

# **Planning Delegated Committee Meeting Agenda**

**Wednesday 11 August 2021 at 6pm**

**Held online and livestreamed at [mrsc.vic.gov.au](https://www.mrsc.vic.gov.au)**

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**1. ACKNOWLEDGEMENT OF COUNTRY**

Macedon Ranges Shire Council is on Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Countries. Council acknowledges that those attending today's meeting are gathering on their land. Council pays its respects to their Elders past, present and emerging and any Aboriginal and/or Torres Strait Islander People who may be viewing this meeting.

**2. RECORDING AND LIVESTREAMING OF THIS COMMITTEE MEETING**

This meeting will be held online and streamed live on the internet.

The meeting will be recorded. The recording will be available on Council's website within 48 hours of the end of the meeting.

**3. PRESENT**

**4. APOLOGIES**

**5. DECLARATION OF CONFLICT OF INTERESTS**

**6. PURPOSE OF PLANNING DELEGATED COMMITTEE**

Council established the Planning Delegated Committee to provide a regular forum for hearing from people who have made a submission to Council or who are an applicant or objector in relation to a planning permit application.

The Committee is authorised to determine statutory planning applications and Planning Scheme amendments only in relation to the *Planning and Environment Act 1987*. Its purpose is to hear from applicants/land owners and objectors/submitters on statutory and strategic planning matters, planning applications and to determine other planning matters.

**7. CONDUCT OF MEETING**

**8. ADOPTION OF MINUTES**

Planning Committee Meeting: **Wednesday 14 July 2021**

**Recommendation:**

**That the minutes of the Planning Delegated Committee of the Macedon Ranges Shire Council held on Wednesday 14 July 2021 as circulated be confirmed.**

**9. APPLICATION FOR PLANNING PERMIT PLN/2020/540**

**Re-Subdivision of 29 lots into 29 lots in three (3) stages, Alter access to a Road Zone Category 1 & Removal of Native Vegetation (Amended plans for Lots 17 to 21)**

**Bowen Street, Malmsbury**

**Officer** Christo Crafford –  
**Coordinator**  
**Statutory Planning**  
**Improve the built environment**

**Council Plan relationship:**

**Attachments:** Locality – Aerial Plan  
Applicant's Planning report  
Subdivision Plans  
Biodiversity Assessment report  
Statement of Planning Policy

**Applicant:** Cardno TGM

**Date of receipt of 28 December 2020 application:**

**Trigger for report to Councillor call-in Council**

**Purpose and Overview**

The application proposes re-subdivision of the 29 existing lots into 29 new lots in three (3) stages.

The application was advertised and ten (10) objections were received. Key issues to be considered relate to the suitability of the proposed lot sizes and lot layouts, and the future servicing of the lots.

The application has been assessed against the relevant provisions of the Macedon Ranges Planning Scheme and is considered appropriate. On balance it is considered that the subdivision is in keeping with the relevant provisions of the Planning Policy Framework, Local Planning Policy Framework, zone, overlay, particular provisions and general provisions. It is recommended that the application be approved subject to the following conditions.

**Recommendation**

**That Council issue a Notice of Decision to grant planning permit for re-subdivision of twenty-nine (29) lots into twenty-nine (29) lots in three (3) stages, alter access to a Road Zone Category 1 and removal of native vegetation for the land at Bowen Street, Malmsbury subject to the following conditions:**

- 1. Prior to the certification of the Plan of Subdivision for Stage 1 under the Subdivision Act 1988, three copies of amended plans must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans prepared by Cardno TGM, Rev 7, dated 25/05/2021, but modified to show:
  - a) A landscape plan in accordance with conditions 6 to 10.**
  - b) Provision of water supply to 21, 27 and 38 Bowen Street, from****

- the new water mains in Bowen Street, as part of Stage 1 of the development.
  - c) The Engineering plan changes required under Condition 11.
  - d) Any changes required as a result of Department of Transport condition 48.
  - e) A tree protection zone (TPZ) in the south western corner of Lot 6 for the tree located in the north western corner of 21 Bowen Street in accordance with the canopy of the tree.
2. Before the Statement of Compliance for the Plan of Subdivision for Stage 1, the owner of the lot must enter into an agreement with the Responsible Authority in accordance with Section 173 of the Planning and Environment Act 1987. The agreement must provide for:
- a) Retention of the Eurabbie Tree within proposed Lot 24.
  - b) Retention of the existing Hawthorn hedge in Bever Street.
  - c) The planting of semi-mature locally indigenous/native canopy trees throughout the development on all the lots at a rate of one (1) tree per 1000m<sup>2</sup> and the maintenance of the planted trees for a period of at least five (5) years after planting.
  - d) The installation of tree protection fencing in accordance with the approved tree protection zone (TPZ) on Lot 6 during construction of the subdivision and any development on Lot 6 to protect the tree on the adjoining land to the south (21 Bowen Street).
  - e) No buildings and works shall be constructed outside the approved building envelopes for all lots as shown on the endorsed plans to Planning Permit PLN/2020/540, unless with the prior written consent from the Responsible Authority.
  - f) All boundary fencing for all lots must be of an open rural style (e.g. post and wire) and solid fencing (e.g. paling and Colorbond) is not permitted unless with the prior written consent from the Responsible Authority.

Prior to a Statement of Compliance being issued:

- a) Application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the same Act.
- b) The owner must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.

3. The owner of the land must enter into an agreement with:

- a) A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
- b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

4. **Before the issue of a Statement of Compliance for the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:**
  - a) **A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and**
  - b) **A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.**
5. **Measures must be undertaken to minimise any loss of amenity to the neighbourhood from the development caused by dust, noise, the transport of materials to and from the land and the deposit of mud and debris on public roads, to the satisfaction of the Responsible Authority.**

#### **MRSC Environment Conditions**

6. **Prior to the issue of Certification for the plan of subdivision, and in conjunction with the Functional Layout Plan, a digital copy of a Landscape Masterplan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Landscape Masterplan is to be drawn to scale and prepared by a suitably qualified and experienced landscape designer and is to show:**
  - a) **The locations of street tree planting in various stages of the subdivision. Trees are to be spaced at a minimum of one per lot or every 12 metres, whichever is the lesser.**
  - b) **Topography and existing features, including contours for the subject land and any affected adjacent land.**
  - c) **The location of all trees existing on the site, any in the road reserves adjacent to proposed road upgrades and including any that overhang the site from adjoining land.**
  - d) **Details of tree protection zones for all trees to be retained**
  - e) **Any trees proposed for removal from the site clearly designated.**
  - f) **All areas which will be available for streetscape planting. Prior to the issue of a Statement of Compliance for each state of the sub-division, a digital copy of a detailed landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The landscape plan is to be generally in accordance with the Masterplan but is to focus on the details of the streetscape planting.**
7. **The Landscape plan is to be prepared by a suitably qualified and experienced landscape designer. The plan is to be to scale and overlaid on the approved Engineering plans as required at**

**Condition 12 to ensure coordination with services and other infrastructure.**

**When approved, the plan will be endorsed and form part of this permit and must show:**

- a) **The location of all trees existing within road reserves adjacent to the sub-division and associated road upgrades, including any that overhang the site from adjoining land.**
- b) **Details of tree protection zones for all trees to be retained.**
- c) **New street trees to all new upgraded roads/streets associated with the sub-division**
- d) **Street trees species selection are to tie in with the existing surrounding character, be of a size suitably for road reserve widths at maturity, and be a mix of native and indigenous species to the approval of the Responsible Authority.**
- e) **Typical cross-sections for each street type, dimensioning tree locations, services offsets as set out in Council's Tree Management Policy, 2019 and any other spatial requirements**
- f) **A table of offsets for all utility services and street trees.**
- g) **The following notations:**
  - **Tree planting is to occur between April & September to maximise establishment and survival.**
  - **Tree locations shown on this plan are a guide only and may require adjustment to coordinate with final service locations, Powercor requirements, and 'as constructed' infrastructure.**
  - **Street tree locations are to be set-out and approved on site by the Council Landscape Officer prior to installation**
  - **It is the responsibility of the contractor to confirm the location of all underground services prior to commencement of any excavation.**
  - **An advanced Tree Planting Detail with a minimum 52L Greenwell water saver and three (3) hardwood stakes.**

**8. Landscape Completion**

**The landscaping works shown on the approved landscape plan must be carried out and completed to the satisfaction of the Responsible Authority prior to the issue of a Statement of Compliance for each stage of the sub-division or any other time agreed in writing by the Responsible Authority.**

**9. Landscape Maintenance**

**Landscaping shown on the endorsed landscape plans must be maintained to the satisfaction of the Responsible Authority for a period of two (2) years from the practical completion of the landscaping. During this period, any dead, diseased or damaged plants or landscaped areas are to be repaired or replaced during the period of maintenance and must not be deferred until the completion of the maintenance period.**

**10. In addition to the Landscape Plans, applicants must submit for approval a proposed maintenance schedule and projected costs. This schedule will also be used to ensure the proposed maintenance**

program is consistent with Council standards and to calculate a 35% Landscape Maintenance Liability bond. It will also be useful for the developer to prepare budget projections for the 2-year maintenance requirement.

**NOTES:**

Information regarding Council's preferred street trees, and typical tree planting detail can be requested from the Open Space Unit.

**MRSC Engineering Conditions**

11. Prior to the certification of the Plan of Subdivision for the Stage 1, an amended Subdivision Layout Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and submitted electronically as a PDF. The plan must be generally in accordance with the submitted plan but modified to show:

- a) Typical cross-section showing on the plan with gravel road surface must be removed from infrastructure plan and replace with sealed surface.
- b) Show all the proposed crossover in the plan of subdivision.
- c) McCrane Street must be sealed 6.6 wide from the intersection for at least 12 metres.

12. Prior to the submission of Engineering Plans and certification of the relevant plan of subdivision for each stage, a Functional Layout Plan for the subdivision or the stage of subdivision must be submitted to and approved by the responsible authority. When approved the functional layout plan will be endorsed and will then form part of the permit. The functional layout plan must be drawn at a scale of 1:500 to acceptable standards and an electronic copy (PDF) must also be provided. The functional layout plan must generally incorporate the following:

- a) Topography and existing features, including contours for the subject land and any affected adjacent land.
- b) Identification by survey of all trees (or group of trees) existing on the site, including dead trees and those that overhang the site from adjoining land.
- c) Details of tree protection zones for all trees to be retained on site.
- d) Any trees proposed for removal from the site (including dead trees) clearly designated.
- e) Typical cross-sections for each street type, dimensioning individual elements, services offsets and any other spatial requirements.
- f) Intersections with interim and/or ultimate treatments.
- g) A table of offsets for all utility services and street trees.
- h) Location and alignment of kerbs, indented parking spaces, footpaths, shared paths, bus stops and traffic controls.
- i) The proposed minor drainage network and any land required for maintenance access.
- j) The major drainage system, including any watercourse, lake, wetland, silt pond, and/ or piped elements showing preliminary



- sizing.
- k) Overland flow paths (100 year ARI) to indicate how excess runoff will safely be conveyed to its destination.
  - l) Drainage outfall system (both interim and ultimate), indicating legal point of discharge and any access requirements for construction and maintenance.
  - m) Preliminary location of reserves for electrical kiosks.
  - n) Works external to the subdivision, including both interim and ultimate access requirements.
  - o) Proposed linkages to future streets, open space, regional path network and surrounding land.
  - p) The location, height, width and form of all retaining walls.
  - q) Splays on all corner lots.
13. Prior to the commencement of works for each stage of the subdivision, Engineering Plans must be submitted to and approved by Responsible Authority including payment of plan checking and supervision fees. The plans must include:
- a) All necessary computations and supporting design documentation for any structure, civil and drainage infrastructure and geotechnical investigation report.
  - b) Details of any cut and fill earthworks including retaining walls.
  - c) Fully sealed pavements with edge strips or kerb and channel where appropriate.
  - d) Provision of concrete footpaths in all streets and reserves.
  - e) Underground drains incorporating features to prevent litter, sediments and oils from entering the drainage system and/or cut-off drains to intercept stormwater run-off from adjoining properties.
  - f) Underground stormwater drainage to each lot in the subdivision within own boundaries.
  - g) Water sensitive urban design measures.
  - h) Provision for all services and conduits (underground) including alignments and offsets.
  - i) Provision of public street lighting and underground electricity supply within all streets and reserves where appropriate.
  - j) A new vehicle crossing for each lot.
  - k) Temporary turnaround areas within the site for waste collection vehicles at the temporary dead end of any road.
  - l) Traffic control measures including street name signs.
  - m) A separate signage and line marking identifying the road layout, proposed signs, line- marking, RRPMS and a sign schedule.
  - n) Survey details of the canopy trunk location and size of trees to be retained and associated tree protection zone.
  - o) Permanent survey marks, levelled to the Australian Height Datum and coordinated to the Australian Map Grid.
14. Prior to issue of a Statement of Compliance for each stage of the subdivision, all works shown on the approved Engineering Plans must be constructed or carried out all to the satisfaction of the Responsible Authority.
15. Prior to the certification of the Plan of Subdivision for each stage, the

permit holder must create a notice of restriction on the Plan of Subdivision to include a minimum 3000L rainwater tank for each new dwelling on a lot such that the tank will be connected to supply water for toilet flushing and outdoor usage to the satisfaction of the Responsible Authority.

