

Minutes

**Planning Delegated Committee Meeting
Thursday 9 March 2023 at 7pm
Held online and livestreamed at [mrsc.vic.gov.au](https://www.mrsc.vic.gov.au)**



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1 ACKNOWLEDGEMENT OF COUNTRY

Macedon Ranges Shire Council 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, present and emerging.

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 was 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

Cr Annette Death (Mayor), Cr Jennifer Anderson (Deputy Mayor), Cr Dominic Bonanno, Cr Rob Guthrie, Cr Anne Moore, Cr Geoff Neil, Cr Janet Pearce, Cr Mark Ridgeway, Cr Bill West

IN ATTENDANCE

Bernie O'Sullivan (Chief Executive Officer), Rebecca Stockfeld (Director Planning and Environment). Lucy Olson (Senior Governance Officer - Council Business), Mwai Mashunga (Service Desk Officer)

4 APOLOGIES

Patricia Clive (Coordinator Governance)

5 CONFLICTS OF INTEREST

Cr Guthrie declared a material conflict of interest in relation to item 8.5 – 89 Ross Watt Road due to living opposite the site.

Cr Anderson declared a material and general conflict of interest in relation to item 8.2 – 2-4 Davy Street due to a owning property near the site and being friends with previous objectors.

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**Committee Resolution**

Moved: Cr Mark Ridgeway
Seconded: Cr Jennifer Anderson

That the Committee confirm the minutes of the Planning Delegated Committee of Macedon Ranges Shire Council held on 8 February 2023, as circulated.

CARRIED

8 REPORTS**8.1 FOR DECISION - MISCELLANEOUS CONSENT MCA/2022/29 - DEVELOPMENT OF AN OUTBUILDING, EFFLUENT DISPOSAL AND MINOR WORKS ASSOICATED WITH THE DWELLING OUTSIDE THE BUILDING AND DRIVEWAY ENVELOPES - 12 CORNISH ROAD, RIDDELLS CREEK****Summary**

The application is for the development of an outbuilding, effluent disposal works and some minor works in association with the dwelling outside the building and driveway envelopes.

The application was advertised and one (1) objection has been received to date.

Key issues to be considered relate to the appropriateness of the proposal in relation to the Section 173 Agreement registered on the title.

The application has been assessed against the requirements of the Section 173 Agreement and is considered contrary to the intent of the Section 173 Agreement. It is recommended that a Refusal to Grant a Miscellaneous Consent be issued.

Recommendation

That Committee issues a Refusal to Grant a Miscellaneous Consent for the development of an outbuilding, effluent disposal works and some minor works in association with the dwelling outside the building and driveway envelopes for the land at LOT 2 PS 830906U P/Kerrie 12 Cornish Road Riddells Creek VIC 3431.

Procedural Note: Cr Geoff Neil moved an amended officer recommendation.

Committee Resolution

Moved: Cr Geoff Neil
Seconded: Cr Anne Moore

That the Committee defers this item, to be presented for decision at the Council meeting scheduled for Wednesday 22 March 2023 at 7:00pm to allow time for potential changes to the application.

CARRIED

8.2 APPLICATION FOR EXTENSION OF TIME FOR PLANNING PERMIT PLN/2015/204 - 2-4 DAVY STREET WOODEND. CONSTRUCTION OF FOURTEEN (14) DOUBLE STOREY DWELLINGS, CONSTRUCTION OF ASSOCIATED BUILDINGS AND WORK (EARTHWORKS, ROADWORKS AND FENCING), AND REMOVAL OF VEGETATION INCLUDING TWO (2) NON-NATIVE TREES WITHIN THE DAVY STREET ROAD RESERVE, CONSTRUCTION OF WORKS WITHIN THE BLACK GUM RESERVE (OUTLET DRAINS AND RESERVE)

Summary

The applicant has applied for an Application to Extend a Planning Permit for the Construction of fourteen double storey dwellings, construction of associated buildings and work (earthworks, roadworks and fencing), and removal of vegetation including two (2) non-native trees within the Davy Street road reserve, construction of works within the Black Gum Reserve (outlet drains and reserve) in relation to Planning Application PLN/2015/204, for a period of one year.

An application for failure to determine the application has been lodged at the Victorian Civil and Administrative Tribunal (VCAT) and Council is required to form a position to present at VCAT. It is deemed reasonable to support an extension to the Planning Permit for a period of one (1) year for the completion of works pursuant to Section 69 of the Planning and Environment Act 1987 and that VCAT be advised accordingly.

