building footprint) and for total building areas in excess of 300m^2. These particular provisions apply only to Metung, Mallacoota, Lakes Entrance and Raymond Island, in recognition of the very high conservation values of the remnant native vegetation found within and around these coastal settlements. The 'proposed total works area' permit trigger provisions, provide planners greater control over development occuring within the DDO through the consideration of the following **Decision Guideline**s related to native vegetation and town character generally:

- The extent of any vegetation to be cleared and the impact of that clearance on the landscape setting of the locality.
- The need for and purpose of proposed vegetation removal.
- Whether the roof form of the building sits generally below the prevailing tree canopy

And more significantly for this development application, the decision guidelines which apply in relation to any proposed subdivision within a DDO are particularly important. The following guidelines must be considered by the Council before deciding on an application, and are designed to protect the well vegetated, coastal bushland character and biodiversity values of the island.

- The effect of any proposed subdivision or development on **the environmental and landscape values of the site and of the local area**, including the effect on streamlines, foreshores, wetlands, **areas of remnant vegetation** or areas prone to erosion.
- Whether the proposed subdivision layout **provides for the protection of existing natural vegetation**, drainage lines, wetland areas and sites of cultural or heritage significance.
- Whether **the potential for wildlife corridors through the area has been retained** or created by limiting fencing **and maintaining indigenous and native vegetation**.

Consideration of the DDO subdivision guidelines in relation to the proposed development, strongly indicates the proposal fails to protect the well vegetated coastal character and biodiversity values of the Island. The proposed subdivision layout will result in:

- The effective loss of all the mature remnant native vegetation which will adversely impact the environmental and landscape values of the site and of the local area.
- No protection measures being afforded to significant remnant native vegetation.
- The loss of wildlife corridors, indigenous and native vegetation important to the survival of threatened species.

The development application's planning report does not satisfactorily respond to the DDO planning controls. Avid claims that "the proposed subdivision will not impact the environmental and landscape values of the site and local area", and have "no effect on areas of remnant vegetation" are untrue, and unsupported by any evidence contained in the report (Austec Planning Report; pg. 9). Furthermore, the report goes on to note "wildlife corridors are not through this area [as] it is a residential area which limits indigenous and native vegetation (Austec Planning Report; pg.9). These opinions demonstrate an unfamiliarity with the DDO and VPO township character objectives of the planning scheme. In sum, the objectives and strategies of the DDO are clearly not met by the proposed subdivision, and nor have they been adequately considered in the planning report accompanying the development application.

PLANNING POLICY FRAMEWORK – Relevant Clauses

11.03-4L-01 Coastal Settlements

- Ensure development does not adversely affect landscape and environmental values and incorporates measures to protect those values.

- Retain existing native vegetation and incorporate replanting in new development.

The proposed subdivision and native vegetation removal will adversely affect landscape and environmental values, and incorporates seriously inadequate measures (partial offsets) to protect those values. No attempt is made to retain existing vegetation in the proposed new lot, and the small amount of native vegetation remaining on the lot with an existing dwelling, is assumed lost for planning purposes.

11.03-4L-03 Raymond Island

- Protect and maintain the well vegetated coastal settlement and low intensity character of Raymond Island.

No effort is made to protect and maintain the well vegetated, coastal bushland settlement character of Raymond Island. All native vegetation is simply assumed lost by the subdivision planning application's lot design.

12.01-1S Protection of Biodiversity

Objective: To protect and enhance Victoria's biodiversity

- Use biodiversity information to identify important areas of biodiversity, including key habitat for rare or threatened species and communities, and strategically valuable biodiversity sites.
- Ensure that decision making takes into account the impacts of land use and development on Victoria's biodiversity, including consideration of:
    - Cumulative impacts.
    - Fragmentation of habitat.
    - The spread of pest plants, animals and pathogens into natural ecosystems.
- Assist in the identification, protection and management of important areas of biodiversity.
- Avoid impacts of land use and development on important areas of biodiversity.
- Assist in the establishment, protection and re-establishment of links between important areas of biodiversity, including through a network of green spaces and large-scale native vegetation corridor projects.
- Support land use and development that contributes to protecting and enhancing habitat for indigenous plants and animals in urban areas.

The value of habitat trees and native vegetation areas in Raymond Island's network of flora and fauna habitats is enhanced where there are opportunities for birds and other wildlife to shelter while moving between them. The connectivity or links between habitat patches increases their long-term sustainability and value in biodiversity protection by reducing the risk of creating isolated and vulnerable habitat areas. This connectivity enables native species to respond to adverse climatic changes, providing greater opportunities for breeding and foraging, and allowing native species (especially birds and arboreal fauna) to recolonise areas following major disturbances such as bushfires. Therefore, high quality habitat patches interspersed in treed urban residential areas (like the subject land), are important climate-change refugia for threatened species. Their relatively sheltered locations (separated from more fire prone areas, flat gradient, surrounded by low threat vegetation) help ensure they're more likely to survive major disturbances such as bushfires, making them **strategically valuable biodiversity areas**.

