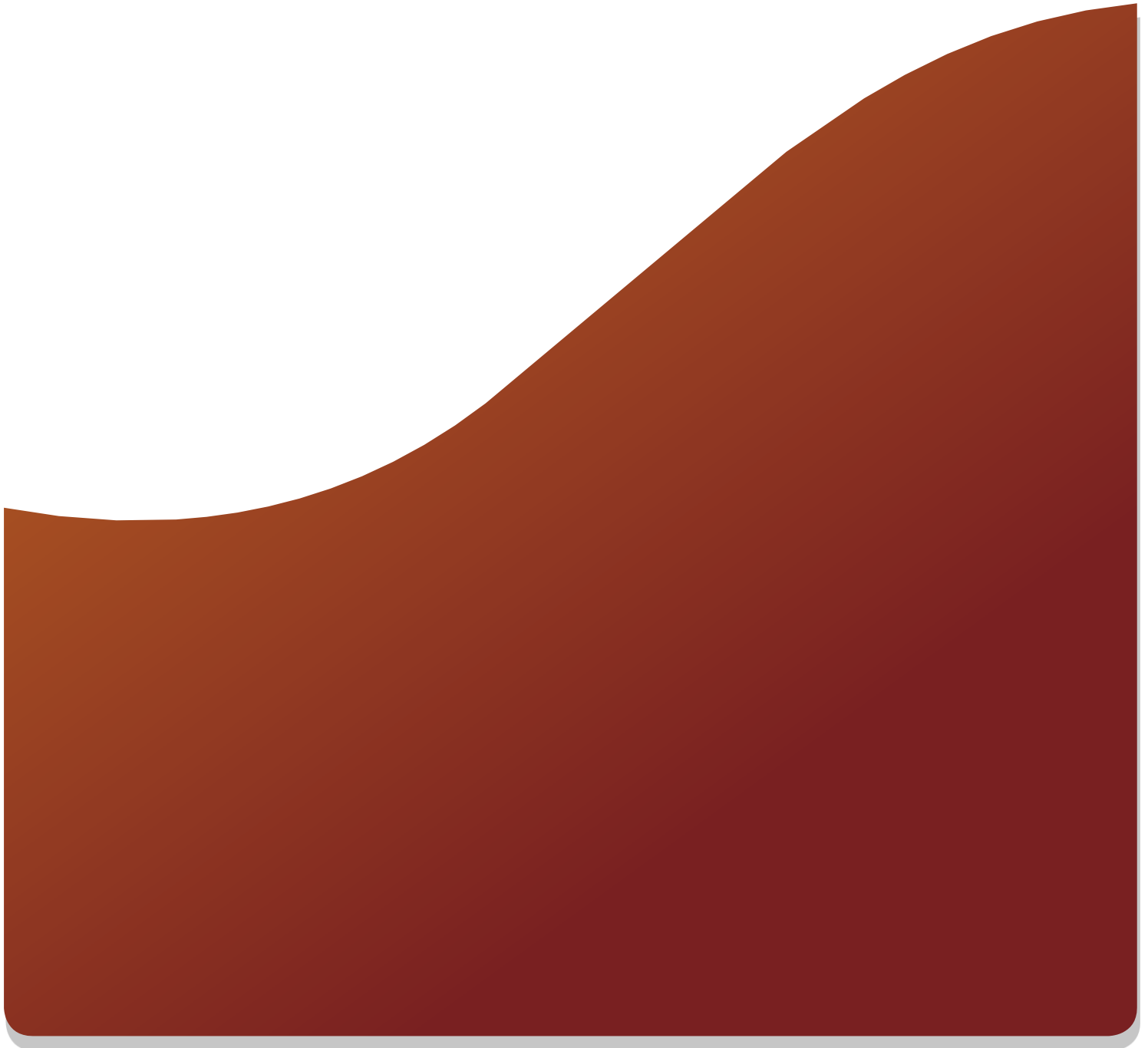


# Agenda

**Planning Delegated Committee Meeting**  
**Wednesday 12 October 2022 at 7pm**  
**Held online and livestreamed at [mrsc.vic.gov.au](https://www.mrsc.vic.gov.au)**



**Order of business**

<b>1</b>	<b>Acknowledgement of Country</b> .....	<b>3</b>
<b>2</b>	<b>Recording and livestreaming of this Committee Meeting</b> .....	<b>3</b>
<b>3</b>	<b>Present</b> .....	<b>3</b>
<b>4</b>	<b>Apologies</b> .....	<b>3</b>
<b>5</b>	<b>Conflicts of interest</b> .....	<b>3</b>
<b>6</b>	<b>Purpose of Planning Delegated Committee</b> .....	<b>3</b>
<b>7</b>	<b>Adoption of minutes</b> .....	<b>3</b>
<b>8</b>	<b>Hearing of submitters</b> .....	<b>4</b>
8.1	DP/2022/1 - 176 Saunders Road, New Gisborne - Development Plan.....	4
8.2	AGR/2022/5 - End of Section 173 Agreement AU829337V - 52B Murphy Street, Romsey .....	7
<b>9</b>	<b>Reports</b> .....	<b>28</b>
9.1	Request Authorisation for a Planning Scheme Amendment C155MACR - 9-35 Mollison Street, Malmsbury - Rezone from Commercial 2 Zone to Neighbourhood Residential Zone .....	28
9.2	Application for a Section 96A Planning Scheme Amendment C154MACR and Planning Permit PLN/2022/198 - 1 Wills Street Malmsbury .....	42
9.3	DP/2019/1 - Bennett Road, Gisborne - Development Plan.....	48
9.4	DP/2021/1 - 89 Ross Watt Road, Gisborne - Development Plan & PLN/2021/616 - 89 Ross Watt Road, Gisborne - Planning Permit.....	64

## **1 ACKNOWLEDGEMENT OF COUNTRY**

Macedon Ranges Shire Council acknowledges the Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Peoples as the Traditional Owners and Custodians of this land and waterways. Council recognises their living cultures and ongoing connection to Country and pays respect to their Elders past, and present.

Council also acknowledges local Aboriginal and/or Torres Strait Islander residents of Macedon Ranges for their ongoing contribution to the diverse culture of our community.

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

This meeting is being recorded and streamed live on the internet, in accordance with Council's 'Live Streaming and Publishing Recordings of Meetings' policy, which can be viewed on Council's website.

## **3 PRESENT**

## **4 APOLOGIES**

## **5 CONFLICTS OF INTEREST**

## **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 ADOPTION OF MINUTES**

### **Recommendation**

**That the Committee confirm the minutes of the Planning Delegated Committee of Macedon Ranges Shire Council held on 14 September 2022, as circulated.**

---

**8 HEARING OF SUBMITTERS**

<b>8.1</b>	<b>DP/2022/1 - 176 SAUNDERS ROAD, NEW GISBORNE - DEVELOPMENT PLAN</b>
<b>Officer:</b>	<b>Jack Wiltshire, Strategic Planner</b>
<b>Attachments:</b>	<b>DP2022.1 - 176 Saunders Road, New Gisborne - Submission - Redacted <a href="#">↓</a></b>

**Summary**

To hear from submitters in relation to Development Plan Application DP/2022/1.

**Recommendation****That the Committee**

- 1. Notes the submissions received in relation to Development Plan Application DP/2022/1; and**
- 2. Requests 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 9 November 2022.**

---

**Background**

Application DP/2022/1 seeks the approval of a Development Plan under the Development Plan Overlay Schedule 2 (DPO2) for the land at 176 Saunders Road, New Gisborne.

While the DPO2 does not require notice to be given, public notice of the development plan was undertaken from 5 August 2022 to 18 August 2022.

Adjoining and surrounding landholders and occupiers were informed of the application by direct notice. One (1) submission has been received.

**Summary of proposal**

The development plan proposes a low density residential subdivision of six (6) lots and the inclusion of an internal road.

The internal road will connect to Joseph Avenue to the south and from a court. Two lots will be accessed from the existing northern driveway from Saunders Road. A number of trees will be required to be removed to accommodate building envelopes, effluent fields and other infrastructure.

Lot sizes are mostly 6000m<sup>2</sup> which include building envelopes. The exception to this is the lot containing the existing dwelling which will be total size of 6073m<sup>2</sup>.

**Planning permit trigger/s**

A permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority.

A permit granted must:

- Be generally in accordance with the development plan.

- Include any conditions or requirements specified in a schedule to this overlay.

The development plan may consist of plans or other documents and may with the agreement of the responsible authority, be prepared and implemented in stages.

The development plan may be amended to the satisfaction of the responsible authority.

The applicant has submitted a development plan for consideration by Council.

**Summary of submissions**

A total of one (1) objection was received to this application and summarised as follows:

Objection/concern regarding application
Land is subject to poor drainage, stormwater and effluent fields. There is concern effluent and chemicals will flow onto subject landowners land in wet periods and impact on amenity and animals.

**Officer declaration of conflicts of interest**

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

Submission 1

[REDACTED]

**From:** [REDACTED]  
**Sent:** Tuesday, 16 August 2022 12:45 PM  
**To:** Macedon Ranges Shire Council  
**Subject:** Re :Development plans

To whom it may concern,  
 We would like to bring up our concerns for the proposed development of 176 Saunders Road New Gisborne (LOT 3 LP 99024 P/Gisborne)

We are very concerned about the storm water drainage, our [REDACTED] of the proposed development site, and the natural drainage around this area is already quite poor. The extent of the excavations that will be associated with the development will only increase the ground water that flow [REDACTED]. There is also deep concerns for the location of the effluent areas that will [REDACTED]. There are four proposed effluent sites on the development plans, putting these septic fields and system components very close [REDACTED]. We are concerned that during periods of high rainfall the pathogens associated with the effluent lines will be [REDACTED]. The area is subject to flooding frequently during the wetter months so we are concerned that the onsite septic wastewater management systems might not be suitable in this situation. The land [REDACTED] very flat, so when we do experience heavy rains all excess water flows across [REDACTED], this will bring the effluent component and chemicals along with it, the pungent odour also associated with septic systems also raises our concerns.

We have [REDACTED] and are very concerned that our grazing land bordering [REDACTED] in the proposed development site of 176 Saunders Road New Gisborne (LOT 3 LP 99024 P/Gisborne) will have sewerage contaminants, which could be hazardous for livestock due to the chemical and pathogens, rendering this part of our land unusable for grazing purposes.

Due to the excess water flow onto [REDACTED] we are also concerned that these chemical and pathogens from the septic fields will also impact and contaminate the surface water of our dam, which is a thriving ecosystem for native fish and ducks

If you could please consider our concerns moving forward with this development that would be much appreciated.

Regards

[REDACTED]

<b>8.2</b>	<b>AGR/2022/5 - END OF SECTION 173 AGREEMENT AU829337V - 52B MURPHY STREET, ROMSEY</b>
<b>Officer:</b>	<b>Koko Cheng, Statutory Planning Officer</b>
<b>Attachments:</b>	1. <b>Title Documents</b> <a href="#">↓</a> 2. <b>Application Letter</b> <a href="#">↓</a>

### Summary

To hear from applicant in relation to planning application AGR/2022/5 for Ending the Section 173 Agreement AU829337V for the land at 52B Murphy Street, Romsey.

### Recommendation

**That the Committee:**

- 1. Notes no submissions have been received in relation to application AGR/2022/5 for Ending the Section 173 Agreement AU829337V; and**
- 2. Endorses that recommendations be prepared, based on all relevant information, for consideration and determination at the next scheduled Council meeting on 26 October 2022.**

---

### Background

The subject site is located on the northern side of Murphy Street, approximately 85 metres east of the Murphy Street and Wrixon Street intersection and is located 250 metres west of the Romsey town centre. The land is a battle-axe lot with a driveway shaft on to Murphy Street having a 6m frontage. It has a depth of 100.58 metres and a rear boundary width of 22.02 meters. The site slopes slightly from the southwest corner towards the northeast corner, with an overall fall of approximately 1.5 metres along the length of the allotment. The land is currently vacant and is clear of vegetation.

The surrounding properties vary in size to the subject site. There is a mixture of smaller medium density developments and larger residential lots containing a single dwelling within Murphy Street and the immediate surrounds. The immediate land to the south (52A Murphy Street) contains a single storey weatherboard dwelling in the southern section of the lot, with a cluster of trees, a sparse amount of overgrown and non-native scrub vegetation located to the north of the dwelling and at the rear of the lot.

It is noted that the subject site was created by a recent two (2) lot subdivision approved in PLN/2019/288.

### Summary of proposal

The applicant seeks in-principle support to end the Section 173 Agreement AU829337V registered on the title of the subject land.

The agreement contains restrictions in relation to building envelope and compliance and maintenance of landscaping area for Lot 2. The agreement was registered on the title in 2021 in accordance with planning permit PLN/2019/288.

A new permit has been lodged under PLN/2021/553 for a further two (2) lot subdivision and the development of two (2) dwellings on the subject site.

**Planning permit trigger/s**

Under Section 178 of the Planning and Environment Act, an agreement may be ended by agreement between the responsible authority and all persons who are bound by any covenant in the agreement.

**Summary of submissions**

No objections were received to this application.

**Officer declaration of conflicts of interest**

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



Copyright State of Victoria. No part of this publication may be reproduced except as permitted by the Copyright Act 1968 (Cth), to comply with a statutory requirement or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA REGD TM System. None of the State of Victoria, its agents or contractors, accepts responsibility for any subsequent publication or reproduction of the information.

The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 12340 FOLIO 127

Security no : 124099376712N  
Produced 02/08/2022 05:13 PM

LAND DESCRIPTION

Lot 2 on Plan of Subdivision 830900H.  
PARENT TITLE Volume 09136 Folio 173  
Created by instrument PS830900H 04/11/2021

REGISTERED PROPRIETOR

Estate Fee Simple  
Joint Proprietors  
KIM ELIZABETH ALLEY  
DEAN ROBERT ALLEY both of 2 GREEN GULLY CLOSE GISBORNE VIC 3437  
PS830900H 04/11/2021

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AR855953A 21/01/2019  
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987  
AU829337V 21/09/2021

DIAGRAM LOCATION

SEE PS830900H FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 52B MURPHY STREET ROMSEY VIC 3434

ADMINISTRATIVE NOTICES

NIL

eCT Control 20427W ARMSTRONG COLLINS & DELACY  
Effective from 04/11/2021

DOCUMENT END

Delivered from the LANDATA® System by InfoTrack Pty Ltd.

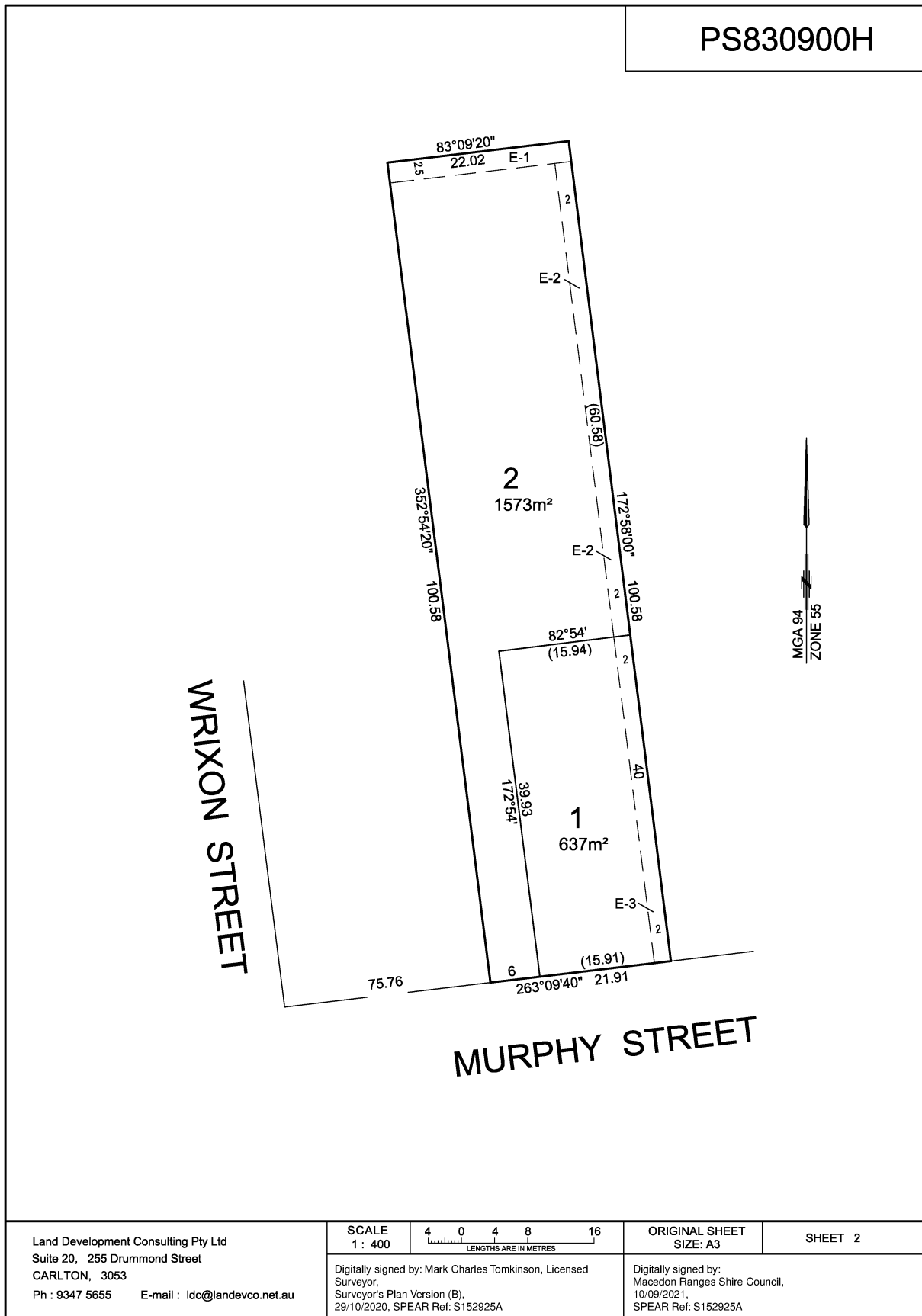
The information supplied by Feigl & Newell Pty. Ltd. has been obtained from InfoTrack Pty Limited by agreement between them. The information supplied has been obtained by InfoTrack Pty Limited who is licensed by the State of Victoria to provide this information via LANDATA® System.

