

HEPBURN SHIRE COUNCIL

ORDINARY MEETING MINUTES

7pm Tuesday 18 November 2008

Daylesford Town Hall

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HEPBURN SHIRE COUNCIL – COUNCIL PLAN 2006-2011

VISION STATEMENT:

Hepburn Shire will be a vibrant, creative rural Shire with strong and healthy connected communities. Our Council will govern with integrity and inclusiveness. Our natural environment, productive agricultural land and rich heritage will remain valued and protected as assets for residents and visitors to appreciate and enjoy.

Council has in the COUNCIL PLAN established 5 objectives to enable your Team of Councillors and Officers to move forward.

Objective One – Strengthening Communities

Council will engage with and support our diverse communities to realise their potential and determine and achieve their aspirations.

- 1.1 To be a leader in community consultation, advocacy & engagement
- 1.2 Enhance community connectedness, capacity building and leadership
- 1.3 Enhance external relationships

Objective Two – Service Delivery

Council will deliver responsive services to our community within available resources.

- 2.1 Improve service delivery
- 2.2 Improve internal and external communication
- 2.3 Further develop the range of facilities and programs

Objective Three – Asset and Resource Management

Council will effectively manage our assets and resources to create a better Shire for our community.

- 3.1 Improve the management of our assets
- 3.2 Foster & encourage leadership
- 3.3 Responsible financial management
- 3.4 Promote and encourage innovation
- 3.5 Tight, sharp, focussed, professional administration

Objective Four – Economic Development

Council will strengthen our local economy by working in partnership with business and community.

- 4.1 Develop partnerships with educational and research organisations
- 4.2 Promote and market the Shire
- 4.3 Encourage and support diversity of economic activity and employment

Objective Five – Heritage and Environment

Council, in partnership with our community will ensure that our cultural, natural and built environment is protected, conserved and enhanced for future generations.

- 5.1 Promote & practise environmental management and sustainability
- 5.2 Respect and honour our unique historical and cultural attributes

Council has committed itself to these philosophies, to the five objectives, to the strategies of implementation and to being accountable to all of the Hepburn Shire.

Hepburn Shire is a wonderful home for all of us. Our Council Plan and the Community Plan provide a direction for the future.

**MINUTES OF THE ORDINARY MEETING
OF THE HEPBURN SHIRE COUNCIL HELD AT
DAYLESFORD SENIOR CITIZENS ROOM ON 18 NOVEMBER 2008
COMMENCING AT 7 PM**

AGENDA

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CLOSE OF MEETING:

ATTACHMENTS

CR TIM HAYES, MAYOR.
19 NOVEMBER 2008.

ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

We would like to acknowledge we are meeting on Jaara people country, of which members and elders of the Dja Dja Wurrung community and their forebears have been custodians for many centuries.

On this land the Jaara people have performed age old ceremonies of celebration, initiation and renewal.

We acknowledge their living culture and their unique role in the life of this region.

PRESENT: Councillors Janine Booth, Bill McClenaghan, Heather Mutimer & David Smith.

IN ATTENDANCE: Chief Executive Officer, Kaylene Conrick; Director Infrastructure & Development, Rod Conway; Manager Finance, John Traill; Manager Governance & Information, Matthew Morgan; Manager Community Services, Martin Walmsley; Manager Organisational Development, Robert Knight. Gallery 17, Media 1.

As the Mayor was in Canberra a temporary Chair was appointed.

Moved that Cr Bill McClenaghan be appointed as the Chair

*Moved: Cr Heather Mutimer
Seconded: Cr Bill McClenaghan
The Motion lapsed.*

Moved that Cr David Smith be appointed as the Chair.

*Moved: Cr Janine Booth
Seconded: Cr Bill McClenaghan
Carried.*

Cr David Smith was appointed as acting Chair.

The Acting Chair, Cr David Smith opened the meeting with a reading of the Council prayer.

OPENING PRAYER

Almighty God, we ask your blessing upon this Council.
direct and guide our deliberations.

We ask you to grant us wisdom and sensitivity as we deal with
the business of our Shire.

May each decision that we make advance the wellbeing of all our
residents.

This we pray. Amen

1. **APOLOGIES:** Mayor, Cr Tim Hayes.

2. **DECLARATION OF CONFLICTS OF INTEREST: NIL**

3. CONFIRMATION OF MINUTES:

Recommendation:

That items :

- 3.1 Minutes of the Ordinary Meeting of Council held on 21 October 2008;*
- 3.2 Minutes of the Special Meeting of Council held on 28 October 2008,*
(Attachment 1), *be confirmed, as required under Section 93 (2) of the Local Government Act 1989.*

Moved the Officer's Recommendation.

Moved: Cr Janine Booth
Seconded: Cr Bill McClenaghan
Carried.

4. PETITIONS AND PUBLIC QUESTION TIME

This part of the Council Meeting allows 30 minutes for:

- tabling of petitions by Councillors and Officers;
- questions to be asked by members of the public on general matters or on specific items appearing elsewhere in this Agenda.

Where you have more than one question or questions are lengthy or complex it would assist if you could provide a written copy so that we can accurately record it and respond. If you have more than one question please indicate this. In the interests of fairness and equity, one opportunity is normally provided for any person during this part of the Meeting.

Questions may be taken on notice and responded to later. Separate forums and Council processes are provided for deputations or for making submissions to Council.

If you have questions about specific items in this Agenda, Council encourages you to attend the Agenda Meeting held a week before the Council Meeting. This allows reasonable time for us to consider your question or comment before making the decision at the Council Meeting.

Nil Petitions received.

PUBLIC QUESTION TIME:

Jack Cooper - Glenlyon

1) More consideration should be given to the Agricultural society with regards to the provision of access to the Pavilion and Sheds in preparation for the Agricultural Society Show. Council currently has equipment in the shed which is taking up space.

2) Why did Council send out letters to people in Holcombe and Coliban wards to inform them that there was to be an uncontested election, surely people would know this from reading the paper?

Response: Kaylene Conrick, CEO - It is an electoral requirement to notify voters of an uncontested election and not everyone reads the paper and is up to date with the election news.

Russ Wilkinson - Daylesford

1) There is a budget allocation of \$243,000.00 for Human Resources and Risk Management, what is this for?

2) What is the current debt level of Council?

John Traill, Manager Finance - With regards to the HR & Risk budget, approximately half of the cost is for Council's insurances, while the other half is primarily staffing costs and operating expenses. The current debt level of Council is approximately \$2.3 million, which has dropped from about \$2.5 million at the start of the year. This will go up in the future as Council takes out additional borrowings to fund the new Depot site construction.

4. PETITIONS AND PUBLIC QUESTION TIME

Graeme Ratray

1) There is a contradiction as Council has a Positive Ageing Strategy, however Council is not looking after the aged people by providing them with the appropriate services at the Bathhouse.

Rod Conway, Director Infrastructure & Development - There is a Community Services Agreement at the Bathhouse which includes discounted rates for locals and the possibility of learn to swim courses etc to cater for groups within our community.

Sam Thompson

1) Following on from the site visit of Councillors to my property, do any Councillors have any further questions of me?

Cr David Smith - There are no questions thank you.

5. GOVERNANCE AND STRATEGIC MATTERS

5.1 CHARTER OF HUMAN RIGHTS

(A/O – Manager Organisational Development)

File Ref: 48/14/04

Introduction

This report tables a draft Human rights Charter and recommends that Council adopt the Charter in accordance with its obligations under the Charter of Human Rights and Responsibilities Act 2006.

Report

From 1 January 2008, Hepburn Shire Council has been obliged to implement the Charter of Human Rights and Responsibilities Act of 2006. The proposed policy outlines Council's commitment to fulfilling its obligations under this Legislation.

Victoria has become the first Australian State to enshrine basic human rights in one Act of Parliament with the adoption of the Charter of Human Rights and Responsibilities Act 2006. The Charter of Human Rights is an important new law designed to protect the fundamental rights and freedoms of ordinary citizens, by recognizing that all people are born free and equal in dignity and rights. It aims to protect rights by requiring that government and other public authorities observe them when making decisions, creating laws, setting policies and providing services.

From January 1, 2008 each Local Government authority in Victoria was required to have a Human Rights Charter in place to be operational from that date onwards. Hepburn Shire Council failed to comply with this requirement.

Council is required to comply and have regard for human rights in its day to day operations. Council in its operations and policy development and implementation already observes many of the principles required by the Charter. The legislation however requires Council to formally demonstrate these considerations.

The proposed policy outlines Council's commitment to fulfilling its obligations under the legislation. (**Attachment No. 2**)

A human rights based approach to service delivery and policy development involves a consideration of both the *what* you are going to do based on the principles of human rights and the corresponding duties we have, and then *how* you are going to do your work in ways that promote these rights. There is no doubt that implementing the human rights charter will have a profound impact in the way we not only relate to individual members of our community but the manner in which services are delivered will also change.

Implementing the Charter

Council will ensure that all new policies will make explicit reference to the above rights and that existing policies will be progressively reviewed to ensure explicit reference to the Charter is contained in the Policy revision.

Council will progressively review and ensure appropriate links are developed to other relevant internal and external laws, policies, codes and guidelines such as

5. GOVERNANCE AND STRATEGIC MATTERS

equal opportunity, health and safety, funding agreements, departmental policies and other standard frameworks

Council will develop a complaint – handling process which will provide an efficient, fair and accessible mechanism for resolving user complaints and use through the monitoring of complaints endeavour to improve the quality of services delivered to the Community.

Recommendation

That Council adopt the Hepburn Shire Council Human Rights Charter.

Moved the Officer's Recommendation.

Moved: Cr Heather Mutimer
Seconded: Cr Bill McClenaghan
Carried.

5. GOVERNANCE AND STRATEGIC MATTERS

5.2 HEPBURN SHIRE YOUTH POLICY

(A/O – Manager Community Services)

File Ref: 16/18/03

Introduction

The purpose of this report is for Council to consider the adoption of the Hepburn Shire Council Youth Policy No. 43 (**Attachment 3**).

Report

At the Council Meeting on the 16 September 2008, Council resolved to:

1. *adopt the Hepburn Shire Youth Policy as a draft,*
2. *direct the draft Policy to be placed on public display for comment by the community.*

The Hepburn Shire Draft Youth Policy was made available at each of the Council's Offices during October and on our website. A number of advertisements and media articles were also published in the Advocate and Courier. At the time of preparing this report, no community comment has been received.

This Policy is aimed at building opportunities for young people in Hepburn Shire, which will encourage or allow them to remain living locally. It also focuses on creating a positive experience for young people, who may leave the district and one day may return to live in Hepburn Shire.

The main strategies include community engagement, advocacy / leadership, service delivery, creating a positive image of young people and building partnerships with community groups and organisations.

Relevant Policies / Council Plan implications:

Objective One – Strengthening Communities

Council will engage with and support our diverse communities to realise their potential and determine and achieve their aspirations.

- 1.4 To be a leader in community consultation, advocacy & engagement
- 1.5 Enhance community connectedness, capacity building and leadership
- 1.6 Enhance external relationships

Community / Engagement / Communication / Consultation:

The Hepburn Shire Draft Youth Policy was made available at each of the Council's Offices during October and on our website.

Financial & Resource Implications Initial & Ongoing

This Policy does not require any additional resources to the current allocation.

Recommendation:

That Council:

- 5.2 .1 *Adopt the Hepburn Shire Council Youth Policy*

5. GOVERNANCE AND STRATEGIC MATTERS

Moved the Officer's Recommendation.

Moved: Cr Janine Booth
Seconded: Cr Bill McClenaghan
Carried.

5. GOVERNANCE AND STRATEGIC MATTERS

5.3 COMMUNITY GRANTS

(A/O – Manager Community Services)

File Ref: 30/14/03

Introduction

The purpose of this report is for Council to consider the recommendations of the Community Grant Applications assessment for Round 1 2008/09.

Report

Twice each year Council has the opportunity through its Community Grants initiative to directly support the work of community groups and organisations as well as provide the chance for new innovations. Round 1 of 2008/09 has received 47 applications in the categories of Culture and Arts, Community Strengthening, Small Equipment and Youth. There is a broad range of requests for funding from simple low-cost equipment to major performing arts and community events.

Community grants have previously enabled 'good ideas' to be trialled as new initiatives. Applications for round one include a number of proposals which fall within this realm.

Council's contribution through the community grants initiative strengthens the work undertaken by communities. Receiving even small amounts of money through the community grants initiative can often enable these groups to conduct their business better, safer or make them more available to the community.

Round 1 Community Grants were advertised on the 20 August 2008, and closed 19 September. Apart from advertising in the Advocate and on Council's webpage, two community information sessions were conducted in Creswick and Daylesford. The funding pool available for Round 1 is \$21,500 - \$2,500 Youth, \$2,500 Culture and Arts, \$13,500 Community Strengthening and \$3,000 Small Equipment.

47 Applications were received. The table below summarises the category, number received, amount requested and amount recommended.

Category	Number Received	Amount Requested	Amount Recommended
Youth	5	\$2,605	\$2,500
Culture and Arts	9	\$4,500	\$2,500
Community Strengthening	15	\$26,530	\$13,480
Small Equipment	18	\$8,325	\$3,000
Totals	47	\$41,960	\$21,480

Grant Applications were assessed by representatives of the associated Advisory Committees; Youth, Culture and Arts and by the Hepburn Healthy Communities Advisory Committee assessing Small Equipment and Community Strengthening Projects. Council Officers assessed the grants independently of the Committees.

All Community Grant applications were assessed against the following criteria:

1. Description of project 10%
2. What will this project address? 25%
3. What will the project achieve? 25%
4. How will the project be implemented and who will be doing it? 20%

5. GOVERNANCE AND STRATEGIC MATTERS

5. How will risk and safety issues associated with the project be assessed? 10%

Assessors applied scores from a total of 90 points. These were averaged and each grant was assigned a mean score.

Applications recommended not for funding were rejected on the following grounds; insufficient evidence or incomplete applications, project was the responsibility of another jurisdiction, lacked benefit for wider community, was a fund-raising activity and the group was funded in the previous round for the same or similar project.

Councillors have been circulated under separate cover with information on the project applications summarised and financial details included.

Relevant Policies / Council Plan implications:

Hepburn Shire Council Community Grants Policy

Council Plan – 1.2 Enhance community connectedness, capacity building and leadership.

Hepburn Shire Council Social Plan – 2.1 Communication, participation and engagement across the Shire, inclusive of all residents of all ages.

Recreation Plan – Developing inclusive and active communities

Community / Engagement / Communication / Consultation:

Publicity had been increased this round. In addition to the Hepburn Shire Council webpage and Advocate page, information was sent out to groups via e-mail lists. Applicants were encouraged to contact officers to discuss their proposals to help increase their success with the application process. Community Grant information sessions were also conducted in Creswick and Daylesford.

Financial & Resource Implications Initial & Ongoing:

The total pool of funds available for allocation in Round Two is \$21,500, based on the 2008/09 Council budget.

Recommendation:

That Council:

5.3.1 Award the Community Grants as recommended in the confidential attachment

Moved the Officer's Recommendation.

Moved: Cr Heather Mutimer

Seconded: Cr Bill McClenaghan

Carried.

5. GOVERNANCE AND STRATEGIC MATTERS

5.4 ROAD NAMING – SOUTH OF ANNE STREET & LUTTETT STREET, CRESWICK

(A/O – Manager Finance)

File Ref: 58/02/03

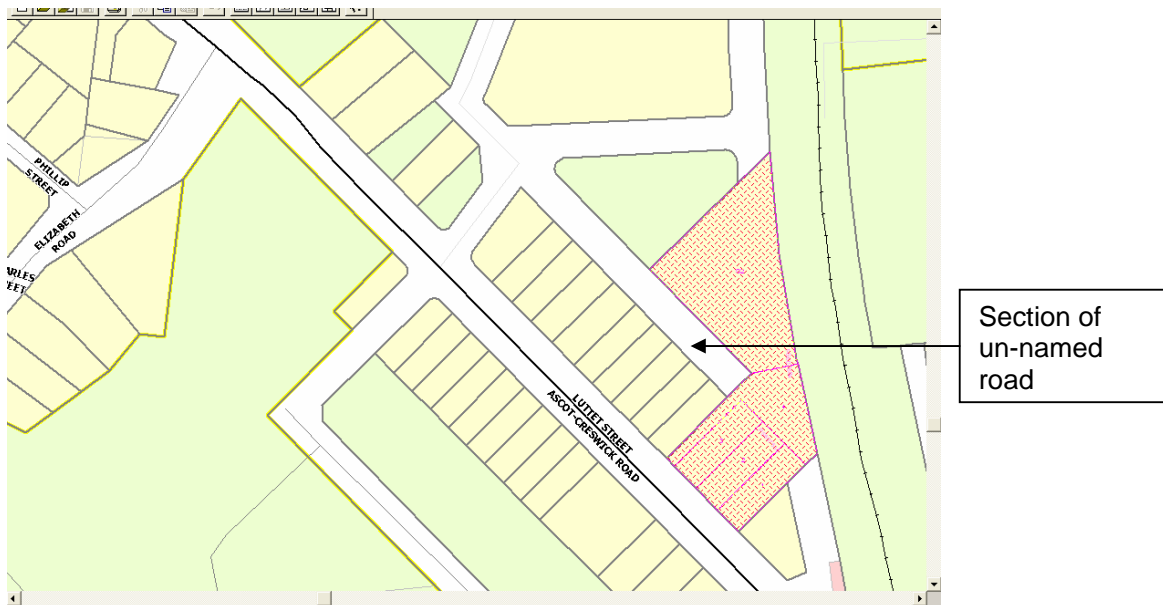
Introduction

The Council has responsibility for the naming of roads and streets within the Municipality, the following report recommends the naming of the un-named section of road South of Anne Street and running parallel with Luttet Street, Creswick.

Report

A written request was received by Terry and Rhonda Merritt who own a large section of land which they are developing, that faces the un-named road (as shown on map below). They believe that with a name allocated to the road and with the work being done by Council and themselves it would help change the outlook of the area.

The Merritt's suggestions were Calemben Close, Lindsay Gordon Way, No Through Road, Isabella Lane and Rubyina Way.



Following Council advertising its intention to name the section of road a further four submissions were received. The other suggested names were Keen Road, Back Lane/Street/Track and Paddock Bomb Road or Common Road.

Upon investigation it was found that some submissions had no relation to this section of road and the others were considered not acceptable.

After studying the Parish Maps it was found that a Mr Doyle who was the original property owner, owned land on either side of the road back in the 1940's. It also came to light that all the streets surrounding this un-named road were named after Royalty, examples are Phillip St, Anne St, Charles St, etc.

5. GOVERNANCE AND STRATEGIC MATTERS

It is therefore recommended that the name "Andrew Street" be adopted to keep with the surrounding street theme of naming roads after Royalty.

Relevant Policies / Council Plan implications

The Local Government Act 1989 gives the Council powers (Section 206) in relation to naming roads. When exercising this power, Council must act in accordance with guidelines (*Geographic Names Victoria –GNV*) provided by the Registrar of Geographic Names. The Registrar has the responsibility to record changes in Vicnames Register as road names are a critical component for Emergency Service Organisations.

Community / Engagement / Communication / Consultation

An Advertisement was placed in the Advocate on 6 August, 2008 calling for submissions and letters were also sent out to residents living in the street. The closing date for submission was 3 September, 2008.

Signage was placed at the beginning and the end of the lane from 6 August, 2008 until 3 September, 2008.

Financial & Resource Implications Initial & Ongoing

Signage costs and installation of approximately \$350.00 to be born out of existing budget.

Recommendation:

That Council::

5.4.1 *resolve to name the un-named section of road South of Anne Street and running parallel with Luttet Street in Creswick "Andrew Street".*

Moved the Officer's Recommendation.

Moved: Cr Janine Booth

Seconded: Cr Bill McClenaghan

Carried.

5. GOVERNANCE AND STRATEGIC MATTERS

5.5 ROAD NAMING – BETWEEN HIGH ST & ALBERT ST, TRENTHAM

(A/O – Manager Finance)

File Ref: 58/02/03

Introduction

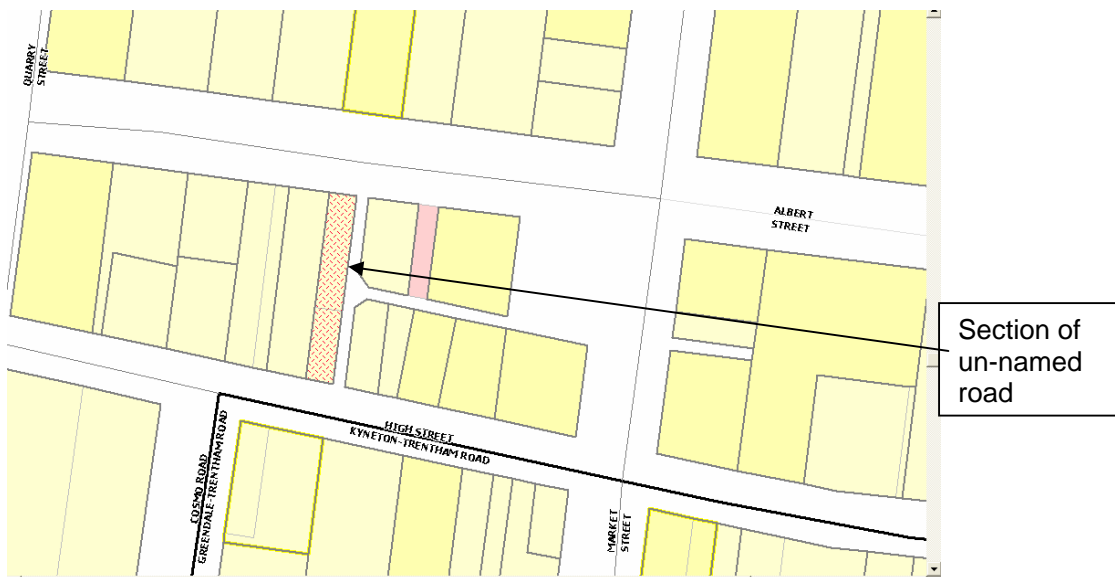
Council has responsibility for the naming of roads and streets within the Municipality, the following report recommends the naming of the un-named section of laneway between High Street and Albert Street, Trentham.

Report

A written request was received by Mr Ludwig Tusek who is the Owner of 40 High Street, Trentham, to have the un-named laneway (as shown on map below) recognised.

This laneway services both popular businesses and residents and a name would allow for easy location/direction. (Mr Tusek suggested the name "Wolff Lane"),

It is important however to note that the land used as the laneway is in fact a carriageway easement on private land and that Council is not responsible for the maintenance of the laneway.



Following Council advertising it's intention to name the laneway a further six submissions were received. The suggested names were Bakers/Bakery Lane, Mckenzie Lane, Grove Lane and Nancy Lane.

Out of the names suggested the two most appropriate which meet the criteria for road naming are Wolff, Bakers or Bakery Lane.

The suggested name of Wolff Lane holds historical meaning which is also supported by documentation from the Trentham and District Historical Society.

Mr John Wolff came to Australia from Southhampton England and bought the land in Trentham in 1866 on which he established a General Store, Butchery and a Bakery. He also owned a split timber yard. He bequeathed a sum of money toward the building of the new Church of England.

5. GOVERNANCE AND STRATEGIC MATTERS

He died on 21 July 1910 aged 75 and along with his wife is buried in the Trentham Cemetery.

The other suggestion of Bakers or Bakery Lane submitted referred to recognition of the locations proud history and primary purpose and the name does not promote a particular individual or family a view apparently shared by some townfolk of Trentham.

As the suggested name of "Wolff Lane" holds more historical significance than the suggested "Bakers/Bakery Lane", It is therefore recommended that the name "Wolff Lane" be adopted to ensure the history of the family name is preserved and recognised.

Relevant Policies / Council Plan implications

The Local Government Act 1989 gives the Council powers (Section 206) in relation to naming roads. When exercising this power, we must act in accordance with guidelines (*Geographic Names Victoria –GNV*) provided by the Registrar of Geographic Names. The Registrar has the responsibility to record changes in Vicnames Register as road names are a critical component for Emergency Service Organisations.

Community / Engagement / Communication / Consultation

An Advertisement was placed in the Advocate on 6 August, 2008 calling for submissions and letters were also sent out to residents living in the street. The closing date for submission was 3 September, 2008.

Signage was placed at the beginning and the end of the lane from 6 August, 2008 until 3 September, 2008.

Financial & Resource Implications Initial & Ongoing

Signage costs and installation of approximately \$350.00 to be born out of existing budget.

Recommendation:

That Council:

5.5.1 *Resolve to name the un-named section of road between High and Albert Streets, Trentham, "Wolff Lane".*

Moved the Officer's Recommendation

Moved: Cr Heather Mutimer
Seconded: Cr Bill McClenaghan
Carried.

5. GOVERNANCE AND STRATEGIC MATTERS

5.6 MONTHLY FINANCIAL REPORT 1/7/08 – 31/10/08

(A/O – Manager Finance)

File Ref: 30/08/17

Introduction

A summary report on the Council's financial performance for the financial year to the 31 October 2008 is provided for information.

Report

This report provides information on Council's operating performance for the 4 months to 31 October 2008 against the budget adopted by Council in July 2008. The report considers year to date budgets against year to date actual for each operating program and for all capital works.

The budget was adopted based on projected completion of projects and capital works at 30 June 2008 and information available at that time. Council will have an opportunity in January 2009 to review its budget based on current information about projects, variations that occur and new information.

Statutory Requirements

Under Section 138 of the Local Government Act 1989, at least quarterly a report comparing expenses and revenue to budget must be presented to the Council.

Summary of Financial Report Attachments

The following attachments form part of this financial report:

- Capital Works and Projects
- Balance Sheet
- Charts of Rate and General Debtors (1.1 and 1.2)

The reports note any variations against the year to date budget and a year to date actual amount.

