Council Meeting Agenda

Ordinary Council Meeting
Wednesday 26 March 2014 at 7.00pm
Gisborne Administration Centre

Public Question Time:
Written questions submitted by the public will be considered at 7.45pm. Question forms will be available at the entrance to the Meeting Room and will be collected at approximately 7.30pm.

Recording of Council Meetings:
The recording of Council Meetings, either visually or by sound, or the taking of photographs in Council Meetings is not permitted without first obtaining the consent of Council or the Chairperson.

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ACKNOWLEDGEMENT OF COUNTRY

I would like to acknowledge the traditional custodians of the land on which we are meeting as being part of the Kulin Nation.

1. PRAYER

Almighty God, we humbly beseech thee to vouchsafe thy blessing upon this Council. Direct and prosper its deliberations to the advancement of thy glory, and the true welfare of the people of the Shire of Macedon Ranges.

2. PRESENT

3. APOLOGIES

4. DECLARATION OF CONFLICT OF INTERESTS

Councillors' attention is drawn to Division 1A Sections 76-81 of the Local Government Act 1989 regarding interests. The relevant sections are reproduced and attached to the back of this Notice Paper.

Councillors are reminded that:

1. Disclosures of Conflicts of Interest must be declared immediately before the consideration of the item Section 79 (2) (a) (i); and

2. They should classify the type of interest that has given rise to the conflict of interest, and describe the nature of the interest Section 79 (2) (b) (c).

5. MAYOR'S REPORT

This item in each Council Notice Paper offers an opportunity for the Mayor to provide a brief report on recent Council activities and initiatives of a Shire wide nature.

Councillor reports on any meetings they have attended as a Councillor delegate are provided at Councillor Briefings or via email communications. Any matters requiring Council deliberation/decision are considered by Council via a report to a Council Meeting.

Recommendation:

That the Mayor's report be received.

6. PETITIONS

Pursuant to Council's Local Law No. 9, Meeting Procedure, a Councillor may present a petition or joint letter to the Council. A petition or joint letter presented to the Council must lay on the table until the next Ordinary Meeting of Council and no motion, other than to receive the petition or joint letter may be accepted by the Chairperson, unless the Council agrees to deal with it earlier. A Councillor presenting a petition or joint letter will be responsible for ensuring that they are familiar with the contents and purpose of the petition or joint letter and that it is not derogatory or defamatory.

7. ADOPTION OF MINUTES

Any Councillor whether in attendance or not at the subject meeting can move and second the adoption of the minutes, however accepted practice is that Councillors who were in attendance moved and second these motions.

Ordinary Council Meeting: Wednesday 26 February 2014

Recommendation:

That the minutes of the Ordinary Meeting of the Macedon Ranges Shire Council held on Wednesday 26 February 2014 as circulated be confirmed.

8. RECORD OF ASSEMBLIES OF COUNCILLORS – MARCH 2014

Summary / Purpose
The purpose of this report is to provide the record of any assembly of Councillors, which has been held since the last Council Meeting, so that it can be recorded in the minutes of the formal Council Meeting.

Policy Context
An amendment to the Local Government Act 1989, which came into effect on 24 September 2010 requires the record of any assembly of Councillors to be reported to the next practicable Council Meeting and recorded in the minutes (Refer Local Government and Planning Legislation Amendment Act 2010 – No. 58 of 2010 – Section 17).

Background Information
The Local Government Act provides a definition of an assembly of Councillors where conflicts of interest must be disclosed.

A meeting will be an assembly of Councillors if it considers matters that are likely to be the subject of a Council decision, or the exercise of a Council delegation and the meeting is:

1. A planned or scheduled meeting that includes at least half the Councillors (5) and a member of Council staff; or

2. Is an Advisory Committee of the Council where one or more Councillors are present.

Note: Advisory Committee means any committee established by the Council, other than a special committee, that provides advice to (a) the Council, or (b) a special committee, or (c) a member of Council staff who has been delegated a power, duty or function of the Council under Section 98.

Note: Only matters that are the subject of discussion and consideration at an Assembly will be listed. Incidental updates and information on matters will not be recorded.

This requirement for reporting provides increased transparency and the opportunity for Councillors to check the record, particularly the declarations of conflict of interest.

Report
Outlined below are the details of assemblies of Councillors held since the last meeting.

1. **Date / Time**	**Type of Assembly**
26 February 2014 2.00pm	Councillor Briefing
Venue	Gisborne Administration Centre
Present - Councillors	Mowatt, Morabito, Piper, Anderson, Connor and Jukes Letchford (arrived 2.15pm) Hackett (arrived 3.30pm) McLaughlin (arrived 3.35pm)
Present - Officers	Peter Johnston, Sophie Segafredo, Karen Stevens, Dale Thornton, Glenn Owens, Hayley Drummond, Graham Treadwell, Mairead O'Sullivan, Rick Traficante, David Nevin, Johann Du Preez, Michelle Wyatt, Fi Cotter and Stephen Mahon
Items Discussed	Councillor and Officer Updates Memorials Update on Gisborne Netball Facility Development General Revaluation Review of Ordinary Council Meeting Agenda
Conflicts of Interest declared by Councillors and record of them leaving the meeting when the matter about which they declared the conflict of interest was discussed.	Nil Did they leave the assembly? N/A
Conflicts of Interest declared by officers	Nil Did they leave the assembly? N/A

2. Date / Time	Type of Assembly
5 March 2014 9.30am	Councillor Briefing
Venue	Gisborne Administration Centre
Present - Councillors	McLaughlin, Morabito, Letchford, Mowatt, Piper and Connor Anderson (arrived 10.10am) Jukes (arrived 10.10am) Hackett (arrived 11.20am)
Present - Officers	Peter Johnston, Karen Stevens, Sophie Segafredo, Dale Thornton, Glenn Owens, Kerry Haby, Stephen Mahon and Enrique Gutierrez
Items Discussed	Budget Workshop #2 Councillor and Officer Update Gisborne Office Extension Kyneton Design & Discovery Briefing New Gisborne Development Plan
Conflicts of Interest declared by Councillors and record of them leaving the meeting when the matter about which they declared the conflict of interest was discussed.	Nil Did they leave the assembly? N/A
Conflicts of Interest declared by officers	Nil Did they leave the assembly? N/A

3. Date / Time	Type of Assembly
12 March 2014 9.30am	Councillor Briefing
Venue	Gisborne Administration Centre
Present - Councillors	Anderson, Piper, Morabito, Jukes, Connor and Letchford Mowatt (arrived 9.37am) McLaughlin (arrived 10.15am) Hackett (arrived 11.45 am)
Present - Officers	Peter Johnston, Sophie Segafredo, Karen Stevens, Dale Thornton, Leon den Dryver, Glenn Owens, Stephen Mahon, David Nevin and Fi Cotter
Items Discussed	Budget Workshop #3 Asset Management Heritage Strategy Councillor Items/Officer Updates Update on BATA's Appointment of Councillor representative to the new