Delivered by LANDATA®, timestamp 02/08/2022 17:14 Page 1 of 2

© State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of Section 32 of the Sale of Land Act 1962 or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA® System. None of the State of Victoria, LANDATA®, Victorian Land Registry Services Pty. Ltd. ABN 86 627 986 396 as trustee for the Victorian Land Registry Services Trust ABN 83 206 746 897 accept responsibility for any subsequent release, publication or reproduction of the information.

<b>PLAN OF SUBDIVISION</b>		EDITION 1	<b>PS830900H</b>	
<b>LOCATION OF LAND</b> PARISH: LANCEFIELD TOWNSHIP : ROMSEY CROWN ALLOTMENT : 2 (Part)  TITLE REFERENCES : VOL.09136 FOL.173  LAST PLAN REFERENCES : LP117048 (Lot 3)  POSTAL ADDRESS: 52 MURPHY STREET (at time of subdivision) ROMSEY, 3434  MGA94 CO-ORDINATES: E: 299 800 ZONE: 55 (of approx centre of land N: 5 864 250 in plan)		Council Name: Macedon Ranges Shire Council  Council Reference Number: CRT/2020/14 Planning Permit Reference: PLN/2019/288 SPEAR Reference Number: S152925A  <b>Certification</b>  This plan is certified under section 6 of the Subdivision Act 1988  Public Open Space  A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made  Digitally signed by: Declan Hunter for Macedon Ranges Shire Council on 10/09/2021  <b>Statement of Compliance</b> issued: 04/10/2021		
<b>VESTING OF ROADS AND/OR RESERVES</b>		<b>NOTATIONS</b>		
IDENTIFIER	COUNCIL/BODY/PERSON			
NIL	NIL			
<b>NOTATIONS</b>				
DEPTH LIMITATION : DOES NOT APPLY				
SURVEY: This plan is based on survey.  STAGING: This is not a staged subdivision. Planning Permit No. : PLN/2019/288  This survey has been connected to permanent mark No. 59 & 17 In Proclaimed Survey Area No.120  SPEAR REFERENCE : S152925A				
<b>EASEMENT INFORMATION</b>				
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE & SEWERAGE	2.50	LP117048	ALL LOTS IN LP117048
E-1	SEWERAGE	2.50	THIS PLAN	WESTERN REGION WATER CORPORATION
E-2	SEWERAGE	2m	THIS PLAN	LOT 1 ON THIS PLAN
E-3	DRAINAGE	2m	THIS PLAN	LOT 2 ON THIS PLAN
Land Development Consulting Pty Ltd Suite 20, 255 Drummond Street CARLTON, 3053 Ph : 9347 5655 E-mail : ldc@landevco.net.au		SURVEYORS FILE REF: PS 3818 Version : B  Digitally signed by: Mark Charles Tomkinson, Licensed Surveyor, Surveyor's Plan Version (B), 29/10/2020, SPEAR Ref: S152925A		ORIGINAL SHEET SIZE: A3 SHEET 1 OF 2 SHEETS  PLAN REGISTERED TIME: 7:52pm DATE: 4/11/2021 Roger Mellor Assistant Registrar of Titles

Delivered by LANDATA®, timestamp 02/08/2022 17:14 Page 2 of 2



**MACEDON RANGES SHIRE COUNCIL**

**- and -**

**DEAN ROBERT ALLEY AND KIM ELIZABETH ALLEY**

**SECTION 173 AGREEMENT**

**Lot 3 on Plan of Subdivision PS117048  
Certificate of Title Volume 09136 Folio 173**

**52 Murphy Street, Romsey**

Section 173 Agreement

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

**BETWEEN:**

**MACEDON RANGES SHIRE COUNCIL** of 129 Mollison Street, Kyneton, Victoria ("the Council")

**AND**

**DEAN ROBERT ALLEY AND KIM ELIZABETH ALLEY** of 2 Green Gully Close, Gisborne, Victoria ("the Owner")

**RECITALS:**

- A. The Owner is the registered proprietor of Lot 3 on Plan of Subdivision PS117048, Parish of Lancefield being the land described in Certificate of Title Volume 09136 Folio 173 ("the land").
- B. The Council is the Responsible Authority pursuant to the Act for the Scheme.
- C. The Owner has obtained a Planning Permit from the Council for subdivision of the Land into Two (2) Lots and Creation of an Easement.
- D. As a condition of the Planning Permit, the Owner must enter into an agreement pursuant to Section 173 of the Act to be registered on title which addresses the issues stated in condition 4 of the Planning Permit.

**OPERATIVE PROVISIONS:**

**1. Definitions**

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1 **"the Act"** means the *Planning and Environment Act 1987*;
- 1.2 **"the Agreement"** or **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement;
- 1.3 **"approved"** means approved by Council;
- 1.4 **"complete"** in respect of any works or any part of any works means the completion of those works or the specified part of those works in accordance with plans and specifications approved by the Council to the satisfaction of the Council;
- 1.5 **"the land"** means the land described in recital A;
- 1.6 **"endorsed landscape plan"** means the landscape plan (1 sheet) prepared by Draftscope Pty Ltd and endorsed by Council on 12 February 2021, a copy of which is contained in Annexure B to this Agreement;
- 1.7 **"endorsed plan of subdivision"** means the proposed plan of subdivision (1 sheet) prepared by Land Development Consulting Pty Ltd and endorsed by

## Section 173 Agreement

---

Council on 28 April 2021, a copy of which is contained in Annexure A to this Agreement;

- 1.8 **“Owner”** means Dean Robert Alley and Kim Elizabeth Alley and any persons entitled from time to time to be registered as proprietor or proprietors of any estate in fee simple in the land or any part of it;
- 1.9 **“Planning Permit”** means Planning Permit PLN/2019/288 issued by the Council on 13 December 2019;
- 1.10 **“the Scheme”** means the Macedon Ranges Planning Scheme as amended from time to time;
- 1.11 **“Lot”** means a lot (as that term is defined in section 3 of the *Subdivision Act* 1988) as shown on the endorsed plan.

## 2. Interpretation

All provisions of this Agreement are to be interpreted in the following manner unless otherwise indicated by the context:

- 2.1 Undefined terms or words shall have the meanings given in the Act or the Scheme.
- 2.2 The singular includes the plural and the plural includes the singular.
- 2.3 A reference to a gender includes a reference to each other gender.
- 2.4 A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.5 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.6 A reference to a “planning scheme” or “the Scheme” shall include any amendment, consolidation, or replacement of such Scheme and any document incorporated by reference into such Scheme.
- 2.7 A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.8 Where in this Agreement the Council may exercise any power, duty or function, that power may be exercised on behalf of the Council by an authorised or delegated officer.
- 2.9 All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 2.10 The introductory clauses to the Agreement are and will be deemed to form part of this Agreement.

## 3. Agreement Under Section 173 of the Act

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and in so far as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

## 4. Effect of Agreement

This Agreement shall come into force and effect from the date of this Agreement.



## Section 173 Agreement

---

**5. Disclosure of Agreement**

The Owner must not sell, transfer, dispose of, assign, mortgage, lease, licence or otherwise part with possession of the land or any part of it without first disclosing the existence and nature of this Agreement.

**6. Successors in Title**

It is intended that the covenants hereafter shall run with the land and Council shall have the power to enforce the covenants against any person or persons deriving title from the Owner.

**7. Owner's covenants**

The Owner covenants and agrees as follows:

**7.1 Building Envelope**

No buildings and works, with the exception of the construction of a driveway on Lot 2, shall be undertaken outside the building envelope shown on the endorsed plan of subdivision, without prior written consent from Council.

**7.2 Landscaping**

Prior to the occupation of the dwelling on Lot 2, landscaping works shown on the endorsed landscape plan must be carried out, completed and thereafter maintained to the satisfaction of Council.

**7.3 Notice**

To bring this Agreement to the attention of any mortgagee of the land and any assignee, transferee, lessee or licensee of the land.

**7.4 Compliance**

- (a) To carry out and comply with the requirements of all statutory authorities and comply with all statutes, regulations, local laws and planning controls in relation to the land.
- (b) To take all necessary steps to comply with the obligations of each and every clause in this Agreement.

**7.5 Registration**

To do all things necessary to enable the Council to register notification of this Agreement against the title or titles to the land in accordance with Section 181 of the Act.



Section 173 Agreement

**7.6 Mortgagee to be Bound**

To obtain the acknowledgment of and consent to this Agreement of any mortgagee, to be witnessed by its written endorsement on the Agreement.

**7.7 Council's Costs to be Paid**

To pay all of the Council's costs and expenses of and incidental to the preparation, execution and registration of this Agreement and its enforcement.

**7.8 Indemnity**

To indemnify and keep indemnified the Council and its officers, employees, agents, workmen and contractors from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer to be or become liable for or in respect of any suit action proceeding judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance with this Agreement.

**7.9 Council Access**

To allow the Council and/or its officers, employees, contractors or agents (at any reasonable time) to enter the land to assess compliance with this Agreement.

**8. Notices**

**8.1 Service of Notice**

A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

- (a) personally on the party; or
- (b) by sending it by pre-paid post, addressed to that party at the address specified in this document or subsequently notified to each party; or
- (c) by email to the person's email address specified in this document or subsequently notified to each party.

**8.2 Time of Service**

A notice or other communication is deemed served:

- (a) if served personally, upon service;
- (b) if posted within Australia to an Australian address, two business days after posting and in any other case, seven business days after posting; or
- (c) if served by email, at the time the recipient's email server receives the email without the sender receiving an error or "out of office" report;
- (d) if received after 6.00pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

**9. General****9.1 Further Assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

**9.2 No Waiver**

Any time or other indulgence granted by the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

**9.3 Severability**

If a court, arbitrator or tribunal determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

**9.4 Disputes**

If any disputes arise between the Owner and the Council in respect of anything to be ascertained, done or agreed pursuant to this Agreement ("the Dispute"), and that Dispute is not resolved by agreement between the parties within 14 days of it arising (or any later period mutually agreed to by the parties), either the Owner, or the Council may refer the Dispute for determination to the Victorian Civil and Administrative Tribunal pursuant to Section 149A of the Act.

**9.5 Alteration of Agreement**

This Agreement may only be altered or modified by a subsequent agreement in writing executed under seal of the Council and signed by the Owner, or otherwise in accordance with section 178 of the Act.

**9.6 Ending of Agreement**

This Agreement shall end in accordance with Section 177 of the Act upon agreement by the parties to this Agreement, or otherwise in accordance with section 177 of the Act.

Section 173 Agreement

---

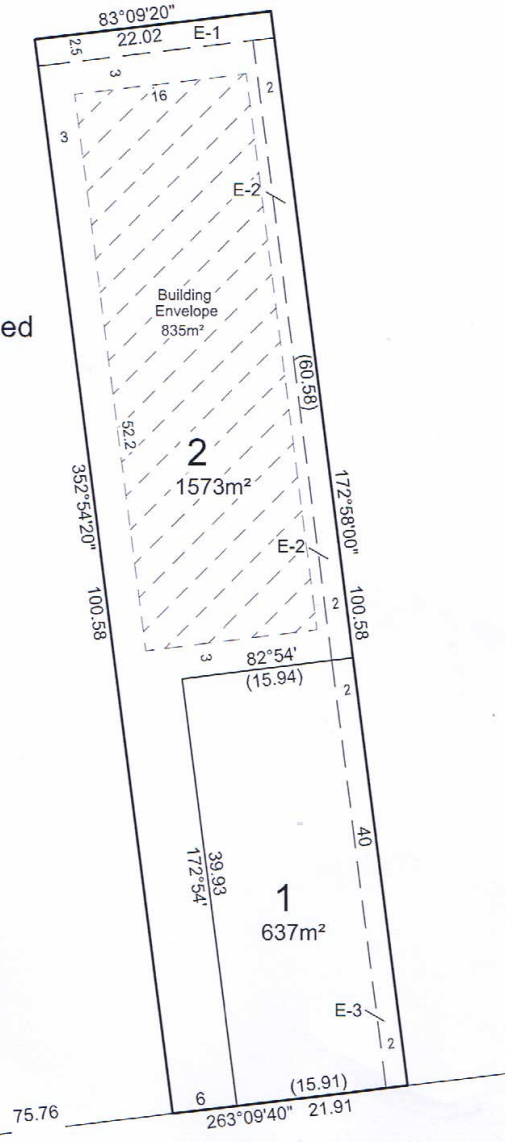
**ANNEXURE A**  
**ENDORSED PLAN OF SUBDIVISION**  
**(1 Sheet)**

Prepared By:  
Land Development Consulting Pty Ltd

PS830900H

Building Envelope shown hatched

WRIXON STREET



MACEDON RANGES PLANNING SCHEME  
 PLANNING PERMIT NO: PLN/2019/288/A  
 This plan is approved as an amendment to the above Planning Permit  
 Date: 28/04/2021

Authorised Officer: Shi Yang (Lydia)

Page: 1 of 1

*Shi Yang*

MURPHY STREET

Land Development Consulting Pty Ltd Suite 20, 255 Drummond Street CARLTON, 3053 Ph: 9347 5655 E-mail: ldc@landevco.net.au	SCALE 1 : 400	LENGTHS ARE IN METRES	ORIGINAL SHEET SIZE: A3	SHEET 2
	Licensed Surveyor : Mark Charles Tomkinson Reference : PS 3818 Version : B			

Section 173 Agreement

---

**ANNEXURE B**  
**ENDORSED LANDSCAPE PLAN**  
**(1 Sheet)**

**Prepared By:**  
**Draftscope Pty Ltd**

---

52 Murphy Street, Romsey

7





Section 173 Agreement

Executed as a Deed

THE COMMON SEAL )  
of the MACEDON RANGES )  
SHIRE COUNCIL was hereto )  
affixed on the ...../...../..... )  
in the presence of: )


Signature of Councillor

Signature of Chief Executive Officer

Name of Councillor (please print)

Name of Chief Executive Officer (please print)

SIGNED SEALED and DELIVERED by )  
the said DEAN ROBERT ALLEY in the )  
presence of: )

  
DEAN ROBERT ALLEY

 LAILA TANAWA  
Witness NOT KIM ALLEY

SIGNED SEALED and DELIVERED )  
by the said KIM ELIZABETH ALLEY in )  
the presence of: )

  
KIM ELIZABETH ALLEY

 LAILA TANAWA.  
Witness NOT DEAN ALLEY

Section 173 Agreement

---

**MORTGAGEE'S CONSENT**

Australia and New Zealand Banking Group Ltd as Mortgagee under Instrument of Mortgage No. AR855953A which encumbers the subject land consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.



**UrbanDesign**  
and managementLand Development | Project Management  
Planning | Urban Design | Civil EngineeringProject No: 21053  
Your Reference:

2 August 2022

Koko Cheng  
Statutory Planning Officer  
Macedon Ranges Shire CouncilVia email: [kcheng@mrsc.vic.gov.au](mailto:kcheng@mrsc.vic.gov.au); [planning@mrsc.vic.gov.au](mailto:planning@mrsc.vic.gov.au)

Dear Koko,

**Re: 52B Murphy Street, Romsey  
Application to end an Agreement**

Urban Design and Management acts on behalf of Dean Alley in relation to this application to end an agreement in accordance with Section 178A(1)(b) of the Planning and Environment Act 1987. This request is provided in accordance with the requirements of Section 55 of the Planning and Environment Regulations 2015.

**Applicant details**

The applicant for this request is:

Dean Alley

Address: 2 Green Gully Close, Gisborne 3437

Phone Number: 0408 168 676

**Section 173 Agreement AU8293377**

A current copy of the Certificate of Title for 52B Murphy Street, Romsey is attached (Lot 2 on Plan of Subdivision 830900H, Volume 09136/Folio 173).

Agreement AU8293377 is included on the title and is also attached.

The Agreement is between our clients, Dean and Kim Alley, and Macedon Ranges Shire Council. It applies to Lot 3 on Plan of Subdivision PS117048, which is the parent lot to 52A and 52B Murphy Street, Romsey.

