

## ORDINARY MEETING OF COUNCIL

**Minutes** of the Ordinary Meeting of Council held at the  
James Young Room, Lerderderg Library,  
215 Main Street, Bacchus Marsh on  
Wednesday 5 October 2016 at 5:00 p.m.

### Members:

Cr. Allan Comrie (Mayor)	East Moorabool Ward
Cr. Paul Tatchell	Central Ward
Cr. David Edwards	East Moorabool Ward
Cr. John Spain	East Moorabool Ward
Cr. Tonia Dudzik	East Moorabool Ward
Cr. Tom Sullivan	West Moorabool Ward
Cr. Pat Toohey	Woodlands Ward

### Officers:

Mr. Rob Croxford	Chief Executive Officer
Mr. Phil Jeffrey	General Manager Infrastructure
Mr. Satwinder Sandhu	General Manager Growth and Development
Mr. Danny Colgan	General Manager Social and Organisational Development

**Rob Croxford**  
**Chief Executive Officer**

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**1. OPENING OF MEETING AND PRAYER**

*The Mayor, Cr. Comrie, opened the meeting at 5.00pm with the Council Prayer.*

**2. ACKNOWLEDGEMENT TO COUNTRY**

*We respectfully acknowledge the traditional owners of this land, their spirits and ancestors.*

**3. PRESENT**

<i>Cr. Allan Comrie</i>	<i>East Moorabool Ward</i>
<i>Cr. Tonia Dudzik</i>	<i>East Moorabool Ward</i>
<i>Cr. David Edwards</i>	<i>East Moorabool Ward</i>
<i>Cr. John Spain</i>	<i>East Moorabool Ward</i>
<i>Cr. Paul Tatchell</i>	<i>Central Ward</i>
<i>Cr. Tom Sullivan</i>	<i>West Moorabool Ward</i>
<i>Cr. Pat Toohey</i>	<i>Woodlands Ward</i>

**Officers:**

<i>Mr. Rob Croxford</i>	<i>Chief Executive Officer</i>
<i>Mr. Phil Jeffrey</i>	<i>General Manager Infrastructure</i>
<i>Mr. Danny Colgan</i>	<i>General Manager Social and Organisational Development</i>
<i>Mr. Robert Fillisch</i>	<i>Manager Statutory Planning and Community Safety</i>
<i>Mr. Mark Lovell</i>	<i>Senior Statutory Planner</i>
<i>Mr. John Whitfield</i>	<i>Governance Coordinator</i>
<i>Ms. Melissa Hollitt</i>	<i>Minute Taker</i>

**4. APOLOGIES**

*Nil.*

**5. CONFIRMATION OF MINUTES**

**5.1 Ordinary Meeting of Council – Wednesday 07 September 2016**

**Resolution:**

**Crs. Sullivan/Edwards**

*That Council confirms the Minutes of the Ordinary Meeting of Council held on Wednesday 07 September 2016.*

**CARRIED.**

**5.2 Special Meeting of Council – Wednesday 14 September 2016**

**Resolution:**

**Crs. Edwards/Sullivan**

*That Council confirms the Minutes of the Special Meeting of Council held on Wednesday 14 September 2016.*

**CARRIED.**

## 6. DISCLOSURE OF CONFLICT OF INTEREST

Under the Local Government Act (1989), the classification of the type of interest giving rise to a conflict is; a direct interest; or an indirect interest (section 77A and 77B). The type of indirect interest specified under Section 78, 78A, 78B, 78C or 78D of the Local Government Act 1989 set out the requirements of a Councillor or member of a Special Committee to disclose any conflicts of interest that the Councillor or member of a Special Committee may have in a matter being or likely to be considered at a meeting of the Council or Committee.

Definitions of the class of the interest are:

- a direct interest
  - (section 77A, 77B)
- an indirect interest (see below)
  - indirect interest by close association (section 78)
  - indirect financial interest (section 78A)
  - indirect interest because of conflicting duty (section 78B)
  - indirect interest because of receipt of gift(s) (section 78C)
  - indirect interest through civil proceedings (section 78D)
  - indirect interest because of impact on residential amenity (section 78E)

### Time for Disclosure of Conflicts of Interest

In addition to the Council protocol relating to disclosure at the beginning of the meeting, section 79 of the Local Government Act 1989 (the Act) requires a Councillor to disclose the details, classification and the nature of the conflict of interest immediately at the beginning of the meeting and/or before consideration or discussion of the Item.

Section 79(6) of the Act states:

While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must:

- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
- (b) remain outside the room and any gallery or other area in view of hearing of the room.

The Councillor is to be notified by the Mayor or Chairperson of the special committee that he or she may return to the room after consideration of the matter and all votes on the matter.

There are important reasons for requiring this disclosure immediately before the relevant matter is considered.

- Firstly, members of the public might only be in attendance for part of a meeting and should be able to see that all matters are considered in an appropriately transparent manner.
- Secondly, if conflicts of interest are not disclosed immediately before an item there is a risk that a Councillor who arrives late to a meeting may fail to disclose their conflict of interest and be in breach of the Act.

***Nil.***

## 7. PUBLIC QUESTION TIME

The aim of Public Question Time is to provide an opportunity for the public to ask general questions at Council Meetings requiring routine responses. Public Question Time is conducted in accordance with Section 6.9 of the Council's *Meeting Procedure Local Law No. 9*.

Questions must be in writing on the form provided by the Council and submitted by 5.00pm on the day before the meeting. Members of the public can contact a Councillor and raise a question which the Councillor will submit on their behalf.

A question will only be read to the meeting if the Chairperson or other person authorised for this purpose by the Chairperson has determined that:

- i) the person directing the question is present in the gallery;
- ii) the question does not relate to a matter of the type described in section 89(2) of the Act (for confidential matters);
- iii) the question does not relate to a matter in respect of which Council has no power to act;
- iv) the question is not defamatory, indecent, abusive or objectionable in language or substance;
- v) the question is not a repetition of a question already asked or answered (whether at the same or an earlier meeting); and
- vi) the question is not asked to embarrass a Councillor, member of Council staff or member of the public.

A Councillor or Council officer may:

- i) immediately answer the question asked; or
- ii) elect to have the question taken on notice until the next Ordinary meeting of Council; at which time the question must be answered and incorporated in the Agenda of the meeting under Public Question Time; or
- iii) elect to submit a written answer to the person asking the question within 10 working days.

Responses to public questions answered at the meeting, will be general in nature, provided in good faith and should not exceed two minutes. These responses will be summarised in the minutes of the meeting.

Public Question Time does not substitute for other forms of communication with or other formal business procedures of the Council.

***Mr. Mark Frackowski submitted a question regarding Maddingley Estate; the landscaping, ongoing maintenance of estate and parks etc. and safety issues in and around the estate.***

***The Council noted that further discussions on this matter are scheduled with Council staff and pending the result of those discussions either a report will be brought to the next Ordinary Meeting of Council or a written answer to Mr Frackowski will be provided within 10 working days.***

**8. PETITIONS**

*Nil.*



## 9. PRESENTATIONS / DEPUTATIONS

The Council has made provision in the business of the Ordinary Meetings of the Council for the making of presentations or deputations to Council in relation to matters presented on the agenda for Council consideration.

Presentations or deputations are required to be conducted in accordance with the requirements contained within the **Presentation/Deputations Protocols and Procedural Guidelines**.

Persons wishing to make a presentation or deputation to Council on a matter included in the agenda shall inform Council prior to the meeting by contacting the Chief Executive Officer's office and registering their name and agenda item being spoken to.

At the meeting the Mayor will invite the persons wishing to make a presentation or delegation to address the Council on the agenda item.

The person making the presentation or deputation is to stand and address Council on the item. No debate on the item is permitted between the person making the presentation or delegation and the Council.

A maximum of three minutes per presentation or delegation will be allocated. An extension of time may be granted at the discretion of the Mayor.

Councillors, through the Mayor, may ask the person making the presentation or delegation for clarification of matters presented.

The Mayor may direct that a member of the gallery ceases speaking if the above procedure is not followed.

**List of Persons making Presentations/Deputations other than in relation to a planning item listed on the agenda:**

***Nil.***

**List of Persons making Presentations/Deputations to a planning item listed on the agenda:**

Individuals seeking to make a presentation to the Council on a planning item listed on the agenda for consideration at the meeting will be heard by the Council immediately preceding consideration of the Council Officer's report on the planning item.

<b>Item No</b>	<b>Description</b>	<b>Name</b>	<b>Applicant/ Objector</b>
10.2.4	<i>Planning Permit Application PA2016-125; Two (2) Lot Subdivision at Lot 48 on PS 200725E, 19 Cunningham Close, Darley VIC 3340</i>	Craig Mayhew	Objector
10.2.4	<i>Planning Permit Application PA2016-125; Two (2) Lot Subdivision at Lot 48 on PS 200725E, 19 Cunningham Close, Darley VIC 3340</i>	Fiona Shugg	Objector
10.2.4	<i>Planning Permit Application PA2016-125; Two (2) Lot Subdivision at Lot 48 on PS 200725E, 19 Cunningham Close, Darley VIC 3340</i>	Matthew Wood	Applicant

## 10. OFFICER'S REPORTS

### 10.1 CHIEF EXECUTIVE OFFICER

#### 10.1.1 Request for Change of Council Meeting Dates - November

##### Introduction

File No.: 02/01/001  
 Author: John Whitfield  
 Chief Executive Officer: Rob Croxford

Proposal to change the Ordinary Meeting of Council date from Wednesday 2 November 2016 to Wednesday 16 November 2016 and the Special Meeting of Council (Statutory and Annual Appointments Meeting) from 26 October 2016 to 9 November 2016, to accommodate the General Election schedule.

