

## Lancefield DPO24 Information Session

Monday 20 December from 7pm – 8.30pm  
Online via Zoom

<b>Purpose:</b>	To enable a discussion about Development Plan Overlay Schedule 24 and enable landowners to seek clarity on any matters regarding the Development Plan Overlay.
<b>Attendees:</b>	<p>15 landowners in DPO area</p> <p>Cr Jennifer Anderson (Mayor)            Cr Bill West            Cr Geoff Neil            Cr Janet Pearce            Cr Annette Death            Bernie O’Sullivan - CEO (host)            Stephen Pykett - Acting Director Planning and Environment            Leanne Khan - Acting Manager Strategic Planning and Environment            Gill Cooper - Communications Advisor (co-host)</p>

<b>Minutes</b>	
1	<p><b>Acknowledgement of Country</b></p> <p><i>Macedon Ranges Shire Council is on Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Country.</i></p> <p><i>I want to acknowledge that I am speaking from land of the Taungurung people here in Kyneton, and pay my respects to their elders past and present.</i></p> <p><i>We extend that respect to all Aboriginal and Torres Strait Islander peoples who may be present tonight.</i></p>
2	<p>Welcome, introductions and ground rules – provided by CEO</p> <p>Purpose of the meeting reiterated as the Council Resolution:  <b>That Council:</b></p> <ol style="list-style-type: none"> <li><b>Requests the Chief Executive Officer to engage an external facilitator to assist Council with a meeting with interested landowners who are within the Development Plan Overlay Schedule 24 area in Lancefield. The purpose of the meeting is to enable a discussion about Development Plan Overlay Schedule 24 and enable landowners to seek clarity on any matters regarding the Development Plan Overlay.</b></li> </ol>

	<p><b>The meeting will be run by an external facilitator and attended by the Chief Executive Officer, planning staff and Councillors as appropriate. Minutes from the meeting will be recorded and presented to Council at a future Councillor briefing session.</b></p> <p><b>The meeting to be held within 3 months of 28 July 2021.</b></p> <p><b>2. Notifies all landholders within the Schedule 24 to the Development Plan Overlay of this decision.</b></p> <p>This forum will not make any decisions on the way forward.          The meeting was recorded for minute taking purposes and to capture questions          Ground rules and zoom etiquette relayed to audience          Introductions of Council staff and Councillors          The minutes will be provided to Councillors at an upcoming Councillor Briefing          Introduction Stephen Rowley</p>
3	<p>Background and introduction to the DPO – Stephen Rowley          Presentation proved by Stephen Rowley</p>
4	<p>Breakdown of key issues to help inform subsequent discussion, including:</p> <ul style="list-style-type: none"> <li>• Issues affecting land within the DPO prior to residential subdivision / development</li> <li>• Issues affecting the ability to pursue / subdivide land</li> <li>• Issues affecting land on an ongoing basis after subdivision / development</li> </ul>
	<p>Whilst some questions have been considered below other themes arose from the session including:</p> <ul style="list-style-type: none"> <li>- The cost of development is high, meaning the scale for small developers isn't there in regards to the infrastructure. Landowners feel that they have no opportunity to maximise development potential.</li> <li>- More clarity on what can be done without a permit – therefore not triggering the need to prepare a Development Plan.</li> <li>- Modifying the DPO24 to allow more uses/developments without the need to prepare a Development Plan.</li> <li>- While some landowners want to develop they find the coordination between neighbours difficult.</li> <li>- Fairness and equity – why this area?</li> <li>- Further clarification identifying the planning system does not provide compensation to impacted landowners regarding the ability to develop land or restrictions on developing land.</li> <li>- More clarification on consent. So I need the consent of my neighbours to prepare a development plan?</li> </ul> <p>Below is a summary of questions and points of clarification answered on the night  <b>NB: Q. – Question, A. – Answer, S – Statement, R- Response</b></p>

Q. Area 1 has 7 owners but only 2 development plans - as there is a plan already in existence what happens if the next plan doesn't cover all remaining areas? A. the other plan will have to cover the balance Q Why only one DP for area 3?

A. The challenge is if the areas are broken down too much, the coordination is lost

S. There is an assumption that all landowners wish to develop their land - this is a false assumption.

R. Ultimately the planning system can never force you to develop. The planning system will always allow you the option not to develop. For landowners who don't wish to pursue development, you always have that option of not pursuing it even if ultimately a development plan is approved across the land that's included in your site. No one can compel you to build on your land.