16. Prior to the commencement of works for each stage of the subdivision, an “Asset Protection Permit” must be obtained from Council for any of the following circumstances:

- a) Entering a building site by means of a motor vehicle having a gross weight exceeding two tonnes.
- b) Occupying a road for works.
- c) Connecting any land to a stormwater drain.
- d) Opening, altering or repairing a road.
- e) Opening, altering or repairing a drain.
- f) Accessing a building site from a point other than a vehicle crossing.

17. At least 14 days prior to commencement of works for each stage of the subdivision a Site Management Plan must be submitted to and approved by the Responsible Authority. The Site Management Plan must contain the following:

- a) Name and contact details of appointed Civil Contractor and Superintendent.
- b) Existing condition survey of all existing assets including private properties
- c) Construction Management Plan
- d) Traffic Management Plan
- e) Environmental Management Plan
- f) Occupational Health & Safety and Job Safety Analysis Plans
- g) Council issued Asset Protection Permit
- h) Council approved Engineering Plans

18. All works must be carried out generally in accordance with measures set out in the above documents approved by the Responsible Authority.

19. Prior to the issue of a Statement of Compliance for each stage of the subdivision, all land to be filled and to be used for a dwelling must be filled and compacted in accordance with Australian Standard AS3798:2007. The results of the tests must be produced and be to the satisfaction of the Responsible Authority.

20. Prior to the issue of a Statement of Compliance for each stage of the subdivision, the following ‘as-constructed’ documentation for road, drainage and public open space assets must be submitted to and approved by the Responsible Authority:

- a) As-constructed drawings in hardcopy A3 format that include all alterations made during construction.
- b) As-constructed drawings in AutoCAD (2000) and Acrobat PDF formats that include all alterations made during construction.
- c) Asset information in digital format and in the form of a schedule of quantities.

21. The subdivision is to be provided with a drainage system to a design approved by the Responsible Authority and such that:
  - a) The subdivision as a whole is provided with a legal point of discharge approved by the Responsible Authority and any other statutory authority from which approval must be received for the discharge of drainage.
  - b) All drainage courses or outfall drainage lines required to the legal point of discharge and which pass through lands other than those within the boundaries of the subdivision must be constructed at no cost to the Responsible Authority.
  - c) All drainage courses located within allotments must be contained within expressed drainage easements.
  - d) The flow paths of a 1 in 100 year ARI storm need to be determined and the subdivision designed such that no private property is inundated.
  - e) The drainage system must have provision for run-off from the upstream catchments and include any downstream works necessary to manage flows from the subdivision.
  - f) Performance objectives of “Best Practice Environmental Management Guidelines” (CSIRO 1999) are satisfied.
22. The subdivision is to be constructed in accordance with Macedon Ranges Shire Council’s Policy Engineering Requirements for Infrastructure Construction (June 2010).
23. No polluted and/or sediment laden run-off is to be discharged directly or indirectly into drains or watercourses. Soil erosion control measures must be employed throughout the development works in accordance with Construction Techniques for Sediment Pollution Control (EPA 1991) and Environmental Guidelines for Major Construction Sites (EPA 1995) to the satisfaction of the Responsible Authority.
24. The creation and removal of easement shown on the endorsed plan must not be altered without the written consent of the Responsible Authority.
25. Before the certification of the plan of subdivision, the owner must enter into and register on the title an agreement with the Responsible Authority in accordance with Section 173 of the Planning and Environment Act 1987. This agreement must ensure that the land must not be further subdivided so as to increase the number of lots. The owner must pay all costs associated with the preparation, execution and registration of the agreement.
26. Before the development commences, a Construction Management Plan must be submitted to and approved by the Responsible Authority. The management plan must show:
  - a) Measures to control erosion and sediment and sediment laden water runoff including the design details of structures;
  - b) Dust control;
  - c) Where any construction wastes, equipment, machinery and/or earth is to be stored/stockpiled during construction;

- d) Where access to the site for construction vehicle traffic will occur;
  - e) The location and details of a sign to be erected at the entrance(s) of the site advising contractors that they are entering a 'sensitive site' with prescribed tree protection zones and fences.
  - f) The location of any temporary buildings or yards.
27. Control measures in accordance with the approved Site Management Plan shall be employed throughout the construction of the works to the satisfaction of the Responsible Authority. The Responsible Authority must be kept informed in writing of any departures from the Site Management Plan. If in the opinion of the Responsible Authority the departure from the approved plan is significant then an amended plan must be submitted to and approved by the Responsible Authority. The approved measures must be carried out continually and completed to the satisfaction of the Responsible Authority.
28. Polluted drainage must be treated and/or absorbed on the lot from which it emanates to the satisfaction of the Responsible Authority. Polluted drainage must not be discharged beyond the boundaries of the lot from which it emanates or into a watercourse or easement drain.
29. The layout of the subdivision as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

**Powercor Conditions**

30. This letter shall be supplied to the applicant in its entirety.
31. The plan of subdivision submitted for certification under the Subdivision Act 1988 shall be referred to the Distributor in accordance with Section 8 of that Act.
32. The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards.

**NOTE:**

Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make such supplies available, with the cost of such works generally borne by the applicant.

33. The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).

**NOTE:**

Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.

34. The applicant shall, when required by the Distributor, set aside areas with the subdivision for the purposes of establishing a substation or substations.

**NOTE:**

Areas set aside for substations will be formalised to the Distributor's requirements under one of the following arrangements: RESERVES established by the applicant in favour of the Distributor. SUBSTATION LEASE at nominal rental for a period of 30 years with rights to extend the lease for a further 30 years. The Distributor will register such leases on title by way of a caveat prior to the registration of the plan of subdivision.

35. The applicant shall establish easements on the subdivision, for all existing

Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements. Notes: Existing easements may need to be amended to meet the Distributor's requirements. Easements required by the Distributor shall be specified on the subdivision and show the Purpose, Origin and the In Favour of party as follows:

Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited / In Favour Of
	Power Line		Section 88 - Electricity Industry Act 2000	Powercor Australia Ltd

**Goulburn-Murray Water Conditions**

36. Any Plan of Subdivision lodged for certification must be referred to Goulburn- Murray Rural Water Corporation pursuant to Section 8(1)(a) of the Subdivision Act.
37. All works within the subdivision must be done in accordance with EPA Publication 960 "Doing It Right on Subdivisions, Temporary Environmental Protection Measures for Subdivision Construction Sites", September 2004.
38. Each lot must be provided with connection to the reticulated sewerage system in accordance with the requirements of the relevant urban water authority.
39. All stormwater discharged from the site must meet the urban run-off objectives and Standard C25 as specified in Clause 56.07-4 of the Victorian Planning Provisions. All infrastructure and works to manage stormwater must be in accordance with the requirements of the Responsible Authority.

**Coliban Water Conditions**

40. The owner is required reach agreement with Coliban Water for the

provision of reticulated water and sewerage services to each of the lots within the subdivision and comply with any requirements arising from any effect of the proposed development on Coliban Water assets. Services are to be provided in accordance with our specifications.

41. The reticulated potable water and sewer mains extensions required to service each of the proposed lots within this development site, must be finalised in accordance with Coliban Water's Developer Installed Works process.
42. Due to the elevation and loading the proposed development will place on Coliban Water's existing assets, the owner will be required to reach agreement with Coliban Water for the necessary upsizing of approximately 570m of existing water mains including a Booster Pump to ensure that each of the lots can be serviced, to meet the minimum requirements of our Customer Charter.
43. All Coliban Water assets within the subdivision, both existing and proposed, are to be protected by an easement in favour of Coliban Region Water Corporation.
44. Coliban Water does not guarantee fire flows. Coliban Water consent is required, if the developer intends on utilising an in-line booster pump, this arrangement and a pump rate must be provided to Coliban Water. Alternatively, on-site storage for fire services is always our preference.
45. Applications through our Consent to Connect Process are required prior to any water supply service and/or drain being amended or connected to a Coliban Water asset.
46. All private works for water supply and sanitary drainage must be constructed in accordance with the National Plumbing and Drainage Code of Australia being AS 3500 and or any relevant requirements of Coliban Water.
47. The development site is located over the dividing boundary between Coliban Region Water Corporation and Central Highlands Water service areas. Please ensure that the proposal is forwarded to Central Highlands Water for comment.

**Department of Transport / VicRoads Conditions**

48. Prior to the issue of the Statement of Compliance for the subdivision;
  - a) The intersection of Irwin Street / Daylesford-Malmsbury Road must be constructed to a standard approved to the written satisfaction and at no cost to Head, Transport for Victoria (Head, TfV); and
  - b) Irwin Street must be sealed to a minimum of 10 metres from the Daylesford-Malmsbury Road edge of seal.

**NOTE:**

No work must be commenced in, on, under or over the road reserve without having first obtaining all necessary approval under the Road

**Management Act 2004, the Road Safety Act 1986, and any other relevant acts or regulations created under those Acts.**

**Separate ‘detailed design’ approval (fees and charges apply) and the specifications of these works are required under the Road Management Act. For the purposes of this application, the works will include provision of:**

- c) Sealing of Irwin Street**
- d) Any other work in the arterial road reserve.**

**Please forward details marked attention to Steven Attard at:**

**[nr.mailbox@roads.vic.gov.au](mailto:nr.mailbox@roads.vic.gov.au)**

**Permit Expiry**

**49. This permit will expire if one of the following circumstances applies:**

- a) The plan of subdivision for Stage 1 is not certified within two years of the date of this permit.**
- b) The plan of subdivision for Stage 2 is not certified within four years of the date of this permit.**
- c) The plan of subdivision for Stage 3 is not certified within six years of the date of this permit.**
- d) The plan of subdivision for each Stage is not registered at Land Registry within five years of the certification of the subdivision for that Stage.**

**In accordance with Section 69 of the Planning and Environment Act 1987 an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.**

**Permit Notes:**

- Future owners of the land must be made aware of the existence of this permit.**

## **Background**

### Subject land

The subject site is located on the western edge of the Malmesbury township, approximately 1.5km from the centre of the town. It comprises a group of 29 lots bound by McCrane Street to the north, Bever Street to the east, Irwin Street to the south and Bowen Street to the west. A pair of lots within the above boundary, facing Bowen Street, is not part of the subdivision. The land is bisected by the Service Street road reserve. The total site area is 19.87 hectares.

The site is currently used for agricultural purposes, predominantly cropping and grazing. There are no waterways traversing the site, although there are several disused dams and bores within the northern and southern portions of the site. The northern portion gradually falls from its west and south-west down to its eastern side. The southern portion undulates gently and also has a gradual fall from west to east.

Canopy trees line some of the boundaries both within the property and within road reserves. These appear to have all been planted in conjunction with the agricultural use of the land. There are also some canopy trees within the site, including a significant Eurabbie tree near Bever Street towards the southeast corner of the land.

### Surrounds

Land to the east is rural living zoned land at the current western edge of the township. Dwellings face the land along this boundary, separated by Bever Street. The lots vary greatly in size, with some approximately 1200m<sup>2</sup> but others (at the north end of Bever Street) either approaching or larger than 1ha.

Land to the west is also zoned and used for rural living, with larger lots (from approximately 1.2 to 5ha) than land to the east. Land to the south is in the farming zone and used for agriculture.