	Waste and Resource Recovery Region Local Government Waste Forum Hanging Rock – Implementation of Council Resolution Performance Reporting Framework 2014/15
Conflicts of Interest declared by Councillors and record of them leaving the meeting when the matter about which they declared the conflict of interest was discussed.	Nil Did they leave the assembly? N/A
Conflicts of Interest declared by officers	Nil Did they leave the assembly? N/A

4.	**Date / Time**	**Type of Assembly**
14 March 2014 9.30am		Councillor Briefing
Venue		Gisborne Administration Centre
Present - Councillors		Anderson, Connor, Hackett, Jukes, Morabito and Piper Letchford (arrived 9.50am) McLaughlin (arrived 9.50am)
Present - Officers		Peter Johnston, Sophie Segafredo, Dale Thornton, Fi Cotter, Rick Traficante and Kate Andrews
Items Discussed		Houses in Farm Zones Discussion
Conflicts of Interest declared by Councillors and record of them leaving the meeting when the matter about which they declared the conflict of interest was discussed.		Nil Did they leave the assembly?
Conflicts of Interest declared by officers		Nil Did they leave the assembly? N/A

5.	**Date / Time**	**Type of Assembly**
19 March 2014 11.30am		Councillor Briefing
Venue		Gisborne Administration Centre
Present - Councillors		Hackett, Morabito, Letchford, Mowatt, Piper, Anderson and Jukes Connor (Arrived 12.45pm) McLaughlin (Arrived 2.00pm)
Present - Officers		Dale Thornton, Karen Stevens, Sophie Segafredo,

	Glenn Owens, Maureen Trezise, Rod Clough, Mairead O'Sullivan, Michelle Wyatt, Kylie Lethbridge, Shane Caruana, Michelle Patrick, Fi Cotter, Rick Traficante, David Nevin and Stephen Mahon
Items Discussed	Presentation by Victorian Grants Commission Councillor and Officer Updates - Councillor Grants - Woodend Transport Project Information and Communications Strategic Plan – Progress Report Planning Matters - Lighthorse Statue Evaluation Healthy Communities Weed & Pest Animal Strategy Proposed Program Reports for Ordinary Council Meeting Agenda 26 March – Questions/Discussion
Conflicts of Interest declared by Councillors and record of them leaving the meeting when the matter about which they declared the conflict of interest was discussed.	Nil Did they leave the assembly? N/A
Conflicts of Interest declared by officers	Nil Did they leave the assembly? N/A

Officer Recommendation:

That Council endorse the record of assemblies of Councillors as outlined in this report.

9. DEPUTATIONS AND PRESENTATIONS TO COUNCIL

Generally there is no opportunity for members of the public to address an Ordinary Council Meeting. In specific circumstances including where a planning matter is being considered at an Ordinary Council Meeting for the first time or a prior request to the Mayor has been made and approved, a member of the public may be provided the opportunity to address the Council. In such circumstances the presentation will be limited to three minutes unless otherwise approved.

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE

Officer: **Robert Szymanski – Senior Statutory Planning Coordinator**

File Ref: **DP/2009/10/E**

Council Plan Relationship: "Relates to Key Goal Area – Sustainable Development – Appropriate Development enhancing our lifestyle and community."

Attachments: Locality Plan;
Current Endorsed Development Plan
& proposed Amended Development Plan

Applicant: Mark Teakle from Alexander Symonds Surveying Consultants

Date of Receipt of Application: 19 December 2013

Trigger for Report to Council: Councillor Call In

Synopsis:

This application seeks approval to amend the current approved Development Plan. The proposed Amended Development Plan covers the same area as that of the original Development Plan approved for the land known as 59 Brooking Road, Gisborne. The road layout remains the same and the plan is further generally in accordance with the approved Development Plan except for seven (7) of the lots being Lots 1, 2, 3, 8, 12, 19 and 21. Each of these lots is shown on the proposed Amended Development Plan as subdivided into two (2), three (3) or four (4) lots.

The amended Development Plan was advertised by sending letters to adjoining owners/occupiers, with four (4) objections received relating to property devaluation, adverse amenity impacts, undesirable precedent and a lack of infrastructure. One (1) letter of support was also received.

Given that the average lot sizes in the currently approved Development Plan area are significantly larger than that already approved in the adjoining Development Plan areas, it is expected that there will be continued pressure to subdivide the larger lots.

It is considered that the smaller lots have been designed with sufficient road frontages or internal width that will allow increased side setbacks of dwellings to ensure a sense of space which is a key characteristic of the Gisborne township area. The plan also allows for convenient access for residents and ensures all lots to have appropriate orientation to enable future dwellings to achieve good solar outcomes.

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

The amended Development Plan layout represents a good planning outcome having regard to the policy framework and planning controls of the Macedon Ranges Planning Scheme. The proposed development is considered appropriate to the existing and proposed local context and is supported. In view of the above, it is recommended that the amended Development Plan be approved.

Officer Recommendation:

That Council approve the amended Development Plan covering the land situated at 59 Brooking Road, Gisborne, showing an amended layout for the site, prepared for the purposes of Clause 43.04, Schedule 4 of the Macedon Ranges Planning Scheme as shown on the Drawing titled "OVERALL DEVELOPMENT PLAN BROOKING ROAD" prepared by Alexander Symonds Surveying Consultants as attached to the Ordinary Council Meeting Agenda – 26 March 2014.

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

Existing conditions and relevant history

The original site known as 59 Brooking Road, Gisborne had a rectangular shape and consisted of two lots with a total area of approximately 9.915ha. The original site had a frontage onto Brooking Road of approximately 202m and a depth of 493m. On 11 July 2007 the Council's Planning Committee approved a Development plan for the site allowing the subdivision of the site into a total of 43 lots ranging in size from 1003m² to 6800m² and a small Reserve of approximately 1096m². The original land has since been subdivided and infrastructure works including roads and other services have been completed and the individual lots have been sold off. Construction of dwellings have commenced on some of the lots.

Land to the west (85 Brooking Road and 95 Brooking Road) have approved Development Plans and subdivision permits that would allow the subdivision of lots with areas varying between 595m² to 2749m². Subdivisional works on these lots have already commenced.

Land to the east (43 Brooking Road) has an approved Development Plan and subdivision permit that would allow the subdivision of lots with areas varying between 700m² to 4240m². Subdivisional works on this lot has not yet commenced.

The land to the north (85 Willowbank Road) also has an approved Development Plan and subdivision permit that would allow the subdivision of lots with areas varying between 660m² to 1240m². The land at 75 Willowbank Road has no relevant planning approvals.

The land to the north-east (61 Willowbank Road) also has an approved Development Plan for lots varying between 469m² and 1196m² with a few larger lots of between 2389m² and 6175m² along Willowbank Road.

The adjoining land to the south of Brooking Road is in the Rural Living Zone - Schedule 5 and consists of large rural allotments used for rural residential and agricultural purposes.

The subject site is in the Residential 1 Zone (R1Z) and is affected by a Development Plan Overlay - Schedule 4 (DPO4) and a Development Contribution Plan Overlay - Schedule 2 (DCPO2).