At 7.1, the Agreement requires all buildings and works, with the exception of the construction of a driveway on Lot 2, to be located within the building envelope shown on the endorsed plan of subdivision.

At 7.2, the Agreement requires landscaping works shown on the endorsed landscape plan to be completed prior to the occupation of a dwelling on Lot 2.

**Reasons for ending of Agreement AU8293377**

The applicant is seeking a new planning permit to subdivide and develop Lot 2 (refer to application PLN/2021/553).

The proposed development would not comply with the existing building envelope and is required to be removed.

A new building envelope is proposed as part of PLN/2021/553. This building envelope would effectively replace that required by Agreement AU8293377.

The proposed plan of subdivision and building envelopes are attached.

Agreement AU8293377 would be removed from Lot 2 completely and likely replaced with a new Agreement via the PLN/2021/553 permit process.

**Consent of 52A Murphy Street, Romsey**

52A Murphy Street, Romsey is now a separately titled lot. Agreement AU8293377 does not apply to this lot and 52A Murphy Street, Romsey is not a party to Agreement AU8293377.

**Application fee**

The application fee of \$680.40 is enclosed.

We look forward to Council's consideration of this request. Should you require any additional information please contact me on 0423 572 451 or [shannon.hill@udmgt.com.au](mailto:shannon.hill@udmgt.com.au).

Yours sincerely



Shannon Hill  
Principal Planner

**Urban Design and Management Pty Ltd**

Enclosure      As noted



## 9 REPORTS

<b>9.1</b>	<b>REQUEST AUTHORISATION FOR A PLANNING SCHEME AMENDMENT C155MACR - 9-35 MOLLISON STREET, MALMSBURY - REZONE FROM COMMERCIAL 2 ZONE TO NEIGHBOURHOOD RESIDENTIAL ZONE</b>
<b>Officer:</b>	<b>Leanne Khan, Coordinator Strategic Planning</b>
<b>Council Plan relationship:</b>	<b>1. Connecting communities</b>
<b>Attachments:</b>	<b>Draft Planning Scheme Amendment Documentation <a href="#">↓</a></b>

### Summary

Council received a request on 27 November 2019 to rezone 9-35 Mollison St, Malmsbury from Commercial 2 Zone to the Neighbourhood Residential Zone. The application implements the Malmsbury Structure Plan (2006), which identifies that the current zone, Commercial 2, is no longer the most appropriate zone.

### Recommendation

**That the Planning Delegated Committee:**

- 1. Seeks authorisation from the Minister for Planning to prepare Planning Scheme Amendment C155macr to the Macedon Ranges Planning Scheme pursuant to section 9 of the Planning and Environment Act 1987.**
- 2. Authorises Council officers to prepare amendment documents for authorisation and exhibition of Amendment C155macr, and**
  - (a) Upon receipt of authorisation from the Minister for Planning, make any changes necessary to comply with conditions of authorisation**
  - (b) Upon satisfaction of any conditions of authorisation, exhibit Amendment C155macr pursuant to section 19 of the Planning and Environment Act 1987.**

---

### Background

Council received an application to rezone 9-35 Mollison St Malmsbury, on 27 November 2019. The application was made on behalf of two of the four landholders.

The application in its original form sought to rezone the land from the Commercial 2 Zone to the General Residential Zone. It is not proposed to alter the existing overlays on the site which consist of the Environmental Significance Overlay (Schedule 4) Eppalock Proclaimed Catchment, Erosion Management Overlay (EMO) and Heritage Overlay Schedule 148 – Malmsbury Precinct (HO148).

There are 12 parcels of land in total being considered for rezoning by this proposal, with 10 lots fronting Mollison Street, one lot fronting Johnson Street, and one lot fronting the unmade section of Wills Street (See Figure One). All of the lots are currently in the Commercial 2 Zone, and are either currently vacant or contain a dwelling. The parcels contain existing titles which are approximately 1000m<sup>2</sup> each.



Figure One – Parcels of land proposed for rezoning.

The subject land was first identified through the Malmsbury Structure Plan (completed in 2006 as part of the Small Towns Study and reviewed as part of the Settlement Strategy in 2011) to be rezoned from a commercial/business zone into a residential zone. The current zone (Commercial 2) is a carry-over from the former Business 4 Zone, which was in place due to Mollison Street historically being the main road from Melbourne to Bendigo.

The Small Towns Study (2006) identified that “*development of this area is not likely to be required, is contrary to the rural village setting, and would be more appropriately zoned for residential use.*” (Page 33).

## Discussion

Over the last 12 months, Council officers and landowners have continued to work towards a rezoning solution for the subject land. At present, the Commercial 2 zoning of these properties prohibits the use of the land for a dwelling. However the Commercial 2 Zone does “*encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services*”.

Malmsbury has a relatively small active commercial area, on the south side of Mollison Street, between Ellesmere Place and Barker Street, which is in the Commercial 1 Zone. Additional vacant Commercial 1 Zone land is also available to the east of Barker Street. It is considered that any commercial development on the subject land would detract from the town centre and is not in keeping with the role and function of Malmsbury or its heritage character.

Together, landholders and officers agree that the most appropriate residential zone will be the Neighbourhood Residential Zone (NRZ). By using the NRZ, the amendment will assist in meeting Objective 2 from Clause 21.13-9, which seeks “*To protect heritage buildings, streetscapes and gardens as an important part of the town’s attractiveness and tourism offering*”.

This zone, and its associated schedule, provide the opportunity to ensure that future development on the land contributes to the township character already established in Malmsbury, respond to and respect the heritage character of the town, and provide generous front and rear setbacks, the planting of large canopy trees

The draft proposed Neighbourhood Residential Zone Schedule (Attachment One) contains the following objectives that seek to implement Clause 21.13-9 of the Planning Scheme: -

- To provide residential development that is in keeping with the existing residential character of Malmsbury with larger lots, significant landscaping and generous setbacks
- To respond to and respect the heritage character of the town
- To promote wide frontages with visual breaks between dwellings surrounded by canopy trees
- To support absent, low or rural style front, side and rear fencing that allows for visual permeability and plantings in front and side setbacks to blend with the public realm

It is proposed to set the subdivision lot size minimum at 1000m<sup>2</sup>, meaning that no further subdivision of lots can occur. The schedule will also require that new development include two canopy trees within the front setback, which will also ensure that new development contributes to the established urban character of Malmsbury.

Draft Planning Scheme Amendment documents have been provided in Attachment One.

**The Amendment Process**

Figure Two below illustrates a general planning scheme amendment process.



Figure Two: A general planning scheme amendment process at Macedon Ranges Shire

This amendment request is at Stage Three, requiring a decision of Council in order to proceed with the amendment.

**Consultation and engagement**

As the amendment is a proponent led amendment, numerous meetings and other correspondence have been had with the owners of 9 to 25 and 31 Mollison Street, and their representatives. The owners of 33 and 35 Mollison Street have been contacted via letter about the proposed rezoning, however no response has been received to date. Both of these owners will be notified of the amendment as part of the formal exhibition process and they will have the opportunity to make a submission, and have their submission heard by an independent Panel appointed by the Minister for Planning if required.

It should be noted that the land owned by these other two landowners already contain dwellings, and that the proposed rezoning to the Neighbourhood Residential Zone will likely



have a positive effect on the continued use and development of their land for residential purposes.

Adjoining and nearby landholders will be notified of the amendment, and will include the Department of Justice and Community Safety (Malmsbury Juvenile Justice Centre).

All submissions received in response to the exhibition phase of the amendment will be considered by Council prior to the amendment progressing to the next stage of the amendment process.

If authorised, statutory consultation on the amendment will be conducted with all impacted landowners and occupiers as required by the *Planning and Environment Act 1987*.

### **Collaboration**

In the preparation of this amendment, Council has sought informal comments from the Department of Justice and Community Safety, Department of Transport and Coliban Water. These agencies have indicated support for this amendment.

### **Innovation and continuous improvement**

N/A

### **Relevant law**

The requirements for a planning scheme amendment are set out in the *Planning and Environment Act 1987* and its regulations.

This report does not have any direct or indirect human rights implications under the *Charter of Human Rights and Responsibilities Act 2006*.

In accordance with the *Gender Equality Act 2020*, a Gender Impact Assessment was not required in relation to the subject matter of this report.

### **Relevant regional, state and national plans and policies**

N/A

### **Relevant Council plans and policies**

This report seeks to progress a priority in the Council Plan 2021-2031:

*Strategic Objective 1 – Connecting Communities.*

*Integrate land-use planning, and revitalise and protect the identity and character of the shire.*

The Settlement Strategy (2011) identifies that land is not required to be rezoned for residential, commercial or industrial purposes until 2036.

Small Towns Strategy (2006) states:

*There is an extensive strip of land zoned for highway business development on the south side of the Kyneton entrance to the town. Development of this area is not likely to be required, is contrary to the rural village setting, and would be more appropriately zoned for residential use.*

The Malmsbury Structure Plan (2006) implemented into the Macedon Ranges Planning Scheme identifies that Council should ‘*consider a more appropriate zone for the land on the south side of the Kyneton entrance between Wills and Ross Streets.*’



**Financial viability**

The *Planning and Environment 1987* Regulations set out fees to be paid at each step of the Amendment.

As this rezoning request has been made by two land owners, who own the majority of the land (9 to 31 Mollison Street), various fees are payable to Council and the Minister for Planning to progress the amendment. Council has received correspondence from these land owners that they will bear the cost of fees associated with the rezoning.

Council's fact sheet, 'Private Sponsored Planning Scheme Amendments' sets out Council's expectation that all costs associated with the amendment will be payable by the applicant.

**Sustainability implications**

The amendment will have a positive social and economic impacts on Malmsbury by providing additional housing opportunities within the Malmsbury Settlement Boundary and allow for a more appropriate use and development of the subject land to meet the community's housing needs.

The proposal utilises the existing road reserve network and servicing infrastructure to continue the rural township 'feel' of the area.

**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.

*Planning and Environment Act 1987*

## MACEDON RANGES PLANNING SCHEME

### AMENDMENT C155

#### EXPLANATORY REPORT

##### Who is the planning authority?

This amendment has been prepared by the Macedon Ranges Shire Council, which is the planning authority for this amendment.

The amendment has been made at the request of Mr Rob Hamilton and Mr Kenneth Payne.

##### Land affected by the amendment

The amendment applies to 9 to 35 Mollison Street, Malmsbury. The subject land has frontages to Mollison Street, Johnson Street and Wills Street and is located within the Malmsbury Township Boundary.

##### What the amendment does

###### *Rezoning*

The amendment rezones land within the Malmsbury Township Boundary from Commercial 2 Zone (CZ2) to Neighbourhood Residential Zone (NRZ), and incorporates a new Schedule to the Zone (NRZ14).

The amendment updates planning scheme maps to reflect the above changes.

##### Strategic assessment of the amendment

##### Why is the amendment required?

The amendment is required to rezone land within the Malmsbury Settlement Boundary from Commercial 2 Zone to the Neighbourhood Residential Zone to respond to and align with Clause 21.13-9 of the Macedon Ranges Planning Scheme, with a schedule to the zone that applies appropriate subdivision and development objectives. The amendment will allow for the land to be used and developed for residential purposes.

The current Commercial 2 Zone promotes the use a development of land for commercial offices. Dwellings are a prohibited use within the Commercial 2 Zone, and therefore the vacant land cannot be used for dwellings. It should also be noted, that the existing dwellings are non-conforming uses, meaning that no permit can be granted for the intensification of the non-conforming use.

The current zone is a carry-over from the former Business 4 Zone, which was in place due to Mollison Street historically being the main road from Melbourne to Bendigo. The purpose of the Commercial 2 Zone is "To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services". It is considered that the subject land is unsuited to this form of use and development, and is better suited to residential use and development. It is considered that the Commercial 2 Zone is a redundant zone for this area of Malmsbury given the existing urban character of Malmsbury, the towns urban structure, and the role of Malmsbury as a small town within the Macedon Ranges Settlement Hierarchy.

Clause 21.13-9 Malmsbury identifies elements that define the character of Malmsbury include:

- Gold mining heritage including bluestone buildings and cultural landscapes.
- Von Mueller designed Botanical Gardens of heritage significance.

OFFICIAL

- ‘Small country town’ atmosphere and limited services.
- The range of residential lifestyles offered including township, low density residential and rural living.
- Railway heritage significance.
- The key issues for Malmsbury include:
  - Protecting the town’s heritage and landscape values and assets.
  - Supporting the town’s identity.
  - Providing a range of commercial and residential opportunities.
  - Enhancing the township’s open space offering and linkages.
  - Supporting the Malmsbury Juvenile Justice Centre located in the town.

Malmsbury has a relatively small active commercial area, on the south side of Mollison Street, between Ellesmere Place and Barker Street, which is in the Commercial 1 Zone. Additional vacant Commercial 1 Zone land is also available to the east of Barker Street.

The purpose of the Commercial 1 Zone is “To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses”. It is considered that the Commercial 1 Zone is suitable to provide for the range of commercial uses needed in Malmsbury.

By using the Neighbourhood Residential Zone, the amendment will assist in meeting Objective 2 from Clause 21.13-9 which seeks “To protect heritage buildings, streetscapes and gardens as an important part of the town’s attractiveness and tourism offering”. In this way, the proposed amendment assists in implementing Clause 21.13-9 of the Macedon Ranges Planning Scheme.

#### **How does the amendment implement the objectives of planning in Victoria?**

The amendment will implement the following objectives of planning in Victoria under section 4 of the Planning and Environment Act 1987:

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;*
- (b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity*
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;*
- (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);*
- (g) to balance the present and future interests of all Victorians.*

The amended implements these objectives by providing for the orderly and balanced growth of Malmsbury responding to Clause 21.13-9 of the Macedon Ranges Planning Scheme and specific site characteristics that will ensure that new development contributes to the established urban character of Malmsbury.

#### **How does the amendment address any environmental, social and economic effects?**

The amendment will have positive environmental, social and economic effects and result in net community benefit.

##### *Environmental*

The amendment will have a positive environmental impact on Malmsbury by ensuring that future development contribute to the existing tree canopy of Malmsbury, thus ensuring the town’s established character and micro-climate is enhanced.

##### *Social and Economic*

The amendment will have a positive social and economic impact on Malmsbury by providing additional housing opportunities within the Malmsbury Settlement Boundary and allow for a more appropriate use and development to meet the community’s housing needs.

Utilising the existing road reserve network and servicing infrastructure associated with the proposed schedule to the zone, moderate population growth will continue the rural township ‘feel’ of the area.

OFFICIAL

**Does the amendment address relevant bushfire risk?**

The site is not within the Bushfire Management Overlay, but is subject to a designated bushfire prone area. The subject land is located centrally within the Malmsbury township, and has no direct exposure to vegetated areas where fire runs may develop.

Views of Fire Victoria were sought through Council's informal referral of the application, however a meeting was declined.

As the site is a designated bushfire prone area, any relevant future use or development applications will be subject to bushfire safety requirements under the Building Act 1983.

**Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

The Amendment complies with the requirements of the *Ministerial Direction – The Form and Content of Planning Schemes* (Section 7(5) of the Act) and *Ministerial Direction 11 Strategic Assessment of Amendments*.

No other Ministerial Direction applies to the Amendment, with the exception of *Ministerial Direction No 15 – The Planning Scheme Amendment Process*.

**How does the amendment support or implement the Planning Policy Framework and any adopted State policy?**

The amendment will further the objectives and considerations of planning in Victoria, and appropriately supports the following elements of the Planning Policy Framework:

- *Clause 11 Settlement* provide guidance that planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land whilst preventing environmental, human health and amenity problems by taking full advantage of existing settlement patterns.

Subsequent Clauses identify the need for housing choice and affordability within settlement boundaries (*Clause 11.01-1S Settlement*) and to ensure development recognises and responds to distinctive areas such as the Macedon Ranges Statement of Planning Policy (*Clause 11.03- 5S Distinctive Areas and Landscapes*) and distinctive neighbourhood characteristics (*Clause 11.03-6S – Regional and Local Places*).

The amendment seeks to rezone unutilised commercially zoned land within the Malmsbury Settlement boundary to allow for residential land supply that will improve the environmental landscape and respond to the existing subdivision pattern.

- *Clause 15 Built Environment and Heritage* seeks to recognise the role of urban design, building design, heritage and energy and resource efficiency in delivering liveable and sustainable cities, towns and neighbourhoods; and that Planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context.

Specifically, *Clause 15.01* seeks to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity. The amendment assists in achieving this objective by utilising the Neighbourhood Residential Zone Schedule to introduce controls that will ensure that new development contributes to the existing urban character of Malmsbury.

- Housing policies such as *Clause 16.01-1S Housing Supply*, *Clause 16.01-2S Housing Affordability* and *Clause 16.01-3S Rural Residential Development* identify the need for well planned housing opportunities within existing settlement boundaries that provide for appropriate land supply and built form outcomes.

The amendment will provide for additional residential land supply within the existing Malmsbury Settlement Boundary, and the Schedule to the Neighbourhood Residential Zone responds to the neighbourhood character of the area.

- *Clause 18 Transport* and *Clause 19 Infrastructure* support subdivision and land uses that are well located, well serviced and support an efficient and safe road network.

OFFICIAL

The amendment will enable for additional serviced residential lots and associated infrastructure and road network upgrades.

