

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. P510/2022 & P511/2022  
PERMIT APPLICATION NO. PLN/2021/616

### CATCHWORDS

Section 149(1)(d) of the *Planning and Environment Act 1987*; Macedon Ranges Planning Scheme; General Residential Zone; Development Plan Overlay; *Gisborne Area 1 Development Plan*; Strategic considerations; Statement of Planning Policy; Semi-rural character; Residential lot sizes and density; Design guidelines; Landscape and visual impact

<b>APPLICANT</b>	ID Ross Watt Road Pty Ltd
<b>RELEVANT AUTHORITY</b>	Macedon Ranges Shire Council
<b>REFERRAL AUTHORITIES</b>	Country Fire Authority Department of Education Department of Energy, Environment and Climate Action Department of Jobs, Skills, Industry and Regions Downer Tenix Environment Protection Authority Greater Western Water Head, Transport for Victoria Melbourne Water Corporation Powercor Southern Rural Water
<b>SUBJECT LAND</b>	89 Ross Watt Road GISBORNE VIC 3437
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	20, 21, 22, 23, 27, 28 & 29 March 2023
<b>DATE OF ORDER</b>	1 May 2023
<b>CITATION</b>	ID Ross Watt Road Pty Ltd v Macedon Ranges SC [2023] VCAT 471



## ORDER

### APPLICATIONS P510/2022 & P511/2022

#### Change name of referral authorities

- 1 Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the statement of grounds lodged by the Department of Environment, Land, Water and Planning is amended by changing that party's name to:

Department of Energy, Environment and Climate Action

- 2 Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the statement of grounds lodged by the Department of Jobs, Precincts and Regions is amended by changing that party's name to:

Department of Jobs, Skills, Industry and Regions

- 3 Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the statement of grounds lodged by the Department of Education and Training is amended by changing that party's name to:

Department of Education

### APPLICATION P510/2022

#### Development Plan substituted

- 4 In accordance with section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), for the *Gisborne Area 1 Development Plan* dated 8 July 2022 substitute the *Gisborne Area 1 Development Plan* dated 3 February 2023.

#### Leave to amend Development Plan

- 5 Leave is given to the applicant to amend the *Gisborne Area 1 Development Plan* dated 3 February 2023 (the **Development Plan**) in accordance with the amendments in Appendix A.
- 6 If the applicant proposes to amend the Development Plan in accordance with order 5:
  - (a) The applicant must notify the Tribunal and parties in writing by **16 May 2023**.
  - (b) The applicant must file a substituted Development Plan by **16 June 2023**.
- 7 If a substituted Development Plan is filed in accordance with order 6, leave is given to the responsible authority and each of the referral authorities to file a submission as to whether the substituted Development Plan includes the amendments in Appendix A. Any submission must be filed and served by **7 July 2023**.



- 8 If a submission is filed in accordance with order 7, the applicant has leave to file a reply submission by **14 July 2023**.
- 9 If a substituted Development Plan is filed in accordance with order 6 and a party requests:
  - (a) a practice day hearing to consider the future conduct of the proceeding; or
  - (b) a further hearing to consider whether the Tribunal should approve the substituted Development Plan,

a request must be filed by **18 July 2023**. Reasons for the request must be included. The Tribunal will then decide if a request will be approved. If no request is filed, the Tribunal will proceed to make final orders without a further hearing.

## **APPLICATION P511/2022**

### **Practice day hearing**

- 10 Application P511/2022 is listed for a practice day hearing as detailed below.

The hearing will be at 55 King Street, Melbourne.

The details of the online platform will be provided to the parties before the hearing.

If there is any change to these details, the Tribunal will notify you.



<b>Practice Day Hearing:</b>	
Date	21 July 2023
Start time	For details of the start time, please refer to the Tribunal's website ( <a href="http://www.vcat.vic.gov.au/todays-hearings">www.vcat.vic.gov.au/todays-hearings</a> ) after 5.00pm on the day before the hearing
Duration	60 minutes
Conduct	Online platform

- 11 The purpose of the practice day hearing is to give directions about the future conduct of the proceeding in Application P511/2022.

**What all parties must do**

- 12 No later than 4 business days before the practice day hearing, each party must provide to the Tribunal and all parties an electronic copy of their submissions addressing the specific purpose of the practice day hearing, together with:
- (a) if any party is seeking procedural directions, a copy of the directions sought; and
  - (b) copies of any associated material sought to be relied upon during the practice day hearing (such as supporting documentation, case law and photographs).

The copy for the Tribunal must be sent to [admin@courts.vic.gov.au](mailto:admin@courts.vic.gov.au)

Geoffrey Code  
**Senior Member**



## APPEARANCES

### By videoconference

For ID Ross Watt Road Pty Ltd Susan Brennan SC and Peter O'Farrell of Counsel, instructed by Linda Choi, lawyer, Norton Rose Fulbright

They called the following witnesses:

- Charmaine Dunstan, traffic engineer, Traffix Group Pty Ltd
- Sarah Horsfield, town planner, Urbis Pty Ltd
- Kim Stapleton, architect and photomontages, Pointilism Pty Ltd
- Aaron Organ, ecologist, Ecology & Heritage Partners Pty Ltd
- Barry Murphy, landscape architect, Murphy Landscape Consultancy
- Jonathan McLean, hydraulic engineer, Alluvium Consulting Australia
- Rob Galbraith, arboriculturist, Galbraith & Associates

For Macedon Ranges Shire Council Barnaby McIlrath, PE Law, instructed by Jack Wiltshire, strategic planner, Macedon Ranges Shire Council

He called the following witness:

- Mark Woodland, town planner, Echelon Planning

For Country Fire Authority No appearance

For Department of Education No appearance

For Department of Energy, Environment and Climate Action No appearance

For Department of Jobs, Skills, Industry and Regions No appearance

For Downer Tenix No appearance

For Environment Protection Authority No appearance



For Greater Western Water	Maria Marshall, Maddocks Lawyers (20, 21 & 22 March 2023)
For Head, Transport for Victoria	Jasmine Bartlett (20 & 21 March 2023) and Ajay Kalia (28 & 29 March 2023), both Department of Transport and Planning
For Melbourne Water Corporation	No appearance
For Powercor	No appearance
For Southern Rural Water	Matthew Townsend of Counsel, instructed by Andrew Sherman, Russell Kennedy Lawyers (20, 21 & 22 March 2023)



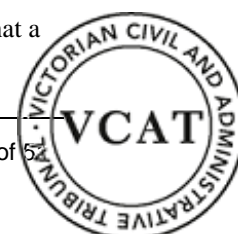
## INFORMATION

Description of proposal	<p><b>Application P510/2022</b></p> <p><i>Gisborne Area 1 Development Plan</i> dated 3 February 2023</p> <p><b>Application P511/2022</b></p> <p>Subdivision of the subject land into stages 1 to 7, construction of dwellings on lots less than 300 sqm, removal of native vegetation and construction of associated buildings and works</p>
Nature of proceeding	<p><b>Application P510/2022</b></p> <p>Application under section 149(1)(d) of the <i>Planning and Environment Act 1987</i> – to review the failure to decide if a development plan is to the satisfaction of the responsible authority<sup>1</sup></p> <p><b>Application P511/2022</b></p> <p>Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time<sup>2</sup></p>
Planning scheme	Macedon Ranges Planning Scheme
Zone and overlays	<p>General Residential Zone Schedule 1 (<b>GRZ1</b>) (Macedon Ranges General Residential Area)</p> <p>Development Plan Overlay Schedule 4 (<b>DPO4</b>) (Gisborne Residential Areas)</p> <p>Development Contributions Plan Overlay Schedule 2 (<b>DCPO2</b>) (Gisborne Development Contributions Plan)</p> <p>Ross Watt Road, adjoining the subject land, is in a Transport Zone 3.</p>
Development plan requirements	Clause 43.04 schedule 4 clause 4.0
Permit requirements	Having regard to the adjournment of the Application P511/2022, it is unnecessary to set out each of the permit requirements

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<sup>1</sup> Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) provides that a failure to make a decision is deemed to be a decision to refuse to make the decision.

<sup>2</sup> Ibid.



Relevant scheme policies and provisions (collectively, for both applications)	Clauses 11, 12.01, 12.05, 13.01-1S, 15, 16, 17, 18, 21.03, 21.04, 21.05, 21.08, 21.09, 21.11, 21.12, 21.13, 32.09, 43.04, 52.17, 52.29, 53.01, 56 & 71.02
Land description	<p>The subject land is located on the western outskirts of Gisborne on the south side of Ross Watt Road on the south-west corner of the T intersection with Swinburne Avenue. The subject land is about 1.5 km as the crow flies from the Gisborne town centre. It is irregular in shape with a frontage to Ross Watt Road of about 529 metres and a frontage of Swinburne Avenue (to the east) of about 466 and an area of about 85.75 ha.</p> <p>The land is currently used to graze stock and contains one dwelling, two dams and ancillary buildings. It is largely open grassland (both introduced and native grasses) and there are scattered large remnant Swamp Gum trees. It is generally undulating, gently falling about 10 metres to the south to the edge of a steep escarpment to the Jacksons Creek.</p> <p>Adjoining land to the east and south-east is developed residential land forming part of the Gisborne urban area. Adjoining land to the north (on the south-west side of Ross Watt Road) is rural land used for grazing. On the south and south-west boundary of the subject land is the Rosslynne Reservoir. Land to the south-west is the Jacksons Creek. Land to the north, on the north side of Ross Watt Road, is the Gisborne Racecourse Marshlands Reserve and the Calder Freeway.</p>
Tribunal inspection	On 16 April 2023, I inspected the subject land, the immediate surrounds and many other sites around Gisborne referred to by the parties, including observing the subject land from the outbound and inbound lanes of the nearby Calder Freeways. All of these inspections were carried unaccompanied by the parties.



## ABBREVIATIONS

AH Act	<i>Aboriginal Heritage Act 2006 (Vic)</i>
CHMP	cultural heritage management plan
Council	Macedon Ranges Shire Council
creek	Jacksons Creek
design guidelines	Draft Design Guidelines for the DP
DEECA	Department of Energy, Environment and Climate Action
DP	<i>Gisborne Area 1 Development Plan</i> dated 3 February 2023
escarpment	That part of the Jacksons Creek escarpment in the subject land
FP	Framework Plan
FUS	Future Urban Structure in the DP
LCC	local convenience centre in the DP
GWV	Greater Western Water
MDH	medium density housing
MRSOPP	Macedon Ranges Statement of Planning Policy
NAC	neighbourhood activity centre
ODP	The Gisborne/New Gisborne Outline Development Plan (revised) September 2009
PE Act	<i>Planning and Environment Act 1987 (Vic)</i>
PIP	project infrastructure plan for the DP
planning scheme	Macedon Ranges Planning Scheme
POS	public open space
PSL	proposed subdivision layout for the DP
Reservoir	Rosslynne Reservoir
RWR	ID Ross Watt Road Pty Ltd
sqm	square metres
SRW	Southern Rural Water
subject land	89 Ross Watt Road, being the land covered by the DP



## REASONS<sup>3</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 ID Ross Watt Road Pty Ltd (**RWR**) applied to the Macedon Ranges Shire Council (the **Council**) under the Macedon Ranges Planning Scheme (the **planning scheme**) for approval of a development plan known as the *Gisborne Area 1 Development Plan* for the subject land. RWR also applied to the Council for permission under the planning scheme to subdivide part of the area to which the development plan applies.
- 2 The Council did not decide both applications within the prescribed periods and RWR applied to the Tribunal to review the failure to approve the development plan and the failure to grant permission to subdivide.
- 3 Before the hearing, the Council resolved to oppose approval of the development plan and the grant of permission to subdivide on various grounds.
- 4 The ultimate issue regarding the development plan is whether it is consistent with and appropriately responds to the relevant provisions of the planning scheme, including the Planning Policy Framework and the Development Plan Overlay schedule that applies to the subject land. Subject to some modifications, I find that it is and should be approved. My reasons follow.
- 5 I will first address some preliminary issues.