##### Background

As Councillors are aware, election day for Moorabool Shire Council is Saturday 22 October 2016.

As a consequence of the recent changes in the *Local Government (Electoral) Regulations 2016*, the postal vote receipt period has been extended to 12 noon on Friday 28 October 2016. This in turn will cause the declaration of the election to occur in the week commencing Monday 31 October and no later than Friday 4 November 2016.

Council's current meeting framework for the October – December 2016 period is as follows:

Wednesday 26 October 2016 at 5.00pm	Special Meeting of Council (Statutory and Annual Appointments meeting)	Ballan
Wednesday 2 November 2016 at 5.00pm	Ordinary Meeting of Council	Blackwood
Wednesday 7 December 2016 at 5.00pm	Ordinary Meeting of Council	James Young Room, Lerderderg Library, Bacchus Marsh

##### Proposal

In order to allow the newly elected Council sufficient time to hold a Special Meeting of Council to elect a new Mayor, consider other statutory and annual appointments and undertake a number of induction sessions, changes to the Statutory and Annual Appointments meeting date and the Ordinary Meeting date are required. It is proposed to transfer the Statutory and Annual Appointments meeting from Wednesday 26 October to Wednesday 9 November 2016. It is proposed to transfer the Ordinary Meeting of Wednesday 2 November to Wednesday 16 November 2016.

The proposed Council meeting schedule, including Councillor induction sessions would be as follows:

Saturday 22 October 2016	Moorabool Shire Council Election Day	
Wednesday 2 November 2016	Proposed Declaration of Election, swearing in of Councillors and Councillor Code of Conduct declaration	Council Chambers, Ballan
Friday 4 November 2016	Councillor Induction Session	Council Chambers, Ballan
Saturday 5 November 2016	Councillor Only Session	North Wing Meeting Room 1, Darley
Wednesday 9 November 2016	Councillor Induction Session and Special Meeting of Council – Statutory and Annual Appointments Meeting	Council Chambers, Ballan  Council Chambers Ballan
Friday 11 November 2016	Council Induction Session	Council Chambers, Ballan
Wednesday 16 November 2016 at 5.00pm	Councillor Induction Session and Ordinary Meeting of Council	Council Chambers, Ballan  Blackwood Hall, Blackwood

### Policy Implications

The 2013–2017 Council Plan provides as follows:

<b>Key Result Area</b>	Representation and Leadership of our Community
<b>Objective</b>	Good Governance through effective systems and procedures
<b>Strategy</b>	Ensure policies and good governance are in accordance with legislative requirements and best practice

The proposal is consistent with the 2013-2017 Council Plan.

### **Financial Implications**

There are no financial implications from this report.

### **Risk & Occupational Health & Safety Issues**

There are no Risk or Occupational Health and Safety issues in relation to this report.

### **Communications and Consultation Strategy**

In accordance with Section 89(4) of the *Local Government Act 1989*, a public notice will be placed in the local and regional newspapers and on Council's corporate website.

### **Victorian Charter of Human Rights and Responsibilities Act 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

### **Officer's Declaration of Conflict of Interests**

Under section 80C of the *Local Government Act 1989* (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*Chief Executive Officer – Rob Croxford*

In providing this advice to Council as the General Manager, I have no interests to disclose in this report.

*Author – John Whitfield*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

### **Conclusion**

If, after consideration, Council resolves to transfer the Statutory and Annual Appointments meeting from Wednesday 26 October to Wednesday 9 November 2016, and the Ordinary Meeting of Council from Wednesday 2 November to Wednesday 16 November 2016, this will allow for the declaration of results from the election and then a suitable induction period for the incoming Council.

### **Election (Caretaker) Period Statement**

The recommended decision is not a "Major Policy Decision", as defined in Section 93A of the *Local Government Act 1989*.

**Recommendation:**

**That Council, in accordance with the provision of Section 89 (4) of the *Local Government Act 1989*, provides public notice of its decision to:**

- 1. transfer the Statutory and Annual Appointments meeting from Wednesday 26 October 2016 to Wednesday 9 November 2016 commencing at 5.00pm, in the Council Chambers, Ballan.**
- 2. transfer the Ordinary Meeting of Council from Wednesday 2 November 2016 to Wednesday 16 November 2016 commencing at 5.00pm at the Blackwood Hall, Blackwood.**

**Resolution:**

**Resolution:**

**Crs. Toohey/Edwards**

***That Council, in accordance with the provision of Section 89 (4) of the Local Government Act 1989, provides public notice of its decision to:***

- 3. transfer the Statutory and Annual Appointments meeting from Wednesday 26 October 2016 to Monday 7 November 2016 commencing at 5.00pm, in the Council Chambers, Ballan.***
- 4. transfer the Ordinary Meeting of Council from Wednesday 2 November 2016 to Wednesday 16 November 2016 commencing at 5.00pm at the Blackwood Hall, Blackwood.***

**CARRIED.**

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**Report Authorisation**

**Authorised by:** 

**Name:** Rob Croxford  
**Title:** Chief Executive Officer  
**Date:** Wednesday 14 September 2016

## 10.2 GROWTH AND DEVELOPMENT

### 10.2.1 Ballan Golf Club – BBQ Building

#### Introduction

File No.: 35500 & PN. 900005  
Author: John Whitfield  
General Manager: Satwinder Sandhu

#### Background

The Ballan Golf Club has written to the Council to use/obtain a disused BBQ building located on the golf course near Blow Court, Ballan. This building is situated near to Ballan Golf Club clubhouse and is currently in a state of disrepair. The BBQ building is owned by the Council and sits on Council's asset register. They have plans to renovate the building and use it to store and charge electric golf carts.

#### Proposal

A letter from the Ballan Golf Club is attached to this report. In it the golf club committee outline the reasons why they would like to have the BBQ building transferred to the club. They include renovating the building to use as a storage facility for golf carts, increasing revenue for the club by offering golf cart hire, making the building secure and improving the appearance of this building. These reasons all have merit and are worthy of support.

Additionally, the Council should note that this building has been the target of graffiti and vandalism for some years now. It is hoped that by transferring the building to the golf club and then having the building renovated and made more secure by the installation of lighting and CCTV cameras that future damage to the building will not occur.

The Council's Asset Management unit have been consulted and support the proposal by the golf club.

Photos of the BBQ building are set out below.





In order to facilitate the transfer of responsibility of the BBQ building to the golf club a number of steps need to be taken.

It is believed that the building sits partially on the road reserve and partially on the crown reserve leased by the Ballan Golf Club from the Crown (Department of Environment, Land Water and Planning – DELWP).



See the aerial photograph below. The BBQ building is located as shown and is obscured by the tree.



It is proposed that a portion of the road reserve for Blow Court be discontinued so that the building all falls within land controlled by the Crown. ie. it adds to the golf course land immediately to the north of Blow Court that the golf club leases from DELWP (Lot 15 Section 29 PP5029).

In order to discontinue a portion of Blow Court the Council makes an application to DELWP. DELWP then arrange for a survey done to identify what portion of the road reserve would need to be discontinued to properly situate the BBQ building on the crown reserve. The constructed area of Blow Court roadway will be unaffected by this discontinuance.

Council should note that buildings and structures on crown land are property of the crown and that the renovations proposed by the golf club will need the consent of the crown.

The golf club's proposal has been discussed with DELWP and they have raised no concerns in principle with this course of action.

**Policy Implications**

The 2013–2017 Council Plan provides as follows:

<b>Key Result Area</b>	Community Wellbeing
<b>Objective</b>	Community self-reliance and resilience.
<b>Strategy</b>	Provide community development support and partnership projects
<b>Key Result Area</b>	Community Wellbeing

<b>Objective</b>	Increase and encourage participation in a range of sport, recreation and leisure activities.
<b>Strategy</b>	Promote community health and wellbeing through the provision of recreation facilities, open space, programs and activities.

The proposal is consistent with the 2013-2017 Council Plan.

### **Financial Implications**

The maintenance of this building including attending to graffiti removal and vandalism repairs is a cost to Council in the hundreds of dollars each year.

DELWP advise that the estimated cost to survey, discontinue a portion of the road reserve for Blow Court and transfer this discontinued portion of the road reserve to the crown land to which it abuts is in the vicinity of \$3,000. There are funds available from the Asset Management budget to cover this expense.

The cost in seeking public submissions at this stage of the process will be met by Council from the 2016-17 operational budget.

### **Risk & Occupational Health & Safety Issues**

The removal of the responsibility for this building lessens the risk exposure to Council by it no longer having to ensure the building is safe for the public to use. No occupational health and safety issues have been identified.

### **Communications and Consultation Strategy**

Once the DELWP survey is done to establish the portion of the road reserve to be discontinued, advertisements under section 223 of the Act will be placed. This advertisement will invite public submissions for a period of no less than 28 days after the date of the public notice in a newspaper circulating generally within the Municipality. Advertisements will also be placed in the Government Gazette and on Council's website.

Under section 207A of the Act, a person has the right to make a submission under section 223 of the Act in respect of Council proposing to discontinue a road within its municipality.

Council must then consider any submissions received in accordance with the Act.