**How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

The amendment will further the objectives and considerations of planning in Victoria, and appropriately supports the following elements of the Planning Policy Framework:

- The *Municipal Strategic Statement* reflects the balanced considerations of residential growth, existing character and heritage, rural and agricultural uses and the natural environment and scenic beauty of the region.
- These considerations are further highlighted in Clause 21.02 Key Issues and Influences, as well as *Clause 21.03 – Vision – Strategic Framework Plan*.

The amendment balances these considerations and responds positively by enabling residential growth within the existing Malmsbury Settlement Boundary under a Neighbourhood Residential Zone with a schedule that respects the existing character of Malmsbury.

- *Clause 21.05 Environment and Landscape Values*, *Clause 21.06 Environmental Risk* and *Clause 21.07 Natural Resource Management* highlight the importance of managing appropriate biodiversity values, rural landscapes, prioritise fire risk in planning decisions, protect water catchments and protect productive agricultural farming land.

The site is not subject to any key landscape values, nor does the amendment provide for any unnecessary environmental risk.

- Housing and development considerations at *Clause 21.08 – Built Environment and Heritage*, *Clause 21.09 Housing* and *Clause 21.13 Local Areas and Small Settlements* highlights the importance of appropriate development and housing opportunity not impacting on the heritage value of character of the surrounds.

Specifically, *Clause 21.13-9 Malmsbury* identifies a rural village lifestyle and envisaged incremental development and population growth within the township boundary. It is further highlighted that heritage, township identity, and landscape values are to be respected and associated strategies to ensure this is met include:

- Locate new development within the township boundary
- Encourage development that maximises access to existing servicing
- Ensure development has a minimal impact on water quality.

The amendment respects and responds to these strategies by enabling for future sympathetic residential development in accordance with a Neighbourhood Residential Zone with an appropriate schedule that sets clear objectives and responds to the characteristics of the Malmsbury township.

The amendment does not seek to change any objective or strategy within the Local Planning Policy Framework or Municipal Strategic Statement.

**Does the amendment make proper use of the Victoria Planning Provisions?**

The proposed use of the Victorian Planning provisions results in the use of the most appropriate VPP tools, being:

- The application of the Neighbourhood Residential as it currently applies to the Macedon Ranges Planning Scheme within the existing Malmsbury Settlement Boundary, in keeping with zoning hierarchy in an area with adjacent existing General Residential Zoned land.
- Introduction of a Schedule to the Neighbourhood Residential Zone responding specifically to the existing character of Malmsbury.

**How does the amendment address the views of any relevant agency?**

OFFICIAL

The amendment removes redundant zoning of land, and introduces a zoning that assists in the implementation of the Macedon Ranges Planning Scheme, specifically Clause 21.13-9. As all relevant agencies have had the opportunity to input to the Macedon Ranges Planning Scheme, it is considered that these views are translated into the amendment via the implementation of the Municipal Strategic Statement.

All relevant referral agencies will be notified of the amendment, which will provide further opportunity for involvement.

#### **Does the amendment address relevant requirements of the Transport Integration Act 2010?**

The amendment will not have any significant impact on the transport system as:

- The amendment does not impact existing public transport networks.
- The amendment will enable limited additional residential land use consistent with the surrounding land use supported by the existing road infrastructure and network.

#### **Resource and administrative costs**

#### **What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

Future administrative cost and burden on the Responsible Authority is considered low, as it is envisaged that the proposal will result in a limited number of additional planning applications for the development of land for single dwelling due to the existing Heritage Overlay and Environmental Significance Overlay. The introduction of the Neighbourhood Residential Zone Schedule 14 provides clear guidance for future development, which will assist the Responsible Authority in exercising its discretion.

#### **Where you may inspect this amendment**

The amendment can be inspected free of charge at the Macedon Ranges Shire Council website at <https://www.mrsc.vic.gov.au/Build-Plan/Planning-For-Our-Future/Planning-Scheme-and-Amendments>

The amendment is available for public inspection, free of charge, during office hours at the following places:

- Gisborne Administration Centre 40 Robertson Street, Gisborne (opposite the police station)
- Kyneton Administration Centre 129 Mollison Street, Kyneton
- Romsey Service Centre 96–100 Main St, Romsey
- Woodend Service Centre Corner Forest and High Streets, Woodend

The amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at [www.planning.vic.gov.au/public-inspection](http://www.planning.vic.gov.au/public-inspection).

#### **Submissions**

Any person who may be affected by the amendment may make a submission to the planning authority. Submissions about the amendment must be received by [insert submissions due date]. A submission must be sent to:

Strategic Planning and Environment team  
Macedon Ranges Shire Council  
PO Box 151  
KYNETON VIC 3444

OFFICIAL

Panel hearing dates

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: [insert directions hearing date]
- panel hearing: [insert panel hearing date]

DRAFT

OFFICIAL

MACEDON RANGES PLANNING SCHEME

25/05/2017 **SCHEDULE 14 TO CLAUSE 32.09 NEIGHBOURHOOD RESIDENTIAL ZONE**

Shown on the planning scheme map as **NRZ14**.

**MOLLISON STREET MALMSBURY**

25/05/2017 **1.0 Neighbourhood character objectives**

To provide residential development that is in keeping with the existing residential character of Malmsbury with larger lots, significant landscaping and generous setbacks.

To respond to and respect the heritage character of the town.

To promote wide frontages with visual breaks between dwellings surrounded by canopy trees.

To support absent, low or rural style front, side and rear fencing that allows for visual permeability and plantings in front and side setbacks to blend with the public realm.

25/05/2017 **2.0 Minimum subdivision area**

The minimum lot size for subdivision is 1,000 square metres

25/05/2017 **3.0 Permit requirement for the construction or extension of one dwelling or a fence associated with a dwelling on a lot**

Requirement	
Permit requirement for the construction or extension of one dwelling on a lot	None specified
Permit requirement to construct or extend a front fence within 3 metres of a street associated with a dwelling on a lot	None specified

25/05/2017 **4.0 Requirements of Clause 54 and Clause 55**

	Standard	Requirement
Minimum street setback	A3 and B6	9 metres
Site coverage	A5 and B8	20%
Permeability	A6 and B9	30%
Landscaping	B13	In addition to the requirements of B13, development should provide for at least two canopy trees within the front setback
Side and rear setbacks	A10 and B17	3 metres
Walls on boundaries	A11 and B18	Walls on boundaries are not permitted
Private open space	A17	None specified
	B28	None specified



MACEDON RANGES PLANNING SCHEME

	Standard	Requirement
Front fence height	A20 and B32	None specified

**5.0 Maximum building height requirement for a dwelling or residential building**

25/05/2017

A building used as a dwelling or a residential building must not exceed a height of 9 metres and 2 storeys.

**6.0 Application requirements**

25/05/2017

None specified

**7.0 Decision guidelines**

25/05/2017

None specified

DRAFT

<b>9.2</b>	<b>APPLICATION FOR A SECTION 96A PLANNING SCHEME AMENDMENT C154MACR AND PLANNING PERMIT PLN/2022/198 - 1 WILLS STREET MALMSBURY</b>
<b>Officer:</b>	<b>Leanne Khan, Coordinator Strategic Planning</b>
<b>Council Plan relationship:</b>	<b>1. Connecting communities</b>
<b>Attachments:</b>	<b>Draft Planning Scheme Amendment C154macr documents and Draft Planning Permit PLN/2022/198 (under separate cover) <a href="#">⇨</a></b>

### Summary

Council has received a request from the owners of 1 Wills Street, Malmsbury to rezone the land from the Farming Zone to the Neighbourhood Residential Zone and to remove Heritage Overlay 148. The request also seeks a planning permit for subdivision of the land into nine lots. Section 96A of the *Planning and Environment Act 1987* provides the ability for a planning permit application to be considered concurrently with a planning scheme amendment. The proposal also seeks to remove a Section 173 Agreement that applies to the land, which was a condition of a previous permit PLN/2009/227.

### Recommendation

**That the Planning Delegated Committee:**

- 1. Requests the Minister for Planning to authorise the preparation of Planning Scheme Amendment C154macr and Planning Permit PLN/2022/198 to the Macedon Ranges Planning Scheme pursuant to section 9 of the Planning and Environment Act 1987.**
- 2. Authorises Council officers to prepare amendment documents for authorisation and exhibition of Amendment C154macr and Planning Permit PLN/2022/198, and**
  - (a) Upon receipt of authorisation, make any changes necessary to comply with conditions of authorisation**
  - (b) Upon satisfaction of any conditions of authorisation, exhibit Amendment C154macr and Planning Permit PLN/2022/198 pursuant to section 19 of the Planning and Environment Act 1987.**

---

### Background

An application under Section 96A of the *Planning and Environment Act 1987* (the Act) was received on 22 November 2019 for the land at 1 Wills Street, Malmsbury. This section of the Act allows a combined planning scheme amendment and planning permit to be considered by Council, an independent planning panel and ultimately the Minister for Planning; concurrently. The application has been made at the request of the owners of the land, and is considered a proponent led planning scheme amendment.

The original application lodged requested a rezoning from Farming Zone to General Residential Zone and a 15 lot subdivision. Over the last 12 months, Council officers and the applicants have continued to work towards a rezoning solution for the subject land. Giving consideration to Clause 21.13-9 of the Macedon Ranges Planning Scheme, which establishes a range of objectives and strategies to guide the future use and development of Malmsbury, it is considered that the Neighbourhood Residential Zone is the most

appropriate zone available from the Victoria Planning Provisions for the subject land. Given the location of the land, and its gateway status into Malmsbury, the planning permit application reduces the number of lots sought from fifteen to nine. Council officers have also requested that the application includes the removal of the Heritage Overlay 148 from this property, as there is no heritage values known on this property or surrounds.

### Discussion

The subject land is within the township boundary of Malmsbury, in the south-east of the town. The land is not currently used for agricultural production, and there is an existing dwelling on the land.

The applicant provided a land supply and demand assessment to support their application. It approximated that Malmsbury has under ten years of land supply currently available.

The purpose of the Farming Zone includes the objectives "To provide for the use of land for agriculture; and to encourage the retention of productive agricultural land". As 1 Wills Street is within the township boundary of Malmsbury, it is considered that this form of use and development is unsuited to Malmsbury's heritage character and status as a small town.

The purpose of the Neighbourhood Residential Zone is "To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics". It is considered that the Neighbourhood Residential Zone is best suited to this location to assist in achieving the planning outcomes identified in Clause 21.13-9 of the Macedon Ranges Planning Scheme.

Clause 21.13-9 Malmsbury identifies that the key issues for Malmsbury include: -

- Protecting the town's heritage and landscape values and assets.
- Supporting the town's identity.
- Providing a range of commercial and residential opportunities.
- Enhancing the township's open space offering and linkages.

The amendment proposes to introduce Schedule 13 to the Neighbourhood Residential Zone (NRZ13) that will apply to the subject land. The content of NRZ13, has been drafted so as to ensure that new development of the subject land continues to contribute to the protection of heritage buildings, streetscapes and gardens as an important part of the town's attractiveness and tourism offering.

The application is also seeking to remove the Heritage Overlay 148 - HO148 Malmsbury Precinct, Mollison Street, Malmsbury from the subject site. The heritage overlay is a precinct overlay and has been in place in its current form since 1999 as guided by the Shire of Kyneton Conservation (Heritage) Study (1990). The Heritage Strategy 2014-2018 identifies the need to '*review precinct and heritage places in Malmsbury*'. Council's Heritage Advisor is supportive of the proposal to remove the heritage overlay from this property as there are no heritage values on the subject site or surrounding properties.

The heritage overlay control was recommended and implemented more than two decades ago, it is no longer up to date with contemporary heritage industry practice or planning. For instance, the 'Malmsbury Conservation Area' citation makes recommendations for what are now termed 'mock' heritage outcomes, and these sorts of recommendations are no longer viewed as good heritage practice. There is also no incorporated 'Statement of Significance' document for the Malmsbury precinct in the planning scheme, as is now required following the VC148 changes adopted in 2018. Lastly, there is no heritage design guidance to assist with both managing sensitive changes to identified heritage places, or for managing sympathetic infilling of the historic town core. The out of date or non-existent documentation

for HO148 is not a tool easily used to get good heritage outcomes. The proposed NRZ13 implements built form controls, limiting new dwellings to two storey, setbacks and the requirement for landscaping.

The draft explanatory report and draft NRZ13 have been provided at Attachment One.

To accord with Strategy 2.7 from Clause 21.13-9, which seeks 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 schedule requires that each lot:

- is to be a minimum of 2000 square metres,
- that front setbacks are a minimum of 15 metres,
- side setbacks are a minimum of 15 metres where there is frontage to a constructed street, and
- 9 metres setback from an unconstructed road reserve.

Landscaping within the road reserve and within the front setback will ensure that new development will contribute to the existing tree canopy character of the town. Each lot will be required to have two canopy trees within the front setback, and a minimum of one street tree per lot.

In this instance, the applicant is applying for a nine lot subdivision of the land. The proposed subdivision has been prepared in line with the proposed Neighbourhood Residential Schedule. Proposed lot sizes range from 2000 square metres to 2162 square metres.

A Draft Planning Permit – PLN/2022/198 has been prepared and included as part of Attachment One. The draft Planning Permit conditions address landscaping, building envelopes, the content of a proposed Section 173 Agreement, mandatory subdivision conditions, Engineering and Projects Unit conditions, engineering plans, asset protection, site management, environmental management plan, construction management plan, and environmental health.

A Cultural Heritage Management Plan is not required for the subdivision.

A referral process will be undertaken under the normal notice requirements for a Planning Scheme Amendment. Referral Authorities will be notified of the amendment, and additional permit conditions can be added to the attached draft conditions at the conclusion of the notice period. Council will consider the rezoning application and the permit application at the conclusion of the public exhibition process, to consider moving the application to the next stage.

A Section 173 agreement exists on title. Document Identification AL765770M requires a farm management plan to be prepared. It is proposed to remove this agreement from the title should the rezoning proceed, as it will become redundant. Council is in the process of providing in principle support to end the current Section 173 Agreement in order to facilitate this amendment.

**The Amendment Process**

Figure One below illustrates the Section 96A combined planning scheme amendment and planning permit process.

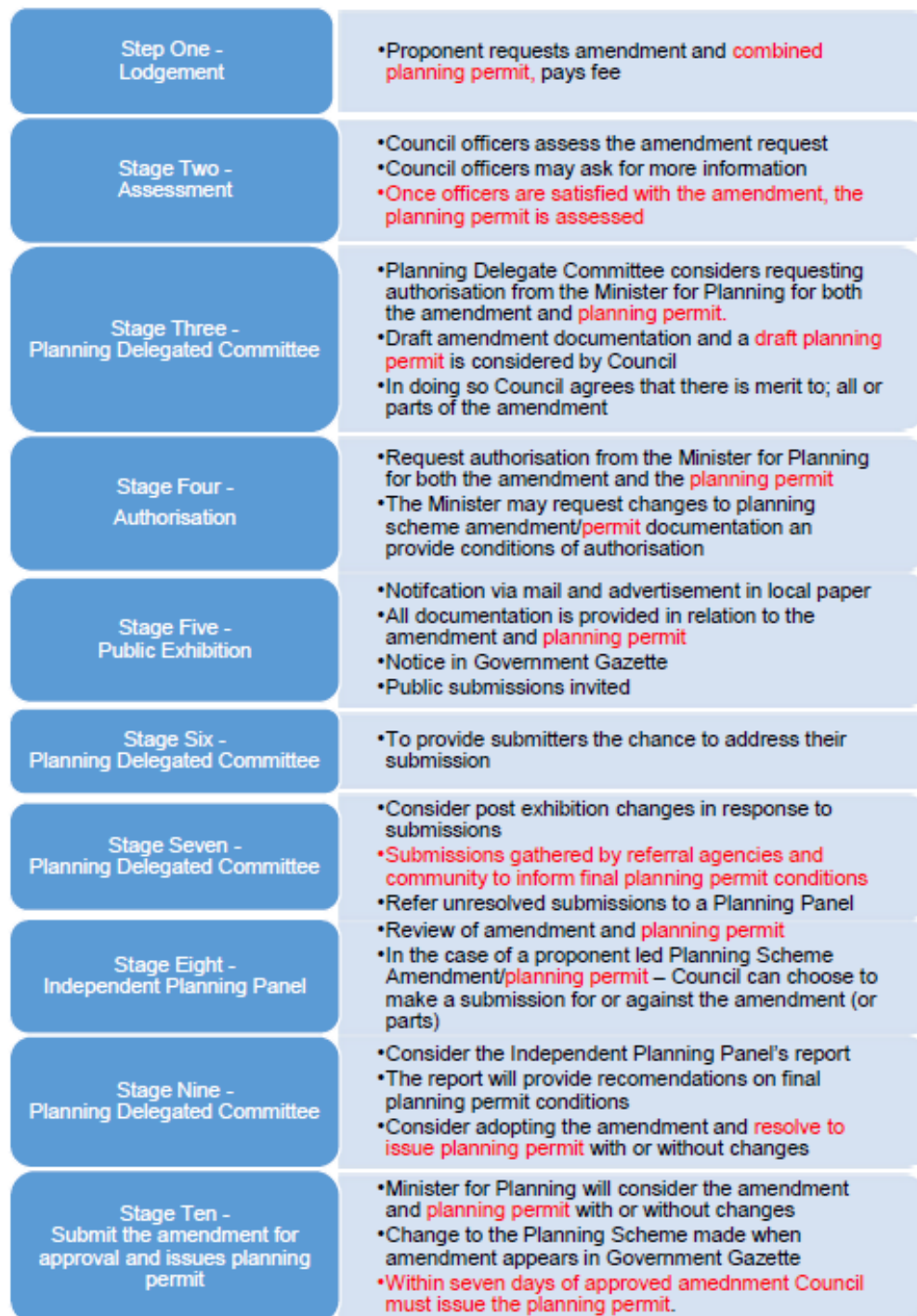


Figure One: A Section 96A combined planning scheme amendment and planning permit process at Macedon Ranges Shire.

