

Need for Strengthening of Aireys Inlet to Eastern View Planning Controls

In your submission AIDA expresses concerns that the current planning controls for Aireys Inlet need strengthening (and consistent application) for development to be more sympathetic to the local environment and character. Could you indicate which aspects of the controls in particular need strengthening and point me to any examples where you think less acceptable outcomes have been achieved?

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Senior Strategic Planner

AIDA's concerns about current planning outcomes – and therefore controls – fall into three categories, each with their own characteristics and problems:

- Buildings and works,
- Infrastructure, and
- Precinct planning.

The problem is that local character and environment are being degraded, bit by bit — in ways that, for buildings and works are contrary to existing provisions in the planning scheme, and for infrastructure are contrary to the agreed local character or to Council's own policy.

AIDA is concerned that it will become impossible to retain the low-key informal coastal character and naturally vegetated bio diverse environment of our area if these processes are permitted to continue.

The effects of the problems are well understood by local residents, who in surveys of community opinion since 1990 have consistently — and increasingly — identified the need for improvement in these areas. This year:

- 87% expressed the need for improvements in planning and infrastructure for the conservation of the natural environment within local residential township areas,
- 91% expressed the need for improvements in siting and design controls that aim to improve the visual and environmental impacts of future developments, and
- 93% supported the need for protection of neighbourhood character, including environmental protection, by controls on house design and site development — with 58% indicating that the existing controls need strengthening.

This is all against the background of 76% of respondents supporting the need for urban and rural conservation zones with restrictive controls on private land.

In addition to community opinion, AIDA has specific experience of the problems in numerous cases over many years through:

- analysing and objecting to problematic development proposals, including appearing at the Surf Coast Shire Planning Committee and when necessary before VCAT,
- providing input to strategic reviews and planning scheme changes, including the introduction of the neighbourhood character provisions,
- participating in local precinct planning processes, infrastructure development initiatives, and
- where necessary opposing infrastructure projects or aspects of them.

The main difficulty appears to be that because of the scale of many of the elements of our local character – which is generally natural, low key and informal – and all applying within what are very small settlements, this leads to the fragile environment, biodiversity and character being easily degraded. Degrading occurs incrementally, but irreversibly, by developments that fail to meet the objectives of the planning scheme. This is happening despite often clear provisions for the values and processes which should be pursued, and the outcomes which are being sought.

It is not the case though, that the problems occur through the planning scheme failing to make the point that the character and environment of Aireys Inlet to Eastern view needs to be “protected”, and also where appropriate “enhanced”.

Protection of local character or environment

The planning scheme includes numerous policies and objectives to “protect” relevant aspects of the character and environment of Aireys Inlet to Eastern View. There are currently 71 such separate provisions in the planning scheme. These range from general state-wide planning policy to local objectives and standards. By implication, when associated with performance objectives and standards, many of them numerically specific, the use of “protection” refers to aiming for specified minimum character and environmental standards being met in any development.

In this way the extent to which a given planning application either does or does not “protect” local character and environment should be clear to see, and a clear judgement can be made as to whether this is sufficient. Because of this there is a reward available to an applicant in protecting local character or environment. But degraded character or environment will only be protected, and the reward will only apply, if the approved proposal meets the minimum character and environmental performance objectives.

Enhancement of local character or environment

The planning scheme recognises, usually implicitly rather than explicitly, that development land might already be relatively degraded in desired character or environmental terms. Therefore it also contains numerous provisions in policies and objectives to “enhance” relevant aspects of the character and environment of Aireys Inlet to Eastern View. There are currently 40 such separate provisions, also ranging from general state-wide planning policy to local objectives and standards. A problem though, in AIDA’s experience, is that there is no measure of the extent to which a planning application should, or is expected to, “enhance” local character or environment, or when it might be required to do so. Because of this there is normally be no reward to an applicant in enhancing local character or environment.

Presumably a potential reward for “enhancement” might be also seen as a quid pro quo in cases where for some valid reason it is not practically possible to meet a particular “protection” or other specified objective but in AIDA’s experience this is rarely if ever proposed, and in any event there is no measurable performance standard to apply in such a case.

Enhancement appears to be a frequently stated, but seldom applied, planning scheme objective.

From all of the above, it therefore appears that both the stated objectives and the approval and implementation processes both need to be tightened.