The Calder Highway connects (through the McCrane Street local road reserve) to the northern corner of the site and the southern corner connects to Daylesford-Malmesbury Road.

The road reserves surrounding the site are all approximately 30 metres wide, with the exception of Irwin Street to the very south, which is approximately 20 metres wide. The roads are all of a rural standard with gravel carriageways in McCrane Street, Service Street, the northern half of Bowen Street, and sections at the northern and southern end of Bever Street. Irwin Street and the southern half of Bowen Street are unmade.

### Registered restrictive covenants and/or Section 173 Agreements affecting the site

Current copies of title have been provided with the application. Multiple lots are subject to crown grant reservations which relates to rights to search for metals and to undertake mining on the subject site. The proposal does not breach this reservation. No other Covenants, Section 173 Agreements or restrictions are registered on the titles to this property.

### Previous planning permit history

No relevant planning permit history for the subject property has been found.

## **Proposal**



The application proposes re-subdivision of the 29 existing lots into 29 new lots in three (3) stages. This re-subdivision will create 29 lots suitable for future construction of dwellings.

The lot sizes will range from 4822m<sup>2</sup> to 13 890m<sup>2</sup> and vary in shape. All lots will be fully serviced with sewer, water and electricity.

The original application included a battle axe configuration for lot 21. Given Council concerns in this regard the applicant has formally amended the application to remove the battle axe configuration with a revised layout affecting lots 17 to 21. These lots now all front to Service Street.

Each lot will have direct access to upgraded road reserves surrounding the site. All roads except Bowen Street would be sealed. Bowen Street north of Service Street will have a gravel surface whilst the section south of Bowen Street will not be constructed as it does not provide access to any lots.

All of the existing canopy trees and vegetation rows, within the site and in the road reserves, will be retained through the proposed lot configuration and infrastructure upgrade works. However a planning permit is required for the removal of native vegetation as some native grasses exist on the land (although without forming a native vegetation patch).

#### **Relevant Macedon Ranges Planning Scheme controls**

Section 46AZK of the Planning and Environment Act 1987 and Clause 51.07 require Council as a Responsible Public Entity to not act inconsistently with any provision of the Statement of Planning Policy (SOPP) in exercising decision making powers. The proposal in general complies with the Statement of Planning Policy and the application will meet the objectives and strategies specified in the policy.

#### Planning Policy Framework

<b>Clause No.</b>	<b>Clause name</b>
11	Settlement
12	Environment and Landscape Values
13.02	Bushfire
14	Natural resource management
16	Housing

#### Local Planning Policy Framework

<b>Clause No.</b>	<b>Clause name</b>
21	Municipal Strategic Statement
21.03	Vision - Strategic Framework Plan
21.05	Environment and Landscape Values
21.07	Natural Resource Management
21.09-2	Rural residential
21.13-9	Malmsbury

#### Zoning

<b>Clause No.</b>	<b>Clause name</b>
35.03	Rural Living Zone Schedule 5

#### Overlay

Clause No.	Clause name
42.01	Environmental Significance Overlay Schedule 4
44.01	Erosion Management Overlay Schedule 1

Particular Provisions

Clause No.	Clause name
52.17	Native Vegetation
52.29	Land Adjacent to a Road Zone, Category 1
53.01	Public Open Space Contribution and Subdivision

General Provisions

Clause No.	Clause name
65	Decision Guidelines
66	Referral and Notice Provisions

**Cultural Heritage Management Plan assessment**

	Assessment criteria	Assessment response
1	Is the subject property within an area of cultural heritage sensitivity as defined within the cultural heritage sensitivity mapping or as defined in Part 2 Division 3 or 4 of the <i>Aboriginal Heritage Regulations 2018</i> ?	No
2	Does the application proposal include significant ground disturbance as defined in Part 1 Regulation 5 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A
3	Is the application proposal an exempt activity as defined in Part 2 Division 2 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A
4	Is the application proposal a high impact activity as defined in Part 2 Division 5 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A

Based on the above assessment, a Cultural Heritage Management Plan is not required in accordance with Part 2 Division 1 of *Aboriginal Heritage Regulations 2018*.

Permit Triggers

Clause No	Details
35.03-3	A permit is required to subdivide land.
42.01-2	A permit is required to subdivide land and remove vegetation.
44.01-5	A permit is required to subdivide land.
52.17-1	A permit is required to remove, destroy or lop native vegetation, including dead native vegetation.
52.29-2	A permit is required to alter access to a road in a Road Zone, Category 1.

### The process to date

The application was referred to the following authorities:

Authority (Section 55)	Response
Coliban Water	No objection subject to conditions.
Goulburn-Murray Water	No objection subject to conditions.
Powercor	No objection subject to conditions.
Downer	No objection and no conditions.
DELWP	No objection and no conditions.
Department of Transport / VicRoads	No objection subject to conditions.
Authority (Section 52)	Response
CFA	No objection and no conditions.
MRSC Engineering	No objection subject to conditions.
MRSC Environment	No objection and no conditions.
MRSC Open Space	No objection subject to conditions.
Hepburn Shire	No objection and no conditions.

### Advertising

Pursuant to Section 52 of the *Planning and Environment Act 1987*, the application was advertised by sending notices to the owners and occupiers of surrounding/adjoining land and by requiring notices to be erected on the land for a period of 14 days.

Ten (10) submissions have been received in response to notification.

Concerns raised relate to:

- Provision of all services and roads;
- Impact on views and landscape;
- Retention of existing Hawthorn hedgerow;
- Stormwater provisions are not sufficient;
- Telecommunications provisions are not adequate,
- Added road connections will increase traffic, dust, and negatively impact resident amenity;
- Impact on amenity including traffic, noise and night pollution;
- Lack of detail regarding entrances to lots;
- Eastern section of Service Street should also be sealed;
- Require detail as to the upgrade of the north part of Bowen Street and staging;
- Inadequate advertising of application;
- Inconsistent with planning scheme;
- Impact on wild life;
- Set back to boundaries; and
- Tree protection.

Comments on the objections received will be provided further below.

### **Officer assessment**

#### General

The proposed subdivision is required to be assessed against the provisions of the Macedon Ranges Planning Scheme, including the Planning Policy Framework, Local Planning Policy Framework, Rural Living Zone Schedule 5, the Erosion Management Overlay Schedule 1, the Environmental Significance Overlay Schedule 4, and the

decision guidelines of Clause 65. Matters for consideration include the suitability of the proposed lots sizes and lot layout, the impact of the subdivision upon the surrounding land and the impact of the subdivision upon the use of the land for agriculture.

On balance it is considered that the subdivision is in keeping with the relevant provisions of the PPF and Local Planning Policy Framework as follows.

#### Planning Policy Framework (PPF)

Clause 12.01-2s – Native vegetation management has an objective:

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

A biodiversity assessment has been submitted and the native vegetation on the land is not significant, save for one large indigenous Eurabbie tree that will be protected by a S173 agreement. No tree removal is proposed and the native grasses on the land do not form a native vegetation patch, with the land having been heavily altered by its history of agricultural use. Both council's Environment Unit and the Department of Environment, Land, Water and Planning have commented on the proposal and neither has objected.

Clause 13.02-1S – Bushfire planning primarily relates to areas subject to the Bushfire Management Overlay which does not apply to the subject property. However, areas included in bushfire prone areas are also required to have bushfire risk assessed in specified circumstances that include subdivisions creating more than ten (10) lots.

The bushfire risk has been assessed in the submitted report. Any future construction of dwellings on the lots would need to meet designated construction standards, and the connection to reticulated water will facilitate bushfire protection. The CFA raised no concerns with regards to the proposal.

Clause 14.01-2S seeks to encourage sustainable agricultural land use. The proposal for the subdivision is considered to be a sustainable and suitable use for the subject site, with the lot sizes still of sufficient size to allow some agricultural use. The subject land has been identified and zoned for rural living development. Development of the land will assist in satisfying demand for hobby farm development and thus reduce the pressure for such development in the Farming Zone thereby preserving productive farmland.

Clause 16.01-3S outlines the need to identify land suitable for rural residential development. The policy seeks to achieve this through the following strategies:

- *Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.*
- *Encourage the consolidation of new housing in existing settlements where investment in physical and community infrastructure and services has already been made.*
- *Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.*
- *Ensure planning for rural residential development avoids or significantly reduces adverse economic, social and environmental impacts by:*
  - *Maintaining the long-term sustainable use and management of existing natural resource attributes in activities including agricultural production, water, mineral and energy resources.*

- *Protecting existing landscape values and environmental qualities such as water quality, native vegetation, biodiversity and habitat.*
- *Minimising or avoiding property servicing costs carried by local and state governments.*
- *Maintaining an adequate buffer distance between rural residential development and intensive animal husbandry.*
- *Ensure land is not zoned for rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural resources.*
- *Discourage development of small lots in rural zones for residential use or other incompatible uses.*

The proposal maintains twenty-nine (29) rural living lots on suitably identified land. The reconfiguration will improve the viability of land for rural living by better distributing the land between lots. This is in accordance with the policy outlined above.

#### Local Planning Policy Framework (LPPF)

The land use vision outlined within Clause 21.03-2 of the Local Planning Policy Framework states that development and land use planning will be guided by the following vision:

- *The Shire remains predominantly rural, with a hierarchy of settlements set in an attractive and productive rural environment.*
- *Agriculture remains an important part of the character and economy of the Shire, especially the high quality soils in the east of the Shire and in the north where there has been less land fragmentation. Effective land management is a key priority.*
- *Protection of water quality, especially potable water supply is fundamental. Land use and development, particularly unserviced development in open water supply catchments, is minimised and managed to ensure water quality is not compromised.*
- *Native vegetation is retained and enhanced, balanced with fire protection considerations. Native vegetation is vital for the environmental health of the Shire and is a significant component of the Shire's character.*
- *Rural living areas will be planned for well in advance and areas will be identified to achieve a fixed supply up to 2045 in well serviced areas with good internal connectivity and integration with external road and path networks.*

The vision and strategic direction for the land as identified in the Rural Framework plan at Clause 21.03-3 is as follows:

*“Encourage and support rural living development in Rural Living Zone areas. The vision for these areas is a rural area with a range of property sizes offering different lifestyle opportunities and landscapes from low density residential to part time farming.*

*Any new development including housing, subdivision or re-subdivision is to preserve the existing rural character.”*

The vision is supported by specific policy objectives which aim:

- *To conserve the biodiversity values of the Shire by protecting, enhancing, managing and restoring indigenous vegetation and fauna habitat (Clause 21.05-1 – Objective 1).*

- *To preserve significant exotic and native vegetation as a fundamental component of the Shire's character and landscape* (Clause 21.05-1 – Objective 7).
- *To maintain and enhance the existing rural landscapes* (Clause 21.05-2 – Objective 1).
- *To preserve significant exotic and native vegetation as a fundamental component of the Shire's character and landscape* (21.05-2 – Objective 7)
- *To protect agricultural land.* (21.07-1 – Objective 1)
- *To protect the quality soils of land with high capability for agriculture.* (21.07-1 – Objective 3)
- *To ensure land in rural areas is managed in a sustainable manner to improve the condition of the environment* (Clause 21.07-2 – Objective 1).
- *To retain and improve water quality and yield in the Special Water Supply Catchments, waterways and groundwater* (Clause 21.07-3 – Objective 1).

Clause 21.09-2 seeks further to ensure rural residential development is sustainable and gives priority to the environment and landscape. The applicable strategies include avoiding rural residential development which does not adversely impact on current and future agricultural and economic activities and demonstrates site specific sustainability, including waste water. It is considered that the existing rural character will be maintained, given that the proposed lot sizes would be generally consistent with the surrounding lot sizes and the average lot size on this site will not be changed (since the total number of lots is not to change).

These provisions emphasise the need to develop rural living land so as to reduce the pressure from rural residential development on land in the Farm Zone. They also focus on the idea of a diversity of lot sizes to permit a variety of activities and lifestyle opportunities. It is considered that the proposal is consistent with this strategic direction as the range of lot sizes offers different lifestyle opportunities and landscapes from low density residential to part time farming. It is further considered that the existing rural character will be maintained given that the proposed lot sizes would be consistent with the surrounding lot sizes.

