



# **AGENDA**

## **Development Assessment Committee Meeting Wednesday, 15 March 2023**

**I hereby give notice that a Development Assessment Committee Meeting will be held on:**

**Date: Wednesday, 15 March 2023**

**Time: 6.00pm**

**Location: Council Chamber, 15 Stead Street, Ballan & Online**

**Henry Bezuidenhout  
Executive Manager, Community Planning & Development**

**Order Of Business**

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**1 OPENING****2 PRESENT AND APOLOGIES****3 RECORDING OF MEETING**

In accordance with Moorabool Shire Council's Governance Rules, the meeting will be livestreamed.

**4 CONFIRMATION OF MINUTES**

Development Assessment Committee Meeting Minutes Wednesday 15 February 2023.

**5 MATTERS ARISING FROM PREVIOUS MINUTES****6 DISCLOSURE OF CONFLICTS OF INTERESTS**

Conflict of interest laws are prescribed under the *Local Government Act 2020* (the Act) and in the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations). Managing conflicts of interest is about ensuring the integrity and transparency of decision-making.

The conflict of interest provisions under the Act have been simplified so that they are more easily understood and more easily applied. The new conflict of interest provisions are designed to ensure relevant persons proactively consider a broader range of interests and consider those interests from the viewpoint of an impartial, fair-minded person.

Section 126 of the Act states that a Councillor has a conflict of interest if they have a general conflict of interest or a material conflict of interest. These are explained below:

- A Councillor has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the member's private interests could result in them acting in a manner that is contrary to their public duty as a Councillor.
- A Councillor has a material conflict of interest in a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

A relevant person with a conflict of interest must disclose the interest in accordance with Council's Governance Rules and not participate in the decision-making process on the matter. This means the relevant person must exclude themselves from any discussion or vote on the matter at any Council meeting, delegated committee meeting, community asset committee meeting or, if a Councillor, any other meeting conducted under the auspices of the Council. The relevant person must also exclude themselves from any action in relation to the matter, including an action taken to implement a Council decision, for example, issuing a planning permit.

## 7 COMMUNITY PLANNING REPORTS

### 7.1 PA2022189 - DEVELOPMENT AND USE OF A DWELLING FOR A GOAT DAIRY FARM AND REMOVAL OF VEGETATION AT CROWN ALLOTMENT 1K ON TP330797W, BOUNDARY ROAD, WARRENHEIP

**Author:** Jyoti Makan, Senior Statutory Planner

**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development

**Attachments:** 1. Proposed Plans (under separate cover)

#### APPLICATION SUMMARY

**Permit No:** PA2022189

**Lodgement Date:** 21 September 2022

**Planning Officer:** Jyoti Makan

**Address of the land:** Crown Allotment 1K on TP330797W, Boundary Road Warrenheip

**Proposal:** Development and Use for a Dwelling for a Goat Dairy Farm and Removal of Vegetation

**Lot size:** Approximately 8.2ha

**Why is a permit required?** Clause 35.07-1 Farming Zone - Use of a land for dwelling on a lot less than 40ha; Clause 35.07-4 Farming Zone - Buildings and Works for a Section 2 use; and Clause 42.01-2 Environmental Significance Overlay Schedule 1 - Buildings and Works (Dwelling, Shed and Removal of Vegetation)

#### RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2022189 for the Development and Use of a Dwelling for a Goat Dairy Farm and Removal of Vegetation at Crown Allotment 1K on TP330797W, Boundary Road, Warrenheip, VIC, subject to the following grounds:

1. The proposed buildings and works leads to loss of vegetation and habitat in the Environmental Significant Overlay and the Farming Zone.
2. The residential use of the land removes the promotion of sustainable agricultural productivity.
3. The proposal sets a precedent towards a proliferation of dwellings.
4. The proposal does not meet the strategies and objectives of the Planning Policy Framework, Operations Provisions, Overlays and Zoning of the land.

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	None.
Number of objections:	Nil.
Consultation meeting:	Not applicable.

## **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

### **Strategic Objective 2: Liveable and thriving environments**

#### **Priority 1.4: Develop a vision and provide opportunities for rural communities**

The proposal is not provided for in the Council Plan 2021-2025.

## **VICTORIAN CHARTER OF HUMAN RIGHTS & 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 130 of the *Local Government Act 2020*, officers providing advice to Council must disclose any interests, including the type of interest.