### PRELIMINARY ISSUES

#### Subdivision application

- 6 The first preliminary issue concerns the future conduct of Application P511/2022 regarding the subdivision of part of the subject land (the **subdivision application**). Shortly before the first day of the hearing, RWR foreshadowed an application to adjourn the hearing of that application until after final orders on Application P510/2022 (ie the development plan application).
- 7 The other parties did not oppose an adjournment and agreed orders to manage future conduct would be required. I granted an adjournment and will make appropriate future conduct orders as part of this proceeding.

#### Substitution of the development plan

- 8 The second preliminary issue concerns substitution of the development plan. Before the hearing, RWR gave notice of its intention to seek leave to substitute the development plan.

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<sup>3</sup> The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



- 9 At the start of the hearing, I gave leave to substitute a version of the development plan entitled *Gisborne Area 1 Development Plan* dated 3 February 2023 for the development plan dated 8 July 2022 lodged with the Council.<sup>4</sup> The other parties did not oppose granting that leave. In these reasons, I will refer to the substituted document as the **DP**.<sup>5</sup>

### Development plan requirements

- 10 The third preliminary matter concerns development plan requirements. The planning scheme requires a development plan in the schedule 4 area (that affects various lands including the subject land) to include specified matters or reports and requires a development plan in the ‘West Gisborne’ area (being the subject land plus a small part of the Southern Rural Water land) to include specified matters or reports.
- 11 It is not in dispute that these matters or reports have been specified or included.<sup>6</sup>

### Participation by the water authorities

- 12 The fourth preliminary issue concerns the participation in the hearing by two water authorities, Southern Rural Water (**SRW**) and Greater Western Water (**GWW**).
- 13 SRW is the storage manager for the Rosslynne Reservoir (the **reservoir**). The reservoir abuts the subject land along the irregular western boundary of the subject land. The reservoir is used for urban water supply by Greater Western Water (**GWW**) for Sunbury and Gisborne and also provides irrigation water to land along the Maribyrnong River. The reservoir is closed to the public.
- 14 It suffices to state that the main grounds on which both SRW and GWW contest the proceeding relate to fencing (to prevent public access to the reservoir and to protect water quality), surveillance of access to the reservoir, preservation of access to the spillway through the subject land, and the timing of completion of these matters in the DP.
- 15 On day 3 of the hearing, the parties reached an agreement which provides for both water authorities consenting to the approval of the DP subject to various modifications to the DP.<sup>7</sup> The water authorities also agreed to modifications to fencing they wanted RWR to construct along the northern boundary of the subject land. This boundary is not a boundary with SRW’s reservoir land but is a boundary with abutting private land through which the SRW land and the reservoir could be accessed.

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<sup>4</sup> The development plan dated 8 July 2022 was a substitution of the development plan originally submitted to the Council in 2021.

<sup>5</sup> I am satisfied I have authority to substitute the development under section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) having regard to the reasoning in *ID-FLK Gisborne Pty Ltd v Macedon Ranges SC* [2019] VCAT 1336.

<sup>6</sup> The Council, written submissions [156].

<sup>7</sup> I refer to the ‘parties’ because the Council also signed the agreement.



- 16 The water authorities sought to be excused from further attendance at the hearing. I excused them on the understanding that their agreement with RWR did not bind me if I were ultimately minded to approve the DP.
- 17 The main effect for the proceeding was RWR and the Council would not make submissions contrary to the effect of the agreement. They did not do so. It suffices to state that I have decided to support the intent of the modifications to the DP in the agreement but those modifications require some redrafting for inclusion in a revised DP.

### Public comments

- 18 The fifth preliminary issue concerns public comments about the development plan.
- 19 The planning scheme provides:

#### Process requirements

The development plan and any amendment to the plan must be publicly exhibited for a period of two weeks prior to approval. The responsible authority must take into account any comments received when considering the development plan or any amendment to the plan.<sup>8</sup>

- 20 Before RWR applied to the Tribunal, the *Gisborne Area 1 Development Plan* dated 8 July 2022 had not been ‘publicly exhibited’. It was then publicly exhibited and the Tribunal received 37 written public comments. The *Gisborne Area 1 Development Plan* dated 3 February 2023 was also publicly exhibited and the Tribunal received 28 further written comments.<sup>9</sup>
- 21 In its written submissions, the Council helpfully summarised all those public comments.<sup>10</sup> The Council officer’s report to the Council on the DP and subdivision application summarised those comments in attachment 3 to the report.<sup>11</sup> The Council included a copy of the officer’s report in the Tribunal Book.
- 22 I have read all the public comments. Most of the issues in those comments were issues in the proceeding relied on by the parties.
- 23 Having regard to the provisions of the *Planning and Environment Act 1987* (Vic) (the **PE Act**), the persons who made these comments are not parties to the proceeding and were therefore not heard in relation to their comments.<sup>12</sup>

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<sup>8</sup> Planning scheme cl 43.04 sch 4 cl 4.0.

<sup>9</sup> The parties included all these submissions in the Tribunal Book for my consideration.

<sup>10</sup> Written submissions on behalf of the Council, paragraph 39 page 10.

<sup>11</sup> The Council also said that on 12 September 2022 it had met with those making comments about the *Gisborne Area 1 Development Plan* dated 8 July 2022.

<sup>12</sup> In accordance with the Tribunal’s practice, only parties to a proceeding are given a copy of an order and so each of these persons will not be given a copy of this order.



## Cultural heritage

- 24 The sixth preliminary matter concerns cultural heritage.
- 25 The planning scheme provides that a development plan should recognise and protect cultural assets.<sup>13</sup>
- 26 The part of the subject land within 200 metres of the Jacksons Creek (the **creek**) is an area of cultural heritage sensitivity. There are also several registered cultural heritage places on the subject land, which are proposed to be included in reserves for public open space (**POS**).
- 27 On 8 November 2022, the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation (being the relevant registered Aboriginal party) approved a voluntary cultural heritage management plan (**CHMP**) no. 18523 under the *Aboriginal Heritage Act 2006* (Vic) (the **AH Act**). The relevant activity and activity area in the CHMP is the development of a part of the subject land being the area generally in phase 1 shown on the DP's development sequencing plan.<sup>14</sup>
- 28 A dispute about whether there is a need for an approved CHMP for the balance of the land in the DP fell away with the adjournment of the application to subdivide part of the land in the DP. A development plan under clause 43.04 of the planning scheme is not a statutory authorisation.<sup>15</sup> Accordingly, there is no bar to approval of the DP in the absence of an approved CHMP.<sup>16</sup>
- 29 Whether the approved CHMP is sufficient for the subdivision application may need to be determined at the relevant time.

## DEVELOPMENT PLAN

- 30 The DP is a document comprising 36 pages plus three appendices of 20 pages. The DP includes a section described as 'Supporting Documents' and (as shown in figure 1, below) it states:

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<sup>13</sup> Planning scheme cl 4.04 sch 4 key principle, dot point 5.

<sup>14</sup> DP p 34.

<sup>15</sup> AH Act s 50.

<sup>16</sup> AH Act s 52.



## SUPPORTING DOCUMENTS

The Gisborne Area 1 Development Plan has been informed by various background documents which have been prepared in respect of the site. These documents are provided in conjunction with this report as listed below.

- 1 89 Ross Watt Road Gisborne Flora and Fauna Assessment, Nature Advisory, January 2023 (3.5)
- 2 Arborist Assessment 89 Ross Watt Road Gisborne, Galbraith and Associates, 8 August 2022
- 3 89 Ross Watt Road Gisborne Targeted Surveys, Nature Advisory, January 2022
- 4 Preliminary Cultural Heritage Report 89 Ross Watt Road, Gisborne, Tardis Archaeology, 5 November 2021
- 5 89 Ross Watt Road, Permit Area 1, Gisborne, Cultural Heritage Management Plan 18523, Tardis Archaeology, November 2022
- 6 Surface / Stormwater Water Management Strategy 89 Ross Watt Road Gisborne, Alluvium, January 2023 Revision 7
- 7 89 Ross Watt Road, Gisborne, Desktop Groundwater Assessment, Tonkin and Taylor, November 2022
- 8 89 Ross Watt Road, Gisborne, Outfall Drainage Plan, Breese Pitt Dixon Pty Ltd, October 2022
- 9 Environmental Site Assessment 89 Ross Watt Road Gisborne, Golder Associates, 29 October 2021
- 10 Road Traffic Noise Assessment 89 Ross Watt Road, Gisborne, ARUP, 17 May 2022
- 11 Bushfire Development Report for 89 Ross Watt Road, Gisborne, Terramatrix, January 2023
- 12 89 Ross Watt Road, Gisborne Social Infrastructure Assessment, ASR Research, January 2023
- 13 Statement of Evidence, 89 Ross Watt Road, Gisborne, Pointilism, January 2023
- 14 Ross Watt Road, Draft Design Guidelines, ID Land, November 2022
- 15 Infrastructure Servicing Report, 89 Ross Watt Road Gisborne, Breese Pitt Dixon, January 2023
- 16 89 Ross Watt Road Gisborne Transport Impact Assessment, January 2023, One Mile Grid
- 17 89 Ross Watt Road, Gisborne, Conservation Management Plan, Nature Advisory, January 2023

Figure 1: Supporting documents. Source: DP p 3.

- 31 The Draft Design Guidelines dated November 2022 (the **design guidelines**) (document 14 in the above list) was the subject of detailed submissions and evidence from Mr Woodland and Ms Horsfield during the hearing. Various amendments to the design guidelines were sought or proposed during the hearing.
- 32 The parties made submissions about the status of the design guidelines. Towards the end of the hearing, RWR agreed the design guidelines should be included in the DP. I will return to this issue later in these reasons.
- 33 The documents are stated to be ‘background documents’. Background documents provided ‘in conjunction’ with the DP are not documents incorporated into, or form part, of the DP. The documents have assisted in the consideration of the DP. An approval of the DP does not include approval of these supporting documents.
- 34 The DP contains a summary description of what is proposed as shown below in figure 2:

GA1DP proposes a development characterised by:

- a mix of lot sizes to cater for residential choice and to meet a wide range of resident demographics, to implement State, regional and local policies;
- larger lots on the northern, western and southern boundaries to provide an appropriate transition from the GA1DP general residential zone to the rural conservation zoning on land as well as to Ross Watt Road and beyond that the Calder Freeway to the north;
- a possible residential village / land-lease community to provide further accommodation choice;
- medium density lots in the walkable catchment of the proposed local neighbourhood activity centre and public open space;
- pedestrian and vehicular connections to the existing residential development to the east with connections provided also to Ross Watt Road and Swinburne Avenue;
- a local neighbourhood activity centre and childcare centre in the centre of the site co-located with public open space;
- an active public open space area co-located with the possible local neighbourhood activity centre and childcare centre;
- a shared path network connecting GA1DP to existing development to the east as well as providing a connection to the Jacksons Creek Escarpment and Conservation Reserve;
- drainage reserves to accommodate stormwater flows and management;
- measures ensuring the protection of Rosslynne Reservoir and the associated water supply;
- a total public open space area greater than the applicable quantity specified (5 per cent) in clause 53.01 in the Scheme.

Figure 2: Summary description of DP. Source: DP p 6.

35 The overall features of the DP include the location of roads, reserves (for drainage, conservation and POS), a local convenience centre, a child care centre, the location of areas for housing based on varying lot sizes, and trees/native vegetation to be retained. They are shown on a diagram identified as ‘Future Urban Structure’ (the **FUS**) in figure 3, below:<sup>17</sup>

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<sup>17</sup> In the DP, this plan is confusing also identified as the ‘Development Plan’. RWR agreed to rename this plan the ‘Future Urban Structure’ plan. This removes the confusion. I will refer to the figure by its proposed new name.