The land already exists as 29 separate parcels, meaning that the proposed re-subdivision will not further fragment agricultural land.

The proposal is identified in the Malmsbury Township Framework Plan at clause 21.13-9 as for "longer term development." A relevant strategy under this clause is to "ensure development on the periphery of the town within the township boundary is of a semi-rural residential form with larger lots, significant landscaping and generous setbacks." The proposal accords with this strategy.

Overall, the proposal is generally compliant with the Planning Policy Framework and Local Planning Policy Framework.

#### Rural Living Zone

The site is within the Rural Living Zone Schedule 5, which has a minimum lot size for subdivision of 8ha. However, Clause 35.03-3 allows for smaller lots if "*The subdivision is the re-subdivision of existing lots and the number of lots is not increased.*" The site currently consists of 29 separate titles and the number of titles is not increased by the proposal. It is noted that further subdivision would be prohibited under the current controls.

While it can be expected that the proposal will facilitate the shift from dedicated

agricultural use of the land to a rural-residential use, the proposed subdivision will maintain lot sizes having capacity to undertake small scale agricultural pursuits on the site which is suited and supported. This is consistent with both the existing landholding pattern and the purpose of the zone, for the reasons outlined in the preceding policy section.

Indicative building envelopes have been provided on the submitted design response plan to demonstrate that appropriate locations are available within each site to build a dwelling and provide access ways. These envelopes have considered the vegetation to be retained, existing infrastructure pipes, proposed easements and the topography of the land. The envelopes also demonstrate appropriate separation distances can be provided between buildings on each proposed lot.

The proposal is overall considered consistent with the purpose of the Rural Living Zone Schedule 5.

### Overlays

#### Environmental Significance Overlay Schedule 4

The subject site is affected by the Environmental Significance Overlay, Schedule 4 (ESO4). Schedule 4 relates to the protection and maintenance of water quality and water yield within the Eppalock Water Supply Catchment Area. The land would be connected to reticulated sewerage and as such would be consistent with the purpose of the overlay.

The proposal has been referred to water authorities who have not objected, subject to conditions.

#### Erosion Management Overlay – Schedule 1 (Malmsbury Township)

The land is within Erosion Management Overlay Schedule 1 (EMO1). The purpose of this is to ensure that the water quality of Malmsbury Reservoir is not affected. A services and infrastructure plan has been submitted that addresses these issues satisfactorily. It is noted that the overlay would still trigger planning permits for the development of future dwellings, allowing further assessment and control as development occurs.

#### Clause 52.17 Native Vegetation

The purpose of Clause 52.17 is to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):

1. *Avoid the removal, destruction or lopping of native vegetation.*
2. *Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.*
3. *Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*

The purpose of Clause 52.17 is also to *manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.*

As previously mentioned a biodiversity assessment has been submitted. This notes that the agricultural use of the land has substantially altered the land and the grasses

present on the land do not form a patch for the purposes of the Guidelines. No trees are to be removed and the only significant tree (the Eurabbie on proposed lot 24) will be protected by a S173 agreement.

#### Clause 52.29 Land Adjacent to a Road Zone Category 1

The proposal would require altered access to the VicRoads controlled Calder Highway. The proposal has been referred to VicRoads / Department of Transport who have not objected, subject to conditions.

#### Clause 53.01 Public Open Space Contribution

Clause 53.01 (Public Open Space) requires that *'a person who proposes to subdivide land must make a contribution to the council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under Section 18 of the Subdivision Act 1988'*.

The proposal is for the re-subdivision of land into the same number of lots and no additional lots will be created. An open space contribution will therefore not be sought.

#### Objections

Objectors raised issues with regards to servicing (including roads, sewerage, drainage, and impacts upon general community infrastructure). The application was referred to all the relevant service authorities including stormwater, roads, electricity, sewer and water and no objections were received subject to conditions that will be included in any permit granted. It is considered that the land can be appropriately serviced. It is also acknowledged that the number of lots is not changed by this proposal, meaning that the servicing implications of the proposal are limited.

Several objections raised concerns about the loss of views and outlook across agricultural land. However the use of the land for rural residential purposes is consistent with both the zone and the existing subdivision pattern.

Similarly, while objections raised concern about the amenity impact of a shift to rural living from agricultural use, this shift is anticipated by the zone. The lot sizes are sufficient to allow separation of dwellings consistent with the expectations of the zone, and the revised layouts of many lots will allow improved outcomes in this regard.

It is also noted that some additional development control will also exist in the future for the dwelling lots less than 5000m<sup>2</sup> as these will require permission under the zone for a dwelling to be constructed. The EMO1 would also still trigger planning permits for the development of future dwellings, allowing further assessment and control as development occurs.

To provide some screening for the site the existing Hawthorn hedge in Bever Street will be retained as a condition of any permit issued and a Section 173 agreement (noting that this is a weed species).

Objectors raised concerns about the use of the land by wildlife. This is, however, highly disturbed agricultural land that is already zoned for rural residential use. The Eurabbie tree is noted in the biodiversity assessment as having habitat value and this is to be protected using a S173 agreement.



In response to objector concerns the developer has also amended the proposal to:

- Upgrade the eastern end of McCrane Street to include a sealed carriageway at its intersection with Bever Street/Calder Highway.
- Provide water supply to 21, 27 and 38 Bowen Street, from the new water mains in Bowen Street, as part of Stage 1 of the development. This is to replace their existing supply which is piped through the subject site. Upsizing of water lines and the installation of a booster pump will increase the pressure and flow currently available to these premises.
- Move the indicative building envelopes on proposed Lots 6 and 7 further north to provide greater separation from the existing dwelling at 21 Bowen Street.

In response to objector concerns the developer has also agreed to semi-mature canopy trees to be planted though out the development at a rate of one (1) tree per 1000m<sup>2</sup>. This will be reflected in permit conditions including a Section 173 agreement to ensure maintenance of the planted trees.

#### **Officer declaration of conflict of interest**

No officers involved in the preparation of this report have any general or material conflict of interest in this matter.

#### **Conclusion**

The proposal meets the policy requirements of the PPF and LPPF with regards to providing additional rural living opportunities. The development is considered suitable within its context and in keeping with the neighbourhood character as there are a mixture of lot sizes and densities within the area. The proposal maintains the existing number of lots on the site and improves their suitability for rural residential development in accordance with policy. The proposal provides housing and diversity in an approved location for rural living and will meet an identified need in local planning policy. The proposal will continue to provide appropriate amenity for it and adjoining residents. The land will be appropriately serviced.

For the above reasons the application is supported subject to appropriate conditions.

**10. APPLICATION TO AMEND PLANNING PERMIT PLN/2014/243/A**

**Buildings and works to construct a building associated with the agricultural use of the land (farm shed)**

**(amendment sought to change the use of farm shed to a dwelling with associated works and to amend the conditions)**

**386 YOUNGS ROAD, MALMSBURY**

**Officer: Awais Sadiq, Coordinator Statutory Planning**

**Council Plan relationship: 3. Improve the built environment**

**Attachments: Plans  
Farm Management Plan  
Department of Agriculture Response  
Statement of Planning Policy**

**Applicant: Macaulay Town Planning**

**Date of receipt of application: 28 January 2021**

**Trigger for report to Planning Committee: Councillor Call-in**

**Background**

Planning Permit PLN/2014/243 was issued on 29 August 2014 allowing buildings and works to construct a building associated with the agricultural use of the land (farm shed).

It is proposed to amend this planning permit to change the use of the farm shed to a dwelling, with associated works and to amend a condition of the planning permit which prohibits human habitation of the building.

The application was advertised. Two (2) objections have been received to date.

Key issues to be considered relate to the impact of the proposal on the agricultural land and the genuine need for a dwelling on the land given scale of agricultural use being proposed for the land and whether proposed agricultural use warrant a dwelling on site.

The application has been assessed against the Macedon Ranges Planning Scheme and is considered not appropriate. It is recommended that a Notice of Decision to Refuse to Grant an Amendment to a Permit be issued.

## **Recommendation**

### **That the Planning Delegated Committee**

**Issue a Notice of Decision to Refuse to Grant an Amendment to a Permit PLN/2014/243/A to change the use of a farm shed to a dwelling with associated works for the land at Crown Allotments 289A, 289B and 289C P/Lauriston 386 Youngs Road, Malmsbury VIC 3446, on the following grounds:**

- 1. The agricultural use proposed is not sufficient to justify the need for a permanent dwelling on site. The farm management plan fails to provide the context of the larger farming operation as it only proposes grazing animal production and fodder production (predominantly) that does not warrant a permanent dwelling on site for management.**
- 2. The proposal is contrary to Clause 14.01 (Agriculture) of the Planning Policy Framework as it does not protect productive farmland due to inappropriate fragmentation which will compromise the long term capacity of the land to be used for agriculture.**
- 3. The proposal is contrary to Clause 14.01 (Agriculture) which seeks to encourage consolidation of agricultural land as there is potential for consolidation of the subject land into the adjoining land to the south.**
- 4. The proposal is contrary to Rural Framework Plan under Clause 21.03-3 as it will result in a dwelling in “Agricultural Landscapes” and “Northern and Southern Catchments” areas as per the plan which aim for the continuation use of the areas for agriculture and to protect agricultural productivity in the northern catchment.**
- 5. The proposal is contrary to Clause 21.07-1 of the Local Planning Policy Framework as it fails to demonstrate and provide adequate justification that the dwelling is required for sustainable agricultural pursuits.**
- 6. The proposal is contrary to Clause 21.13-9 (Malmsbury) which encourages development within the existing Township boundary. The proposal will result in a type of residential development outside the township boundary where the strategy is to restrict such development within the town boundary.**
- 7. The proposal is contrary to the purposes and decision guidelines of the Farming Zone as the dwelling will exacerbate the fragmentation of existing farming land and holdings; remove land from agricultural use; and facilitate an opportunity of a non-agricultural use (dwelling), that would be incompatible with and adversely affect the adjoining and nearby land uses for agriculture.**
- 8. It is considered that the use of the land for a dwelling is not consistent with the MSS requirement to protect agricultural land, facilitate productive agricultural activity and ensure new development is related to the ongoing, productive use of the land for agriculture.**
- 9. The proposal would result in the proliferation of dwellings, and degradation of agricultural land (by fragmentation).**

**10. The proposal is contrary to Clause 51.07 (Macedon Ranges Statement of Planning Policy) as it will be unable to support and encourage agricultural land use.**

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**Existing conditions and relevant history**

Subject land

The subject site is located on the eastern side of Youngs Road, approximately 1.7 kilometres southeast of the Malmesbury town centre. The site consists of three parcels known as Crown Allotments 289A, 289B and 289C, with a government road (unused) separating CA 289C to the north from CA 289A and CA 289B to the south with a total area of approximately 22 Hectares.

CA 289A contains an existing agricultural building with two associated water tanks. A dam is located to the west of the existing agricultural building adjacent to the Youngs Road frontage. There is a derelict cottage located on CA 289C, which is uninhabitable as well as dry bluestone walls that are recognised as having heritage significance under a Heritage Overlay.

There is an existing crossover from Youngs Road to the property that enters the unused government road, which is then used as a driveway into the three allotments. The site is predominantly clear in terms of vegetation.

Surrounds

The surrounding area to the south and west is zoned farming with some allotments developed with dwellings, associated outbuildings, and agricultural uses. Bendigo-Melbourne railway track aligns with the eastern boundary of the site.

Land to the further northeast is zoned Rural Living containing smaller lots, with dwellings with associated outbuildings.

Registered restrictive covenants and/or Section 173 Agreements affecting the site

The title provided with the application shows that the property is not encumbered by any restrictive covenants and/or Section 173 Agreement.

Previous planning permit history

A search of Council's records has found the following permit history:

Permit No.	Description
PLN/2014/243	Buildings and works to construct a building associated with the agricultural use of the land (farm shed)
PLN/2020/545	Use and Development of the Land for a Dwelling (Withdrawn)

**Proposal**

The proposal is to amend the planning permit to allow for the change of use of existing farm shed to a dwelling and associated works.

It is proposed to convert the existing farm shed into a dwelling with a habitable floor area of approximately 216m<sup>2</sup> (108m<sup>2</sup> at ground floor and 108m<sup>2</sup> at first floor).