*Executive Manager – Henry Bezuidenhout*

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

*Author – Jyoti Makan*

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

## **EXECUTIVE SUMMARY**

Application referred?	Yes.
Any issues raised in referral responses?	Concerns related to vegetation loss, dwelling siting, unsustainable agricultural practice, and the proliferation of dwellings.
Preliminary concerns?	Biodiversity and habitat loss, siting of buildings, limited site area for agricultural production after buildings are developed.
Any discussions with applicant regarding concerns?	Yes, a request for further information was made and the farm management plan was revised.

Any changes made to the application since being lodged?	As above.
Brief history.	Not applicable.
Previous applications for the site?	None.
General summary.	The proposal is made for a dwelling, two sheds, and removal of native vegetation. The application was referred, and concerns were raised. A request for information was sent to the applicant resulting in a revised Farm Management Plan. The proposal does not prove to encourage sustainable agricultural practices. It removes the land from farming to residential. The siting of the buildings increases biodiversity losses. Overall, the proposal does not warrant a residential land use in the Farming Zone.
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Refusal to Grant a Permit PA2022189 for Development and Use of a Dwelling for a Goat Dairy Farm and Removal of Vegetation at Crown Allotment 1K on TP330797W, Boundary Road, Warrenheip, VIC, subject to the grounds mentioned above.	

## SITE DESCRIPTION

The site is located at the corner of Foos Lane and Yankee Flat Road. The site is formerly known as Crown Allotment Lot 1K on TP330797W. The site is 8.4ha and slopes downwards towards the southwest corner of Foos Lane. The 8.4ha site is subject to the Schedule to Clause 35.07 of the Farming Zone, a dwelling on a lot less than 40ha requires a planning permit.

The site contains native vegetation and a recently constructed vehicle crossover and partially completed driveway.

Scattered vegetation is existing in the middle of the site and rows of trees along the boundaries of the site. A powerline runs north south through the property.

A dam exists on the Foos Lane boundary which is fed by a gully in the southwest corner. A watercourse flows from the southeast towards the southwestern corner of the site reflecting inundation risks.

The surrounding area is all farmland and the dwellings that do exist in the vicinity are either on small lots or lots larger than 40ha.



**Figure 1:** Aerial image of the site

## **PROPOSAL**

The proposal is made for the development and use of a dwelling, sheds and removal of native vegetation. The proposed agricultural activities to support the dwelling are related to goat dairy farming.

The dwelling is a 4 bedroom weatherboard house. Two 20m X 9m sheds are proposed north of the dwelling. One shed is proposed for the goat dairy (milking shed and cheese room) and the other shed for machinery and storage.

The agricultural activity proposed to justify the dwelling is mainly on goat dairy but other parts of the land will be used as a vegetable garden and free range chicken for personal use only. The proposal also states that due to the small area, the property is unsuited for a commercial cattle or sheep enterprise or broadacre cropping and that dairy goats are suited to small area farming.

The infrastructure proposed is the milking shed, hayshed and kid rearing facility boundary fencing is underway however internal fencing will be developed.

Water is proposed to be sourced from the small dam and by water tanks for domestic use and for agriculture. It is proposed that the one 180sqm shed will cater for animal shelter, milking and cheese room.

All effluent management is via septic tank system and two machines are proposed generating 50 litres of waste produced each day during the milking and clean-up process. All the whey by-products will be fed to the goats and the goat dairy effluent is considered grey water and will be used to irrigate pastures when required.