A. Building problems

In building proposals the driver of the problems being experienced mainly appears to be the increasing expectations in recent years as to the size and ambition of projects and their associated site works. Sites, particularly residential blocks, are being developed with over-large proposals, and increasingly over-filled with excessive development footprints when the site is insufficient for the applicants’ ambitions. There is an ever increasing amount of investment money pursuing the limited land available in our small, finite townships.

At the time that the Aireys Inlet to Eastern View Neighbourhood Character Overlay was being prepared in 2005, this trend, while recognised as occurring in outer Melbourne in

“McMansions”, was not at all anticipated to threaten our area. But more recently large budgets and dreams are now commonplace, with expectations that neighbourhood character and environmental protection provisions can be overridden if the applicant is tactically savvy, well represented, and persistent enough.

This pressure leads to site setback, site coverage, site permeability, plot ratio, vegetation protection, glazing area, facade articulation, visual recessiveness, site paving, swimming pool, tennis court and external illumination objectives not being met in various combinations in an increasing number of cases.

Examples, providing the flavour of where these problems have occurred, are cases where:

- the planning officer’s analysis is too forgiving, as for example in a local case in a visually sensitive precinct, arguing that rebuilding on a house block, well within the minimum front setback, was permissible because the replacement building was classed as a renovation — but when only a few stumps of the original house remained in place, being a clear device to establish the new sub-standard setback;
- the Shire’s Planning Committee determines applications contrary to aspects of the planning scheme, as for example when approving swimming pool and tennis court applications despite the neighbourhood character objective of discouraging them — even in one case where the minimum site permeability could no longer be achieved;
- VCAT approval is insufficiently rigorous, as for example when grossly substandard setbacks, without any claimed basis, and modified at the hearing to something less substandard, were accepted by the member on the grounds that an improvement had been made. Or when the member, failing to understand the definition of plot ratio, accepted the totally incorrect “advice” of the applicant’s counsel rather than referring to the planning scheme itself or taking into account the correct definition provided by AIDA.

Additional examples are described below.

It appears that in many such cases, tightening of the planning scheme decision guidelines is required to resist these tendencies. Particularly, clearer decision guidelines under NCO1, ESO4, ESO5, DDO10, DDO11 and DDO15 seem to be needed in the interpretation of how the most sensitive objectives should be met — guaranteeing the protection and enhancement of local character and environment. This would provide less opportunity for skilled applicant advocates to argue interpretations, give a firmer basis for officer recommendations and permit less discretion for final decision makers. Possibly, also, the objectives themselves should be reviewed to determine whether any of them need to be more prescriptive.

It isn’t fully clear to AIDA how to obviate all of these failings, but their effects continue to be felt in changing the character and challenging the environment of our area.

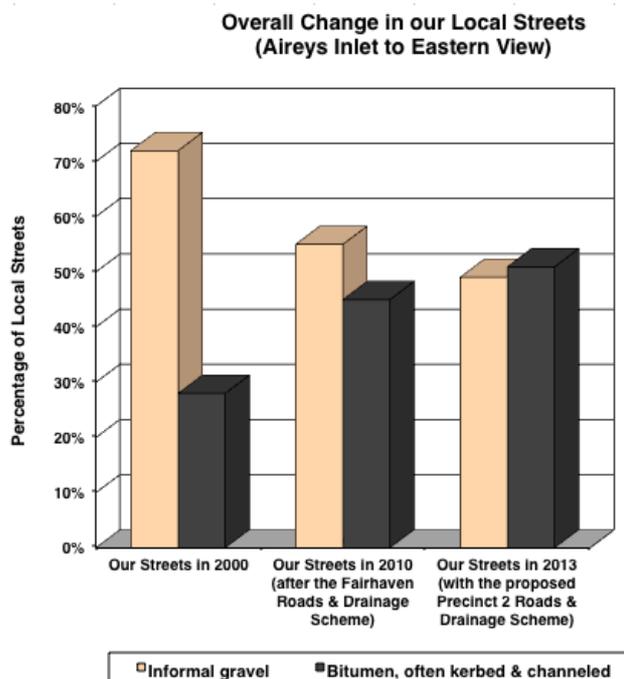
B. Infrastructure problems

In infrastructure projects the driver of the problems appears mainly to be mismatches between the objectives of the planning scheme and the standards being pursued for infrastructure developments. This is particularly disappointing and disillusioning in the local community when both of these responsibilities rest with the Shire. But more importantly, it should not be permitted to continue if the agreed character, and eventually the environment of the area are to be retained or enhanced.