This amendment and planning permit request is at Stage Three, requiring a decision of Council in order to proceed with the amendment.

**Consultation and engagement**

If authorised, statutory consultation on the amendment will be conducted with all impacted landowners, occupiers and referral authorities as required by the *Planning and Environment Act 1987*.

**Collaboration**

In the preparation of this amendment Council has sought informal comments from Coliban Water and Department of Transport who have indicated support for the amendment.

**Innovation and continuous improvement**

N/A

**Relevant law**

The requirements for a planning scheme amendments are set out in the *Planning and Environment Act 1987* and its regulations.

This report does not have any direct or indirect human rights implications under the *Charter of Human Rights and Responsibilities Act 2006*.

In accordance with the *Gender Equality Act 2020*, a Gender Impact Assessment was not required in relation to the subject matter of this report.

**Relevant regional, state and national plans and policies**

N/A

**Relevant Council plans and policies**

This report seeks to progress a priority in the Council Plan 2021-2031:

*Strategic Objective 1 – Connecting Communities.*

*Integrate land-use planning, and revitalise and protect the identity and character of the shire.*

Small Towns Strategy incorporating the Malmsbury Structure Plan (2006) includes as an action

*R1-Residential*

*Protect the landscape and built form characteristics and qualities of residential areas in Malmsbury, promoting the theme of a rural village. No further land should be rezoned at this time as there is land available for development in excess of 10 years supply.*

**Financial viability**

The *Planning and Environment 1987* Regulations set out fees to be paid at each step of the Amendment.

Council's fact sheet, 'Private Sponsored Planning Scheme Amendments' sets out Council's expectation that all costs associated with the amendment will be payable by the applicant.

**Sustainability implications**

The amendment will have a positive social and economic impacts on Malmsbury by providing additional housing opportunities within the Malmsbury Settlement Boundary and allow for a more appropriate use and development of the subject land to meet the community's housing needs.

The proposal utilises the existing road reserve network and servicing infrastructure to continue the rural township 'feel' of the area.

**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.

<b>9.3</b>	<b>DP/2019/1 - BENNETT ROAD, GISBORNE - DEVELOPMENT PLAN</b>
<b>Officer:</b>	<b>Jack Wiltshire, Strategic Planner</b>
<b>Council Plan relationship:</b>	<b>3. Improve the built environment</b>
<b>Attachments:</b>	<b>1. Attachment 1 - Statement of Planning Policy Assessment <a href="#">↓</a></b> <b>2. Attachment 2 - Bennett Road Development Plan documents for endorsement (under separate cover) <a href="#">⇒</a></b>
<b>Applicant:</b>	<b>G2 Urban Planning</b>
<b>Date of receipt of application:</b>	<b>13 August 2019</b>
<b>Trigger for report to the Committee</b>	<b>Decision on Development Plan application</b>

### Summary

A Development Plan (DP) application for the land covered under the Development Plan Overlay Schedule 18 – Bennett Road, Gisborne Rural Living Area (DPO18) is ready for Council’s consideration. Officers are recommending approval of the application which proposes 48 lots, including a ‘superlot’ that has further subdivision potential, and the creation of a substantial new creek reserve.

The Bennett Road Development Plan (DP/2019/1) documentation is found at Attachment 2 to this report

The application was advertised to adjoining landowners on 13 April 2022 for fourteen days. Four (4) submissions were received. No objection to the proposal was received from referral authorities.

### Recommendation

**That the Committee:**

- 1. Approve the Development Plan prepared by G2 Urban Planning (December 2021) covering the Development Plan Overlay Schedule 18 - Bennett Road, Gisborne Rural Living Area, prepared for the purposes of Clause 43.04 Schedule 18 of the Macedon Ranges Planning Scheme.**
- 2. Notify the applicant and submitters of Council’s decision.**

### Existing conditions and relevant history

#### Subject land

The land subject to the Development Plan Overlay is located between McGregor Road, Bennett Road, Brooking Road and Coney Court. 88 Bennett Road is located to the south of Brooking Road. The site comprises a generally undulating landscape situated to the east of the Calder Freeway. The Djirri Djirri Creek runs diagonally across the area from Bennett Road towards Coney Court.

The subject land comprises the following properties:



- 88 Bennett Road (Lot 1, PS343448) is a 16.25ha site which contains an existing dwelling and outbuildings. The Djirri Djirri Creek runs through this site with the majority of the trees on site following this corridor. Apart from the creek corridor, the property is generally flat to undulating.
- 128 Bennett Road (Lot 1, PS343449) is a 25.77ha site which contains an existing dwelling and outbuildings. The site contains two dams toward its northern boundary and two small dams along its western boundary. The site is generally flat to undulating. Large trees exist along the existing driveway and around the dwelling and also occur toward the northern boundary.
- 168 Bennett Road (Lot 2, PS627007) is a 16.6ha site on the corner of McGregor Road and Bennett Road. It contains a dwelling and outbuildings. The site is generally flat to undulating and contains a single dam. Row plantings of vegetation occurs along the road frontage and within the site.
- 15 McGregor Road (Lot 1, TP886104) is an 11.11ha site fronting McGregor Road. The site is currently vacant of buildings. It contains a single dam and has a tree row along its northern boundary and the boundary shared with 66 McGregor Road. The site is generally flat to undulating.
- 94 McGregor Road (Lot 1, LP134525) is a 31.88ha site fronting McGregor Road and the unmade Brooking Road. The site contains a single dwelling and outbuildings. Extensive driveway tree plantings and around the dwelling are present. The Djirri Djirri Creek runs along the eastern boundary of this site. The remainder of the site is flat to undulating.
- 134 McGregor Road (Lot 1, PS633404) is a 27.7ha site fronting McGregor Road to the north, Brooking Road reserve to the south and the Coney Court road reserve to the east. The site contains a single dwelling and outbuildings. Djirri Djirri Creek runs through the centre of the site which generally falls towards this area. Vegetation is generally located around the existing dwelling and northern boundary. A rocky outcrop is present to the south-east corner of the site.

### Surrounds

The surrounding area is established rural living land with larger parcels located to the east of the site. The Calder Freeway runs to the west of the area and the Gisborne Township further west. To the north of McGregor Road is the Emmaline Vale estate.

The area is approximately 2.8km from the Gisborne town centre and 5km from the Gisborne train station.

Notable landscape features within the local area include the Djirri Djirri Creek running north towards Jacksons Creek and views to Red Rock in Hume Shire to the east.

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

Section 173 Agreements have been removed at 168 Bennett Road, Gisborne and 134 McGregor Road, Gisborne which restricted further subdivision.

These agreements came in prior to C110 which was gazetted in 23 September 2015. It is expected an application will be lodged at the time of subdivision to end these agreements. The Amendment C110 was aware of Section 173 agreements applying to sites as part of the amendment and expected these would be removed as land was rezoned for more intensive rural living outcomes. This process is separate from the approval of a development plan application and can be considered at the time of subdivision.

Previous planning permit history

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

<b>Permit No.</b>	<b>Description</b>
PLN/2007/546	134 McGregor Road, Gisborne (Lot 1, PS633404). Subdivision of the land into three lots
PLN/2009/137	44 Bennett Road, Gisborne (Lot 2, PS627007) Subdivision of the land into two lots
PLN/2002/239	88 Bennett Road, Gisborne (Lot 1, PS343448) Dwelling and outbuilding
PLN/2001/53	94 McGregor Road, Gisborne (Lot 1, LP134525) Extension to a dwelling
AGR/2019/6	End Section 173 Agreement AH592210A on land at 168 Bennett Road, Gisborne
AGR/2020/3	End Section 173 Agreement AH247622D on land at 134 McGregor Road, Gisborne

**Proposal**

The proposal is for the approval of a development plan comprising a rural living subdivision layout of 48 lots which includes a 12.35ha 'super lot,' which could be further subdivided to create an additional six lots subject to additional investigations.

The Development Plan outlines a linear waterway reserve corridor along Djirri Djirri Creek running between Coney Court and Bennett Road. Lots fronting Djirri Djirri Creek have indicative building envelopes to ensure suitable setbacks of development. It should be noted that lots that do not contain building envelopes would be subject to the setback requirements outlined in the Rural Living Zone Schedule 2 (RLZ2).

Lot sizes are to range from 2ha up to 3.23ha (excluding a 12.35ha super lot). No open space is proposed within the development, however the waterway reserve along Djirri Djirri Creek and some rural pedestrian/bike paths will be provided within the development plan area offering passive recreation opportunities.

**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
12	Environmental and Landscape Values
13	Environmental Risks and Heritage
15	Built Environment and Heritage

16	Housing
18	Transport
19	Infrastructure

Local Planning Policy Framework

Clause no.	Clause name
21.03	Vision – Strategic Framework Plan
21.04	Settlement
21.05	Environment and Landscape Values
21.06	Environmental Risks
21.08	Built Environment and Heritage
21.09	Housing
21.11	Transport
21.12	Community Development and Infrastructure

Zoning

Clause no.	Clause name
35.03	Rural Living Zone Schedule 2 (RLZ2)

Overlay

Clause no.	Clause name
43.04	Development Plan Overlay Schedule 18 (DPO18)

Particular provisions

Clause no.	Clause name
51.07	Macedon Ranges Statement of Planning Policy
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> ?	Yes.
2	Does the application proposal include significant ground disturbance as defined	Yes.

	Assessment criteria	Assessment response
	in Part 1 Regulation 5 of <i>Aboriginal Heritage Regulations 2018</i> ?	
3	Is the application proposal an exempt activity as defined in Part 2 Division 2 of <i>Aboriginal Heritage Regulations 2018</i> ?	No
4	Is the application proposal a high impact activity as defined in Part 2 Division 5 of <i>Aboriginal Heritage Regulations 2018</i> ?	Yes

Based on the above assessment, a cultural heritage management plan is required in accordance with Part 2 Division 1 of *Aboriginal Heritage Regulations 2018*.

A Cultural Heritage Management Plan has not been submitted as it is not required as part of a development plan application.

A Cultural Heritage Management Plan may be required for any future subdivision application within the Bennett Road Development Plan area.

**The process to date**

The application was submitted to Council on 13 August 2019.

The application was reviewed, referred and further information requests were worked through to the current development plan application dated December 2021.

The application was advertised from 13 April 2022 for a period of 14 days to adjoining landowners and four (4) submissions were received.

Referral

Authority (Section 55)	Response
Nil.	

Authority (Section 52)	Response
Melbourne Water	No objection. A number of requirements will be sought at the time of subdivision for lots along the Djirri Djirri Creek.
Department of Environment, Land, Water and Planning	No objection.
Greater Western Water	No objection.
Southern Rural Water	No objection.
Department of Transport	No objection.
Country Fire Authority	No objection.
Powercor	No objection.
MRSC Engineering Unit	No objection.
MRSC Environment Unit	No objection.
MRSC Health Unit	No objection.
MRSC Parks and Gardens Unit	No objection.

### Advertising

Whilst the DPO18 does not require notice to be given, public notice of the development plan was undertaken from 13 April 2022 to 27 April 2022.

Adjoining and surrounding landholders and occupiers were informed of the application. Four (4) submissions have been received.

A total of four (4) objections were received to this application. They are summarised as follows:

Objection/concern regarding application:

- Internal road layout and other traffic concerns.
- Djirri Djirri Creek reserve and why this land cannot be incorporated into residential lots.
- Provision of infrastructure and the equity of the proposed arrangement.
- Condition of Bennett Road and the impact of the development.
- Proposed layout, building envelopes and access of 88 Bennett Road, Gisborne.
- Drainage from the site onto nearby properties.
- Proposed setbacks and building envelopes.

### **Officer assessment**

#### **Planning Policy Framework and Local Planning Policy Framework**

Various State and Local policies relevant to this application relate to settlement, environmental values, landscape, environmental risks, amenity, built environment and heritage, housing, transport and infrastructure.

Clause 13.02-1S (Bushfire Planning) is relevant to the proposal and relate to planning for bushfire risk.

Clause 21.03 (Vision – Strategic Framework Plan) encourages rural living development within appropriately zoned areas including a diversity of lot sizes that preserves the existing rural character. Clause 21.04 (Settlement) reinforces rural living strategy by promoting the development of areas appropriately subject to Rural Living Zone for this purpose rather than allowing rural residential development in other rural zones.

Clause 21.05 (Environment and Landscape Values) aims to ensure protection and enhancement of biodiversity and native vegetation as well as rural and natural landscape values.

Clause 21.06 (Environmental Risk) includes policy relating to soil degradation and bushfire risk relevant to this application. Bushfire risk has been addressed in respect to clause 13.02-1S. The avoidance of land degradation including significant land disturbance and soil erosion is promoted by this policy.

Clause 21.05 (Environment and Landscape Values) seeks the protection of the landscape qualities of the Shire are also promoted by this policy including avoidance of impacts to scenic landscapes.

Clause 21.09 (Housing) includes policy for rural residential development that aims for new development to reflect the rural character as well as landscape values and environmental constraints. The visual prominence of new buildings is preferred to be minimised, whilst new roads should also be minimised in their extent and cut. The avoidance of detrimental environmental impacts is also encouraged. The servicing of lots including waste water treatment should be sustainable.

Clauses 21.11 (Transport) and 21.12 (Community Development and Infrastructure) aim to ensure provision of appropriate accessibility as well as other social and physical infrastructure.

### **Discussion**

The subject land is zoned for rural living and permits rural living subdivision. The development area would connect to existing roads providing access to Gisborne and Sunbury for shopping and services as well as the Calder Freeway. The Djirri Djirri Creek with environmental, vegetation and habitat values will be incorporated into a public waterway reserve and become a significant landscape and environmental feature of the proposed development. By creating this lineal reserve, native vegetation and habitat values can be retained and enhanced.

It also propose to avoid development on the steeper slopes of the waterway escarpment by capturing these in the waterway reserve. This reserve would offer enhanced land management outcomes by transferring it to Council management rather than the current arrangement where individually held sections of creek in private ownership.

The visual impact of development on the landscape will be minimised through the provision of building envelopes along the creek corridor. The RLZ2 also provides building setbacks to ensure all buildings in the DP area retain an open rural character.

The site is not located within a Bushfire Management Overlay, however is located in a bushfire prone area. A fire access track and the roadway along the western/northern side of Djirri Djirri Creek will add to the access and permeability of the site.

Road access to all lots would meet fire fighting vehicle requirements.

Reticulated potable water and electricity supply is required by the relevant service authorities. Effluent disposal would be required to meet relevant standards and future septic tank permits.

A Land Capability and Stormwater review has found it feasible to service the development as proposed. Public open space is not formally proposed by this application however the waterway reserve and bike/pedestrian paths would incorporate passive recreational opportunities.

An acoustic report has been provided and future development will need to ensure compliance with its recommendations in regard to noise from the Calder Freeway.

It is further considered the proposal is acceptable under the provisions of the Macedon Ranges Statement of Planning Policy.

The proposal is consistent with the relevant State and Local Policy Framework.

### **Clause 35.03 – Rural Living Zone (RLZ2)**

The purpose of the Rural Living Zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for residential use in a rural environment.*
- *To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.*
- *To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

Schedule 2 to the Rural Living Zone provides for specific lot sizes for subdivision of 2ha and permit exemption for dwellings on land over 0.4ha as well as setback requirements including 20m from roads, 10m from boundaries and 40m from adjacent dwellings and permit triggers for earthworks.

A subdivision permit will be required to subdivide land.

A lot used for a dwelling must include all-weather access including emergency vehicle dimensions, wastewater disposal, water supply, and electricity supply.

It is considered the proposed layout outlined within the development plan provides for a suitable outcome on the individual lots while providing for a good yield of lots for development while balancing environmental, landscape and risk factors. The layout would allow for any property to develop separately subject to providing the adequate infrastructure required.

### **Development Plan Overlay Schedule 18 – Bennett Road, Gisborne, Rural Living Area (DPO18)**

The application is for the approval of a development plan under DPO18.

The DPO18 outlines that a permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority.