### **Victorian Charter of Human Rights and Responsibilities Act 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

### **Officer's Declaration of Conflict of Interests**

Under section 80C of the Local Government Act 1989 (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager – Satwinder Sandhu*

In providing this advice to Council as the General Manager, I have no interests to disclose in this report.

*Author – John Whitfield*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

### **Conclusion**

It is recommended that the Council support, in principle, the proposal to transfer control of the BBQ building at the Ballan Golf Club to the golf club. This includes approval for the logistics of checking the location of the building by way of a survey organised by DELWP and then, if needed, to discontinue a corner of the Blow Court road reserve with this portion to be added to the crown reserve that abuts Blow Court.

### **Election (Caretaker) Period Statement**

The recommended decision is not a “Major Policy Decision”, as defined in Section 93A of the *Local Government Act 1989*.

#### **Resolution:**

**Crs. Tatchell/Toohey**

***That the Council:***

- 1. *support, in principle, the proposal to transfer control of the BBQ building at the Ballan Golf Club to the golf club;***
- 2. *write to the Department of Environment, Land, Water and Planning (DELWP) to request they commence the process to discontinue a corner of Blow Court, Ballan with a view to adding the discontinued road to the golf course land that the Ballan Golf Club currently leases from DELWP; and***
- 3. *approve the public submission process under Sections 207A and 223 of the Local Government Act 1989 if the DELWP survey shows a corner of Blow Court, Ballan requires discontinuation;***
- 4. *receive a report following the completion of the public submission process under Sections 207A and 223 of the Local Government Act 1989, to consider all public submissions received.***

**CARRIED.**

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**Report Authorisation**

**Authorised by:**

**Name:** Satwinder Sandhu  
**Title:** General Manager Growth and Development  
**Date:** Thursday, 15 September 2016



## 10.2.2 2015/16 Moorabool Shire Council Annual Report

### Introduction

File No.: 02/02/002  
Author: John Whitfield  
Manager: Satwinder Sandhu

### Background

Under Section 133 of the Local Government Act (1989), Council is required to prepare an Annual Report and submit it to the Minister for Local Government within three months after the end of the financial year reported on. The Moorabool Shire Council Annual Report 2015/16 was submitted to the Minister for Local Government on Friday, 23 September 2016.

Under Clause 17 of the Local Government (Finance and Reporting) Regulations 2004 No. 30 of the Act, Council must hold a meeting to consider the Annual Report within one month of providing the Annual Report to the Minister pursuant to section 131 (6) of the Act.

Council is required to advertise that the Annual Report will be presented to Council for consideration.

Public notice has been given in the Moorabool News on 20 and 27 September, 2016 and the Ballarat Courier on 17 and 24 September, 2016 that the 2015/16 Annual Report is being presented to Council on Wednesday 5 October, 2016. Further advertisements have been scheduled to appear in the Courier (8 October, 2016) and the Moorabool News (11 October, 2016) stating that the report is available for public inspection at Council offices and on Council's website.

### Proposal

In accordance with requirements of the Local Government Act (1989), the 2015/16 Annual Report has been advertised for at least the mandatory 14 day period before the meeting is held and presented to Council to consider and receive the report. Advertising during this period will outline the places from which copies of the Annual Report can be obtained prior and post the meeting.

Once considered, hard copies of the Annual Report will be available at Council offices for inspection and supplied upon request. The public will be able to download a copy of the Annual Report from the Council website.

As this Annual Report is to be produced within the Election (Caretaker) Period. The following extract from the Council's Election (Caretaker) Period Policy is set out for the information of the Council.

## **7.6 Annual Report**

*Council is required by the Act to produce and put on public display a copy of its Annual Report. The 2015/16 Annual Report will be published during the election period. The Annual Report will not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual Councillors.*

*The Annual Report does not require certification by the Chief Executive Officer, however any publication of an extract or summary of the Annual Report will require certification.*

The Annual Report distributed with this agenda has been produced to meet the requirements of the Local Government Act 1989 and the Council policy.

### **Policy Implications**

The 2013-2017 Council Plan provides as follows:

<b>Key Result Area</b>	Representation and Leadership of our Community
<b>Objective</b>	Good governance through open and transparent processes and strong accountability to the community.
<b>Strategy</b>	Ensure policies and good governance are in accordance with legislative requirements and best practice.

The proposal to consider the 2015/16 Annual Report is consistent with the 2013-2017 Council Plan.

### **Financial Implications**

There are no financial implications as a result of this report.

### **Risk & Occupational Health & Safety Issues**

There are no risk implications in relation to this report

### **Communications Strategy**

Advertisements have been placed in the Moorabool News advising that the Annual Report is being presented to Council for consideration and that the report will be available for inspection at Council offices. An electronic copy and a hard copy of the 2015/16 Annual Report were lodged to the office of the State Government's Minister for Local Government.

The Annual Report will be available for inspection at all Council Service Centres and hard copies of the report will be distributed to stakeholders and customers who have requested a copy of the report. The report is also on the Council's website.

### **Victorian Charter of Human Rights and Responsibilities Act 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

### **Officer's Declaration of Conflict of Interests**

Under section 80C of the Local Government Act 1989 (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager Growth and Development – Satwinder Sandhu*

In providing this advice to Council as the General Manager, Growth and Development, I have no interests to disclose in this report.

*Author – John Whitfield*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

### **Conclusion**

Having complied with the requirements of the Local Government Act (1989) and the Councils Election (Caretaker) Period Policy, the 2015/16 Annual Report can now be made a public document and either distributed to stakeholders or made available for inspection on request.

### **Election (Caretaker) Period Statement**

The recommended decision is not a "Major Policy Decision", as defined in Section 93A of the *Local Government Act 1989*.

### **Recommendation:**

**That Council, in accordance with section 134 of the *Local Government Act 1989* accepts the 2015/16 Annual Report.**

### **Resolution:**

**Crs. Sullivan/Dudzik**

***That Council, in accordance with section 134 of the Local Government Act 1989 accepts the 2015/16 Annual Report with the inclusion of the correction of an error on page 59 as advised to Councillors.***

**CARRIED.**

**Report Authorisation**

**Authorised by:**



**Name:** Satwinder Sandhu  
**Title:** General Manager Growth and Development  
**Date:** Friday 9 September 2016



**10.2.3 Planning Permit 2015-294; Use and Development of the land for offices and a reduction to the standard car parking rate at 32 Grant Street, Bacchus Marsh**

<b>Application Summary:</b>	
Permit No:	PA2015-294.
Lodgement Date:	9 December, 2015
Planning Officer:	Mark Lovell.
Address of the land:	Lot 2 on PS143683 32 Grant Street, Bacchus Marsh
Proposal:	Use and development of the land for offices (retrospective), and a reduction of the standard car parking requirement
Lot size:	943.96m2.
Why is a permit required	Clause 32.04-2 and Clause 32.04-8 – Use and development of land for offices  Clause 52.06-3 – Reduction to the standard car parking rate.
<b>Public Consultation:</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of Objections:	Three objections
Consultation meeting:	Meeting held but no resolution achieved between the parties. A draft Section 173 agreement prepared by permit applicant was discussed at the meeting.
<b>Policy Implications:</b>	
<b>Key Result Area</b>	Enhanced Natural and Built Environment.
<b>Objective</b>	Effective and efficient land use planning and building control.

<b>Strategy</b>	<p>Implement high quality, responsive, and efficient processing systems for planning and building applications</p> <p>Ensure that development is sustainable, resilient to change and respects the existing character.</p>
<b>Victorian Charter of Human Rights and Responsibilities Act 2006</b>	
<p>In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.</p>	
<b>Officer's Declaration of Conflict of Interests</b>	
<p>Under section 80C of the Local Government Act 1989 (as amended), officers providing advice to Council must disclose any interests, including the type of interest.</p> <p><i>Manager – Robert Fillisch</i></p> <p>In providing this advice to Council as the Manager, I have no interests to disclose in this report.</p> <p><i>Author – Mark Lovell</i></p> <p>In providing this advice to Council as the Author, I have no interests to disclose in this report.</p>	
<b>Executive Summary:</b>	
Application Referred?	The application was referred to Melbourne Water, VicRoads and Council's Infrastructure.
Any issues raised in referral responses?	None raised subject to conditions
Preliminary Concerns?	There were initial concerns that the applicant had been lodged the application prematurely, prior to a determination of a VCAT hearing regarding an enforcement order for the same site.
Any discussions with applicant regarding concerns	The applicant agreed to place the application on hold and needed some additional time to consider their position of how to proceed in light of the VCAT order.
Any changes made to the application since being lodged?	