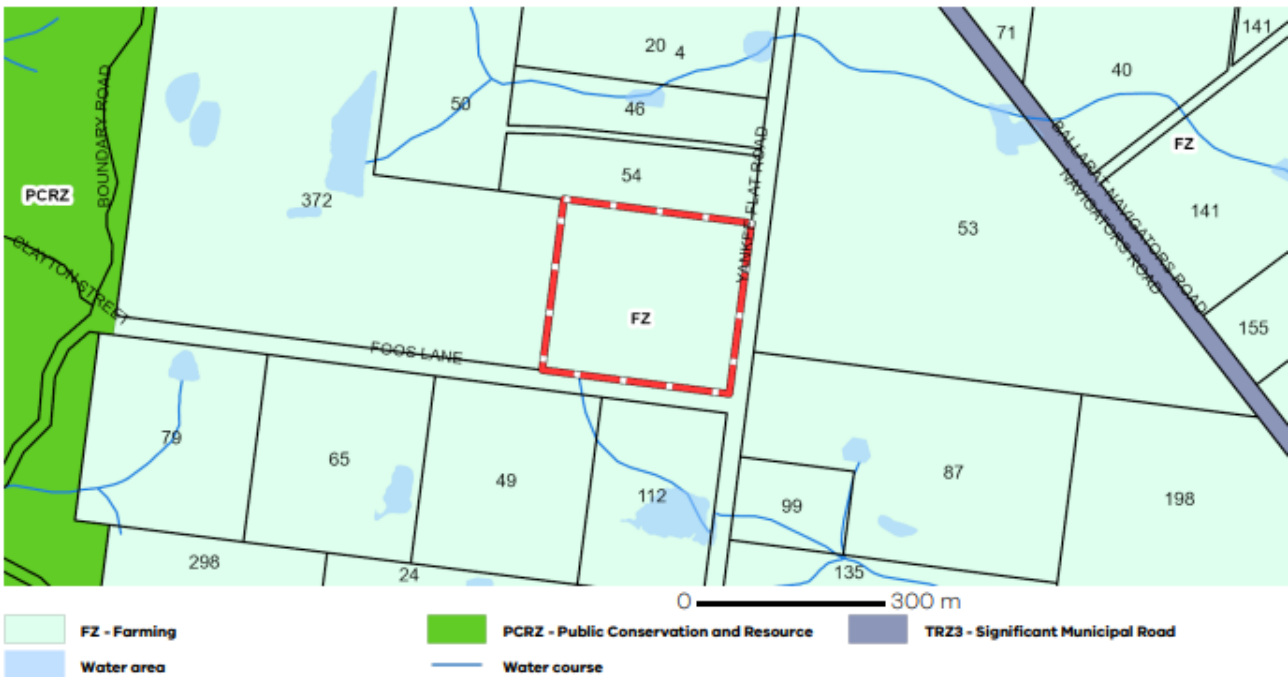
**PUBLIC NOTICE**

The application was notified to adjoining and surrounding landowners by means of letters to neighbouring properties and a sign placed on site.

No objections were received.

**LOCALITY MAP**

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



**Figure 2: Zone Map**

**PLANNING SCHEME PROVISIONS**

Council is required to consider the Victoria Planning Provisions and give particular attention to the Planning Policy Framework (PPF) and the Municipal Strategic Statement (MSS).

The relevant clauses (in part) are:

- Clause 11 – Settlement - Planning is to prevent environmental, human health and amenity problems created by siting incompatible land uses close together.
- Clause 12 – Environmental and Landscape Values - Consider impacts of any change in land use or development that may affect the biodiversity value and to protect and conserve environmentally sensitive areas.



- Clause 13.02-1S – Bushfire Planning - to ensure that the bushfire risk to existing and future residents, property and community infrastructure will not increase as a result of future land use and development.
- Clause 14.01 – Agriculture – serves to protect the state’s agricultural base by preserving productive farmland.

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

PPF	Title	Response
Clause 14.01-1S	Protection of agricultural land	The proposal removes the land from primary production of agriculture and impacts the continuation of primary production on adjacent land with regard to land values and viability of infrastructure. Residential development is not compatible with large lot intensive agricultural practices likely to occur in the surrounding large lots.
Clause 14.01-1L	Agriculture, rural dwellings and subdivision	The balance of the land left towards agricultural does not facilitate ongoing agricultural use.
Clause 14.01-2S	Sustainable agriculture land use	The proposal does not ensure that the agricultural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.
Clause 13.02-1S	Bushfire Planning	The proposal does not direct population growth and development to low risk locations where human life can be better protected from the effects of bushfire.
Clause 12.05	Environmentally sensitive areas and Landscapes	The proposal hinders the link of the existing vegetation towards the heavily vegetated reserve in the west therefore fragmenting habitat and leading to cumulative impacts. Topsoil disturbance is not minimised with the proposed developments.
Clause 12.01-1S	Biodiversity	The net loss of biodiversity is not warranted by the siting of the buildings and the need for the residential development.
Clause 12.01-2S	Native vegetation management	

## ZONE

The site is in the Farming Zone and a permit is required to use the land for a dwelling under Clause 35.07-1. A planning is required for building and works to a Section 2 land use under Clause 35.07-4.

## OVERLAYS

### Environmental Significant Overlay – Schedule 1

A permit is required for the buildings and works of the dwelling and the sheds and for the removal of vegetation under Clause 42.01-2.

### Bushfire Management Overlay

A permit is required for the use and development of the land for accommodation under Clause 44.06-2.

### Design and Development Overlay – Schedule 2

The proposal does not trigger a permit under this overlay as the materials selected for the proposed buildings are non-reflective.