DPO18 outlines a number of objectives which are:

- *To coordinate development and provide an integrated and safe road and path network connecting land within the development plan area with neighbouring land.*
- *To provide for a range of lot densities that respond to and manage site features and constraints.*
- *To strategically manage the features and constraints of the development area, including the protection and enhancement of drainage lines and steeply sloping land and limiting the visual intrusion of development adjacent to the Calder Freeway.*
- *To protect and manage waterways, drainage lines and adjacent escarpments.*
- *To provide sustainable access to water supplies, and allow natural run-off to be maintained to waterways within and connecting with the area.*

The DPO18 also requires that the development plan must be generally in accordance with the concept plan in Map 1 to the schedule and must include the following requirements:

- A general site analysis plan,
- A land capability assessment,
- Biodiversity and heritage assessment,
- Infrastructure provision plan,
- Sustainable development plan,
- Subdivision layout concept plan,
- Traffic management and impact plan,
- Landscaping and open space concept plan.

A detailed review of the proposed development has found it generally accords with the requirements of the DPO18 and no objection has been received from relevant referral authorities or internal Council departments.

The capability of the land area for the proposed development has been demonstrated by a Land Capability Assessment for onsite effluent disposal that has been reviewed by Council's Health Unit as well as local water authorities who have consented to the proposal. Future subdivision permits will ensure compliance with relevant requirements to ensure no adverse impact on the Djirri Djirri Creek and surrounding properties.

The design and siting of the proposed lot layout and location of proposed building envelopes for lots adjoining the creek are considered appropriate. The other sites within the DPO18 are subject to setback requirements of the RLZ2 and these setbacks are deemed appropriate and will provide for an open rural landscape. The alignment of the reserve along Djirri Djirri Creek will allow for the subdivided lots sited away from the waterway while prompting stock exclusion, enhanced waterway management and CFA access. This is reflected within the DPO18 concept plan.

Road connection would be facilitated by connections to the existing road network. It is noted a roundabout treatment is not proposed at the intersection of McGregor Road and Panorama Drive as per the DPO18 concept plan. This outcome is supported by the provided traffic impact assessment and the MRSC Engineering Unit who have confirmed the proposed road layout is suitable. The layout provides for a road interface between the western section of the site and Djirri Djirri Creek and provide for a fire fighting access between Coney Court and Bennett Road.

Future roadside landscaping would be to the approval of Council's Open Space and Recreation Unit. Other services available or required to the subject land include reticulated electricity and water specified by Powercor and Greater Western Water respectively, whilst provision of reticulated gas and telecommunications facilities would be subject to the requirements of those authorities at the time of subdivision.

Melbourne Water has no objection to the proposal but future subdivisions will be subject to future planning permit conditions to implement recommendations from the technical reports. The waterway reserve area is considered encumbered land forming part of the Djirri Djirri Creek waterway and balancing the location of adjoining roads to ensure a suitable response. Final location of these roads will be subject to detailed design at the subdivision stage of development. Any alignment should ensure the cut to the slope is minimised.

The future subdivision of the super lot at 134 McGregor Road will be subject to a more detailed land capability assessment to ensure effluent field placement away from rocky outcrops to the maximum extent.

The Djirri Djirri Creek reserve will comprise an area of approximately 13ha. Approximately 7.09ha will come from 134 McGregor Road, 2.67ha from 94 McGregor Road and 3.24ha from 88 Bennett Road. These areas are considered not suitable for development due to the slope and proximity to the waterway. However, some flexibility would be available at the time of subdivision to ensure the appropriate balance between waterway protection, landscape values and minimising land take from residential development.

Overall the proposal is considered an acceptable outcome in consideration of the objectives of the DPO18, views of relevant authorities and provides a balance for residential development, environmental and ecological outcomes and infrastructure.

#### Clause 53.01 – Public Open Space Contribution and Subdivision

Public open space requirements are set out under Clause 53.01. It is noted no public open space reserves are proposed as part of the development plan. The requirement of this contribution will be considered at the subdivision permit stage but may include capital works to improve the waterway reserve. Four properties in the development plan do not border the waterway reserve and the open space contributions would also be collected.



### Response to Objections

There is concern with the proposed internal road layout including the overall design. This includes the timing and staging. The proponent has indicated the layout is consistent with the DPO18 concept plan, supported by a traffic impact assessment and ensures the objectives of the DPO18 are met. Road construction costs have been minimised through locating roadways along more level sections of the site and allows for road construction to occur by individual landholder's should they wish.

The requirement for a Djirri Djirri Creek reserve was a result of a detailed review by Council officers, consideration of Melbourne Water's requirements, environmental values, road layout and landscape considerations. Earlier versions of the plan included residential lots between Djirri Djirri creek and the north-south road which was considered an inappropriate outcome considering landscape values, environmental values and waterway protection. Council must consider the plan before it and whether it is acceptable.

Council officers support the reserve encompassing Djirri Djirri Creek rather than retaining it in private ownership with an easement and is reflective of a subdivision at PLN/2018/541 at 21 Coney Court. This alignment would mean the Djirri Djirri Creek reserve would connect to the conservation reserve at 21 Coney Court in the future and provide conservation and passive recreation values.

The proposed development plan outlines the provision of infrastructure and the equity of the proposed arrangement. It is considered the proposed layout requires generally an individual approach to individual site development with enough flexibility to permit landowners to develop separately if they wish. Concern regarding the Brooking Road culvert across Djirri Djirri Creek would be undertaken by the landholder at 134 McGregor Road and not the objecting parties. Costs associated with other sections of the site would be covered by the landholder seeking to develop and no infrastructure requirements would be imposed to landowners not seeking to develop.

The proposed building envelopes and layout are considered suitable and it is noted final lot layouts should be generally in accordance with the development plan. These envelopes are considerate of landscape values while reflecting the setback requirements of the RLZ2. The protection of individual views is not something that can be addressed but by providing sufficient area for development it is expected suitable landscaping and development can occur.

The concerns related to the condition of Bennett Road have been noted and referred to the MRSC Engineering Unit for review. The current condition of this road is a wider matter and will be reviewed. It is considered the proposed development plan would not further adversely impact on Bennett Road. Any drainage from each site would be required to be at predevelopment levels subject to future subdivision permit requirements.

### **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.

Consistency of a proposal with the Statement of Planning Policy: DP/2019/1 – Bennett Road Development Plan.

Objective number	Objective in the SoPP (Direct quote)	Strategies to deliver the objective (Direct quote)	Meets	Does not meet	N/A	Planner's Comment
1	To ensure the declared area's natural and cultural landscapes are conserved and enhanced.					
		Manage land use, development and infrastructure to ensure that significant landscapes, views and vantage points are conserved and enhanced.	✓			Proposal seeks to screen views from Calder Freeway and provide appropriate setbacks from Djirri Djirri Creek.
		Encourage retention of native vegetation and revegetation that contributes to significant landscapes, particularly on escarpments and ridgelines and along riparian areas.	✓			Protection of Djirri Djirri Creek and building envelopes will seek to protect areas of remnant vegetation. A vegetation management plan has also been included. Areas of remnant vegetation can be protected.
		Manage development around significant landscapes of visual, scientific or education value, including along ridgelines and at vantage points.	✓			An appropriate response has been provided for the proposal by including building envelopes along Djirri Djirri Creek. This reserve and adjoining roadway open views up towards Red Rock to the east.
		Manage development and infrastructure provision to ensure sequences of views from key road and rail corridors are maintained for current and future users.	✓			A landscaping plan will be incorporated at the subdivision stage along the Calder Freeway to screen buildings.
2	To ensure the significant biodiversity, ecological and environmental values of the declared area are conserved and enhanced					
		Conserve and enhance high-value native vegetation and biodiversity and their ecological integrity by undertaking responsible environmental management, planning, procedures and practices.	✓			Areas of identified native vegetation have been avoided sufficiently by the proposal.
		Utilise appropriate historical ecological knowledge and practices from Traditional custodians of the land in the management of biodiversity and ecological and environmental values.			N/A	
		Encourage ecological restoration works in areas of identified state, regional and locally significant biodiversity value	✓			A vegetation management plan has been provided to guide future planning permits for the reserve along Djirri Djirri Creek.
		Establish and improve bio links to connect high-value ecological areas, including areas along waterways and areas within and between towns.	✓			The plan seeks the Djirri Djirri Creek to have a reserve which will provide for an enhanced outcome between Bennett Road and Coney Court.

Objective number	Objective in the SoPP (Direct quote)	Strategies to deliver the objective (Direct quote)	Meets	Does not meet	N/A	Planner's Comment
		Minimise the effects of weeds and pest animals on biodiversity values by establishing and implementing best practice land management plans.			N/A	
3.	To prioritise the conservation and use of the declared area's water catchments to ensure a sustainable local, regional and state water supply, and healthy environment.					
		Protect water quality and natural systems by discouraging development that contributes to the degradation of water quality and quantity.	✓			It is considered the proposal will create an enhanced waterway outcome and ensure no degradation to Djirri Djirri Creek.
		Manage land use and development, including dams, in Declared Water Supply Catchments to retain and improve water quality and improve yield to support regional water needs and to increase system-wide capacity to Respond to demand.			N/A	
		Reinforce the role of waterways as biodiversity Linkages and as corridors for native plants and animals.	✓			The proposal provides an enhanced outcome for local waterways and management as a waterway reserve. The linkage will connect to the reserve to be created at 21 Coney Court Gisborne (PLN/2018/541).
		Ensure water supply and land use planning policies are integrated, to realise efficiencies in regional catchment management and best practice, water-sensitive urban design.	✓			The provided LCA provides guidance for future development to ensure development does not adversely impact on the waterway.
		Address the expected impacts of climate change, including changes in the duration and frequency of rainfall events and changes in the intensity and frequency of bushfire events.			N/A	
		Review and improve regulation and monitoring of groundwater licences and surface water diversions.			N/A	
4.	To recognise, protect, conserve and enhance the declared area's Aboriginal cultural and spiritual heritage values and work in partnership with Traditional Owners in caring for Country.					

Objective number	Objective in the SoPP (Direct quote)	Strategies to deliver the objective (Direct quote)	Meets	Does not meet	N/A	Planner's Comment
		With Traditional Owners, identify, protect, conserve and enhance sites, landscapes and views of Aboriginal cultural significance, consistent with the Aboriginal Heritage Act 2006 and Cultural Heritage Management Plans.			N/A	No areas have been yet identified via the provided Cultural Heritage review. A Cultural Heritage Management Plan will be required for any subdivision within a Cultural Heritage Sensitivity Area.
		With Traditional Owners, acknowledge, protect, promote and interpret tangible and intangible Aboriginal cultural values, heritage and knowledge when planning and managing land use and development, water and other environmental resources.			N/A	
5.	To recognise, conserve and enhance the declared area's significant post-contact cultural heritage values.					
		Conserve and enhance the character of state and/or nationally significant post-contact cultural heritage values (including aesthetic, historic, scientific, social and spiritual values) in the declared area's heritage places, precincts and landscapes, including sequences of views along main road and rail routes.			N/A	No areas of significance has been identified within the DP area.
		Acknowledge, promote and interpret significant post-contact cultural heritage values in the planning, design, development and management of land uses, including infrastructure.			N/A	
6.	To support and encourage agricultural land uses that strengthen the declared area's economy and contribute to the rural landscape.					
		Encourage the use of rural-zoned land for agricultural purposes and encourage the use of high-quality soils for soil-based agriculture.			N/A	
		Encourage and support innovations in agricultural practices (such as sustainable farming, water reuse, technologies to enable farming to adapt and respond to emerging and niche markets).			N/A	
		Support agricultural practices that improve soil health and respond to and encourage adaptation to climate change.			N/A	

Objective number	Objective in the SoPP (Direct quote)	Strategies to deliver the objective (Direct quote)	Meets	Does not meet	N/A	Planner's Comment
		Encourage measures to ensure agricultural practices protect and enhance soil quality, water quality, biodiversity and native plants and animals.			N/A	
		Manage the effects of rural land use and development on important environmental and cultural values.	✓			The proposal provides a positive environmental outcome.
		Restrict the supply of rural-living-zoned land to conserve and protect agricultural practices.	✓			The DP provides for infill rural living in an existing rural living area.
		Protect strategic extractive resource areas and existing quarry operations from encroachment from inappropriate development.			N/A	
		Proposals to establish an extractive industry must adhere to best practice measures to avoid and minimise impacts on significant environments and landscapes.			N/A	
7.	<b>To provide for a diverse and sustainable visitor economy compatible with the natural and cultural values of the area.</b>					
		Support and facilitate sustainable and responsible tourism and recreation-related land uses and developments (such as agritourism) in keeping with the declared area's significant landscapes, environmental and cultural values.			N/A	
		Facilitate tourism-related land use and development that encourages people to recognise and understand Aboriginal and post-contact cultural heritage.			N/A	
		Ensure the conservation and enhancement of Declared Water Supply Catchment Areas of regional or state significance in the planning of tourism and recreational land uses.			N/A	
		Protect the unique rural character of towns in the declared area.	✓			
8.	<b>To plan and manage growth of settlements in the declared area consistent with protection of the area's significant landscapes, protection of catchments, biodiversity, ecological and environmental</b>		✓			

Objective number	Objective in the SoPP (Direct quote)	Strategies to deliver the objective (Direct quote)	Meets	Does not meet	N/A	Planner's Comment
	values, and consistent with the unique character, role and function of each settlement.					
		Direct urban development to a hierarchy of settlements identified for growth, through clearly defining long-term settlement boundaries.			N/A	Area is outside of a urban boundary.
		Direct rural residential development to rural-living-zoned land as provided for in the Macedon Ranges Council's rural living strategy, In the Rural Living Zone – Strategic Direction (2015).	✓			The DP provides for rural residential in an appropriate area in accordance with the rural living zone strategy.
		Encourage infill development that respects the townships' character.			N/A	
		Limit the expansion of settlements in high risk locations, actively reducing the risks associated with natural hazards.			N/A	
		Encourage a range of housing types within settlement boundaries to support a diverse range of housing needs.			N/A	
		Encourage provision of an adequate supply of well-serviced employment land within settlement boundaries to support local and regional jobs and services.			N/A	
		Encourage the use of voluntary Cultural Heritage Management Plans.		✓		A voluntary CHMP has not been provided.
9.	To manage the provision of infrastructure consistent with protection of the area's significant landscapes and protection of environmental values to support the social and economic needs of communities and increase resilience to climate change effects.					
		Provide timely infrastructure and services to meet community needs in sequence with development.	✓			Infrastructure can be provided as development occurs.
		Maintain and enhance transport connections that provide links between and within regional communities and to major cities.	✓			There will be no impact on important transport corridors.
		Reduce use of fossil fuels and reduce greenhouse gas emissions by prioritising active transport and public transport modes.			N/A	

Objective number	Objective in the SoPP (Direct quote)	Strategies to deliver the objective (Direct quote)	Meets	Does not meet	N/A	Planner's Comment
		Maintain view lines of state-significant landscape features from the main road and rail transport corridors.	✓			The DP provides for adequate screening of the area from the Calder Freeway as directed within the DPO18.
		Ensure the future operation and development of major transport linkages and rail corridors and upgrading and improved management of freight routes are considered when managing the growth of settlements.			N/A	
		Ensure equitable access to community infrastructure.			N/A	
		Encourage the use of active and public transport by planning infrastructure and facilities in accessible locations, and improve walking and cycling routes.			N/A	
<b>10.</b>	<b>Respond to the challenges and threats of climate change and natural hazards with careful planning and mitigation strategies.</b>					
		Support community and government planning for disaster preparedness and climate resilience.	✓			The proposal provides good site permeability regarding bushfire defence and provides a CFA access track along the northern side of Djirri Djirri Creek.
		Manage bushfire risks while also retaining valued biodiversity and landscape character.	✓			As the CFA access track is located on the more level section of this area there will be limited landscape impact.
		Plan for more renewable energy generation and distribution.			N/A	
		Ensure proposals to establish renewable energy facilities adhere to best practice measures to avoid and minimise impacts on significant environments and landscapes.			N/A	
		Ensure planning for future use and development of land prone to flooding minimises the consequences of inundation.	✓			The DP ensures good setbacks from any flooding in Djirri Djirri Creek.

<b>9.4</b>	<b>DP/2021/1 - 89 ROSS WATT ROAD, GISBORNE - DEVELOPMENT PLAN &amp; PLN/2021/616 - 89 ROSS WATT ROAD, GISBORNE - PLANNING PERMIT</b>
<b>Officer:</b>	<b>Jack Wiltshire, Strategic Planner</b>
<b>Council Plan relationship:</b>	<b>3. Improve the built environment</b>
<b>Attachments:</b>	<ol style="list-style-type: none"> <li><b>1. Attachment 1 - Development Plan (combined) for 89 Ross Watt Road DP/12021/1 (under separate cover) <a href="#">⇨</a></b></li> <li><b>2. Attachment 2 - Planning Permit Application (combined) for 89 Ross Watt Rd PLN/2021/616 (under separate cover) <a href="#">⇨</a></b></li> <li><b>3. Attachment 3 - Macedon Ranges Statement of Planning Policy Assessment (under separate cover) <a href="#">⇨</a></b></li> </ol>
<b>Applicant:</b>	<b>ID Ross Watt Road Pty Ltd</b>
<b>Date of receipt of application:</b>	<b>19 November 2021 (DP/2021/1 and 23 December 2021 (PLN/2021/616)</b>
<b>Trigger for report to the Committee</b>	<b>Refusal of a Development Plan application and associated planning permit</b>

**Summary**

The application is for a Development Plan (DP) for land known as 89 Ross Watt Road, Gisborne (DP/2021/1). The application has been appealed at VCAT due to Council not having made a decision within a reasonable time. A Council decision is required to form a position to give direction to Council’s legal representation and officers at an upcoming VCAT hearing.