The following restrictive Covenants and Restrictions are registered on the title of the lots:

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

- Covenant PS6388392W dated 07/03/2013

This Restriction relates to various matters regarding future built form such as land use, house size, building materials, fencing, appearing of buildings, and minimum setbacks. It is noted that under the heading Land Use it is stated that:
The owner of the land must only use the property for the construction and occupation of "one permanent non-transportable single residential dwelling house in the case of single lots."

This restriction expired on 31 December 2013.

- Section 173 Agreement AJ026865R

Under Clause 7.2 of this agreement it is stated that:
"The land must not be further subdivided so as to increase the number of lots unless a revised development plan (if required by the scheme) is approved by the Council and a further planning permit is granted by the Council.

- Section 173 Agreement AK066336L

This restriction relates only to Lots 36, 37, 41, 42 and 43 and the construction of a temporary retarding basin and access thereto and has no bearing on the current application.

A search of Council's records has found the following permit history:

Permit Number	Description
DP/2009/10	Approval of a Development Plan
PLN/2008/491	43 Lot Subdivision

The proposal

The proposed amended development plan covers the same area as that of the original Development Plan approved for the land known as 59 Brooking Road, Gisborne. The road layout remains the same and the plan is further generally in accordance with the approved Development Plan except for seven (7) of the lots being Lots 1, 2, 3, 8, 12, 19 and 21. Each of these lots are shown on the proposed Amended Development Plan as subdivided into two (2), three (3) or four (4) lots as follows:

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

Current Lot Numbers	Size in m²	Lot Dimensions in m
1	1513	47.2 X 32
	1505	47.2 X 33.6
	1648	62 X 27
	1240	60 X 21
2	2833	70 X 42.4
	3969	70.3 X 52.4 (Battle axe lot)
3	1236	58.21 X 21.54
	1236	56.62 X 20.71
7	860	32.5 X 27.5
	856	30.75 X 27.5
8	2076	55.25 X 37.34
	2077	55.30 X 37.33
12	894	46.9 X 19
	899	47.5 X 19
	897	47.5 X 19
19	703	39.9 X 17.77
	704	39.9 X 17.65
	704	39.9 X 17.65
21	778	43.0 X 18.33
	745	43.0 X 17.33
	745	43.0 X 17.33

The proposed Amended Development Plan includes a note that states: *"Further subdivision beyond that approved on the current Development Plan will not be supported."*

Relevant Macedon Ranges Planning Scheme controls

State Planning Policy Framework

MRPS Clause No.	Clause Name
11	Settlement
15	Built Environment and Heritage
16	Housing

Local Planning Policy Framework

MRPS Clause No.	Clause Name
21	Municipal Strategic Statement (MSS)
22.01	Macedon Ranges and Surrounds
22.02-2	Gisborne and New Gisborne Township

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

Zoning and Overlay Controls

MRPS Clause No.	• Clause Name
32.01	Residential 1 Zone (R1Z)
43.04	Development Plan Overlay – Schedule 4
45.06	Development Contribution Plan Overlay – Schedule 2

The relevant permit trigger is summarised below:

Zone, Overlay or Particular provision	Permit requirement
43.04	Approval required to amend a Development Plan

General Provisions

MRPS Clause No.	Clause Name
Clause 65	Decision guidelines
Clause 66	Referral and notice provisions

The Process to Date

Referral

The application was referred to the following MRSC units:

Authority (Section 52)	• Response
Country Fire Authority	Consent
Melbourne Water	Consent
Powercor	Consent
Tenix	Consent
Western Water	Consent
Melbourne Water	Consent
Engineering	Consent
Conservation Planner	Consent

Advertising

The Macedon Ranges Planning Scheme requires that an application for a Development Plan and any amendment to a plan, which is located within the area affected by Development Plan Overlay Schedule 4, must be publicly exhibited for a period of two (2) weeks prior to approval. The Responsible Authority must take into account any comments received when considering the development plan or any amendment to the plan.

The proposal was advertised by sending letters to the owners/occupiers of adjoining land.

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

Four (4) letters of objection and one (1) letter of support have been received. The objections are summarised as follows:

- *Proposal will devalue other land in the estate.*
- *Impact on amenity due to more noise, traffic, and higher density.*
- *Proposal will set a precedent.*
- *The owner of Lot 20 proposes that the Lots 19 and 21 adjoining him each only be subdivided into 2 lots instead of 3 lots and that any development be limited to single dwelling and single storey by means of a title restriction.*
- *There is an existing oversupply of land in Gisborne.*
- *There is a lack of infrastructure such as schools and public transport to support further development.*

The objections will be addressed further below.

Officer Assessment

The subject site is included in the Development Plan Overlay – Schedule 4 which pertains to the area south of Willowbank Road, west of Central Creek. This Development Plan was one of the first to have been approved in the Development Plan Overlay area and occurred well before the Gisborne ODP was approved by Council. The average lot sizes are consequently significantly larger as compared to that approved in the adjoining developments which were generally approved after the approval of the Gisborne ODP.

The proposed amended development plan covers the same area as that of the original Development Plan approved for the land known as 59 Brooking Road, Gisborne. The road layout remains the same and the plan is further generally in accordance with the approved Development Plan except for seven (7) of the lots being Lots 1, 2, 3, 8, 12, 19 and 21. These lots are shown on the proposed amended Development Plan as subdivided into two (2), three (3) or four (4) lots as shown on the attached plan.

Given that the average lot sizes in the Development Plan area are significantly larger at between 1003m² to 6800m² compared to what has already been approved in the adjoining Development Plan areas which range from between 469m² to 6175m² it is expected that there will be continued pressure to subdivide the larger lots.

Under the ODP an average lot size of 800m² is proposed and the average is still significantly higher than that of the ODP.

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

In light of the above, it is considered that the smaller lots have been designed with sufficient road frontages or internal width that will allow increased side setbacks of dwellings to ensure a sense of space which is a key characteristic of the Gisborne area. The plan also allows for convenient access for residents and ensures all lots have appropriate orientation to enable future dwellings to achieve good solar outcomes.

Public Open Space

Given that a Public Open Space contribution has been levied as part of the original subdivision approval, no further open space contribution will be required as part of the subsequent subdivision approval.

Development Contribution (DCP)

The Development Contributions Plan Overlay (DCPO2) has placed a mechanism in the Planning Scheme by which Council can levy development contributions on landowners/developers in Gisborne for scheduled infrastructure as documented in the *Gisborne Development Contributions Plan*. Under the provisions of the DCPO2 all the additional lots in this Development Plan will be subject to a contribution of $1,502.73 (as on 1 July 2013) per additional lot created.

Title Restrictions

Covenant PS6388392W dated 07/03/2013 states that the owner of the land must only use the property for the construction and occupation of "*one permanent non-transportable single residential dwelling house in the case of single lots*."

Previous legal advice confirmed that it is not the subdivision that would breach such Covenant but the construction of an additional dwelling(s) on the original lot. This restriction however expired on 31 December 2013.

Under Clause 7.2 of Section 173 Agreement AJ026865R it is stated that:
"The land must not be further subdivided so as to increase the number of lots unless a revised development plan (if required by the scheme) is approved by the Council and a further planning permit is granted by the Council." Once the Development Plan is amended the issue of a subdivision permit would not be in breach of the Section 173 Agreement.