Figure 3: Future Urban Structure. Source: DP p. 21

36 The DP includes a ‘proposed subdivision layout’ (PSL) as required by the planning scheme.<sup>18</sup> It is included in figure 4, below:

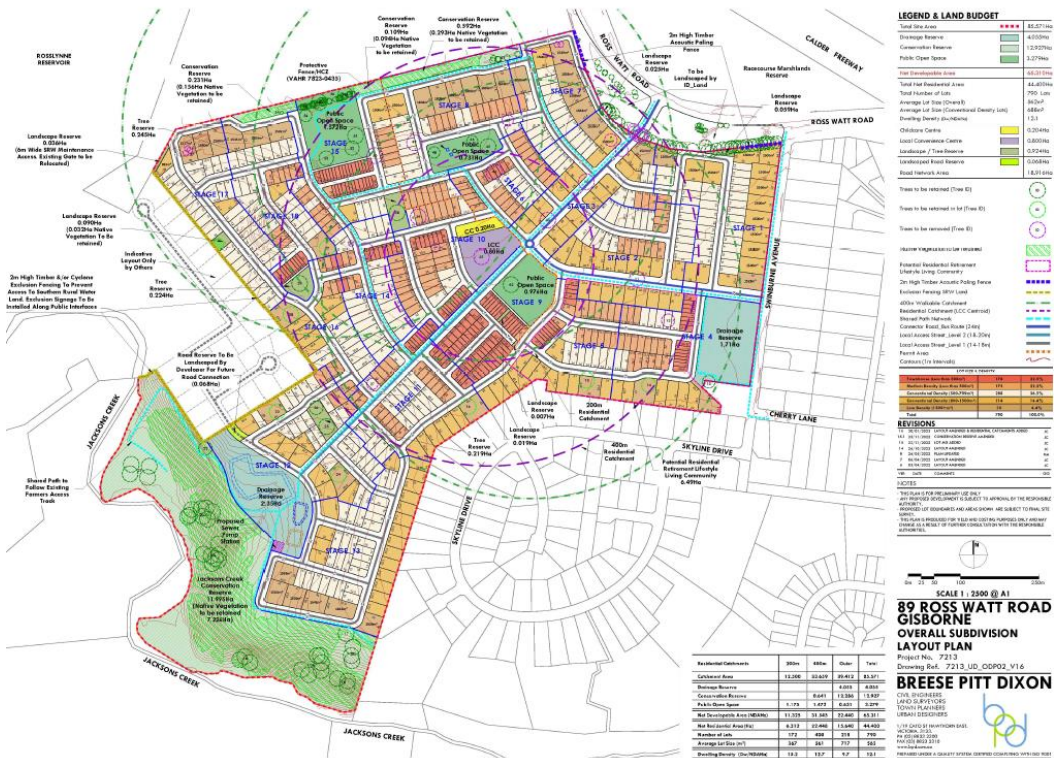


Figure 4: Overall subdivision layout plan. Source: DP p 33.

<sup>18</sup> Planning scheme cl 43.04 sch 4 cl 4.0 dot point 3.





- 37 The legend to figure 4 includes a table showing the varying lot sizes in five categories (ranging from ‘less than 300m<sup>2</sup>’ to ‘1500+m<sup>2</sup>’, the number of lots in each category and proportion of total lots in each category. See figure 5, below:

LOT SIZE & DENSITY		
Townhouse (Less than 300m <sup>2</sup> )	178	22.5%
Medium Density (Less than 500m <sup>2</sup> )	175	22.2%
Conventional Density (500-799m <sup>2</sup> )	288	36.5%
Conventional Density (800-1500m <sup>2</sup> )	114	14.4%
Low Density (1500+m <sup>2</sup> )	35	4.4%
<b>Total</b>	<b>790</b>	<b>100.0%</b>

Figure 5: Lot size & density table. Source: DP pp 21 & 33.

- 38 The legend to figure 4 also states the net residential area is 44.4 ha, the total number of (residential) lots is 790, the overall average lot size is 562 sqm, the average lot size of conventional density lots is 688 sqm and the dwelling density (dwellings per net developable area) is 12.1 per hectare.
- 39 The DP includes proposed social and physical infrastructure, stormwater management, movement network, indicative road cross sections, the landscape concepts (including street tree strategy and plans for reserves), and development sequencing.<sup>19</sup> I will only refer to these details if necessary in the consideration of the DP.
- 40 The DP must include a ‘conceptual urban design for the development of the Local Neighbourhood Activity Centre (approximate floor area of 500 sqm)’.<sup>20</sup> The DP includes a concept plan. See figure 6, below.

<sup>19</sup> All these matters are required under cl 43.04 sch 4 cl 4.0 of the planning scheme.

<sup>20</sup> Planning scheme cl 43.04-sch 4 cl 4.0 West Gisborne area specific requirements, dot point 1.

## Activity Centre Concept Plan

Indicative layout only - subject to future planning permit approvals

Total lot area (excluding child care centre) = 8,000 sqm  
 Child care centre lot area = 2,000 sqm



The activity centre is envisioned as an area where people will gather amongst canopy trees and abundant landscaping, with plenty of places to sit and rest within the highly pedestrian-permeable block.

Building frontages will activate the streetscape, with main access to the street and additional access from the internal area. The large central car parking space will be hidden from the street behind the built form.

Cafes, restaurants, shops, and commercial offices will both benefit from and enhance this pedestrian friendly environment, in a type of symbiotic relationship. Pedestrians will be given priority over cars through features of raised platforms, pavement texturing, and kerb extensions within the activity centre and included in surrounding streets.

The connection between the activity centre and the public park to the south-east is an important feature. This public open space is considered an extension of the activity centre.



Figure 6: Activity centre concept plan. Source: DP p 18.

### ISSUES IN DISPUTE

- 41 Although the Council's formal grounds on which it opposes approval of the DP are wide-ranging, there are parts of the DP about which the Council did not dispute.
- 42 It is therefore both efficient and convenient to mainly identify the issues on which the Council and RWR disagree and explain my findings on those issues. I proceed to do that in the following parts of these reasons.

## STRATEGIC CONSIDERATIONS

43 This section of the reasons summarises my findings about the relevant strategic considerations. It is relevant to state that Mr Woodland and Ms Horsfield are in broad agreement about the consistency of the DP with these considerations.<sup>21</sup>

### Statement of Planning Policy

44 At the highest level of strategic considerations, an approval of the DP must not be inconsistent with the objectives of the Macedon Ranges Statement of Planning Policy (**MRSOPP**).<sup>22</sup> The Minister for Planning has amended the planning scheme to give effect to the MRSOPP.<sup>23</sup>

45 The Council contends the DP is inconsistent with the strategies underpinning the landscape, biodiversity, water catchments and water quality objectives of the MRSOPP.<sup>24</sup> Having regard to the evidence in this proceeding, I find there is consistency in relation to biodiversity and water related objectives. I will refer to my findings relating to landscape later in these reasons.

46 The Council also contends the DP is inconsistent with the objective of managing growth in the declared area in a way that it consistent with ‘the ‘unique character ‘of settlements, such as Gisborne.’<sup>25</sup> I will refer to my findings on character later in these reasons. The objective includes directing development to a hierarchy of centres.

47 The planning scheme identifies Gisborne as a ‘large district town’<sup>26</sup> but the MRSOPP identifies Gisborne as well positioned for growth and transitioning to a higher order ‘regional centre’. This is consistent with provisions in ‘Plan Melbourne 2017-2050’ that support further development in peri-urban towns such as Gisborne.<sup>27</sup>

48 While the MRSOPP encourages development in Gisborne to areas within defined long-term settlement boundaries, and those boundaries have not yet been fixed, the subject land is within the town boundary in the 2009 Outline Development Plan to which I will shortly refer.

### Regional growth

49 The regional growth plan provides that new growth in the region should be targeted to settlements ‘including Gisborne’.<sup>28</sup>

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<sup>21</sup> Mark Woodland and Sarah Horsfield, Joint Statement dated 9 March 2023 section 1.0.

<sup>22</sup> PE Act s 46AZK.

<sup>23</sup> PE Act s 46AZB.

<sup>24</sup> There is no need to make any finding on the Council’s submission that the consistency requirement continues to apply even after the Minister has amended the planning scheme.

<sup>25</sup> MRSOPP objective 8.

<sup>26</sup> Planning scheme cl 21.04.

<sup>27</sup> Plan Melbourne, policy 7.12.

<sup>28</sup> Loddon Mallee South Regional Growth Plan, principle 1.



50 The regional growth plan includes directions for Gisborne’s future land use and the subject land is an ‘identified growth area (subject to detailed investigation and planning processes)’.<sup>29</sup>

### Outline Development Plan

- 51 The 2009 Outline Development Plan (the **ODP**) is a ‘background document’ in the planning scheme. However, the DP must have regard to the ODP.<sup>30</sup> The planning scheme has been amended to give effect to the ODP, mainly through clause 21.13, and I will address that clause shortly.
- 52 I will not refer to all the relevant provisions of the ODP but what stands out for present purposes is a need for a variety of lot sizes and types across all parts of Gisborne to add to the generally larger and lower density lots outside the town centre.
- 53 To the extent that the DP provides a range of lot sizes between lots under 300 sqm and lots over 1,500 sqm and a generous provision of medium density lots, the DP responds to this aspect of the ODP. I will say more about lot sizes and density shortly.
- 54 The ODP encourages walkable, mixed use neighbourhoods. To the extent the DP provides for a local convenience centre (**LCC**) centrally located in the DP’s residential areas, the DP is a satisfactory response.
- 55 The ODP encourages a mix of affordable housing around local centres for households on low to moderate incomes.<sup>31</sup> This is broadly consistent with State policy. The generous provision of housing on small lots in townhouse forms generally around the LCC in the DP creates opportunities for affordable housing.
- 56 The ODP encourages the facilitation of increased housing densities that respond to the broader semi-rural character of Gisborne. I will say more about character shortly.
- 57 Otherwise, I agree with Ms Horsfield’s opinions about the DP’s response to the ODP, subject to specific findings in these reasons.<sup>32</sup>

### Local area policy

- 58 Local area policy for Gisborne and New Gisborne is found at clause 21.13-1 of the planning scheme. There is a Framework Plan (the **FP**) in that clause that is derived from the ODP. The DP must be consistent with clause 21.13-1.<sup>33</sup>
- 59 In the FP, the subject land is identified as an ‘existing residential land – short-medium term growth opportunity’. See figure 7, below.

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<sup>29</sup> Ibid, figure 4.

<sup>30</sup> Planning scheme cl 43.04 sch 4 cl 4.0.

<sup>31</sup> ODP p 41.

<sup>32</sup> Sarah Horsfield, statement of evidence, Appendix C.

<sup>33</sup> Planning scheme cl 43.04 sch 4 cl 4.0.





Figure 7: Gisborne & New Gisborne Framework Plan (extract).

- 60 I will briefly mention some relevant features of the FP.
- 61 The brown hatched area around the northern, north-western and western boundaries of the subject land is a ‘low density interface’. None of the subject land is proposed for a Low Density Residential Zone. All parts of the subject land for residential development were for standard residential zoning.<sup>34</sup> The land along the creek, generally below the Jacksons Creek escarpment (the **escarpment**), was for an open space corridor.
- 62 The DP is consistent with these features of the FP and therefore local area policy.
- 63 The FP has a ‘road structure’ that connects the subject land to the rest of Gisborne via one connection to Swinburne Avenue (at its southern end) and two connections to Ross Watt Road (in a central and eastern position). The DP maintains this structure, although moves the Swinburne Avenue connection to the north and provides only one centrally-located connection to Ross Watt Road.
- 64 The Council does not oppose this road structure/movement network, subject to provision of a wider verge width in the central spine road off Ross Watt Road in the section between the LCC and the escarpment. I agree in part with this submission, to which I will refer shortly.
- 65 The main variations in the DP from the FP are with aspects of the LCC and open space.
- 66 The FP provides for a ‘proposed local neighbourhood retail (ie local shop)’ (the **local shop**) adjoining the existing child care centre. The LCC is located about 400 metres to the east of the local shop to a more central location in the DP.