The *Victorian Flora & Fauna Guarantee Act (FFGA) 1988 Action Statement No. 169* (p.4) directs Shires to:

> Incorporate information regarding the location and management of Swift Parrot sites into local planning schemes, including environmental significance overlays, and apply the Victorian Planning Provisions so as to protect these sites" (DSE 2003; p.4).

Unfortunately, this strategic planning work has not been undertaken by the Shire since the release of the FFGA Action Statement over 20 years ago. The absence of such planning, has created a situation whereby compliance with the FFGA requirements is now in question. Council can in the interim, utilise existing planning controls such as the VPO2 and DDO011

to protect critical habitat for the Swift Parrot, whilst funding and support for this vital strategic planning work is secured. As Minister Plibersek herself recently acknowledged:

> "the protection and recovery of the Swift Parrot requires the cooperation of state **and local governments** and support for on the ground work in local communities" (Plibersek, 7 Sep 2023).

Relevant Policy documents:

- **Any applicable** biodiversity strategies, such as *Threatened Species Recovery Plans* and *Threatened Species Action Statements* (EPBC Act 1999, FFG Act 1988)
- *Protecting Victoria's Environment – Biodiversity 2037* (Department of Environment, Land, Water and Planning, 2017)

12.01-2S Native vegetation management

Objective: To ensure that there is **no net loss to biodiversity** as a result of the removal, destruction or lopping of native vegetation.

- Ensure decisions that involve, or will lead to, the removal, destruction or lopping of native vegetation, apply the three-step approach in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017)

The native vegetation offsets did not consider threatened species habitat impacted by the proposal, and therefore will result in a net loss to biodiversity.

According to the *Guidelines for native vegetation removal* (2017) and the *Assessor's Handbook: Applications to remove, destroy or lop native vegetation* (2017); the presence of the following features are relevant to calculations of the impacts resulting from native vegetation removal:

- large trees
- habitat for rare or threatened species,
- sensitive wetland and coastal areas (the subject land falls within a designated Ramsar site)

The presence of all three of these attributes increases the potential impacts on biodiversity of the vegetation to be removed. All three of these apply to the development site. The Ethos vegetation report overlooked the very high habitat values for threatened species of the subject area in making its determinations for the site. Furthermore, the proposed subdivision **has not** been carefully designed to ensure the principles of avoidance and minimising vegetation losses commensurate with the biodiversity and other values are upheld.

Policy documents:

Guidelines for the removal, destruction or lopping of native vegetation (2017)

Assessor's Handbook: Applications to remove, destroy or lop native vegetation (2017)

12.02-1S Protection of the Marine and Coastal Environment

Objective: To protect and enhance the marine and coastal environment**.**

- Protect and enhance the overall extent and condition of native habitats and species diversity distributions across public and private land in the marine and coastal environment.
- Minimise direct, cumulative and synergistic effects on ecosystems and habitats.

The overall extent and condition of coastal native habitats critical to the survival of several listed threatened species are neither protected nor enhanced by the development application. The proposed development fails to minimise direct, cumulative and synergistic effects on habitats critical to the survival of threatened species.

12.02-1L Protection of Coastal Areas

- Minimise the environmental impacts of use or development on coastal land

The impacts on habitat critical to the survival of the Swift Parrot are both notable and of consequence to an ecologically significant proportion of the species population. The proposed subdivision fails to minimise or offset in any meaningful way, the detrimental environmental impacts on coastal land of considerable strategic biodiversity value.

12.05-1L Environmentally Sensitive Areas

Objective: To protect and enhance environmental, cultural and aesthetic values within East Gippsland.

- Design development in significant landscape areas including those referenced on the map to this clause (incl. Gippsland Lakes Ramsar Site) that is sympathetic to the character of the area and preserves its aesthetic values.
- Protect and enhance landscapes, important vistas and visual and environmental qualities of coastal, lakeshore and river-frontage areas, townships, recreation activity centres through responsive siting and design.

The proposed subdivision and native vegetation removal does not protect nor enhance the landscape, visual and environmental qualities of coastal townships through responsive siting and design. The consequential total loss of native vegetation that will arise from the proposed subdivision is inconsistent with the objective to protect and enhance environmentally sensitive areas, and not sympathetic of the character of the area.

12.05-2S Landscapes

Objective: To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.