## Particular Provisions

### Bushfire Planning:

This provision serves to ensure that the location, design and construction of development appropriately reduced the bushfire risk to life and property to an acceptable level. The bushfire management overlay covers the site and any sensitive land use such as a dwelling requires defensible space surrounding the dwelling leading to several losses in native vegetation.

### Native Vegetation (Clause 52.17)

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

- Avoid the removal, destruction or lopping of native vegetation.
- Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.
- Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.
- To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

## DISCUSSION

### Bushfire Planning

Officers considered assessment on bushfire planning (Clause 53.02 and Clause 13.02) stemming from the control of the bushfire prone area and the overlay subjects to ensuring that any settlement growth and development approvals can implement bushfire protection measures without unacceptable biodiversity impacts by discouraging development in bushfire affected areas that are important areas of biodiversity. The submitted Bushfire Management Plan demonstrates there are adequate measures to protect the dwelling with a sufficient defensible space in compliance with the objectives of the Bushfire Management Overlay.

Whilst the applicant states that access is provided from Yankee Flat Road, the site plans clearly show that two accessways are evident. Therefore, there are other opportunities for access delivery to the site without impacting on the Crown allotment's vegetation.

Farming Zone

The siting of the proposed buildings is a fundamental concern especially due to the constraints of the site given the vegetation, size, access and slope of the land.

Whilst the site is located with access to Navigators Road to support the agricultural business, the development will be undertaken by off-site income and the size of the site does not support the long term sustainability of the practice. The site is very close to townships nearby and a proposed dwelling in this location will fragment agricultural land and will lead to a proliferation of dwellings in the Farming Zone undermining existing farming operations.

A goat dairy does not require a dwelling to maintain its operation. A dwelling on the site will limit the progression and expansion of any surrounding agricultural practices who will need extensive and heavy machinery, pesticides, noise inhibitors and the likes causing environmental nuisance to newly created residents.

Advice was received from Agriculture Victoria after an assessment of the Farm Management Plan that a dwelling is not justified to sustain the proposed farming activities. Their advice furthermore identified information gaps including, no detail on whether the effluent system is combined with the dwelling septic system and there is no account of dry manure and how it will be managed and utilised. The waste management from the cheese room is not addressed and the capital contribution estimates and operating budgets do not correlate with their with annual costing rates and well thought expenditure. No water source estimates for the on farm cheese room was submitted even after the Farm management Plan was revised. The advice suggests there could be difficulties in operating this farming business and may not be able to be sustained in the long term.

Upon an assessment of the against the planning scheme provisions, the proposed farming practices does not demonstrate the need for a dwelling located in the Farming Zone.

**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**

Authority	Response
<b>Section 55 – Determining Authorities</b>	
Country Fire Authority	Consent with Conditions.
Central Highlands Waters	Consent with conditions.
Corangamite Catchment Management Authority	Cosent
Department of Energy, Environment and Climate Action	Lack of information and concerns with the siting of the dwelling.
<b>Section 52 – Recommending Authorities</b>	
Council's Infrastructure	Consent with conditions.
Agriculture Victoria	Letter of advice.
Council's Environmental, Emergency and	Concerns with siting of the dwelling and loss of

waste Unit	vegetation.
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**FINANCIAL IMPLICATIONS**

The recommendation of refusal of this application has no financial implications to Council.

**RISK & OCCUPATIONAL HEALTH & 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 invited to address the Development Assessment Committee if required.

**OPTIONS**

- Issue a Refusal to Grant a Permit in accordance with the grounds in the recommendation of this report; or
- should the Development Assessment Committee wish to support the application and issue a Planning Permit with conditions.

**CONCLUSION**

From the assessment, it is considered that the size of the site and any historical surrounding dwellings should raise expectations that the site is suitable only for a rural lifestyle dwelling. The dwelling is considered to lead to the proliferation of dwellings negating the sustainability of existing and future farmland. The domestic nature of the agricultural practice and lack of sustainable income from the agricultural practice does not prove that sustainability of agricultural production will occur.

## **7.2 PA2022049 - PETITION - REQUEST TO PREVENT FURTHER UNIT DEVELOPMENT IN MASONS LANE END OF DICKSON STREET BETWEEN NUMBERS 70-80 GEORGE AND YOUNG STREETS, BACCHUS MARSH**

**Author:** Pamela Roncon, Executive Assistant

**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development

**Attachments:** Nil

### **PURPOSE**

The purpose of this report is to provide response to a petition received by Council to prevent further unit development in the Masons Lane end of Dickson Street numbers 70 – 80 between George and Young Streets, Bacchus Marsh.