The dwelling will comprise a laundry, living/kitchen/meals/ lounge areas, bathroom and a toilet at ground floor level. The first floor will comprise three bedrooms, ensuite, toilet and a retreat area. A garage associated with the dwelling use is located at the front of the building. It is setback 20m from the front boundary and

20m from the eastern boundary of CA289A.

The roof and walls of the dwelling are fully clad with colorbond in “Woodland Grey” colour.

The applicant is also seeking to amend the permit to remove the following condition from the permit:

*“The outbuilding hereby permitted shall not be used for human habitation, as defined by the Macedon Ranges Planning Scheme, to the satisfaction of the Responsible Authority.”*

The Applicant justifies the use of the land for a dwelling on the basis of the agricultural use of the site, which includes 60 cows (30 cows in spring and 30 cows in autumn) and production of hay. A farm management plan has been provided with the application.

### **Relevant Macedon Ranges Planning Scheme controls**

#### Section 46AZK of the Planning and Environment Act 1987

Section 46AZK of the Planning and Environment Act 1987 and Clause 51.07 of the Macedon Ranges Planning Scheme require Council as a Responsible Public Entity to not act inconsistently with any provision of the Statement of Planning Policy (SOPP) in exercising decision making powers. Attachment 1 contains the officer assessment against the SOPP.

#### Planning Policy Framework

<b>Clause no.</b>	<b>Clause name</b>
11	Settlement
11.03-3S	Peri-Urban Areas
14.01-1S	Protection of Agricultural Land
14.01-2S	Sustainable Agricultural Land Use
15.03-1S	Heritage Conservation
16.01-3S	Rural Residential Development

#### Local Planning Policy Framework

<b>Clause no.</b>	<b>Clause name</b>
21	Municipal Strategic Statement (MSS)
21.03	Vision-Strategic Framework Plan
21.04	Settlement
21.07	Natural Resource Management
21.08-1	Heritage Conservation
21.13-9	Malmsbury

#### Zoning

<b>Clause no.</b>	<b>Clause name</b>
35.07	Farming Zone

#### Overlay

<b>Clause no.</b>	<b>Clause name</b>
42.01	Environmental Significance Overlay (Schedule 4)
43.01	Heritage Overlay (Schedule 150)

Particular provisions

<b>Clause no.</b>	<b>Clause name</b>
51.07	Macedon Ranges Statement of Planning Policy

General provisions

<b>Clause no.</b>	<b>Clause name</b>
65	Decision Guidelines
66	Referral and Notice Provisions

### Cultural Heritage Management Plan assessment

	Assessment criteria	Assessment response
1	Is the subject property within an area of cultural heritage sensitivity as defined within the cultural heritage sensitivity mapping or as defined in Part 2 Division 3 or 4 of the <i>Aboriginal Heritage Regulations 2018</i> ?	No
2	Does the application proposal include significant ground disturbance as defined in Regulation 5 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A
3	Is the application proposal an exempt activity as defined in Part 2 Division 2 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A
4	Is the application proposal a high impact activity as defined in Part 2 Division 5 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A

Based on the above assessment, a cultural heritage management plan is not required in accordance with Part 2 Division 1 of *Aboriginal Heritage Regulations 2018*.

### The process to date

#### Referral

Authority (Section 55)	Response
Goulburn Murray Water	No objection subject to conditions.
Coliban Water	No objection subject to conditions.

Authority (Section 52)	Response
MRSC Engineering	No objection subject to conditions.
MRSC Health	No objection.
MRSC Heritage	No objection.
MRSC Strategic Planning	No objection.
Department of Agriculture	Comments provided.

#### Advertising

The application was advertised pursuant to Section 52 of the Planning and Environment Act 1987. Two (2) objections for the application have been received.

Following are the concerns raised by objectors:

- No advertising for previous application;
- Illegal conversion of shed to a dwelling;
- Land less than 40 hectares;
- Dwelling on small lot;
- Illegal closure of government road;
- Detrimental impact to the health of water supply;
- Collection of bin.

### Officer assessment

Planning and Local Policies seek to support and enhance agricultural pursuits by ensuring future development, particularly residential development, does not result in the permanent removal of productive agricultural land or inhibit the continuation

and development of existing agricultural uses. These objectives are reiterated in the purpose of the Farming Zone.

The proposed use of the land for a dwelling is not in keeping with the purposes of the zone and is inconsistent with the objectives of both Planning and Local Policy. The information submitted with the application does not reasonably demonstrate the need for a dwelling on the site to operate an agricultural use.

#### Planning Policy Framework

In both direct and indirect references, the Planning Policy Framework (PPF) strongly discourages fragmentation and loss of productive agricultural land. The policies seek to protect Victoria's agricultural base as an important component of the State's economy. Throughout the PPF, preventing dispersed settlement in rural areas, limiting or reducing fragmentation of agricultural land, and discouraging incompatible land uses are the predominant themes in relation to agriculture.

Clause 14.01-1S, relating to the protection of agricultural land aims "*to protect the state's agricultural base by preserving productive farmland.*" The clause states that in considering a proposal to develop agricultural land, the following factors must be considered:

- *Desirability and impacts of removing the land from primary production, given its agricultural productivity.*
- *Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.*
- *Compatibility between the proposed or likely development and the existing use of the surrounding land.*
- *Land capability.*

Collectively, these policies place great emphasis on the importance of protecting existing agricultural land from inappropriate development, which will permanently remove the land from agricultural use. Clause 14.01-1S is particularly clear in requiring a nexus between development of farmland and ongoing productive use of agriculture, to protect against loss of agricultural land.

Clause 16.01-3S aims "*to identify land suitable for rural residential development.*" The relevant strategies associated with this objective also aim to:

- *Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.*
- *Ensure planning for rural living avoids or significantly reduces adverse economic, social and environmental impacts by:*
  - *Maintaining the long-term sustainable use and management of existing natural resource attributes in activities including agricultural production, water, mineral and energy resources.*
- *Discourage development of small lots in rural zones for residential use or other incompatible uses.*

The use of the subject site for a dwelling is not consistent with the planning policy in relation to rural and regional development, as it will permanently remove land from agriculture and creates an outcome where the potential for surrounding land for agriculture would become further limited.



This position is supported by Planning Policy put in place to guide where rural-residential type development should occur (Clause 16.01-3S). Specifically this policy requires that *'land not be zoned for rural living or rural residential development if it will encroach on high quality productive agricultural land...'*

It is also the intent of Planning Policy to encourage consolidation of existing rural settlements rather than facilitate dispersed and isolated development. The associated strategies are intended to protect land for agriculture and ensure that housing development is limited to that which is required to improve agricultural production. Submitted Farm Management Plan is not adequate to justify the need for a dwelling on the site. The dwelling does not relate to a genuine need to facilitate agriculture and operation of proposed agricultural use.

The adjoining land to the south is under the same ownership and contains a dwelling. It has an area of approximately 47 hectares and an opportunity therefore exists for the consolidation of land into a larger farming enterprise which the planning policies seek to achieve.

The application was referred to Agriculture Victoria for comment, who made similar comments on the application:

*"A manager's residence in support of this size of farming operation and to support effective succession planning may be justified, however it is noted that the house on the adjoining property (owned by the parents) was stated to be leased out. This undermines the assertion that the dwelling is required when an existing dwelling could be made available for the stated purpose."*

In *Ward v Macedon Ranges SC* [2013] VCAT 1758, Tribunal Member Potts discusses the importance of the consolidation of small agricultural lots by stating:

*"Planning policy at a state and local level seeks for land to be available for consolidation into larger enterprises consistent with a vision for broad acre agricultural activity. Allowing a dwelling on this land would mean future consolidation into larger land holdings would be unlikely. The effect of the dwelling would be to de- couple this land from its agricultural value and hence the purposes of the zone."*

In *Morabito v Macedon Ranges SC* [2018] VCAT 1313, Tribunal Member Rundell discussed the importance of above policies while considering the proposal for dwelling in Farming Zone:

*"The reasons behind the policies include not having agricultural land removed from production because it would be used as a dwelling. The policies also aim to prevent smaller agricultural lots being used as rural lifestyle lots because such use fragments, or prevents the consolidation of smaller lots into larger agricultural holdings that can be used as a viable agricultural businesses. Ad hoc incremental development of small lots for dwellings can encourage land values to rise, thereby making consolidation of agricultural lots more difficult. Dwellings may also be incompatible with agricultural activities on adjoining and nearby land. At the core of the above strategies is the proposition that agricultural land (particularly land with good quality soils) is a rare and valuable resource that needs to be preserved for agriculture in the long term."*

Planning Policy has emphasised the need to protect agricultural land, particularly

from encroachment of urban development. In this case the development of a dwelling on the site, would serve to prevent the use of the subject site as part of a larger agricultural land holding. The existing lot could still easily be amalgamated with adjoining lots to form part of a larger agricultural enterprise.

#### Local Planning Policy Framework

Clause 21.03-2 – Land use vision states the following:

*“Agriculture remains an important part of the character and economy of the Shire, especially the high quality soils in the east of the Shire and in the north where there has been less land fragmentation. Effective land management is a key priority.”*

The “Rural Framework Plan” associated with this clause identifies the site being located in an areas of “Agricultural Landscapes” and “Northern Catchments”. Development in these areas should not prejudice the agricultural activities because they contribute to the character and economy of the Shire.

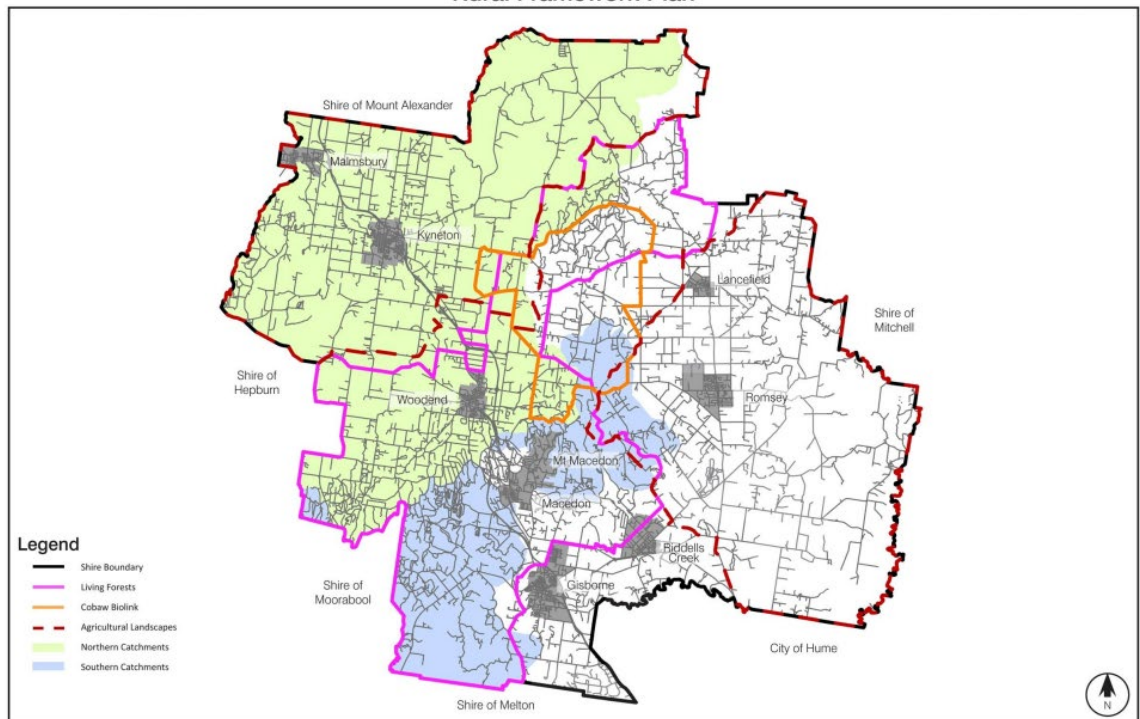
Vision and strategic direction for the “Agricultural Landscapes” shown on the rural framework plan is:

*“Continue to use agricultural landscapes for stock raising (including sheep, cattle and horses) and intensive and extensive cropping. Development should not prejudice these agricultural activities because they contribute to the character and economy of the Shire.”*

Similarly vision and strategic direction for the “Northern and Southern Catchments” shown on the rural framework plan is:

*“Protect water quality and quantity, agricultural productivity in the northern catchment and encourage rural residential only in the more fragmented southern catchment where detailed land capability studies demonstrate there is no negative impact on water quality or agricultural uses.”*

## Macedon Ranges Rural Framework Plan



Local policy further emphasises the intrinsic value of agricultural land particularly Clause 21.07-1 (Agriculture) which emphasises the importance of agriculture as an important contributor to the productivity and economy of the shire.