5. GOVERNANCE AND STRATEGIC MATTERS

Variance Report

Corporate Services:

Variance (Deficit)/Surplus 000's: \$ 211

Program	Major Activities	Annual Budget \$000's	YTD Budgets \$000's	YTD Actuals \$000's	YTD Variance \$000's
1 Corporate Services					
Revenue Services	Rates & Municipal Charge	-9,673	-9,633	-9,796	163
Grants Commission	Untied Government Grant	-2,201	-550	-555	4
Council	CEO's Office & Councillors	806	203	185	18
Financial Services	Financial Services	407	98	77	21
Technical Services	Engineering Services	794	264	265	-1
Governance & IT	Governance Records Management & Information Technology	914	408	410	-2
Organisational Development	Human Resources and Risk Management	243	65	64	2
Other Administration	Office Operations, Postage etc	678	179	172	7
Total Corporate Services		-8,032	-8,965	-9,177	211

- Revenue services relates to supplementary valuations exceeding expectations

Community Services:

Variance (Deficit)/Surplus 000's: \$ 31

Program	Major Activities	Annual Budget \$000's	YTD Budgets \$000's	YTD Actuals \$000's	YTD Variance \$000's
2 Community Services					
Community Development	Community Development, Arts & Culture and Youth Services	521	173	145	29
Family & Childrens Services	Maternal & Child Health, Pre-Schools etc	168	30	26	4
Aged & Disability Services	Home Care Services, Day Activity Centres Meals on Wheels	244	55	46	8
Housing	Housing	-6	-2	-6	3
Contract Services	Home Care Services provided under Contract for External Agencies	-8	-8	5	-13
Total Community Services		919	248	217	31

- Community Development includes \$10 thousand unbudgeted contribution received also position vacant for one and a half months.

5. GOVERNANCE AND STRATEGIC MATTERS

Regional Development:

Variance (Deficit)/Surplus 000's: \$ 120

Program	Major Activities	Annual Budget \$000's	YTD Budgets \$000's	YTD Actuals \$000's	YTD Variance \$000's
3 Regional Development					
Planning & Heritage Services	Strategic & Statutory planning & Heritage services	734	203	153	50
Building Services	Building Inspections	58	17	-3	20
Tourism & Economic Development	Tourist information centres Caravan Parks & Economic Development	313	109	52	57
Community Amenities	Public Conveniences, Cemeteries	183	43	36	6
Library Services	Branch Libraries & Bookmobile	324	166	163	3
Other Cultural Activities	Community Events & Museums	63	16	33	-17
Public Halls	Town Halls & Other Public Halls	130	37	36	1
Total Regional Development		1,806	591	471	120

- Planning services fees exceeding expectation. Delay in replacing statutory planning position.
- Building services in surplus due to extent of activity.
- Tourism & Economic Development is in surplus as a result of receiving an unbudgeted grant of \$75,000 however this will be offset by additional expenditure with an adjustment to the budget made at the mid year review.

5. GOVERNANCE AND STRATEGIC MATTERS

Public Safety:

Variance (Deficit)/Surplus 000's: (\$14)

Program	Major Activities	Annual Budget \$000's	YTD Budgets \$000's	YTD Actuals \$000's	YTD Variance \$000's
4 Public Safety					
Fire Prevention	Fire Hazards, signs Fire Access Tracks	17	9	5	4
Animal Control	Animal Management & Pound Operating	-43	11	7	4
Compliance	By-Laws Management & Parking	217	67	65	2
Health	Health Surveyor, Food Premises Inspections Immunisations etc	116	51	63	-11
Environmental Initiatives	Environmental Officer & Projects	145	33	47	-13
School Crossings	School Crossing Supervision	18	9	7	1
Emergency Management	State Emergency Service contribution	5	0	0	0
Total Public Safety		475	180	194	-14

- All areas currently on budget.

Recreation:

Variance (Deficit)/Surplus 000's: (\$ 8)

Program	Major Activities	Annual Budget \$000's	YTD Budgets \$000's	YTD Actuals \$000's	YTD Variance \$000's
5 Recreation					
Parks & Gardens	Parks & Gardens Maintenance	231	44	78	-34
Reserves	Reserves Maintenance	665	211	202	9
Mineral Springs Reserves	Mineral Springs Reserves Maintenance	-354	-80	-51	-29
Swimming Areas	Swimming Areas Supervision & Maintenance	274	31	25	6
Recreation Management	Recreation Management	163	28	-5	33
Indoor Recreation	Indoor Recreation Contribution	30	8	0	8
Total Recreation		1,009	242	250	-8

- The mineral springs area profiling needs to be adjusted
- Recreation management needs some work in this area as well.

5. GOVERNANCE AND STRATEGIC MATTERS

Infrastructure:

Variance (Deficit)/Surplus 000's:

(\$ 61)

Program	Major Activities	Annual Budget \$000's	YTD Budgets \$000's	YTD Actuals \$000's	YTD Variance \$000's
6 Infrastructure					
Road Maintenance	Local Road Maintenance plus Local & Federal Road Grants	225	356	398	-42
Depots	Works & Parks Depot Operations	51	22	22	0
Other Transport	Gravel Pits, Plant Hire & Private Works	-598	-201	-182	-19
Total Infrastructure		-323	176	238	-61

- Road maintenance figures have not been adjusted for seasonal variations in work plans.

Waste Management:

Variance (Deficit)/Surplus 000's:

\$ 54

Program	Major Activities	Annual Budget \$000's	YTD Budgets \$000's	YTD Actuals \$000's	YTD Variance \$000's
7 Waste Management					
Waste Revenue	Waste Management, Garbage, Recycling Charges and Fees	-1,493	-1,441	-1,450	10
Street Cleaning	Street sweeping and Clearance of Street Bins	124	39	37	2
Waste Management	Operation of Transfer Stations and Recycling Facility	1,333	371	328	43
Land Management	Support for Landcare Groups & Weed Eradication Programs	14	1	1	0
Total Waste Management		-22	-1,030	-1,084	54

- The waste management monthly profiling needs reviewing some monthly accounts are paid the following month.

5. GOVERNANCE AND STRATEGIC MATTERS

Unclassified:

Variance (Deficit)/Surplus 000's: \$ 101

Program	Major Activities	Annual Budget \$000's	YTD Budgets \$000's	YTD Actuals \$000's	YTD Variance \$000's
8 Unclassified					
Oncost Accounts	Clearing Oncost Clearing Accounts	0	-25	-126	101
Unclassified	Minor Expenditure	125	0	0	0
Total Unclassified		125	-25	-126	101

- Superannuation payment of \$106 thousand processed in early November.

Operating Summary:

The year to date operating result against budget currently indicates a positive variance of \$434 thousand. After only three months of the financial year it is to be expected that there would be few variations that cannot be explained because of timing differences, projects to be carried over from 2007/2008 or projects where unbudgeted funding has been received. The net operating result is monitored each month to ensure that the overall budget is met by year end.

Capital Works and Major Projects:

The 2008/2009 capital works program is in its early stages as projects are being scoped and designed and contracts let. Main variations in this area relate to projects carried over from 2007/2008 that will be adjusted as part of the mid-year budget review. The year end surplus for 2007/2008 confirms that a number of projects were not completed and will have to be accommodated in 2008/2009.

Balance Sheet

Current Assets:

Cash and investments at 31 October total \$2.25 million and include \$0.95 million for the Long Service Leave Provision.

Net current receivables are \$9.03 million including \$8.01 million in rates. Trade debtors at 31 October are \$910 thousand. Debtors are being monitored and regular follow up action taken to minimise any write offs.

Council is generally owed money for the GST input tax credit and BAS's are lodged monthly. All legislative requirements are being met.

Current Liabilities:

The major items here are the creditors control, current loan liability, provision for landfill rehabilitation and employee provisions. Deposits and Securities are reviewed quarterly and refunds or transfers made where applicable.

5. GOVERNANCE AND STRATEGIC MATTERS

Non-Current Assets:

These include all infrastructure assets and for the purpose of this report the net cost of current capital and major works has been treated as works in progress and added to the balance sheet here.

Non-Current Liabilities:

Major items here include loan liability, provision for landfill rehabilitation and provision for long service leave.

Conclusion:

As expected there are few major variations this early in the financial year other than those caused by timing differences. However there are some areas that will be closely monitored and reviewed regularly with Management Team and responsible managers. As indicated a number of variances have resulted from projects carrying over from 2007/2008 or new projects where funding will be received in 2008/2009.

The mid year budget review in January 2009 will be an opportunity for these projects to be brought to account and the overall budget fine tuned with the knowledge of 6 months of operations. In the meantime managers will continue to review in detail both operating and capital budgets to ensure that the overall budget will be achieved.

Relevant Policies / Council Plan Objectives

The Management of Council financials is in line with objective 3.3 of the adopted Council Plan 2006 – 2011.

Community / Engagement / Communication / Consultation:

Nil

Financial & Resource Implications Initial & Ongoing

The reports attached provide the opportunity for constant review of Council's financial position to ensure compliance with budgets. The reports presented show the annual budget, year to date budget, year to date actuals and year to date variance. The reports note any variances against the year to date actual amount.

Recommendation:

5. 6 .1 *That Council receive the Monthly Finance Report for the 4 months from 1 July 2008 to 31 October 2008.*

Moved the Officer's Recommendation.

Moved: ***Cr Bill McClenaghan***
Seconded: ***Cr Janine Booth***
Carried.

6. COUNCIL AS COMMITTEE OF MANAGEMENT OF CROWN LAND

6.1 HEPBURN POOL ADVISORY COMMITTEE

(A/O – Manager Organisational Development)

File Ref: 5/6370/00050

Introduction

The Hepburn Pool Advisory Committee was principally established by Council to ensure the Community's involvement and engagement in the agreed "safety works" undertaken by Council for and on behalf of the Department of Sustainability and Environment, following the reinstatement of Public Liability insurance for the Pool. Following the completion of this work the Committee has not been very active. Further, with the creation of a Master Plan for the Reserve in which the Pool resides it is proposed that the ongoing management of the Pool will be better addressed within this Master Plan.

Report

A meeting of the Hepburn Pool Advisory Committee was arranged for 9 October 2008. No business was able to be transacted at this meeting due to lack of a quorum. Only 1 committee member, apart from the Chair and the Manager Organisational Development attended the meeting and that member arrived some 30 minutes after the due starting time of 7 pm.

This meeting was the first to be arranged since April 2007.

The Advisory Committee was established in late 2006, with an initial period of 3 years to:

"To advise Council in its role as Committee of Management of the Hepburn Pool on the implementation of the recommendations made by Lynne Haultain in her report to immediately improve the safety of the site within the budgeted amount provided by the Department of Sustainability and Environment.

To continue discussion of improvements and on-going management, and use of the site."

The Committee was active in successfully fulfilling the first part of its terms of reference. The work to improve the "safety of the site" was formally completed in early September 2007. The works have greatly improved the view and amenity of the site

In Council's Capital Works Budget for 2008 – 09, provision has been made for the development of a Management Plan for the Hepburn Mineral Springs Reserve. The Pool is an integral part of the Reserve and as such, it is proposed that the Plan is ideally situated to address the second part of the terms of reference for the Hepburn Pool Advisory Committee.

Recommendation

That Council:

- 6.1.1 Advise the Hepburn Pool Advisory Committee that it will be "wound up"
- 6.1.2 Formally thank the Committee members for their contribution
- 6.1.3 Address as an integral component of the proposed Management Plan for the Mineral Springs Reserve, the "ongoing management and use:

6. COUNCIL AS COMMITTEE OF MANAGEMENT OF CROWN LAND

Moved the Officer's Recommendation

Moved: Cr Bill McClenaghan

Seconded: Cr Heather Mutimer

Carried.

6. COUNCIL AS COMMITTEE OF MANAGEMENT OF CROWN LAND

6.2 WOMBAT HILL BOTANIC GARDENS KIOSK LEASE

(A/O – Manager Governance & Information)

File Ref: 5/1330/01950

Introduction

Council recently resolved to proceed to prepare specifications for the leasing of the Wombat Hill Botanic Gardens kiosk area. A Tender Brief has been prepared and attached to this report which encompasses the former curator's residence and Council is being asked to proceed to seek tenders for the lease and management of this facility. Any proposed lease will have to conform to the recommendations from the Conservation Management Plan developed for this Reserve.

Report

In 2007 a Conservation Management Plan was developed for the Wombat Hill Botanic Gardens which encompasses the Curator's Residence. The plan asserts that the Curator's residence is of cultural significance to the gardens and that there are in fact two particular elements of primary significance, which are:

- A tradition of a Curator's Residence located in the Gardens; and
- A tradition of providing refreshments in the Gardens

The plan also states that:

"With the great expansion in recreational garden-visiting over the past decade, the Gardens' fine and nationally significant tree collection, historic association with the spas and health resorts, heritage and geological interest, and great natural beauty, mark the Gardens as a readily promotable tourist destination. A small investment in capital works, reliable provision of refreshments on-site, interpretation and aggressive marketing are all that would be initially required."

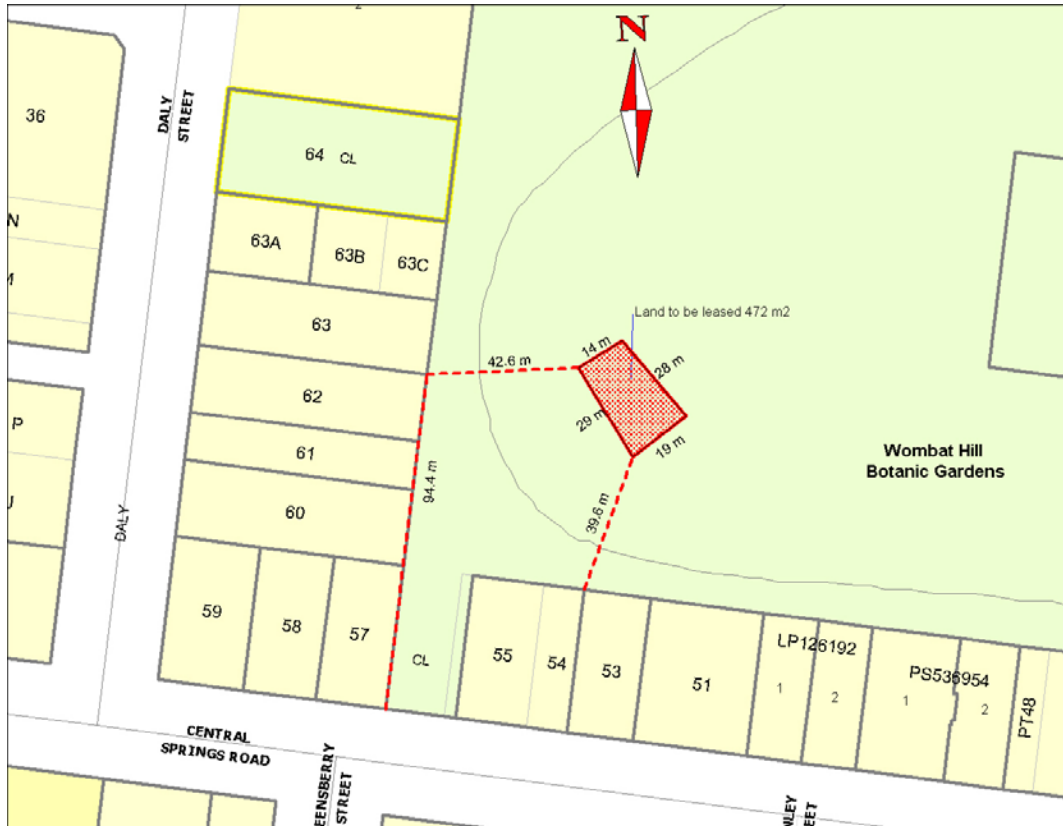
It is apparent from the Conservation Management Plan that the Wombat Hill Botanic Gardens have the potential to become an iconic tourist attraction and that the existence of a Curator's Residence and the provision of refreshments are two factors that will contribute to the Cultural Significance and tourism attractiveness of the gardens.

It is also evident that there is cultural significance in maintaining the Curator's residence. Like any asset that needs to be maintained, it would be beneficial to generate some return on investment to pay for the maintenance costs.

While the Conservation Management Plan does not specifically state that refreshments must to be sold from the Curator's residence, it would seem to be the ideal location, situated close to the lawn areas, the new toilet block and business revenue could help offset the cost of preserving this asset into the future. This area has been used as a kiosk facility in the past, and is generally referred to as the Wombat Hill Kiosk area. The area encompasses the former curator's residence, the under cover area adjoining the residence and the fenced garden area to the rear of the building.

The area that will be subject to any proposed lease is shown on the map below.

6. COUNCIL AS COMMITTEE OF MANAGEMENT OF CROWN LAND



The next move for Council is to put out a request for tenders for the leasing of the Curator's Residence and provision of refreshments to the visitors to the gardens. The Wombat Hill Botanic Gardens Reserve is Crown Land of which Council is the Committee of Management. As such DSE has consented that Council may lease out the premises for up to 21 years. It is proposed that Council seek tenders for a lease of this duration. (**Attachment No. 4**).

The Curator's Residence requires some cosmetic work and refurbishment to be undertaken before the premises could be used. In addition to this, within the lifecycle of the proposed lease, there would need to be some structural maintenance on the building.

It is proposed that through offering a 21 year lease that Council may attract tender proposals that encompass a base rent and a commitment to invest capital into the redevelopment / refurbishment of the premises, thus relieving Council of any financial burden associated with maintenance / renovation of this building for the next 21 years.

Relevant Policies / Council Plan implications

Wombat Hill Botanic Gardens Conservation Management Plan

Community / Engagement / Communication / Consultation

A Tender Advertisement will be placed in The Age, The Ballarat Courier and the Hepburn Shire Advocate newspapers.

6. COUNCIL AS COMMITTEE OF MANAGEMENT OF CROWN LAND

Financial & Resource Implications Initial & Ongoing

There are no direct financial implications from the process of calling for Tenders, other than the cost of advertisement. However, financial implications will arise if council resolves at the end of the tender process to award a lease.

Recommendation:

That Council:

6.2.1 *Proceed to call for Tenders for the leasing of the Wombat Hill Botanic Gardens Kiosk Area which includes the former Curator's Residence for a period of up to 21 years.*

Moved the Officer's Recommendation

Moved: Cr Bill McClenaghan

Seconded: Cr Janine Booth

Carried.

7. COUNCIL SECTION 86 AND ADVISORY COMMITTEES

No reports at time of collating Agenda.

8. STATUTORY

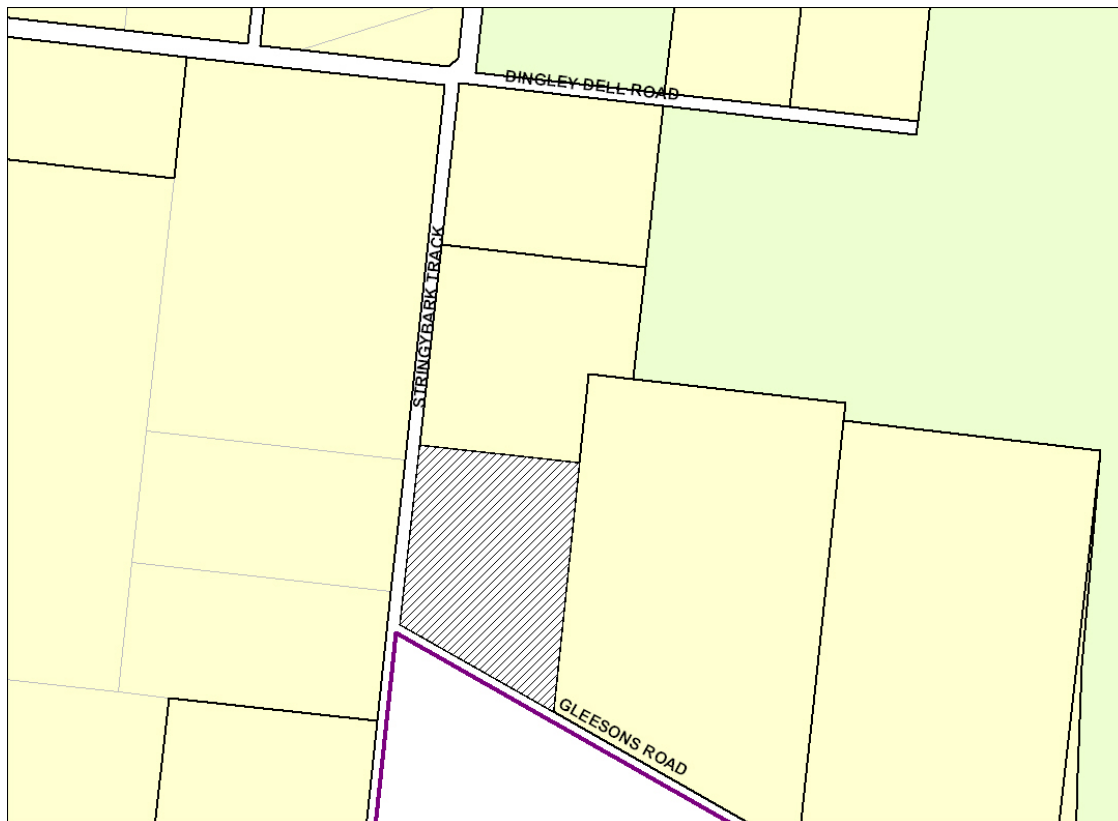
8.1 PLANNING APPLICATION NO. 2008/9853, PROPOSED: CONSTRUCTION OF A DWELLING – DINGLEY DELL ROAD, MOLLONGHIP

(A/O – Planning Officer 3)

File Ref: 3/2040/04790/P

Synopsis

Applicant:	Mr Sam Thompson
Location:	Dingley Dell Road, Mollonghip Lot 1 PS 218586 PSH PDE
Proposal:	Construction of a Dwelling
Zoning:	Farming Zone – FZ – Area 2
Overlay Controls:	ESO1, WMO
No of Objections received	Nil
Recommendation	Refusal to Grant a Permit



8. STATUTORY

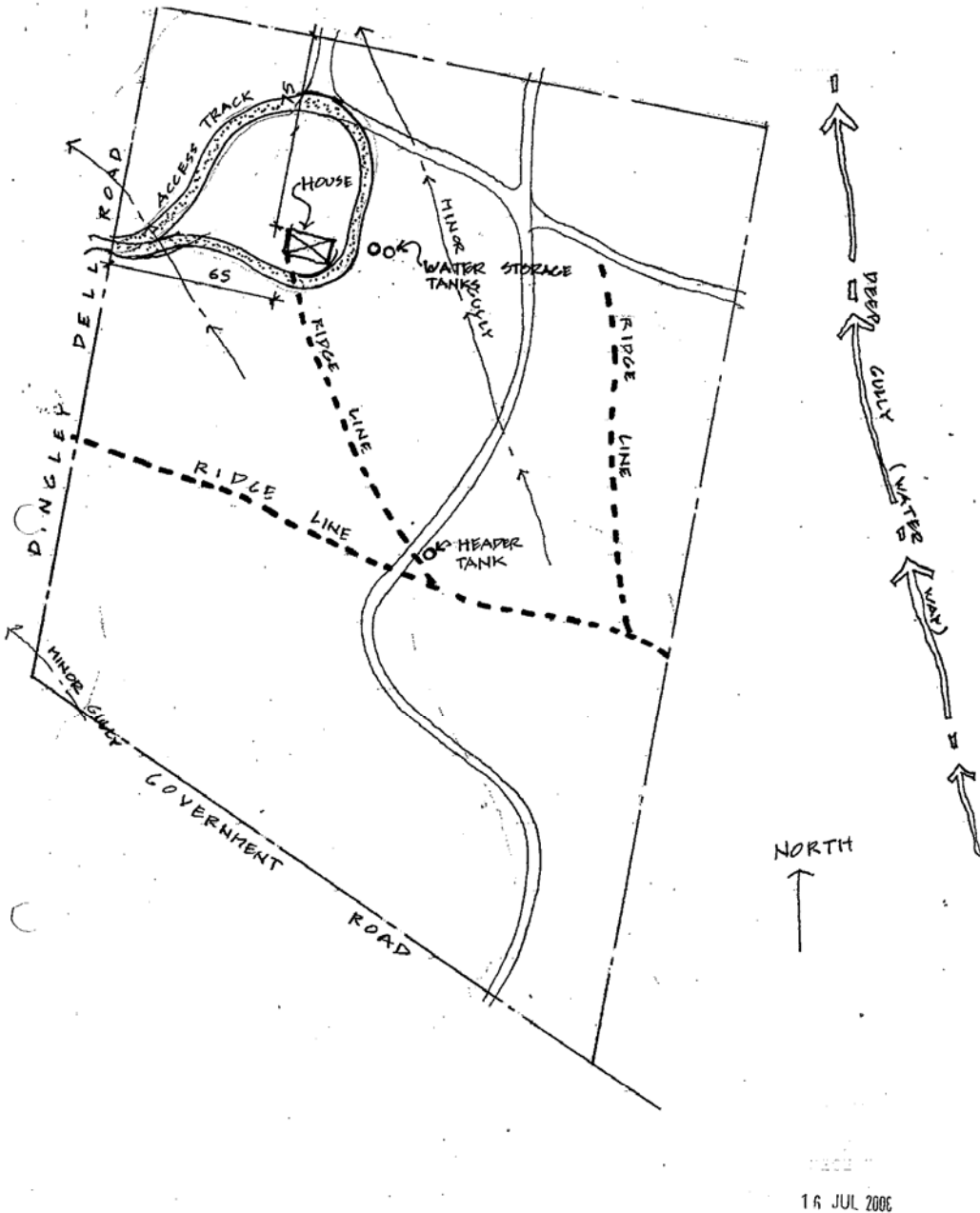


FIGURE 3 PROPOSED SITE PLAN

APPLICATION FOR ROCKMAN, MOLLINGHIP

DATE JULY 2008

SCALE 1 : 2000

8. STATUTORY

INTRODUCTION

A planning application was submitted to Council for the construction of a dwelling on 16th July 2008.

PROPOSAL

It is proposed to construct a three (3) bedroom single story weatherboard dwelling on an allotment fronting Dingley Dell Track, Mollonghip. The lot totals 8.094 hectares.

Access to the lot is gained via Dingle Dell Track; an all weather yet unsealed access road. The proposed dwelling measures 14.90 metres by 8.90 metres; is located approximately 75 metres from the northern boundary and approximately 65 metres from the western boundary which provides access to the lot.

To the west of the subject site there is a large land holding of approximately 240 hectares. This lot is used for agriculture. Much of the land to the west of the subject site is used for agriculture. Immediately adjoining the subject site to the east is a lot of 24.68 hectares with an existing dwelling.