<sup>34</sup> This now the General Residential Zone.

67 The FP provides for one large area of POS near Swinburne Avenue, a reserve area along the creek and a linear connection to that reserve from within the subject land. The DP varies this by provision of three areas of POS, including one larger area opposite the LCC and two further areas to the north of the LCC. The reserve along the creek remains provided as a conservation reserve. In addition, two drainage reserves are provided along Swinburne Avenue and adjoining the escarpment.

### **Gisborne Futures**

- 68 'Gisborne Futures' is the Council's current strategic planning review for Gisborne. A draft Gisborne structure plan has been prepared as part of the review and was released for public comment in 2020. It is anticipated that a revised draft structure plan will be released this year for a further round of public consultation.
- 69 The structure plan is still an early draft and is not yet a 'seriously entertained planning proposal'. It is also not an adopted policy statement.<sup>35</sup> I must therefore give it very limited weight in determining the proceeding.

### **Conclusion**

- 70 I have briefly summarised, above, my findings on the main strategic considerations. Consistent with those findings, I agree with the opinions of Mr Woodland and Ms Horsfield that:
- (c) Gisborne is an identified growth area under State Planning Policy, Plan Melbourne and the Loddon Mallee Regional Growth Plan.
  - (d) The subject land has been identified for housing growth and also zoned for such purposes under the planning scheme for many years.
  - (e) The population of Gisborne has grown at a significantly faster rate than was anticipated in the Framework Plan.
  - (f) There is a short term need for the subject land to be made available for development in order to meet housing needs in the region.<sup>36</sup>
- 71 The DP is an appropriate response to the relevant strategic planning considerations.<sup>37</sup>

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<sup>35</sup> PE Act s 60(1A)(g).

<sup>36</sup> Mark Woodland and Sarah Horsfield, 'Joint Expert Conference' report dated 9 March 2023 section 1.0.

<sup>37</sup> Nonetheless, the DP requires some modifications to which I will refer throughout these reasons.



## CHARACTER

- 72 The Council submits the DP fails to respond to the ‘unique rural character’ of Gisborne,<sup>38</sup> is not ‘in keeping with local character, attractiveness and amenity’ of Gisborne,<sup>39</sup> does not encourage housing choice ‘within the context of a semi-rural township’<sup>40</sup> and is ‘not cognisant of the semi-rural character and village setting of Gisborne/New Gisborne’.<sup>41</sup>
- 73 The focus of the Council’s concerns was on the number and location of lots for medium density housing (**MDH**). In the next section of these reasons, I consider this concern.
- 74 I do not propose to discuss character as a concept. It is a qualitative matter not amenable to mathematical or ‘tick box’ standards. It requires judgment.
- 75 I agree with the planning witnesses that a character assessment for residential development involves more than lot size and density and requires consideration of built form, landscaping, street design, fencing and other matters. In the context of a development plan, character is difficult to assess in the absence of a development application that would address relevant matters in more detail.
- 76 If the DP must respond to Gisborne’s existing ‘rural’, ‘local’ or ‘semi-rural township’ character, it needs to be remembered that character evolves over time. As well, there is no uniform existing character in Gisborne. Mr Woodland and Ms Horsfield agree that, in terms of housing density, there is a patchwork mosaic of densities.
- 77 In this proceeding, the DP’s urban design guidelines are probably the most important part of the character response. I will separately consider these guidelines.
- 78 However, to the extent that character is influenced by how development integrates with its immediate surrounds, the DP is an acceptable character response for the following reasons.
- 79 First, lower density lots along Swinburne Avenue integrate satisfactorily with lower density housing on the east side of that road, even though the FP does not seek a low density interface in that location.
- 80 Second, lower density lots along Ross Watt Road and the north-western boundary (with rural land and with an outlook towards the Calder Freeway) (the **freeway**) and along the escarpment interface is consistent with the FP.
- 81 The largely conventional density lots along the western boundary (shared with the SRW land) is acceptable because the lower density lots in the FP are located largely on the SRW land. As well, that interface is a unique public land interface containing significant earthen mounding at the

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<sup>38</sup> MROSPP objective 7 strategies dot point 4.

<sup>39</sup> MROSPP p 32.

<sup>40</sup> DPO4 principles, dot point 1; cl 21.13-1 settlement objective 2, 3 & 5, strategy 1.9.

<sup>41</sup> 21.13-1 settlement and housing strategies, para 1.9.



boundary. This prevents any real appreciation of the development from the SRW land, noting of course that no public access to the SRW land and the reservoir is permitted.

- 82 Third, ‘medium density’ lots and ‘townhouse lots’ (ie those under 500 sqm) are, subject to one exception to which I will soon refer, internal to the DP. This means that the externally appreciated character does not include MDH.
- 83 I therefore find that the DP is an acceptable response to character.

## **RESIDENTIAL LOT SIZES AND DENSITY**

84 The summary table of lot size and density for the DP is at figure 5, above.

85 The Council submits, in summary, that:

- (g) There are too many smaller lots in the DP. The 353 ‘townhouse’ and ‘medium density’ lots comprise 44.7% of the total lots and the excess of these lots is illustrated by the fact that only 18.8% of lots are ‘conventional density’ or ‘low density’ lots (ie more than 800 sqm).
- (h) The overall average lot size of 592 sqm is too small and fails to respond to the preferred average of 800 sqm.
- (i) The overall average lot size exceeds that in recent development approvals in Diggers Rest and Sunbury and, consequently, the DP fails to respond to Gisborne’s semi-rural character.

86 In my opinion, the Council places insufficient weight on planning scheme policies encouraging ‘a range of housing types ... to support a diverse range of housing needs’ and on the need for the DP to provide ‘a variety of lot sizes and types’. Diversity is assisted by a range of lot sizes. The evidence is of a material undersupply of smaller housing on smaller lots in Gisborne.

### **Larger lots**

- 87 When carefully examined, the local policy preference for an average lot size of 800 sqm applies to conventional density lots of between 500 sqm and 1,500 sqm.<sup>42</sup> It does not apply to smaller or larger lots (ie townhouse lots, medium density lots and lower density lots) in the DP.
- 88 There are other ways of looking at the statistics about lot density.
- 89 Of the 288 conventional density lots between 500 sqm and 799 sqm, the average lot size is 576 sqm. This is below the overall average of 592 sqm. However, for the 114 conventional density lots between 800 sqm and 1,500 sqm, the average lot size is 973 sqm and for the 437 conventional density and low density lots, the average lot size is 766 sqm.

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<sup>42</sup> Planning scheme cl 21.13 settlement and housing strategies, item 1.9.





- 90 The legend to the FUS and the PSL states the average lot size for conventional density lots is 688 sqm.<sup>43</sup> I accept this is below the preferred average of 800 sqm.
- 91 Although the Council is correct that conventional density and low density lots comprise only 18.8% of total lots, lots of at least 500 sqm take up or cover 39.2% of the total area of the subject land. This is materially greater than the 12.8% occupied by lots less than 500 sqm. As well, of the net residential area in the DP, 75.3% is occupied by lots 500 sqm or more and 24.7% is occupied by lots less than 500 sqm.
- 92 Of course, the non-compliance is not fatal because the preference for an average 800 sqm lot size is one of policy. In the present circumstances I find it acceptable given the location of the subject land, the extent of open space (both useable POS and the drainage reserves), and the need to respond to policy supporting housing diversity.
- 93 On a related matter, Mr Woodland's opinion was that, to deliver a 'semi-rural' character, larger lots should be provided at 'key intersections along the connector roads' other than those for townhouse lots.<sup>44</sup> The FUS and the PSL in the DP show only two sections of 'connector road', being the road with a 24 metres wide reserve extending west from Swinburne Avenue and south from Ross Watt Road. These connector roads intersect at a roundabout at the north-east corner of the LCC.
- 94 Twelve corner lots face the connector road off Ross Watt Road. Two lots are 1,500 sqm and 10 lots are 800 sqm to 1,500 sqm. They have widths of between 22 metres and 31 metres, and generally 24 metres. Lot size and lot width alone does not ensure a semi-urban character because, as I have already said, a range of other factors are relevant. However, to the extent that size and width contribute to character, the corner lots in this section are satisfactory.
- 95 Seven corner lots face the connector road off Swinburne Avenue, outside the townhouse area to the east of the central POS. One lot is a townhouse lot of less than 300 sqm, one lot is 1,500 sqm and four lots are between 800 sqm and 1,500 sqm. Other than the townhouse lot, they have widths of between 23 metres and 31 metres.
- 96 For the same reasons, six of the corner lots in this section are satisfactory. The townhouse lot is unsatisfactory and I will require this lot to be a conventional density lot, consistent with another change to which I refer in the next part of these reasons.

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<sup>43</sup> I assume this takes into account both categories of conventional density lots.

<sup>44</sup> Mark Woodland, statement of evidence [211].



## Smaller lots

- 97 The Council is correct that the summary table of lot size and density (at figure 5) shows 353 lots less than 500 sqm or 44.7% of total lots.
- 98 The planning scheme does not specify a preferred number or proportion of lots less than 500 sqm for this DP.
- 99 Although the planning scheme does not define MDH, I would proceed on the basis that a single dwelling on a lot of less than 500 sqm is MDH in the DP.
- 100 As I have stated, the planning scheme encourages housing diversity generally and provides a preferred location for MDH being land within 400 metres of the Gisborne town centre.<sup>45</sup> The subject land is not in that preferred location. But the planning scheme does not discourage MDH in all other locations. It goes on to provide that:
- Medium density housing may be appropriate in locations outside designated areas if all of the following apply:
- The site is located near public open space or a local neighbourhood activity centre;
  - A site responsive and high quality built form outcome is achieved, and generous landscaping that contributes to the local neighbourhood character is provided;
  - Amenity impacts on adjoining residential properties are minimised; and
  - The intensity and scale of development is in keeping with the character of the area.<sup>46</sup>
- 101 In the context of the DP, the second and third dot points do not apply, so the relevant considerations are the first and fourth dot points.
- 102 The first dot point refers to proximity to POS or a NAC. The LCC is a NAC for this purpose. The FUS shows the part of the subject land that is within 200 metres and 400 metres of the centroid of the LCC and within 400 metres of the three main areas of POS. Having regard to common planning practice and the evidence of Mr Woodland and Ms Horsfield, all areas for medium density lots and townhouse lots satisfy the proximity standard in the dot point.
- 103 The fourth dot point refers to ‘intensity’ and ‘scale’ that is ‘in keeping’ with the character of ‘the area’.
- 104 As the existing non-urban character of the subject land will change if it is developed, ‘the area’ should not include the subject land but should be the character of the surrounding residential area. This is two areas – the low

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<sup>45</sup> Planning scheme cl 21.13-1 settlement and housing strategies item 1.8.

<sup>46</sup> Ibid.

density detached housing on the east side of Swinburne Ave and the conventional density detached housing in Skyline Drive.