Vegetation

The lots shown to be subdivided are vacant and no vegetation will be required to be removed to allow the subdivision or development of the lots with the exception of Lots 2 and 3.

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

The Environmental Unit has advised that it would be desirable to protect the trees along the western boundary of Lot 2 with 10m building wide building exclusion zone. It would also be desirable to protect the trees located on the boundary between Lot 2 and 3 with a building exclusion zone in accordance with the canopies of the trees and will be approximately 5m wide on both sides of the common boundary of the two lots. Finally the large tree closest to the road reserve (approximately 10m from the road reserve) on Lot 3 should be protected with a building exclusion zone commensurate with the canopy of the tree. These proposed building exclusion zones are shown on the proposed amended Development Plan.

It is noted that sufficient developable space would remain outside the canopies of the trees.

<u>Response to Objectors other concerns</u>

The objections are addressed as follows with officer comment underneath:

- *Proposal will devalue other land in the estate.*

Property devaluation is not a relevant town planning consideration, supported by VCAT.

- *Impact on amenity due to more noise, traffic, and higher density will impact on privacy and increase the potential of overlooking/over shadowing.*

It is agreed that the amenity of the adjoining lots may be impacted, it is however considered that the impact on the adjoining properties will not be unreasonable given the lots are still of a reasonable size with reasonable dimensions to preserve a reasonable level of amenity.

- *Proposal will set a precedent*

It is agreed that the proposal may set a precedent. Each case will however be considered on its own merits.

- *The owner of Lot 20 proposes that the Lots 19 and 21 adjoining him each only be subdivided into two (2) lots instead of three (3) lots and that any development be limited to single dwelling and single storey by means of a title restriction.*

It is considered that the proposed adjoining lot sizes to Lot 20 are acceptable particularly in view of the adjoining lot sizes as approved in the Development Plan for the land across the road to the west which would be of similar and even smaller dimensions.

- *There is an existing oversupply of land in Gisborne.*

Gisborne is earmarked for future growth of the township, supported by planning policies in the Macedon Ranges Planning Scheme.

10. PE.1 APPLICATION TO AMEND DEVELOPMENT PLAN DP/2009/10 AT 59 BROOKING ROAD, GISBORNE (Continued)

- *There is a lack of infrastructure such as schools and public transport to support further development.*

The provision of infrastructure such as schools and public transport depends largely on the demand. Additional facilities would be provided as and when there is sufficient demand.

Conclusion

The amended Development Plan layout represents a good planning outcome having regard to the policy framework and planning controls of the Macedon Ranges Planning Scheme. The proposed development is considered appropriate to the existing and proposed local context. In view of the above, it is recommended that the amended Development Plan be approved.

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW

Officer: **David Nevin, Coordinator Policy Development**

File Ref: **48/02/64-C92**

Council Plan Relationship: An inspiring place - Our lifestyle, culture and sense of place are strengthened by best practice planning and development.

Attachments:

1. Panel Report Macedon Ranges Planning Scheme Amendment C92 Changes to Restructure Overlays 28 January 2014
2. CFA letter, 2 November 2013
3. Incorporated Document Macedon Ranges Shire Restructure Area Plans 1999 (Revised 2014)
4. C92 Explanatory Report – Council adoption version for Ministerial consideration
5. Clause 21.08 and Schedule to Clause 81.01

Synopsis:

A Restructure Overlay was applied to Macedon and Mount Macedon in 1977 and includes an Incorporated Document. The Incorporated Document identifies whether or not a house may be developed on individual lots including whether lots require consolidation.

A review process reconsidered the relevance of the Restructure Overlay and determined that development of a number of sites had a high chance of gaining development approval under other relevant planning considerations (such as bushfire risk, environmental significance, landscape values, etc).

Amendment C92 proposes to amend the existing Restructure Overlay incorporated document: *Macedon Ranges Restructure Area Plans, 1999*. The changes to the Restructure Overlay Incorporated Document (as exhibited) would remove the prohibition on dwellings on 13 separate lots creating potential for 17 dwellings. It should be noted that any development on these lots would be subject to other planning controls that require planning approval. This includes the Bushfire Management Overlay which covers all of the candidate sites the subject of the Amendment.

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

Following public notification of the amendment, 46 submissions (including 6 from government departments/referral authorities) were received. The majority of submissions were from property owners affected by the Restructure Overlay. Only 18 of the 46 submissions sought changes or objected to the Amendment, the remainder were in support. One of these submissions was able to be resolved by Council supporting changes to the amendment post-exhibition.

As required under 23(1)(b) of the *Planning and Environment Act 1987*, Council referred the amendment and the 17 unresolved submissions to an independent Planning Panel for review. A Panel Hearing was held on 3 and 4 December 2013.

Council received the *Panel Report Macedon Ranges Planning Scheme Amendment C92* on 29 January 2013.

The Planning Panel recommends that Amendment C92 to the Macedon Ranges Planning Scheme should be abandoned due to the absence of analysis of the strategic fire risk to support the Amendment. The Panel Report also raises other concerns with the Amendment which are outlined in the Officer Comment.

Officer Recommendation:

That Council resolve to:

1. **Formally receive the Panel Report on Macedon Ranges Planning Scheme Amendment C92 dated 28 January 2014.**
2. **Adopt Amendment C92 in the revised form (Attachments 3 and 4) based on findings of the *Panel Report Macedon Ranges Planning Scheme Amendment C92* and the 28th August 2013 decision of Council following exhibition of the Amendment pursuant to Section 29 of the *Planning and Environment Act 1987*.**
3. **Submit the adopted Amendment C92 to the Minister for Planning together with the prescribed information for approval and gazettal pursuant to section 31(1) of the *Planning and Environment Act 1987*.**

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

Officer Comment:

Macedon Restructure Overlay Review and Consultation

The Restructure Overlay was applied to areas in Macedon and Mount Macedon in 1977 in response to the area's role as a water catchment for urban and local water supplies and due to *"the extensive and indiscriminate past subdivision of the Policy Area"* (Statement of Planning Policy No 8 (Macedon Ranges and Surrounds)). Parts of Macedon and Mount Macedon were connected to reticulated sewerage in 2006 through a 'back log' scheme which has removed concerns around water quality in catchment areas.

Amendment C92 is based on a strategic planning background assessment that analysed the limitations of the Restructure Overlay and recommended changes in the *Macedon Restructure Overlay Review Final Report,* Planning Australia Consultants completed in 2012. The review was in response to a need to review overlays and other planning controls in Macedon as expressed in the Small Towns Study 2006, the Settlement Strategy and the Council Plan.