REFERRAL AUTHORITIES

Section 55 Referral

Goulburn-Murray Region Water Corporation (GMW): No objection subject to conditions

CFA: No objection subject to conditions

Section 52 Referral

Nil

REFERRAL WITHIN COUNCIL

Environmental Health Officer: No objection subject to conditions

Engineering: No conditions.

ADVERTISING/NOTICE OF APPLICATION

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.

The notification has been carried out correctly. Council has received no objections.

Relevant Policies / Council Plan implications:

N/A

STATE PLANNING POLICY FRAMEWORK (SPPF)

Clause 15.01 Protection of catchments, waterways and groundwater

The objective of this clause is to assist in the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

A land capability assessment was submitted with the application and a referral was sent to GMW and the Environmental Health Department; both did not object.

8. STATUTORY

The application meets the objectives of this clause.

Clause 15.07 Protection from Wildfire

The objective of this clause is to assist in the minimisation of risk to life, property, the natural environment and community infrastructure from wildfire.

The applicant has demonstrated that all fire fighting measures have been incorporated into the proposal. The application was submitted to the CFA for comment. The CFA did not object to the proposal subject to conditions being placed on the permit.

The application meets the objectives of this clause.

Clause 17.05 Agriculture

The objective of this clause is to ensure that the state's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive farmland. Permanent removal of agricultural land must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors.

The applicant has not demonstrated that the construction of a dwelling is needed to reasonably support any agricultural activity being undertaken on the land. The applicant has not proposed any form of agricultural use for the property. The development of a dwelling may lead to a permanent land use shift away from agricultural use.

The application fails to meet the objectives of this clause.

LOCAL PLANNING POLICY FRAMEWORK (LPPF)

Clause 21.08 Rural Land Use and Agriculture

The key issues of this clause are:

- Rural land provides an attractive landscape and environmental setting in many parts of the Shire.
- Protection of high quality agricultural land from encroachment of urban land uses.
- Maintenance of rural land holdings with a potential for productive agricultural uses, including new and emerging rural enterprises.
- Lifestyle preferences including rural living opportunities changing the traditional agricultural potential of large rural areas of the Shire and leading to fragmentation of productive agricultural land.
- Scattered and unplanned rural living development needs to be managed and an adequate supply of 'rural residential' land provided, according to demand and supply projections, to avoid loss of productive agricultural land to non-productive land use.

This proposal seeks to allow a dwelling on a small rural allotment. No agricultural use has been proposed. There is an adequate supply of rural residential land elsewhere in the shire available for lifestyle dwellings. This development will result in a permanent change in land use leading to an unplanned rural living development.

The application fails to meet the objectives of this clause.

Clause 22.01 Catchment and Land Protection

The development of dwellings was submitted with consideration on the effect of wastewater on the environment and waterways. A land capability assessment was

8. STATUTORY

submitted with the application and a referral was sent to GMW and the Environmental Health Department; both did not object.

The application meets the objectives of this clause.

Clause 22.04 Rural Land

The objectives of this clause relevant to this application are:

- To prevent the unsustainable use of agricultural land which results in the loss of the quantity and quality of natural resources and limits the realisation of its full productive potential.
- To provide for the erection of dwellings on rural lots where associated with and required to support a productive agricultural enterprise.
- To ensure that the use and development of land does not conflict with adjoining and nearby land uses.

This proposal fails to meet the objectives of this clause as the development of a dwelling for residential purposes may lead to the removal of that land from achieving its full agricultural potential.

The proposal has not demonstrated any agricultural use of the lot therefore the dwelling is not reasonably required to support a productive agricultural enterprise.

The proposed use of this land for the development of a dwelling, conflicts with the purpose of the zone and adjoining land uses which includes grazing, cropping and other agricultural uses.

The application fails to meet the objectives of this clause.

ZONE AND OVERLAY PROVISIONS

Clause 35.07-1 Farming Zone – Section 2 Use

A planning permit is required on this lot in this instance as the lot must be at least 40ha to be able to develop a dwelling as of right under the provisions of the Hepburn Planning Scheme. The applicant must be able to show that the development can meet the requirements of Clause 35.07-2. In this instance the applicant can provide this assurance.

Before deciding on an application to construct or carry out works the Responsible Authority must consider general issues, agricultural issues, dwelling issues, environmental issues and design and siting issues as described in Clause 35.07-6 of the Farming Zone.

An application for the use of a lot for a dwelling in the Farming Zone must be accompanied by a written statement describing how the proposed dwelling responds to the decision guidelines for dwellings in the zone:

Whether the dwelling will result in the loss or fragmentation of productive agricultural land.

The applicant has not proposed any form of agricultural use for the property. The development of a dwelling will result in the loss and fragmentation of productive agricultural land.

Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.

8. STATUTORY

The applicant did not provide justification that a dwelling is reasonably required for the operation of an agricultural activity on the land. No agricultural use has been proposed.

Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to noise, dust, odour, use of chemicals and farm machinery, traffic and hours of operation.

The dwelling may potentially be affected by agricultural uses in the surrounding area. There are large land holdings to the west of the subject site where cropping and grazing occurs and to the east more cropping. These properties are approximately 650-700 metres away however expansion of these properties is possible which may create land use conflicts in the future.

Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural activities.

The dwelling may limit the expansion of any property adjoining this lot due to permanent land use change. All land abutting the subject lot is zoned Farming zone. Expansion of existing agricultural holdings is possible.

The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

There is the potential for a proliferation of dwellings in the area if this development is approved. The approval of this lot may provide justification for the development of similar lots in the area. Increased land values through the approval for dwellings on Farming Zone lots may provide incentive for further requests for the use and development of lots in the area for rural residential dwellings.

The development of dwellings may also limit the expansion of existing agricultural properties. Land located to the north east of the subject lot is crown land therefore the opportunity for existing agricultural properties to expand is already limited. Allowing unplanned development would further limit the possibility for expansion.

This proposal is not supported under the provisions of the Farming Zone as it will not support and enhance agricultural production and may permanently remove land from agricultural production, possibly leading to further and fragmented loss of agricultural land.

Clause 42.01-2 Environmental Significance Overlay 1 (ESO1)

The application for the development of a dwelling is in an unsewered area of the shire therefore the ESO1 triggers the need for a planning permit. The main concerns in relation to protecting the proclaimed catchment area are:

8. STATUTORY

- To protect the quality of domestic water supplies within the shire.
- To maintain and enhance the quality and quantity of water within watercourses.
- To prevent erosion of banks and streambeds and saltation of watercourses.
- To prevent pollution of water bodies, streams and water storages.

The applicant has supplied a Land Capability Assessment (LCA) with the application. The purpose of the LCA is to provide evidence that all waste water from the proposed dwelling can be treated and retained onsite.

The application was referred to Council's Environmental Health Officer and Goulburn-Murray Water for comment. The referral authorities recommended that with appropriate conditions they had no objections to the proposal.

Given the referral responses and the recommendations provided with the LCA, it is deemed that the proposed development of a dwelling meets the objectives of the ESO1 as listed above.

Clause 44.06-1 Wildfire Management Overlay

A permit is required for building and works on a lot with this overlay control. When proposing a development of a dwelling in this overlay one must ensure that development satisfies the specified fire protection objectives and does not significantly increase the threat to life and surrounding property from wildfire.

The applicant completed a wildfire management declaration and the application was referred to the CFA for comment. The CFA were satisfied that with appropriate conditions the risk posed by wildfire can be mitigated.

The application meets the objectives of this clause.

ASSESSMENT

The applicant advised Council in their opinion the Farming Zone does not suit the subject site as the site is heavily vegetated.

The lot adjoining the subject site to the east was granted a planning permit (PA 2003/7042) for the use and development of the land for a dwelling, workshop and 1.5ml dam associated with a rural activity – seed collection and cultivation. The lot is as heavily vegetated as the lot subject to this application. While traditional forms of agriculture such as grazing and cropping may not be possible on this site (unless clearing was to occur) other innovative forms of agriculture are possible as demonstrated on the adjoining lot. One of the strategies of Clause 21.08 Agriculture of the Hepburn Planning Scheme is to:

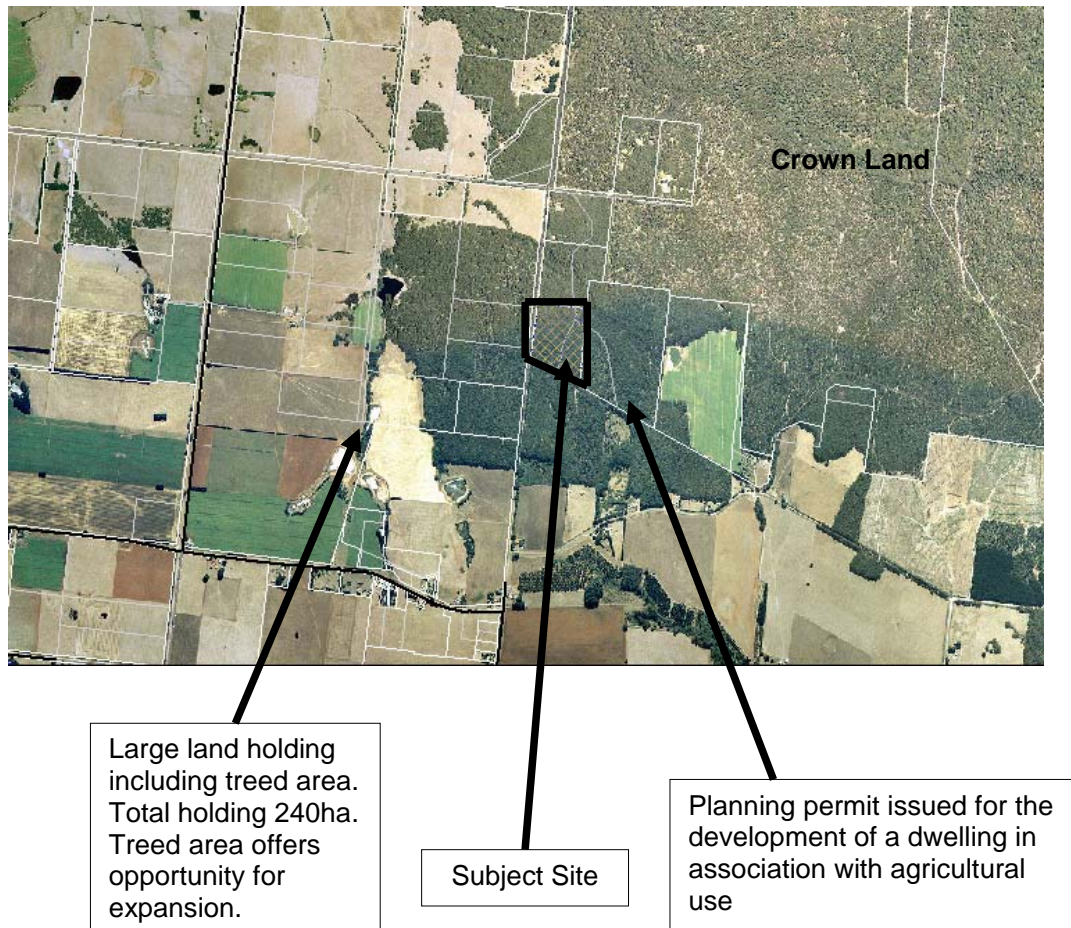
“promote the potential for new and innovative rural enterprises, including appropriate local value adding activity”.

An alternative/innovative agricultural use would support this strategy.

The lot further to the east is also used for an agricultural use, cropping. The land holding to the west totalling approximately 240 hectares is used for agriculture, including cropping and grazing. This land use in this area is predominantly an agricultural use. The use of the land for rural residential dwellings could shift this use.

8. STATUTORY

The aerial view below shows the house site and surrounding land uses. To the west large agricultural holdings use the land for cropping and grazing. Similarly vegetated properties to the subject site have planning permits for dwellings in association with innovative agricultural uses. Land located to the north and north east is crown land/forest reserve.



The applicant has not submitted any grounds that the dwelling is reasonably required in conjunction with an agricultural use of the land. A further information letter was sent to the applicant on 1st August 2008 advising that in its current form the proposal may not be in accordance with the purpose or intent of the Hepburn Planning Scheme's strategic framework including the following clauses:

- Clause 17.05 - Agriculture - to ensure that the State's agricultural base is protected from the unplanned loss of productive agricultural land.
- Clause 22.04 - Rural Land – To prevent the unsustainable use of agricultural land which results in the loss of the quantity and quality of natural resources and limits the realisation of its full productive potential.
- Clause 35.07 – Farming Zone – The proposal has not adequately addressed the decision guidelines at Clause 35.07-6 and does not appear to meet the purpose of the zone.

8. STATUTORY

The applicant was advised in the further information request sent 1st August 2008 that the proposal was not supported by the planning scheme in the Farming Zone and offered the opportunity to withdraw the application with a refund.

The applicant was advised if they would like to proceed with the application the following further information would be required:

- Notification that they would proceed with the application as it is.

Or

1. A detailed analysis (ie written statement) which demonstrates that the proposal is consistent with all the relevant elements of State and Local planning policy contained in the Hepburn Shire planning scheme. In particular the policies listed above.
2. A written statement addressing each of the following decision guidelines of the Farming Zone – Clause 35.07-5:
 - Whether the dwelling will result in the loss or fragmentation of productive agricultural land
 - Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land
 - Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation
 - Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses
 - The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

On the 13th August 2008 a meeting was held at council's Duke Street office between the Council Officer assessing the application and the applicant. Again the applicant was advised that in its current form the application was unlikely to receive officer support and would be recommended for refusal.

The applicant responded to the further information letter on 3rd September 2008 advising that they believe the Farming Zone is not suited to the site. It is the applicant's intention to carry out weed control and land management, improving the biodiversity of the area. The applicant did address the decision guidelines of the Farming Zone, however still does not propose any form of agricultural use of the lot therefore a dwelling cannot be reasonably required on the lot.

Notwithstanding the ability of the lot to treat wastewater and compliance with wildfire protection, the grant of a permit for a dwelling has no strategic justification. As such, there is no planning merit for allowing the use and development of land for a dwelling in a Farming Zone in this locality.

Community / Engagement / Communication / Consultation:

Community consultation was not undertaken.

Financial & Resource Implications Initial & Ongoing

Financial implication resulting from a VCAT review.

8. STATUTORY

Recommendation:

That Council having caused notice of Planning Application No. 2008/9853 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to Refuse to Grant a Permit under the provisions of Clause 35.07-1 of the Hepburn Planning Scheme in respect of the land known and described as Dingley Dell Road, Mollongghip, Lot 1 PS 218586 PSH PDE, for the development of a dwelling in accordance with the attached plans, with the application dated 16th July 2008 for the following reasons:

- 1 *The application does not meet the objectives of Clause 35.07-6 of the Farming Zone.*
- 2 *The application failed to demonstrate that a dwelling is reasonably required on the land.*
- 3 *The application may lead to a loss of agricultural land and may lead to a proliferation of dwellings in the farming zone.*
- 4 *Clause 17.05 – Agriculture
The application fails to meet the objectives of this clause.*
- 5 *Clause 21.08 Rural Land Use and Agriculture
The application fails to meet the objectives of this clause.*
- 6 *Clause 22.04 Rural Land
The application fails to meet the objectives of this clause.*

MOTION MOVED AT MEETING:

Item 8.1

PLANNING APPLICATION NO. 2008/9853, PROPOSED: CONSTRUCTION OF A DWELLING – DINGLEY DELL ROAD, MOLLONGGHIP

Motion:

That Council having caused notice of Planning Application No. 2008/9853 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to Grant a Permit under the provisions of the Hepburn Planning Scheme in respect of the land known and described as Dingley Dell Road, Mollongghip, Lot 1 PS 218586 PSH PDE, for the development of a dwelling in accordance with the attached plans, with the application dated 16th July 2008 and subject to the following conditions:

1. LAYOUT NOT ALTERED

8. STATUTORY

The *use and/or* development as shown on the endorsed plans must not be altered.

2. GOULBURN-MURRAY REGION WATER CORPORATION:

- 2.1** All wastewater from the proposed dwelling must be treated to a standard of at least 20mg/L BOD and 30mg/L suspended solids using a package treatment plant or equivalent. The system must be EPA approved and installed, operated and maintained in accordance with the relevant EPA Code of Practice and Certificate of Approval. Depending on the system installed a reliable source of power must be provided to the satisfaction of the council's Environmental Health Department.
- 2.2** The wastewater disposal area must be located at least 100 metres from the nearest waterway and must be appropriate to the slope of the land and soil constraints.
- 2.3** The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.

Notation: Application must be made to Goulburn-Murray Water prior to construction of any dams on the subject land. A licence must be obtained where surface or groundwater supplies are taken and used for commercial irrigation purposes or if a dam is to be constructed on a waterway as defined under the Water Act 1989. For further information, the applicant should contact Goulburn-Murray Water Diversion Operations on (03 5833 5740).

3. COUNTRY FIRE AUTHORITY CONDITIONS

Water Supply Requirements

A static water supply, such as a tank, must be provided.

A static water supply, must meet the following requirements:

- A minimum of 10,000 litres on-site static storage must be provided on the lot and be maintained solely for fire fighting.
- The water supply must be within 60 metres of the dwelling.
- Fire brigade vehicles must be able to get to within four metres of the water outlet;

The water supply should be readily identifiable from the building or appropriate signage (see Appendix A: Figure 1) must point to water supply. All below-ground water pipelines must be installed to the following depths:

- subject to vehicle traffic : 300 mm
- under houses or concrete slabs : 75 mm
- all other locations : 225 mm
- all fixed above-ground water pipelines and fittings, including water supply, must be constructed of non-corrosive and non-combustible materials or protected from the effects of radiant heat and flame.

If the static water supply is above ground, the following additional standards apply:

- All above-ground static water supply must provide at least one 64 mm. 3 thread/25 mm x 50 mm nominal bore British Standard Pipe (BSP), round male coupling (see Appendix A : Figure 2).
- All pipework and valving between the water supply and the outlet must be no less than 50 mm nominal bore.
- If less than 20 metres from the building, each outlet must face away from the building to allow access during emergencies.

Access Requirements

8. STATUTORY

Access to the dwelling must be designed to allow emergency vehicles access. The minimum design requirements are as follows:

- curves in driveway must have a minimum radius of 10 metres;
- the average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 metres.
- dips must have no more than a 1 in 8 (12.5%) (7.1 degrees) entry and exit angle.

If the driveway from the road to the dwelling and water supply, including gates, bridges and culverts, is greater than 30 m long, the driveway:

- must be designed, constructed and maintained for a load limit of at least 15 tonnes,
- be all weather construction; and
- must provide a minimum trafficable width of 3.5 metres, and
- be clear of encroachments 4 metres vertically (see Appendix A : Figure 3).

If the driveway is longer than 100 metres, a turning area for fire fighting vehicles close to the dwelling must be provided by either:

- a turning circle with a minimum radius of 8 metres; or
- the driveway encircling the dwelling; or
- a "T" head or "Y" head with a minimum formed surface of each leg being 8 metres in length measured from the centre point of the head, and 4 metres trafficable width (see Appendix A: Figure 4).
- If the length of the driveway is greater than 200 metres, passing bays must be provided. Passing bays must be 20 metres long and must be provided every 200 metres, with a trafficable width of 6 metres (see Appendix A: Figure 5).

Vegetation Management Requirements:

The wildfire management plan (10/10/2008) must be endorsed as part of the Permit.

The vegetation management areas as indicated on the wildfire management plan be maintained to the following standard.

Inner zone:

A distance of 10 metres around the proposed dwelling or property boundary (whichever is the lesser) must be maintained to the following requirements during the declared "Fire Danger Period" to the satisfaction of the Responsible Authority:

- Grass must be no more than 100 mm in height
- Leaf litter must be less than 10 mm deep
- There must be no elevated fuel on at least 50% of the area. On the remaining 50% the elevated fuel must be at most, sparse, with very little dead material.
- Dry native shrubs must be isolated in small clumps more than 10 m away from the dwelling.
- Trees must not overhang the roofline of the dwelling.

Outer Zones:

Vegetation in outer zones, as specified in the wildfire development plan must be maintained to the following requirements during the declared 'Fire Danger Period' to the satisfaction of the Responsible Authority.

- Grass must be no more than 100 mm in height.
- Leaf litter must be less than 20 mm deep.
- There must be no elevated fuel on at least 50% of the outer zone area.
- Clumps of dry native shrubs must be isolated from one another by at least ten metres.

8. STATUTORY

NOTE: Non-flammable features such as tennis courts, swimming pools, dams, patios, driveways, or paths should be incorporated into the vegetation management plan, especially on the north and western sides of the proposed building. Features with high flammability such as coir doormats and firewood stacks should not be located near the dwelling during the Fire Danger Period.

Note: For Category of Bushfire Attack

The land is in a bushfire prone area designated under regulation 804 of the Building Regulations 2006. Medium forest, tall forest or shrub and heath is the predominant vegetation within 100 metres of the proposed dwelling, which corresponds to a high category of bushfire attack under AS 3959.

4. ENVIRONMENTAL HEALTH CONDITIONS

4.1 An application to install a septic tank system must be submitted prior to any works commencing.

4.2 An EPA approved Aerobic Wastewater Treatment System capable of achieving the 20/30 standard must be installed in accordance with the Septic Tanks Code of Practice.

4.3 The effluent disposal field must be located in an area that is able to satisfy minimum setbacks from dams and waterways. A 60m setback must be satisfied from any proposed or existing dams and 100m from declared waterways.

5. TIME FOR STARTING AND COMPLETION

This permit will expire if one of the following circumstances applies:

- The development *and use is/are* not started within *two* years of the date of this permit.
- The development is not completed within *four* years of the date of this permit.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

Moved: Cr Janine Booth
Seconded: Cr Bill McClenaghan
Carried.

Cr Mutimer requested that her dissent be recorded.

8. STATUTORY

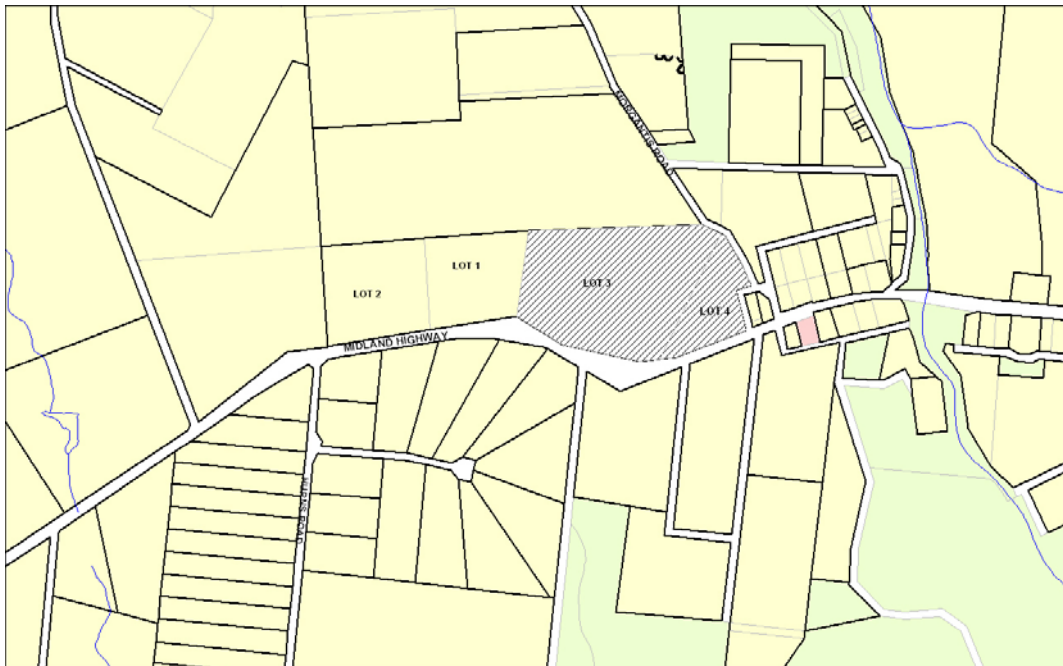
8.2 PLANNING APPLICATION NO. 2008/9856, PROPOSED BOUNDARY REALIGNMENT AND THE DEVELOPMENT OF A DWELLING ON EACH LOT (LOTS 3 & 4) AT 3681 MIDLAND HIGHWAY, EGANSTOWN

(A/O – Planning Officer 3)

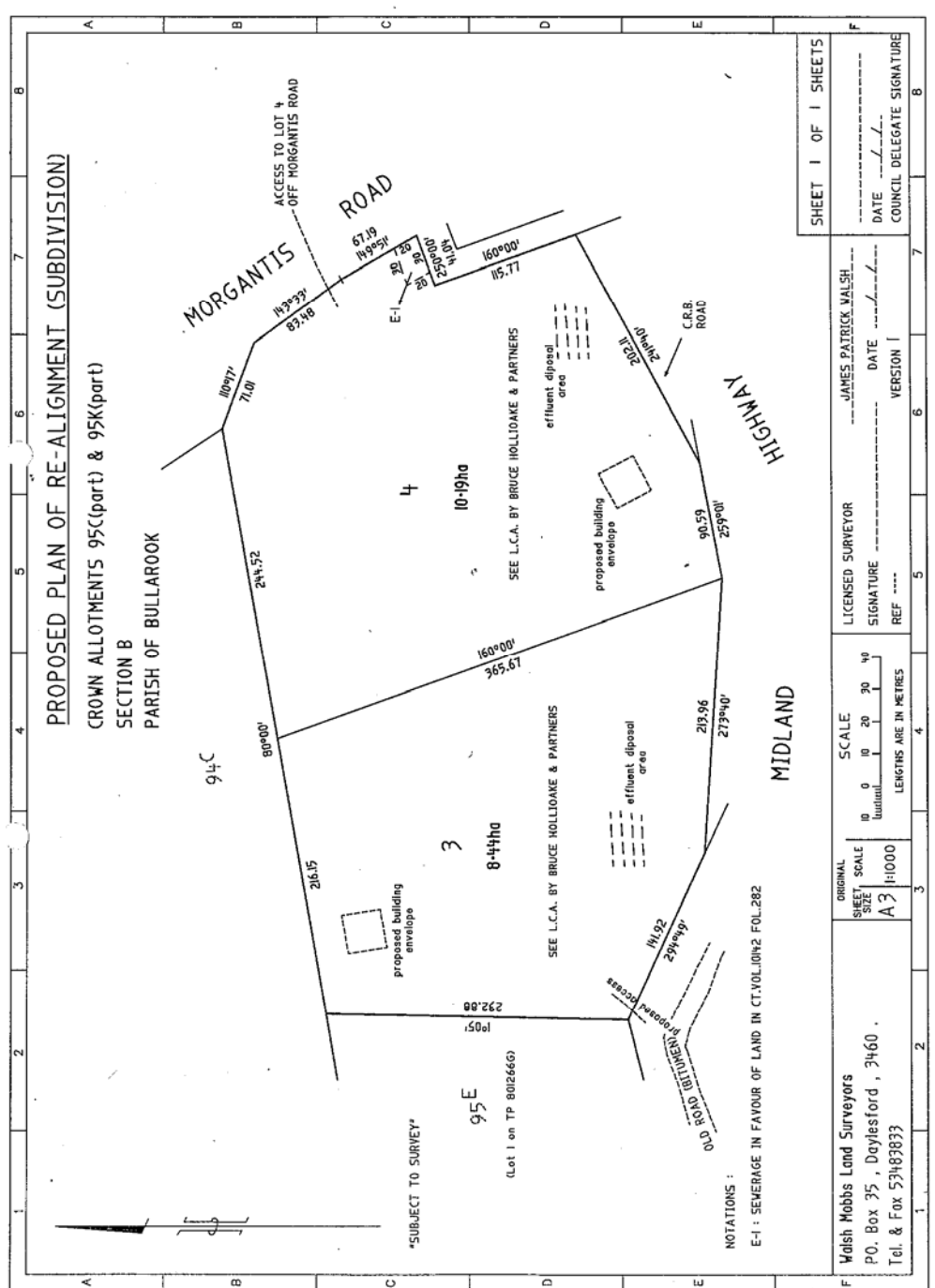
File Ref: 3/4630/00593/P

Synopsis

Applicant:	Mr James Walsh
Location:	3681 Midland Highway, Eganstown Lot 3 and 4 TP 8012066 Parish of Bullarook
Proposal:	Boundary Re-alignment and Construction of a Dwelling on each lot
Zoning:	Farming Zone – FZ – Area 2
Overlay Controls:	ESO1, WMO
No of Objections received	One
Recommendation	Refusal to Grant a Permit



8. STATUTORY



ORIGINAL SCALE		SCALE		SHEET 1 OF 1 SHEETS	
1:1000	A3	1:1000	A3	LICENSED SURVEYOR	JAMES PATRICK WALSH
SHEET SIZE		LENGTHS ARE IN METRES		SIGNATURE	DATE
A3		10 0 10 20 30 40		REF	VERSION 1
Wolsh Mobbs Land Surveyors				DATE	COUNCIL DELEGATE SIGNATURE
P.O. Box 35, Doylestord, 31460					
Tel. & Fax 52483833					

8. STATUTORY

Introduction

A planning application was submitted to Council for boundary realignment and the development of a dwelling on each lot on 17th July 2008.