These problems have led to ongoing reductions of local gravel streets, despite this being the key infrastructure character objective established as part of the Aireys Inlet to Eastern View

Neighbourhood Character Study. Compared to the impacts of individual building developments, street character is ubiquitous throughout our townships and therefore any changes to that character become immediately obvious throughout a whole street or streets. Since 2000 the character of local streets has changed from 72% gravel roads to less than 49% in gravel today. Even now additional road sealing is being considered. Sealing is seen as the answer to any problem posed by gravel roads.

As well as major road works projects, smaller, incremental road sealing also occurs. As an example of this, in the past three years four local street intersections in Aireys Inlet have been sealed for 50 metres in each direction. We understand from the Shire that these works were carried out by accident, as the intersection sealing program is a safety measure intended to be applied only on rural roads, but this action is nevertheless irreversible, and has added another 700 metres to the total of sealed local streets. We are concerned that now this has occurred, there will be an argument to “join them up”.



Although not explicitly covered in the planning scheme, the same tendency has occurred in relation to pedestrian pathways, which are being established in concrete, even where specified as gravel in the Shire’s Pathways Strategy. This has occurred while GORCC has constructed successful gravel pathways in similar situations. AIDA would also encourage simple grassed pathways in the many informal and relatively low-traffic settings that exist in the district.

The above moves toward sealed roads and concrete pathways have occurred despite the conclusion in the 2005 Aireys Inlet to Eastern View Neighbourhood Character Study that warm coloured gravel roads, driveways and paths are the preferred character. Accordingly, gravel road objectives formed part of Amendment C18, which incorporated neighbourhood character into the planning scheme — in the NCO1 Statement of neighbourhood character, and DDO Design objectives — but subsequently these were removed from the planning scheme. The agreed neighbourhood character designation of warm coloured gravel was modified in DDO10 and DDO11 to become, respectively, “an impervious material, [with] a texture and colour that gives a similar appearance to gravel” and “light coloured bitumen containing exposed aggregate, giving a similar appearance to gravel”.

But even with these watered down provisions, none of the almost 7 km of local streets sealed by the Shire since 2005 has made any noticeable or surviving concessions to meeting its own objective of them having a similar appearance to gravel — all are constructed and maintained with the appearance of conventional bitumen.

At the same time, the Anglesea Strategy retains “*Recognising the importance of ... Anglesea’s character and the following key neighbourhood character attributes [of] gravel roads*”. AIDA believes it appropriate that this provision, removed from Aireys Inlet to Eastern View, be reintroduced into the planning scheme for our area — particularly as this objective has always been more central to our low-key area than elsewhere in the Shire.

These changes to the planning scheme, having the effect of seriously weakening the objective of protecting the preferred character of Aireys Inlet to Eastern View’s local streets, were made despite:

- The Citizen’s Jury for the Aireys Inlet Precinct 1 Roads and Drainage Scheme strongly determining in 2007 that its streets should not be paved,
- The Citizen’s Jury for the Aireys Inlet Precinct 2 Roads and Drainage Scheme marginally determining in 2009 that its streets should not be paved,
- A majority of the Precinct 2 community in 2012 voting to over-turn the declared Aireys Inlet Precinct 2 Roads and Drainage Scheme, including paved streets and footpaths, and
- An unsealed local street road category being included at AIDA’s request in the Shire’s Road Management Plan after its 2010 review.

AIDA is concerned that the progressive sealing of residential streets will ultimately lead to a conventional metropolitan suburban street system. Sealed road surfaces permit increased vehicle speeds and also reduce tyre noise, increasing pedestrian danger in a locality like ours where 73% of people prefer to share the road with cars — as is always the case in relaxed coastal settlements. Shared pedestrian use of roads also supports the retention of naturally vegetated roadsides, another local character objective under the planning scheme, which this year was supported by 92% of the community. As sealed road surfaces are hotter than gravel, they are for that reason also less desirable to walk on by casual family groups in summer. AIDA is concerned that this, together with vehicle safety issues, will in time lead to pressures to provide separate, conventionally suburban road-side footpaths (which only 19% currently approve of) that will necessitate the destruction of roadside vegetation.

It may already be desirable to designate some residential streets as shared traffic zones to help to prevent pedestrian safety problems.

This disconnection between policy and practice has caused significant negative reactions in the local community and a feeling of distrust in some areas. As a result of these problems Council unanimously resolved in 2012 that it:

“Endorse for all future infrastructure solutions in sensitive coastal areas a design approach in sympathy with the local neighbourhood character and request that engagement with impacted communities occurs prior to the commencement of design work to ensure communities contribute to proposed infrastructure solutions.”