- 105 'Scale' cannot be determined because built form details do not form part of the DP. 'Intensity' has several meanings. To the extent it is synonymous with scale, it cannot be determined. To the extent it is understood as proportion of overall lots, that is the sense relied on by the Council. As I have already mentioned, it could be also understood as a proportion of total area or net residential area and medium density lots and townhouse lots comprise about one-third of those areas.
- 106 For MDH to be 'in keeping with' character, I would follow other authorities that the emphasis should be on 'respect' for 'existing or preferred' character. As I have mentioned, the preferred character is seeking housing diversity including housing on smaller lots.
- 107 Finally, it should be remembered the exception provision is policy and therefore must be interpreted flexibly having regard to present circumstances.
- 108 All of the areas identified for medium density lots and townhouse lots in the DP are within the 200 metres and 400 metres radii to which I have referred. In fact, given the central and the dispersed locations of the LCC and three main areas of POS, it is unsurprising that only that part of the subject land nearest the escarpment is outside those radii. Location within those radii alone does not make medium density lots and townhouse lots acceptable. It is just a starting point for analysis.
- 109 In oral evidence, Mr Woodland said he did not support three townhouse areas in the north-west corner of the subject land. I agree with him about one of those areas, being that on the north side of the 0.224 ha 'tree reserve' containing tree 29. Tree 29 is a significant tree. A small tree reserve does not have the POS characteristics that justify that townhouse area. The townhouse area should be deleted and replaced with an area for conventional density lots.
- 110 Neither Mr Woodland nor Ms Horsfield expressed an opinion about the townhouse area (in two parts) on the immediate west side of the 1.71 ha drainage reserve located on Swinburne Avenue. On the PSL it contains 16 lots. However, they did support development along Swinburne Avenue having a lower density character. I did not discern any strong concern by the Council about this townhouse area. However, I do not support that townhouse area.
- 111 Even though it does not directly abut Swinburne Avenue, it is separated from that road only by about the 75 metres width of the drainage reserve that does abut Swinburne Avenue.
- 112 It has an unsatisfactory presentation to low density housing on the east side of Swinburne Avenue because the reserve will have a drainage function and I do not anticipate it will be vegetated as if it were a tree or conservation



reserve. Existing policy also expressly supports larger lots in locations abutting existing larger lots of low density residential development.<sup>47</sup>

- 113 As well, while I expect the drainage reserve will have a secondary passive open space function, it should not qualify the townhouse area as proximity to a reserve with a primary purpose of POS developed for active or passive recreation.
- 114 This townhouse area should be deleted and replaced with an area for conventional density lots.

## DESIGN GUIDELINES

- 115 The DP includes 13 specified ‘urban design guidelines’.<sup>48</sup> I consider them more to be urban design ‘principles’. One of the ‘supporting documents’ to the DP was the design guidelines. As I have stated, the design guidelines are important to ensuring an appropriate character response.
- 116 In summary, the design guidelines will apply in addition to normal planning and building requirements. They are said to be necessary to ‘maintain the quality and amenity of the estate for the benefit of residents’.<sup>49</sup> In most cases, they require a lot owner’s home design to be approved by RWR’s ‘Ross Watt Road Design Assessment Panel’ (the **panel**).
- 117 The subject matter of the design guidelines includes setbacks and building height, building design, facades, roof design, colours and materials, windows, retaining walls, driveways, garages, landscaping & fencing.

## Whether part of the DP

- 118 The Council submitted the design guidelines should form part of the DP. One of the Council’s reasons was uncertainty about the extent to which they would be implemented. For example, RWR at its discretion may amend the design guidelines at any time ‘to reflect changes in design and building trends’.<sup>50</sup> As another example, the panel has the right to ‘waive or vary any requirement in the design guidelines’.<sup>51</sup>
- 119 During the hearing, RWR agreed to include the design guidelines in the DP. A common implementation method is through title restrictions that could be required as conditions of planning permit approval of relevant stages of subdivision. As permission for subdivision is no longer part of this proceeding, that method cannot be relied on. I therefore support inclusion.
- 120 The effect of inclusion is that RWR will be unable to amend or vary the design guidelines as it wishes. I will require removal of the panel’s right to

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<sup>47</sup> Planning scheme cl 21.13-1, settlement and housing strategies, item 1.11. While it might be said the townhouse area does not abut such development, it effectively does given the intervening drainage reserve.

<sup>48</sup> DP section 6.9.

<sup>49</sup> Design guidelines, p 1.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.



waive or vary requirements and whether that power should be included as part of title restrictions can be reconsidered as part of the subdivision application and for consistency with an approved DP.

### **Sufficiency**

- 121 The Council also submitted the design guidelines were insufficient in ensuring an appropriate character outcome. It relied on Mr Woodland's evidence in relation to various matters that are unnecessary to set out here.
- 122 Ms Horsfield's evidence is that the design guidelines require more direction about the 'semi-rural and village character' outcomes to be achieved, particularly in relation to 'architectural design' and 'landscape'.
- 123 During the hearing, RWR proposed various amendments to the design guidelines. They included:
- (a) Clarification that they apply to all residential lots.
  - (b) Imagery of encouraged and discouraged building designs.
  - (c) Landscaping in street setbacks of lots more than 1,500 sqm.
  - (d) Removal of fencing adjoining the shared path along the central road off Ross Watt Road.
- 124 The Council broadly agreed with these amendments. I will require them. I will now briefly refer to matters on which disagreement remained.
- 125 The design guidelines do not contain building envelopes for lots. This is normal because building envelopes are provided, if necessary, as part of planning permission for subdivision. However, in this case, they should be provided for the lots affected by significant trees that are to be retained.
- 126 However, the design guidelines do provide for front, side and rear building setbacks of lots. They provide for a minimum 10 metres front setback for lots at least 1,500 sqm fronting Ross Watt Road, Swinburne Avenue, the northern boundary, and the escarpment conservation reserve (six lots as shown on the PSL). They also provide for a 10 metre front setback for the nine lots between 800 sqm and 1,500 sqm facing the drainage reserve adjoining the escarpment conservation reserve.
- 127 The Council, relying on Mr Woodland's evidence, sought a minimum 15 metres front setback for the six 1,500 sqm lots and the nine lots between 800 sqm and 1,500 sqm. To minimise visual impact on the creek valley, I will require 15 metres for the six 1,500 sqm lots. It is unnecessary for the nine other lots given the distance from the escarpment provided by the drainage reserve.
- 128 I am not satisfied that 10 metres is sufficient for the nine minimum 1,500 sqm lots facing Swinburne Avenue, given the prevailing setbacks well in excess of 10 metres on the east side of Swinburne Avenue. I will require a minimum of 15 metres.



- 129 The design guidelines provide for a maximum single storey dwelling on the 15 lots to which I have referred adjoining the escarpment or drainage reserve adjoining the escarpment. Mr Murphy, Mr Woodland and the Council support this provision, although Ms Horsfield's opinion is that it is unnecessary for the lots adjoining the drainage reserve.
- 130 In determining this issue, I have been assisted by Mr Stapleton's four photomontages from the Bacchus Marsh Road south of the creek towards the escarpment and the location of the 15 lots and my own inspections. The visual impact of the single storey dwellings in the south-west corner of Skyline Drive close to the escarpment was unsatisfactory having regard to current policy settings from various vantage points along the road not featured in the four photomontages.
- 131 The result is my finding that the single storey restriction in the design guidelines for the 15 lots should be retained.
- 132 For completeness, I do not support RWR's proposal to replace the reference to 'Draft Design Guidelines' dated November 2022 as a supporting document in the DP with the design guidelines amended to form part of an approved DP.<sup>52</sup>

#### **LANDSCAPE AND VISUAL IMPACT**

- 133 The planning scheme confirms that the subject land has 'landscape sensitivity ... resulting from significant view lines from the Calder Freeway and Jacksons Creek' and that has a principle of 'limiting the visual intrusion of development ... around ... the Calder Freeway [and the] Jacksons Creek escarpment ...'.<sup>53</sup>
- 134 This principle is consistent with strategies underpinning objectives in the MROSPP. The Framework Plan in the MROSPP shows the freeway near the subject land is a corridor with a 'significant sequence of views'.
- 135 There are two main disputes in relation to this issue.
- 136 The first is visual impact in relation to the escarpment. I have set out my finding on this as part of my assessment of the design guidelines.
- 137 The second is visual impact from the freeway corridor. The assessment needs to take into account the impact of two sections of two metres high timber acoustic fencing at the eastern and western ends of Ross Watt Road abutting the subject land. Each section is about 75 metres long.
- 138 Impact from the northbound lane of the freeway is minimal given the orientation to the subject land and existing vegetation in the Ross Watt

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<sup>52</sup> I do not support that change, but not because I prefer the 2022 version of the design guidelines. It is for the simple reason that proposed amended design guidelines cannot have been a supporting document that was submitted with the February 2023 version of the DP.

<sup>53</sup> Planning scheme cl 43.04 sch 4 key principles.



Road reserve. The impact from the southbound lane is not so straightforward.

- 139 The Council's main concern was the visual impact of the townhouse area on the south side of the 1.572 ha POS along the northern boundary and the visual impact of the acoustic fencing. The Council supports Mr Woodland's opinion that the fencing should be replaced with earthen mounding on the Ross Watt Road reserve.
- 140 In my opinion, the visual impact of the townhouses and the fencing is acceptable. First, the townhouse area is about 750 metres from the southbound lane. Most of that distance is the unobstructed landscape of the freeway, Ross Watt Road, and the grassland of land to the north of the subject land.
- 141 However, closer to the townhouse area visual impact will be mitigated by vegetation in the conservation reserve along the northern boundary and vegetation in the POS. Impact will also be mitigated by dwellings in the eleven low density (minimum 1,500 sqm) lots along the northern boundary east of the townhouse area.
- 142 Provided the acoustic fencing is behind the existing pines at the eastern end of the Ross Watt Road reserve abutting the subject land and provided the Ross Watt Road reserve is landscaped as proposed in the DP at the western end, the visual impact of that fencing is satisfactory.
- 143 While on the matter of the existing pines at the eastern end of the Ross Watt Road reserve abutting the subject land, the 14 metres wide reserve for an internal loop road almost touches the Ross Watt Road boundary about 150 metres west of Swinburne Avenue.
- 144 Mr Murphy's opinion was that the reserve should be widened to 16 metres and also pulled back from that boundary by a distance of about six metres. The increased setback will help ensure the construction of the road within the road reserve is outside the tree protection zone of the existing pines, which RWR proposes to retain. RWR tendered a plan showing these alterations during the hearing.
- 145 Mr Murphy also expressed the opinions that:
- (a) A building envelope should be shown on the four low density lots that abut Ross Watt Road east of the entry road, so that no building is built within the tree protection zone of the existing pines.
  - (b) The 14 metres wide road reserve adjacent to the acoustic fence at the western end of the Ross Watt Road boundary should be widened to 16 metres so that a verge of about three metres is created for the planting of a street tree.
- 146 I agree with these opinions. RWR does not oppose these changes.

## MOVEMENT NETWORK

147 The planning scheme provides that a DP for the subject land must show, or include:<sup>54</sup>

The proposed movement network which:

- Provides convenient internal and external access / linkages within and between neighbourhoods and key destinations.
- Allows for the future provision of public transport, including accommodation for bus movements and bus stop facilities at strategic locations.
- Provides attractive, convenient, safe and legible pedestrian and bicycle networks.
- Provides for wide road verge widths to allow for landscaping, footpaths and create the overall appearance of openness and a landscaped setting for new development.

A detailed traffic assessment and management plan addressing the impact of the development on the arterial and local road network, including mitigation works required on the road network in addition to funding responsibilities. The plan must show typical road cross sections and integration with the existing and proposed road, bicycle and pedestrian networks and public transport.

148 The movement network in the DP is set out in 15 dot points plus five figures on pages 25 to 27. It includes primary road links to and from the DP from Swinburne Avenue and Ross Watt Road; connector roads from those points that are bus capable in a 24 metre wide reserve; an internal road network of other roads in reserves between 8 metres and 20 metres; and upgrades to Cherry Lane, the west side of Swinburne Avenue and the southern side of Ross Watt Road.

149 The DP also states that the network is ‘characterised by ... interim signals at the intersections of Cherry Lane/Station Road and Ross Watt Road/Station Road’.<sup>55</sup>

150 Ms Dunstan’s opinion was that traffic generated by occupation of the whole development in the DP can be accommodated by the nearby road network with:

- (a) upgrades to Cherry Lane, the west side of Swinburne Avenue and the south side of Ross Watt Road (including turning lanes in Ross Watt Road at the entry road and at the Swinburne Avenue intersection) (the **surrounding road upgrades**), and
- (b) upgrades to the intersections in Station Road at Cherry Lane and Ross Watt Road, and duplication of Station Road from a point south of Cherry Lane extending north to the freeway interchange (the **Station Road upgrades**).