### **EXECUTIVE SUMMARY**

- Planning Application PA2022049 was tabled to the Development Assessment Committee on 16 November 2022 to issue a refusal to grant a planning permit for the development of two dwellings and a two-lot subdivision at 79 Dickson Street, Bacchus Marsh. The Committee resolved to support the Planning officer’s recommendation. There was no appeal lodged against the refusal decision.
- A Petition was tabled at the Ordinary Meeting of Council on 7 December 2022 to prevent further unit development in the Masons Lane end of Dickson Street numbers 70 – 80 between George and Young Streets. It was resolved that a report be prepared by officers for Council’s consideration pertaining to the petitioner’s request to be tabled at the Development Assessment Committee.

### **RECOMMENDATION**

**That Council:**

- 1. Agree that Council officers advise the petition organiser in writing of the Development Assessment Committee’s decision and that:**
  - (a) Council is obligated to accept future compliant planning permit applications for residential development permitted under the zone;**
  - (b) the Moorabool Planning Scheme allows for the lodgement of a compliant planning permit application for medium density housing in the Masons Lane end of Dickson Street numbers 70-80 between George and Young Streets; and**
  - (c) compliant planning permit applications will be assessed on their own individual planning merits including an assessment against neighbourhood character.**

**BACKGROUND**

Planning application PA2022049 for the development of two dwellings and a two-lot subdivision at 79 Dickson Street, Bacchus Marsh was lodged with Council on 1 April 2022. A report was presented to the Development Assessment Committee on 16 November 2022 for refusal and the Committee resolved to support the Planning officer's recommendation for refusal based on the following grounds:

- The application does not meet the neighbourhood character objectives of the General Residential Zone, Schedule 2 (Natural Greenfield Residential Growth Areas) of Clause 32.08 of the Moorabool Planning Scheme (MPS).
- The attached boundary to boundary development does not accord with the preferred neighbourhood character as defined by Precinct 19 of Council's Housing Bacchus Marsh to 2041 policy.
- The application does not meet key neighbourhood objectives of Recode, Clause 55 and 56 of the MPS.
- The proposed site layout does not provide sufficient opportunities to landscape the site, including canopy tree planting, to achieve the preferred neighbourhood character.

On 26 October 2022 a petition with 23 signatures was received, objecting to the planning permit. The reason for the petition is stated as being 'to prevent further unit development in the Masons Lane end of Dickson Street, numbers 70-80 between George and Young Street. Further development will ruin the streetscape.' The petition was referred to the Ordinary Meeting of Council on 7 December 2022 where Council resolved that a report be prepared by officers for Council's consideration pertaining to the petitioner's request to be tabled at the Development Assessment Committee.

**PROPOSAL**

To consider the petitioners request to prevent future unit development in the Mason Lane end of Dickson Street.

**COUNCIL PLAN**

The proposal is not provided for in the Council Plan 2021-2025.

**FINANCIAL IMPLICATIONS**

There are no financial implications to Council.

**RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

There are no risk or occupation health and safety risks to Council.

**COMMUNICATIONS & CONSULTATION STRATEGY**

The petition organiser was contacted by Council officers and advised of this report being tabled at the Development Assessment Committee in response to the petition.

**VICTORIAN CHARTER OF HUMAN RIGHTS & 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 130 of the *Local Government Act 2020*, officers providing advice to Council must disclose any interests, including the type of interest.

*Executive Manager – Henry Bezuidenhout*

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

*Author – Pamela Roncon*

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

#### **ASSESSMENT**

Under the current residential zoning in Dickson Street, there is no prohibition on two or more dwellings on a single lot. Officers are required to assess any future planning applications on their own planning merits and in accordance with the provisions of the Moorabool Planning Scheme. Part of the officer's consideration is examining the existing neighbourhood character and the objectives of the preferred neighbourhood character. Any future planning application for a unit development will require notification to surrounding properties and residents will have the opportunity to lodge an objection.

#### **CONCLUSION**

The petition organiser will be advised of Council's refusal to grant a permit for a unit development at 79 Dickson Street and be advised of the process to assess any future planning application for a unit development in Dickson Street.

**8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS**

**9 UPDATE ON VCAT DECISIONS**

**10 OTHER BUSINESS**

**11 DATE OF NEXT MEETING**

Wednesday 19 April 2023.

**12 MEETING CLOSE**