Proposal

It is proposed to realign the boundary of two Farming zone lots and construct a dwelling on each lot. Both lots front the Midland Highway, Eganstown.

The current lot sizes are; Lot 3 - 15.08 hectares and Lot 4 - 3.77 hectares. The proposal to realign the two lots would result in Lot 3 - 8.44 hectares and Lot 4 - 10.19 hectares.

These two lots are two of four allotments under one ownership. The total land holding in one ownership is approximately 32.20 hectares.

Access to Lot 3 is proposed via an access road leading on to the Midland Highway. The proposed building envelope on Lot 3 measures 12 metres by 12 metres. The building envelope is located approx 90 metres from the southern boundary which fronts the Midland Highway and 20 metres from the western boundary which adjoins a lot in the same ownership; and which is subject to a planning application for a dwelling on that lot (PA 2008/9858). The lot to the west of that is also subject to a planning permit by the same owner (PA2008/9857). All four lots are in one contiguous ownership and the owner is seeking approval for a dwelling on each lot.

Access to Lot 4 is proposed via Morgantis Road which leads directly on to the Midland Highway. The proposed building envelope on Lot 4 measures 12 metres by 12 metres. The building envelope is located approximately 8 metres from the southern boundary which fronts the Midland Highway and 33 metres from the western boundary which adjoins a lot in the same ownership and is part of this application.

To the north of the subject site is another lot containing a dwelling and the lot is approx 31.3 hectares. Grazing of cattle appears to be the predominant land use of these properties and of those further to the north. To the south of the Midland Highway is designated rural residential area with land zoned Rural Living zone.

REFERRAL AUTHORITIES

Section 55 Referral

Goulburn-Murray Water (GMW):	No objection subject to conditions
VICROADS:	No objection
CFA:	No response

Section 52 Referral

Nil

REFERRAL WITHIN COUNCIL

Environmental Health Officer:	No objection subject to conditions
Engineering:	No conditions.

8. STATUTORY

ADVERTISING/NOTICE OF APPLICATION

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land. The notification has been carried out correctly.

Council has received one objection. The main points of the objection are:

- Inadequate provision for non highway access to the property.
- House site and outbuildings need to be restricted on the lot to minimise flash flooding.
- Access to the objector's property is sub-optimal. Are there plans to integrate the access from this application with the objector?
- Need for some commercial development in this area not more houses. Daylesford is not within walking distance. Where is the servicing?

Relevant Policies / Council Plan implications:

N/A

STATE PLANNING POLICY FRAMEWORK (SPPF)

Clause 15.01 Protection of catchments, waterways and groundwater

The objective of this clause is to assist in the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

A land capability assessment was submitted with the application and a referral was sent to GMW and the Environmental Health Department; both did not object.

The application meets the objectives of this clause.

Clause 15.07 Protection from Wildfire

The objective of this clause is to assist in the minimisation of risk to life, property, the natural environment and community infrastructure from wildfire.

The applicant has demonstrated that all fire fighting measures have been incorporated into the proposal. The application was submitted to the CFA for comment. The CFA did not object to the proposal subject to conditions being placed on the permit.

The application meets the objectives of this clause.

Clause 17.05 Agriculture

The objective of this clause is to ensure that the state's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive farmland. Permanent removal of agricultural land must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors.

8. STATUTORY

The lot has been actively used for timber production in the past. Timber production is considered by definition of the scheme as a form of agricultural land use, commonly known as silviculture. Pine plantation timber was extracted from the site as little as four years ago demonstrating that the land is capable of a productive agricultural use.

The applicant has not demonstrated that the construction of a dwelling is needed to reasonably support any agricultural activity being undertaken on the land. The development of two dwellings on lots 3 and 4 may lead to a permanent land use shift away from agricultural use.

The application fails to meet the objectives of this clause.

LOCAL PLANNING POLICY FRAMEWORK (LPPF)

Clause 21.01-5 Key Towns and Settlements

This clause identifies a number of villages and settlements which serve a residential role, surrounded by rural land. Eganstown is mentioned as such a settlement. The land subject to this application sits on the outer fringe area of Eganstown Settlement; approx 2-2.5km from any notable settlement development in the Eganstown area. Land located across the Midland Highway to the south of the subject lot is zoned Rural Living Zone and thus presents a more appropriate location for development of dwellings on small rural allotments.

The development of a dwelling on lots 3 and 4 does not sit within a rural settlement.

Clause 21.08 Rural Land Use and Agriculture

The key issues of this clause are:

- Rural land provides an attractive landscape and environmental setting in many parts of the Shire.
- Protection of high quality agricultural land from encroachment of urban land uses.
- Maintenance of rural land holdings with a potential for productive agricultural uses, including new and emerging rural enterprises.
- Lifestyle preferences including rural living opportunities changing the traditional agricultural potential of large rural areas of the Shire and leading to fragmentation of productive agricultural land.
- Scattered and unplanned rural living development needs to be managed and an adequate supply of 'rural residential' land provided, according to demand and supply projections, to avoid loss of productive agricultural land to non-productive land use.

This proposal seeks to realign the boundaries of two adjoining lots to allow for the development of a dwelling on each lot. The same applicant seeks to develop a dwelling on each of the two allotments adjoining this lot. No agricultural use has been proposed for any of the applications. This will result in a permanent change in land use leading to an unplanned rural living development when land to the south has been provided for such a purpose. One purpose of the rural living zone is to allow for rural lifestyle properties in order to protect farm zone land from unplanned and unnecessary loss or permanent changes in land use.

The application fails to meet the objectives of this clause.

8. STATUTORY

Clause 22.01 Catchment and Land Protection

The development of dwellings was submitted with consideration on the effect of wastewater, on the environment and waterways. A land capability assessment was submitted with the application and a referral was sent to GMW and the Environmental Health Department; both did not object.

The application meets the objectives of this clause.

Clause 22.04 Rural Land

The objectives of this clause relevant to this application are:

- To prevent the unsustainable use of agricultural land which results in the loss of the quantity and quality of natural resources and limits the realisation of its full productive potential.
- To provide for the erection of dwellings on rural lots where associated with and required to support a productive agricultural enterprise.
- To ensure that the use and development of land does not conflict with adjoining and nearby agricultural uses.

This proposal fails to meet the objectives of this clause as the development of a dwelling for residential purposes may lead to the removal of that land from achieving its full agricultural potential. This land has been used for an agricultural use through timber production.

The proposal has not demonstrated any agricultural use of the lot therefore the dwelling is not reasonably required to support a productive agricultural enterprise.

The use of this land for the development of two dwellings, conflicts with the purpose of the zone and adjoining land uses which includes grazing.

The application fails to meet the objectives of this clause.

ZONE AND OVERLAY PROVISIONS

Clause 35.07-1 Farming Zone – Section 2 Use

A planning permit is required for boundary realignment on undersized lots in the farming zone. The subdivision must be a re-subdivision of existing lots and the number of lots must not be increased. The applicant must enter into a Section 173 agreement which ensures that the land may not be further subdivided. This agreement must be registered on title.

The development of a dwelling on Lots 3 and 4 require planning permission as each lot must be at least 40ha to be able to develop a dwelling as of right under the provisions of the Hepburn Planning Scheme. The applicant must be able to show that the development can meet the requirements of Clause 35.07-2. In this instance the applicant can provide this assurance.

Before deciding on an application to construct or carry out works the Responsible Authority must consider general issues, agricultural issues, dwelling issues, environmental issues and design and siting issues as described in Clause 35.07-6 of the Farming Zone.

8. STATUTORY

An application for the use of a lot for a dwelling in the Farming Zone must be accompanied by a written statement describing how the proposed dwelling responds to the decision guidelines for dwellings in the zone:

Whether the dwelling will result in the loss or fragmentation of productive agricultural land

Lots 3 and 4 have been used for a productive silviculture, a form of agricultural use – timber production. The larger holding in one ownership totals 32.20 hectares. The applicant has proposed to construct 4 dwellings on this total landholding. Each lot has a separate title. The development of a dwelling on each lot will result in the loss and fragmentation of productive agricultural land.

Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.

The applicant did not provide justification that a dwelling on each lot is reasonably required for the operation of an agricultural activity on the land. No agricultural use has been proposed. It is uncommon for the operation of large scale timber production/silviculture to need a dwelling to manage the site given the preference for off-site management.

Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to noise, dust, odour, use of chemicals and farm machinery, traffic and hours of operation.

The proposed dwellings may potentially be affected by agricultural uses in the surrounding area.

Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural activities.

The proposed dwellings may limit the expansion of any property zoned farming zone from the north, east or west.

The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

There is the potential for a proliferation of dwellings in the area if this development is approved. As mentioned the applicant has proposed a further two dwellings in addition to the two proposed in this application. The approval of this application may provide support for the development of the other contiguous two lots.

Increased residential density through a proliferation of dwellings along this stretch of the Midland Highway may cause detriment to the safe operation of the Midland Highway given its current alignment, speed limitation and vehicle access.

The development of dwellings may also limit the expansion of existing agricultural properties. The re-subdivision of the existing lots has no agricultural justification.

This proposal is not supported under the provisions of the Farming Zone as it will not support and enhance agricultural production and may permanently remove land from

8. STATUTORY

agricultural production, possibly leading to further and fragmented loss of agricultural land.

Clause 42.01-2 Environmental Significance Overlay 1 (ESO1)

The application for the development of two dwellings is in an unsewered area of the shire therefore the ESO1 triggers the need for a planning permit. The main concerns in relation to protecting the proclaimed catchment area are:

- To protect the quality of domestic water supplies within the Shire.
- To maintain and enhance the quality and quantity of water within watercourses.
- To prevent erosion of banks and streambeds and saltation of watercourses.
- To prevent pollution of water bodies, streams and water storages.

The applicant has supplied a Land Capability Assessment (LCA) with the application. The purpose of the LCA is to provide evidence that all waste water from the proposed dwelling can be treated and retained onsite.

The application was referred to Council's Environmental Health Officer and Goulburn-Murray Rural Water Corporation for comment. The referral authorities recommended that with appropriate conditions they had no objections to the proposal.

Given the referral responses and the recommendations provided with the LCA, it is deemed that the proposed development of a dwelling meets the objectives of the ESO1 as listed above.

Clause 44.06-1 - Wildfire Management Overlay

A permit is required for building and works on a lot with this overlay control. When proposing a development of a dwelling in this overlay one must ensure that development satisfies the specified fire protection objectives and does not significantly increase the threat to life and surrounding property from wildfire.

The applicant has demonstrated that all fire fighting measures have been incorporated into the proposal. The application was submitted to the CFA for comment. The CFA did not respond within the required timeframe, however given the CFA did not object to a similar proposal adjoining this application, should the permit be approved appropriate conditions could be placed on the permit to the satisfaction of the Responsible Authority.

The application meets the objectives of this clause.

ASSESSMENT

An aerial photo of the lots show that it has been previously used for timber production (Pine Plantation) See Lot 3 and 4 outlined below. A site visit of lots 3 and 4 by the Council Officer assessing this application confirmed that the lots appear to have been used for timber production and there is evidence of regrowth of pine trees on the lot. The applicant was advised in the planning application submission that the lot was used for a pine plantation and was harvested as recently as four years ago. A photo taken on a site visit confirms regrowth of pine trees on the lot.

8. STATUTORY



This aerial photo shows rows of pine plantation harvested four years ago. Timber production is an agricultural use allowable on the farming zone and promoted as a value added industry in the Hepburn Shire.

As mentioned the adjoining property to the west is subject to a planning application for a dwelling (PA 2008/9857) on lot 1 and another application for another dwelling further to the west of that lot (PA2008/9858) on lot 2. All four lots are in one ownership and all four lots appear to have been used for timber production in the past. There is evidence of the regrowth of pine trees on all four allotments.

The applicant has not submitted any grounds that the dwellings are reasonably required in conjunction with an agricultural use of the land. The application to use the lots for a dwelling was not accompanied with a written statement which explains how the proposed dwelling responds to the decision guidelines for dwellings in the zone. There was no justification for a boundary realignment.

A further information letter was sent to the applicant on 1st August 2008 advising that in its current form the proposal may not be in accordance with the purpose or intent of the Hepburn Planning Scheme's strategic framework including the following clauses:

- Clause 17.05 - Agriculture - to ensure that the State's agricultural base is protected from the unplanned loss of productive agricultural land.
- Clause 21.08 - Rural Land Use & Agriculture – to protect areas of high – very high quality agricultural land from non-complementary uses. (The subject site is designated as 'high quality' agricultural land.)
- Clause 22.04 - Rural Land – To prevent the unsustainable use of agricultural land which results in the loss of the quantity and quality of natural resources and limits the realisation of its full productive potential.
- Clause 35.07 – Farming Zone – The proposal has not adequately addressed the decision guidelines at Clause 35.07-6 and does not appear to meet the purpose of the zone.

The applicant was advised in the further information request sent 1st August 2008 that the proposal was not supported by the planning scheme in the Farming Zone and offered the opportunity to withdraw the application with a refund.

The applicant was advised if they would like to proceed with the application the following further information would be required:

3. A detailed analysis (ie written statement) which demonstrates that the proposal is consistent with all the relevant elements of State and Local planning policy contained in the Hepburn Shire planning scheme. In particular the policies listed above.
4. A written statement addressing each of the following decision guidelines of the Farming Zone – Clause 35.07-5:
 - Whether the dwelling will result in the loss or fragmentation of productive agricultural land.

8. STATUTORY

- Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.
 - Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.

 - Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
 - The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.
3. The proposed dwelling is in a Wildfire Management Overlay. As such, you are required to provide information demonstrating that all fire protection requirements have been considered and incorporated in your proposal. The booklet *Building in a Wildfire Management Overlay* applicant's kit is enclosed to assist you. I have included a copy of Clause 44.06, Wildfire Management Overlay for your convenience which explains the applicant requirements to be submitted with a planning application.

On the 5th August 2008 the applicant responded to the further information letter advising that they believe the additional information letter requested had been addressed in the original application submitted. The applicant did provide a Wildfire Management Declaration which was forwarded to the Country Fire Authority for comment.

Notwithstanding the ability of individual parcels of land to treat wastewater and compliance with wildfire protection, the grant of a permit for a dwelling has no strategic justification as land is available in proximity for rural residential purposes. As such, there is no planning merit for allowing the use and development of land for a dwelling in a Farming Zone in this locality.

Community / Engagement / Communication / Consultation:

Community consultation was not undertaken.

Financial & Resource Implications Initial & Ongoing

Financial implication resulting from a VCAT review.

8. STATUTORY

Recommendation:

That Council having caused notice of Planning Application No. 2008/9856 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to Refuse to Grant a Permit under the provisions of Clause 35.07-1 of the Hepburn Planning Scheme in respect of the land known and described as 3681 Midland Highway, Eganstown; Lot 3 and 4 TP 8012066 (Formerly CA 95E, Pt 95 C, 95E1, Pt 95K SEC b PSH PBK), for a boundary realignment and the development of a dwelling in accordance with the attached plans, with the application dated 17th July 2008 for the following reasons:

1. *The application does not meet the objectives of Clause 35.07-6 of the Farming Zone.*
2. *The application failed to demonstrate that a dwelling is reasonably required on the land.*
3. *The application may lead to a loss of agricultural land and may lead to a proliferation of dwellings in the farming zone.*
4. *Clause 17.05 – Agriculture
The application fails to meet the objectives of this clause.*
5. *Clause 21.08 Rural Land Use and Agriculture
The application fails to meet the objectives of this clause.*
6. *Clause 22.04 Rural Land
The application fails to meet the objectives of this clause.*

MOTION MOVED AT THE MEETING:

That Council having caused notice of Planning Application No. 2008/9856 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to issue of Notice of Decision to Grant a Permit under the provisions of the Hepburn Planning Scheme in respect of the land known and described as 3681 Midland Highway, Eganstown; Lot 3 and 4 TP 8012066 (Formerly CA 95E, Pt 95 C, 95E1, Pt 95K SEC b PSH PBK), for a boundary realignment and the development of a dwelling in accordance with the attached plans, with the application dated 17th July 2008 and subject to the following conditions:

1. PLANS REQUIRED

Before the *use and/or development* start(s), plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must show:

- a) *Floor and elevations of the proposed dwellings including finished materials and colours.*

8. STATUTORY

2. ENVIRONMENTAL HEALTH CONDITIONS

- 2.1 An application to install a septic tank system must be submitted prior to any works commencing.
- 2.2 An EPA approved Aerobic Wastewater Treatment System capable of achieving the 20/30 standard must be installed in accordance with the Septic Tanks Code of Practice.
- 2.3 The effluent disposal field must be located in an area that is able to satisfy minimum setbacks from dams and waterways. A 60m setback must be satisfied from any proposed or existing dams and 100m from declared waterways.
3. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity, gas and telecommunication services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
4. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.

5. SECTION 173 AGREEMENT

An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensures that the land may not be further subdivided so as to create a smaller lot for an existing dwelling. The agreement must be registered on title, and all costs of the agreement must be met by the land owners.

6. GOULBURN-MURRAY REGION WATER CORPORATION

- 6.1 All wastewater from the proposed dwelling must be treated to a standard of at least 20mg/L BOD and 30mg/L suspended solids using a package treatment plant or equivalent. The system must be EPA approved and installed, operated and maintained in accordance with the relevant EPA Code of Practice and Certificate of Approval.
- 6.2 The wastewater disposal area must be located at least 100 metres from the nearest waterway (as measured from the bank or the normal high water mark if there is no bank.)
- 6.3 The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.

Notation: Application must be made to Goulburn-Murray Water prior to construction of any dams on the subject land. A licence must be obtained where surface or groundwater supplies are taken and used for commercial irrigation purposes or if a dam is to be constructed on a waterway as defined under the Water Act 1989. For further information, the applicant should contact Goulburn-Murray Water Diversion Operations on (03 5833 5740).

7. COUNTRY FIRE AUTHORITY

Water Supply Requirements

A static water supply, such as a tank, must be provided.

8. STATUTORY

AND

A static water supply, must meet the following requirements:

- A minimum of 10,000 litres on-site static storage must be provided on the lot and be maintained solely for fire fighting.
- The water supply must be within 60 metres of the dwelling.
- Fire brigade vehicles must be able to get to within four metres of the water outlet;

The water supply should be readily identifiable from the building or appropriate signage (see Appendix A: Figure 1) must point to water supply. All below-ground water pipelines must be installed to the following depths:

- subject to vehicle traffic : 300 mm
- under houses or concrete slabs : 75 mm
- all other locations : 225 mm
- all fixed above-ground water pipelines and fittings, including water supply, must be constructed of non-corrosive and non-combustible materials or protected from the effects of radiant heat and flame.

If the static water supply is above ground, the following additional standards apply:

- All above-ground static water supply must provide at least one 64 mm. 3 thread/25 mm x 50 mm nominal bore British Standard Pipe (BSP), round male coupling (see Appendix A : Figure 2).
- All pipework and valving between the water supply and the outlet must be no less than 50 mm nominal bore.
- If less than 20 metres from the building, each outlet must face away from the building to allow access during emergencies.

Access Requirements

Access to the dwelling must be designed to allow emergency vehicles access. The minimum design requirements are as follows:

- curves in driveway must have a minimum radius of 10 metres;
- the average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 metres.
- dips must have no more than a 1 in 8 (12.5%) (7.1 degrees) entry and exit angle.

If the driveway from the road to the dwelling and water supply, including gates, bridges and culverts, is greater than 30 m long, the driveway:

- must be designed, constructed and maintained for a load limit of at least 15 tonnes,
- be all weather construction; and
- must provide a minimum trafficable width of four metres, and
- be clear of encroachments 4 metres vertically (see Appendix A : Figure 3).

If the driveway is longer than 100 metres, a turning area for fire fighting vehicles close to the dwelling must be provided by either:

- a turning circle with a minimum radius of 10 metres; or
- the driveway encircling the dwelling; or
- a "T" head or "Y" head with a minimum formed surface of each leg being 8 metres in length measured from the centre point of the head, and 4 metres trafficable width (see Appendix A: Figure 4).

8. STATUTORY

If the length of the driveway is greater than 200 metres, passing bays must be provided. Passing bays must be 20 metres long and must be provided every 200 metres, with a trafficable width of 6 metres (see Appendix A: Figure 5).

Vegetation Management Requirements

A distance of 30 metres around the proposed dwelling or property boundary (whichever is the lesser) must be maintained to the following requirements during the declared "Fire Danger Period" to the satisfaction of the Responsible Authority:

- Grass must be no more than 100 mm in height
- Leaf litter must be less than 10 mm deep
- There must be no elevated fuel on at least 50% of the area. On the remaining 50% the elevated fuel must be at most, sparse, with very little dead material.
- Dry native shrubs must be isolated in small clumps more than 10 m away from the dwelling.
- Trees must not overhang the roofline of the dwelling.

NOTE: Non-flammable features such as tennis courts, swimming pools, dams, patios, driveways, or paths should be incorporated into the vegetation management plan, especially on the north and western sides of the proposed building.

Features with high flammability such as coir doormats and firewood stacks should not be located near the dwelling during the Fire Danger Period.

Note: For Category of Bushfire Attack

The land is in a bushfire prone area designated under regulation 804 of the Building Regulations 2006. The planning permit conditions mean the building is located within 100 metres of vegetation with a medium fuel load, which corresponds to a medium category of bushfire attack under AS 3959.

8. VICROADS CONDITIONS

- 8.1** Access from the Midland Highway to lot 3 must be via the eastern opening of the old Highway. This opening (bellmouth) must be designed and constructed to allow vehicles to enter and exit the development at 90 degrees to the Midland Highway.
- 8.2** Submit detailed plans to Vicroads for written approval, showing the location and design of construction of the bellmouth and access road from the Midland highway to the development.
- 8.3** The bellmouth must be sealed back to a minimum of 10 metres from the edge of the seal of the Midland Highway.
- 8.4** The developer must not commence any works in, on, under or over the Midland Highway road reserve without having first applied for and received written consent from VicRoads for those works in accordance with section 63 of the Road Management Act 2004.
- 8.5** Access must be designed so that all vehicles can be driven in a forward direction when entering or leaving the subject land.
- 8.6** The developer must obtain approval for the Department of Sustainability and Environment for the removal of any native vegetation.
- 8.7** All works must be completed to the satisfaction of VicRoads prior to the development coming into use.
- 8.8** All works will be at the developers cost.

8. STATUTORY

9. TIME FOR STARTING AND COMPLETION

This permit will expire if one of the following circumstances applies:

- The development *and use is/are* not started within *two* years of the date of this permit.
- The development is not completed within *five* years of the date of this permit.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

10. TIME FOR STARTING AND COMPLETION - SUBDIVISION

The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.

This permit will expire if one of the following circumstances applies:

- the plan of subdivision is not certified within two (2) years of the issue date of this permit.
- the development is not completed within five (5) years of the certification of the plan of subdivision under the Subdivision Act 1988.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

Moved: *Cr Janine Booth*
Seconded: *Cr Bill McClenaghan*
Carried.

Cr Mutimer requested that her dissent be recorded.

