

SPECIAL MEETING OF COUNCIL

Minutes of a
Special Meeting of Council held in
Public Hall, 211 Main Street, Bacchus Marsh on
Wednesday 15 October 2014,
at 5:00 p.m.

Members:

Cr. Paul Tatchell (Mayor)	Central Ward
Cr. Allan Comrie	East Moorabool 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. Shane Marr	General Manager Corporate Services
Mr. Phil Jeffrey	General Manager Infrastructure
Mr. Satwinder Sandhu	General Manager Growth and Development
Mr. Danny Colgan	General Manager Community Services

Rob Croxford
Chief Executive Officer

AGENDA

1.	OPENING OF MEETING	3
2.	PRESENT.....	3
3.	APOLOGIES	3
4.	DISCLOSURE OF INTERESTS OR CONFLICTS OF INTEREST	4
4.1	<i>Disclosure of a Direct Conflict of Interest</i>	<i>5</i>
5.	PRESENTATIONS/DEPUTATIONS	6
6.	BUSINESS	7
6.1	<i>Planning Scheme Amendment C58 – Camerons Road</i>	<i>7</i>
6.2	<i>2013/14 Moorabool Shire Council Annual Report</i>	<i>23</i>
7.	FURTHER BUSINESS AS ADMITTED BY UNANIMOUS RESOLUTION OF COUNCIL	26
8.	CLOSED SESSION OF THE MEETING TO THE PUBLIC	27
9.	MEETING CLOSURE	28

1. OPENING OF MEETING

The Mayor, Cr. Paul Tatchell, opened the meeting at 5.02 pm.

2. PRESENT

*Cr. Paul Tatchell
Cr. John Spain
Cr. Tonia Dudzik
Cr. Allan Comrie
Cr. Tom Sullivan
Cr. Pat Toohey*

*Central Ward
East Moorabool Ward
East Moorabool Ward
East Moorabool Ward
West Moorabool Ward
Woodlands Ward*

Officers:

*Mr. Rob Croxford
Mr. Satwinder Sandhu*

*Mr. Shane Marr
Mr. Andrew Goodsell*

Ms. Deb Absolom

*Chief Executive Officer
General Manager Growth and
Development
General Manager Corporate Services
Acting Manager Strategic &
Sustainable Development
Minute Taker*

3. APOLOGIES

Cr. David Edwards

East Moorabool Ward

4. DISCLOSURE OF INTERESTS OR CONFLICTS 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)

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.

4.1 Disclosure of a Direct Conflict of Interest

Cr. Edwards declared a Direct Conflict of Interest in relation to Planning Scheme Amendment C58 – Camerons Road. The nature of the Conflict of Interest is due to members of Cr. Edward's family's involvement in the proposal.

5. PRESENTATIONS/DEPUTATIONS

The Council has made provision in the business of the Special Meeting 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 the Council on a matter included in the agenda shall inform Council by 1pm on the Friday 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 the 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:

Item No	Description	Name	Position
6.1	<i>Planning Scheme Amendment C58 – Cameron's Road</i>	Robert Mundy	Supporter
6.1	<i>Planning Scheme Amendment C58 – Cameron's Road</i>	Barbara Green	Supporter

6. BUSINESS

6.1 Planning Scheme Amendment C58 – Camerons Road

File No.: 13/06/054
Author: Andrew Goodsell
General Manager: Satwinder Sandhu

Introduction

This Amendment applies to approximately 500 ha of land held in multiple ownerships west of Gisborne Road and north of Darley, generally bounded by Goodmans Creek to the east, the Lerderderg River to the south and west, and the Lerderderg State Park to the north (otherwise known as Camerons Road).

Changes to the planning scheme sought by Amendment C58 are as follows:

- Rezone the land from the Farming Zone to the Rural Living Zone, with a 6 hectare minimum lot size for subdivision.
- Amend Clause 21.07 (Municipal Strategic Statement) by modifying the Bacchus Marsh Framework Plans reference to the potential of Camerons Road as a rural living area to %Camerons Road rural living area.+
- Apply the Design and Development Overlay - Schedule 6 (DDO6) to the rezoned area to guide the future development of the land.
- Amend the schedule to Clause 66-06 to identify notice requirements to the Department of Environment and Primary Industries, for proposed dwellings within 500 metres of the Lerderderg State Park.