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<sup>54</sup> Planning scheme cl 43.04 sch 4 cl 4.0.

<sup>55</sup> DP p 27, third dot point on that page.





- 151 The surrounding road upgrades are not in serious contention as being necessary and RWR proposes to construct them.
- 152 The Station Road upgrades are contentious, partly because it appears to be agreed that the Station Road duplication is required regardless of approval of the DP and occupation of the development when completed. As well, duplication and the two intersection upgrades are being considered as part of the ‘Gisborne Futures’ project and would not be constructed for at least 10 years. As the ‘Gisborne Futures’ project is ongoing, the Council is yet to form an opinion about whether signals or roundabouts should be provided at the two intersections, although the Council currently appears to support roundabouts.
- 153 The upgrades are also complicated by the relevant road authority for Station Road being the Department of Transport and Planning (the **Department**). The Head, Transport for Victoria did not actively participate in the proceeding and has not been able to formalise its opinion or preferred conditions for any approval of the DP.
- 154 However, before excusing the Department from attendance at most of the proceeding, I asked the Department if it opposed the provision in the DP for ‘interim signals’ at the two Station Road intersections. The Department’s representatives did not oppose the inclusion of that provision.
- 155 Ms Dunstan’s written evidence is that traffic from the DP can be accommodated by either signals or roundabouts at the two intersections. She modelled and assessed four different options for full or part provision of either of them under post-10 years DP development without duplication. In oral evidence, she expressed a preference for signals at both intersections as an interim treatment, but recognised that the final form of the upgrade was primarily a matter for the Department.
- 156 Earlier in these reasons, I referred to various documents comprising and known as DP ‘supporting documents’. During the hearing, the parties referred to a one-page document prepared by RWR and identified as the ‘project infrastructure plan’ (**PIP**). It is not one of the listed ‘supporting documents’. However, the PIP is headed ‘Development Plan (Supporting Material)’.
- 157 The PIP sets out 17 items of infrastructure, each of which is said to be fully funded by RWR. Items 1 to 6 in the PIP correspond to what I have described as the surrounding road upgrades and what is intended to be the interim Station Road upgrades. The PIP also specifies timing of provision (‘staging triggers’) of each item of infrastructure
- 158 Ms Dunstan’s opinion was that the Cherry Lane upgrade will be necessary when volumes exceed 3,000 vehicles per day and this is not expected until the 557<sup>th</sup> lot in the DP is occupied. The PIP refers to provision before occupation of the 322<sup>nd</sup> lot. Either is later than occupation of the 314 lots in



the subdivision application, which generally corresponds to phases 1 to 3 in the DP.<sup>56</sup>

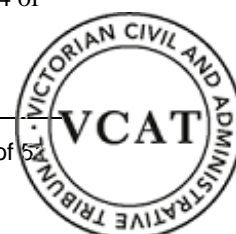
- 159 It is therefore uncertain as to whether the Cherry Lane upgrade would be required by condition of the subdivision permit (if granted) which is now not part of this proceeding.
- 160 Ms Dunstan' opinion was that the Cherry Lane/Station Road intersection upgrade will be necessary when the degree of saturation reaches 0.9 and this is expected when the 72<sup>nd</sup> lot in the DP is occupied. The PIP refers to the upgrade being necessary before occupation of the 40<sup>th</sup> lot. Either would be before occupation of the 314 lots in the subdivision application.
- 161 It is therefore likely that this upgrade would be required by condition of the subdivision permit (if granted) which is now not part of this proceeding.
- 162 Ms Dunstan' opinion was that the interim upgrade of Ross Watt Road/Station Road intersection will be necessary when the degree of saturation reaches 0.9 and this is expected when the 541<sup>st</sup> lot in the DP is occupied. The PIP refers to provision before occupation of the 280<sup>th</sup> lot.
- 163 If Ms Dunstan is correct, this is later than occupation of the 314 lots in the subdivision application. But if the PIP is correct, it is not later than that occupation. It is therefore uncertain as to whether the upgrade would be required by condition of the subdivision permit (if granted) which is now not part of this proceeding.
- 164 The Council did not submit that the provision in the DP about 'interim signals' (to which I have referred) should be deleted or amended but did oppose the RWR's proposed amendment to the PIP that the upgrades to the two intersections should be amended from 'roundabout or signalisation (TBC)' to 'signalisation'.
- 165 The PIP is a document that does not form part of the DP. The Council therefore accepts the 'staging triggers' are not part of the DP.<sup>57</sup> The Council invited me to include the PIP within the DP. RWR did not oppose its inclusion with any real force. Inclusion would be consistent with the planning scheme's requirement that the DP include the 'provision and timing of physical and social infrastructure'.<sup>58</sup>
- 166 My overall findings on the upgrade issues are as follows.
- 167 First, the DP's provisions for the surrounding road upgrades are satisfactory and the requirement for their provision (including timing) can be included in the DP by inclusion of the PIP. Further details about what must be done may be considered as part of the subdivision application.

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<sup>56</sup> The areas covered by the five phases are set out on a development sequencing plan on page 34 of the DP. Each phase may contain several subdivision stages, as set out in the PSL.

<sup>57</sup> The Council, written submissions, [138].

<sup>58</sup> Planning scheme cl 43.04 sch 4 cl 4.0 dot point 10.



- 168 Second, it is premature and unnecessary to make any finding about the ultimate form of the Station Road upgrades, given the positions of the Department of Transport (as road authority for Station Road) and the Council (as road authority for Cherry Lane and Ross Watt Road) are unresolved.
- 169 Third, the existing provision in the DP for interim signalisation of the Station Road intersections should be maintained. The Department does not formally oppose that provision.
- 170 Fourth, based on the traffic impact assessment (being one of the ‘supporting documents’) and Ms Dunstan’s evidence, the interim signalisation for the Cherry Lane and Station Road intersection will be needed well before occupation of all of the lots in the subdivision application (if approved). Further details about what must be done may therefore be considered as part of the subdivision application.
- 171 Fifth, the PIP should be included in the DP so that the responsibility and timing of the delivery of items 1 to 7 in the PIP are part of the DP, subject to amendment with the Council’s consent. The PIP should include Ms Dunstan’s triggers because they were tested but maintained in cross examination.
- 172 I now turn to two other movement network related issues raised during the hearing.
- 173 The first issue relates to the reserve width of the entry road off Ross Watt Road. This issue is as much a character and landscape issue as a movement network issue. The DP provides for a 24 metre reserve from Ross Watt Road south to the LCC. This is a distance of about 600 metres.
- 174 The main network purpose is to facilitate bus access with the connecting 24 metre wide reserve east from the LCC to Swinburne Avenue. The DP provides for a 20 metres reserve from the LCC south to the drainage reserve adjoining the escarpment. The Council submits the 24 metres reserve should extend all the way from the LCC to the escarpment, a distance of about 1,200 metres. The main reason for this submission is to enhance views to the escarpment and the creek valley.
- 175 RWR accepts that the 24 metres width should be extended past the LCC and past the townhouse area (on both sides of the road) adjoining the LCC. This is a distance of about 300 metres.
- 176 I agree with Mr Murphy that an extension beyond the townhouse area is unnecessary from a landscape or escarpment viewline perspective. The more important objective is to provide a broad, well-landscaped road past and beyond the LCC. Views to the escarpment and creek valley can still be provided on a 20 metre reserve, subject to the provision of street plantings.
- 177 The second issue relates to the bus route. As I have stated, the internal road network provides for bus provision through the DP to and from Ross Watt Rd and Swinburne Avenue, passing the LCC. The Council made muted



submissions (without adducing expert evidence) that the bus route should be extended in a further loop to the north and west of the LCC and, accordingly, 24 metres wide road reserves should be provided in this extended area.

- 178 While I accept the extension would potentially reduce walking distance to a bus stop from the western and southern parts of the subject land, I prefer Ms Dunstan's opinion that it is unnecessary and would be likely to extend time between services.
- 179 The third issue relates to whether the shared path should be provided as well as a footpath on the same side as the road pavement. There was effective agreement that this duplication was unnecessary.
- 180 Finally, I will briefly mention that the Council sought to tender a document prepared by Mr McDougall, who I understood to be a traffic engineer employed by the Council. The Council also sought to cross examine Ms Dunstan about the report. The report apparently expressed different opinions or recommendations about RWR's traffic impact assessment and Ms Dunstan's evidence.
- 181 I did not allow Mr McDougall's report to be tendered because it was not included in the Tribunal Book for the hearing and so the parties and I and Ms Dunstan were not aware of it. The Council did not propose to call Mr McDougall to give evidence and, even if it did, no evidence statement had been circulated before the hearing in accordance with practice requirements.
- 182 Nonetheless, the Council had sufficient opportunity to cross examine Ms Dunstan (which it did at length) on the issues on which Mr McDougall may have expressed opinions.

#### **LOCAL CONVENIENCE CENTRE**

- 183 As I have stated, the DP must be consistent with local policy. Local policy includes a FP with a local shop shown in a materially different location close to Swinburne Avenue. The planning scheme also requires the DP to integrate the LCC with active and passive POS.<sup>59</sup>
- 184 The planning witnesses support the more centrally located LCC and deletion of the local shop. The Council does not oppose it. It has the advantage of greater accessibility to all residential areas in the DP area and the movement network maintains potential bus access to the LCC.
- 185 I support the location of the LCC. However, it is inconsistent with local policy. I would disregard compliance with the requirement for consistency, if only because it is inconsistent with the more-recently included DP requirements.

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<sup>59</sup> Planning scheme cl 43.04 sch 4 cl 4.0 'West Gisborne area specific requirements' dot points 1 & 2.



- 186 As I have stated, those requirements are for the DP to include a ‘conceptual urban design for the development of the Local Neighbourhood Activity Centre (approximate floor area of 500 sqm)’.<sup>60</sup> This centre is identified in the DP as the LCC. The DP includes a concept plan for the LCC, which is included in figure 6.
- 187 The Council submits the concept plan is inadequate because more detail is needed about siting, design and landscaping in the concept plan area. It suffices to state that Mr Woodland considered the detail as desirable rather than necessary and Ms Horsfield considered it to be unnecessary.
- 188 The Council also submitted the footpath to the central connector road is not wide enough to support outdoor dining and that kerbside parking on that part of the road is undesirable.
- 189 As a concept plan it is satisfactory. It indicates appropriate uses, sufficient space for those uses and for a verge with outdoor seating and limited parking, even with widening of the adjoining central road reserve to 24 metres. It is bordered with roads, and it has a centrally located parking area. Further detail generally in accordance with the concept plan can be provided when permission is lodged for construction of the LCC.
- 190 The Council is also critical of provision of the LCC in phase 4 of the five phase development of the subject land and prefers it at any earlier phase. The planning witnesses did not oppose its inclusion in phase 4 and doubted it could be viable any earlier.
- 191 The DP includes a 0.97 ha POS directly opposite the LCC. Safe pedestrian access can be provided. The POS has both active and passive components. It also contains a significant tree which, because of its cultural significance, can and should be conserved and protected within the POS.

## **OPEN SPACE**

- 192 The DP must provide for appropriate open space. The requirements include POS integrated with the LCC (to which I have referred) and linear connections from this POS to the escarpment. The DP provides for a shared path from the LCC to the escarpment and a path through the drainage reserve and then heading east and west to access the conservation area below the escarpment.
- 193 The provision of POS is different from that in the FP under local policy to which I have referred. The planning scheme requires consistency with the provision in the FP. To the extent of any inconsistency, I prefer the provision in the DP. I discerned no disagreement to open space locations in the DP from Mr Woodland, Ms Horsfield or the Council.
- 194 The Council submitted the central POS was a poor design because it failed to include a toilet block in accordance with the Council’s open space policy

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<sup>60</sup> Planning scheme cl 43.04-sch 4 cl 4.0 West Gisborne area specific requirements, dot point 1.



and failed to clearly protect the culturally significant tree from interference or damage. These criticisms are not significant and, if more details are needed at the relevant subdivision or construction stage, they can be provided.