8. STATUTORY

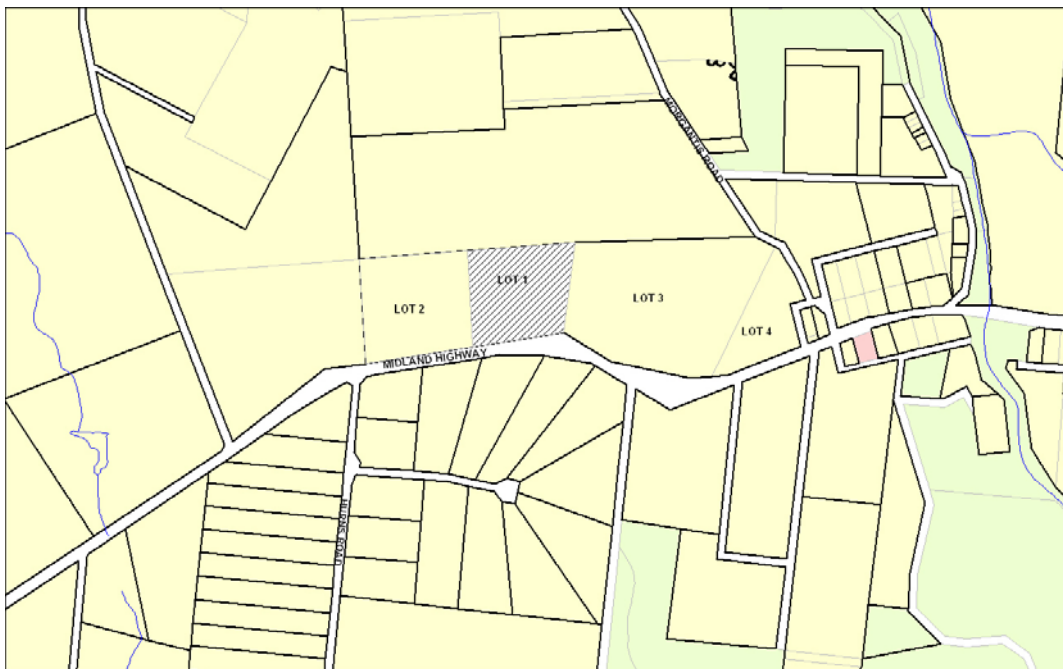
8.3 PLANNING APPLICATION NO. 2008/9857, PROPOSED CONSTRUCTION OF A DWELLING ON LOT 1, 3681 MIDLAND HIGHWAY, EGANSTOWN

(A/O – Planning Officer 3)

File Ref: 3/4630/00593/P

Synopsis

Applicant:	Mr James Walsh
Location:	3681 Midland Highway, Eganstown Lot 1 TP 8012066 Parish of Bullarook
Proposal:	Construction of a Dwelling
Zoning:	Farming Zone – FZ – Area 2
Overlay Controls:	ESO1, WMO
No of Objections received	One
Recommendation	Refusal to Grant a Permit



8. STATUTORY

Introduction

A planning application was submitted to council for the construction of a dwelling on 17th July 2008.

Proposal

It is proposed to construct a four (4) bedroom single story dwelling on an allotment fronting the Midland Highway, Eganstown. The lot is one of four allotments in one ownership and covers approx 6.12 hectares. The total land holding in one ownership is approx 32.20 hectares.

Access to the lot is gained via an access road leading onto the Midland Highway. The proposed building envelope measures 12metres by 12metres; is located approximately 60 metres from the southern boundary which fronts the Midland Highway and 8 metres from the western boundary which adjoins a lot in the same ownership and which is subject to a planning application for a dwelling on that lot (PA 2008/9858). The two lots to the east of this lot are also subject to a planning application (PA2008/9856) for a boundary re-alignment and the development of a dwelling on each lot. All four lots are in contiguous ownership and the owner is seeking approval for a dwelling on each lot.

To the west of the subject site has been previously used for timber production. To the west of this site there is a dwelling on a 15.19 hectares site which is used for grazing. To the north of the subject site is another lot containing a dwelling and the lot is approx 31.3 hectares. Grazing of cattle appears to be the predominant land use of these properties and of those further to the north. To the south of the Midland Highway is a designated rural residential area with land zoned Rural Living.

REFERRAL AUTHORITIES

Section 55 Referral

Goulburn-Murray Water (GMW):	No objection subject to conditions
VICROADS:	No objection subject to conditions
CFA:	No response within the required timeframe

Section 52 Referral

Nil

REFERRAL WITHIN COUNCIL

Environmental Health Officer:	No objection subject to conditions
Engineering:	No conditions.

ADVERTISING/NOTICE OF APPLICATION

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.
The notification has been carried out correctly.

8. STATUTORY

Council has received one objection.

The main points of the objection are:

- Inadequate provision for non highway access to the property.
- House site and outbuildings need to be restricted on the lot to minimise flash flooding.
- Access to the objector's property is sub-optimal. Are there plans to integrate the access from this application with the objector?
- Need for some commercial development in this area not more houses. Daylesford is not within walking distance. Where is the servicing?

Relevant Policies / Council Plan implications:

N/A

STATE PLANNING POLICY FRAMEWORK (SPPF)

Clause 15.01 Protection of catchments, waterways and groundwater

The objective of this clause is to assist in the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

A land capability assessment was submitted with the application and a referral was sent to GMW and the Environmental Health Department; both did not object.

The application meets the objectives of this clause.

Clause 15.07 Protection from Wildfire

The objective of this clause is to assist in the minimisation of risk to life, property, the natural environment and community infrastructure from wildfire.

The applicant has demonstrated that all fire fighting measures have been incorporated into the proposal. The application was submitted to the CFA for comment. The CFA did not respond within the required timeframe however given the CFA did not object to the proposal adjoining this application, should the permit be approved appropriate conditions could be placed on the permit to the satisfaction of the Responsible Authority.

The application meets the objectives of this clause.

Clause 17.05 Agriculture

The objective of this clause is to ensure that the state's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive farmland. Permanent removal of agricultural land must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors.

The lot has been actively used for timber production in the past. Timber production is considered by definition of the Scheme as a form of agricultural land use, commonly known as silviculture. Pine plantation timber was extracted from the site as little as four years ago demonstrating that the land is capable of a productive agricultural use.

8. STATUTORY

The development of a dwelling may lead to a permanent land use shift away from agricultural use.

The applicant has not demonstrated that the construction of a dwelling is needed to reasonably support any agricultural activity being undertaken on the land.

The application fails to meet the objectives of this clause.

LOCAL PLANNING POLICY FRAMEWORK (LPPF)

Clause 21.01-5 Key Towns and Settlements

This clause identifies a number of villages and settlements which serve a residential role, surrounded by rural land. Eganstown is mentioned as such a settlement. The land subject to this application sits on the outer fringe area of the Eganstown Settlement; approx 2-2.5km from any notable settlement development in the Eganstown area. Land located across the Midland Highway to the south of the subject lot is zoned Rural Living Zone and thus presents a more appropriate location for development of dwellings on small rural allotments.

The development of a dwelling on this lot does not sit within a rural settlement.

Clause 21.08 Rural Land Use and Agriculture

The key issues of this clause are:

- Rural land provides an attractive landscape and environmental setting in many parts of the Shire.
- Protection of high quality agricultural land from encroachment of urban land uses.
- Maintenance of rural land holdings with a potential for productive agricultural uses, including new and emerging rural enterprises.
- Lifestyle preferences including rural living opportunities changing the traditional agricultural potential of large rural areas of the Shire and leading to fragmentation of productive agricultural land.
- Scattered and unplanned rural living development needs to be managed and an adequate supply of 'rural residential' land provided, according to demand and supply projections, to avoid loss of productive agricultural land to non-productive land use.

This proposal seeks to allow a dwelling on a small rural allotment. The same applicant seeks to develop a dwelling on each of the three allotments adjoining this lot. No agricultural use has been proposed for any of the applications. This will result in a permanent change in land use leading to an unplanned rural living development when land to the south has been provided for such a purpose.

The proposal may also lead to removing land which has in the past been used for a pine timber plantation from a productive agricultural use.

The application fails to meet the objectives of this clause.

Clause 22.01 Catchment and Land Protection

The development of dwellings was submitted with consideration on the effect of wastewater on the environment and waterways. A land capability assessment was submitted with the application and a referral was sent to GMW and the Environmental Health Department; both did not object.

The application meets the objectives of this clause.

8. STATUTORY

Clause 22.04 Rural Land

The objectives of this clause relevant to this application are:

- To prevent the unsustainable use of agricultural land which results in the loss of the quantity and quality of natural resources and limits the realisation of its full productive potential.
- To provide for the erection of dwellings on rural lots where associated with and required to support a productive agricultural enterprise.
- To ensure that the use and development of land does not conflict with adjoining and nearby land uses.

This proposal fails to meet the objectives of this clause as the development of a dwelling for residential purposes may lead to the removal of that land from achieving its full agricultural potential. This land has been used for an agricultural use through timber production.

The proposal has not demonstrated any agricultural use of the lot therefore the dwelling is not reasonably required to support a productive agricultural enterprise.

The proposed use of this land for the development of a dwelling, conflicts with the purpose of the zone and adjoining land uses which includes grazing.

The application fails to meet the objectives of this clause.

ZONE AND OVERLAY PROVISIONS

Clause 35.07-1 Farming Zone – Section 2 Use

A planning permit is required on this lot in this instance as the lot must be at least 40ha to be able to develop a dwelling as of right under the provisions of the Hepburn Planning Scheme. The applicant must be able to show that the development can meet the requirements of Clause 35.07-2. In this instance the applicant can provide this assurance.

Before deciding on an application to construct or carry out works the Responsible Authority must consider general issues, agricultural issues, dwelling issues, environmental issues and design and siting issues as described in Clause 35.07-6 of the Farming Zone.

An application for the use of a lot for a dwelling in the Farming Zone must be accompanied by a written statement describing how the proposed dwelling responds to the decision guidelines for dwellings in the zone:

Whether the dwelling will result in the loss or fragmentation of productive agricultural land.

The lot has been used for s productive silviculture, a form of agricultural use – timber production. The larger holding in one ownership totals 32.20 hectares. The applicant has proposed to construct four (4) dwellings on this total landholding. Each lot has a separate title. In the case of this application the dwelling is proposed on approximately 6 hectares. The development of a dwelling will result in the loss and the fragmentation of productive agricultural land.

Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.

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The applicant did not provide justification that a dwelling is reasonably required for the operation of an agricultural activity on the land. No agricultural use has been proposed. It is uncommon for the operation of large scale timber production/silviculture for a dwelling to be required on the lot given the preference for off-site management.

Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to noise, dust, odour, use of chemicals and farm machinery, traffic and hours of operation.

The dwelling may potentially be affected by agricultural uses in the surrounding area.

Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural activities.

The dwelling may limit the expansion of any property zoned Farming Zone from the north, east or west.

The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

There is the potential for a proliferation of dwellings in the area if this development is approved. As mentioned the applicant has proposed a further three dwellings to the east of this lot. The approval of this lot may provide support for the development of the other three contiguous lots.

Increased residential density through a proliferation of dwellings along this stretch of the Midland Highway may cause detriment to the safe operation of the Midland Highway given its current alignment, speed limitation and vehicle access.

The development of dwellings may also limit the expansion of existing agricultural properties.

This proposal is not supported under the provisions of the Farming Zone as it will not support and enhance agricultural production and may permanently remove land from agricultural production, possibly leading to further and fragmented loss of agricultural land.

Clause 42.01-2 Environmental Significance Overlay 1 (ESO1)

The application for the development of a dwelling is in an unsewered area of the Shire therefore the ESO1 triggers the need for a planning permit. The main concerns in relation to protecting the proclaimed catchment area are:

- To protect the quality of domestic water supplies within the Shire.
- To maintain and enhance the quality and quantity of water within watercourses.
- To prevent erosion of banks and streambeds and saltation of watercourses.
- To prevent pollution of water bodies, streams and water storages.

The applicant has supplied a Land Capability Assessment (LCA) with the application. The purpose of the LCA is to provide evidence that all waste water from the proposed dwelling can be treated and retained onsite.

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The application was referred to council's environmental health officer and Goulburn-Murray Water for comment. The referral authorities recommended that with appropriate conditions they had no objections to the proposal.

Given the referral responses and the recommendations provided with the LCA, it is deemed that the proposed development of a dwelling meets the objectives of the ESO1 as listed above.

Clause 44.06-1 Wildfire Management Overlay

A permit is required for building and works on a lot with this overlay control. When proposing a development of a dwelling in this overlay one must ensure that development satisfies the specified fire protection objectives and does not significantly increase the threat to life and surrounding property from wildfire.

The applicant completed a wildfire management declaration and the application was referred to the CFA for comment. The CFA were satisfied that with appropriate conditions the risk posed by wildfire can be mitigated.

The application meets the objectives of this clause.

ASSESSMENT

Aerial photos of the lot show that it has been previously used for timber production (Pine Plantation) See lot outlined below. A site visit of the lot by the council officer assessing this application confirmed that the lot appears to have been used for timber production and there is evidence of regrowth of pine trees on the lot. The applicant was advised in the planning application submission that the lot was used for a pine plantation and was harvested as recently as four years ago. A photo taken on a site visit confirms shows regrowth of pine trees on the lot.



This aerial photo shows rows of pine plantation harvested four years ago. Timber production is an agricultural use allowable on the farming zone and promoted as a value added industry in the Hepburn Shire.

As mentioned the adjoining property to the west is subject to a planning application for a dwelling (PA 2008/9858) on the lot. The two lots to the east of that are also subject to a planning application for a boundary re-alignment and development of a dwelling on each lot (PA 2008/9856). All four lots are in one ownership and all four lots appear to have been used for timber production in the past. There is evidence of the regrowth of pine trees on all four allotments.

The applicant has not submitted any grounds that the dwelling is reasonably required in conjunction with an agricultural use of the land. The application to use the lot for a dwelling was not accompanied with a written statement which explains how the proposed dwelling responds to the decision guidelines for dwellings in the zone.

A further information letter was sent to the applicant on 1st August 2008 advising that in its current form the proposal may not be in accordance with the purpose or intent of the Hepburn Planning Scheme's strategic framework including the following clauses:

- Clause 17.05 - Agriculture - to ensure that the State's agricultural base is protected from the unplanned loss of productive agricultural land.

8. STATUTORY

- Clause 21.08 - Rural Land Use & Agriculture – to protect areas of high – very high quality agricultural land from non-complementary uses. (The subject site is designated as ‘high quality’ agricultural land.)
- Clause 22.04 - Rural Land – To prevent the unsustainable use of agricultural land which results in the loss of the quantity and quality of natural resources and limits the realisation of its full productive potential.
- Clause 35.07 – Farming Zone – The proposal has not adequately addressed the decision guidelines at Clause 35.07-6 and does not appear to meet the purpose of the zone.

The applicant was advised in the further information request sent 1st August 2008 that the proposal was not supported by the planning scheme in the Farming Zone and offered the opportunity to withdraw the application with a refund.

The applicant was advised if they would like to proceed with the application the following further information would be required:

5. A detailed analysis (ie written statement) which demonstrates that the proposal is consistent with all the relevant elements of State and Local planning policy contained in the Hepburn Shire planning scheme. In particular the policies listed above.
6. A written statement addressing each of the following decision guidelines of the Farming Zone – Clause 35.07-5:
 - Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
 - Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.
 - Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.
 - Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
 - The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.
3. The proposed dwelling is in a Wildfire Management Overlay. As such, you are required to provide information demonstrating that all fire protection requirements have been considered and incorporated in your proposal. The booklet *Building in a Wildfire Management Overlay* applicant's kit is enclosed to assist you. I have included a copy of Clause 44.06, Wildfire Management Overlay for your convenience which explains the applicant requirements to be submitted with a planning application.

On the 5th August 2008 the applicant responded to the further information letter advising that they believe the additional information letter requested had been

8. STATUTORY

addressed in the original application submitted. The applicant did provide a Wildfire Management Declaration which was forwarded to the Country Fire Authority for comment.

Notwithstanding the ability of individual parcels of land to treat wastewater and compliance with wildfire protection, the grant of a permit for a dwelling has no strategic justification as land is available in proximity for rural residential purposes. As such, there is no planning merit for allowing the use and development of land for a dwelling in a Farming Zone in this locality.

Community / Engagement / Communication / Consultation:

Community consultation was not undertaken.

Financial & Resource Implications Initial & Ongoing

Financial implication resulting from a VCAT review.

Recommendation:

That Council having caused notice of Planning Application No. 2008/9857 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to Refuse to Grant a Permit under the provisions of Clause 35.07-1 of the Hepburn Planning Scheme in respect of the land known and described as 3681 Midland Highway, Eganstown; Lot 2 TP 8012066 (Formerly CA 95E, Pt 95 C, 95E1, Pt 95K SEC b PSH PBK), for the development of a dwelling in accordance with the attached plans, with the application dated 17th July 2008 for the following reasons.

1. *The application does not meet the objectives of Clause 35.07-6 of the Farming Zone.*
2. *The application failed to demonstrate that a dwelling is reasonably required on the land.*
3. *The application may lead to a loss of agricultural land and may lead to a proliferation of dwellings in the farming zone.*
4. *Clause 17.05 – Agriculture
The application fails to meet the objectives of this clause.*
5. *Clause 21.08 Rural Land Use and Agriculture
The application fails to meet the objectives of this clause.*
6. *Clause 22.04 Rural Land
The application fails to meet the objectives of this clause.*

8. STATUTORY

MOTION MOVED AT THE MEETING:

8.3 PLANNING APPLICATION NO. 2008/9857, PROPOSED CONSTRUCTION OF A DWELLING ON LOT 1, 3681 MIDLAND HIGHWAY, EGANSTOWN

Motion:

That Council having caused notice of Planning Application No. 2008/9857 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to issue a Notice of Decision to Grant a Permit under the provisions of Clause 35.07-1 of the Hepburn Planning Scheme in respect of the land known and described as 3681 Midland Highway, Eganstown; Lot 2 TP 8012066 (Formerly CA 95E, Pt 95 C, 95E1, Pt 95K SEC b PSH PBK), for the development of a dwelling in accordance with the attached plans, with the application dated 17th July 2008 and subject to the following conditions:

11. PLANS REQUIRED

Before the *use and/or development* start(s), plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must show:

- b) Floor and elevations of the proposed dwelling including finished materials and colours.*

12. ENVIRONMENTAL HEALTH CONDITIONS

- 2.1** An application to install a septic tank system must be submitted prior to any works commencing.
- 2.2** An EPA approved Aerobic Wastewater Treatment System capable of achieving the 20/30 standard must be installed in accordance with the Septic Tanks Code of Practice.
- 2.3** The effluent disposal field must be located in an area that is able to satisfy minimum setbacks from dams and waterways. A 60m setback must be satisfied from any proposed or existing dams and 100m from declared waterways.

13. GOULBURN-MURRAY REGION WATER CORPORATION

- 3.1** All wastewater from the proposed dwelling must be treated to a standard of at least 20mg/L BOD and 30mg/L suspended solids using a package treatment plant or equivalent. The system must be EPA approved and installed, operated and maintained in accordance with the relevant EPA Code of Practice and Certificate of Approval.
- 3.2** The wastewater disposal area must be located at least 100 metres from the nearest waterway (as measured from the bank or the normal high water mark if there is no bank.)
- 3.3** The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.

8. STATUTORY

Notation: Application must be made to Goulburn-Murray Water prior to construction of any dams on the subject land. A licence must be obtained where surface or groundwater supplies are taken and used for commercial irrigation purposes or if a dam is to be constructed on a waterway as defined under the Water Act 1989. For further information, the applicant should contact Goulburn-Murray Water Diversion Operations on (03 5833 5740).

14. COUNTRY FIRE AUTHORITY

Water Supply Requirements

A static water supply, such as a tank, must be provided.

AND

A static water supply, must meet the following requirements:

- A minimum of 10,000 litres on-site static storage must be provided on the lot and be maintained solely for fire fighting.
- The water supply must be within 60 metres of the dwelling.
- Fire brigade vehicles must be able to get to within four metres of the water outlet;

The water supply should be readily identifiable from the building or appropriate signage (see Appendix A: Figure 1) must point to water supply. All below-ground water pipelines must be installed to the following depths:

- subject to vehicle traffic : 300 mm
- under houses or concrete slabs : 75 mm
- all other locations : 225 mm
- all fixed above-ground water pipelines and fittings, including water supply, must be constructed of non-corrosive and non-combustible materials or protected from the effects of radiant heat and flame.

If the static water supply is above ground, the following additional standards apply:

- All above-ground static water supply must provide at least one 64 mm. 3 thread/25 mm x 50 mm nominal bore British Standard Pipe (BSP), round male coupling (see Appendix A : Figure 2).
- All pipework and valving between the water supply and the outlet must be no less than 50 mm nominal bore.
- If less than 20 metres from the building, each outlet must face away from the building to allow access during emergencies.

Access Requirements

Access to the dwelling must be designed to allow emergency vehicles access. The minimum design requirements are as follows:

- curves in driveway must have a minimum radius of 10 metres;
- the average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 metres.
- dips must have no more than a 1 in 8 (12.5%) (7.1 degrees) entry and exit angle.

If the driveway from the road to the dwelling and water supply, including gates, bridges and culverts, is greater than 30 m long, the driveway:

- must be designed, constructed and maintained for a load limit of at least 15 tonnes,
- be all weather construction; and
- must provide a minimum trafficable width of four metres, and

8. STATUTORY

- be clear of encroachments 4 metres vertically (see Appendix A : Figure 3).

If the driveway is longer than 100 metres, a turning area for fire fighting vehicles close to the dwelling must be provided by either:

- a turning circle with a minimum radius of 10 metres; or
- the driveway encircling the dwelling; or
- a "T" head or "Y" head with a minimum formed surface of each leg being 8 metres in length measured from the centre point of the head, and 4 metres trafficable width (see Appendix A: Figure 4).

If the length of the driveway is greater than 200 metres, passing bays must be provided. Passing bays must be 20 metres long and must be provided every 200 metres, with a trafficable width of 6 metres (see Appendix A: Figure 5).

Vegetation Management Requirements

A distance of 30 metres around the proposed dwelling or property boundary (whichever is the lesser) must be maintained to the following requirements during the declared "Fire Danger Period" to the satisfaction of the Responsible Authority:

- Grass must be no more than 100 mm in height
- Leaf litter must be less than 10 mm deep
- There must be no elevated fuel on at least 50% of the area. On the remaining 50% the elevated fuel must be at most, sparse, with very little dead material.
- Dry native shrubs must be isolated in small clumps more than 10 m away from the dwelling.
- Trees must not overhang the roofline of the dwelling.

NOTE: Non-flammable features such as tennis courts, swimming pools, dams, patios, driveways, or paths should be incorporated into the vegetation management plan, especially on the north and western sides of the proposed building.

Features with high flammability such as coir doormats and firewood stacks should not be located near the dwelling during the Fire Danger Period.

Note: For Category of Bushfire Attack

The land is in a bushfire prone area designated under regulation 804 of the Building Regulations 2006. The planning permit conditions mean the building is located within 100 metres of vegetation with a medium fuel load, which corresponds to a medium category of bushfire attack under AS 3959.

15. VICROADS CONDITIONS

- 5.1** Access from the Midland Highway to lot 1 must be via the eastern opening of the old Highway. This opening (bellmouth) must be designed and constructed to allow vehicles to enter and exit the development at 90 degrees to the Midland Highway.
- 5.2** Submit detailed plans to Vicroads for written approval, showing the location and design of construction of the bellmouth and access road from the Midland highway to the development.
- 5.3** The bellmouth must be sealed back to a minimum of 10 metres from the edge of the seal of the Midland Highway.
- 5.4** The developer must not commence any works in, on, under or over the Midland Highway road reserve without having first applied for and received written consent from VicRoads for those works in accordance with section 63 of the Road Management Act 2004.

8. STATUTORY

- 5.5** Access must be designed so that all vehicles can be driven in a forward direction when entering or leaving the subject land.
- 5.6** The developer must obtain approval for the Department of Sustainability and Environment for the removal of any native vegetation.
- 5.7** All works must be completed to the satisfaction of VicRoads prior to the development coming into use.
- 5.8** All works will be at the developers cost.

16. TIME FOR STARTING AND COMPLETION

This permit will expire if one of the following circumstances applies:

- The development *and use is/are* not started within *two* years of the date of this permit.
- The development is not completed within *four* years of the date of this permit.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

Moved: *Cr Janine Booth*

Seconded: *Cr Bill McClenaghan*

Carried.

Cr Mutimer requested that her dissent be recorded.