VCAT history?	<p>Yes.</p> <p>VCAT directed a previous permit PA2007-069 be issued (P1253/2007) after Council failed to make a decision in the statutory period. The permit issued on 27 November, 2007 authorised the development of the land for the purposes of offices, altered access to a Road Zone Category 1, car parking dispensation and a 10 lot subdivision.</p> <p>VCAT determined an enforcement order (P160/2015) concerning the use of land for dwellings instead of offices and the permit expiry date. Their order dated 5 February, 2016 advised that the permit had expired due to certification of the plan of subdivision not occurring by 27 November, 2012 and what had been constructed on the land was ten dwellings.</p>
Previous applications for the site?	2007-069 was issued on 27 November, 2007 allowing the development of land for the purposes of offices, altered access to Road Zone Category 1, car parking dispensation and a ten lot subdivision.
General summary (Pro's/Con's of the proposal)	<p>The development has been undertaken and has been completed except that no valid permit remains in place. The proposal seeks retrospective approval for use of the land for offices with its associated reduction in the standard car parking rate and retrospective approval for building works not undertaken in accordance with the endorsed development plans.</p> <p>The use and development of the land for offices is acceptable subject to the owner entering into a Section 173 agreement which provides certainty to future owners and tenants that the site can only be used for offices unless a separate planning permit is issued for an alternative use. The S173 agreement will also alert prospective buyers that an enforcement order applies to the site preventing the use of dwellings without planning approval.</p> <p>The reduction of the on site car parking provision is considered unacceptable as there is insufficient information to clearly demonstrate that the car parking spaces provided are adequate based on current parking demand in this area of Bacchus Marsh. With the building already constructed</p>

	<p>on the land does not allow for any additional on site car spaces.</p> <p>The applicant has lodged an appeal against the failure to determine the application within the prescribed time with VCAT. Council must advise VCAT of its position based on the information provided by the applicant.</p>
<p><b>Summary Recommendation:</b></p>	
<p>That, having considered all relevant matters as required by Section 60 of the Planning and Environment Act 1987, Council advise the VCAT registrar that Council does not support the use and development of the land for offices (retrospective) and a reduction of the standard car parking requirement for land at Lot 2 on PS143683, 32 Grant Street, Bacchus Marsh</p>	

### Background

The applicant has constructed a double storey building comprising ten offices with additional internal amenities compared to the endorsed plans including robes to the offices, shower to the toilet area, laundry and kitchen area. Externally, the applicant has added a window to the front elevation, altered the external bin storage area, and altered screening of the upper floor balconies.



Site photo taken 19 April, 2016

This application seeks retrospective approval for internal and external works already completed on site. The previous permit associated with the site, 2007-069 has expired, therefore the applicant requires retrospective approval for use of the land for offices with associated reduction in the standard car parking rate.

During the assessment of the application, officers determined that there was inadequate information to demonstrate a reduction to the standard car parking rate. The applicant was advised in writing on 2 August, 2016 that Council required a traffic engineering assessment that details the parking demand generated by the development. As this request for information was made after 28 days of lodgment of the application, it does not stop the statutory clock. The applicant has lodged an appeal against the failure to determine the application within the prescribed sixty days statutory timeline on 30 August, 2016. Council is required to advise VCAT of its position to enable future orders to be executed by VCAT.

### Public Notice

The application was notified to adjoining and surrounding landowners and by placing a large notice for a period of fourteen days. A statutory declaration verifying display of the large notice was received on 16 May, 2016.

A total of three objections were received to the application.

### Summary of Objections

The objections received are detailed below with officer's comments accompanying them:

Objection	Any relevant requirements
Site advertised as luxury townhouse accommodation	Mixed Use Zone provisions- Clause 32.04.
<b>Officer's response</b> - The applicant is seeking approval for use of the land as offices not dwellings. This can be confirmed by a Section 173 agreement registered on the parent title as a condition of any approval.	
History of developer's response to flout Council and VCAT.	
<b>Officer's response</b> – Prior conduct of the previous permit applicant can not be considered in the current application which needs to be assessed on its own planning merits. Council is required to undertake its own assessment of the application to determine the scope of works proposed and how they respond to the current planning controls.	
The building ignores streetscape of the neighbourhood/ does not blend with residential character of the area	

<b>Officer's response</b> – The building, as constructed, was previously deemed acceptable on neighbourhood and streetscape grounds. The only external change facing the street frontage is an additional window which will assist in breaking up visual bulk.	
Car parking assessment fails to provide an analysis of the available on street parking/ car parking problems in Grant Street	Car parking provisions - Clause 52.06
<b>Officer's response</b> –The building constructed and limited open areas remaining does not allow for any additional on site car parking spaces. The applicant has relied on a previous approval on the land which occurred nine years ago. The applicant has not examined the current parking demand in area and has not provided a traffic engineering assessment to justify a reduction to the standard car parking rate. There is inadequate information to allow for a reduction to the standard car parking rate	
Hours of operation should be restricted.	
<b>Officer's response</b> – A use can have restricted hours to prevent use during the night time hours. The hours proposed by objectors are quite restrictive which may not support a viable end user to the offices. Hours of operation will be limited to daylight hours and less during Sundays and public holidays which can be enforced by a permit condition.	
Inconsistencies in the plans	
<b>Officer's response</b> – Can be resolved through the submission of revised plans.	

## Proposal

Use and development of the land for offices and a reduction to the standard car parking rate. The land will be comprised of 10 office tenancies contained within a double storey building. Nine offices are over two floors and the front office is over a single floor level. Each office includes enclosed office rooms and amenities such as kitchen, bathroom, and laundry. There is a common disabled persons toilet and common bin storage area located in the front of tenancy number 10. There are eleven car spaces of which one is dedicated disabled persons car space located adjacent to the eastern property boundary. The car space access a common driveway to a double width crossover facing Grant Street. Designated landscaping areas are limited to an area adjacent to the office frontage, adjacent to the bin storage area and to the rear property boundary line.

The building, as constructed, has built in part against the northern and southern side boundaries, constructed in part against the street frontage, and is setback 2.5 metres from the rear eastern property boundary.

## Site Description

The subject site is located on the eastern side of Grant Street, 60.73 metres south of Waddell Street, Bacchus Marsh. The lot is 20.25 metres in width and 46.94 metres in length for a total site area of 950.53m<sup>2</sup>. The site has a flat topography and there is a sewerage easement 3 metres in width running parallel with the rear property boundary.

The site contains a double storey building reflecting contemporary architectural styling with a side car parking area.

The surrounding area are comprised of mixed land uses but predominately detached residential dwellings on moderate sized lots size with generous front setbacks and with established front landscaping treatments.

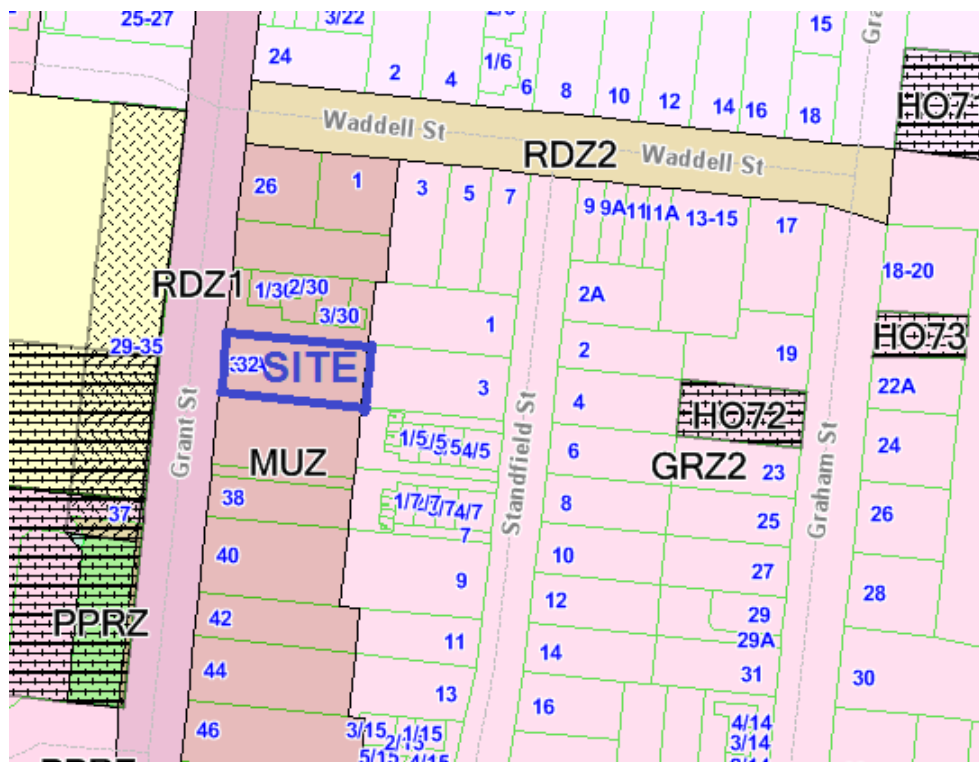
The opposite side of Grant Street contains the large Bacchus Marsh & District Hospital with main building well setback from the street frontage. There is a large open lawn area and some hard surface car parking bays and associated accessways. There are some border trees located adjacent to the street frontage.

### Locality Map

The site below indicates the location of the subject site and the zoning applicable to the surrounding area.



Figure 1: Locality Map



**Figure 2: Zone Map**

**See Attachment for floor and elevation plans**

### Planning Scheme Provisions

Council is required to consider the Victoria Planning Provisions and give particular attention to the State Planning Policy Framework (SPPF), the Local Planning Policy Framework (LPPF) and the Municipal Strategic Statement (MSS).

The relevant clauses are:

- Clause 11.01-2 Activity centre planning
- Clause 11.05-2 Melbourne's hinterland areas.
- Clause 11.06-2 A diversified economy.
- Clause 13.04-1 Noise abatement.
- Clause 17.01-1 Business.
- Clause 18.02-5 Car Parking.
- Clause 21.04-3 Commerce.
- Clause 21.07 Bacchus Marsh.