The Small Towns Study suggested a *"major review of the anomalies between the existing residential zone boundaries and the sewerage infrastructure (in Macedon)"*. Subsequent to this Study the Settlement Strategy limited the growth potential for Macedon making any zone changes unnecessary. Instead, the Settlement Strategy recognised that the Restructure Overlay is one of a number of a constraints to development of Macedon, as well as high fire risk and environmental constraints. The Strategy noted that the Restructure Overlay was *"established before the town was sewered, (the Restructure) Overlay may remain appropriate but could be reviewed".*

The Macedon Restructure Overlay Review was undertaken in response to this recommendation in the Settlement Strategy and was the subject of considerable consultation. Following consultation the report was finalised and a number of options were reported to Council at its meeting on 27th June 2012, including:

- Option 1, no change to the RO;
- Option 2, removal of RO; and
- Option 3, modification to allow 29 additional lots.

Council's Resolution of 27th June 2012 included, inter alia:

"adopt the preferred Option 3; maintaining the Restructure Overlay while modifying the Overlay to allow application to be made for the development of single dwellings on the 29 candidate sites identified in the final report."

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

Amendment preparation and authorisation:

Council prepared Amendment C92 to implement the recommendations of the Review. During this phase the Country Fire Authority was further consulted in relation to the 19 properties (29 dwellings) identified for further development in the Review. The CFA response dated 2 November 2012 stated *“CFA does not object to the proposed Planning Scheme Amendment subject to some modifications prior to exhibition”.* Specifically, the CFA requested the removal of 3 sites from the list identified for development *“as it has not been demonstrated that the risk to future development (of the 3 sites) ... can be reduced to an acceptable level”* (refer Attachment 2).

The number of properties identified as suitable for the removal of current restrictions was reduced to 13 (17 dwellings) in the exhibited document following:

further examination of the planning controls affecting vacant allotments including discussions with Statutory Planning officers;

the capability to meet with the requirements of the BMO; and

potential impact on the environmental and landscape values of the sites.

The Minister for Planning granted authorisation to prepare Amendment C92 to the Macedon Planning Scheme on 11 April 2013.

Exhibition

On 30 May 2013 Council formally commenced exhibition of Amendment C92 under the notification requirements of the Act.

The exhibited amendment proposed to remove the current Restructure Overlay restrictions to development affecting 13 properties that are covered by the Macedon Restructure Overlay and allow the potential of 17 dwellings to be developed across the 13 properties subject to obtaining a planning permit.

The amendment as exhibited proposed to make the following changes to the Macedon Ranges Planning Scheme:

Amend Clause 21.08 to include the *Macedon Restructure Overlay Review, Final Report 2012* in the list of Reference documents in the Planning Scheme.

Amend the Schedule to Clause 45.05 - Restructure Overlay to update:

o RO4 - Bent Street Restructure Plan to Bent Street Restructure Plan - Revised 2013

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

- RO5 - Macedon South West Restructure Plan to Macedon South West Restructure Plan - Revised 2013
  - RO10 - Mt Macedon Restructure Area to Mt. Macedon Restructure Area - Revised 2013.

and insert :

- RO14 – Hunter Street Restructure Plan – 2013.

and delete :

- RO10 from 29 Hunter Street and 404 Black Forest Drive and replace it with RO14 (refer Appendix 1, Figure 5: Outline Development Plan for 404 Mt Macedon Road and 29 Hunter Street, Macedon).
- Amend the Schedule to Clause 81.01 to update the list of Incorporated Documents by amending the Macedon Ranges Shire Restructure Area Plans, 1999 to the Macedon Ranges Shire Restructure Area Plans, 1999 (Revised 2013).

The proposed amendment would not result in any mapping changes to existing zoning, overlays or the extent of the area affected by the Restructure Overlay.

Formal exhibition occurred between 30th May 2013 and 12th July 2013.

Submissions Received

A total of forty-six (46) submissions (including six (6) from government departments/referral authorities), were received. One late submission was received.

The submissions included a significant amount of support for the proposed Amendment C92, and this is recognised in:

the 27 submissions made in support, and

the 13 submissions that were generally in support, subject to the modifications being made to the amendment, largely by way of including additional candidate sites.

5 submissions objected to the principle of the Amendment and 1 sought clarification.

Issues raised in the submissions included:

Concern about fire hazard and additional residents who would potentially be living in the area.

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

That the candidate sites are unable to meet with the Bushfire Management Overlay requirements and contradict the Victorian Bushfire Royal Commission directions.

That the process of engagement with relevant authorities resulted in the alteration of the fire hazard assessment of these sites.

The proposed Amendment C92 favours individual landowners.

There are errors in the Explanatory Report and Incorporated Document.

Council resolved to appoint a Panel to consider unresolved submissions at its meeting of 28 August 2013. In addition, Council resolved to make changes to Amendment C92 in response to 3 submissions. The changes exclude the rear of 38A Bruce Street Macedon and rear of 1A McBean Avenue as candidate sites and include Lot CA 1 Section 83 Township of Macedon (fronting Nursery Road) as a candidate site.

Panel Hearing

As issues raised in 17 of the submissions could not be resolved by making changes to the amendment, an Independent Panel was requested to consider submissions pursuant to Section 23(1)(b) of the Act.

Panel hearings were held on 3rd and 4th December 2013, including accompanied site inspections attended by Council and CFA representatives on the afternoon of the 4th December 2013.

Panel Report and Recommendations

The Panel report (dated 28 January 2014) was received on 29 January 2014 (refer Attachment 1).

The *Overall Conclusion and Recommendation* of the Panel Report states:

For the reasons set out in the previous chapter of this report, the Panel recommends to the Council that the Amendment should be abandoned. This is not a case of a finding based on the balancing of strongly competing considerations both for and against an amendment. The arguments in favour of this Amendment are in the Panel's view considerably less substantial than those against. (page 46)

In considering the changes to the Incorporated Document proposed in Amendment C92, the Panel's evaluation of issues did not support the amendment based on the consideration of 7 central issues which are discussed in turn below:

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

(i) Need for a strategic fire review (see separate discussion below)

Panel concluded view on this issue (bushfire hazard) is that no proper strategic fire analysis has been presented which would support this Amendment.

... It is clear that a 'rough' site-focussed analysis has been done for the lots which are the subject of the Amendment ...

... there is a distinction between taking a strategic approach to fire risk and identifying the characteristics of particular lots and their immediate surrounds. (page 36-37)

Officer response:

The issue of bushfire risk was a central consideration in determining the appropriateness of proposed candidate sites and Council adopted a precautionary approach to this consideration. This involved extensive liaison with the CFA from the earliest stages of the review project through to the days leading up to the Panel hearing.

Council and CFA officers carried out an intensive site analysis process using desktop resources before ground truthing the potential of individual sites to meet bushfire management requirements.

It should be noted that the position the CFA presented to Panel was contrary to more than 12 months of discussions and negotiations. This issue has been raised with the CFA at a meeting with senior officers on Friday 21 February 2014. It was agreed that Council and the CFA will collaborate openly on future projects.

Council does not accept the assertion made in the Panel Report that the CFA's advice was based on a 'rough site focussed analysis'. The CFA's review of the candidate sites was based on a review of aerial photographs and site inspections and is similar to the level of assessment that would occur in response to a permit application to build a house on land covered by the BMO. The CFA made it clear that all of the candidate sites included in the Amendment are likely to meet the requirements of the BMO in terms of defendable space and if a permit for a dwelling were submitted to Council it is unlikely that CFA would object.