8. STATUTORY

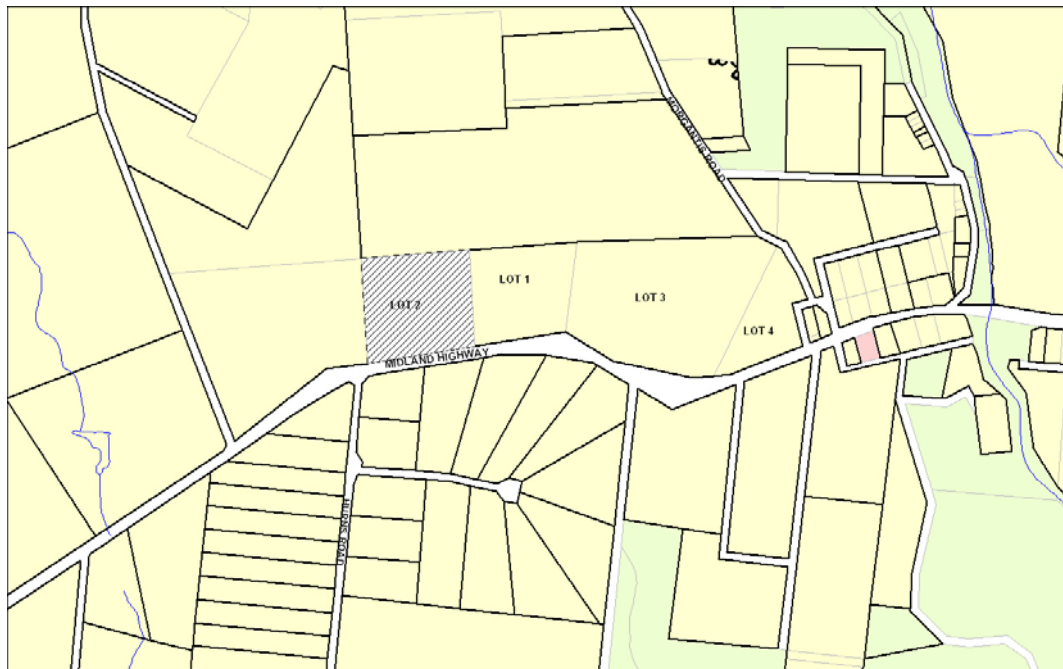
8.4 PLANNING APPLICATION NO. 2008/9858, PROPOSAL – CONSTRUCTION OF A DWELLING AT 3681 MIDLAND HIGHWAY, EGANSTOWN

(A/O – Planning Officer 3)

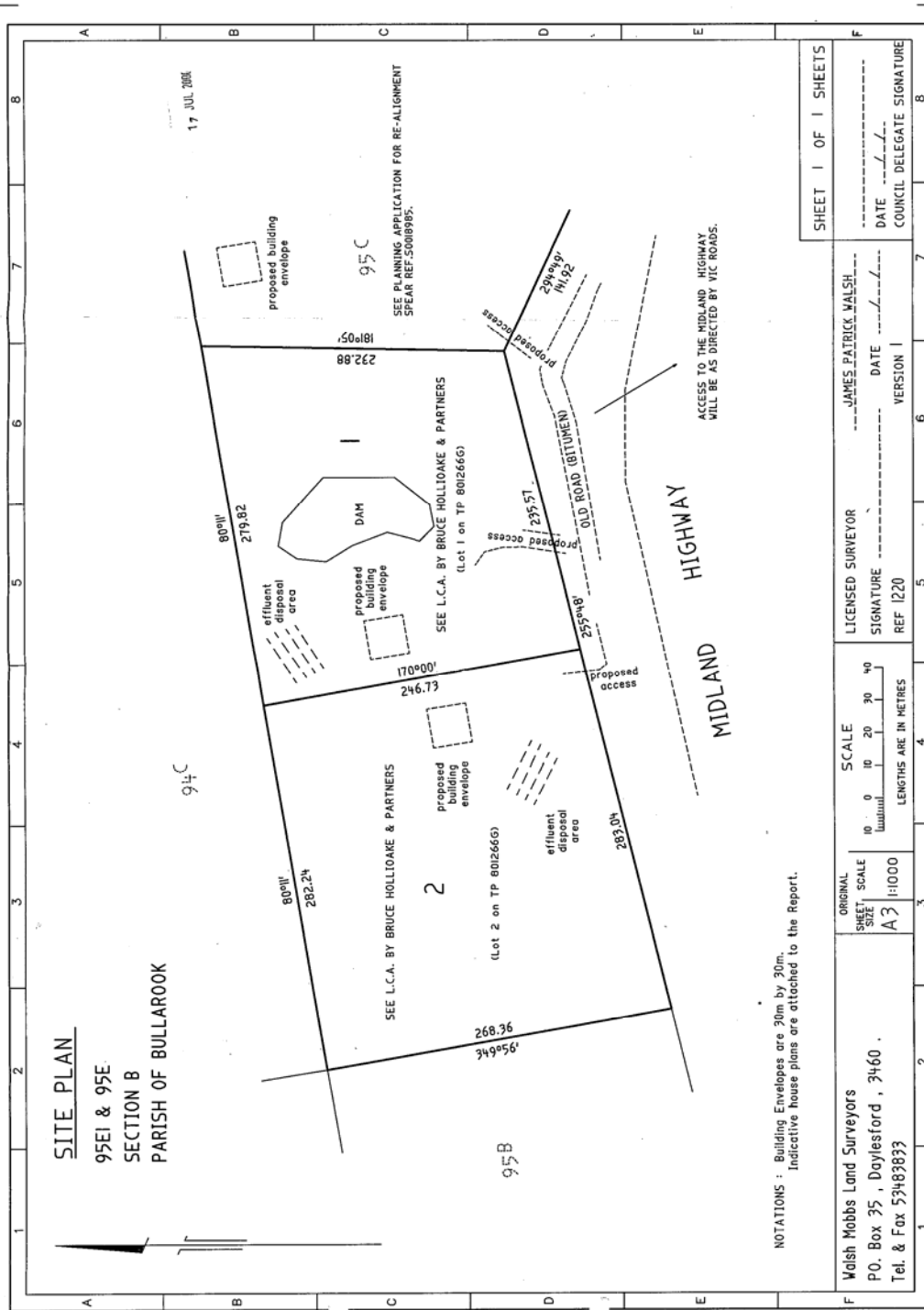
File Ref: 3/4630/00593/P

Synopsis

Applicant:	Mr James Walsh
Location:	3681 Midland Highway, Eganstown Lot 2 TP 8012066 Parish of Bullarook
Proposal:	Construction of a Dwelling
Zoning:	Farming Zone – FZ – Area 2
Overlay Controls:	ESO1, WMO
No of Objections received	One
Recommendation	Refusal to Grant a Permit



8. STATUTORY



8. STATUTORY

Introduction

A planning application was submitted to Council for the construction of a dwelling on 17th July 2008.

Proposal

It is proposed to construct a four (4) bedroom single story dwelling on an allotment fronting the Midland Highway, Eganstown. The lot is one of four allotments in one ownership and covers approx 7.2 hectares. The total land holding in one ownership is approximately 32.20 hectares.

Access to the lot is gained via an access road leading onto the Midland Highway. The proposed building envelope measures 12 metres by 12 metres; is located approximately 40 metres from the southern boundary which fronts the Midland Highway and 10 metres from the eastern boundary which adjoins a lot in the same ownership and which is subject to a planning application for a dwelling on that lot (PA 2008/9857). The two lots to the east of this are also subject to a planning application (PA2008/9856) for a boundary re-alignment and the development of a dwelling on each lot. All four lots are in contiguous ownership and the owner is seeking approval for a dwelling on each lot.

To the west of the subject site there is a lot with a dwelling. This site is approximately 15.19 hectares. To the north of the subject site is another lot containing a dwelling and the lot is approximately 31.3 hectares. Grazing of cattle appears to be the predominant land use of these properties and of those further to the north. To the south of the Midland Highway is a designated rural residential area with land zoned Rural Living.

REFERRAL AUTHORITIES

Section 55 Referral

Goulburn-Murray Water (GMW):	No objection subject to conditions
VICROADS:	No objection subject to conditions
CFA:	No objection subject to conditions

Section 52 Referral

Nil

REFERRAL WITHIN COUNCIL

Environmental Health Officer:	No objection subject to conditions
Engineering:	No conditions.

ADVERTISING/NOTICE OF APPLICATION

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.
The notification has been carried out correctly.

Council has received one objection.
The main points of the objection are:

8. STATUTORY

- Inadequate provision for non highway access to the property.
- House site and Outbuildings need to be restricted on the lot to minimise flash flooding.
- Access to the objector's property is sub-optimal. Are there plans to integrate the access from this application with the objector?
- Need for some commercial development is needed in this area not more houses. Daylesford is not within walking distance. Where is the servicing?

Relevant Policies / Council Plan implications:

N/A

STATE PLANNING POLICY FRAMEWORK (SPPF)

Clause 15.01 Protection of catchments, waterways and groundwater

The objective of this clause is to assist in the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

A land capability assessment was submitted with the application and a referral was sent to GMW and the Environmental Health Department; both did not object.

The application meets the objectives of this clause.

Clause 15.07 Protection from Wildfire

The objective of this clause is to assist in the minimisation of risk to life, property, the natural environment and community infrastructure from wildfire.

The applicant has demonstrated that all fire fighting measures have been incorporated into the proposal. The application was submitted to the CFA for comment. The CFA did not object to the proposal subject to conditions being placed on the permit.

The application meets the objectives of this clause.

Clause 17.05 Agriculture

The objective of this clause is to ensure that the state's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive farmland. Permanent removal of agricultural land must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors.

The lot has been actively used for timber production in the past. Timber production is considered by definition of the Scheme as a form of agricultural land use, commonly known as silviculture. Pine plantation timber was extracted from the site as little as four years ago demonstrating that the land is capable of a productive agricultural use.

The applicant has not demonstrated that the construction of a dwelling is needed to reasonably support any agricultural activity being undertaken on the land.

8. STATUTORY

The development of a dwelling may lead to a permanent land use shift away from agricultural use.

The application fails to meet the objectives of this clause.

LOCAL PLANNING POLICY FRAMEWORK (LPPF)

Clause 21.01-5 Key Towns and Settlements

This clause identifies a number of villages and settlements which serve a residential role, surrounded by rural land. Eganstown is mentioned as such a settlement. The land subject to this application sits on the outer fringe of the Eganstown Settlement; approximately 2-2.5km from any notable settlement development in the Eganstown area. Land located across the Midland Highway to the south of the subject lot is zoned Rural Living Zone and thus presents a more appropriate location for development of dwellings on small rural allotments.

The development of a dwelling on this lot does not sit within a rural settlement.

Clause 21.08 Rural Land Use and Agriculture

The key issues of this clause are:

- Rural land provides an attractive landscape and environmental setting in many parts of the Shire.
- Protection of high quality agricultural land from encroachment of urban land uses.
- Maintenance of rural land holdings with a potential for productive agricultural uses, including new and emerging rural enterprises.
- Lifestyle preferences including rural living opportunities changing the traditional agricultural potential of large rural areas of the Shire and leading to fragmentation of productive agricultural land.
- Scattered and unplanned rural living development needs to be managed and an adequate supply of 'rural residential' land provided, according to demand and supply projections, to avoid loss of productive agricultural land to non-productive land use.

This proposal seeks to allow a dwelling on a small rural allotment. The same applicant seeks to develop a dwelling on each of the three allotments adjoining this lot. No agricultural use has been proposed for any of the applications. This will result in a permanent change in land use leading to an unplanned rural living development when land to the south has been provided for such a purpose.

The proposal may also lead to removing land which has in the past been used for a pine timber plantation from a productive agricultural use.

The application fails to meet the objectives of this clause.

Clause 22.01 Catchment and Land Protection

The development of dwellings was submitted with consideration on the effect of wastewater on the environment and waterways. A land capability assessment was submitted with the application and a referral was sent to GMW and the Environmental Health Department; both did not object.

The application meets the objectives of this clause.

Clause 22.04 Rural Land

8. STATUTORY

The objectives of this clause relevant to this application are:

- To prevent the unsustainable use of agricultural land which results in the loss of the quantity and quality of natural resources and limits the realisation of its full productive potential.
- To provide for the erection of dwellings on rural lots where associated with and required to support a productive agricultural enterprise.
- To ensure that the use and development of land does not conflict with adjoining and nearby land uses.

This proposal fails to meet the objectives of this clause as the development of a dwelling for residential purposes may lead to the removal of that land from achieving its full agricultural potential. This land has been used for an agricultural use through timber production.

The proposal has not demonstrated any agricultural use of the lot therefore the dwelling is not reasonably required to support a productive agricultural enterprise.

The proposed use of this land for the development of a dwelling, conflicts with the purpose of the zone and adjoining land uses which includes grazing.

The application fails to meet the objectives of this clause.

ZONE AND OVERLAY PROVISIONS

Clause 35.07-1 Farming Zone – Section 2 Use

A planning permit is required on this lot in this instance as the lot must be at least 40ha to be able to develop a dwelling as of right under the provisions of the Hepburn Planning Scheme. The applicant must be able to show that the development can meet the requirements of Clause 35.07-2. In this instance the applicant can provide this assurance.

Before deciding on an application to construct or carry out works the Responsible Authority must consider general issues, agricultural issues, dwelling issues, environmental issues and design and siting issues as described in Clause 35.07-6 of the Farming Zone.

An application for the use of a lot for a dwelling in the Farming Zone must be accompanied by a written statement describing how the proposed dwelling responds to the decision guidelines for dwellings in the zone:

Whether the dwelling will result in the loss or fragmentation of productive agricultural land.

The lot has been used for a productive silviculture, a form of agricultural use. The larger holding in one ownership totals 32.20 hectares. The applicant has proposed to construct four (4) dwellings on this total landholding. Each lot has a separate title. In the case of this application the dwelling is proposed on approximately 7 hectares. The development of a dwelling will result in the loss and fragmentation of productive agricultural land.

Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.

8. STATUTORY

The applicant did not provide justification that a dwelling is reasonably required for the operation of an agricultural activity on the land. No agricultural use has been proposed. It is uncommon for the operation of large scale timber production/silviculture for a dwelling to be required on the lot given the preference for off-site management.

Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to noise, dust, odour, use of chemicals and farm machinery, traffic and hours of operation.

The dwelling may potentially be affected by agricultural uses in the surrounding area.

Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural activities.

The dwelling may limit the expansion of any property zoned farming zone from the north, east or west.

The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

There is the potential for a proliferation of dwellings in the area if this development is approved. As mentioned the applicant has proposed a further three (3) dwellings to the east of this lot. The approval of this lot may provide justification for the development of the other three contiguous lots.

Increased residential density through a proliferation of dwellings along this stretch of the Midland Highway may cause detriment to the safe operation of the Midland Highway given its current alignment, speed limitation and vehicle access.

The development of dwellings may also limit the expansion of existing agricultural properties.

This proposal is not supported under the provisions of the Farming Zone as it will not support and enhance agricultural production and may permanently remove land from agricultural production, possibly leading to further and fragmented loss of agricultural land.

Clause 42.01-2 Environmental Significance Overlay 1 (ESO1)

The application for the development of a dwelling is in an unsewered area of the Shire therefore the ESO1 triggers the need for a planning permit. The main concerns in relation to protecting the proclaimed catchment area are:

- To protect the quality of domestic water supplies within the Shire.
- To maintain and enhance the quality and quantity of water within watercourses.
- To prevent erosion of banks and streambeds and saltation of watercourses.
- To prevent pollution of water bodies, streams and water storages.

The applicant has supplied a Land Capability Assessment (LCA) with the application. The purpose of the LCA is to provide evidence that all waste water from the proposed dwelling can be treated and retained onsite.

8. STATUTORY

The application was referred to Council's Environmental Health Officer and Goulburn-Murray Water for comment. The referral authorities recommended that with appropriate conditions they had no objections to the proposal.

Given the referral responses and the recommendations provided with the LCA, it is deemed that the proposed development of a dwelling meets the objectives of the ESO1 as listed above.

Clause 44.06-1 Wildfire Management Overlay

A permit is required for building and works on a lot with this overlay control. When proposing a development of a dwelling in this overlay one must ensure that development satisfies the specified fire protection objectives and does not significantly increase the threat to life and surrounding property from wildfire.

The applicant completed a wildfire management declaration and the application was referred to the CFA for comment. The CFA were satisfied that with appropriate conditions the risk posed by wildfire can be mitigated.

The application meets the objectives of this clause.

ASSESSMENT

An aerial photo of the lot shows that it has been previously used for timber production (Pine Plantation) See lot outlined below. A site visit of the lot by the Council Officer assessing this application confirmed that the lot appears to have been used for timber production and there is evidence of regrowth of pine trees on the lot. The applicant was advised in the planning application submission that the lot was used for a pine plantation and was harvested as recently as four years ago. A photo taken on a site

visit confirms regrowth of pine trees on the lot.



This aerial photo shows rows of pine plantation harvested four years ago. Timber production is an agricultural use allowable on the farming zone and promoted as a value added industry in the Hepburn Shire.

As mention the adjoining property to the east is subject to a planning application for a dwelling (PA 2008/9857) on the lot. The two lots to the east of that are also subject to a planning application for a boundary re-alignment and development of a dwelling on each lot. (PA 2008/9856) All four lots are in one ownership and all four lots appear to have been used for timber production in the past. There is evidence of the regrowth of pine trees on all four allotments.

The applicant has not submitted any grounds that the dwelling is reasonably required in conjunction with an agricultural use of the land. The application to use the lot for a dwelling was not accompanied with a written statement which explains how the proposed dwelling responds to the decision guidelines for dwellings in the zone.

A further information letter was sent to the applicant on 1st August 2008 advising that in its current form the proposal may not be in accordance with the purpose or intent of the Hepburn Planning Scheme's strategic framework including the following clauses:

- Clause 17.05 - Agriculture - to ensure that the State's agricultural base is protected from the unplanned loss of productive agricultural land.

8. STATUTORY

- Clause 21.08 - Rural Land Use & Agriculture – to protect areas of high – very high quality agricultural land from non-complementary uses. (The subject site is designated as ‘high quality’ agricultural land.)
- Clause 22.04 - Rural Land – To prevent the unsustainable use of agricultural land which results in the loss of the quantity and quality of natural resources and limits the realisation of its full productive potential.
- Clause 35.07 – Farming Zone – The proposal has not adequately addressed the decision guidelines at Clause 35.07-6 and does not appear to meet the purpose of the zone.

The applicant was advised in the further information request sent 1st August 2008 that the proposal was not supported by the planning scheme in the Farming Zone and offered the opportunity to withdraw the application with a refund.

The applicant was advised if they would like to proceed with the application the following further information would be required:

7. A detailed analysis (i.e. written statement) which demonstrates that the proposal is consistent with all the relevant elements of State and Local planning policy contained in the Hepburn Shire planning scheme. In particular the policies listed above.
8. A written statement addressing each of the following decision guidelines of the Farming Zone – Clause 35.07-5:
 - Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
 - Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.
 - Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.
 - Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
 - The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.
3. The proposed dwelling is in a Wildfire Management Overlay. As such, you are required to provide information demonstrating that all fire protection requirements have been considered and incorporated in your proposal. The booklet *Building in a Wildfire Management Overlay* applicant’s kit is enclosed to assist you. I have included a copy of Clause 44.06, Wildfire Management Overlay for your convenience which explains the applicant requirements to be submitted with a planning application.

8. STATUTORY

On the 5th August 2008 the applicant responded to the further information letter advising that they believe the additional information letter requested had been addressed in the original application submitted. The applicant did provide a Wildfire Management Declaration which was forwarded to the Country Fire Authority for comment.

Notwithstanding the ability of individual parcels of land to treat wastewater and compliance with wildfire protection, the grant of a permit for a dwelling has no strategic justification as land is available in proximity for rural residential purposes. As such, there is no planning merit for allowing the use and development of land for a dwelling in a Farming Zone in this locality.

Community / Engagement / Communication / Consultation:

Community consultation was not undertaken.

Financial & Resource Implications Initial & Ongoing

Financial implication resulting from a VCAT review.

Recommendation:

That Council having caused notice of Planning Application No. 2008/9858 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to Refuse to Grant a Permit under the provisions of Clause 35.07-1 of the Hepburn Planning Scheme in respect of the land known and described as 3681 Midland Highway, Eganstown; Lot 2 TP 8012066 (Formerly CA 95E, Pt 95 C, 95E1, Pt 95K SEC b PSH PBK), for the development of a dwelling in accordance with the attached plans, with the application dated 17th July 2008.

1. *The application does not meet the objectives of Clause 35.07-6 of the Farming Zone.*
2. *The application failed to demonstrate that a dwelling is reasonably required on the land.*
3. *The application may lead to a loss of agricultural land and may lead to a proliferation of dwellings in the farming zone.*
4. *Clause 17.05 – Agriculture
The application fails to meet the objectives of this clause.*
5. *Clause 21.08 Rural Land Use and Agriculture
The application fails to meet the objectives of this clause.*
6. *Clause 22.04 Rural Land
The application fails to meet the objectives of this clause.*

MOTION MOVED AT THE MEETING:

That Council having caused notice of Planning Application No. 2008/9858 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to issue a Notice of Decision to Grant a Permit under the provisions of Clause 35.07-1 of the Hepburn Planning Scheme in respect of the land known and described

8. STATUTORY

as 3681 Midland Highway, Eganstown; Lot 2 TP 8012066 (Formerly CA 95E, Pt 95 C, 95E1, Pt 95K SEC b PSH PBK), for the development of a dwelling in accordance with the attached plans, with the application dated 17th July 2008 subject to the following conditions:

17. PLANS REQUIRED

Before the use and/or development start(s), plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must show:

- c) Floor and elevations of the proposed dwelling including finished materials and colours.

18. ENVIRONMENTAL HEALTH CONDITIONS

- 2.1 An application to install a septic tank system must be submitted prior to any works commencing.
- 2.2 An EPA approved Aerobic Wastewater Treatment System capable of achieving the 20/30 standard must be installed in accordance with the Septic Tanks Code of Practice.
- 2.3 The effluent disposal field must be located in an area that is able to satisfy minimum setbacks from dams and waterways. A 60m setback must be satisfied from any proposed or existing dams and 100m from declared waterways.

19. GOULBURN-MURRAY REGION WATER CORPORATION

- 3.1 All wastewater from the proposed dwelling must be treated to a standard of at least 20mg/L BOD and 30mg/L suspended solids using a package treatment plant or equivalent. The system must be EPA approved and installed, operated and maintained in accordance with the relevant EPA Code of Practice and Certificate of Approval.
- 3.2 The wastewater disposal area must be located at least 100 metres from the nearest waterway (as measured from the bank or the normal high water mark if there is no bank.)
- 3.3 The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.

Notation: Application must be made to Goulburn-Murray Water prior to construction of any dams on the subject land. A licence must be obtained where surface or groundwater supplies are taken and used for commercial irrigation purposes or if a dam is to be constructed on a waterway as defined under the Water Act 1989. For further information, the applicant should contact Goulburn-Murray Water Diversion Operations on (03 5833 5740).

20. COUNTRY FIRE AUTHORITY

Water Supply Requirements

A static water supply, such as a tank, must be provided.

8. STATUTORY

AND

A static water supply, must meet the following requirements:

- *A minimum of 10,000 litres on-site static storage must be provided on the lot and be maintained solely for fire fighting.*
- *The water supply must be within 60 metres of the dwelling.*
- *Fire brigade vehicles must be able to get to within four metres of the water outlet;*

The water supply should be readily identifiable from the building or appropriate signage (see Appendix A: Figure 1) must point to water supply. All below-ground water pipelines must be installed to the following depths:

- *subject to vehicle traffic : 300 mm*
- *under houses or concrete slabs : 75 mm*
- *all other locations : 225 mm*
- *all fixed above-ground water pipelines and fittings, including water supply, must be constructed of non-corrosive and non-combustible materials or protected from the effects of radiant heat and flame.*

If the static water supply is above ground, the following additional standards apply:

- *All above-ground static water supply must provide at least one 64 mm. 3 thread/25 mm x 50 mm nominal bore British Standard Pipe (BSP), round male coupling (see Appendix A : Figure 2).*
- *All pipework and valving between the water supply and the outlet must be no less than 50 mm nominal bore.*
- *If less than 20 metres from the building, each outlet must face away from the building to allow access during emergencies.*

Access Requirements

Access to the dwelling must be designed to allow emergency vehicles access. The minimum design requirements are as follows:

- *curves in driveway must have a minimum radius of 10 metres;*
- *the average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 metres.*
- *dips must have no more than a 1 in 8 (12.5%) (7.1 degrees) entry and exit angle.*

If the driveway from the road to the dwelling and water supply, including gates, bridges and culverts, is greater than 30 m long, the driveway:

- *must be designed, constructed and maintained for a load limit of at least 15 tonnes,*
- *be all weather construction; and*
- *must provide a minimum trafficable width of four metres, and*
- *be clear of encroachments 4 metres vertically (see Appendix A : Figure 3).*

If the driveway is longer than 100 metres, a turning area for fire fighting vehicles close to the dwelling must be provided by either:

- *a turning circle with a minimum radius of 10 metres; or*
- *the driveway encircling the dwelling; or*
- *a "T" head or "Y" head with a minimum formed surface of each leg being 8 metres in length measured from the centre point of the head, and 4 metres trafficable width (see Appendix A: Figure 4).*

8. STATUTORY

If the length of the driveway is greater than 200 metres, passing bays must be provided. Passing bays must be 20 metres long and must be provided every 200 metres, with a trafficable width of 6 metres (see Appendix A: Figure 5).

Vegetation Management Requirements

A distance of 30 metres around the proposed dwelling or property boundary (whichever is the lesser) must be maintained to the following requirements during the declared "Fire Danger Period" to the satisfaction of the Responsible Authority:

- *Grass must be no more than 100 mm in height*
- *Leaf litter must be less than 10 mm deep*
- *There must be no elevated fuel on at least 50% of the area. On the remaining 50% the elevated fuel must be at most, sparse, with very little dead material.*
- *Dry native shrubs must be isolated in small clumps more than 10 m away from the dwelling.*
- *Trees must not overhang the roofline of the dwelling.*

NOTE: *Non-flammable features such as tennis courts, swimming pools, dams, patios, driveways, or paths should be incorporated into the vegetation management plan, especially on the north and western sides of the proposed building.*

Features with high flammability such as coir doormats and firewood stacks should not be located near the dwelling during the Fire Danger Period.

Note: For Category of Bushfire Attack

The land is in a bushfire prone area designated under regulation 804 of the Building Regulations 2006. The planning permit conditions mean the building is located within 100 metres of vegetation with a medium fuel load, which corresponds to a medium category of bushfire attack under AS 3959.

21. VICROADS CONDITIONS

- 5.9** *Access from the Midland Highway to lot 2 must be via the eastern opening of the old Highway. This opening (bellmouth) must be designed and constructed to allow vehicles to enter and exit the development at 90 degrees to the Midland Highway.*
- 5.10** *Submit detailed plans to Vicroads for written approval, showing the location and design of construction of the bellmouth and access road from the Midland highway to the development.*
- 5.11** *The bellmouth must be sealed back to a minimum of 10 metres from the edge of the seal of the Midland Highway.*
- 5.12** *The developer must not commence any works in, on, under or over the Midland Highway road reserve without having first applied for and received written consent from VicRoads for those works in accordance with section 63 of the Road Management Act 2004.*
- 5.13** *Access must be designed so that all vehicles can be driven in a forward direction when entering or leaving the subject land.*
- 5.14** *The developer must obtain approval for the Department of Sustainability and Environment for the removal of any native vegetation.*
- 5.15** *All works must be completed to the satisfaction of VicRoads prior to the development coming into use.*

8. STATUTORY

5.16 *All works will be at the developers cost.*

22. TIME FOR STARTING AND COMPLETION

This permit will expire if one of the following circumstances applies:

- *The development and use is/are not started within two years of the date of this permit.*
- *The development is not completed within four years of the date of this permit.*

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

Moved: *Cr Janine Booth*

Seconded: *Cr Bill McClenaghan*

Carried.