Clause 21.07-1 provides local content to support Clause 14.01 of the PPF. The relevant objectives provided within this clause are:

- *To protect agricultural land.*
- *To provide for sustainable, productive agriculture within the Northern Catchments and Agricultural Landscapes areas identified on the Rural Framework Plan in Clause 21.03, discourage land use and development that is contrary to the vision for these areas and limit expectations of land use change and speculation.*
- *To protect the quality soils of land with high capability for agriculture.*
- *To maximise benefit from high value agriculture.*
- *To facilitate productive agricultural activity and ensure new development is related to the on-going productive use for agriculture.*

The various strategies associated with these objectives generally encourage the use and management of land for agriculture, discourage conversions of productive agricultural land to non-productive purposes, ensure new development relates to the productive use of the land and ensure any use of the land for residential activity is secondary or ancillary to the primary agricultural use of the land. Of particular importance, construction of dwellings is discouraged unless it can be demonstrated it is required to facilitate or enhance the ongoing primary use of the land for productive, sustainable agriculture.

The subject site's development for the purpose of a single dwelling is not generally encouraged, noting that planning policies seek to protect productive farmland rather than increasing density and numbers of rural dwellings in a Farming Zone area.

In this instance, the proposed dwelling cannot be considered as consistent with or supported by such policy in relation to rural and regional development, particularly where such development is explicitly discouraged. In addition, the application fails to sufficiently demonstrate the need for a dwelling as a secondary component to a productive agricultural use.

Ultimately to approve a dwelling on the subject land will result in a permanent change to the land use to the subject land. This land use change creating an additional residential lot which will limit the ability for agriculture to be facilitated in the context of the wider area and does not support the general principle to support the consolidation and enhancement of rural land.

By allowing a dwelling on the lot which is outside the designated township boundary area will compromise the viability of agricultural activities in the Farming Zone.

Clause 21.13-9 (Malmsbury) provides guidance in relation to the development within the township. Overview of the township under 21.13-9 states:

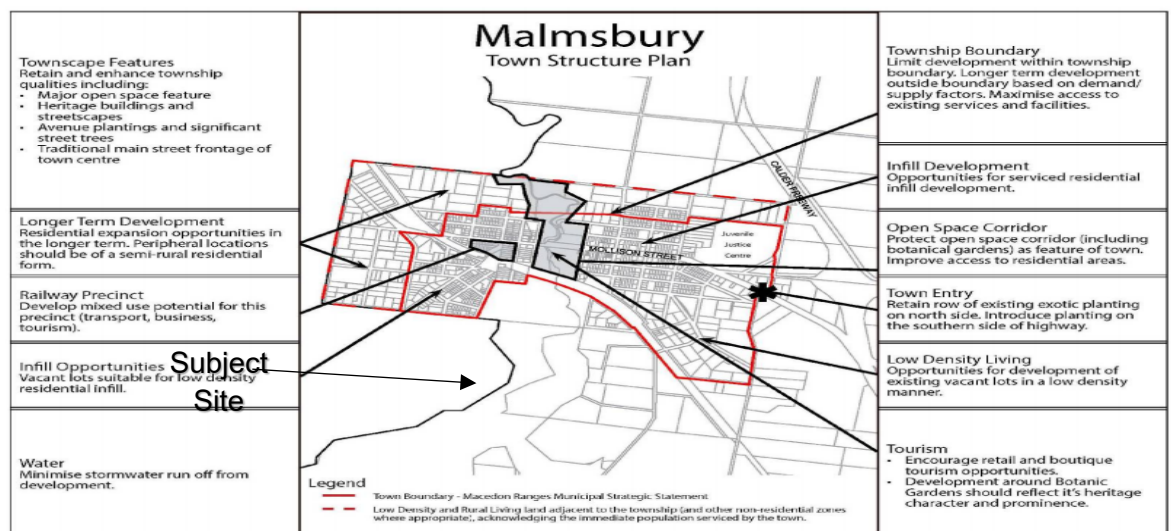
*Given the level of existing services and infrastructure within Malmsbury, as well as the low historical demand, Malmsbury could be expected to accommodate a population of approximately 900 in 2036 (Macedon Ranges Settlement Strategy, 2011) within the township boundary and surrounding area, retaining its role as a small town.*

*It is acknowledged, however, that the existing land supply in Malmsbury may have the potential to accommodate as many as 1,200 people (Macedon Ranges Settlement Strategy 2011) within the township boundary and surrounding area.*

	2006 Population	Recommended population 2036	Increase in population 2006 to 2036	Est. lot supply required to accommodate 2036 population	Theoretical vacant lot supply (lower) @ 85% take-up <sup>1</sup>
<b>Malmsbury</b>	700	900	200	90	230

(Macedon Ranges Settlement Strategy 2011)

The subject land is located outside the township of Malmsbury as per Clause 21.13-9.



The objective under Clause 21.13-9 (Malmsbury) which is relevant to the proposal is:

- *To provide for the orderly development of Malmsbury having regard for the constraints of the area.*

Relevant strategies to achieve this objective are:

- *The location, form and design of new development in the town should be consistent with the Malmsbury Township Framework Plan included in this sub-clause.*
- *Restrict new development to within the town boundary and the township sewerage district.*
- *Discourage the expansion of new rural living development.*

The proposal will be unable to achieve the above objective as it will result in a dwelling outside the township boundary where the strategy is to restrict such development within the town boundary. Main commercial area of Malmsbury is located within approximately 1km to the north of the site. The site is also located within approximately 800m of the main residential area of Malmsbury. Macedon Ranges Settlement Strategy 2011 states that the existing town has sufficient availability of residential zoned land. The policy seeks to direct development within the township and the proposal therefore will be contrary to this policy.

The applicant justifies that a dwelling is required in association with grazing animal production and fodder production. Given the location of the site in close proximity to the township and the availability of residential land in the town, a dwelling is not required for the operation of agricultural use. In *Andrews v Hepburn SC & Anor [2013] VCAT 408*, Member Potts refused a dwelling in the farming zone based on the location of the site being in close proximity to the township (similar scenario):

*“Given the scale and nature of proposed agricultural activities operation, I am not persuaded that a fulltime presence is required on the property..., however it is clear that the property is close to Trentham... described its location as a comfortable walk from the town centre. Given such a location, I am not persuaded that living off site, in Trentham, would not be an unworkable or present a substantial inconvenience.”*

In another VCAT case *Milan v Macedon Ranges SC [2014] VCAT 717*, the Tribunal Member made the following remarks in relation to the need of the owner to live on a farm:

*“... can visit the farm frequently without having a second dwelling on the land. The trip from metropolitan Melbourne to the farm takes 90-120 minutes, which is not an undue length of time. Overnight accommodation is available in Romsey and other nearby towns. He can provide strategic direction for its future without having a second dwelling on the land, as this can be done on visits or remotely by telephone, email and many other wireless means. His activities benefit the farm yet do not warrant the granting of a permit for a second dwelling given that planning policy for this area mainly discourages the grant of such a permit.”*

It is noted that there are still a number of vacant lots of comparable size to the subject site in the surrounding area, used only for farming and grazing purposes. Development of a dwelling on the lot could encourage development of other vacant allotments, thereby impeding the potential for both the subject allotment and

adjoining allotments to be effectively farmed especially as the potential to consolidate allotments would be removed.

As such it is considered that the proposal is considered to be contrary to the relevant policies and vision within the LPPF relating to protection and sustainable use of agricultural land.

The proposal does not demonstrate a nexus between agricultural land use and the necessity of a dwelling on the land. It is considered that the proposal is contrary to the relevant policies and vision within the PPF and LPPF relating to protection and sustainable use of agricultural land. The proposal is also deemed contrary to specific objectives and strategies sought in the Municipal Strategic Statement which discourage rural living/residential type development on productive agricultural land.

### Farming Zone

The purpose of the Farming Zone is to provide land for agriculture, retain productive agricultural land and to ensure non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

The Farming Zone sets out the following relevant decision guidelines in relation to the proposal:

- *Whether the dwelling will result in the loss or fragmentation of productive agricultural land.*
- *Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.*
- *Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.*
- *The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.*

In assessing this application, key consideration is the appropriateness of the dwelling use in the zone. The dwelling will result in loss and fragmentation of productive agricultural land.

The agricultural proposed is not sufficient to justify the need for a permanent dwelling on site. This lack of justification is due to the relatively generic nature of the 'farm plan' and the minor level of infrastructure proposed. This reflects a small scale and low intensity rural use that appears to be more in line with a hobby farm or rural lifestyle block, rather than a substantial bona fide agricultural pursuit.

The farm management plan demonstrates that grazing animal production is an appropriate land use for the site and outlines weed management and land improvement plans as well as targets for stocking and pasture production rates. This may be considered to meet the needs of an integrated farm management plan as required by the decision guidelines for the zone. The farm management plan does not address the need for a dwelling in association with the grazing animal production land use and fails to provide the context of the larger farm operation that may justify such a dwelling.

As discussed above the application with associated Farm Management Plan was referred to Agriculture Victoria and the Department has provided the same advice

that the farm plan is not sufficient to warrant a dwelling on site. It is therefore not considered that the applicant has demonstrated that the agricultural use proposed requires a permanent dwelling to support it.

While a dwelling may be more convenient for the land owners, this is not a reason for the approval of a dwelling. Many of daily tasks required could simply be undertaken by daily visitation to the property and working on the site. It is considered the application has not sufficiently demonstrated that the agricultural uses proposed would not be able to be undertaken without the presence of a dwelling on the site.

Although it is acknowledged that there are some existing dwellings within the local area, it is considered that another dwelling on a small rural parcel will further contribute to a proliferation of dwellings within the area and will result in a loss of opportunity for smaller parcels to be consolidated with larger parcels. An additional dwelling is also a sensitive use, which may adversely impact the operation of future farming activities within the area.

In a VCAT case *J and M Pulis v Macedon Ranges SC* [2012] VCAT 1457, the Tribunal Member addresses the need for dwellings when undertaking animal husbandry uses and concludes that the uses do not require a permanent 24 hour presence on site and can be undertaken without a dwelling and made following comments:

*‘Further while I agree with the Council that the Farm Management Plan submitted with the application is light on substance, those activities that are identified as being necessary to support the breeding herd do not carry any imperative for a 24 hour presence on the site. Indeed many of the activities are seasonal rather than daily requirements and are consistent with general stock grazing and farmland management. Apart from the need to monitor cattle in late stages of pregnancy other aspects of breeding management appear to have no imperative for an ongoing 24 hour presence.*

*Apart from having to have a substantive connection or need to support the agricultural enterprises on the land, policy and the zone decision guidelines call for consideration on issue about the dwelling use being subsidiary to the agricultural use and the impact on the agricultural landscape.*

*The scale of the agricultural enterprise is small. As the Council helpfully and concisely puts it the dwelling ‘...will not support a substantial agricultural use but will simply be occupied by someone who runs a small scale agricultural enterprise’. The dwelling is not a use that will be secondary to or ancillary to the use. Rather it is a use of the land that in many ways will have equal if not more dominance over the agricultural use, being the primary place of residence for people who only undertake agricultural pursuits on a part time basis. In other aspects, the dwelling will convert the land into defacto residential land.’*

A further case which is relevant to this application, is *Ward v Macedon Ranges SC* [2013] VCAT 1758. The Tribunal upheld Council’s refusal of the application for a dwelling in Farming Zone. The applicant submitted that a dwelling is necessary for a property/stock manager to provide the necessary levels of security, training and stock management regimes in support of a horse training enterprise.