Q. Why is our area being chosen to discriminated against like that whereas other parts of Lancefield have been allowed to grow into Sunbury developments?

A. The challenge is the two aspects of your question are in tension with each other. Yes, there is a question of fairness. And there's an issue of restricting your rights to develop. But if you give everyone the ability to develop in an unrestricted way the reality is you do get bad outcomes. I'm not going to comment on the other developments that you're talking about but frankly let's just say planners pursue these kinds of tools because they see bad outcomes. Sometimes people point to a development and say 'why were they allowed to do this'. Sometimes a particular outcome they saw wasn't good and we want to try and get better outcomes going forward.\

Q. Why can't council hold developers to their development plan and layout of each area. Why do we need a DPO?

A. I think the question's saying Council's got this indicative guide that's in the DPO schedule, why can't Council just have that map up behind the counter as developers come in to subdivide lots and say 'well this is what you've got to do'. The simple reality is Council is not able to give any weight to things like that if they're not in the Planning Scheme. Part of the process, part of the reason why Council kept on such a short leash what is in their Planning Scheme is there was a long history of Councils doing that kind of things 20-30 years ago and essentially State Government kind of whipped us into line and there is a very regimented system we've got now and a very standard format about how Planning Schemes are written.

And if Councils started to say to developers, for example, ah no you have to do all these other things that are in our plan, and they didn't have a DPO or an equivalent. The reality is Councils would just lose those battles at VCAT. And again, an awful lot of my day to day work is fighting for Councils at VCAT and you just need the words in the Planning Scheme to back you up or VCAT will just kick you to the kerb every time. That I think is the core of the argument.

Q. How does one achieve more than 2 development plans? A Planning scheme amendment? I think it's Area 1 we can only have 2 plans and I'm trying to think ahead...how do we get 3 or 4?

A. It's a Planning Scheme Amendment. The challenge would be if you went back to DELWP. There's a real challenge given it's only recently gone into the Scheme whether DELWP would be willing to just let you make changes to it. Certainly you need justification for that and I think they'd be real questions about whether they'd let that happen but that would be the mechanism you'd need.

Q. How do we get to the point of changing the DPO so everyone can develop their land at the point of time that they have the money and it makes sense for them to do so?

A. I suppose the point I'd clarify slightly is "I don't think everyone has to develop at the same time necessarily. There may be some need for coordination depending on how the properties relate to each other as there might be a logical order in staging. It definitely requires cooperation to get the development plans prepared. It may then require – depending on the individual properties and the logistics of scaling – it may require some properties to be developed simultaneously so that's true. The alternatives are to not develop – no planning tool can make you develop - but the reality is if the goal is to get some coordination of infrastructure and some coordination of outcomes, there isn't really a way to do that without some coordination between the landowners. It is a dilemma sort of inherent to the challenge of redeveloping areas of land. There is going to need to be some coordination between landowners. It is a challenge.

Q. So could the Council not have a look at how each of the blocks could be developed to help have that discussion? We've just been through this process, it costs tens of thousands of dollars to get a development plan done. I've just done it. Not everyone has tens of thousands of dollars. So where we say they has to be coordination that actually comes with a price tag and not everyone can actually do that.

A. It's a fair question and it's true that two of the recommendations that went up to Council midyear were directly responding to that issue. And one of them was well yes Council could take on the cost of preparing the Development Plan. That would be a cost to Council but that is a response to that – or Council could do some of the background work to reduce the costs. And those were amongst the options put to Council in the middle of the year. And those are still presumably live options that could go to Council again.

Q. In April this year a letter was submitted to Councillors: multiple landowners in each area Asked for clarity re improvements to existing homes. Does this trigger a planning permit and if so does that trigger the DPO24.

A. The Schedule allows for an extension, addition or modification to existing dwellings and minor buildings and works associated with an existing use and development. I think if there are examples of development that the community feels should be able to be pursued before the development plan is prepared, I think that is a reasonable thing to communicate back to Council. I'm not a decision-maker for Council but that could be an outcome of this meeting to say "well are there thing Council could look into trying to get an extra dot points if there are things that the community need to be able to do to their land that they can't currently pursue?" That is certainly valid.

Q. My question is what can I do with my property? I can't do anything with it because I have been refused permission to go on a property or anyone else has been refused permission to do

a development plan. Now that's an owner's right. And there's another property there in the Area 1 that can be further fragmented because it's in multiple titles or allotments. And hence it makes the problem worse. So my question is now who do I put the claim in for my full development loss?