Having previously declared a conflict of interest in relation to this item, at 7:06 pm, Cr Jennifer Anderson left the meeting.

Recommendation

That the Committee advises the Victorian Civil and Administrative Tribunal it would have granted an extension of time for one (1) year for the completion of works pursuant to Section 69 of the *Planning and Environment Act 1987*.

Procedural Note: Cr Rob Guthrie moved an alternative motion.

Committee Resolution

Moved: Cr Rob Guthrie
Seconded: Cr Anne Moore

That the Committee resolve to refuse an extension of time for Planning Permit PLN/2015/204 on the following ground:

- 1. The extension of time issued to complete the development was considered reasonable by VCAT (VCAT Reference No. P2019/20) to pursue and complete the development. It is considered that the applicant is warehousing the permit given no further development has occurred since the previous extension of time was granted and given that a substantial amount of time has elapsed since the issue of the original permit.**

In Favour: Crs Annette Death, Rob Guthrie, Anne Moore, Geoff Neil, Mark Ridgeway and Bill West

Against: Crs Dominic Bonanno and Janet Pearce

CARRIED 6/2

At 7:22 pm, Cr Jennifer Anderson returned to the meeting.

8.3 FOR DECISION - PLN/2021/587 - 1164 KYNETON SPRINGHILL ROAD, KYNETON SPRINGHILL ROAD AND 535 SHEPHERDS HILL ROAD SPRING HILL - RESUBDIVISION OF FOUR (4) LOTS INTO FOUR (4) LOTS

Summary

The proposal is for the Resubdivision of Four (4) Lots into Four (4) Lots. The application was advertised, with no objections having been received to date. The key issues to be considered relates to the impact of the proposal on the agricultural land and the genuine need for the proposed subdivision to facilitate or enhance the existing agricultural operation. The application has been assessed against the Macedon Ranges Shire Planning Scheme and the proposal has been deemed as not being in accordance with the aforementioned Planning Scheme. It is recommended that a Notice of Decision to Refuse to Grant a Permit be issued.

Recommendation

That Council issues a Notice of Decision to Refuse to Grant a Permit for the Resubdivision of Four (4) Lots into Four (4) Lots for the land at Kyneton Springhill Road and 535 Shepherds Hill Road Spring Hill on the following grounds:

- 1) The proposal is contrary to Clause 14 of the Planning Policy Framework as it does not protect productive farmland due to inappropriate fragmentation which will compromise the long term capacity of the land to be used for agriculture.**
- 2) The proposal is contrary to Clause 21.07-1 of the Local Planning Policy Framework as it fails to demonstrate and provide adequate justification that the resubdivision is required for sustainable agricultural pursuits.**
- 3) The proposal is contrary to Clause 21.09 of the Local Planning Policy Framework as it is considered that the proposal will likely facilitate inappropriate development in a rural area not designated for residential use and development.**
- 4) The proposal is contrary to the purposes and decision guidelines of the Farming Zone as the resubdivision will further solidify the fragmentation of existing farming land and holdings, remove land from agricultural use, and facilitate an opportunity of a non-agricultural use (dwelling) that would be incompatible with and adversely affect the adjoining and nearby land uses for agriculture.**
- 5) The proposal will contribute to the fragmentation of agricultural land which is valuable to the Shire.**
- 6) The proposal will result in a creation of a lot with as-of-right use for dwelling which demonstrates that the subdivision will not support or enhance the agricultural use.**

Procedural Note: Cr Mark Ridgeway moved an alternative motion.

Procedural Note: Meeting suspended at 7:40pm and restarted at 7:44pm

Committee Resolution

Moved: Cr Mark Ridgeway

Seconded: Cr Janet Pearce

That the Committee resolves to Grant a Permit for the Resubdivision of Four (4) Lots into Four (4) Lots for the land at Kyneton Springhill Road and 535 Shepherds Hill Road Spring Hill subject to the conditions below:

- 1. Before the Plan of Subdivision is certified under the Subdivision Act 1988, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned, with electronic copy to be provided. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans submitted with the application, but modified to show:**
 - (a) An amended Farm Report with a plan/ set of plans drawn to scale and dimensioned showing the locations of the agricultural activities proposed as well as any associated infrastructure on each lot addressed by this permit. This includes, but is not limited to, the proposed on-farm changes mentioned in the Farm Report prepared by A J Forbes and Associates, Agricultural Consultants on 27 May 2022;**
 - (b) A plan with aerial imagery showing the resubdivided lots with locations of existing and proposed crossovers for each lot in the plan of subdivision;**
 - (c) A Land Capability Assessment/Land Capability Assessments in accordance with Condition 7 of this Permit.**
 - (d) A plan with indicated effluent envelopes in accordance with the endorsed Land Capability Assessment(s) required by Condition 7 of permit PLN/2021/587. The effluent envelopes are to be considerate of the natural features and agricultural values of the land and minimise the domestic use and development of the land.**
 - (e) A plan with indicated building envelopes, drawn to scale and fully dimensioned. The building envelopes are to be considerate of the natural features and agricultural values of the land and minimise the domestic use and development of the land.**
 - 2. The subdivision allowed by this permit and shown on the plans endorsed to accompany the permit shall not be amended unless with the prior written consent of the Responsible Authority.**
 - 3. Before the certification of the Plan of Subdivision, the owner/s of the lot must enter into an agreement with the Responsible Authority in accordance with Section 173 of the Planning and Environment Act 1987. The agreement must provide for:**
 - (a) The owner/s of the land must not further subdivide (including any smaller lots for an existing dwelling).**
 - (b) The owner/s of the land must implement all the recommendations and requirements of the Farm Report endorsed under Planning Permit PLN/2021/587 (or any subsequent amendment approved with written**
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consent by the Responsible Authority) must be followed on an ongoing basis to the satisfaction of the Responsible Authority.

- (c) All recommendations and actions specified within the Land Capability Assessment(s) endorsed under Planning Permit PLN/2021/587 (or any subsequent amendment approved by the Responsible Authority) must be followed to the satisfaction of the Responsible Authority.
- (d) That the owner acknowledges and accepts the possibility of nuisance from adjoining agricultural operations including animal production, spray drift, agricultural machinery use, pumps and associated hours of operation necessary for agricultural production.

Prior to a Statement of Compliance being issued:

- (a) An application must be made to the Registrar of Titles to register the Section 173 Agreement on the title of all the lots under Section 181 of the same Act.
 - (b) The owner/s must pay all costs (including Council's costs) associated with the preparation, execution, registration and (if later sought) cancellation of the Section 173 Agreement.
4. The owner of the land must enter into an agreement with:
- (a) A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - (b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
5. Before the issue of a Statement of Compliance for the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
- (a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - (b) A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
6. Measures must be undertaken to minimise any loss of amenity to the neighbourhood from the development caused by dust, noise, the transport of materials to and from the land and the deposit of mud and debris on public roads, to the satisfaction of the Responsible Authority.
7. A Land Capability Assessment/Land Capability Assessments prepared by appropriately qualified professional(s) must be provided which demonstrates
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that the each lot is capable of treating and retaining all wastewater for domestic development in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.

Goulburn Murray Water Conditions:

- 8. Any Plan of Subdivision lodged for certification must be referred to Goulburn-Murray Rural Water Corporation pursuant to Section 8(1)(a) of the Subdivision Act.
- 9. The existing on-site wastewater treatment and disposal systems for proposed new lots containing existing dwellings must be wholly contained within the boundaries of the new lot created by subdivision.

Powercor Conditions:

- 10. This letter shall be supplied to the applicant in its entirety.
- 11. The plan of subdivision submitted for certification under the Subdivision Act 1988 shall be referred to the Distributor in accordance with Section 8 of that Act.
- 12. The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).
- 13. The applicant shall establish easements on the subdivision, for all existing Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements.

Permit Expiry:

- 14. This permit will expire if one of the following circumstances applies:
 - (a) The Plan of Subdivision is not certified within two (2) years of the date of this permit.
 - (b) The Plan of Subdivision is not registered at Land Registry within five (5) years of the certification of the subdivision.