In the decision, the Tribunal Member described how activities required to support

the horse raising and training operations do not carry any imperative to live on the property and further signalled the incremental impact and consequential change created by a dwelling application to the area. He commented:

*“A number of questions remain as to why the issues about stock and land security cannot be addressed by other means or what activities the resident would be engaged in that requires a full time presence....”*

*“Planning policy at a state and local level also seeks for land to be available for consolidation into larger enterprises consistent with a vision for broad acre agricultural activity. Allowing a dwelling on this land would mean future consolidation into larger land holdings would be unlikely. The effect of the dwelling would be to de-couple this land from its agricultural value and hence the purposes of the zone”*

In *Seyit v Macedon Ranges SC* [2017] VCAT 1210, Member made comments for the necessity of a full time presence in order to feed the goats daily, protect them from predators, respond to weather conditions and manage the birthing process. In refusing the grant the permit, the Tribunal commented on this point as follows:

*‘I was also unconvinced by Mr Seyit’s submissions at the hearing that a dwelling is necessary to support the proposed goat business. I consider that an appropriate level of care and management of the goats could be provided without the need for a constant 24-hour presence on the subject site ... Mr Seyit’s submission did not persuade me the management of goats is so different to the existing farm business as to justify the construction of a dwelling. I think that other security techniques could be implemented to protect the goats from predators.’*

Development of a dwelling on the lot could encourage development of other vacant allotments, thereby impeding the potential for both the subject allotment and adjoining allotments to be effectively farmed especially as the potential to consolidate allotments would be removed.

In *Benca v Macedon Ranges Shire Council* [2010] VCAT 470, Member Rundell remarked on setting up a precedent and proliferation of dwellings on existing farming zoned lots in the shire:

*“Some lots in the locality do not have dwellings. There also may be many small lots in the Macedon Ranges Farming Zone which do not have dwellings. Planning applications utilise previous decisions. I have no doubt that should planning approval be granted this case, it will be used to support planning applications for a dwelling on other lots less than 40 hectares. An approval in this situation will form part of the long established pattern of small lots being gradually removed from farming on an ad hoc, incremental basis.*

*Whilst each approval may have a minimal impact, over time the cumulative impact of many approvals is that areas once used for farming are no longer used for that purpose and transition to become rural living precincts. Planning policy is clearly indicating that this incremental process needs to cease.”*

These relevant VCAT decisions demonstrate that simply because a dwelling can be considered under the zone, it does not follow that every application that can meet these requirements should be approved. The application must be able to demonstrate how the purpose of the zone is fulfilled and the guiding policies



addressed for approval to be a real option. In this instance it is not considered that this application achieves this.

The proposal would serve to permanently remove land from agricultural use, limit the expansion and operation of adjoining and nearby agricultural uses and is not reasonably required to support and enhance agricultural production.

For the reasons discussed above, the proposal would incrementally further fragment the agricultural landscape character; lead to a concentration or proliferation of dwellings in the area; impinge the opportunity to use this land for more productive, sustainable agriculture and eventually have an adverse impact on use of the land for agriculture.

#### Environmental Significance Overlay Schedule 4

The site is affected by Environmental Significance Overlay (Schedule 4). This overlay applies to properties within the Eppalock Proclaimed Catchment and aims to ensure the protection and maintenance of water quality and water yield within the Eppalock Water Supply Catchment Area.

The application site is not connected to reticulated sewerage. The decision guidelines specified in the planning scheme require Council to consider the impact of the use and development on the water catchment; the need to protect or retain vegetation; and any land capability study.

The application was accompanied by a Land Capability Assessment. The application has been referred to Goulburn-Murray Water, Coliban Water and Council's Environmental Health Officer. All authorities have confirmed that they do not object to the proposal, subject to conditions and endorsement of Land Capability Assessment. Council's Health Department issued a permit to install a septic tank on 5 November 2020.

While issuing the septic permit Council's Environmental Officer added following conditions:

- *This permit is being issued in retrospect as the system has already been installed. I note that size of the effluent lines are approx. 50m, which does not comply with the maximum length specified in the EPA's Code of Practice – On-site Wastewater Management Publication 891.4 of 30m.*
- *This permit is issued for a temp period of no more than 6 months and is subject to the Planning Permit for use of the building as a dwelling being applied for & issued. The outbuilding cannot be used for human habitation. The septic is for the disposal of wastewater generated from the toilet, shower & hand basin and they may only be used in association with the agricultural use of the land.*

Relevant water authorities have assessed the wastewater issues and the report and they have raised no concerns in relation to potential contamination of the water. Goulburn-Murray Water have also included a condition stating:

*"The wastewater disposal area must be at least 100m from the nearest waterway, 60m from any dams, 20m from any bores and 40m from any drainage lines. The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its*

*performance.”*

The applicant has provided a copy of bore licence which allows them to extract water for domestic and stock use as well as for general non-irrigation farm use.

#### Heritage Overlay (Schedule 150)

The site is affected by Heritage Overlay (HO150) that relates to the dry stone walls on the subject site. Under Clause 43.01-1 of the Heritage Overlay, a permit is required to construct or carry out works.

Under the Decision Guidelines (Clause 43.01-8), the assessment needs to consider whether the proposed works will adversely affect the significance, character or appearance of the heritage place. The application was referred to Council's Heritage Advisor and the Heritage Advisor has raised no objection in relation to the proposal.

Based on the above, it is considered that the amendment will not adversely impact the significance, character or appearance of the dry stone walls on the site (HO150).

#### Deletion of a Condition

The applicant is seeking to remove the following condition from the Planning Permit PLN/2014/243:

*“The outbuilding hereby permitted shall not be used for human habitation, as defined by the Macedon Ranges Planning Scheme, to the satisfaction of the Responsible Authority.”*

It is recommended not to remove this condition as the removal of this condition will facilitate the human habitation of the outbuilding which will be contrary to the policies in relation to protection of agricultural land under the Macedon Ranges Planning Scheme.

#### **Officer declaration of conflicts of interest**

All officers involved in the preparation of this report have declared that they do not have a conflict of interest in relation to the subject matter.

#### **Conclusion**

The protection of agricultural farm zone land is of paramount importance to the policy contained within the planning scheme and to the local and wider community. It is considered that this application does not justify a need for a dwelling on this site and that the application should be refused.

**11. HEARING OF SUBMITTERS**

For the purpose of hearing from those making submissions, the Planning Delegated Committee may suspend standing orders for the purposes of allowing a member of the public to address the meeting.

In accordance with the Planning Committee Guidelines, each speaker will be allocated a maximum of three (3) minutes to speak to their submission.

In the case of joint submissions, a maximum of three (3) minutes will be allocated per submission, up to a maximum of nine (9) minutes, and one person should be nominated to speak on behalf of the submitters.

**11.1 Hearing of submitters in relation to PLN/2019/571, Edgecombe Road Kyneton**

**11.2 Hearing of submitters in relation to PLN/2019/572, Edgecombe Road Kyneton**

**12. APPLICATION FOR PLANNING PERMIT PLN/2019/571 – EDGECOMBE ROAD KYNETON**

**Development of land for Trade Supplies/Restricted Retail Premises, Display of Business Identification Signage, Removal of Native Vegetation, and Creation and Alteration of Access to a Road Zone - Category 1.**

**Lot 1, PS 331532T, Edgecombe Road, Kyneton**

**Officer** **Christo Crafford –  
Coordinator  
Statutory  
Planning**

**Attachments** **Submissions received**

**Purpose and Overview**

To hear from submitters in relation to Planning Application PLN/2019/571 regarding the Development of land for Trade Supplies/Restricted Retail Premises, Display of Business Identification Signage, Removal of Native Vegetation, and Creation and Alteration of Access to a Road Zone - Category 1. for the land at Lot 1, PS 331532T, Edgecombe Road, Kyneton.

**Recommendation**

- 1. That the Planning Delegated Committee note the submissions received in relation to Application for a Planning Permit for Application PLN/2019/571 – Development of land for Trade Supplies/Restricted Retail Premises, Display of Business Identification Signage, Removal of Native Vegetation, and Creation and Alteration of Access to a Road Zone - Category 1; and**
- 2. That recommendations be prepared, based on all relevant information, including the submissions received, for consideration and determination at the next Planning Delegated Committee Meeting on 8 September 2021.**

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**Background**

The subject site is a 1.7 hectare portion of the property which aligns the eastern side of Edgecombe Road just north of the Calder Freeway, 1.6 kilometres north-east of the Kyneton town centre. Pipers Creek Road forms the southern boundary of the development area subject to this application.

The proposed development area otherwise fronts to Edgecombe Road on its western side and a proposed road approved by previous planning permit PLN/2019/573 for the subdivision of the broader parent title into commercial and rural living lots that is currently under appeal to VCAT. The development area for this application is predominantly rectangular in shape and is subject to gentle sloping generally to the north and the east. The land comprises pasture other than three remnant native trees comprising two River Red Gums and one Candlebark tree within its southern side.

A smaller portion of the larger property is located on the southern side of Pipers Creek Road and abuts the Calder Freeway and is subject to concurrent planning permit application PLN/2019/572 for the development of a service station and convenience restaurant that is also included in this Agenda.

The remainder of the larger northern portion of the property extends further north and east with neighbouring properties on those sides being rural residential land other than the Kyneton Golf Course on its north-eastern edge. On the western side of Edgecombe Road are industrial properties fronting that road as well as Saleyards Road including the former Frews abattoir and meatworks site directly opposite the subject land.

### **Summary of Proposal**

The proposal is for Development of land for Trade Supplies/Restricted Retail Premises, Display of Business Identification Signage, Removal of Native Vegetation, and Creation and Alteration of Access to a Road Zone - Category 1 as follows:

The proposal comprises the development of the subject land for a trade supplies and restricted retail premises being a 'Bunnings Warehouse', along with display of signage, removal of native vegetation, and the creation of access to a Road Zone, Category 1. The site layout would provide for an extensive car park on the southern half of the development area with the Bunnings building occupying the majority of the northern area of the site.

The building would be divided into three main sections being a central retail area totalling 2093m<sup>2</sup> in area with a connected outdoor covered nursery and bagged goods area totalling 790m<sup>2</sup> in area to its western side, and a separately accessed timber and trade supplies outlet totalling 1893m<sup>2</sup> forming the eastern portion of the building.

The total building area including loading bay and adjacent canopy would total around 5060m<sup>2</sup> floor area and would extend to maximum width of 102m and depth of 49m. The building would be set back minimum 18m from the western frontage, 58m from the southern frontage, and 3m from the eastern frontage to the proposed new road.

The building design is a standard Bunnings Warehouse design incorporating predominantly dark green metal wall cladding with white panelling along the lower portion of the facades. The building would incorporate low pitched roofing clad with galvanised iron. The main projecting entry feature along the southern side of the building would provide glazing on its frontage with flat roof above. The nursery/outdoor goods area would comprise a flat canopy roof with mesh fencing enclosing its sides. The timber and trade supplies section of the building would be 8.6m in height at the roof apex (5.4m side wall height) with the main retail building and nursery/goods canopy rising to 7.0m in height.

The car park in front of the building would provide parking for 194 cars and an additional 6 spaces for vehicles with trailers along with internal driveways, with entry and exit to Pipers Creek Road midway along its southern boundary and a driveway entry from a proposed service road aligning the western side of Edgecombe Road. Pedestrian pathways extending from Pipers Creek Road and Edgecombe Road would access the front of the building. A separate driveway would extend from the proposed road on the eastern side of the site along the rear of the building, to provide access to the loading and service areas and would share the driveway exit to Edgecombe Road.

Landscaping is proposed along the road frontages of the site, along the northern rear boundary, with within the car park area of the site.

### **Business Identification Signage**

Signage would comprise the building façade, being the dark green metal wall cladding with white Bunnings text and red logo on each façade with smaller direction signage to the garden centre and timber/trades entrances respectively, along with a 10m high and 4.8m wide externally illuminated pylon sign to be located at the front (south-west) corner of the site adjacent to the Edgecombe Road and Pipers Creek Road intersection.

Planning Permit Trigger/s

The planning permit triggers are as follows:

- Clause 34.02-4 – Buildings and works;
- Clause 42.01-2 – Removal of any vegetation;
- Clause 52.05-11 – Signs;
- Clause 52.17-1 – Removal of Native vegetation
- Clause 52.29-2 – Alter access to a road in Road Zone, Category 1.

It is noted that the proposed use of the land for trade supplies and restricted retail premises is exempt from planning permit under the Commercial 2 Zone (C2Z) provisions.