(ii) Prematurity given required zones and overlays review (page 38-39)
If it is the case that, even within the context of a no growth scenario for the township, some review of planning controls is to be undertaken, then this review of the RO conducted in isolation would appear to be premature.

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

The Panel would anticipate that any general review of zoning as well as overlays would include consideration of issues such as fire hazard and how the controls best respond to it.

Officer response: In this issue the Panel suggested that the review of the controls should be comprehensive and include review of all zoning and overlay controls and development of Structure Plans. The amendment sites are all within the Low Density Residential Zone, Bushfire Management Overlay and Restructure Overlay, and 4 of the 12 lots are also within the Environmental Significance Overlay (Schedule 5).

Council doesn't agree that a comprehensive review of controls was required as there has been no significant change for the study area other than the recent connection of reticulated sewerage to the area. This change has a direct relationship to the Restructure Overlay but has no implications for the other controls applying to the subject land. Given this, and that the recommended changes to the Restructure Overlay area are relatively minor, a more comprehensive review of controls is unwarranted.

Council is currently preparing Town Centre Studies for Macedon and Mt Macedon to consider the need and potential for further commercial uses based on community need and a bushfire analysis. However these studies do not raise any issues for the Restructure Overlay or Amendment C92.

(iii) The strategic RO review (page 39-41)
The Review report discusses various factors which appear to have influenced the selection of candidate lots including (inter alia):

- *Zoning*
- *Bushfire management*
- *Infrastructure requirements*
- *Landscape character and visual impact ...*

Nowhere in the Review report, however, is there a systematic discussion of how the factors have influenced the selection of the 29 lots. Even in the section which maps candidate lots by precinct there is no notation against the lots indicating the basis of their individual suitability.

... the Panel finds that the process lacks an adequate level of transparency and rigour to provide that basis.

Officer response: The Panel has selectively, and erroneously, interpreted the review to conclude that there was an inadequate level of transparency.

The Review Report is clear in terms of background *"Macedon Ranges Council has mapped undeveloped/ vacant lots within the study area and any development restrictions relating to individual lots"* (page 21).

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

This is an unambiguous starting point and the report goes on to outline a charette style process held with major government stakeholders which determined the potential for 21 candidate sites to accommodate 29 dwellings based on the mapping of undeveloped lots and known constraints. In finalising the candidate sites for a planning scheme amendment this list was further refined and reduced to 13 sites (17 dwellings) based on:

further examination of the planning controls affecting vacant allotments including discussions with Statutory Planning officers;

the capability to meet with the requirements of the BMO following ground truthing with CFA officers – to exclude sites with unsuitable levels of bushfire risk; and

potential impact on the environmental and landscape values of the sites.

Whilst an assessment of each amendment property was not documented, the principles which determined the final list of amendment properties were clearly set out in the Review Report.

At the Panel Hearing, Council's representative explained the process of site selection which included identifying vacant sites with and without RO restrictions, establishing vegetation cover (using aerial photographs and site visits), allotment size and development pattern in the vicinity of potential candidate sites.

(iv) Irregularities in the Amendment documentation (page 41-42)
Ms Pruneau made extensive submissions about the failings in the Amendment documentation and provided various documents providing a forensic analysis of its failings.

The Panel agrees that the Amendment should not have proceeded to exhibition in the current form.

....The Panel's concluded view is that the Amendment contains a large number of errors, inconsistencies and structural deficiencies and for this reason alone it should not proceed.

<u>Officer response</u>: An Incorporated Document sits behind the Restructure Overlay to define controls specific to individual properties, either identifying that a house may be constructed or that no further houses can be allowed. This document has been in place since 1977 and whilst it may contain errors, the study area was defined by the areas of Macedon recently connected to sewerage. A wholesale review of the Incorporated Document was completely unnecessary to support the Amendment given that it has been utilised and consistently interpreted for over 30 years.

It is acknowledged that some confusion has been created by the existence of an addendum document attached to the back of the Incorporated Document.

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

This document has been created sometime in the last 10 years as an Addendum to cross reference old street numbers used in the original Restructure Overlay document with new street numbers introduced across the State in the intervening period. This was clarified at the Panel hearing and it was agreed that Council would make the Incorporated Document and the Addendum available on the website. The Addendum document has been reformatted with a distinct cover page and Council's website has a dedicated page for the Restructure Overlay with relevant information and documents.

(v) Is this no growth? (page 42-43)

... the local policies as currently in the Planning Scheme and as proposed support a no growth outcome for Macedon for a variety of reasons but notably due to high wildfire risk.

In the Panel's view the additional lots which might potentially be developed if the Amendment were approved would not represent 'no growth' in the township.

... The Panel also considers that describing the increase in developable lots as not representing 'significant growth' is a misnomer: any growth is significant in the context of the extreme fire risk of the area.

<u>Officer response</u>: Whilst the Settlement Strategy and Amendment C84 support a 'no growth' approach for Macedon and Mt Macedon, this is based on an expectation that infill development will occur where there are manageable planning constraints but that no rezoning of land is needed to provide additional development areas. The Panel's interpretation of 'no growth' is exceptionally restrictive. Council's position on 'no growth' would maintain a static population within Macedon and Mt Macedon as outlined in the Settlement Strategy with some infill development being desirable to provide housing diversity as household sizes decline.

During the preparation of the Macedon Ranges Settlement Strategy, it was clarified in discussions with CFA officers that the 'no growth' position would allow for infill development.

(vi) Precedent issues (page 43)

... some of the support for the Amendment relied upon the fact that it would better utilise infrastructure and provide improved support for commercial and transport facilities serving the township.

... if the Amendment were to be approved on the basis that it offered such support, the same argument could be made on any number of future occasions for even more numerous dwelling site releases. It would set an unsatisfactory precedent to allow this argument to prevail against other considerations.

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

Officer response: The Restructure Overlay Review process identified an exhaustive list of candidate sites (or potential development sites). These sites where reviewed in detail to exclude sites which would not satisfy planning controls, including bushfire risk factors. Given this, there would be very few opportunities to utilise Amendment C92 as a precedent.

Neverthless, the Panel has suggested Council's support for the amendment has been limited to positive outcomes for commercial and transport facilities. This is only true in part, with the review establishing whether it is fair to retain restriction on some vacant lots that are of a similar size and shape to adjacent lots with and existing house.

(vii) Fairness and equity issues (page 43-45)

The very first objective of the Act envisages that planning outcomes should be fair as well as orderly, economic and sustainable.

The question that arises is, if the Amendment is abandoned, would this be a fair outcome? Is the fairness issue such that the other considerations which recommend against adoption of the Amendment should be set aside? If so what is the better outcome?

... despite some sympathy with some of the submitters' cases, the Panel considers that, in addition to the general issues with the Amendment discussed earlier, there are a number of additional difficulties if further submitters' properties were to be added to the Amendment and it proceeded.