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

Permit Notes:

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

Powercor Notes:

- Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.
- Existing easements may need to be amended to meet the Distributor's requirements.
- Easements required by the Distributor shall be specified on the subdivision and show the Purpose, Origin and the In Favour of party as follows:

Easement Reference	Purpose	Width	Origin	Land Benefited / In Favour Of
	Power Line		Section 99 – Electricity Industry Act 2000	Powercor Australia Ltd

In Favour: Crs Annette Death, Dominic Bonanno, Geoff Neil, Janet Pearce, Mark Ridgeway and Bill West

Against: Crs Jennifer Anderson, Rob Guthrie and Anne Moore

CARRIED 6/3

8.4 AMENDMENT C145MACR - ENVIRONMENTAL SIGNIFICANCE OVERLAY SCHEDULE 4

Summary

The purpose of this report is for Council to consider all submissions made to the exhibition of Macedon Ranges Planning Scheme Amendment C145macr and have the matter proceed to an independent Planning Panel.

Committee Resolution

Moved: Cr Geoff Neil
Seconded: Cr Dominic Bonanno

the Committee

- 1. Adopts the post-exhibition changes to Amendment C145macr as set out in Attachment 2;**
- 2. Requests the Minister for Planning to appoint an independent Planning Panel under Part 8 of the Planning and Environment Act 1987 to consider the submissions to Amendment C145macr to the Macedon Ranges Planning Scheme;**
- 3. Refers all submissions to Amendment C145macr to the Panel, in accordance with section 23 of the Planning and Environment Act 1987;**
- 4. Authorises Council officers, under section 22(2) of the Planning and Environment Act 1987, to consider any late submissions to Amendment C145 received in advance of the Panel Hearing and to refer those submissions to the Panel in accordance with item 1 above; and**
- 5. Notifies all submitters to Amendment C145 of Council's decision.**

CARRIED

8.5 DP/2021/1 - 89 ROSS WATT ROAD, GISBORNE - DEVELOPMENT PLAN & PLN/2021/616 - 89 ROSS WATT ROAD, GISBORNE - PLANNING PERMIT

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 the Victorian Civil and Administrative Tribunal (VCAT) due to Council not having made a decision within a reasonable time. A Council decision is required in order to formalise Council's position and provide 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. Redacted submissions to the development plan application are attached at Attachment Three.

The application was advertised to adjoining landowners in accordance with the Development Plan Overlay Schedule 4 – Gisborne Residential Areas (DPO4) at the direction of VCAT.

Key issues to be considered relate to the appropriateness of lot sizes, traffic considerations, subdivision layout, response to the Macedon Ranges 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), and Department of Energy, Environment and Climate Action (DEECA) (formerly DELWP) have reviewed the proposals.

Procedural Note: Having previously declared a conflict of interest in relation to this item, at 8:03 pm, Cr Rob Guthrie left the meeting and did not return.

Committee Resolution

Moved: Cr Anne Moore
Seconded: Cr Dominic Bonanno

That the Committee

1. **Notes that the application for approval of Development Plan DP/2021/1 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 (3 February 2023) prepared by Collie Pty Ltd covering the Development Plan Overlay area affecting the land at Ross Watt Road Gisborne, prepared to meet the requirements 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:**

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- (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 13.02 (Bushfire)
 - iv. Clause 14.02-1S (Catchment planning and management)
 - v. Clause 15.01 (Built Environment)
 - vi. Clause 21.05 (Environment and Landscape Values)
 - vii. Clause 21.06 (Environmental Risks)
 - viii. Clause 21.08-3 (Built Environment)
 - ix. Clause 21.12 (Community Development and Infrastructure)
 - x. Clause 21.13-1 (Gisborne and New Gisborne)
 - xi. Clause 15 (Urban design)
- (ii) The key principles and objectives of the Development Plan Overlay Schedule 4;
- (iii) The natural environment and landscape character of the area; and
- (iv) The interface to the Jacksons Creek, Rosslynne Reservoir and Calder Freeway;
4. Resolves to oppose the grant of planning permit application PLN/2021/616 for the following reasons:
- (a) The proposed subdivision is not generally in accordance with an approved development plan;
 - (b) The subdivision responds poorly to the DPO4 for the same reasons that the proposed development plan is opposed;
 - (c) The proposal responds poorly to policy for urban design and neighbourhood character at clauses 13.02, 15.01, 18, 21.05, 21.06 and 21.13-1 of the Macedon Ranges Planning Scheme.
 - (d) The proposal fails to provide the adequate retention of large scattered trees.
 - (e) The proposal fails to meet some the objectives and standard of Clause 56.
5. Allows officers and Council's representative delegation to represent Council at the upcoming VCAT hearing and advocate Council's position.
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CARRIED

The Meeting closed at 8:08pm.