A planning permit application PLN/2021/616 has also been submitted but a permit cannot be granted before a development plan has been prepared to the satisfaction of the responsible authority.

The development plan application, DP/2021/1 is provided at Attachment One. The planning permit application, PLN/2021/616 is provided at Attachment Two.

The application was advertised to adjoining landowners in accordance with the Development Plan Overlay Schedule 4 – Gisborne Residential Areas at the direction of the Victorian Civil and Administrative Tribunal (VCAT).

Key issues to be considered relate to the overall quality of the application provided including the response to the further information requested, appropriateness of lot sizes, traffic considerations, layout, response to Statement of Planning Policy, landscape considerations, open space provision and design, cultural heritage considerations and native vegetation impact. A number of referral authorities including Melbourne Water (MW), Greater Western Water (GWW), Southern Rural Water (SRW), Department of Transport (DoT), Department of Environment, Land, Water and Planning (DELWP) have also either requested further information or objected to the current proposal.



**Recommendation**

**That the Committee:**

- 1. Notes that the application for approval of the Development Plan is subject to VCAT proceedings to be determined in 2023.**
- 2. Resolves to advise VCAT that Council opposes the approval of the Gisborne Area 1 Development Plan (8 July 2022) prepared by Collie Pty Ltd covering the Development Plan Overlay area affecting the land at 89 Ross Watt Road Gisborne, prepared for the purposes of Clause 43.04, Schedule 4 of the Macedon Ranges Planning Scheme.**
- 3. Resolves to advise VCAT that it opposes the Development Plan on the following grounds :**
  - (a) The Development Plan is an unacceptable response to:**
    - (i) The following provisions within the Planning Policy Framework and the Local Planning Policy Framework:**
      - i. Clause 12.01 (Biodiversity)**
      - ii. Clause 12.03 (Waterways and wetlands);**
      - iii. Clause 14.02-1S (Catchment planning and management)**
      - iv. Clause 15.01 (Built Environment)**
      - v. Clause 21.05 (Environment and Landscape Values)**
      - vi. Clause 21.06 (Environmental Risks)**
      - vii. 21.08-3 (Built Environment)**
      - viii. 21.12 (Community Development and Infrastructure)**
      - ix. Clause 21.13-1 (Gisborne and New Gisborne)**
      - x. Clause 15 (Urban design)**
    - (ii) The key principles and objectives of the Development Plan Overlay Schedule 4.**
    - (iii) The natural environment and character of the area; and**
    - (iv) The interface to the Jacksons Creek;**
  - (b) The Development Plan is accompanied by insufficient information to make an informed decision in consideration of relevant referral authority objections to the proposal.**
  - (c) The Development Plan does not provide for the delivery of necessary traffic infrastructure to effectively integrate the development into the arterial road network.**
- 4. Resolves to oppose the grant of planning permit application PLN/2021/616 for the following reasons:**
  - (i) Council is not satisfied that the subdivision is exempt from the requirement for an approved Cultural Heritage Management Plan;**
  - (ii) The proposed subdivision is not generally in accordance with an approved development plan;**

- (iii) The subdivision responds poorly to the DPO4 for the same reasons that the proposed development plan is opposed;
  - (iv) The proposal responds poorly to policy for urban design and neighbourhood character at clause 15 and 21.13-1 of the Macedon Ranges Planning Scheme.
  - (v) The proposal fails to provide an adequate response to clause 52.17 of the Macedon Ranges Planning Scheme.
  - (vi) The proposal fails to include an adequate response to clause 53.18 of the Macedon Ranges Planning Scheme.
5. Allows officers and Council's representative delegation to negotiate improved outcomes at any upcoming VCAT compulsory conference, for ratification by Council if appropriate.
- 

## Existing conditions and relevant history

### Subject land

The subject land comprises three parcels of land in Gisborne:

- 89 Ross Watt Road, Gisborne ( PT LOT 14 LP 5226 P/Gisborne (TP 844764W),
- LOT A PS 318022T P/Gisborne),
- Ross Watt Road, Gisborne (PT LOT 14 LP 5226 P/Gisborne).

The site comprises an area of approximately 94.1ha bound by Ross Watt Road to the north, Swinburne Avenue to the east, Rosslynne Reservoir to the west and Jacksons Creek to the south. The site is to the north-west of the Gisborne town centre.

The site comprises mostly open paddocks currently used to graze cattle. A single dwelling is located on the northern Ross Watt Road frontage. A former quarry site owned by Southern Rural Water is located on the western portion of the site (PT LOT 14 LP 5226 P/Gisborne).

The site contains a section of the Jacksons Creek escarpment landscape and two dams. Current access to the site is from Ross Watt Road via a gravel driveway.

A large number of native trees are located within the site, particularly within the northern section of the site and towards the Jacksons Creek escarpment. Other native grasses and vegetation are dispersed throughout the site. Areas of Cultural Heritage Sensitivity are located along Jacksons Creek and a single point located central to the site.

The land is generally flat to undulating with steep gradients around Jacksons Creek and the former quarry site.

### Surrounds

The land surrounding the site comprises:

- Gisborne Racecourse Marshland Reserve to the north across Ross Watt Road.
- Rosslynne Reservoir to the west of the site.
- Established residential development to the east and south-east of the site. These areas have an open, semi-rural character with large lots ranging from 2,000 - 4,000m<sup>2</sup>
- containing single, detached dwellings with low site coverage, generous setbacks and established tree plantings in a garden setting.

- Jacksons Creek and the Jacksons Creek escarpment to the south.

There are significant views to the site from Calder Freeway, Bacchus Marsh Road and from numerous locations within the Gisborne town centre.

The site is accessed by Ross Watt Road and Swinburne Avenue to its north and east. Cherry Lane runs from Swinburne Avenue to Station Road which is the main north-south connector road in Gisborne. The Calder Freeway is located north of Ross Watt Road.

The closest train station is located in New Gisborne approximately 1.7km to the north-east. The nearest commercial centre is within the Gisborne town centre and is approximately 1.1km to the south-east.

The Swinburne Avenue Children’s Centre (a two-room kindergarten) is located on the intersection of Swinburne Avenue and Cherry Lane which is to the south-east boundary of the site.

The nearest primary schools include New Gisborne Primary School which is approximately 1.3km north of the site and Gisborne Primary School which is approximately 1.3km to the south-east and St Brigids Catholic Primary School which is approximately 1.4km to the south-east. Gisborne Secondary Collage is 1.7km to the south.

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

No restrictions are currently listed on the titles to the land.

A two metre wide transmission of electricity easement is located on the eastern boundary of Lot 1 / TP844764W.

Previous planning permit history

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

Permit No.	Description
Nil.	

**Proposal**

The application is seeking approval of a development plan (DP/2021/1) under Clause 43.04 – Development Plan Overlay Schedule 4 for Area 1 on Map 1 of the schedule.

A permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority.

The development plan proposes approximately 769 lots with an average lot size of 573m<sup>2</sup>, a local neighbourhood activity centre, open spaces and a childcare centre.

The development plan includes ‘medium density super lots’ and a potential ‘residential retirement living community area.’ The density, built form and design for these sites is unclear.

**PLN/2021/616 – Subdivision, development of dwellings under 300m<sup>2</sup>, vegetation removal and other associated buildings and works.**

An application has also been lodged for the subdivision of 275 lots that are generally in accordance with the development plan lodged with Council on November 2021. The planning permit is proposing subdivision, development of dwellings on sites under 300m<sup>2</sup>, native vegetation removal and other associated buildings and works. The application proposes a subdivision of 275 lots. This is proposed to be undertaken in seven (7) stages.

The planning permit plans do not currently reflect the revised Development Plan dated 8 July 2022 and a Cultural Heritage Management Plan has not been provided for the proposed subdivision. The application was not referred to applicable authorities given the need to resolve the development plan application DP/2021/1. All relevant authorities are aware of the proposed development plan and were served notice of the development plan application as directed by VCAT.

Council is required to refuse to grant a permit for subdivision in the absence of an approved Development Plan.

**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 Three contains the officer assessment against the SOPP.

Planning Policy Framework

<b>Clause no.</b>	<b>Clause name</b>
11	Settlement
12	Environment and Landscape Values
13	Environmental Risks and Amenity
14	Natural Resource Management
15	Built Environment and Heritage
16	Housing
17	Economic Development
18	Transport
19	Infrastructure

Local Planning Policy Framework

<b>Clause no.</b>	<b>Clause name</b>
21	Municipal Strategic Statement
21.03	Vision – Strategic Framework Plan
21.04	Settlement
21.05	Environment and Landscape Values
21.06	Environmental Risks
21.07	Natural Resource Management
21.08	Built Environment and Heritage
21.09	Housing
21.10	Economic Development and Tourism
21.11	Transport
21.12	Community Development and Infrastructure

21.13-1	Local Areas and Small Settlements – Gisborne
---------	--

Zoning

Clause no.	Clause name
32.08	General Residential Zone Schedule 1

Overlay

Clause no.	Clause name
43.04	Development Plan Overlay Schedule 4
44.04	Land Subject to Inundation Overlay
45.06	Development Contributions Plan Overlay Schedule 2

Particular provisions

Clause no.	Clause name
51.07	Macedon Ranges Statement of Planning Policy
52.17	Native Vegetation
53.01	Public Open Space Contributions
53.18	Stormwater Management in Urban Development
55	Two or More Dwellings on a lot and Residential Buildings
56	Residential 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> ?	Yes
2	Does the application proposal include significant ground disturbance as defined in Part 1 Regulation 5 of <i>Aboriginal Heritage Regulations 2018</i> ?	Yes
3	Is the application proposal an exempt activity as defined in Part 2 Division 2 of <i>Aboriginal Heritage Regulations 2018</i> ?	No
4	Is the application proposal a high impact activity as defined in Part 2 Division 5 of <i>Aboriginal Heritage Regulations 2018</i> ?	Yes

Based on the above assessment, a cultural heritage management plan is required in accordance with Part 2 Division 1 of *Aboriginal Heritage Regulations 2018*.

A Cultural Heritage Management Plan has not been submitted. The applicant has advised VCAT that it is preparing a voluntary CHMP. A CHMP is required before a subdivision permit can be approved.

### **The process to date**

- A development plan application was lodged with Council on 19 November 2021. This application was referred to relevant authorities and considered by officers.
- A planning permit was lodged with Council on 23 December 2021.
- A request for further information (RFI) regarding the development plan was sent to the applicant on 23 December 2021 and 28 February 2022.
- An RFI regarding the planning permit was sent on 19 January 2022. This included a requirement for a Cultural Heritage Management Plan to be provided.
- Council was informed on 23 May 2022 that an appeal to VCAT had been lodged by the applicant due to Council not having made a decision on the development plan within a reasonable time and for not making a decision on the planning permit within the prescribed time.
- The applicant provided a response to Council's RFI on 8 June 2022, after the appeal was lodged through VCAT.
- Subsequent VCAT practice day hearings and directions required the revised development plan documents to be publically advertised to all relevant referral authorities and some of the surrounding landholders including residents along Ross Watt Road and Cherry Lane.
- A VCAT Compulsory Conference is listed for 10 November 2022, a Practice Day hearing listed 25 November 2022 and a full hearing listed from 20 – 30 March 2023.
- Council have engaged PE Law to represent Council in these proceedings.

Referral

<b>Authority (Section 55)</b>	<b>Response</b>
Melbourne Water	Objection
Greater Western Water	Objection
Department of Environment, Land, Water and Planning	Objection
Department of Transport	Objection / Request for Further Information outstanding
Tenix (Downer)	No objection.
Powercor	No objection.

<b>Authority (Section 52)</b>	<b>Response</b>
Department of Jobs, Precincts and Regions	No response.
Department of Education and Training	No objection.
Environmental Protection Authority Victoria	No objection.
Southern Rural Water	Objection / Request for Further Information outstanding
Transport for Victoria	See Department of Transport response.
Country Fire Authority	No objection.

<b>Internal Referral</b>	<b>Response</b>
MRSC Engineering Unit	Preliminary response pending referral agency comments
MRSC Environment Unit	Objection.
MRSC Parks and Gardens Unit	No Objection.
MRSC Recreation Unit	No objection.
MRSC Economic Development Unit	No objection.
MRSC Children, Youth and Family Services	No objection.

The above listed referrals were under the Development Plan application.

No formal referral has occurred under the Planning Permit application given the outstanding matters under the Development Plan application.

Advertising

DPO4 requires public notice of the development plan for a period of two weeks prior to approval. The Responsible Authority must take into account any comments received when

considering the development plan or any amendment to that plan. Adjoining and surrounding landholders and occupiers were informed of the application in accordance with a direction of VCAT from 8 July 2022 to 26 July 2022.

A total of twenty-eight (28) objections were received to this application. They are summarised as follows:

#### Objection/concern regarding application

- Traffic, including internally and externally of the development plan area. This includes staging of works, existing traffic levels and proposed outcomes.
- Extent of growth proposed and the impact this will have on the town due to the lack of services and infrastructure.
- Impact on local waterways including Jacksons Creek, Racecourse Marshland Reserve and water quality at the Rosslynne Reservoir.
- Concern with the proposed dwelling density including that lots are under 300m<sup>2</sup>.
- Impact on the Jacksons Creek escarpment, landscape values and semi-rural character of Gisborne.
- Concern with the lack of pedestrian and cycling connections.
- Lack of schools within the proposed development and distance to the local schools.
- Concerns regarding stormwater drainage and location of stormwater infrastructure.
- Amenity, noise, disruption and risk concerns during development of the site.
- Extent of notice undertaken.
- Concern with the neighbourhood character response and design outcomes.
- Impact on adjoining rural land uses.
- Concern with the loss of native vegetation and linkages for animals.
- Concern with response to climate change.
- Failure to meet key principles of the DPO4.
- The development's interface with the Calder Freeway.
- Lack of details regarding "medium density lots", Residential Retirement Living Community, open space and traffic.
- The landscaping and open space response.
- The development plan does not address Gisborne Futures or its recommendations including a western bypass option for Gisborne.

#### **Officer assessment**

##### Planning Policy Framework (PPF) and Local Planning Policy Framework (LPPF)

Clause 11 outlines the objectives of Settlement within the Loddon Mallee South region and settlement growth in Victoria. It includes direction to manage and support growth in Gisborne as an employment and service hub that reinforces the network of communities in the region.

Clause 12.01 outlines the need to protect and enhance Victoria's biodiversity the need to ensure there is no net loss to biodiversity as a result of the removal, destruction or lopping of naïve vegetation. Clause 12.03-1S outlines the need to protect and enhance river corridors, waterways, lakes and wetlands. Clause 12.05-1S outlines the need to protect and



conserve environmentally sensitive areas which includes the Macedon Ranges. Clause 12.05-2S outlines the need to protect and enhance significant landscapes and opens spaces that contribute to character, identity and sustainable environments.

Clause 13.01-1S outlines the need to minimise the impacts of natural hazards and adopt to the impacts of climate change through risk-based planning.

The site is currently located in a bushfire prone area and under Clause 13.02-1S bushfire risk which should be considered when assessing planning applications for subdivisions of more than 10 lots and broadly a development plan application. It should be noted the Development Plan application was referred to the CFA who offered no objection to the proposal.

Clause 13.03-1S outlines the floodplain management objectives and strategies. These are considered applicable to the subject development plan due to its interface with Jacksons Creek.

Clause 14 outlines the need to protect the state's agricultural base by preserving productive farmland and the need to assist in the protection and restoration of catchments, waterways, estuaries, water bodies, groundwater and the marine environment. This includes the need to ensure the continued availability of clean, high-quality drinking water by protecting water catchments and water supply facilities, impact on drainage corridors and vegetated buffers along each side of waterways. Clause 15 outlines the need to create urban environments that area safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.

Clause 15 outlines the need to achieve building design and sitting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development. It also outlines the need to ensure the design of subdivisions achieves attractive, safe, assessable, diverse and sustainable neighbourhoods.

Clause 16.01-1S outlines the need to facilitate well-located, integrated and diverse housing that meets community needs. This includes providing a mix of housing types and higher density housing development on sites that are well located in relation to jobs, services and public transport.

Clause 17 outlines relevant economic development strategies. This includes Clause 17.02-1S which outlines the encouragement of development that meets the community's needs for retail, entertainment, office and other commercial services.

Clause 18 outlines strategy regarding transport including walking, cycling, public transport, roads and freight. Clause 19 outlines strategies regarding infrastructure, including social and cultural infrastructure and open space.

Clause 21 outlines the Local Planning Policy Framework. Clause 21.04 outlines the settlement principles which are aligned with clause 21.09 – housing and 21.13 – Local Areas and Small Settlements. It outlines that Gisborne is expected to become a regional centre with a population greater than 10,000 people by 2036. Objective 2 of Clause 21.14 seeks to: 'To provide for development which maximises the benefits of established and proposed urban infrastructure'. It also outlines within its strategies that some areas within the defined town boundaries may not be suitable for urban development.

Clause 21.05-1 (Biodiversity and native vegetation management) outlines the Shire's rich native biodiversity and that it is also at risk. It also outlines that some of the most serious threats facing the Shire's biodiversity includes poorly planned urban residential developments.