A. Similar to the answer above. One of the legitimate questions about the DPO which I as a planner, looking at this from the outside is: You want to make sure that what people are allowed to do before the Development Plan is prepared is going to allow them reasonable use of the property (before the Development Plan is prepared). Whether or not the particular things you want to do on that land are things that would be allowed, I don't know... without the Development Plan. So that's always a question as well. The reality of what planning is means that not everybody has an unfettered right to develop their property as they'd like to anyway. Compensation due to devaluation of land through the DPO- Planning system does not get too far into compensation because one of the mechanisms is to restrain development.

**Q. Why have these particular areas in Lancefield been chosen?**

A. I can't answer that terribly well because it comes down to the strategic judgement about the planning for the town that Council officers would have done and obviously those strategic plans get signed off by the Councillors as well. But you can obviously see they are on the fringes, they're extensions of the existing township but if you pointed to those bits and why those bits were developed instead of some other bits, that might seem in the next sequence, I couldn't answer that without going to the individual background of each block. It does seem to me (and I won't get the plan up again cos it will take me a couple of minutes to get it up). Looking through my slides they look to me like reasonably next logical areas if you were looking at the sequence of development in Lancefield.

**Q. Prior to the DPO we could develop 7 lots using other planning schemes. We have been financially disadvantaged and lost our human rights to trade or sell by subdividing. We are seeking compensation for 7 lots with a value of 2.24 million dollars. What is the plan to compensate impacted landowners in terms of devaluation?**

A. The issue of devaluation of land as a result of rezoning is both a complex one and a simple one. It's complex because it's actually very hard to be sure what the valuation impacts are here because you could also say the DPO allows development of many, many lots that creates potential value once people can get through the DPO process because they can develop. It's unlocking a lot of value as well.

The second part of the answer though and in some sense why it's simple is the planning system doesn't get too far into the question of that loss of value or creation of value anyway because the reality is that the planning system is trying to achieve outcomes for the community.

And yes, one of the ways it does that is through the strength of people's development rights. It's the nature of the planning system that stops people doing just whatever they like with their land and so to a certain extent it would be dishonest to say there's not going to be impacts of the planning system on people's abilities to develop their properties. Obviously that does have any impact on people and potentially on their properties. I would be cautious about being simplistic and saying land is being devalued because there would also be a lot of land that not have been able to be developed anywhere near these densities without this control

	<p>Q. The DPO purports to give a developer the power to dictate what should happen to blocks they do not own and have not paid for. Under what power does council purport to do this, and why is this not akin to compulsory acquisition?</p> <p>A. I don't see it as akin to acquisition of land because I mean no-one's acquiring land. It's the imposition of planning control – at the end of the day in this case if there was one landowner who led the development of the development plan and the development plan overlay would be a control that had been initiated by one particular person, perhaps driven if that was how it ended up happening. But at the end of the day that would still have to go through Council, still need to be signed off and it would still be a planning control. So I don't agree that it's akin to acquisition of land.</p> <p>Q. We had a letter sent to Councillors that did not consent anyone to put a DPO on our land - where does that stand? This was done without many landowners consent ... our "No" was "No" so at law, where do we stand at law?</p> <p>It is a Planning Scheme control that exists. The process that it went through is the process. There were a process of submissions... process of exhibitions, submissions and there was the Panel. I am hearing and I understand that there were concerns with that Panel...rightly or wrongly it's been to the Panel and that was the process and as you may recall from having been through the process...it comes back from the Panel to another Council Meeting and then if Council adopt the amendment it goes off to the Minister. So that is essentially the process.</p>
5	<p>Questions arising/On Notice</p> <p>Q. Why were these zones chosen and not other ones</p> <p>Q. Much of zone 3 was relatively recently planned and sub divided by council. Why has council now overlaid another DPO over our house block</p> <p>Q. On the matter of consent can we clear up – I think 3 people so far that I know of have asked this question and all been given different answers. While we are here I would like someone to explain to me, if in my area there's five landowners, if we don't all consent to subdivide or to engage in the DPO, does that mean that none of us can do it?</p>
6	<p>Next steps and wrap up - CEO</p> <p>Landowners encouraged to make contact with Strategic Planning to discuss individual situations</p> <p>Commitment given that early in the new year minutes and Q&amp;A to be circulated.</p>