Cr Mutimer requested that her dissent be recorded.

8. STATUTORY

**8.5 SECTION 173 AGREEMENT BETWEEN HEPBURN SHIRE COUNCIL,
GOULBURN-MURRAY RURAL WATER CORPORATION AND TERENCE
WOODHOUSE, 13 BREMNER AVENUE, LYONVILLE**

(A/O – Senior Environmental Health Officer)

File Ref: 4/0860/00400/B

Introduction

This report concerns a Section 173 Agreement that ensures the owner maintains the on-site wastewater treatment system installed at 13 Bremner Avenue, Lyonville.

Applicant: TERENCE WOODHOUSE

Property: 13 BREMNER AVENUE, LYONVILLE
LOT 3, PS 55632, PARISH BULLARTO

Report

The land owner/applicant is to enter into an agreement with the Municipal Council and Goulburn Murray Rural Water Corporation under Section 173 of the Planning & Environment Act 1987, in accordance with the Septic Tank Permit 010/2005. Such an agreement is to be registered on the title.

The agreement provides that the on-site wastewater system will be maintained in accordance with the permit conditions of Septic Tank Permit.

Relevant Policies / Council Plan implications:

Community / Engagement / Communication / Consultation:

Financial Implications

Nil

Recommendation:

8.5 *Sign and seal the Section 173 Agreement between Hepburn Shire Council, Goulburn-Murray Rural Water Corporation and Terence Woodhouse, as detailed under item 8.5.*

Moved the Officer's Recommendation.

Moved: Cr Bill McClenaghan

Seconded: Cr Janine Booth

Carried.

8. STATUTORY

8.6 SECTION 173 AGREEMENT BETWEEN HEPBURN SHIRE COUNCIL AND GRAEME JOHN BRIDLE, 195 KIERCES ROAD, CLUNES - PLANNING PERMIT NO 2008/9703

(A/O – Planning Administration Officer)

File Ref: 1/3690/00470/P

Introduction

This report concerns a Section 173 Agreement that provides for no further subdivision to be sought for the subject land at CA 26B, Section 6, Parish of Clunes, under Condition 5 of Planning Permit 2008/9703, issued for a two (2) lot subdivision.

Applicant: GRAEME JOHN BRIDLE

Property: 195 KIEARCES ROAD, CLUNES
CA 26B, SECTION 6, PARISH OF CLUNES

Report

The land owner/applicant is to enter into an agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987, in accordance with the planning permit.

The agreement provides that no further subdivision so as to create a smaller lot for an existing dwelling is to be sought for the subject land at CA 26B, Section 6, Parish of Clunes, under Condition 5 of Planning Permit 2008/9703, issued for a two (2) lot subdivision.

Relevant Policies / Council Plan implications:

Community / Engagement / Communication / Consultation:

Financial Implications

Nil

Recommendation:

8.6 *Sign and seal the Section 173 Agreement between Hepburn Shire Council and Graeme John Bridle, as detailed under item 8.6*

Moved the Officer's Recommendation.

Moved: Cr Bill McClenaghan

Seconded: Cr Janine Booth

Carried.

8. STATUTORY

8.7 SECTION 173 AGREEMENT BETWEEN HEPBURN SHIRE COUNCIL, GOULBURN-MURRAY RURAL WATER CORPORATION AND CATHERINE MULCAHY, PLANNING PERMIT NO 2007/9435

(A/O – Planning Administration Officer)

File Ref: 3/3120/04800/P

Introduction

This report concerns a Section 173 Agreement that provides for correct operation and maintenance of the wastewater treatment disposal facility on the subject lot at CA 8, Section A, Parish of Franklin, under Paragraph 4 of Goulburn-Murray Rural Water Authority conditions in Planning Permit 2007/9435, issued for the construction of a dwelling.

Applicant: CATHERINE SHARON ELLEN MULCAHY

Property: 335 HEPBURN-NEWSTEAD ROAD SHEPHERDS FLAT
CA 8, SECTION A, PARISH OF FRANKLIN

Report

The land owner/applicant is to enter into an agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987, in accordance with the planning permit.

The agreement provides that the wastewater treatment and disposal facility be installed, operated and maintained at CA 8, Section A, Parish of Franklin, under paragraph 4 of GMW conditions of Planning Permit 2007/9435.

Relevant Policies / Council Plan implications:

Community / Engagement / Communication / Consultation:

Financial Implications

Nil

Recommendation:

8.7 *Sign and seal the Section 173 Agreement between Hepburn Shire Council, Goulburn-Murray Rural Water Corporation and Catherine Sharon Ellen Mulcahy, as detailed under item 8.7.*

Moved the Officers Recommendation.

Moved: Cr Bill McClenaghan

Seconded: Cr Janine Booth

Carried.

9. COUNCILLOR REPORTS AND CONGRATULATIONS

THE MAYORAL REPORT WAS CIRCULATED:

Council Report – November 2008

Given that this is the last Council meeting of my Mayoral term, it is appropriate that I present a review of the past twelve months. Unfortunately I am unable to present the report in person as I am representing Council at the Inaugural Australian Council of Local Government meeting in Canberra together with invited Mayors and Shire Presidents from Australia's 565 local governments, including the 79 Victorian Councils.

Although Council has been beset by governance and behavioural issues over the past twelve months, the period has also witnessed many positive aspects and significant achievements.

From an infrastructure point of view, the completion of the redevelopment of the Hepburn Bathhouse was undoubtedly the most significant project undertaken at a cost of over \$10 million. The Recreation Centre in Daylesford was also completed at a cost of \$2.4 million.

Other significant infrastructure projects included;

- Opening of the Yandoit Fire Station, costing \$110,000;
- Completion of Leonard's Bridge, costing \$360,000 and Nelson's Bridge, costing \$437,000;
- Several projects funded through the State Government's Drought Assistance to a total of \$300,000 and
- Refurbishment of the Clunes Town Hall kitchen and replacement of the floor in the main hall.

Council also finalized the Structure Plan Review for the townships of Clunes, Creswick, Trentham, Daylesford and Hepburn Springs.

During the year Hepburn Shire Council had the honour of hosting the Victorian Community Cabinet during which a number of significant funding announcements were made.

Community events are an important part of life in the Hepburn Shire and it was pleasing to see the return of the ChillOut festival after an absence during the previous year. The Back to Booktown event also proved to be an outstanding success in its second year, attracting over \$12,000 visitors to the Clunes Township.

Of course, this year we have had significant changes in the administrative structure of the Shire with the departure of our Chief Executive Officer, Victor Szwed after 13 years of service and the appointment of Kaylene Conrick as the new Chief Executive. I am confident that Kaylene will work with and provide the necessary leadership for the new and expanded Council in fostering a positive image for this Council and in ensuring that it focuses on the issues that matter to our ratepayers, rather than the personalities.

When I was elected Mayor last year I emphasized the need for all of us – Councillors, Officers and members of the gallery to examine the way we behave and treat each other; because it is primarily our collective behaviour that has impacted on the wider public's perception of our ability to govern. Suggestions that I or other Councillors need to apologise for the behaviour of others indicates not only an abatement of my hopes

9. COUNCILLOR REPORTS AND CONGRATULATIONS

but the failure of individuals to accept responsibility for their actions and their behaviour. I do believe that the situation will improve with a new and expanded Council and the introduction of the new Code of Conduct provisions of the Local Government Act.

I thank Council Officers for their support over the past twelve months and wish Councillors Smith and Booth – who are facing contested elections this month – my best wishes.

Cr Tim Hayes
Mayor

CR HEATHER MUTIMER COLIBAN REPORT

No report tabled.

CR BILL MCCLENAGHAN HOLCOMBE WARD.

The past month since the October Council Meeting has been relatively quiet with Council moving into the Caretaker Period prior to this month's election. Still, there have been important events and meetings that I have attended as follow;

- A new residents' meeting at the Daylesford Neighbourhood House
- A board meeting of the Highlands Regional Waste Management Group
- A community information evening on the proposed Forest Resort \$1 billion expansion
- The final Heritage Advisory Committee meeting for the year
- A consultant review of our planning department
- A meeting of the Glenlyon & Upper Loddon Landcare
- A Glenlyon Progress Association meeting
- A Remembrance Day service at the Daylesford cenotaph on November 11th and
- The usual Council meeting sequence for November.

That was a quiet month in caretaker mode before the election of a new Council and the addition of two new Councillors to our ranks. I sincerely hope that new candidates understand the time required to be an effective and diligent Councillor and that all of those elected will be able to make a full commitment to their role.

Since being elected in November 2005, I have provided a comprehensive Councillor Report every month and these are now on the public record to document what my contribution to Hepburn Shire has been in this Council term. I look forward to the new four year term of Council that lies ahead; may our issues be resolved, our problems be overcome with effective solutions and the important and exciting challenges of the future be met by a united Council team that is truly equal to the task.

In closing, let me pay my respects and tribute to two of our oldest citizens, Drago Petkovic and Madeline Mutimer. Both were born in the hard days of the Great War, both came to live a happy life in Hepburn Shire and both passed away on Remembrance Day surrounded by their family's love. I attended both funerals last weekend and it was a moving experience to remember and celebrate the lives of

9. COUNCILLOR REPORTS AND CONGRATULATIONS

members of that selfless generation who lived for others, not themselves although each loved the long and simple life they had. Both are now buried in the Daylesford cemetery with the good citizens of yesterday. When we reckon that we've got it tough, that things are crook, I think that we should take a lesson from these people whose world was a lot harder and very different to ours. Drago spent his working life on the railways and later on his farm at Lyonville and Madeline was a railway child, and later a railway wife. Her exploits were always strong or a bit outrageous like when she marched up and down Vincent Street, aged 91, banner in hand outside our Town Hall, protesting to the Mayor of the day, her own daughter, about the removal of the Jubilee Lake pontoon. "I always used to jump off it and it wasn't unsafe then," she declared.

I mention these two dearly departed citizens to make my final point in this Council term. They always worked hard and rarely complained. To them, nothing was too much trouble, nothing was too hard if you took it a bit at a time and they always made the best of things. Life was fun and interesting and a whole lot richer if you stayed positive, helped your mates and lived for your family and community. May the new Council embrace more of the values of this older generation and may our future together be so enriched and assured.

CR JANINE BOOTH CRESWICK WARD

In this my last Council report for the current Council I would like to acknowledge what a privilege it has been to represent Creswick Ward over the last 3 years.

I thank the residents of Creswick Ward for their encouragement, reasonability and support during that time and for giving willing of their ideas, time and energy to work together to achieve our aspirations for Creswick Ward and Hepburn Shire.

I acknowledge and thank the dedicated and professional officers and staff of the Hepburn Shire Council who have always shown me respect, honesty and were happy to share their knowledge and expertise.

In particular I would like to thank previous CEO Mr. Victor Szwed and Mr. Rod Conway the Director of Infrastructure who have always encouraged and supported me in my role as Councillor and whom I respect greatly for their professionalism, wise advice and extensive knowledge.

This last month even though our Council has been in caretaker mode, the usual round of monthly meetings have taken place and my usual monthly Ward meetings have continued. I chaired meetings of the CDC Creswick Development Committee and Members continue to work on important aspects of the Creswick Development Plan as well as initiatives of the Creswick Tourism Plan.

I have also attended meetings of the Doug Lindsay Recreation Reserve Section 86 Committee involving plans to form a fundraising group to focus on raising sponsorship and financial support for the continued development of the Reserve and to support Councils ongoing commitment to sporting facilities in Creswick Ward.

I have also met with the Magic Pudding playground Committee to discuss their plans for future development of the Raglan street playground and I attended the final meeting of the Hepburn Healthy Communities committee, a committed and caring committee who have helped implement the initiatives of our Hepburn Healthy Communities Plan across the Shire. I would like to acknowledge the guidance and expert advice provided

9. COUNCILLOR REPORTS AND CONGRATULATIONS

to the committee by the Manager Community services Martin Walmsley and Community Development Officer Brian Dunn over the past three years.

I attended the Remembrance Day service at Creswick and laid a wreath on behalf of the Council and ratepayers of the Hepburn Shire in recognition of the sacrifices of the Men and Women of Australia's Armed Forces.

I also attended a public meeting at Creswick informing residents of the proposed new developments and expansion plans of the Forest Resort.

I attended the opening of the new fire station at Newlyn, a working bee at the Creswick Town Hall organized by Friends of the Creswick Town Hall and sadly I attended the memorial service of Mr. Paul Ryzowy, whose family have owned and operated the Creswick Woollen Mills for the past 60 years. I was able to offer condolences on behalf of the Hepburn Shire Council to the family and acknowledge the contribution Mr. Ryzowy and his family had made towards employment, training and economic development of this Shire and the previous Shire of Creswick.

In closing I would like to thank our CEO Ms Kaylene Conrick for her fairness, guidance and support to this Council over the last few weeks and hope that She and the incoming Council enjoy a strong, mutually respectful relationship, productive teamwork and good governance over the next four years.

CR DAVID SMITH BIRCH WARD

Cr Smith attended the following meeting and functions over the past month.

- 5.11.2008 Forward Planning Meeting.
- 6.11.2008 Planning Review Meeting for Councillors.
Opening Dean / Newlyn Fire Shed,
- 10.11.2008 Attended with fellow Councillors the Official Opening of our new world class Smeaton Oat Mill under the Management and Board of UniGrain Pty Ltd. Senator Hon Michael Ronaldson officially opened the Smeaton Oat Mill with over 200 official invited guests.
- 14.11.2008 End-of-Term Councillor Dinner.

I thank my fellow Councillors and the staff for their support in this three year term and also the support shown to me in my term as Mayor.

Recommendation:

<i>That Council:</i>

9.1 <i>Receive and note the reports of Councillors.</i>

Moved the Officer's Recommendation.

Moved: Cr Janine Booth

Seconded: Cr Bill McClenaghan

Carried.

CLOSE OF MEETING

CLOSE OF MEETING: **The meeting closed at 8.05pm.**

ATTACHMENTS

- ATTACHMENT 1** (Item 3.1) MINUTES OF THE ORDINARY MEETING
HELD 21 OCTOBER
- (Item 3.2) MINUTES OF THE SPECIAL MEETING HELD
28 OCTOBER
- ATTACHMENT 2** (Item 5.1) CHARTER OF HUMAN RIGHTS
- ATTACHMENT 3** (Item 5.2) HEPBURN SHIRE YOUTH POLICY
- ATTACHMENT 4** (Item 5.6) MONTHLY FINANCIAL REPORT
- ATTACHMENT 5** (Item 6.2) WOMBAT HILL BOTANIC GARDENS KIOSK
LEASE

ATTACHMENT 1

**Minutes of The Ordinary Meeting Of Council
Held On 21 October 2008
And
Minutes of the Special Meeting of Council
Held on 28 October 2008.**

The minutes will be tabled at the meeting.

ATTACHMENT 2

ITEM 5.1 CHARTER OF HUMAN RIGHTS



POLICY NUMBER: 49

**HUMAN RIGHTS CHARTER
(DRAFT)**

ADOPTED: November 2008

LAST AMENDED:

AMENDED:

NEXT REVIEW: October 2010

RESPONSIBLE OFFICER: Manager Organizational Development

REFERENCES: Policy 33 Equal Opportunity
Policy 37 Councillor / Staff Relationships
Policy 4 Communication and Consultation
Policy 24 Risk Management

RELEVANT LEGISLATION: Victorian

- Children, Youth and Families Act 2005
- Crimes Act 1958
- Disability Act 2006
- Equal Opportunity Act 1995
- Freedom of Information Act 1982
- Information Privacy Act 2000
- Mental Health Act 1986
- Occupational Health and Safety Act 1985
- Racial and Religious Tolerance Act 2001

Commonwealth

- Age Discrimination Act 2004
- Crimes Act 1914
- Disability Discrimination Act 1992
- Human Rights and Equal Opportunity Commission Act 1986
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984

Purpose

ATTACHMENT 2

Victoria has become the first Australian State to enshrine basic human rights in one Act of Parliament with the adoption of the Charter of Human Rights and Responsibilities Act 2006.

From January 1, 2008 the Charter will be fully operational and from that date onwards Council will be required to comply and have regard for human rights in its day to day operations. The purpose of the Charter is to protect and promote human rights by recognizing that all people are born free and equal in dignity and rights.

The Charter introduces standards to ensure that Council considers human rights when making laws and decisions and when providing services.

It also provides a framework to help public authorities to strike a balance between protecting the rights of Victorians and other competing public interests. For example, a person's right to freedom of expression would need to be balanced with another person's right to privacy.

Scope

Council's new responsibility is to act compatibly with the Charter and give proper consideration to human rights when making decisions. This responsibility is set out in the Charter and the Public Administration Act 2004.

The Charter reinforces existing sound work practices and states our commitment to a human rights culture within government.

Policy

Hepburn Shire Council is wholly committed to the principles within the Charter of Human Rights and Responsibilities and will ensure that it is taken into consideration when making laws, setting policies and providing services.

Council is committed to respecting, protecting and promoting human rights in all its spheres of influence and will avoid complicity in abuses of human rights.

Council will have regard for human rights in its day to day operations by ensuring that it considers the 20 rights and 4 basic principles of:

ATTACHMENT 2

Freedom

- Freedom from forced work
- Freedom of movement
- Freedom of thought, conscience, religion and belief
- Freedom of expression
- Right to peaceful assembly and freedom of association
- Property rights
- Right to liberty and security of person
- Fair hearing
- Rights to criminal proceedings
- Right not to be tried or punished more than once
- Protection from retrospective criminal laws

Respect

- Right of life
- Protection of families and children
- Cultural rights, including recognition of the distinct cultural rights of the Aboriginal people of Victoria.

Equality

- Recognition and equality before the law
- Entitlement to participate in public life

Dignity

- Protection from torture and cruel, inhuman or degrading treatment
- Protection of privacy and reputation
- Humane treatment when deprived of liberty
- Appropriate treatment of children in the criminal process

Implementing the Charter

Council will ensure that all new policies will make explicit reference to the above rights and that existing policies will be progressively reviewed to ensure explicit reference to the Charter is contained in the Policy revision.

Council will progressively review and ensure appropriate links are developed to other relevant internal and external laws, policies, codes and guidelines such as equal opportunity, health and safety, funding agreements, departmental policies and other standard frameworks

Council will develop a complaint –handling process which will provide an efficient, fair and accessible mechanism for resolving user complaints and through the monitoring of complaints endeavour to improve the quality of services delivered to the Community.

Policy End

ATTACHMENT 3

ITEM 5.2 HEPBURN SHIRE YOUTH POLICY



Policy No: 43

HEPBURN SHIRE COUNCIL
YOUTH POLICY

Adopted:

Last Amended: N/A

Next Review:

Responsible Officer: Youth Development Co-ordinator

Background

ATTACHMENT 3

At the 2006 census there were 1,914 people aged 12-24 in the Hepburn Shire. Young people (aged 15-24 years) make up 10% of the Shire's population, compared to 14% of the State population. They are an integral part of our communities however as with the national population trends this group is in decline. Despite recent increases in the birth rates in Hepburn Shire this trend is unlikely to turn around.

Hepburn Shire young people report being affected by a lack of local education, training and employment opportunities. This results in migration to larger centres to fulfil these needs or under-participation. For example 61% of youth aged 15-19 years are engaged in full time work or study, compared to the state average of 71.9% (Community Indicators Victoria 2008). In 2006 the population of 20-24 year age was half that of the 15-19 year age group. These matters are further complicated by secondary restrictions such as limited transport options.

Young people add value and diversity to our communities through involvement in sporting clubs, participating in and contributing to events and committees, taking part in the arts and through volunteering.

Rationale

Young people's input can often go under represented where their age or experience prevents their involvement. This policy has been developed to ensure young people have the right to active citizenship through visible and meaningful participation in decision making regarding them and their communities.

Hepburn Shire Council is committed to retaining young people and/or attracting them back later in life. To achieve greater youth retention and to make Hepburn Shire an attractive option to return to (for those young people who leave) a concerted effort will be required. This policy is intended to direct Hepburn Shire Council's youth retention initiatives and support action to attract a diverse population.

Scope

This policy applies to all Hepburn Shire Council.

Aims

To create an environment where young people will choose to live because they can participate in decision making, learning and employment.

Objectives

1. To increase young people's participation in civic processes

Hepburn Shire Council recognises that young people have an important contribution to make to the social, economic, recreational and cultural life of Hepburn Shire

2. To Increase the number of young people who chose to remain or return to live in Hepburn Shire.

Young people who are connected, appreciated and celebrated within their communities will retain our history as well as govern our future.

3. To provide effective leadership and advocacy for and on behalf of young people

ATTACHMENT 3

Hepburn Shire Council has a key role to play on a local, state and federal level as leaders in youth engagement, education, training, employment and advocacy.

Strategies

1. Strengthening and engaging with the youth communities by actively seeking their input in Council decisions conducting community engagement initiatives and developmental projects. This includes an ongoing commitment to a Youth Advisory Committee, Youth Grants and Youth Development Co-ordination.
2. Advocating for and creating opportunities for education, training and employment with other levels of government, private industry and within Hepburn Shire Council's operations through youth apprenticeships and traineeships.
3. Deliver youth specific programs such as the Freeza Program and pursue where appropriate alternative resources to support youth development and participation.
4. Creating a positive image within communities that young people are valued and appreciated within the Shire.
Attracting young people back will in part be determined by their experience before they leave and the opportunity they will have as older adults.
5. Building partnerships with community organisations, groups and services to advance youth participation and retention.

Endorsed by:

Adopted by Council:

References

MAV Youth Charter
Youth Advisory Council of Victoria Code of Ethical Practice
Hepburn Healthy Communities Social Plan (2005)
Australian Bureau of Statistics (ABS) 2006
Community Indicators Victoria (CIV)
FReeZA Program Delivery Guidelines

ATTACHMENT 4

ITEM 5.6 MONTHLY FINANCIAL REPORT

ATTACHMENT 5

ITEM 6.2 WOMBAT HILL BOTANIC GARDENS KIOSK LEASE

File # 5/1330/01950



INFORMATION PACKAGE

WOMBAT HILL BOTANIC GARDENS RESERVE

BRIEF - TENDER FOR LEASE

FORMER CURATOR'S RESIDENCE & KIOSK

LEASE OF PREMISES FOR COMMERCIAL USE

MARCH 2009 - 21 YEARS

DOCUMENTS INCLUDED

ADVERTISMENT
BRIEF – TENDER FOR LEASE
TENDER FORM
DRAFT – TYPICAL LEASE
SETTING UP A FOOD BUSINESS IN THE HEPBURN SHIRE

TENDERS CLOSE 4PM WEDNESDAY 12 JANUARY 2009

Refundable Deposit: \$50

ATTACHMENT 5

ADVERTISEMENT

HEPBURN SHIRE COUNCIL
BUSINESS LEASE OPPORTUNITY

WOMBAT HILL BOTANIC GARDENS

KIOSK - "expand the tradition"

Tenders are invited for a lease to develop the former Curator's residence - kiosk in the Gardens and operation of an appropriate business.

A 21 year lease will be offered to the person submitting the tender considered the most advantageous – taking into consideration capital investment, the type of service to be provided for persons visiting the Gardens, other uses and rent offered to be paid.

A basic function is to offer refreshments to Garden visitors, however the location offers longer term opportunities for development and growth of a business compatible with the Gardens and tourism.

A Brief giving further detail (\$50 refundable deposit) is available from Ashleigh Mahon - Town Hall 76 Vincent Street Daylesford 3460, Ph 5348 2306. Enquiries on the Brief or other matters may be directed to Richard Pekin Ph 5321 6435.

Any canvas of Councillors or Officers will mean a Tender cannot be considered. Late, facsimile or e-mail tenders will not be accepted. The Council is not bound to accept any tender and reserves the right to reject any or all tenders received.

Tenders must be lodged in the Tender Box located at the Customer Service Office, Cnr Duke and Albert Streets, Daylesford by 4pm, Monday 12 January 2009.

Kaylene Conrick
CHIEF EXECUTIVE OFFICER

HEPBURN SHIRE COUNCIL
(the Council)

File# 5/1330/01950

BRIEF – TENDER FOR LEASE

WOMBAT HILL BOTANIC GARDENS - WHBG

Tenders are invited for development and business operating proposals for the former Curator's residence - kiosk (the Premises) in the WHBG subject to a 21 year term lease. Tenders close at **4pm Monday 12 January 2009**.

ATTACHMENT 5

1. BACKGROUND

The Premises consists of a kiosk, covered outdoor area, the residence provided for former Curators of the Gardens and small garden area at the rear of the residence. Residential use is no longer relevant and not permitted. Refer to the attached plan for exact dimensions of the area.

WHBG are subject to a permanent reservation as a Crown land Public Gardens Reserve for which Council, as Committee of Management, is responsible and with Ministerial consent has a right to lease the Premises. These powers are contained in the Crown Land (Reserves) Act 1978. WHBG have been classified and included in the National Trust's Register.

The occupancy and term will be subject to a specific lease which requires final approval by the Minister for Environment and Climate Change. Legislative requirements now in place allow a 21 year term tenancy to be offered.

No 'ownership' of the Premises or assets provided will be acquired by the successful tenderer.

Traditionally the Kiosk provided a range of refreshments - drinks, ice creams, sweets and even light meals - to people visiting the Wombat Hill Botanic Gardens.

The Council desires to maintain the tradition of a Kiosk in the Gardens, however believes it is now time to expand the 'tradition' and explore other opportunities for the Premises associated with other uses compatible with the Gardens. Refer to the Conservation Management Plan section.

Council has a role to facilitate appropriate economic and tourism development and will have regard to this when assessing tenders.

Based on the term and capital investment requirements of this lease it will be exempt from the Retail Leases Act 2003.

2. CONSERVATION MANAGEMENT PLAN

A Conservation Management Plan (CMP) for the Gardens was completed in December 2007.

Any tender proposal for the Premises must not conflict with the requirements of this Plan.