Those additional difficulties are:

- *The number of lots for which development controls are now sought to be relaxed is more than double the number that was put on exhibition. There is an issue of transformation to be addressed.*
- *Most significantly, if it was contemplated approving the Amendment with additional properties, the issue of further notice and fairness to others arises.*

There are a number of aspects to this:

- *The Amendment was publicly advertised as including a small number of lots only. The number could substantially increase. Persons who did not object to or supported the Amendment involving 17 lots may have a different view if lot numbers were substantially greater.*
- *So far as the Panel is aware, neighbours to the submitters' properties (or at least the lots owned by submitters which were not included in the exhibited Amendment) have not been given any notice of the possibility that development controls might be relaxed on land abutting theirs. This matter would require addressing if, contrary to the Panel's recommendations, the Amendment were to proceed. The views of those neighbours would need to be considered.*

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

- *Further, there may be other owners of lots in the Amendment area who chose not to participate in the Amendment process and request that their properties also be included. This may have been because they believed that only selected lots were or could be under consideration for development. Those persons would be disadvantaged if it was thought that additional places should or could be added.*

The exclusion of other third party objectors and other lot owners who may have wished to argue for the inclusion of their lot in the Amendment are matters of fairness which would arise if additional places were added and the Amendment proceeded.

The Panel considers that an appropriate balance of fairness is achieved for these groups by the recommendation that the Amendment not proceed.

Officer response: The Panel could have recommended a separate amendment to change the Restructure Overlay controls on submitter properties that it believed had merit to review development potential. This would address equity and fairness issues as a separate process and would allow notice and review rights to parties affected by any additional properties.

Changes proposed in the Panel Report
The Panel Report refers to potential changes to the revised Incorporated Document which, inter alia, includes:

- Removal of RO14;
- Clarity in respect of the potential development entitlement of properties subject of the amendment.
- Further consideration of the merits of including 11 and 35 McBean Avenue.
- Mr Nevin's closing submission for the Council made some useful suggestions about how this could be improved. This approach should be included in any redrafting of the Restructure Plan for RO10. (p 41)

Options
Based on the recommendations of the Panel Report to Amendment C92, Council has options of:

adopting the amendment, with or without further changes,

abandoning the amendment.

Council has invested significant resources into this project which responded to the community interest to realize the potential of their lots following connection to sewerage. Whilst it is recognised that there is some opposition to progressing the amendment, abandonment is not recommended because officers consider:

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

- The *Macedon Restructure Overlay Review Final Report* is sufficiently robust.
- The CFA is not likely to object to dwellings on the candidate sites on a case by case basis.
- All lots affected by the amendment will require detailed scrutiny through a planning permit application process.

It is also important to note that references and apparent interpretation that "no growth" means literally no further construction of any new dwellings on lots that may otherwise be developed and comply with BAL regulations is the view of one Panel member in this individual case. The report implies that "no growth" means no further development (including no new dwellings or infill development) in towns, which are subject to fire risk (page 40). This interpretation is contrary to the intentions of the Settlement Strategy and Amendment C84 which seeks to achieve no growth in the population of Macedon but supports infill development acknowledging that a sustained population will require additional housing as household sizes decline.

It is considered that the Council's intention in adopting the Settlement Strategy was not to preclude infill development in Macedon and Mount Macedon, but to accommodate all forecast further population in other, larger settlements and allow new buildings within existing township footprints.

The proposed amendment is considered appropriate in response to the change of infrastructure available to the subject lots and based on precautionary principles in respect of bushfire risk.

However, should Council seek to proceed with adopting the amendment the Minister for Planning will consider all background, strategic and formal documentation and also give weight to the independent Panel's view and recommendation. The result of this deliberation cannot be predicted and therefore officers recommend that no further Council resources be invested in further studies or strategic justification beyond the document changes recommended below. Other interested parties are at liberty to correspond with the Minister directly to assist in his deliberations.

It is recommended that Council adopt Amendment C92 to the Macedon Ranges Planning Scheme including the modifications adopted at the Council meeting of 28th August 2013 with changes in light of the C92 Panel, specifically changes to the Explanatory Report and Incorporated Document:

- proposed in Council's closing submission to the Panel and supported in the *Panel Report Macedon Ranges Planning Scheme Amendment C92*:
  - To include the H reference to the vacant parcel(s) of land and retain the NFH for the lot(s) where an existing dwelling is located.

10. PE.2 AMENDMENT C92 MACEDON RESTRUCTURE OVERLAY REVIEW (Continued)

  - Where the house covers the entire property that a H(2) be inserted to reflect the existing house and the potential for 1 additional house.
- Suggested in *Panel Report Macedon Ranges Planning Scheme Amendment C92:*
  - Removal of 2 properties from the planning scheme amendment affected by proposed RO14 including 29 Hunter Street and 404 Black Forest Road.
  - Removal of RO14 from the Incorporated Document.
- Changes adopted at the 28th August 2013 Council meeting in response to submissions received during the statutory exhibition period, including:
  - The exclusion of the rear of 38A Bruce Street, Macedon (Lot CM PS 404199) and rear of 1A McBean Avenue (CP150488) in response to submissions from landowners and further review of 1A McBean Avenue.
  - Inclusion of west of 86 Greene Street (Lot CA 1 Sec 83 Township of Macedon) in response to a request from the landowner and no objection from the CFA.
  - Clarifications of the current restrictions affecting 96 Railway Place and 10 Barkly Avenue.
- A further change has been made in relation to 35 McBean Avenue to change H(2) to H(3) to clarify that a total of 3 dwellings may be allowed at this property, based on the existing dwelling and 2 additional dwellings.

The proposed changes would further reduce the number of candidate sites to 10 and additional development capability to 11 dwellings across the 10 candidate sites.

Conclusion

In conclusion it is considered that Council should adopt the amendment with changes as outlined, resulting from submissions and Panel feedback, and submit the documents for Ministerial consideration.

10. PE.3 NEW GISBORNE DEVELOPMENT PLAN

Officer: **David Nevin, Coordinator Policy Development**

File Ref: **48/02/60**

Council Plan Relationship: An inspiring place - Our lifestyle, culture and sense of place are strengthened by best practice planning and development.

Attachments: New Gisborne Development Plan (August 2012); Conservation Management Plan (December 2013)

Synopsis:

Council's resolution of 29 August 2012 adopted the New Gisborne Development Plan (August 2012) as the 'in-principle' Development Plan for the New Gisborne Growth Area. Subsequently, Amendment C67 (Part 2) was approved by the Minister for Planning on 11 April 2013. Amendment C67 (Part 2) rezoned the New Gisborne Growth Area (west of Station Road) to the Residential 1 Zone and applied the Development Plan Overlay Schedule 16 (DPO16) to the land. It also rezoned further land (7 ha) for industrial development in Gisborne Industrial Estate.

Item 3 in DPO16 required an updated Conservation Management Plan which has now been prepared by Brett Lane & Associates Pty Ltd in consultation with the Department of Environment and Primary Industries (DEPI). DEPI has reviewed the Conservation Management Plan and confirmed in writing that it is suitable for approval. The Conservation Management Plan does not require changes to the August 2012 version of the New Gisborne Development Plan

Council can now be satisfied that the work to meet the requirements of Schedule 16 of the Development Plan Overlay has been completed and that the New Gisborne Development Plan (August 2012) is ready for formal adoption under Clause 43.04 of the Planning Scheme. The Development Plan sets out the overall framework and conditions for development across the entire New Gisborne Growth Area.