However current councillors seem to be unaware of this policy, as it is not always followed, and AIDA is also concerned that the policy does not go far enough, as what is needed is the development of clear, agreed character and environmental objectives for infrastructure, similar to those applying in the planning scheme to buildings and site works developments.

Councils which cannot build on policies adopted previously will never progress and improve their management, but will be caught continuously re-inventing the wheel. Council needs to build on its “corporate knowledge” and not waste resources continuously reviewing the same issues.

C. Precinct planning problems

From time to time there are challenges associated with the integrated planning of precincts within our area. For more than a decade, until recently, the Lighthouse Precinct was one of these, but through successful consultation between the community, GORCC and the Shire this now appears to have been resolved.

But over the past few years the development future of the Bottom Shops has become another, increasingly unresolved area, presenting a number of challenges. AIDA has indicated its support in the Structure Plan for *Activating the Shopping Centres* and would like to see this objective strengthened to resolve continuing problems in the implementation of key aspects of the 2009 Commercial Areas Urban Design Guidelines at the Bottom Shops.

There is good community support for linking the diverse pathways of south of the Great Ocean Road with the newer paths to the north, and particularly establishing an attractive and safe pedestrian connection from the frontage of the Bottom Shops via the laneway running between 83 and 85 Great Ocean Road to the pathway running in either direction along the southern bank of the Painkalac Creek. This pathway was singled out for mention in the 1993 Structure Plan and we believe is of key strategic importance to the overall pedestrian network. AIDA recommends that it be given similar clear priority in the 2015 Structure Plan.

In addition, and in support of the attractiveness and safety of the pathways around the Bottom Shops, the Guidelines encourage active pedestrian frontages along both the laneway and the Painkalac Creek path alignments of the commercial zone. In this way a pleasant precinct of cafes etc. along the creek path would be encouraged in this area, providing a relaxed and shaded north-facing aspect across the creek to the valley and a new meeting place for the community and for visitors.

The importance of this helicopter view of strategic planning is often lost in the individual decisions taken by the Shire through the recommendations of individual council officers in individual circumstances. These decisions have a cumulative effect.

Unfortunately the new owners of 83 Great Ocean Road have redeveloped their site without applying for planning permission and proceeded effectively to completion before this was able to be addressed by the Shire. Because of this delay the opportunity identified in the Guidelines for establishing an active frontage along the laneway to the creek was lost, and for whatever reason, the Council most unfortunately agreed to retrospectively grant a permit, even though the works not only failed to include an active frontage, but also jeopardised the Guidelines' other key planning principle of making the laneway a pedestrian-only access way to the creek — and to the pathway along the creek bank, together with its intended potential to provide for an additional active frontage facing the creek.

Exacerbating the problem, the owners of 83 and 85 Great Ocean Road, on either side of the laneway, in the absence of firm planning guidance and control have moved to effectively incorporate the laneway into their retail precinct, by both signage and also by making the laneway part of a vehicular circuit, which enters 85 Great Ocean Road from its frontage, exits onto the creek bank and returns to the GOR via the laneway. This arrangement is directly opposed to the objectives of the Urban Design Guidelines, and if accepted will further alienate the laneway, and also the creek bank from their intended, pedestrian access only, urban design purpose and character.

In addition, these traffic movements and the owners' businesses take effectively exclusive advantage of an informal car parking area which exists behind both 83 and 85, and which as far as is known has been progressively established over the past decade or more on the creek bank, in the Public Conservation and Resource Zone, without planning permission. This car park was to be removed under the Urban Design Guidelines and replaced with a revegetated

and shaded continuation of the creek side land and pathway, but no action has been taken as yet to remove it. It may even be being actively maintained by the Shire, as recent re-paving of the area with crushed blue metal would indicate.

In the meantime, because of what in this way appears to be confused signals, and an ongoing lack of planning leadership by the Shire, the ability to realise the connection of the pedestrian network and improve the pedestrian amenity of the creek bank and of the Bottom Shops precinct appears to have become challenging, to say the least.

AIDA strongly urges that the planning of this area be resolved before it becomes an irreversible problem which permanently compromises the range of key planning objectives it addresses within Aireys Inlet.

Development and adoption of design guidelines through community consultation lead people to think that this is what will in fact happen.

D. Examples of poor planning outcomes

In the 2015 AIDA Questionnaire of members one question dealt with protection of neighbourhood character by controls on house designs and site development. In response 35.6% of members considered the controls were working well and 57.5% felt that the controls needed strengthening.