Background

Duties and Responsibilities

When considering planning scheme amendments Council acts as a Planning Authority with specific duties and responsibilities. In 2008 the Victorian Auditor General reviewed the consistency of the planning system with legislative requirements. In relation to Planning Scheme Amendments the Auditor General found:

- *Councils should make certain that they perform a comprehensive initial assessment of the amendment against all the requirements of Section 12 (s12) of the Act, and that this is clearly documented in reports to Council.*
- *Planning schemes are the major legislative mechanisms within the state's planning framework for controlling land use and development. When amending a planning scheme, a Council as planning authority must consider and ensure compliance with a number of relevant matters set out in the Act, Regulations and planning scheme.*

Similar proposals in the Camerons Road area have been considered by Planning Panels in the past. Planning Panels, Advisory Committee Reports and VCAT determinations often discuss how best to give effect to local and state policy and form a framework for considering whether the proposal is in

accordance with the requirements of s12 of the Planning and Environment Act 1987.

Various Planning Panels have considered the desirability of rezoning the land for Rural Living purposes. Panel reports relating to this land as well as Panel and VCAT determinations relating to key issues help provide guidance regarding the context for Council's consideration of policy matters and the strategic considerations which the proponent must demonstrate to the planning authority, panel and Minister have been addressed for the land to be rezoned. The Table below outlines some recommendations relevant to this matter.

Bacchus Marsh L60 (Rural Living Zone Camerons Road)	<i>The Amendment is not consistent with the State Planning Policy Framework particularly in relation to wildfire, and the protection of mineral resources.</i>
NPS1 Moorabool PS Advisory Committee	<p><i>The Camerons Road area provides an attractive rural landscape in close proximity to Bacchus Marsh. The scattered residential development does not dominate the landscape. It provides a rural living environment in close proximity to Bacchus Marsh but at a lesser density than other areas within a Rural Living Zone. In this sense, it provides an attractive alternative to other rural residential areas. The Panel believes that the attractive qualities of the area would be compromised by further subdivision should a Rural Living Zone be applied. For this, and other reasons set out above, the Panel does not support any rezoning for this area.</i></p> <p><i>The Panel notes that this area is also included in a Special Building Overlay (now Wildfire Management Overlay). This indicates a high fire hazard in this area which suggests that further residential development should not be encouraged. The Panel does not consider that the recent improvement in access along Seereys Road overcomes the fundamental characteristics of the land in this respect. The fire risk is simply one further reason why the land should not be rezoned.</i></p>
C34 Panel	<i>"The Panel also accepts that the Cameron's Road area presents an opportunity for rural lifestyle housing but considers a specific area should not be designated on the framework plan as further work is required to establish the implications of constraints and the extent of the area that may be suitable for this form of development."</i>
Southern Grampians C29	<i>It is an appropriate planning response to minimise the number of dwellings within areas that have been identified as being of 'Extreme' fire risk in the northern and western areas of Dunkeld.</i>
Moorabool SC v Mitrakas [2014] VCAT 755	<p><i>129. Decision making in land use planning requires a careful synthesis and integration of sometimes competing outcomes and objectives. We have sought to balance the benefits of a proposal for re-use of a heritage asset with the consequential amenity, bushfire risk and biodiversity impacts.</i></p> <p><i>130. In line with a clear policy objective to place the primacy of human life above all else, we have not been persuaded that the proposal before us achieves an acceptable outcome.</i></p> <p><i>131. We also have concluded that the impact on biodiversity values, while possible to achieve no net loss, is</i></p>

	<i>unsatisfactory in terms of impacts to biodiversity values of state-significance that are inherently tied to this site and its immediate surrounds.</i>
Colac Otway C69 Colac Otway Rural Living Strategy (2011) and Forrest Structure Plan (2011)	<i>The Panel considers the proposed Structure Plan identification of the land for potential township expansion is appropriate. Issues such as the intensity of development, vegetation removal and offsets, and subdivision design will need to be addressed during subsequent amendment and permit processes.</i>

Table 1 Relevant Policy Guidance . Panel and VCAT

As State Policy within the VPP~~§~~ includes primacy of human life and protection of industry from encroachment of sensitive uses it was the officer~~§~~ position that the proposed controls did not effectively resolve these particular policy issues. Council officers did not make substantive changes to the proponents amendment documents to ensure compliance with Section 8A(4) of the Act as the recommendation was not to proceed with the amendment in the form submitted by the proponents.