Clause 21.05-2 (Significant Environments and Landscapes) notes that Macedon Ranges Shire has many and varied rural and township landscapes which are highly valued by residents and visitors. The landscape character within the Macedon Ranges Shire is in part defined by:

- Heritage gardens with native vegetation, exotic species, hedgerows, managed plantations and pastoral qualities.
- Significant views and vistas from and to the undulating wooded hills, which also form major visual edges to the Shire.
- Distinctive settlements set within a rural environment.

Important objectives include maintaining and enhancing the existing rural landscapes by encouraging sensitive subdivision designs with use of larger lots and building envelopes to minimise landscape and environmental impacts for land supporting areas of vegetation or adjacent to waterways or the Calder Freeway (Strategy 1.3 of Objective 1).

Strategy 4.3 of Objective 4 seeks to “avoid development on prominent ridgelines and hilltops and ensure development within viewsheds to the Shire’s backdrop of ranges, hills and ridges does not detract from their significance as a land range feature.” Objective 6 outlines the need to protect the character of visually sensitive areas such as roadsides, rail corridors and water courses. This is to be achieved by ensuring buildings and works are designed and sited so that landscape values, natural features and important vistas including significant stands of cypress hedges are not degraded (Strategy 6.1 of Objective 6) but also by ensuring building siting, form and design is sympathetic to the landscape character of the surrounding areas (Strategy 6.2 of Objective 6).

Lastly, Objective 7 outlines the need to preserve significant exotic and native vegetation as a fundamental component of the Shire’s character and landscape.

Clause 21.06 outlines environmental risks which include bushfire and flooding.

Clause 21.07-3 seeks to outline the protection of water quality as a significant issue. This consideration includes the Rosslynne Reservoir (Jacksons Creek). Strategies including larger lots where there are drainage lines, waterways and steep slopes; on site property works to enhance water quality. Another strategy is to include commercial and residential uses to demonstrate the activity will provide a net benefit to the health of the waterway.

Clause 21.08-2 (Aboriginal Cultural Heritage) seeks to protect Aboriginal cultural heritage places and values within the Shire. This includes identifying and protecting Aboriginal cultural heritage values by working with traditional owners, ensure development and land use appropriately protects and manages Aboriginal cultural heritage places and values. It also seeks the need to consider Aboriginal cultural heritage in any aspect of land use planning that may impact on Aboriginal cultural heritage (Strategies 1.1, 1.2 and 1.3 of Objective 1).

Clause 21.08-3 (Built Environment) seeks to ensure the high landscape qualities of the Shire and built form of its towns are appropriately controlled, and to ensure development is sustainable and respects character. Of note are strategies under objective 2 including:

- Strategy 2.1 - Encourage new extensions to residential areas to reflect existing street patterns and sub-division layouts and to harmonise with the surrounding environment.
- Strategy 2.2 - Encourage development that respects the distinctive character and defining attributes of each settlement.
- Strategy 2.3 - Ensure development in sensitive areas respects its context and the preferred character of the area.

- Strategy 2.4 Identify appropriate locations for higher density urban development in town centre structure plans and outline development plans to not detrimentally affect the heritage values, preferred neighbourhood character or landscape character of the Shire's towns.
- Strategy 2.5 - Ensure the planning density and design of new residential development recognises the environmental and infrastructure constraints and preserves the distinctive characters of the Shires various communities and individual towns and settlements.

Objective 3 is to ensure development and built form occurs in a sustainable manner. Strategy 3.2 is to ensure subdivisions and development add to the walkability and accessibility of townships and ensure development.

Clause 21.09-1 outlines the need to provide affordable housing and a diversity of lot sizes and styles to meet the requirements of all age groups, household types and lifestyles. This includes by facilitating aging in place by identifying suitable locations for medium density development in structure plans and outline development plans which provide good access to services.

Clause 21.10 outlines local support and context to Clause 17.

Clause 21.11 outlines transport considerations and local support to Clause 18. This notes that Gisborne has excellent transport infrastructure in the form of the Calder Freeway and Bendigo Railway line.

Clause 21.12 provides local context to Clause 19. It includes the need for new development to strengthen community connections and create public spaces for use by people of all ages and abilities. Clause 21.12-2 outlines the need to provide adequate infrastructure, services and community facilities.

Clause 21.13-1 provides policy context for Gisborne and New Gisborne in the context of Clause 11 of the PPF. It notes that a key issue for Gisborne and New Gisborne is balancing township growth and development densities against the community's desire to maintain the semi-rural and established village character of Gisborne and New Gisborne, whilst also providing for sustainable development in one of the Shire's major urban centres with good commercial and community services/facilities, and transport options. It discusses Gisborne's character elements and includes strategies that implement the Gisborne/New Gisborne Outline Development Plan 2009.

These include:

- Strategy 1.8 - Encourage, in appropriate locations, medium density housing within 400 metres walking distance of the Gisborne town centre as designated on Gisborne /New Gisborne Framework Plan. Appropriate locations are those areas where slope and access to services are favourable for medium density development and where such development is compatible with established landscape and township character, and places of heritage significance. Medium density housing may be appropriate in locations outside designated areas if all of the following apply:
  - The site is located near public open space or a local neighbourhood activity centre;
  - A site responsive and high quality built form outcome is achieved, and generous landscaping that contributes to the local neighbourhood character is provided;
  - Amenity impacts on adjoining residential properties are minimised; and

- The intensity and scale of development is in keeping with the character of the area.
- Strategy 1.9 - Provide a range of conventional residential development opportunities and densities in other residential areas that is cognisant of the semi-rural character and village setting of Gisborne / New Gisborne. Within the context of Gisborne and New Gisborne conventional residential development includes lots ranging between 500-1,500m<sup>2</sup> in area (with an average lot size not less than 800m<sup>2</sup> in any new subdivision).

### **Discussion**

It is considered the proposed development plan does not appropriately respond to the PPF and LPPF of the Macedon Ranges Planning Scheme. The proposed layout would have a detrimental impact on the Jacksons Creek escarpment and provides insufficient justification on how local policy is met by the proposed development.

Concerns relate to the extent of native vegetation removal, impact on the valued township character and insufficient direction on how the proposed medium density development, including the residential village, meets local policy objectives and strategies.

The extent of the development on the escarpment landscape is not supported. There is insufficient built form guidance to achieve an appropriate response to the character of the adjoining development, or landscape values.

The protection of waterways and Rosslynne Reservoir is of concern given the objection of both Greater Western Water and Southern Rural Water to the proposal and the input from Melbourne Water. To date the application has not satisfied these authorities on the proposal.

The proposal seeks to provide medium density development without addressing the guidance provided in the planning scheme as to when this form of development is appropriate within the Gisborne township context. The extent of information provided gives little guidance on how generous landscaping and high quality built form is achieved for the proposed medium density development and its noted the planning permit application also does not provide much guidance other than relying on the standard minimum requirements of Clause 55 and 56.

The Macedon Ranges Planning Scheme provides clear guidance on the location of conventional and medium density development.

There is concern with the distance of the residential retirement living on the rural interface located away from provided public transport connections, community facilities and town centre. Proximity to open space is not the only criteria in local policy regarding the location of medium density. It also requires good quality outcomes, generous landscaping and contribution to local neighbourhood and landscape character.

The extent of native vegetation removal is considered not suitable and at odds with both the PPF and LPPF objectives and strategies particularly regarding habitat values and the enhancement of environmental values.

### **General Residential Zone Schedule 1**

General Residential Zone 1 (GRZ1) seeks to encourage development which respects the neighbourhood character and provide for residential developments at a range of densities with a variety of dwellings to meet the housing needs of all households.

A permit is required to subdivide land, develop dwellings on land under 300m<sup>2</sup> and associated building and works under the GRZ1.

The GRZ1 requires a subdivision to meet the objectives and standards of Clause 56.

The current planning permit application has not been updated to reflect the latest 8 July 2022 development plan proposal.

An application for a planning permit under the GRZ1 must be in accordance with the provisions of the GRZ including Clauses 54, 55 and 56.

Vacant lots created under 400 square metres must be capable of development for a dwelling and contain at least 25 percent as garden area. However, an exemption applies if there is an approved development plan.

Given there is not support for the proposed development plan the planning permit application is considered not able to be supported under the provisions of the DPO4.

#### Development Plan Overlay Schedule 4

The DPO4 states that a permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority.

The DPO4 outlines the subject land as within the Development Area 1 on Map 1 of the clause. DPO4 references the Gisborne / New Gisborne Outline Development Plan Revised Final Report, September 2009 (ODP) as its basis.

The DPO4 includes the following key principles:

- *Encouraging housing choice and the development of a variety of lot sizes and types within the context of a semi-rural township.*
- *Establishing open space networks that provide both pedestrian and cycling link, passive and active recreation needs, and protection of environmental features and drainage functions.*
- *Limiting the visual intrusion of development around key township entrances, the Calder Freeway, Jacksons Creek escarpment and Rosslynne Reservoir.*
- *Protecting areas of remnant indigenous and significant exotic vegetation.*
- *Recognising and protecting cultural, environmental, landscape and heritage assets.*
- *Increasing stormwater capture and reuse to reduce water usage and impacts on existing drainage infrastructure.*
- *Providing for physical and social infrastructure and the orderly staging of development.*
- *Encouraging current sustainable development principles and high quality urban design.*

The DPO4 contains a number of requirements for Area 1 which go above the standard requirements of a standard GRZ1 subdivision, including that a development plan must be consistent with the provisions of Clause 21.13-1 and have regard to the Gisborne/New Gisborne Outline Development Plan Revised Final Report, September 2009 (ODP).

DPO4 requires a conceptual urban design for the Local Neighbourhood Activity Centre that integrates with active and passive open space and the childcare facility on Swinburne Avenue.

The location of the local neighbourhood activity centre is supported centrally to the site to provide greater walkability and servicing for the development plan area.

The layout provided in the application does not provide sufficient detail on landscaping, floor areas, streetscape elements, connections or built form outcomes.

The location of the childcare centre adjacent to the local neighbourhood activity centre is supported however there is no guidance on how this facility will incorporate with surrounding medium density development, activity centre or landscaping.

The provision of any significant open space, retail and childcare to the fourth stage of development would leave residents without these services for an undetermined time.

Low density interfaces are required with the Calder Freeway, Ross Watt Road area opposite Gisborne Racecourse Marshland Reserve, Jacksons Creek escarpment and adjoining rural land. The Jacksons Creek escarpment should be protected by an open space designation. It is noted that a majority of this escarpment area is nominated as unencumbered land within the development plan but is considered at least partly encumbered due to slope, environment values and areas subject to inundation.

Building siting, design (including materials and colours) and height controls for future development should be used to address landscape sensitivity of the site resulting from significant view lines from the Calder Freeway and Jacksons Creek. Reliance on the standards of the GRZ or provision of 1,500m<sup>2</sup> lots does not demonstrate compliance with this requirement.

The protection of the Gisborne Racecourse Marshland Reserve is also considered an important outcome and detail of adjoining landscape outcomes is not sufficient.

DPO4 requires linear open space linkages through the development which have not been provided.

Council officers do not support the revised development plan (submitted 8 July 2022) for the following reasons:

- The proposal does not limit the visual intrusion of development area on the Calder Freeway, Jacksons Creek escarpment and Rosslynne Reservoir by not providing sufficient landscaping, setbacks or built form controls.
- There is not sufficient protection, retention and enhancement of biodiversity including the current extent of removal of large native trees and habitat.
- The proposal does not demonstrate how it supplies a variety of lot sizes and type within the context of a semi-rural township.
- The development plan does not appropriately respond or outline how building siting, design (including materials and colours) and height controls will be provided outside of minimum standards expressed in the GRZ1 or how this will address the landscape sensitivity of the site.
- It does not adequately demonstrate sustainable development principles or a high quality urban design outcome by only providing high level discussion, limited guidance on future development and referencing only the minimum standards expressed under the GRZ1.
- It is considered there is an inadequate response and consideration of the Ross Watt Road, Gisborne (PT LOT 14 LP 5226 P/Gisborne (old quarry site owned by Southern Rural Water) part of the development plan. This includes character considerations including lot size, built form outcomes, infrastructure provision and its interface with both the Rosslynne catchment and Jacksons Creek corridor. The nomination of a possible residential retirement living community in this area is also of concern.
- The development plan is not considered to appropriately respond to the strategies and objectives of the PPF and LPPF noted above and overrides desired character, landscape and environment outcomes to accommodate a higher density.

- There is concern there will be adverse impacts on water quality to Jacksons Creek, Rosslynne Reservoir or the Gisborne Racecourse Marshland Reserve given outstanding referral authority objections.
- There is concern regarding how the stormwater management plan addresses best practice for the protection of natural systems and water quality, integration of stormwater treatment into the landscape, water quality treatment and other water sensitive urban design treatments also given outstanding referral authority objections.
- The development plan does not provide clear habitat linkages between Gisborne Racecourse Marshland Reserve, Jacksons Creek and Rosslynne Reservoir.
- There is insufficient detail to determine the ultimate impact on significant view lines from the Calder Freeway and to the Jacksons Creek escarpment.
- There is limited detail provided regarding the local neighbourhood activity centre to demonstrate if enough land area to accommodate a high quality streetscape and built form outcome to warrant the proposed extent of medium density development. It further does not provide sufficient guidance on any outcomes in this area.
- Insufficient detail regarding the open space provision and provision of a connected open space network.
- Concern that access for pedestrian and maintenance activities will not be provided to the Jacksons Creek reserve.
- Insufficient detail to determine the impact on local traffic and the required infrastructure pending the Department of Transport's outstanding information request.

In addition, referral authorities have objected or are still waiting on outstanding further information.

Given the reasons above it is considered the proposed layout is not acceptable to provide guidance and deliver a high quality urban design outcome, provide appropriate neighbourhood and landscape character outcomes, requires extensive vegetation removal and in its whole fails to meet the wider objectives of the PPF and LPPF outlined above.

#### Development Contributions Plan Schedule 2 (DCPO2)

Development contributions in accordance with the DCPO2 would be required if Council was of the view of approving the subdivision permit. However, there is no support for the development plan in its current form and therefore the planning permit will also be refused.

#### Clause 51.07 – Macedon Ranges Statement of Planning Policy

Clause 51.07 purpose is to ensure that a decision made under this planning scheme by a responsible public entity:

- Is consistent with the parts of the Macedon Ranges Statement of Planning Policy that are binding on the public entity.
- Has regard to the parts of the Macedon Ranges Statement of Planning Policy that are in the nature of recommendations to which the public entity is required to have regard.

Among the objectives of the Macedon Ranges Statement of Planning Policy include:

- Objective 1 - To ensure the declared area's natural and cultural landscapes are conserved and enhanced.
- Objective 2 - To ensure the significant biodiversity, ecological and environmental values of the declared area are conserved and enhanced.

- Objective 3 - To prioritise the conservation and use of the declared area's water catchments to ensure a sustainable local, regional and state water supply, and healthy environment.
- Objective 4 - To recognise, protect, conserve and enhance the declared area's Aboriginal cultural and spiritual heritage values and work in partnership with Traditional Owners in caring for Country.
- Objective 8 - To plan and manage growth of settlements in the declared area consistent with protection of the area's significant landscapes, protection of catchments, biodiversity, ecological and environmental values, and consistent with the unique character, role and function of each settlement.
- Objective 9 - To manage the provision of infrastructure consistent with protection of the area's significant landscapes and protection of environmental values to support the social and economic needs of communities and increase resilience to climate change effects.
- Objective 10 - Respond to the challenges and threats of climate change and natural hazards with careful planning and mitigation strategies.

It is considered the proposal is not consistent with the objectives of the Macedon Ranges Statement of Planning Policy by not ensuring the protection and enhancement of natural landscapes, the extent of native vegetation removal, potential impacts on catchments and waterways and to ensure development is consistent with the area's significant landscapes, protection of catchments, biodiversity, ecological and environmental values. It is further not consistent by not providing sufficient guidance on how development will be compliment the unique semi-character of Gisborne.

The protection of the landscape, resilience to climate change effects and responding to climate change challenges are also not demonstrated by the proposal.

#### 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 undertaken by following a 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.

It also seeks to manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

It is considered the proposal has not demonstrated compliance with the provisions of clause 52.17 including how vegetation has sufficiently been avoided or minimised, there is concern about the extent of native vegetation to be removed including large and hollow bearing trees. There is inadequate information provided showing timing, location, weather and number of visits for targeted surveys, both flora and fauna. Concern has been raised regarding the extent of vegetation removal required along road reserves and for intersection treatments along Ross Watt Road, Station Road and Cherry Lane.

#### Clause 53.18 - Stormwater management in urban development



Clause 53.18 seeks to ensure stormwater in urban development, including retention and reuse, is managed to mitigate the impacts of stormwater on the environment, property and public safety and to provide cooling, local habitat and amenity benefits.

The planning permit application should address the standards and objectives of Clause 53.18-4. There is limited demonstration on how the planning permit application meets the provisions of this clause. The decision making is further confounded by the outstanding objections by GWW, SRW and MW regarding the protection of waterways and catchments.

The planning permit originally included a commercial development component and should address the provisions of Clause 53.18.

**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.