The proposal complies with the relevant sections of the SPPF and LPPF, with the exception of the clauses outlined in the table below:

SPPF	Title	Response
Clause 11.05-2	Melbourne's Hinterland Areas	The objective of the clause is maintain the attractiveness and amenity of hinterland towns. This can be achieved by ensuring there is adequate landscaping within the front setback of certain tenancies. This could be satisfied by a permit condition
Clause 18.02-5	Car Parking	The objective of this clause is to ensure an adequate supply of car parking that is appropriately designed and located. The applicant is seeking a large reduction to the standard car parking rate and has provided no traffic analysis for such a reduction. The application has not considered demand for off street parking spaces caused by this development.

## Zone

### Mixed Use Zone

The subject site is in the Mixed Use Zone (MUZ) and the provisions of Clause 32.04 apply.

The purpose of the zone is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies
- To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.
- To provide for housing at higher densities.
- To encourage development that responds to the existing or preferred neighbourhood character of the area.
- To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.

Under Clause 32.04-2 a permit is required to use land for offices that exceeds a leasable floor area of 150 square metres and under Clause 32.04-8 a permit is required to construct buildings and works

Before deciding on an application, in addition to the decision guidelines in Clause 65, the Responsible Authority must consider the following relevant decision guidelines:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

- The effect that the use may have on nearby existing or proposed residential areas or other uses which are sensitive to industrial off-site effects, having regard to any comments or directions of the referral authorities.
- The effect that nearby industries may have on the proposed use.
- The drainage of the land.
- The availability of and connection to services.
- The effect of traffic to be generated on roads.
- Any natural or cultural values on or near the land.
- Streetscape character.
- Built form.
- Landscape treatment.
- Interface with non-industrial areas.
- Parking and site access.
- Loading and service areas.
- Outdoor Storage.
- Lighting.
- Stormwater discharge

### **Overlays**

#### Design & Development Overlay - Schedule 10 (DDO10)

There were no overlays at the time of lodgment of the planning application.

Planning Scheme Amendment C51 was gazetted on 23 June, 2016 and introduced a number of changes to the planning scheme in order to implement the findings and recommendations of the Bacchus Marsh Activity Centre Structure Plan, November 2011.

Design and Development Overlay Schedule 10 (Bacchus Marsh Hospital and Medical Services Precinct) covers part of Grant and Turner Streets, Bacchus Marsh.

The overlay has a number of objectives.

- *To maintain and enhance the established character of the precinct.*
- *To encourage the provision of landscaping, where practical, within building setbacks.*
- *To ensure that the design of buildings provide elements which protect the amenity of and visually enhance areas of open space and residential interface.*
- *To encourage non residential uses buildings to have an active frontage on the ground floor, with a clearly identifiable entry.*
- *To ensure that the location and design of car parks, loading bays and services areas does not dominate the public domain and supports safe use and access.*
- *To ensure that signage and fencing on non residential uses is appropriate and sympathetic to the character of the precinct.*

The proposal only partially complies with these objectives.

## **Particular Provisions**

### Clause 52.06 Car Parking

The proposed use is for offices. Under Clause 52.06-5, an office use requires 3.5 car space to each 100 square metres of net floor area. Based on a total floor area of the combined tenancies is at 765.4m<sup>2</sup> which equates to 27 car spaces. Only 11 car spaces are provided and therefore the applicant seeks a reduction to the standard car parking rate by 16 car spaces.

Before deciding that a plan prepared under Clause 52.06-7 is satisfactory, the responsible authority must consider, as appropriate:

- The role and function of nearby roads and the ease and safety with which vehicles gain access to the site.
- The ease and safety with which vehicles access and circulate within the parking area.
- The provision for pedestrian movement within and around the parking area.
- The provision of parking facilities for cyclists and disabled people.
- The protection and enhancement of the streetscape.
- The provisions of landscaping for screening and shade.
- The measures proposed to enhance the security of people using the parking area particularly at night.
- The amenity of the locality and any increased noise or disturbance to dwellings and the amenity of pedestrians.
- The workability and allocation of spaces of any mechanical parking arrangement.
- The design and construction standards proposed for paving, drainage, line marking, signage, lighting and other relevant matters.
- The type and size of vehicle likely to use the parking area. Whether the layout of car parking spaces and access lanes is consistent with the specific standards or an appropriate variation.
- The need for the required car parking spaces to adjoin the premises used by the occupier/s, if the land is used by more than one occupier.
- Whether the layout of car spaces and accessways are consistent with Australian Standards AS2890.1-2004 (off street) and AS2890.6-2009 (disabled).
- The relevant standards of Clauses 56.06-2, 56.06-4, 56.06-5, 56.06-7 and 56.06-8 for residential developments with accessways longer than 60 metres or serving 16 or more dwellings.
- Any other matter specified in a schedule to the Parking Overlay

### Clause 52.07 Loading and Unloading of Vehicles

The purpose of this provision is to set aside land for loading and unloading commercial vehicles to prevent loss of amenity and adverse effect on traffic flow and road safety

The office use does not require servicing or sale of goods and materials. In this instance, there is no requirement for a loading bay to each office tenancy.

### Clause 52.29 – Adjacent to Road Zone Category 1

The land is adjacent to a Road Zone Category 1 which is Grant Street.

The purpose of this particular provision is

- To ensure appropriate access to identified roads.
- To ensure appropriate subdivision of land adjacent to identified roads

Under Clause 52.29 a permit is required to alter access to a Road Zone Category 1.

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The views of the relevant road authority.
- The effect of the proposal on the operation of the road and on public safety.
- Any policy made by the relevant road authority pursuant to Schedule 2, Clause 3 of the Road Management Act 2004 regarding access between a controlled access road and adjacent land.

VicRoads had no objection to the altered access which has already been completed on site.

### **Discussion**

#### Building works

Minor external changes to front facade and the altered rear bin enclosure area will not have a negative impact upon the existing streetscape pattern. The building was previously assessed as an acceptable design by VCAT whose member stated' *I am satisfied that the design approach taken is worthy, provides for an appropriate level of detailing and articulation and uses a sensible layout within the site*'.

There is however some opportunities to soften the external built form by adding landscaping treatments adjacent to the front of tenancies 2 to 7 rather than the current rock beds. Landscaping can help break up visual bulk to a development. Under the Design & Development Overlay Schedule 10, the provision of landscaping is encouraged where practical. This could be addressed by a permit condition.

#### Adequacy of the car parking provision.

The applicant is providing 11 on site car spaces with one car space per tenancy and one disabled persons car space and is seeking a dispensation of 16 spaces based on the minimum car parking rate under Clause 52.06.

With the building already constructed and car parking bays and associated accessways already formed, there is no opportunity to include any additional car spaces on site.

The applicant has been requested to provide a traffic engineering assessment to measure the current car parking demand given the previous approval on land was issued nine years ago and car parking demand has visibly increased in the area.

The applicant has not considered the limited number of on street parking spaces surrounding the site that will be under more pressure if the site is occupied by tenants that will attract more visitors to the area. The applicant has not provided any car parking data or analysis and based on limited information within their written submission, the applicant has not demonstrated adequate justification for a reduction to the standard car parking rate. The proposal has not addressed the decision guidelines under Clause 52.06-6.

Without any adequate justification that includes a proper car parking analysis, the application can not be supported on car parking grounds.

#### Use of the land for offices

The land is appropriately located near a hospital and the activity centre to Bacchus Marsh which can support small offices uses. The offices can assist in promoting commercial activity in the area and supporting future job growth. The proposed use of the land is consistent with the objectives of the Mixed Use Zone and will appropriate subject to permit conditions. Permit conditions can minimise the amenity impacts upon the more sensitive land uses contained in the Mixed Use Zone.

#### Section 173 agreement

The site has been subjected to enforcement action with the applicant for a period of time marketing the site for residential use. Future owners, tenants and neighbouring owners and occupiers need to be protected from the site been used residential purposes rather than office use unless the applicant obtains planning permission for an alternative use. The mechanism to achieve this would be to register a Section 173 agreement under the Planning & Environment Act onto the title advising that the land can only be used for office purposes. This provides certainty for all parties and prevents the situation of future owners and tenants unsure of the how the land can be used. There is a current enforcement order issued on site which also prevents use of the land for residential purposes. The Section 173 agreement can be addressed by a permit condition.

#### **General Provisions**

Clause 65 – Decision Guidelines have been considered by officers in evaluating this application.

- *The matters set out in Section 60 of the Act.*
- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the amenity of the area.*

Clause 66 - stipulates all the relevant referral authorities to which the application must be referred.

### **Referrals**

The following referrals were made pursuant to S.55 of the Planning and Environment Act 1987 and Council departments were provided with an opportunity to make comment on the proposed development plan.

<b>Authority</b>	<b>Response</b>
Melbourne Water VicRoads	Consent with a condition Consent
Infrastructure	Consent with a condition

### **Financial Implications**

The recommendation to not support the application would not represent any financial implications to Council. Should Council consider supporting this application, then VCAT would need to be notified and objectors would have the right for appeal.

### **Risk and Occupational Health and Safety Issues**

The recommendation of not supporting this use and development does not implicate any risk or OH & S issues to Council

### **Communications Strategy**

Notice was undertaken for the application, in accordance with s.52 of the Planning and Environment Act 1987, and further correspondence is required to all interested parties to the application as a result of a decision in this matter. All submitters and the applicant were invited to attend this meeting and invited to address Council if desired.

### **Options**

An alternative recommendation would be to support the application and accordingly notify VCAT of Council's decision.

Supporting the application may result in the objectors lodging an application with VCAT.