Current Rezoning Request

In May 2010 a request to rezone land in Camerons Road, Coimadai was received by Council. At the 4 August 2010 Ordinary Meeting of Council, in relation to the Moorabool Rural Strategy, Council resolved to *%provide general support for Planning Scheme Amendment proposals covering the Camerons Road area and Bences Road such that they will be proponent led amendments that will be the object of individual reports back to Council.+* At the 20 October 2010 Ordinary Meeting of Council, in response to the rezoning request, Council resolved that *%Subject to the CFA giving general support to the proposed amendment, resolves to request the Minister for Planning to authorise Moorabool Shire Council to prepare Amendment C58 pursuant to Sect 19 of the Planning and Environment Act (1987)%;*

Council submitted the Amendment for authorisation on 16 November 2010. On 4 August 2011, Council received authorisation from the Minister for Planning (Attachment 6.1(a)). This authorisation was conditional on achieving a balance between bushfire management and native vegetation; addressing how the proposal responds to the housing needs of the Municipality; strategic consideration of impact on State policy to protect stone resources and the views of DPI, CFA and DSE.

CFA Assessment of the proposed Amendment (June 2013)

Prior to the preparation of the supplementary report by Terramatrix the CFA had provided advice, included in Attachment 6.1(b) that *The bushfire risk to the subject site is significant. The wider landscape has the potential for severe bushfire almost every summer, as realised in the 1983 Ash Wednesday fires. This risk arising from this bushfire behaviour is compounded by the generally poor strategic access to and from the site as identified in the supporting information. Given the above factors, the Council will need to carefully consider how the proposal prioritises human life over all other planning considerations as required by Clause 13.05 of the Moorabool Planning Scheme.*

In making a decision to proceed with the Amendment, we particularly note that the bushfire protection measures currently proposed will not adequately mitigate the likely forms of bushfire attack. In contrast, parts of the proposed Amendment (e.g. objectives of the exhibited DDO) are likely to undermine the effectiveness of bushfire protection measures.

Planning system changes since initial authorisation in 2011

Bushfire

Significant policy changes have occurred since Amendment C58 was initially authorised with conditions. This includes the introduction of Amendment VC83 made in response to the recommendations of the Victorian Bushfire Royal Commission (VBRC) on Black Saturday. Clause 13.05 Bushfire, included in Attachment 6.1(c) requires Planning and Responsible Authorities to *"Prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire"* and *"Where appropriate, apply the precautionary principle to planning and decision-making when assessing the risk to life, property and community infrastructure from bushfire."*

This clause also requires planning authorities to *"Ensure that planning to create or expand a settlement in an area at risk from bushfire:*

- *Addresses the risk at both the local and broader context.*
- *Reduces the risk to future residents, property and community infrastructure from bushfire to an acceptable level.*
- *Ensures any biodiversity and environmental objectives specified in the planning scheme are compatible with planned bushfire protection measures.*
- *Ensures the risk to existing residents, property and community infrastructure from bushfire will not increase as a result of future land use and development.*
- *Ensures future residents can readily implement and manage bushfire protection measures within their own properties.*

Following the receipt of feedback from the CFA in June 2013 Council Officer concerns regarding the amendment were given to the applicant for response. Full documents were sought in relation to *whether a "balance" between the bushfire management overlay requirements and bushfire characteristics of the land and the native vegetation qualities of the land and surrounding land has been achieved to allow exhibition.* Concerns were raised as *'whether a balance can be achieved by the proposal in its current form (RLZ, DDO)'*. As the Terramatrix report identified that *"access and egress is generally poor from a bushfire safety perspective, with limited options to exit the area"* and as the CFA had expressed concerns regarding landscape risk, the proponents were informed that *"Council must consider the matters as they are integral to the determination of 'balance' and the consideration of whether human life has been prioritised"*.

The proponent was given the opportunity to *consider the contents of the CFA correspondence and to provide a response to Council as to how the final amendment and supporting documentation will address the matters raised. Particular emphasis should be provided to how the protection of human life is being prioritised over other policy considerations in planning and decision-making in areas at risk from bushfire, as required by the State Planning Policy Framework.*

Rural Residential Development

The approach to consideration of supply of Rural Residential Land changed since the initial authorisation. Ministerial Direction No 6 was revoked and replaced by Planning Practice Note 37 Rural Residential Development. Practice Note 37 (Attachment 6.1(d)) contains a similar set of considerations for rural residential development based on:

- *Strategy: does rural residential development align with the overall strategic planning of the municipality;*
- *Housing need: How much rural residential development is require to provide appropriate housing diversity and choice to meet housing needs;*
- *Location: Where should rural residential development take place; and*
- *Subdivision and design: is the new rural residential development subdivided and designed in an attractive setting offering high amenity and efficient infrastructure.*

Final amendment documents addressing some of the issues raised by Council were submitted by the proponent on 18 September 2013 in the form of a supplementary report on Landscape Fire Risk by Terramatrix and a Flora and Fauna report to respond to both CFA's concerns and the authorisation requirements. A report was prepared for the November 2013 Ordinary Meeting of Council but was withdrawn at the request of the proponents to allow a briefing of Council by the proponents.