A number of members took the opportunity to comment on their perception of the situation. One wrote *“The Shire has masses of rules and regulations to protect the area and does nothing to enforce them. Even after complaint on complaint”*.

Another wrote *“Decisions by the Surf Coast Shire on house designs and site development do not always meet their specific guidelines which leads to inappropriate constructions and sets an inappropriate precedence for developers / planning applicants.”*

And still another *“Council needs to conduct site inspections and makes sure that builders are building houses in accordance with approved design drawings and are not damaging or clearing more than is permitted of natural vegetation on the remainder of the blocks.”*

AIDA has selected a number of examples of the type of failure that cause us and our members' concern. As indicated above, not all the following items are the direct responsibility of the Shire, but regardless of who is responsible, they contribute to the public's negative perception of “planning in the Shire”.

1. Inlet Crescent South, the part of the Crescent that faces the Inlet, was intended to appear as a single story zone, with upper levels set back to achieve this appearance, and was established as its own precinct to achieve this. At present, 4 houses are double story, and appear as such due to inadequate upper level setbacks, and another 6 are at risk because of the precedent that has been set.
2. One of the 2 story houses (number 13), the first 2 story house in this section of Inlet Crescent South was built as a renovation. It was deemed as a renovation that consisted of a totally new house except for the reuse of a few house stumps. This sort of cynical manipulation needs to be stopped as it destroys confidence in the planning scheme. Because it was a renovation, the street frontage setback is less than it should be. AIDA requested of a senior planner whether there was an appropriate definition of “renovation” and was told that there was none.
3. 11 Inlet Crescent South is a particularly bad example of a planning failure by a Shire-appointed body. AIDA objected to this planning application on numerous grounds – side, back and front setbacks, site coverage, upper storey, etc. The Shire's planning officer had the same objections and more. These were major breaches of the

planning guidelines and impacted badly on neighbourhood character. However, much to our collective surprise and disgust, the Shire Planning Committee allowed it to go ahead – even congratulated the architect on a wonderful design. If AIDA had not had so much on its plate at the time, it would probably have taken this decision to VCAT and would have expected to win on most points. The building has now been completed and is a gross overdevelopment of the site and a monument to the Planning Committee that the community has to live with. The still incomplete hanging vertical garden in front of the house is an unappealing metal framework.

4. 44 Ridge Road Fairhaven was built with insufficient front setback. This small setback was apparently considered appropriate by the planning officer because of a very small setback that existed for a neighbouring property. The result is a lack of vegetation buffering this home from the street and an ongoing precedent.
5. Areas zoned for small blocks near to the Top Shops have become a significant problem because of the expectation by new owners of some of these small blocks that they will be allowed to construct large houses on them. Pearse Road has seen a number of such applications, including a recent one at 9 Pearse Road. The result is a large, bulky building dominating a site, with sub-standard setbacks and site coverage.
6. The application for a planning permit for 11A Pearse Road was granted by VCAT. The member apparently did not understand the Shire's plot ratio standard. The interpretation adopted by the member was that only the area of the ground floor need be considered. The result will a dwelling that is significantly oversized for the small site.
7. One of the worst developments is located at 2/42 Great Ocean Road, on the land behind the General Store at the Top Shops. AIDA and the Shire objected on a number of grounds but this development was allowed by VCAT. The site was so constrained that the developer had a lot of difficulty in finding a builder willing to do the work.
8. The most infamous development in Aireys Inlet is the apartment and shop complex at 89 Great Ocean Road. This development, which struggles to be economically viable, is on land subject to inundation and its urban design is completely inappropriate to its location.
9. The planning guidelines say that swimming pools should be "discouraged". However, the planning committee has let so many be developed that AIDA no longer objects to them as a waste of our time. In one case on Anderson Street, there was an application for a swimming pool that put the property over the required proportion of permeable land. That did not stop the Planning Committee approving the proposal.
10. The neighbourhood character requires that dwellings be articulated and not appear as flat-sided monoliths. Unfortunately we have our share of such monoliths, including a number on Eagle Rock Parade in Aireys Inlet.
11. Important canopy trees have been known to suddenly die, with the beneficiary apparently obvious. Inspection indicates holes in the tree and poisoning is likely. As long as there is no witness the perpetrator gets away with the elimination and pays no penalty. Are we not responsible for the vegetation on our blocks? The loss of these canopy trees has a detrimental effect on the neighbourhood character. It is acknowledged that the landowner might eliminate some trees within 10m of the dwelling.