- 195 Mr Murphy's opinion was that the layout of this POS should be modified to enhance its proximity to the LCC by including a picnic area and play area closer to the LCC and a more active 'kickabout' space to the south of this open space. The Council had some concern about this space in the vicinity of the culturally significant tree but the detailed design of tree protection and intervening new vegetation should mitigate difficulties, subject to consultation, as required, with the registered Aboriginal party.
- 196 The Council also submitted that too many significant trees were included within lots and should have been included in reserves. As I have stated, there are few such trees within lots. The lots have been designed to ensure sufficient area for buildings away from the relevant protection zones of those trees. This can be confirmed and strengthened by the inclusion of building envelopes for those few lots.
- 197 The Council's concerns that the total area of unencumbered POS is less than the five percent of site area that the planning scheme requires is a requirement relating to permission to subdivide which does not apply in this proceeding.
- 198 The proposed shared path in the escarpment conservation reserve connects to the central road and the escarpment drainage reserve. It extends to the north along an existing 'farmer's track' to the creek and extends to the south along the escarpment to the boundary of the subject land where it abuts the Skyline Drive estate.
- 199 The Council submitted that the shared path should be extended further to the east towards the existing Dixon Field reserve. It is unclear how the path could gain access down the steep escarpment at this point towards that reserve. Given this uncertainty and ongoing investigations by the Council about how this might be achieved, it would be premature to require any modification of the DP.

## LANDSCAPING

- 200 The planning scheme provides that the DP must show or include 'landscape concept plans ... that show ... public open space landscaping, including landscaping of roads and streets ... to contribute to Gisborne's ... attractive semi-rural environment'.<sup>61</sup>
- 201 The DP includes an 'open space framework plan', a 'street tree strategy plan', and landscape concept plans for POS reserves, drainage reserves, tree reserves, conservation reserves and the Ross Watt Road reserve.

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<sup>61</sup> Planning scheme cl 43.04 sch 4 cl 4.0 dot point 6.



- 202 The Council, consistent with opinions of Mr Woodland, doubted *Acacia melanoxyton* was a tree species to line the central road between Ross Watt Road and the escarpment that could contribute to the semi-rural environment.
- 203 RWR did not oppose any amendment to all the landscape concept plan that enables suitable species to be chosen to the Council's satisfaction as part of permission to subdivide the relevant stages of the DP.
- 204 The Council submits the landscape concept plans do not adequately provide for protection of significant view corridors recognised in policy. The relevant view corridors are from the freeway and to and from the escarpment. I have already found the former is satisfactory.
- 205 View corridors to the escarpment and the creek valley from within the DP are created and protected by the straight alignment of the centrally located connector road (with a reserve width of mainly 24 metres) that extends from Ross Watt Road to the escarpment drainage reserve. I have already made findings about view corridors to the escarpment from the south side of the creek and the need for minimum setbacks and maximum building heights in lots nearest to the escarpment.
- 206 The DP includes a street tree strategy.<sup>62</sup> Mr Murphy's opinion is that the strategy includes a range of indigenous and native trees and the sizes are generally appropriate for the relevant reserve cross sections. Mr Murphy also considered Blackwood *Acacia melanoxyton* was not ideal for the important connector road to the escarpment and I accept his opinion that Yellow box *Eucalyptus mellidora* is more appropriate given its larger canopy spread.

## BIODIVERSITY

- 207 The Department of Energy, Environment and Climate Action (**DEECA**) is the referral authority with biodiversity responsibility and expertise. It had concerns with the earlier versions of the development plan but does not oppose approval of the DP in the proceeding. The Council's claims that two of the four relevant strategies in objective 2 of the MROSPP are not met have diminished force having regard to DEECA's advice.
- 208 The Council acknowledges the DP includes improvements on earlier versions, especially with the inclusion of a linear reserve containing indigenous vegetation along the northern boundary.
- 209 Most of the significant trees to be retained are located within the two conservation reserves, the three POS reserves, the three tree reserves or the small landscape reserve adjoining the reservoir land. One such tree is located within each of a small number (about six) of low density lots of at least 1,500 sqm.

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<sup>62</sup> DP p 30.



- 210 I have already found this to be an acceptable response to the planning scheme's requirement that the DP protect areas of remnant indigenous vegetation. Overall, the retention of scattered trees is satisfactory even though some significant trees will be removed, for example if there is conflict with road alignments.
- 211 The Council was critical of the Nature Advisory's biodiversity report (one of the DP 'supporting documents') and Mr Organ's evidence because it claimed the surveys did not include fauna that may make use of hollow bearing trees. Mr Organ said the biodiversity report did a targeted assessment of hollows in trees and noted that the assessment was only required for specified fauna species. He also said fauna found in hollows of trees to be removed should, for animal welfare reasons, be captured and relocated before removal of the tree.
- 212 Mr Organ supported the conservation reserves along the northern boundary because they provided a biodiversity corridor for terrestrial fauna between the escarpment and the marshland reserve to the north of Ross Watt Road.
- 213 I agree with Mr Murphy's opinion that the 14 metres wide road reserve in the northern corner that is about 100 metres long, extending south-west from Ross Watt Road, should be increased in width to 16 metres to accommodate a three metres wide verge along the northern boundary. With this amendment, the reserve can better support canopy trees and the proposed habitat link along the northern boundary.

## **WATER MANAGEMENT**

- 214 The DP includes a surface/stormwater management strategy.<sup>63</sup> The strategy is not the subject to any fundamental dispute. Mr McLean supports the strategy.
- 215 Mr McLean was questioned about various details, include dimensions of the sediment basins (including the extent of required excavation), any necessary fencing (or other public safety design features), and interim works (including to Cherry Lane). He was also questioned about batter grades in the drainage reserve adjoining the escarpment and their relationship to proposed abutting access roads.
- 216 I accept Mr McLean's evidence and there is no need to amend the DP.

## **POTENTIAL RETIREMENT LIVING**

- 217 The DP includes an area of 6.49 ha located to the immediate west of the drainage reserve adjoining Swinburne Avenue as 'potential retirement lifestyle living community'.<sup>64</sup> However, the DP provides this area as a mixture of residential lots (other than low density lots) and 8 metres and 16 metres wide internal roads.

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<sup>63</sup> DP section 3.3.

<sup>64</sup> DP pp 21 & 32.





- 218 The DP ‘must describe ... the proposed use and development of each part of the land’.<sup>65</sup>
- 219 Describing the use and development of this part of the subject land as ‘potential retirement lifestyle living community’ does not comply with this mandatory requirement. I will require this description to be removed. If there is a future proposal to replace the residential lots in the DP with an area for aged accommodation, the proposal may need to be advanced as an amendment to the DP.

## STAGING

- 220 As I have stated, the DP includes a short section on ‘Development sequencing, staging and timing’. There is a development sequencing plan containing five ‘phases’. The PSL contains 18 stages.
- 221 I have already referred to the need to include reference to the PIP in this section of the DP.
- 222 Consistent with Mr Woodland’s opinions, the Council sought delivery of the LCC and central open space before phase 4 and sought no construction of any townhouse area until after delivery of the LCC.
- 223 I am not persuaded the first of these obligations can be justified given the likely number of residents when the relatively small number of lots in phases 1 to 3 are occupied. The second of these obligations has little impact given the limited extent of townhouse areas in phases 1 to 3 and is unreasonable if the LCC is ‘delivered’ (ie completed) towards the end of phase 4 in which most of the townhouses are proposed.
- 224 I do not therefore support the Council’s submissions.

## CONCLUSION

- 225 Having heard all the submissions and evidence over seven hearing days, the DP is generally consistent with expectations in the planning scheme and generally provides an appropriate framework in relation to interfaces with surrounding land, a movement network, infrastructure, landscape, open space, and a neighbourhood activity centre, among others.
- 226 However, the parties agree some modifications to the DP are necessary or desirable. I find modifications are necessary.
- 227 I will therefore not approve the DP in its current form. I will consider approving the DP if the modifications in Appendix A are made. I will not include conditions to an approval of the type I specified in *Canterbury Hills Pty Ltd v Hume CC*,<sup>66</sup> because the modifications have consequential impacts on other features and all those impacts cannot be identified and resolved. They require some further consideration by RWR.

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<sup>65</sup> Planning scheme cl 43.04-4.

<sup>66</sup> [2015] VCAT 80.



- 228 I will give the RWR an opportunity to decide if it wishes to substitute the DP with a revised DP containing the modifications in Appendix A.
- 229 If RWR states that it does not propose to prepare a substituted DP or if it fails to inform me by the specified date, I will consider making final orders that refuse to approve the DP as being to the Council's satisfaction under clause 43.04 of the planning scheme.
- 230 If RWR proposes to prepare a substituted DP, I will make orders for the preparation, filing and submissions relating to the substituted DP.
- 231 Given the likely need for consequential amendments to the DP to the modifications specified in Appendix A, I encourage RWR to informally consult the Council and water authorities before it files a substituted DP.
- 232 I will fix a practice day hearing to consider the future conduct of the subdivision application.

Geoffrey Code  
**Senior Member**



## APPENDIX A

### MODIFICATIONS TO THE GISBORNE AREA 1 DEVELOPMENT PLAN DATED 3 FEBRUARY 2023

#### Front cover

- 1 Delete 'VCAT Issue (3 February 2023)' and '31 January 2023' and include a relevant date when modifications are made and a substituted Development Plan is filed.

#### Page 1

- 2 Update page numbers in the table of contents when modifications are made.

#### Page 2

- 3 Update figures and appendices when consequential amendments are made.

#### Page 5

- 4 In section 1.1, for the fourth bullet point, substitute:

Rosslynne Reservoir and Southern Rural Water Land to the west;

#### Page 6

- 5 In section 1.5, at the end of the first bullet point insert 'within the context of a semi-rural township.'
- 6 In section 1.5, after the fourth bullet point insert the following two new bullet points:

- To maintain Gisborne as a distinctive semi-rural settlement with clear limits to population and physical urban growth.
- To provide guidance for a range of residential development opportunities and densities that are cognisant of the semi-rural character and village setting of Gisborne.

#### Page 8

- 7 In section 3.1, for the sixth bullet point, substitute:

- The seven larger residential lots where trees are proposed to be retained will contain a building envelope, tree protection zone, tree drip line and minimum loitering distance generally in accordance with the building envelope plan for the lots version 3 dated 27 March 2023 and shown in Appendix E to limit encroachment into the tree protection zone of retained trees. The building envelope plan will be registered on the corresponding plan of subdivision, as detailed in an accompanying memorandum of common provisions (MCP).



## Page 9

8 In section 3.2, for the second bullet point, substitute:

- further to the preliminary cultural heritage report two CHMPs have been prepared for the site - a mandatory assessment of the southern portion of the site has been submitted for approval and a voluntary assessment of the northern portion of the site has been approved (*Cultural Heritage Management Plan 18523, Tardis Archaeology, November 2022*). Some areas of cultural heritage significance were found. Significant artefacts (VAHR 7832-0435) identified for retention have been proposed to be retained in a public open space reserve (0.731 hectares).

## Page 10

9 In section 3.3, for the eighth bullet point, substitute:

- sediment ponds and drainage reserves for both the east and west catchments will be required and will be designed in accordance with Melbourne Water (MW) design guidelines;

## Page 15

10 In the right hand column of item 14, for the expression ‘is expected to be approved in January 2023’ substitute ‘has been submitted for approval’.

11 For the text in the second paragraph in the right hand column of item 18, substitute:

The GA1DP proposal provides for development to be consolidated within the recognised urban area of Gisborne and its Township boundary. The proposal provides for a form of development which responds appropriately to the policy of providing housing within the urban area in a manner which is respectful of the semi-rural character of Gisborne. Landscape concept plans which form part of this Development Plan provide for streetscape and public realm planting and tree protection measures which will contribute to the semi-rural character of Gisborne. Design Guidelines which form part of this Development Plan will appropriately guide future development on private residential lots.