2014 Authorisation

At the April 2014 ordinary meeting of Council, it was resolved to seek authorisation to prepare and exhibit Amendment C58. The resolution did not outline any changes from the 2013 amendment documents to resolve any potential discrepancies between the policy considerations and the form and content of the amendment. After the finalisation of the report but prior to the Council meeting, the proponent had sought minor changes to the Design and Development Overlay to reference a distance of 500m not 300m to quarry land, but not to other planning provisions proposed to be utilised.

Re-authorisation of the amendment was sought on the Amendment and was re-authorised in 2014 with the following conditions which were addressed prior to exhibition:

Provide a complete package of amendment details prior to exhibition, including:

- *A reworked Clause 21.07 Bacchus Marsh Framework Plan to properly identify and describe the area subject to the amendment, and substituting a more appropriate reference to the subject land; and*

- *Detail of the proposed DDO schedule and the extent of the area that the schedule will apply to;*

Provide supporting documents as a part of the exhibition package, including the Terramatrix reports.

As the proposed Amendment affects Crown land, Native Title Services Victoria must be given notice of the Amendment.

Planning system changes since exhibition

Since exhibition of Amendment C58, a state wide Amendment (VC109) has been approved by the Minister for Planning and gazetted. Under this regime, once land is zoned for residential or rural living purposes exemptions from other Victorian planning controls relating to the removal of native vegetation are in place. Therefore, the ability of the Amendment, in its exhibited form, to address the section 12 considerations has changed:

Moorabool SC v Mitrakas [2014] VCAT 755 considered native vegetation impact and fire risk in a recent decision. This determination is of relevance as it considered the same Ecological Vegetation Class (EVC) in relation to an application for intensification of use:

129. Decision making in land use planning requires a careful synthesis and integration of sometimes competing outcomes and objectives. We have sought to balance the benefits of a proposal for re-use of a heritage asset with the consequential amenity, bushfire risk and biodiversity impacts.

130. In line with a clear policy objective to place the primacy of human life above all else, we have not been persuaded that the proposal before us achieves an acceptable outcome.

Exhibition

Amendment C58 was on exhibition from 31 July 2014 to 1 September 2014. At the time of writing sixty one (61) submissions to the Amendment had been received by Council, with over three quarters (47) within the statutory time.

Eight (8) submissions are opposed to the rezoning / requesting change; two (3) submissions from agencies make no objection and fifty (51) submissions are in support of the proposal.

Issues raised in submissions

The key issues in relation to the Amendment include:

- Strategic support for the amendment;
- Concern regarding time taken to rezone the land.
- Fire risk;
- Native vegetation;
- Protection of Industry;
- Suitability of the land for agriculture / environmental management

- Amenity; and
- Errors / omissions

Several submissions from landholders raise issues regarding the timespan over which rezoning of the land has been sought, while some agencies have raised issues regarding the strategic justification for the Amendment. As discussed in the background to these reports, the potential rezoning of land in Camerons Road has been considered by Planning Panels since the 1990s.

The length of time taken is in direct response to the need to provide strategic justification for the Amendment. Whether the proposal meets the objectives of planning in Victoria and effectively responds to policy and guidelines (first principles). There has been little change to the objectives of Planning in Victoria [s4(1)] since Bacchus Marsh Amendment L60. The key considerations have related to the objectives of Planning in Victoria [s4(1)] to:

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

Section 4(1)(a) relates to whether the proposed use / development is appropriate for the site and its context including any impact on the wider economy or impact on the environment. The planning context is viewed as community impact not individual gain or loss. Section 4(1)(b) relates to the conservation of significant natural values of the site, Section 4(1)(c) relates to the issue of fire risk and Section 4(1)(g) allows for intergenerational equity considerations.

The key considerations in relation to the objectives are embodied in the Victoria Planning Provision and guidelines, practice notes and directions relating to the operation of the system. In this instance the key issues of strategic justification relate to state and local policy in regard to protection of environmental values, management of the fire risk / prioritisation of human life as well as the protection of extractive industry from encroachment. These issues are discussed separately in Attachment 6.1(e) (full officers report).

Fire Risk;

There are several submissions in support of the Amendment which query the level of bushfire risk in the area; express confidence that the fire issue has been resolved in expert reports; stating minimal additional risk (20 additional dwellings); question the response of the CFA; and question what Council will do to address fire risk.