The following '**extracts**' from the CMP not only clearly summarises the significant importance of WHBG but provides an insight into the direction for opportunities that may be available for development of the Kiosk:

WHBG is of historic, aesthetic, social and scientific cultural significance to the State of Victoria and the people of Daylesford/Hepburn Springs district. This is acknowledged by its classification with the National Trust of Australia (Victoria), its inclusion on the Register of the National Estate and its pending inclusion on the Victorian Heritage Register.

WHBG continues today to have a great capacity to tell many 'illustrated' stories about ways of life, traditions, and intellectual and economic endeavour in Daylesford's and Victoria's past.

The Gardens continue - to fulfil the dual roles of botanic study and passive recreation for which it was originally created. It continues to be regarded with warm affection and appreciation by it many visitors.

The CMP proposes - to Retain the Curator's Residence and Kiosk for staff, friends group, café and/or community use associated with the functioning of the Gardens.

The Curators Residence may be one of the few remaining mid-twentieth century replacement cottages left in Victoria's regional botanic gardens. If this be the case, its cultural significance will be increased. Existing rock work at the rear of the residence is thought to belong to the earlier curator's residence. This remaining rock is important in understanding the site's long and evolving history.

Ranking of cultural significance

ATTACHMENT 5

Primary significance

***Tradition of Curator's residence located in the Gardens
Tradition of providing refreshments in the Gardens***

Contributory significance

***Current (1948) Curator's residence, including associated crazy paving, rock seat and garden areas
Existing brick Kiosk
Existing Kiosk extension incorporating the patio***

Alteration or loss which jeopardises cultural significance

***Loss of early Curator's residence
Loss of garden elements to the rear of the current Curator's Residence
Loss of provision of refreshments in the Gardens***

In terms of Policy, the Plan proceeds to say:-

The Curator's Residence has been identified as culturally significant and an important contributor to the public's understanding of the history of the Gardens. Regardless of the architectural or aesthetic merit of WHBG Curator's Residence, it is important for the story it tells, and as an existing building in reasonable condition, it presents an opportunity to revitalise it through a new use. Possible new uses include offices for the Friends group and staff, a visitor's centre, bookshop or gift shop. Such changed use has occurred successfully in a number of botanic gardens in Victoria and beyond, and has acted as a catalyst for renewed community interest in the botanic gardens themselves. Its rear garden could be successfully used for community groups and school groups. And its quaint stone paved terrace could be the site of community activities such as art shows and lectures. Provision of refreshments in the form of a café, kiosk or tearooms, is an important aspect of present-day garden visitation. The reintroduction of refreshments in the Gardens would increase the attraction of the place and prolong the visitation, potentially encouraging visitors to explore the Gardens more fully.

The Policy recommendation is:

To retain and promote the Curator's Residence as a focus for community activity, with facilities such as horticultural library, café and information centre.

To provide a professional standard of horticultural and office facilities for gardens staff

To create an attractive, instructive and fully integrated landscape which respects past design intent in a modern context.

3. LEASE

A lease will be made available as provided in Section 17D of the Crown Land (Reserves) Act 1978. The Lease requires approval from the Minister for Environment and Climate Change following execution by the parties. This approval will be initiated by the Council through the Department of Sustainability and Environment.

A copy of a draft lease is attached to this Brief.

The area of land to be leased (includes the buildings) is approximately 470 sq metres as marked on the attached Plan, together with a right of access across the Reserve for operational purposes.

The Premises are vacant.

A general description of the Premises includes:

- kiosk room
- paved outside/undercover eating area with plastic curtains
- domestic kitchen – (domestic stove, dishwasher, 2 bar fridges*) and cupboards
- 3 rooms (former bedrooms)
- 1 room (former lounge) and

ATTACHMENT 5

- domestic bathroom/toilet previously for staff only use.

(* these items if not required by a tenant will be removed by the Council.)

The lease term is 21 years with no provision for any further term.

A bank guarantee (or cash) of \$10,000 or equal to 6 months rent (whichever is the greater), to secure performance of the tenant's obligations is required. Reference must be made in the tender to acknowledge that the tenant will provide such a guarantee. Where the lessee is a company or partnership, individual indemnity and guarantees are required.

Terms and conditions subsequently agreed, but not specifically mentioned or covered in this Brief or the attached draft lease will become "Further Obligations" and be included in the lease together with the successful tender.

It is acknowledged that the Premises is in need of repairs and maintenance, but it will be leased "as is". The successful tenderer/lessee will be responsible to bring the Premises to an appropriate standard for the proposed use, fitout, develop and to maintain the Premises, all subject to the CMP and any town planning requirements throughout the lease term. No guarantees are made, given or implied by this Brief in respect of the condition or suitability of the Premises for any proposed use.

Subject to the governing law and the lease, any permanent improvements (in the nature of fixtures and fittings) made to the Premises during the lease term must be removed at the end of the lease; otherwise they may become the property of the Council as landlord or the Crown. All fixing holes or other damage must be made good (including painting) by the departing tenant.

There is a right implied to access the Premises through the WHBG Reserve for operation of the business proposed, including deliveries. Keys will be provided to the operator. It will be required that during the lease term the Premises keying be converted to match the Council's master key system.

There is no current liquor licence associated with the Premises and it will be the lessee's responsibility to seek any approvals if such a licence is required.

4. MINIMUM GENERAL REQUIREMENTS

Tenderers must clearly detail the purpose which they propose to use the Premises, outline how they will achieve the stated purpose and agree to the requirements of this Brief.

For Kiosk operation to maintain a basic service to Garden's visitors, the following would be a typical requirement –

- coffee/teas and biscuits/cake
- juices, soft drinks, milk shakes
- soup & bread, sandwiches, roll-ups, foccacia
- a small range of ice creams and sweets.

This may extend to include quiches, frittata, antipasto, cheese platter/dips, salads, deserts and the like.

The operator must be a person (or have a person on site) who holds a 'Food Safety Supervisor' qualification.

The Premises must be open during week days at least between 10am and 4pm; extended to 6pm on weekends/public holidays.

Any breakdown and subsequent repairs to or replacement of any equipment, services or utilities directly associated with the premises will be the responsibility of the operator.

The Operator must obtain the consent of the Council for any change, alteration or modification either to the service proposed, the Premises, or this Brief.

5. RENT

ATTACHMENT 5

A rent offer (monthly amount excluding GST) must be submitted as a condition of a tender.

Rent will be negotiated and finalised with the person(s) who lodges the most advantageous tender, also having regard to other stated criteria.

Rent will be increased and reviewed during the term on a 5 year cycle as follows:

- Year 1 - rent as initially tendered – excluding GST
- Year 2 – CPI increase on the tendered amount
- Year 3 – CPI increase on the prior year
- Year 4 – CPI increase on the prior year
- Year 5 – full market rent review
- Years 6-9 CPI on the preceding years
- Year 10 full market rent review
- Years 11 – 14 CPI on the preceding years
- Year 15 full market rent review
- Years 16 – 19 CPI on the preceding years
- Year 20 full market rent review
- Year 21 CPI on the prior year.

6. FINANCIAL

Tenders must include sufficient financial information to enable an assessment of the tenderers financial status, capacity and sustainability.

A draft business plan is essential – although there is no need to provide significant detail – an outline of major points including finances will be sufficient.

Other information might include 2 or 3 years of trading reports if a trading entity, references from a long term banker, and/or accountant. Other corporate information or evidence as deemed appropriate.

7. EXPERIENCE

Details of business background and experience/credentials - especially related to the restaurant and tourist industry should be submitted. Any trade or appropriate professional qualifications are to be noted.

8. DISCLOSURE AND COMPLIANCE

As part of submitting a tender, tenderers must disclose any proceedings by or against them during the past 5 years. Examples may be workers compensation or occupational health and safety matters, bankruptcy, or a criminal matter.

A current national data base Victoria Police check may be required before awarding a lease. A successful tenderer and operator must comply with all relevant laws, regulations, local laws, planning schemes and requirements applicable to the leased Premises and the running of the business.

9. PLANNING, ZONING, BUILDING USE

The Premises as part of the Wombat Hill Botanic Gardens Reserve is zoned PPRZ - Public Park and Recreation - with the following planning overlays applying:- Heritage Overlay HO697 – Wombat Hill Garden Heritage Precinct, Daylesford

Any change of use, development or significant maintenance will require the operator to obtain a planning permit.

Specifically a permit is required to:

ATTACHMENT 5

- Demolish or remove a building.
- Construct a building or construct or carry out works, including:
 - Domestic services normal to a dwelling if the services are visible from a street (other than a lane) or public park.
 - A rainwater tank if the rainwater tank is visible from a street (other than a lane) or public park.
 - A fence.
 - A pergola or verandah, including an open-sided pergola or verandah to a dwelling with a finished floor level not more than 800mm above ground level and a maximum building height of 3 metres above ground level.
 - A deck, including a deck to a dwelling with a finished floor level not more than 800mm above ground level.
 - Non-domestic disabled access.
- Externally alter a building by structural work, rendering, sandblasting or in any other way.
- Construct or display a sign.
 - Externally paint a building if the schedule to this overlay identifies the heritage place as one where external paint controls apply.
 - Externally paint an unpainted surface.
 - Externally paint a building if the painting constitutes an advertisement.
 - Internally alter a building if the schedule to this overlay identifies the heritage place as one where internal alteration controls apply.
 - Carry out works, repairs and routine maintenance which change the appearance of a heritage place or which are not undertaken to the same details, specifications and materials.
 - Remove, destroy or lop a tree if the schedule to this overlay identifies the heritage place as one where tree controls apply. This does not apply:
 - To any action which is necessary to keep the whole or any part of a tree clear of an electric line provided the action is carried out in accordance with a code of practice prepared under Section 86 of the Electricity Safety Act 1998.
 - If the tree presents an immediate risk of personal injury or damage to property.

Due to the nature of the premises and planning requirements, before any alterations, additions, maintenance or painting work is undertaken advice from the Council's Planning Department must be sought. This may also likely involve Heritage Victoria. It is the responsibility of the successful tenderer to apply for all planning and building permits for all works.

Those persons intending to lodge a tender should seek advice from the Council's Planning Department, especially where changes are proposed.

10. CHATTELS

Apart from any items mentioned above, no tables, seating, cooking utensils, appliances, additional benches, crockery, cutlery or other material are available or will be supplied. These or any other items (eg cookers, fryers, refrigeration, fire control/extinguishers, display racks/cabinets, cash register and floor coverings) are to be supplied as fitout by the operator to meet its own need and requirements.

11. OUTGOINGS

The operator will arrange and pay for all utility services required, including municipal rates and charges assessed during the term.

The operator will be responsible to make enquiries about and arrange for all waste disposal including any trade waste requirements from Central Highlands Water Corporation.

12. MAINTENANCE

The operator must maintain the Premises, buildings, services, utilities and all tenant's fixtures and fittings, in good order and repair, clean and tidy commensurate with the business being conducted. At the end of the lease, the operator's fixtures and fittings must be removed and the premises made good, including painting out any signs and painting any brightly coloured walls or corporate specific colours with neutral tones.

The operator must submit annually by 15 July an annual maintenance plan. The annual maintenance plan must set out the operator's planned maintenance works for the year, the scope and timing of these works and an analysis of how the maintenance plan will ensure the operator complies with its maintenance and repair obligations. The operator must also include as part of the maintenance plan the maintenance works actually carried out by over the

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previous year, the cost of those maintenance works, as well as an analysis of the operator's compliance with the annual maintenance plan for that year.

If it is found necessary to carry out any substantial repairs or maintenance to the Premises not detailed in the annual maintenance plan, the operator must obtain the written approval of the Council (such approval will not be unreasonably withheld) and all relevant Authorities.

13. PREMISES REFURBISHMENT

It is expected throughout the life of the long lease on offer that the Premise will require from time to time (even as a matter of normal commercial operations) refurbishment – examples painting, replacement of floor coverings, plumbing fixtures, heating/cooling, light fittings and so on.

As part of a tender, tenderers are to consider this issue and make submissions on it.

As a matter of course, it would be expected after initial setup/redevelopment of the Premises, a refurbishment program would be established with refurbishment works being required at maximum intervals of 6 years, although this interval may depend on the type of business operated at the Premises. The refurbishment program would be combined into the annual maintenance plan.

14. INSURANCE

Insurance provisions in the lease must be noted and will be strictly enforced.

The following are minimum requirements:

- Public/products liability cover with minimum \$10m cover
- All owners contents
- Glass full replacement value
- Interruption to business/trading

The interests of the Council, the Crown and the Department of Sustainability and Environment must be noted on the insurance policies as required by the lease.

Evidence of policies and compliance with requirements will be required.

The Council will maintain insurance for the buildings, however the operator must reimburse the Council the insurance premiums paid or payable.

15. INDEMNITY

The operator must indemnify, as provided in the Lease, the Council, the Crown and the Department of Sustainability and Environment against all claims (except those which may arise as a result of the Councils or Departments direct actions) arising as a result of the operator's occupancy of the premises and operation of the Premises and any associated business.

16. PARKING

There is no parking area directly associated with the Premises; all parking is part of the Reserve. No specific car parks will be set aside or allocated in the WHBG for the proposed business. Any parking restrictions and payment of fees and charges will be applicable.

The operator must not park vehicles on the leased area except in any area specifically determined for this purpose. Delivery vehicles excepted while actually setting down or taking up goods.

17. FOOD PREMISES AND REGISTRATION

"Setting up a Food Business in the Hepburn Shire" is attached and available from the Environmental Health Department or www.hepburnshire.vic.gov.au It is a valuable resource. The Premises must be registered pursuant to the Food Act 1984. It will be the responsibility of the operator for registration fees - currently \$305. Advice should be sought from Council's

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Environmental Health Department Officers at the Duke Street Office well in advance about compliance with food premises requirements.

18. NAME

The names Wombat Hill Botanic Gardens or Wombat Hill Botanic Gardens Kiosk/cafe (in any form) are synonymous to the Gardens Reserve, belong to and remain the property of the Council. Subject to the Council's consent the operator may use the names or some derivative of them or change them for the purposes of the business only. The name 'Wombat Hill Botanic Gardens' may be used in terms of an address, but cannot be changed.

19. SIGNS

Before any sign (required statutory signs excepted) is erected or placed externally on the premises the Council's consent must be obtained. This may include a planning approval. Advice from the Council's Planning Department should be sought.

20. EMERGENCY MANAGEMENT

The operator will be expected to develop, adopt and use procedures in case of any emergency.

Immediately adjacent to the Curator's residence is communications equipment including an antenna which is permitted via a Licence as part of a State-wide Mobile Radio Site.

21. REPORTS

A report of any serious or significant incident (whether to the public or staff) occurring at or in conjunction with the leased premises must be made to the Council within 24 hours of occurrence.

22. CUSTOMER SERVICE

Council has no intention nor would it 'influence' how a person should conduct the running of a business. Council does, however, take every opportunity to encourage high standards of customer service.

Tourism, with all its associated activities is very important to sustainable economic development across the Shire. Council Plan 2006 – 2011 emphasises through stated Mission and Values the Council's commitment to excellence in providing quality service and ensuring that people are treated with respect, integrity, openness and honesty.

Council extends these values to its tenants and in return there is an expectation that tenants will treat their customers accordingly.

The successful tenderer/lessee should look to adopting appropriate standards for customer service protocols.

23. LODGING YOUR TENDER

A tender must be in writing (the attached form may be used) and must address the Evaluation Criteria below. The tender should also contain the following basic data:

- Name(s), address(s), (include Email) telephone #, any existing ABN, business, company name or incorporation registration number
- Outline clearly the proposal for conduct at the Premises or type of business to be conducted
- Rent amount initially offered
- Other financial information and plans requested
- The name of the bank/funding organisation, a contact name and telephone number

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- An acknowledgement that if successful the tenderer will provide personal and bank guarantees (or cash) as required to secure lease obligations
- Provide the names and addresses of directors or partners who will execute a personal indemnity and guarantee of performance
- Details of business experience, with particular reference to whether the business will be personally operated or by employed staff or even a third party (sub-letting proposed)
- Name of intended insurer and details of any public/product liability insurance held, note a minimum \$10m cover required, with specific indemnity for Council and Crown
- A statement acknowledging this Brief and to agree to the terms and conditions of it and as finally negotiated
- provide at least two referees willing to be contacted by Council
- Other information as you see fit.

Tenders in sealed envelopes addressed to the Chief Executive officer and marked **'TENDER: – WOMBAT HILL GARDENS'** must be lodged in the Council's Tender Box located in the foyer at the Customer Service Centre, Cnr Duke and Albert Streets, Daylesford, VIC 3460 by **4pm, Monday 12 January 2009**.

Tenders lodged by the above closing date will be considered, **EXCEPT:**

- any canvassing of Councillors or Officers will disqualify a tender
- a tender received after the above time and date will not be considered
- facsimile or e-mail tenders will not be accepted.

The Council is not bound to accept any tender and reserves the right to reject any or all tenders received.

It can be anticipated that consideration of tenders, together with any interviews necessary will be completed and a tender provisionally awarded by 18 February 2009.

After a tender is accepted (provisionally) and the terms and conditions of the Lease are finalised the Council will submit documents to the Department of Sustainability and Environment as part of the process to obtain the Minister's approval.

24. TENDER EVALUATION

Tenders will be evaluated using the following core points:-

RENT OFFERED

- level of rent offered – excludes GST

SERVICE/BUSINESS TO BE PROVIDED

- the type of business proposed and it's relevance to the Reserve and users
- whether the business will be personally operated or by employed staff or sub-let
- whether the business compliments other/nearby tourism activities
- whether the business may be a detrimental use of public land
- the general benefit the business may offer to Hepburn Springs and surrounds
- customer service protocols

FINANCIAL CAPACITY AND SUSTAINABILITY

- compliance with supplying the information required by this Brief
- draft business plan
- bankers or accountants recommendations
- bank (cash) guarantee (\$10,000) to secure performance – directors guarantees as well
- sustainability of the business – trading solvent, ability to meet debts when due, current significant issues

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- insurances – name, address of insurer, or commitment that insurances are available

PRIOR BUSINESS EXPERIENCE

- experience of the business proprietors – any food establishments and tourist industry
- any particular business or trade qualifications
- legal or other proceedings during past 5 years

25. EXPENSES

Those preparing and lodging a tender are not entitled to claim for nor will any payment be made for any cost associated with the preparation, lodging of documents, attendance at interview or supply of further information.

26. EXECUTION OF DOCUMENTS

Following the close of tenders it is anticipated evaluations and interview (if necessary) of selected tenderers will be completed by 30 January 2009 and the lease awarded (provisionally) by 18 February 2009 with confirmation during late February early March.

The successful tenderer will be expected to execute the lease within 14 days of receipt of documents and at the same time lodge security deposits and guarantees. Time will be of the essence for the successful execution of this lease.

Until documents are formally executed and completed the tender, written (provisional) acceptance by the Council, this Brief and its terms and conditions, any supplementary information supplied and the tenderer's written acceptance will constitute a binding agreement between the successful tenderer and the Council.

If the Minister's approval is not given, the parties will mutually agree to release each other from any agreement created. No compensation will be payable one to the other in these circumstances.

It is expected that the Operator commence occupancy at the latest by 1 April 2009.

27. INSPECTIONS

Those persons wishing to inspect the premises must contact and make arrangements with Richard Pekin at Council's Office Ph 03 5321 6435. Inspections will only be held during normal week day business hours.

28. ENQUIRES

You should direct any enquires to Richard Pekin at the Town Hall, 76 Vincent Street, Daylesford, Telephone# 03 5321 6435 or Email: rpekin@hepburn.vic.gov.au

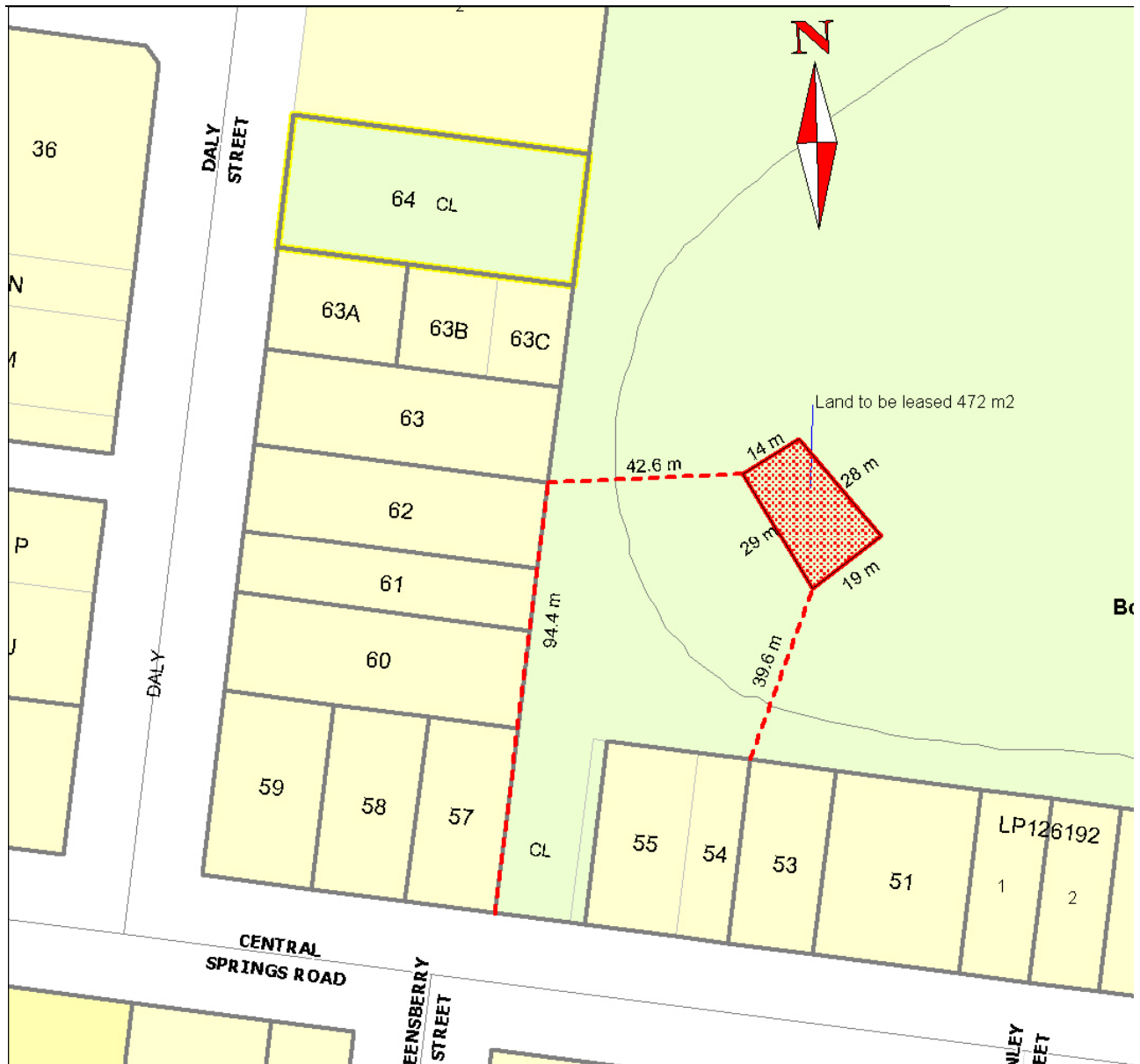
Kaylene Conrick
Chief Executive Officer
2008

18 November

PLAN OF LAND TO BE LEASED – SHADED AREA

Measurements shown are not by survey

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TENDER FORM: please use this form or similar including the 'acknowledgement' to provide tender information required.

File # 5/1330/01950

Ms Kaylene Conrick
Chief Executive Officer
Hepburn Shire Council
PO Box 21
Daylesford Vic 3460

TENDER FOR LEASE

**FORMER CURATOR'S RESIDENCE & KIOSK AT
WOMBAT HILL BOTANIC GARDENS RESERVE**

- Tenders must be lodged in the tender Box located in the foyer at the Customer Services Centre Cnr Duke & Albert Streets Daylesford by 4pm Monday 12 January 2009.

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- Envelops to be marked – “**TENDER: – WOMBAT HILL GARDENS**”
- The information below is based on the Evaluation criteria and must be submitted as a minimum requirement for a Tender.
- Parties are welcome to submit any other supporting information by attachment.
- All information submitted will be treated as **CONFIDENTIAL**.
- On execution of a Lease some information provided by the successful tenderer may be subject to disclosure.

The Party/Parties below submit the following tender and information in accordance with the Tender Brief for lease of the former Curator’s residence - kiosk at the Wombat Hill Botanic Gardens Reserve and agree to be bound by the stated conditions including security and guarantee requirements.

Name and Address: (Include details for all persons/directors/respondents **associated** with the Tender

1 _____ 2 _____

3 _____ 4 _____

(If insufficient spaces attach information separately)

Telephone No: _____ Fax: _____ E-mail: _____

Outline type of Business being proposed:

Tendered amount for Rent year 1 of Lease (exclude GST)
\$ _____

Refer to the Brief for Tender - Section ‘TENDER EVALUATION’ to provide and attach information and /or give undertakings on:

- **Service/Business to be provided**
- **Financial Capacity and Sustainability**
- **Prior Business Experience**

Attach any other supporting information.

Contact details for at least 2 Referees willing to be contacted:

Name and telephone No.

Name and telephone No.

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Name and Address of Director/Partner/
Director/Partner/
Individual to execute Guarantee:

Name and Address of
Individual to execute Guarantee:

It is acknowledged and agreed that if Hepburn Shire Council offers a Lease and receives a letter of acceptance, until the execution of a formal agreement in the form of a Lease and its approval by the Minister for Environment and Climate Change this tender document, the offer and acceptance will evidence a binding agreement between the parties.

Tender by:

1 Individual(s) – Signed sealed and delivered by:

(Signature(s))

2 Partnership – Signed sealed and delivered by in the presence of:

(Partner) (Witness)

(Partner) (Witness)

(Partner) (Witness)

3 Company – under seal

The Common Seal of _____)
was hereunto affixed in accordance with its)
Articles of Association in the presence of:)

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_____ Director)
_____ Secretary)

4 If the Tender is being submitted by any other form of body corporate, or group please insert the appropriate sealing/signature clause