- Ensure development does not detract from the natural qualities of significant landscape areas.

- Improve the landscape qualities, open space linkages and environmental performance in significant landscapes and open spaces, including green wedges, conservation areas and non-urban areas.
- Ensure important natural features are protected and enhanced.

The proposed subdivision does not achieve the objective of protecting and enhancing significant landscapes that contribute to character, identity and sustainable environments. The proposed clearing of mature native vegetation will detract from the natural qualities of a significant landscape area, harming its environmental performance, and completely fails to ensure important natural features are protected and enhanced.

13.02-1S Bushfire Planning

Objective: To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

Key strategies to be considered in bushfire planning decisions include;

- Prioritising the protection of human life over all other policy considerations.
- Directing population growth and development to low-risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.
- Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process.
- Ensuring the bushfire risk to existing and future residents, property and community infrastructure will not increase as a result of future land use and development
- Achieving no net increase in risk to existing and future residents, property and community infrastructure, through the implementation of bushfire protection measures and where possible reducing bushfire risk overall.
- Ensure settlement growth and development approvals can implement bushfire protection measures **without unacceptable biodiversity impacts** by discouraging settlement growth and development in bushfire affected areas that are important areas of biodiversity.

Approving the subdivision proposal will result in the consequential loss of ALL the remnant vegetation within the development site. The requirements for defendable space make retaining any of the native vegetation within the subdivided lots all but impossible, resulting in unacceptable impacts to the sites' outstanding biodiversity values.

The planning application's accompanying Bushfire Planning Report acknowledges the project area lies in a "Type 2 Landscape"; being a landscape with a moderate bushfire risk. The report also notes the project area's vegetation is classified as "Woodland flat", and surrounded by "low threat vegetation" for 62m to the South, 100m to the East and 95m to the North West (Bushfire Planning Report; pg.21). The report notes the new lot can only meet an acceptable radiant heat flux rating by clearing all the native vegetation. Yet the bushfire planning report's response to the bushfire policy of protecting areas of high biodiversity conservation value is to paradoxically claim "minimal vegetation requires removal" (Bushfire planning report, pg.15). The report goes on to explain "the sub-division will not increase the bushfire hazard to the locality and surrounding dwellings" (p.15). Commensurably, a decision to not approve the subdivision will also achieve **no net increase** in bushfire risk to residents, property and community infrastructure.

The bushfire planning report appears to apply a particularly rigid and deterministic approach to the protection of human life provisions of Clause 13.02-1S and Clause 71.02-3 of the planning scheme. Applying such an unnuanced approach to bushfire planning would effectively support the **complete removal of all native vegetation** on every house lot under 0.4ha, on every street, across every neighbourhood and municipality in bushfire prone areas (which covers much of Victoria); a somewhat extreme proposition that defies the commonsense application of a planning and responsible authorities' discretion in applying State Bushfire Policy. This policy includes **a range of strategies** relating to protection of human life, bushfire hazard identification and assessment, settlement planning, areas of biodiversity conservation value, and use and development control in Bushfire Prone Areas.

The **responsibility authority has discretion** in the manner in which it implements the bushfire planning strategies, whilst prioritising the protection of human life and community resilience to natural hazard risks. Simply clearing all native vegetation to reduce bushfire hazard regardless of its conservation significance is not wholly consistent with the bushfire planning policy. If achieving community safety and resilience primarily through extensive, intensive and unmoderated vegetation removal was indeed the intention of the policy, then it would have simply omitted any strategy seeking to protect areas of high biodiversity value in bushfire risk planning and decision making.

The subject areas outstanding biodiversity and conservation values have not been adequately considered by either of the proponent's vegetation or bushfire planning reports. Protecting these biodiversity values is not incompatible with the policies and provisions which seek to prioritise the protection of human life; given the retention of significant native vegetation will achieve no net increase in bushfire risk or measurably increase the vulnerability of communities to bushfire.

Moreover, the moderate to high bushfire risk of the surrounding area, combined with limited evacuation, firefighting and shelter options for the island's residents in the event of extreme bushfire conditions, are not consistent with policies **directing population growth and development to low risk locations.** The bushfire planning report focuses largely on a design response rather than a consideration of appropriate siting of future development on an island greatly constrained by a plethora of natural hazard risks, that are compounded by limited infrastructure, services, emergency access *and* high conservation values throughout the island's residential zones.

Concluding remarks

Contrary to the opinions given in the planning report, this is not a simple proposal for subdivision and native vegetation removal requiring expedited approval. The application triggers a diverse range of planning controls and provisions, and requires careful consideration of numerous planning policies and strategies that on balance, **do not support** the approval of this highly contentious development application.