**Summary of Submissions**

The application was advertised and two hundred and fifty two (252) objections and sixteen (16) letters of support were received.

**Objection/concern regarding application**

- Inconsistent with Macedon Ranges Planning Scheme and associated documents including the Macedon Ranges Commercial and Industrial Design Guidelines 2012, Kyneton Structure Plan 2013, and the Macedon Ranges Statement of Planning Policy.
- No appropriate in Commercial 2 Zone.
- Detrimental environmental impacts including loss of native vegetation, water catchment and waterway impacts. Inconsistent with Macedon Ranges Environment Strategy 2019.
- Detrimental economic impacts including competition with existing businesses and reduced viability of town centre retail, loss of jobs, diversion of profits from the local economy, inadequate intersection design for adjacent roads, lack of skilled employment opportunities, detriment to tourism, preference for local rather than multi-national businesses, other Bunnings stores in proximity of Kyneton.
- Bunnings and other similar franchise businesses more representative of urban sprawl development than country town character. Objectors chose to live in country town rather than metropolitan locations to avoid this type of development.
- Detrimental traffic safety and efficiency impacts from increased traffic, inadequate road capacity and infrastructure, increased movement of large commercial vehicles.
- Detriment to pedestrian and cyclist safety.
- Location of development inappropriate including out of town centre and near rural residential land.
- Inappropriate building design, not in keeping with character of with Kyneton and Macedon Ranges. Large and poorly articulated building.
- Detrimental landscape and visual amenity impacts.
- Unduly large and dominant signage.
- Detrimental amenity impacts including noise, lighting and disturbance from business operation including on weekends and evenings, and traffic movements including large commercial vehicles.
- Inappropriate design and presentation along road entrances to Kyneton including Edgecombe Road as the northern gateway.
- Local services including sewerage and water already overstressed.
- Lack of landscaping for proposal.
- Impacts to Aboriginal cultural heritage.
- Loss of existing productive farmland.
- Development would set unwanted precedent for similar development in the future.
- False and misleading information about proposal.

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| <ul style="list-style-type: none"><li>• Lack of response to request for further information including suggestions for modifications to the proposal.</li></ul> |
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<b>Summary of Support</b>
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| <ul style="list-style-type: none"><li>• Creation of new jobs including youth employment, additional income for other businesses with customers coming from elsewhere.</li><li>• Increased retail choice for developing town.</li><li>• Weed control.</li></ul> |
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**Officer Declaration of Conflict of Interest**

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

**13. APPLICATION FOR PLANNING PERMIT PLN/2019/572 – EDGECOMBE ROAD KYNETON**

**Use and Development of the Land for a Service Station and Development of a Restaurant, Alteration of Access to a Road Zone, Category 1 and Display of Business (Illuminated) Identification Signage**

**Lot 1, PS 331532T, Edgcombe Road, Kyneton**

**Officer**                      **Awais Sadiq –  
Coordinator  
Statutory  
Planning**

**Attachments**                      **Submissions received**

### **Purpose and Overview**

To hear from submitters in relation to Planning Application PLN/2019/572 regarding the Use and Development of the Land for a Service Station and Development of a Restaurant, Alteration of Access to a Road Zone, Category 1 and Display of Business (Illuminated) Identification Signage for the land at Lot 1, PS 331532T, Edgcombe Road, Kyneton.

### **Recommendation**

1. **That the Planning Delegated Committee note the submissions received in relation to Application for a Planning Permit Application PLN/2019/572 – Use and Development of the Land for a Service Station and Development of a Restaurant, Alteration of Access to a Road Zone, Category 1 and Display of Business (Illuminated) Identification Signage; and**
2. **That recommendations be prepared, based on all relevant information, including the submissions received, for consideration and determination at the next Planning Delegated Committee Meeting on 8 September 2021**

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### **Background**

The site is located to the north of Kyneton, with frontage to Edgcombe Road, a major gateway entrance into the town. It is located adjacent to the Calder Freeway, on the east side of Edgcombe Road, at the intersection of Edgcombe Road and Pipers Creek Road.

The site is irregular in shape and vacant in terms of any buildings. It is an open, gently undulating rural landscape comprising fenced paddocks and some scattered vegetation. Clusters of trees are located along the southern boundary where the site adjoins the Calder Freeway onramp.

Post Office Creek intersects the southern portion of the site and runs in an east-west direction. Land forms part of the largely undeveloped extension of Kyneton township on the north of the Freeway, which partially used for industrial activity, open paddock areas and rural lifestyle living.

Land on the opposite side of Edgcombe Road is zoned Industrial containing various industrial/commercial uses including a small vehicle servicing centre and the former Kyneton abattoir land. A pocket of industrial development is located 1km further west of the site, with some standalone businesses and the industrial precinct, along Saleyards Road.



The southern boundary abuts the Calder Freeway slip lane and Freeway. Across the Freeway to the south is residential land (zoned Neighbourhood Residential Zone) forming the periphery to the established area of the Kyneton Township.

The eastern part of the site and broader eastern hinterland is used for rural residential living, apart from Kyneton Golf Course which is zoned Special Use Zone. Edgcombe Road connects to the established Kyneton township to the south of the Freeway via an overpass. To the north, Edgcombe Road contains rural residential land and farm land.

### **Summary of Proposal**

The proposal is for the use and development of the land for a service station and development of a restaurant, alteration of access to Edgcombe Road (Road Zone, Category 1) and display of business (illuminated) identification signage.

#### Service Station

The proposed development associated with the service station will comprise the following:

- Retail building having a floor area 450m<sup>2</sup> comprising a fuel shop (250m<sup>2</sup>) and a convenience restaurant (165m<sup>2</sup>) with a minimum setback of approximately 72m from the western boundary (Edgcombe Road) and 65m from the northern boundary (Pipers Creek Road);
- An approximately 30m long and 6.5m wide car fuel canopy with an overall height of 5.6m with a minimum setback of approximately 53m from the Edgcombe Road and minimum setback of 56m from Pipers Creek Road;
- An approximately 16m long and 12m wide truck fuel canopy with an overall height of 6.4m with a minimum setback of approximately 62m from the northern boundary and 9.75m to the rear of proposed retail building associated with the service station.
- Four fuel bowsers and eight fuel bays for cars;
- Two fuel bowsers and three fuel bays for trucks;
- 54 car parking bays, 5 truck parking spaces and 6 bikes for customers and staff;
- A drive through access/window in association with the convenience restaurant along the eastern elevation of the building;
- Air and water facilities in front of the retail building;
- Bin storage area and loading bay adjacent to the northern side of retail building;
- To the immediate west of the car fuel bowser canopy, two below ground fuel storage tanks.

#### Stand Alone Convenience Restaurant (McDonald's)

The proposed development associated with McDonald's will comprise the following:

- Building having a floor area of 377m<sup>2</sup> containing playground, kitchen area, dining area, offices and play land;
- Setback of approximately 28m from Pipers Creek Road and 27m from Edgcombe Road;
- Overall height of 6.075m;
- A drive through access/windows along the southern elevation of the building;
- Bin storage area and loading bay adjacent to the eastern side of retail building;
- 28 car parking bays and 6 bikes for customers and staff.

### Business Identification Signage

Standard various McDonalds internally illuminated signage is proposed, including a pole sign, pylon signs and other signage. The service station and other convenience restaurant has not been finalised therefore final font/colours of signage for the service station and convenience restaurant are unknown. The applicant has however provided the dimensions of those signs.

Planning Permit Trigger/s

A planning permit is required to:

- Clause 34.02-1 – Section 2 Use (Service Station);
- Clause 34.02-4 – Buildings and works;
- Clause 52.05-11 – Signs;
- Clause 52.29-2 – Alter access to a road in Road Zone, Category 1.

### **Summary of Submissions**

The application was advertised and three hundred and sixty six (366) objections and nineteen (19) letter of supports were received.

Objection/concern regarding application
<ul style="list-style-type: none"><li>• Inappropriate location towards the entry of Township;</li><li>• Environmental Impact;</li><li>• Traffic;</li><li>• Road configuration;</li><li>• Road Safety for users;</li><li>• MacDonald's food in conflict with VicGov and Council's health and wellbeing objectives;</li><li>• Contrary to Kyneton Structure Plan;</li><li>• Impact on biodiversity;</li><li>• Impact on Water Quality;</li><li>• Chemical contamination;</li><li>• Impact on the health Post Office Creek;</li><li>• Out of character for Kyneton Township;</li><li>• Impact on local businesses;</li><li>• Impacts on Kyneton town centre;</li><li>• Increase in rubbish;</li><li>• Health issues with fast food;</li><li>• Animal welfare;</li><li>• Prime agricultural land;</li><li>• Load on sewerage;</li><li>• Impact on aesthetics;</li><li>• Air pollution;</li><li>• Noise;</li><li>• Too many service stations;</li><li>• Impact on views from town entry;</li><li>• Impact on the amenity of dwellings;</li><li>• Uses not allowed under the zone;</li><li>• Service station contrary to the freeway service centre design guidelines;</li><li>• Light pollution;</li><li>• Ecological impacts;</li><li>• Impact on local economy and businesses;</li><li>• Inappropriate signage;</li><li>• Contrary to Industrial guidelines;</li><li>• Contravenes Macedon Ranges Environment Strategy 2019;</li></ul>

- Cultural Heritage Impacts;
- Children health and safety concerns;
- Negative impact on tourism;
- Minimal landscaping;
- Loss of sense of place;
- 24 hour operation is not appropriate;
- Risk of accidents;
- Setbacks;
- Large area of hard surface;
- Not appropriate for industrial zoned land;
- Close proximity to schools;
- Odour/Smell;
- Contrary to Council vision;
- Property devaluation;
- Impact on heritage of the town and properties;
- Loss of flora and fauna;
- Lack of support for alternative mode of transports;
- Lack of pedestrian use and access;
- Night time noise;
- Lack of pedestrian access from Kyneton Township;
- Impact on sleep due to noise from traffic;
- MacDonald's not required in this location;
- Impact on waterways and marine life due to litter;
- Job losses;
- Water pollution;
- Lack of community engagement;
- Landscape impacts on rural land;
- Stress on families;
- No safe pedestrian and bicycle route;
- Location of petrol station in close proximity to Rural Living Zone land;
- Loss of fertile farming land;
- Unsociable behaviour;
- Congestion in the industrial area;
- Impact on water quality;
- Pressure on Coliban Water Reclamation plant;
- Impacts on liveability;
- Threat to aquatic habitat;
- No need for freeway service station;
- Discrepancies in the plans in relation to access points;
- Flooding;
- Lack of footpaths;
- Lack of long term sustainability plan;
- Developer not covering cost of traffic infrastructure and upgrade and maintenance;
- Effluent disposal;
- Brightness of signs;
- Anti-social behaviour;
- Homogenisation of community (McDonaldization);
- Traffic congestion;
- Light spill;
- Pressure on existing resources;
- The proposal is not in the interests of community;
- Setting precedence for other big corporations;
- Issues in relation to fuel storage for its contamination with ground water;
- Impacts of underground fuel storage on drinking water;
- Impact on Bald Hill Reserve;
- Large truck movements on rural roads;

- Traffic impacts for proposal and Bunnings have not been considered together;
- No increase in jobs due to other job losses because of the proposal;
- Poor design and lack of future planning;
- Inconsistent with a number of Macedon Ranges Policies;
- Removal of vegetation;
- Soil contamination impacts from post service station;
- Food security issues;
- Contrary to Freeway Service Centre Design Guidelines 1997;
- Suburban Sprawl like Sunbury;
- Contrary to Kyneton Urban Design Framework;
- Impact on wildlife from traffic;
- Council obligation to support residents;
- Contrary to objectives of Statement of Planning Policy;
- Risk of Bushfire;
- Insufficient screening of lighting on the eastern boundary of service station;
- Lack of details in relation to waste collection points;
- Lack of trust from students on Council;
- Lack of support for cycling;
- Lack of pedestrian access;
- Lack of public transport;
- Underpayment to staff;
- Undermines Daylesford Macedon Ranges branding;
- Impact on roads.

#### Summary of Support

- Employment opportunities;
- Improvement to landscape;
- No impact to heritage;
- Availability of food;
- Additional rest area along freeway;
- Coffee availability options.

#### **Officer Declaration of Conflict of Interest**

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.