## **Conclusion**

The proposal is considered to only partially complies with the broad objectives of the State and Local Planning Policy Framework, the Mixed Use zone provisions, the Design & Development Schedule 10 provisions and the Road Zone provisions. The applicant has not demonstrated that the proposal complies with the car parking provisions.

Regardless of the development already been undertaken on site, the proposed use and development for offices can be acceptable. Additional landscaping can add a visual improvement to the development as completed and a Section 173 agreement under the Planning & Environment Act can be registered on title to prevent the site been used for residential purposes unless a further permit is issued for an alternative use.

The application fails to address the reduction to the standard car parking requirement. The applicant has decided not provide a traffic engineering assessment to evaluate parking demand generated by this particular development. There has been no justification based on the current car parking demand to allow for a reduction to the standard car parking rate in accordance with Clause 52.06. The application should not be supported.

## **Election (Caretaker) Period Statement**

The recommended decision is not a "Major Policy Decision", as defined in Section 93A of the *Local Government Act 1989*.

## **Recommendation:**

**That, having considered all matters as prescribed by the Planning and Environment Act, Council advises VCAT that it would not support planning application number 2015-294 for the Use and development of the land for offices (retrospective), altered access to a Road Zone and a reduction of the standard car parking requirement at Lot 2 on PS143683 known as 32 Grant Street, Bacchus Marsh with the following Statement of Grounds**

- 1. The applicant has not provided a traffic engineering assessment to determine the car parking demand generated by the development**
- 2. The applicant has not demonstrated adequate justification for the reduction to the standard car parking rate under Clause 52.06 of the Moorabool Planning Scheme.**
- 3. The proposed car parking area will not adequately service the expected demand of tenants and visitors to the proposed offices.**

**Resolution:****Crs. Edwards/Spain**

***That, having considered all matters as prescribed by the Planning and Environment Act, Council advises VCAT that it would not support planning application number 2015-294 for the Use and development of the land for offices (retrospective), altered access to a Road Zone and a reduction of the standard car parking requirement at Lot 2 on PS143683 known as 32 Grant Street, Bacchus Marsh with the following Statement of Grounds***

- 1. The applicant has not provided a traffic engineering assessment to determine the car parking demand generated by the development***
- 2. The applicant has not demonstrated adequate justification for the reduction to the standard car parking rate under Clause 52.06 of the Moorabool Planning Scheme.***
- 3. The proposed car parking area will not adequately service the expected demand of tenants and visitors to the proposed offices.***
- 4. That consideration of street set backs as required under the Moorabool Planning Scheme and policy documents be taken into account.***

**CARRIED.**

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**Report Authorisation****Authorised by:**

**Name:** Satwinder Sandhu   
**Title:** General Manager Growth and Development  
**Date:** Friday 16 September 2016



**Consideration of Deputations – Planning Permit Application No. PA2016-125.**

**Mr. Craig Mayhew addressed Council as an objector to the granting of a planning permit for the application.**

**Ms. Fiona Shugg addressed Council as an objector to the granting of a planning permit for the application.**

**Mr. Matthew Wood addressed Council as the applicant in favour of the granting of a planning permit for the application.**

**The business of the meeting then returned to the agenda.**

**10.2.4 Planning Permit Application PA2016-125; Two (2) Lot Subdivision at Lot 48 on PS 200725E, 19 Cunningham Close, Darley VIC 3340.**

<b>Application Summary:</b>	
Permit No:	PA2016-125
Lodgement Date:	16 May 2016
Planning Officer:	Tom Tonkin
Address of the land:	Lot 48 on PS 200725E, 19 Cunningham Close, Darley 3340
Proposal:	2 Lot Subdivision
Lot size:	1143sq m
Why is a permit required?	Clause 32.08-2 – General Residential Zone – subdivision
Restrictions registered on title	Yes, covenant M333437V. The proposal would not breach the covenant.
<b>Public Consultation:</b>	
Was the application advertised?	The application was advertised due to the proposal's potential to cause material detriment.
Notices on site:	One (1)
Notice in Moorabool Newspaper:	None
Number of Objections:	16
Consultation meeting:	Yes, held 24 August 2016 with the applicant and several objectors. None of the objections were resolved.

<b>Policy Implications:</b>	
<b>Key Result Area</b>	Enhanced Natural and Built Environment.
<b>Objective</b>	Effective and efficient land use planning and building control.
<b>Strategy</b>	Implement high quality, responsive, and efficient processing systems for planning and building applications Ensure that development is sustainable, resilient to change and respects the existing character.
<b>Victorian Charter of Human Rights and Responsibilities Act 2006</b>	
In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.	
<b>Officer's Declaration of Conflict of Interests</b>	
Under section 80C of the Local Government Act 1989 (as amended), officers providing advice to Council must disclose any interests, including the type of interest. <i>Manager – Robert Fillisch</i> In providing this advice to Council as the Manager, I have no interests to disclose in this report. <i>Author – Tom Tonkin</i> In providing this advice to Council as the Author, I have no interests to disclose in this report.	
<b>Executive Summary:</b>	
Application Referred?	Referred to Council's Infrastructure unit.
Any issues raised in referral responses?	No
Preliminary Concerns?	None
Any discussions with applicant regarding concerns	Not applicable
Any changes made to the application since being lodged?	No
VCAT history?	None

Previous applications for the site?	None
General summary	<p>The application is for a two (2) lot subdivision of the site. Lot 1 would contain an existing dwelling on a lot of 654sq m and Lot 2 would be a vacant lot of 489sq m. Both lots would front Cunningham Close and have separate access.</p> <p>Objections to the proposal generally relate to neighbourhood character, traffic and amenity. The proposal satisfies some of the relevant provisions of the Moorabool Planning Scheme, but fails to adequately respond to the neighbourhood character of the area. For this reason the proposal is not considered to be sufficiently site responsive and is not supported.</p>
<b>Summary Recommendation:</b>	
That, having considered all relevant matters as required by the Planning and Environment Act 1987, Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , on the grounds detailed at the end of this report.	

### Public Notice

Notice of the application was given to adjoining and nearby landowners by mail on 13 July 2016 and a sign erected on site from 14-31 July. Sixteen (16) objections were received.

### Summary of Objections

The objections received are detailed below with officer's accompanying comments:

Objection	Any relevant requirements
The proposed dwelling has the potential to overlook and overshadow adjoining dwellings and impact on amenity, privacy and views.	N/A
<b>Officer's response -</b> The application is for subdivision and does not include consideration of any dwelling plans. Potential overlooking and overshadowing by a future dwelling on Lot 2 would be assessed as part of the building permit process. It is noted that loss of views is generally not a valid planning consideration.	
Loss of vegetation would significantly impact the landscape and area's environmental qualities.	Clause 56.04-2

<b>Officer's response -</b> Several small trees and low level landscaping would need removal to facilitate the proposed subdivision. This relatively minor loss of vegetation would not have any substantial impact on the landscape character of the area or the environment, and the proposed lot dimensions would be sufficient to allow replacement planting to occur.	
Multiple vehicle crossings reduce on street parking availability.	N/A
<b>Officer's response -</b> The proposal would utilize the existing crossover for Lot 2 and require an additional crossover to be constructed for Lot 1. Provision of a single crossover to each lot fronting a street is considered to be acceptable, and the associated loss of possibly one on-street car space is not considered unreasonable.	
The proposed development does not integrate with the existing neighbourhood amenity or character of large family sized allotments.	Clauses 15.01-5, 21.03-4, 32.08 and 56.03-5.
<b>Officer's response -</b> This objection is discussed below.	
The density of the development is excessive for the neighbourhood.	N/A
<b>Officer's response -</b> The proposal would create lot sizes notably smaller than surrounding lots. It is considered that the resulting lot density would not respond positively to the character of the area, as discussed below.	
The development would increase traffic, noise and dust.	N/A
<b>Officer's response -</b> Cunningham Close and the surrounding street network is considered capable of absorbing traffic associated with an additional residential lot in this location. Noise normally associated with residential use would not be unreasonable in this context. Noise and dust generated during development would be regulated by relevant regulations, and provided the impacts are not unreasonable are an unavoidable aspect of land development.	
The development would burden the already lacking community infrastructure.	Clause 21.05
<b>Officer's response -</b> The creation of an additional residential lot would have negligible impact on local infrastructure and services. Bacchus Marsh is an identified regional growth area and the proposal would support this role, consistent with State and local planning policy.	
The development contradicts the Moorabool Planning Scheme. The proposed development would provide financial gain to Council.	N/A
<b>Officer's response -</b> It is unclear what this objection relates to. Subdivision of residential land is subject to planning approval, and this application is no exception.	

## **Proposal**

It is proposed to develop the site for a 2 lot subdivision. Lot 1 would contain an existing dwelling on an irregular shaped lot of 654sq m. An existing attached car port and part of a verandah would require demolition to facilitate development of Lot 2. Vehicle access to Lot 1 would be provided via a proposed crossover on a bend of Cunningham Close. Lot 2 would be an irregularly shaped vacant lot of 489sq m, fronting Cunningham Close. The site would have a 19.0m frontage and utilize an existing single crossover for vehicle access. No common property is proposed.

No significant vegetation removal would be required.

The proposed plan of subdivision is provided in Attachment 10.2.5.