Others have objected to the amendment due to: poor access; landscape level risk and findings of previous Panels.

The CFA, as a relevant authority, has made a submission to the Amendment (Attachment 6.1(f)). Some of the key issues raised by the CFA relate to Council's responsibilities as the planning authority, including:

- *The bushfire risk to the subject land is significant.*
- *The wider landscape risk has the potential for severe bushfire behaviour almost every summer, as realised in the 1983 Ash Wednesday fires.*
- *A major bushfire in this landscape is likely to result in the following:*
 - *Crown fires, powerful convection columns and fire induced winds leading to extreme ember attack across the area.*
 - *Significant radiant heat impacts at the edges of the study area particularly the west and north-western areas adjoining the Lerderderg State Park*
 - *Winds, poor visibility, flames and radiant heat from localised burning fuels, including vegetation and structures.*
- *Clause 13.05-1 seeks to prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire. Where appropriate, apply the precautionary principle to planning and decision-making when assessing the risk to life, property and community infrastructure from bushfire.*
- *The reports do not appear to have considered the potential for more than one additional dwelling on each lot.*

Council is required to acknowledge that one of the key considerations in relation to this Amendment is fire risk and the prioritisation of the protection of human life. Council accepts the role of the CFA as an expert in this field. In addition, it is acknowledged that considerable work has been undertaken by the proponents to balance a range of strategic issues in a policy landscape that has evolved throughout the process.

Council must address the existing policy framework in regards to fire risk and provide the proponent the opportunity to review the Amendment documents in response to submissions and systemic changes. These changes would need to be provided to all parties prior to consideration by the Planning Panel.

Native Vegetation:

Many submissions have stated that native vegetation is not an issue and can be managed via the proposed Design and Development Overlay. Inherent in the CFA response to risk mitigation is vegetation modification / defensible space. Whilst the Bacchus Marsh L60 Panel report did not raise native vegetation concerns, it noted that this issue had not been assessed in the proposal. The documentation prepared to support this Amendment includes a preliminary flora and fauna study prepared by Oekologie. This Study identifies the site as containing habitat, which may contain Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth) listed flora and fauna, and Rocky Chenopod Woodland.

Removal of isolated patches of this woodland may require consideration under the Flora and Fauna Guarantee Act.

The Amendment proposes to address the protection of native vegetation through a Design and Development Overlay Schedule, however this is no longer applicable since gazettal of VC109 as it gives wider powers to remove vegetation for fire hazard mitigation. The flora and fauna and bushfire reports include indicative building envelopes, which provided defensible space in areas of lower native vegetation values. Development is not restricted to these locations.

The submission of the CFA identifies *"The suite of controls do not adequately resolve potential planning conflicts which should be addressed at the strategic planning stage and not deferred to the planning permit stage"* and makes reference to Clause 13.05-1 *"to ensure planning schemes provide for use and development of land in a manner compatible with the risk from bushfire and do not prevent the creation of required defensible space around existing development through the removal and management of vegetation"*. These are relevant considerations for the proponent to address for consideration by the Planning Panel and the Planning Authority.

Council acknowledges that native vegetation is a key consideration in relation to the amendment. The proponent has undertaken work to assess the flora and fauna issues and to develop tools to allow for the consideration of these issues. Given that Amendment VC109 impacts on the ability of those tools to be effectively utilised in the Rural Living Zone, the proponents should be given the opportunity to review the form of the Amendment in response to submissions and planning system changes.

Protection of Industry:

Many submissions of support have referred to the buffer distance to the quarries and that this should not be a major issue of concern. The Department of State Development Business and Innovation, the Environment Protection Authority, Hanson and Tract Consultants, on behalf of Boral Industries, have submitted regarding the need to protect extractive industry, which is a relevant policy consideration within the State Planning Policy Framework. These submissions form Attachment 6.1(g).

The Hanson Heidelberg Cement Group and Department of State Development Business and Innovation (DSDBI) submitted requesting the proponents replacement of 300 metres with 500 metres within the DDO Schedule in relation to the buffer to the Special Use Zone 2 (SUZ2). DSDBI noted the following:

- The proposed rezoning has the potential to cause conflicts with the continued full term extraction of the sand and stone reserves.
- The elevated location of Camerons Road increases the likelihood of impacts on any proposed development through loss of visual amenity.