## Page 16

12 In the right-hand column of item 26, add the following paragraph:

The proposal provides for a form of development which responds appropriately to the policy of providing housing within the urban area in a manner which is respectful of the semi-rural character of Gisborne. Landscape concept plans which form part of this Development Plan provide for streetscape and public realm planting and tree protection measures which will contribute to the semi-rural character of Gisborne. Design Guidelines which form part of this Development Plan will appropriately guide future development on private residential lots.

## Page 18

- 13 In section 4.1, amend Figure 4 to provide for a widened central road reserve of 24 metres and retention of the balance of land available for the local convenience centre and child care centre.

## Page 20

- 14 In section 5.1, add the following bullet point to the ‘Vision’:
- to provide guidance for a range of residential development opportunities and densities that are cognisant of the semi-rural character and village setting of Gisborne.
- 15 In section 5.2, add the following principle:
- The protection of Rosslynne Reservoir.
- 16 In section 5.2, add the following text after the sixth bullet point:
- Design Guidelines which form part of this Development Plan will appropriately guide future development on private residential lots.

## Page 21

- 17 In section 5.2, amend Figure 5 as follows:
- (a) For its title, substitute ‘GA1DP Future Urban Structure’.
  - (b) In the title box in the figure, for ‘Development Plan’ substitute ‘Future Urban Structure’.
  - (c) In the legend to the figure, for ‘Medium density (less than 500m<sup>2</sup>)’ substitute ‘Medium density (300-499m<sup>2</sup>)’.
  - (d) In the legend to the figure, for ‘Low density (1500+m<sup>2</sup>)’ substitute ‘Low density (more than 1500m<sup>2</sup>)’.
  - (e) In the legend and in the figure, change the colours for each of the five ‘lot size & density’ categories to improve visual distinguishing between them.
  - (f) Delete the ‘Townhouse’ area to the north of the ‘Tree Reserve 0.224Ha’ and replace with a ‘Conventional density’ area.
  - (g) Delete the ‘Townhouse’ area (two parts) west of the ‘Drainage Reserve 1.7Ha’ and replace with a ‘Conventional density’ area.
  - (h) Increase the width of the central roadway reserve from the roundabout to the intersection to the southwest of the ‘Townhouse’ lot size area from 20 metres to ‘local access street at 24 metres’ and retain a local access street at 20 metres for the balance of the central roadway to the drainage reserve. Make consequential adjustments to the dimensions and location of the ‘Townhouse’ lot size area.
  - (i) Increase the width of the reserve for the access street in northeast corner to 16 metres (from 14 metres) and increase the size of the

abutting landscape reserve, both generally in accordance with the plan tendered during the hearing.

- (j) Increase the width of the reserve for the access street in north-west corner adjoining the acoustic fence to 16 metres (from 14 metres).
- (k) Increase the width of the reserve for the access street about 100 metres long extending south-west from the northern boundary of the subject land at Ross Watt Road to 16 metres (from 14 metres).
- (l) Remove the indicative lot layout on the Southern Rural Water land.
- (m) Amend all relevant numbers and descriptions in the 'Legend & Land Budget' and in the 'Lot Size & Density' table and in the table headed 'Residential catchments' for consistency with all modifications to figure 5.
- (n) For the annotation starting '2m High Timber ...' to the west of the Figure, substitute:

Provide a 2.4m high Cyclone Exclusion Fencing to Prevent Access to Southern Rural Water Land and an inbound 2m high timber fence on the development side of the boundary to the satisfaction of SRW. Exclusion Signage to be Installed Along Public Interfaces.

- (o) In the annotation to 'Landscape Reserve 0.036Ha', add the following text:

Landscaped to SRW's satisfaction (6m Wide SRW Maintenance Access to be vested in SRW).

## Page 22

- 18 In section 6.1, omit the second last bullet point.

## Page 23

- 19 In section 6.2, in Figure 6, add reference to Rosslynne Reservoir as a source of drinking water.

## Page 24

- 20 In section 6.5, for the second bullet point, substitute:
  - fencing, to SRW's satisfaction as per the document titled Fencing Specifications dated 21 March 2023, is provided along the site's western boundary as shown on Breese Pitt Dixon, 89 Ross Watt Road Gisborne, Development Plan, Drawing Ref. 7213\_UD\_DPO2\_V16 to ensure that public access is restricted, this may include the provision of fencing along part of the boundaries of the site that do not front the SRW owned land but that would allow access to be obtained if remained unfenced.

21 In section 6.5, after the final bullet point, insert the following text:

In relation to the 'Exclusion Fencing SRW Land' as shown on figure 5:

- The cyclone fencing must be in place before the occupation of Stage 1 of the development.
- The 2m high timber fencing (unless not required by SRW) for rear boundary fencing of lots along SRW's boundary, must be installed before the occupation of a dwelling on the relevant adjoining lot.
- Any timber fencing must be maintained to the satisfaction of SRW.
- If there are any temporary interfaces with the SRW land that are not fenced, temporary fencing will be put in place until permanent fencing is in place to the satisfaction of SRW.
- A cross section of the proposed treatments along the SRW boundary will be provided to the satisfaction of SRW.

Fencing along the northern boundary of the GA1DP land (between 'Landscape Reserve 0.036Ha' and Ross Watt Road) must be constructed as follows, to the satisfaction of SRW:

- 1.5m high post and wire semi-rural style fencing from Ross Watt Road to the western edge of the Public Open Space Reserve.
- 1.8m high post and wire semi-rural style fencing along the balance of the northern boundary of the GA1DP land from the western edge of the Public Open Space Reserve.
- Each part must make suitable provision to allow for animals to pass underneath the fence by provision of up to 3 wildlife passages of 40cm between the ground and the bottom wire, along the full extent of the northern boundary fencing, to the satisfaction of SRW, GWW and Macedon Ranges Shire Council. The style of the fence is to be generally as shown in the image below:



- The fence along the northern boundary must be in place prior to the occupation of Stage 1 of the development.

In relation to surveillance of public access to the SRW land:

- A contribution towards CCTV cameras in the amount of \$10,000 will be provided payable to SRW upon request. Further, if required by SRW at the time, an electrical pit for use by SRW will be provided by the developer at the time of the development of the stage adjoining the SRW maintenance gate.

### Page 25

24 In section 6.7, after the third bullet point, insert the following new bullet point:

- A central roadway with a footpath on one side and a shared path on other side. The shared path should be located on the side of the road which is not impacted by the LCC.

### Page 26

25 In section 6.7, amend Figure 8 to provide off-road shared path on one side and footpath on one side of central roadway.

### Page 27

26 In section 6.7, after the fifth bullet point, insert the following two new bullet points:

- provision of left and right turn lanes into the site from Ross Watt Road;
- provision of left and right turn lanes on Ross Watt Road on the approach to Swinburne Avenue;



- 27 In section 6.7, in the legend to Figure 9, for ‘Local Access Street Level 2 (18-20m)’ substitute ‘Local Access Street Level 2 (18-24m)’ and maintain the representation of a local access street from the roundabout to the drainage reserve.

### Page 28

- 28 In section 6.7, amend Typical sections A-A and C-C in Figure 10 to provide a 24 metre width and an off-road shared path on one side and footpath on one side.
- 29 In section 6.7, amend Typical section B-B in Figure 10 to provide a 20 metre width and an off-road shared path on one side and footpath on one side.

### Page 30

- 30 In section 6.8, amend Figure 13 to show Yellow box *Eucalyptus melliodora* along the central connector road and Dwarf red spotted gum *Eucalyptus mannifera* ‘Little Spotty’ along western side of Swinburne Avenue.
- 31 In section 6.8, in the second bullet point, for the expression ‘Figure 15’, substitute ‘Figure 14’.

### Page 31

- 32 In section 6.8, for the title to Figure 14, substitute ‘Open Space Framework Plan’.
- 33 In section 6.9, amend the heading to ‘URBAN DESIGN’.
- 34 In section 6.9, in the first line beneath the heading, for the word ‘guidelines’, substitute ‘principles’.

### Page 32

- 35 In section 6.9, in the fourth bullet point on the page, omit the word ‘Potential’.
- 36 In section 6.9, omit the sixth bullet point on the page.
- 37 In section 6.9, before the final bullet point, insert:
- Provision of exclusion treatments along boundaries including signage and exclusion fencing treatments to ensure the protection of Rosslynne Reservoir and Southern Rural Water’s land.
- 38 In section 6.9, for the final bullet point, substitute:
- Implement the Design Guidelines in Appendix D to control the built form outcomes on larger lots (1,500 square metres and greater) along the Jacksons Creek Escarpment and Conservation Reserve, boundary interfaces with rural land, Swinburne Avenue and Ross Watt Road boundaries.

39 In section 6.9, after the final bullet point, insert the following new bullet points and new text:

- Limit the height of dwellings to single storey on lots immediately opposite the 'Jacksons Creek Conservation Reserve', on lots opposite the 'Drainage reserve 2.35Ha' and on the lot abutting the 'Road Reserve to be landscaped by Developer for Future Road Connection 0.068Ha'.
- Building envelopes will be included on the lots containing trees to be retained nos. 14, 15, 16, 23, 24, 28 & 30 generally in accordance with the building envelope plans included in Appendix E.
- Building envelopes will be included in Low Density lots abutting Ross Watt Road east of the entry road off Ross Watt Road outside the tree protection zone of existing pines on Ross Watt Road.

The development of a dwelling on a residential lot will be in accordance with the Design Guidelines in Appendix D.

40 In section 6.10, amend the figure in the Land Budget table for consistency with all modifications referred to in this order and Appendix.

### **Page 33**

41 Update Figure 15 to reflect all modifications in this Appendix.

42 In section 6.11, after the final paragraph on the page, insert the following new paragraph:

Infrastructure will be provided in accordance with the project implementation plan included in Appendix F.

### **General modifications**

43 To improve legibility in hard copy, enlarge Figures 3, 5, 6, 7, 8, 9, 10, 11, 13, 14 & 15 to occupy no less than a full A4 page.

44 Make consequential amendments to the whole of document for consistency with all modifications referred to in this order and Appendix.

### **Appendix C**

45 Amend the concept plan TP-L07 for POS reserve 1 generally in accordance with the statement of evidence of Barry Murphy dated 28 February 2023 at page 12.

46 State on all plans 'This plan is indicative of the landscaping concept to be refined at the planning permit stage inclusive of the palette of planting.'

47 Amend medium density precinct concept plan TP-L11 consistently with other modifications, including providing for a 24 metres wide reserve.

## **Appendix D**

- 48 In a new Appendix D, insert the Design Guidelines depicted in the tracked change version tendered to the Tribunal on 23 March 2023 with the modifications set out in the following paragraphs.
- 49 On page 1, under the heading ‘General’, in the bullet point starting ‘The design guidelines may ...’:
- Omit the first and fourth sentences.
  - In the second sentence, for the expression ‘the current version of’, substitute ‘these’.
- 50 On pages 2, 3 & 4, under the heading ‘Setbacks and building height’, make amendments for consistency with the modifications referred to in this order or specified in this Appendix.
- 51 On page 3, under the heading ‘All other lots’, for the expression ‘Council’s planning scheme’, substitute ‘the Macedon Ranges Planning Scheme’.
- 52 On page 5, omit the right hand images in the second and third row and replace with other suitable examples.
- 53 On page 6, include images of encouraged front and rear loaded townhouse designs and add further images of materials or designs that are discouraged.
- 54 On page 3, omit the heading and bullet points relating to ‘Maintenance of lots’.

## **Appendix E**

- 55 Include the building envelope plans referred to in the modifications (above) relating to page 32.

## **Appendix F**

- 56 Include the project infrastructure plan as filed with the Tribunal on 29 March 2023 including the amendments shown thereon in red.

**– End of modifications –**