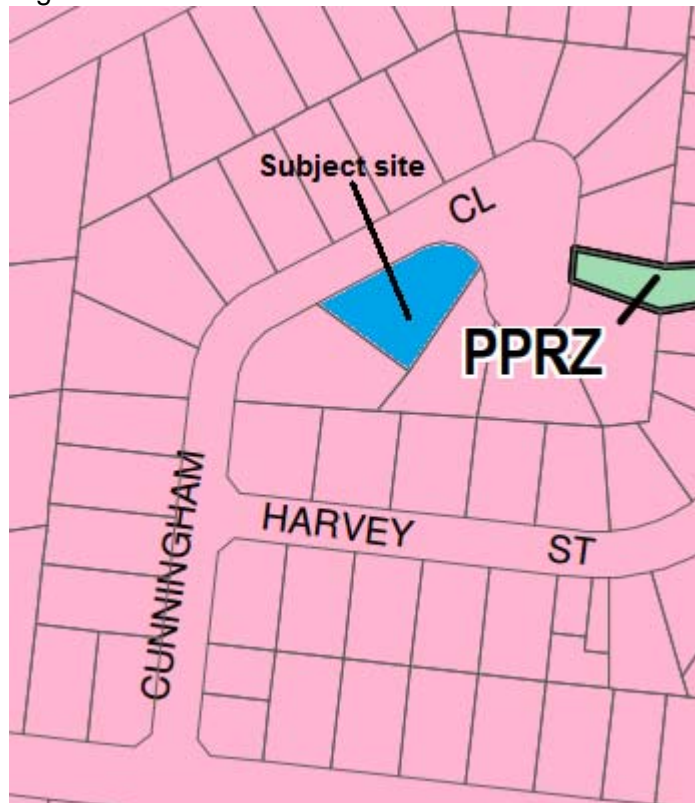
## **Site Description**

The site is identified as Lot 48 on PS 200725E and known as 19 Cunningham Close, Darley. The site is on the southeast side of the street and on a bend in the road, with an area of 1143sq m and an irregular shape. The site has a 40.03m boundary to Cunningham Close, a 42.15m southeast boundary and 37.96m southwest boundary. The site has a fall of approximately 3.0m and partially fronts a court bowl which is unusually large being >40.0m wide at some points. The site is occupied by a single storey brick dwelling with a low pitched hipped tile roof with an attached double carport at the rear, accessed via an existing crossover. The site and surrounding area is in the General Residential Zone, and comprises lots of generally 760sq m - 900sq m, with some larger lots of up 1400sq m. Most lots are developed with single detached dwellings. To the southeast is a lot of 918sq m, to the southwest is a lot of 1317sq m, and opposite the site to the northwest and northeast are lots of 774sq m-1119sq m, all of which are developed with single dwellings.



### Locality Map

The map below indicates the location of the subject site and the zoning of the surrounding area.



## Planning Scheme Provisions

Council is required to consider the Victoria Planning Provisions and give particular attention to the State Planning Policy Framework (SPPF), the Local Planning Policy Framework (LPPF) and the Municipal Strategic Statement (MSS).

The relevant clauses are:

- 11.05-2 Melbourne's hinterland areas
- 11.06 Central Highlands regional growth
- 15.01-3 Neighbourhood and subdivision design
- 15.01-5 Cultural identity and Neighbourhood Character
- 16.01-1 Integrated housing
- 16.01-2 Location of residential development
- 21.03-2 Urban Growth Management
- 21.03-3 Residential Development
- 21.03-4 Landscape and Neighbourhood Character
- 21.07 Bacchus Marsh

The proposal complies with the relevant sections of the SPPF and LPPF, with the exception of the clauses outlined in the table below:

SPPF	Title	Response
Clause 15.01-5	Cultural identity and neighbourhood character	The proposal does not adequately respond to the existing neighbourhood character.
LPPF		
Clause 21.03-4	Landscape and neighbourhood character	The proposal does not respect the existing neighbourhood character.

## Zone

The subject site is in the General Residential Zone, Schedule 1.

The purpose of the Zone is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To encourage development that respects the neighbourhood character of the area.*
- *To implement neighbourhood character policy and adopted neighbourhood character guidelines.*
- *To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport.*
- *To allow educational, recreational, religious, community and a limited range of other nonresidential uses to serve local community needs in appropriate locations.*

Under Clause 32.08-2 a permit is required to subdivide land. An application to subdivide land must meet the relevant requirements of Clause 56 for residential subdivision.

The proposed subdivision is, overall, inconsistent with the General Residential Zone provisions.

### **Overlays**

The site is not affected by any Overlays.

### **Relevant Policies**

Council adopted the Urban Growth Policy Statement on 19 September, 2012 and the Housing Bacchus Marsh to 2041 strategy on 3 August 2016. Council can give weight to these documents under the provisions of section 60(1A)(g) of the *Planning and Environment Act 1987*.

#### Urban Growth Policy

The Urban Growth Policy states that:

*The Moorabool Growth Strategy 2041 aims to provide a vision for the type of community Moorabool Shire will be in 2041 and to outline how Council can facilitate an outcome that both allows for growth and keeps the community connectedness, character and sense of place so valued by our current residents.*

*The urban strategy is about planning and managing the pressures of growth in a proactive manner so that a sustainable environment where people can live, work, access retail, social and recreational services and be involved and connected. The strategy looks at what our future population will be and what employment, services and infrastructure will be required to meet their needs so that Council can identify what growth options will meet these needs in a sustainable and cost effective manner.*

#### Housing Bacchus Marsh to 2041

One of the objectives of the strategy is to:

*Provide a clear direction and policy guidance to enable orderly growth, managed change and retention of key elements of character including neighbourhood character mapping and character precinct brochures.*

Cunningham Close is located in Precinct 13 of the Settlement Framework Plan which is identified as an 'Increased Residential Growth Area'. The Preferred Character Statement for this precinct gives direction to the following:

- Ensure adequate private open space and garden plantings are provided.
- Front setbacks will enhance the front garden character
- New development is to minimize the need for additional crossovers
- Car parking facilities should not visually dominate the streetscape



- Increased housing choice is encouraged in areas accessible to services and facilities.

### Particular Provisions

#### Clause 52.01 Public Open Space Contribution and Subdivision

Under Clause 52.01-1 a subdivision is exempt from a public open space requirement if it subdivides land into two lots and the council considers it unlikely that each lot will be further subdivided. In this instance, if a permit were to issue, it is considered unlikely that further subdivision of the land would occur and therefore no public open space contribution should apply.

#### Clause 56 Residential Subdivision

The proposal complies with the relevant ResCode (Clause 56) provisions, except for the following:

ResCode Clause	Title	Response
56.03-5	Neighbourhood character objective	The proposal does not adequately respond to and integrate with surrounding development.

### Discussion

Overall, the proposal is considered to be inconsistent with relevant State and local planning policy, the General Residential Zone and Clause 56 of the Moorabool Planning Scheme.

The Central Highlands Regional Growth Plan (Victorian Government 2014) identifies Bacchus Marsh as regionally significant in terms of its role as a key service centre and location for increased population growth. Whilst the proposal would contribute to consolidated growth of Bacchus Marsh and take advantage of existing infrastructure the lot design does not respond positively to the surrounding neighbourhood character. Growth must be balanced with the need for new development to respect the existing neighbourhood character and integrate with the surrounding urban environment.

The subject site and surrounding land is in the General Residential Zone, Schedule 1 (GRZ1). Surrounding land is mostly developed with single dwellings on lots generally ranging in size from 800sq m to 1400sq m. Occasional examples of two lot subdivisions are evident nearby, including on the corner of Cunningham Close and Holts Lane.

The purpose of the GRZ includes the following:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To encourage development that respects the neighbourhood character of the area.*
- *To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport.*

The purpose of the GRZ indicates that a balance must be achieved in responding to the range of applicable policies.

The key issue for discussion is considered to be neighbourhood character, in particular:

- Does the proposal respect neighbourhood character?

Cunningham Close and residential areas nearby were subdivided in the mid 1980's and largely developed in the following years. The area is characterised by an undulating to hilly landscape affording views of ridgelines surrounding the township. Dwellings are mostly single storey brick with low pitched tile roofs with eaves. Established native and exotic trees and landscaped gardens also contribute to the character of the area. Dwellings typically have spacious front and rear setbacks, and are generally set back from at least one side boundary by at least 3.0m. The lot design in Cunningham Close includes irregularly shaped lots and correspondingly some dwellings are partially constructed close to side boundaries. However, the lot sizes and layout of dwellings in relation to each other ensures a sense of spaciousness.

The proposed two (2) lot subdivision would create a vacant lot of 489sq m (Lot 2), facilitated by the partial demolition of a carport and verandah attached to the existing dwelling to be retained on Lot 1. Lot 2 would have a frontage of 19.0m and narrow to a rear boundary of 12.8m width. The existing dwelling on Lot 1 would be set back 1.5m from the proposed common boundary with Lot 2. On the other side of Lot 2, the existing dwelling at 20 Cunningham Close is set back from the subject site by 1.0-2.2m. Clause 56.04-2 of the Moorabool Planning Scheme requires Lot 2, as a vacant lot, to be able to accommodate a rectangle of 10m x 15m, being a generic building envelope. Under the decision guidelines for subdivision in Clause 32.08-10 (General Residential Zone), the responsible authority must consider the pattern of subdivision and its effects on the spacing of buildings. Whilst Lot 2 has sufficient dimensions to meet the requirement of a 10m x 15m rectangle it is likely to result in development with minimal side setbacks, which in the context of existing adjoining dwellings, and nearby development generally, would not be in keeping with the character of the area.