The EPA noted that the SUZ2 provides for the use and development of the adjoining land for earth and energy resources, which utilise blasting as part of quarrying activities. Given that these types of quarrying activities have a recommended separation distance of 500 metres from sensitive uses, the EPA stated that the DDO should be amended to state *"all new dwellings"*

must be sited outside this buffer. It is considered that this aspect of the submission can be resolved by the proponent.

In addition, the EPA identified that *Council should consider whether the Rural Living Zone is an appropriate interface to the Special Use Zone 2, the type of activities undertaken by residents within a RLZ are inherently different to that of the Farming Zone and a differing expectation of amenity is likely and encouraged land uses within the separation distance to industry include agriculture which is the established use of the subject land.*

Tract Consultants on behalf of Boral Industries have provided a detailed policy assessment in relation to the Amendment and its potential impact on a state significant extractive resource. This submission raises many issues which cannot be fully resolved via the proposed alteration to the separation distance specified in the Schedule to the DDO. In addition, it raises issues in regard to whether the exhibited Amendment makes appropriate use of the VPPs.

Council acknowledges that extractive industry is a key employer and generator of economic activity in Moorabool which needs to be protected from encroachment of sensitive uses. Council is supportive of the proponents request immediately prior to exhibition to include 500 metres in the DDO schedule. Concerned parties were made aware of this proposed change during the exhibition process.

A majority of submissions may be deemed resolved by this change (including a change from *shall* to *must*). However, all submissions in relation to this issue cannot be resolved without change to the amendment, including of the appropriate interface zone to industry. The proponent should be given the opportunity to address the policy concerns raised within the EPA and Tract submissions, for consideration by all parties at Panel.

Suitability of the land for agriculture / environmental management:

Several submissions support the application of the Rural Living Zone due to the existing fragmentation of the land, poor soils, low rainfall and inability to productively farm. These issues have been previously considered by the NPS1 Moorabool Planning Scheme Panel as not being a strategic justification to support the rezoning. Council acknowledges that the existing zone is compliant with the EPA Guidelines for land adjoining extractive industry. No evidence has been provided that the change in designation of land will improve management of pest plants and animals.

Council acknowledges the findings of previous Panels and that the proponent has undertaken analysis to provide strategic support for the zone change in relation to Practice Note 37 Rural Residential Development in relation to land supply, particularly in the context of rural residential land supply outside the Special Water Supply Catchment.

Amenity:

Many submissions identify the lifestyle and amenity of the area and that rezoning would allow more parties to enjoy this lifestyle. Other submitters were concerned about the impact of development on their amenity and safety. Council acknowledges that the area has locational attributes, which

make it desirable for rural living development. Council acknowledges that the site is suited for rural living development if key policy matters can be resolved.

Errors / Omissions:

The proponent has raised concerns that changes to documents submitted immediately prior to Council consideration were not included in the exhibited Amendment. The report presented to the April 2014 Ordinary Meeting of Council was based on the previous documents and did not recommend that authorisation be sought given officers consideration of issues listed under Section 12 of the Act. (Attachment 6.1(h)).

As authorisation was not recommended, the officers report did not address these issues and the Amendment documents, in the form on which the officers report were based, were forwarded for authorisation. The nature of the changes was not considered to be transformational to the Amendment and could be addressed during the consideration of submissions / Panel processes.

Is a Panel required?

Where submissions are received which cannot be resolved Council has two options . abandonment of the Amendment or requesting that the Minister for Planning appoint a planning panel to consider submissions to the amendment.

Some of the submissions to the amendment (such as CFA, EPA, Tract (Boral), Saksida, Ron Guy) cannot be resolved without the abandonment of Amendment C58. If Council wishes to proceed with the Amendment it will need to request that the Minister for Planning appoint a Panel to hear submissions to the Amendment to address the issues raised. This course of action would allow the proponent an opportunity to review the nature of the Amendment in response to submissions and allow Council as planning authority the benefit of the view of an independent Panel as to whether any proposed changes successfully balance divergent policy considerations and enable the Amendment to proceed.

Policy Implications

The 2013 - 2017 Council Plan provides as follows:

Key Result Area	Enhanced Infrastructure and Natural and Built Environment
Objective	Promote, and enhance places of heritage, landscape and environmental significance.
Strategy	Develop future planning policy to ensure it : <ul style="list-style-type: none">~ Preserves the unique character and sense of place~ Maintains the rural setting of the Shire.

- “ Provides a sense of connection with the town’s origins and familiarity with the country town feel.
- “ Ensures environmentally sensitive areas such as Lerderderg State Park and remnant vegetation are protected and enhanced.

Amendment C58 is not considered to be wholly consistent with the 2013-2017 Council Plan.