Furthermore, the proposal would require new vehicle access and parking for Lot 1, in a proposed double garage constructed to the street boundary. Whilst not specifically assessed under this application, this aspect of the design response is a poor outcome for neighbourhood character, and further demonstrates that, overall, the proposed subdivision would not integrate comfortably with the surrounding pattern of development.

It is noted that the proposal satisfies the other relevant requirements of Clause 56 for residential subdivision, subject to standard permit conditions for subdivision.

The proposed two (2) lot subdivision fails to properly satisfy the relevant provisions of the Moorabool Planning Scheme.

## General Provisions

Clause 65 – Decision Guidelines have been considered by officers in evaluating this application.

Clause 66 - stipulates all the relevant referral authorities to which the application must be referred.

## Referrals

No external referrals were required. Council's Infrastructure unit was provided with an opportunity to make comment on the proposed development plan.

Authority	Response
Infrastructure	Consent with conditions

## Financial Implications

The recommendation of refusal of this application would not represent any financial implications for Council.

## Risk and Occupational Health and Safety Issues

The recommendation of refusal of this application does not implicate any risk or OH & S issues to Council

## Communications Strategy

Notice was undertaken for the application, in accordance with s.52 of the Planning and Environment Act 1987, and further correspondence is required to all interested parties to the application as a result of a decision in this matter. All submitters and the applicant were invited to attend this meeting and address Council if desired.

## Options

An alternative recommendation would be to approve the application subject to conditions.

Approving the application may result in the objectors lodging an application for review of Council's decision with VCAT.

## Conclusion

The proposed two (2) lot subdivision does not adequately respond to relevant State and local planning policy, the General Residential Zone or Clause 56 of the Moorabool Planning Scheme.

Whilst the proposal would contribute to consolidated urban growth the lot design does not contribute positively to the surrounding neighbourhood character. For this reason the proposal is not considered to be sufficiently site responsive and is not supported.

### **Election (Caretaker) Period Statement**

The recommended decision is not a "Major Policy Decision", as defined in Section 93A of the *Local Government Act 1989*.

#### **Resolution:**

**Crs. Edwards/Dudzik**

***That, having considered all matters as prescribed by the Planning and Environment Act, Council issues a Refusal to Grant a Permit for PA2016-125 for a Two (2) Lot Subdivision at Lot 48 on PS 200725E, 19 Cunningham Close, Darley, on the following grounds:***

- 1. The proposed subdivision does not satisfy the relevant provisions of the Moorabool Planning Scheme regarding neighbourhood character.***

**CARRIED.**

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#### **Report Authorisation**

**Authorised by:**

**Name:**

  
Satwinder Sandhu

**Title:**

General Manager Growth and Development

**Date:**

Friday, 16 September 2016

### **10.3 SOCIAL AND ORGANISATIONAL DEVELOPMENT**

*No reports for this meeting.*

#### **10.4 INFRASTRUCTURE SERVICES**

*No reports for this meeting.*

## 11. OTHER REPORTS

### 11.1 Assembly of Councillors

File No.: 02/01/002

Section 76(AA) of the Local Government Act 1989 defines the following to be Assemblies of Councillors; an advisory committee of the Council that includes at least one Councillor; a planned or scheduled meeting of at least half the Councillors and one member of council staff which considers matters that are intended or likely to be:

- the subject of a decision of the Council; or
- subject to the exercise of a Council function, power or duty by a person or committee acting under Council delegation.

It should be noted, an assembly of Councillors does not include an Ordinary Council meeting, a special committee of the Council, meetings of the Council's audit committee, a club, association, peak body or political party.

Council must ensure that the written record of an assembly of Councillors is, as soon as practicable –

- a) reported to the next ordinary meeting of the Council; and
- b) incorporated in the minutes of that council meeting. (s. 80A(2))

Council also records each Assembly of Councillors on its website at [www.moorabool.vic.gov.au](http://www.moorabool.vic.gov.au)

A record of Assemblies of Councillors since the last Ordinary Meeting of Council is provided below for consideration:

- Assembly of Councillors – Wednesday 24 August 2016 – Regional Rail Overview
- Assembly of Councillors – Wednesday 24 August 2016 – Local Government Act Review Update
- Assembly of Councillors – Wednesday 31 August 2016 – Tour Darley Early Years Hub and Halletts Way Southern Extension
- Assembly of Councillors – Wednesday 7 September 2016 – Audit Committee Presentation
- Assembly of Councillors – Wednesday 7 September 2016 – Update – Local Government Inspectorate

**Resolution:****Crs. Sullivan/Edwards*****That Council receives the record of Assemblies of Councillors as follows:***

- ***Assembly of Councillors – Wednesday 24 August 2016 – Regional Rail Overview***
- ***Assembly of Councillors – Wednesday 24 August 2016 – Local Government Act Review Update***
- ***Assembly of Councillors – Wednesday 31 August 2016 – Tour Darley Early Years Hub and Halletts Way Southern Extension***
- ***Assembly of Councillors – Wednesday 7 September 2016 – Audit Committee Presentation***
- ***Assembly of Councillors – Wednesday 7 September 2016 – Update – Local Government Inspectorate***

**CARRIED.**



## 11.2 Advisory Committees of Council - Reports

Advisory Committees are established to assist Council with executing specific functions or duties.

Advisory Committees of Council currently have no delegated powers to act on behalf of Council or commit Council to any expenditure unless resolved explicitly by Council following recommendation from the Committee. Their function is purely advisory.

Advisory Committees are required to report to Council at intervals determined by the Council.

Councillors as representatives of the following Advisory Committees of Council present the reports of the Committee Meetings for Council consideration.

<b>Committee</b>	<b>Meeting Date</b>	<b>Council Representative</b>
Place Making Advisory Committee	16 August 2016	Cr. Spain Cr. Sullivan Cr. Toohey

**Resolution:**

**Crs. Sullivan/Toohey**

***That Council receives the reports of the following Advisory Committees of Council:***

- ***Place Making Committee meeting held on Wednesday, 16 August 2016.***

**CARRIED.**

### 11.3 Section 86 - Delegated Committees of Council - Reports

Section 86 Delegated Committees are established to assist Council with executing specific functions or duties. By instrument of delegation, Council may delegate to the committees such functions and powers of the Council that it deems appropriate, utilising provisions of the Local Government Act 1989. The Council cannot delegate certain powers as specifically indicated in Section 86(4) of the Act.

Section 86 Delegated Committees are required to report to Council at intervals determined by the Council.

Councillors as representatives of the following Section 86 – Delegated Committees of Council present the reports of the Committee Meetings for Council consideration.

<b>Committee</b>	<b>Meeting Date</b>	<b>Council Representative</b>
Navigators Community Centre	15 September 2016	Community Members

**Resolution:**

**Crs. Sullivan/Toohey**

***That Council receives the reports of the following Section 86 - Delegated Committees of Council:***

- ***Navigators Community Centre meeting held on Thursday, 15 September 2016.***

**CARRIED.**

**12. NOTICES OF MOTION**

*Nil.*

**13. MAYOR'S REPORT**

***Since the last Ordinary Meeting of Council, the Mayor, Cr. Comrie, attended the following meetings and activities:***

<b>Cr Allan Comrie – Mayor's Report</b>	
<i>September/October 2016</i>	
8 September	Moorabool Shire Council Literacy Trail, Bacchus Marsh MAV Annual Conference Dinner
9 September	MAV State Council Meeting
10 September	Central Highlands Football League Grand Final Afternoon Tea
12 September	Australian Citizenship Ceremony,
14 September	Special Meeting of Council
18 September	Opening of the Bungaree Bowling Club Bowling Green
21 September	S86 Development Assessment Committee Meeting
5 October	Ordinary Meeting of Council

**Resolution:**

**Crs. Toohey/Sullivan**

***That the Mayor's report be received.***

**CARRIED.**

**14. COUNCILLORS' REPORTS**

***Since the last Ordinary Meeting of Council, Councillors have attended the following meetings and activities:***

<b>Cr. Edwards</b>	
October 2016	
3 October	Moorabool Landcare Advisory Committee meeting

<b>Cr. Sullivan</b>	
September 2016	
7-8 September	MAV Conference and Dinner
15 September	AGM Navigators Community Centre
18 September	Official Opening Bungaree Bowling Club Bowling Green

<b>Cr. Dudzik</b>	
September 2016	
8 September	Literacy Trail – Thanks to all Council staff involved.

<b>Cr. Spain</b>	
October 2016	
3 October	AGM Bacchus Marsh Arts Council

<b>Cr. Toohey</b>	
September 2016	
15 September	AGM Gordon Hall, congratulated community on management and use of the community facility.

**Resolution:**

**Crs. Edwards/Toohey**

***That the Councillors' reports be received.***

**CARRIED.**

**15. URGENT BUSINESS**

***Cr. Sullivan remarked on the achievements of this Council during the four year term and wished those who are standing for Council well. He thanked Cr. Spain for his contributions during this Council's term and acknowledged the good work of the Council staff.***

***Cr. Toohey thanked Cr. Spain and wished him well for the future.***

***Cr. Comrie thanked Councillors for the assistance they have given him during his term as Mayor and congratulated and thanked Cr. Spain for his contribution to this Council.***

***Cr. Spain expressed his appreciation to the CEO and his staff for the support given to him over his term in Council and acknowledged the achievements that have set the platform for the new Council.***

**16. CLOSED SESSION OF THE MEETING TO THE PUBLIC**

*Nil.*

**17. MEETING CLOSURE**

*The meeting closed at 5.48PM.*

*Confirmed.....Mayor.*