Financial Implications

There is potential reputational risk relating to this Amendment, which has financial implications.

Proceeding with the Amendment has directly associated costs generated by the appointment of a legal representative or alternatively an independent planning consultant to present Council’s submission at the Panel Hearing. It is estimated this is likely to cost in the range of \$20,000 - \$50,000 for a three to four (3-4) day hearing (including preparation time). This is a cost over and above the preparation time and documentation being prepared by consultants appointed via the Flying Squad (DTPLI).

The Amendment to date has had significant financial implications with respect to staff time (estimated at over \$60,000 across many years). Council staff attendance at the Panel as well as further reports post the Panel hearing will involve additional commitment of staff resources on what is a proponent driven amendment.

Risk & Occupational Health & Safety Issues - Possible legal issues

The Cameron’s Road area represents a high fire risk area with an extreme fire risk. The reports do not conclude that additional dwellings or life could be protected in a large fire event.

If Council decides to approve an amendment to facilitate further development in the subject area and this area is impacted by fire, there may be legal issues in the future for Council and other authorities.

The planning scheme provisions proposed in the exhibited Amendment do not restrict development to an additional 20 dwellings or to the identified building envelopes, as contended by the proponents.

The Amendment, in applying the Rural Living Zone to land within 500 metres of the Boral quarry poses a risk for Council. As previously indicated, this risk can be limited if the higher standard is applied and the DDO is varied accordingly. Within the Rural Living Zone a dwelling is a section 1 use.

Communications and Consultation Strategy

Consultation has occurred with the formal exhibition process including with relevant parties and authorities. If Council proceeds with the Amendment a Planning Panel will be appointed to hear submissions to the Amendment. All submitters would be notified by Planning Panels Victoria and provided the opportunity to address the Panel.

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 – Andrew Goodsell

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

Conclusion

There are fundamental policy issues to this Amendment proceeding in the form exhibited. If Council resolves to proceed with the amendment it will require the proponent to respond to the three key policy issues:

1. fire risk;
2. potential loss of native vegetation; and
3. impact on industry.

This may require consideration of whether a change in zone and overlay is required in addition to other tools to restrict new dwellings to the building envelopes outside the buffers to both the Lerderderg State Park and the Special Use Zone.

Although Council understands the seriousness of these policy issues, it sought authorisation of the Amendment as it considered that the proponents should be provided with the opportunity to resolve these issues. Proceeding to Panel will allow the proponents to consider what changes to the exhibited Amendment may mitigate any policy or implementation concern of submitters for discussion by all parties at Panel.

State policy in relation to bushfire management and protection of industry continue to be significant issues for this amendment. Given the evolution of State policy following the recommendations of the Bushfires Royal Commission it will be critical for the proponents to address how the amendment as a whole meets the tests within Clause 13.05-1 to: -

- *Prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire.*

- *Where appropriate, apply the precautionary principle to planning and decision-making when assessing the risk to life, property and community infrastructure from bushfire.*

If the Amendment is to proceed revision by the proponent will be required to ensure that the practical outcomes of the Amendment prioritise human life, will not impact on areas of high environmental value and do not impact on significant mining and extractive industries.

Consideration of Deputations – Planning Scheme Amendment C58 - Camerons Road

Mr. Bob Mundy addressed Council in relation to Planning Scheme Amendment C58 – Camerons Road.

Ms. Barbara Green addressed Council in relation to Planning Scheme Amendment C58 – Camerons Road.

The business of the meeting then returned to the agenda.

Recommendation:

That Council, having considered all submissions to Amendment C58, resolves to:

- 1) Request the Minister for Planning to appoint a Planning Panel under Part 8 of the Planning and Environment Act 1987 for Amendment C58.**
- 2) Refer Amendment C58 (including submissions) to the Planning Panel for consideration.**
- 3) Accept the late submissions and refer them to the Planning Panel for consideration, without Council position.**
- 4) Accept the policy issues outlined in submissions by the Country Fire Authority; the Environment Protection Authority and Tract consultants as valid issues for response and rectification by the proponent.**
- 5) Adopt a position on submissions to Panel are outlined in the Table to Attachment 6.1(i).**
- 6) Request the proponents to review the suitability of the exhibited documents in response to the submissions made and system changes (strategic assessment guidelines check).**
- 7) Request the proponent to circulate any changes to the amendment to resolve submissions to all parties prior to the Panel Hearing.**
- 8) Authorise unbudgeted expenditure of approximately \$50,000 to hire Counsel to present Council's case to Panel.**

Resolution:**Crs. Spain/Dudzik**

That Council, having considered all submissions to Amendment C58, resolves to:

- 1) Request the Minister for Planning to appoint a Planning Panel under Part 8 of the Planning and Environment Act 1987 for Amendment C58.***
- 2) Refer Amendment C58 (including submissions) to the Planning Panel for consideration.***
- 3) Accept the late submissions and refer them to the Planning Panel for consideration, without Council position.***
- 4) Accept the policy issues outlined in submissions by the Country Fire Authority; the Environment Protection Authority and Tract consultants as valid issues for response and rectification by the proponent.***
- 5) Adopt a position on submissions to Panel are outlined in the Table to Attachment 6.1(i).***
- 6) Request the proponents to review the suitability of the exhibited documents in response to the submissions made and system changes (strategic assessment guidelines check).***
- 7) Request the proponent to circulate any changes to the amendment to resolve submissions to all parties prior to the Panel Hearing.***

CARRIED.**SUBSEQUENT MOTION****Crs. Spain/Dudzik**

That council resolve to contribute a maximum of \$15,000 to panel sitting and advertising costs with the proponents required to pay any excess costs.

LOST.***Councillor Spain called for a Division.******Councillors voting for the resolution:******Cr. Spain, Cr. Dudzik, Cr. Comrie******Councillors voting against the resolution:******Cr. Sullivan, Cr. Toohey, Cr. Tatchell***

The resolution was determined to be LOST on a Casting Vote by the Mayor.

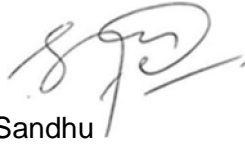
Report Authorisation

Authorised by:

Name: Satwinder Sandhu

Title: General Manager Growth & Development

Date: Thursday, 9 October 2014



6.2 2013/14 Moorabool Shire Council Annual Report

Introduction

File No.: 02/02/002
Author: Peter Forbes
Manager: Satwinder Sandhu

Background

Under Section 131 of the *Local Government Act* 1989, Council is required to prepare an Annual Report and submit it to the Minister for Local Government by Tuesday, 30 September 2014.

The Moorabool Shire Council Annual Report 2013/14 was submitted to the Minister for Local Government on Monday, 29 September 2014.

Under Division 4, Section 22(1) of the Local Government (Planning and Reporting) Regulations 2014 (17), Council must hold a meeting to consider the Annual Report within one month of providing the Annual Report to the Minister pursuant to section 133(1) 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 30 September, and 7 October 2014 and in the Ballarat Courier on 27 September and 4 October, that the 2013/14 Annual Report is being presented to the Special Meeting of Council on Wednesday, 15 October 2014.

Proposal

In accordance with requirements of the *Local Government Act* 1989, the 2013/14 Annual Report has been available for public viewing for at least the mandatory 14 day period and is presented to Council to consider and receive the report.

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

Policy Implications

The 2013 - 2017 Council Plan provides as follows:

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

The proposal to consider the 2013/14 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 2013/14 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 – Peter Forbes

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), the 2013/14 Annual Report can now be made a public document and either distributed to stakeholders or made available for inspection on request.

Resolution:

Crs. Toohey/Sullivan

That Council, in accordance with section 131 of the Local Government Act 1989;

- 1) Considers the 2013/14 Annual Report.***
- 2) Gives public notice in the local newspaper that the 2013/14 Annual Report is available for public inspection at Council offices.***

CARRIED.

Report Authorisation

Authorised by:

Name: Satwinder Sandhu

Title: General Manager Growth & Development

Date: Thursday, 9 October 2014



7. FURTHER BUSINESS AS ADMITTED BY UNANIMOUS RESOLUTION OF COUNCIL

Nil.

8. CLOSED SESSION OF THE MEETING TO THE PUBLIC

Recommendation:

That pursuant to the provisions of the Local Government Act 1989, the meeting now be closed to members of the public to enable the meeting to discuss matters, which the Council may, pursuant to the provisions of Section 89(2) of the Local Government Act 1989 (the Act) resolve to be considered in Closed Session, being a matter contemplated by Section 89(2) of the Act, as follows:

- (a) personnel matters;**
- (b) the personal hardship of any resident or ratepayer;**
- (c) industrial matters;**
- (d) contractual matters;**
- (e) proposed developments;**
- (f) legal advice;**
- (g) matters affecting the security of Council property;**
- (h) any other matter which the Council or special committee considers would prejudice the Council or any person;**
- (i) a resolution to close the meeting to members of the public.**

9. MEETING CLOSURE

The meeting closed at 5.38 pm.

Confirmed.....Mayor.