Officer Recommendation:

1. **That Council adopt the New Gisborne Development Plan (August 2012) prepared by Hansen Partnership Pty Ltd on behalf of Council for the New Gisborne Growth Area, being the land bound by the Bendigo to Melbourne Railway Line to the north; Station Road to the east; Gisborne Racecourse Marshlands Reserve, Calder Freeway and Webb Crescent, which is an unmade road reserve, to the south; and properties zoned Rural Living to the west; and**

10. PE.3 NEW GISBORNE DEVELOPMENT PLAN (Continued)

2. **That Council endorse the Conservation Management Plan prepared by Brett Lane & Associates Pty Ltd, (Dec 2013) Document No. 13078 (1.5) for the New Gisborne Growth Area.**

10. PE.3 NEW GISBORNE DEVELOPMENT PLAN (Continued)

In considering the Panel's Report on 15 December 2010, Council resolved to defer consideration of the recommendations regarding the New Gisborne Growth Area and split Amendment C67 into two parts. This was to enable further detailed work regarding the complex range of issues in New Gisborne to be undertaken before the rezoning took place. This was intended to provide Council and the landowners with a degree of certainty regarding the development outcomes that would occur in the area. Included in Council's resolution was also the agreement to prioritise and bring forward a number of planning projects, including preparation of the Development Plan for the New Gisborne Growth Area.

The officer's report at the time described a range of complex planning issues in New Gisborne that required detailed investigation and inputs from various technical studies and reports. As a result, Hansen Partnership, in association with Ecology & Heritage Partners, Cardno Engineers and Tim Nott, were appointed by Council in October 20111 to prepare the New Gisborne Development Plan.

The Development Plan

The purpose of New Gisborne Development Plan is to provide a broad overarching framework that will coordinate development across the entire precinct. It will guide use and development of land where a planning permit will be required under the Residential 1 Zone and where the land is also covered by a Development Plan Overlay.

The report reaffirms the vision for the New Gisborne Growth Area which was established in the Gisborne / New Gisborne Outline Development Plan, 2009.
The Development Plan Final Report (August 2012) consists of a report describing the plan's vision, objectives and design principles / objectives together with a development plan layout showing the location of major roads, different land uses / densities, open space, retained vegetation, drainage etc.

Objectives must be met in order to achieve the vision and directions. Guidelines and plans explain how the vision and principles may be achieved in relation to specified matters. The guidelines will assist Council to exercise its discretion in certain matters that require a planning permit. They may or may not be included as a condition on a planning permit. The Development Plan layout is shown on the next page.

10. PE.3 NEW GISBORNE DEVELOPMENT PLAN (Continued)

10. PE.3 NEW GISBORNE DEVELOPMENT PLAN (Continued)

Key features of the Development Plan include:

- A diversity of housing opportunities through the provision of a range of lot sizes.
- A yield of approximately 320 dwellings based on densities of 10-15 dwellings / hectare.
- Establishment of a central open space/drainage corridor/biolink running north south through the study area, connecting the Gisborne Racecourse Marshlands Reserve to areas of vegetation to be retained on the Westport property.
- Establishment of a small scale Neighbourhood Activity Centre (1,500 sqm retail component and 300 sqm non-retail floor space) on Station Road, in a central location that serves both the study area and existing residents. This may require a separate planning scheme amendment to rezone the site to the Commercial 1 Zone.
- A series of detailed design guidelines relating to urban design and character which seek to reflect the particular characteristics, community aspirations and unique village qualities of New Gisborne.
- A network of drainage lines, water sensitive urban design treatments and a retarding basin to manage stormwater in accordance with best practice environmental guidelines.
- Establishment of a road network based upon a traditional grid street network that forms a permeable pedestrian environment as well as an efficient layout.
- Protection of ‘high’ and ‘very high’ conservation status flora and fauna within the Westport Property.
- Road reserves of 20m for most streets, except those roads with an open space or vegetation interface where the width has been reduced to 18 / 16 m.
- Widening of Ferrier Road to a 24m wide road reserve to create a boulevard effect.
- A road reserve with frog fencing at the interface to the Gisborne Racecourse Marshlands Reserve.

The Development Plan is also supported by a comprehensive Background Report and series of Technical Reports including:

- Flora, Fauna Assessment and Net Gain Assessment
- Targeted Growling Grass Frog Survey
- Targeted Brown Toadlet Survey
- Conservation Management Plan for Growling Grass Frog and Migratory Water birds
- Aboriginal Cultural Heritage Due Diligence Assessment
- Stormwater Management Report
- Traffic and Transport Assessment
- Feature Site Survey

10. PE.3 NEW GISBORNE DEVELOPMENT PLAN (Continued)

Council's resolution of 29 August 2012 adopted the New Gisborne Development Plan (August 2012) as the 'in-principle' Development Plan for the New Gisborne Growth Area. This allowed for the approval of Amendment C67 (Part 2), which occurred on 11 April 2013. Amendment C67 (Part 2) rezoned the land to the Residential 1 Zone and applied the Development Plan Overlay Schedule 16.

DPO16 outlines the key principles to be implemented during the preparation of the Development Plan. It also contains, inter alia, conditions to be included on permits within the plan area, items to be submitted for approval before a plan of subdivision is certified and requirements for a Development Plan.

Since the rezoning of the land, an updated Conservation Management Plan has been prepared to meet the requirements of item 3.0 in Schedule 16 of the Development Plan Overlay. The Conservation Management Plan has been prepared by Brett Lane & Associates Pty Ltd in consultation with the Department of Environment and Primary Industries (DEPI). DEPI has reviewed the Conservation Management Plan and confirmed in writing that it is suitable for approval. The Conservation Management Plan does not require changes to the August 2012 version of the New Gisborne Development Plan.

Council can now be satisfied that the work to meet the requirements of Schedule 16 of the Development Plan Overlay has been completed and that the New Gisborne Development Plan (August 2012) is ready for formal adoption.

This report seeks the formal adoption of the New Gisborne Development Plan (August 2012), which Council has previously adopted 'in principle'.

Public consultation process

An enquiry-by-design workshop was held on 1 February 2012 as an intensive and interactive consultation event with landowners, Council officers, referral and servicing agencies and the community. Relevant background information, including technical assessments and opportunities and constraints associated with the study area were presented, followed by a design ideas and generation workshop with attendees, which resulted in three (3) growth scenarios being prepared.

In the evening, a Community Open House session was held with approximately 45 residents present, as well as Councillors and Council officers.

Following the enquiry-by-design workshop, the project team and Council officers held separate meetings with the major landowners, Melbourne Water and the DEPI to further refine and advance the Development Plan. Presentations and project updates were provided to the Councillors at separate briefings on 28 March, 18 April and 9 May 2012.

10. PE.3 NEW GISBORNE DEVELOPMENT PLAN (Continued)

The draft Development Plan was placed on public exhibition from 4th to 25th June 2012 inclusive. All affected landowners and referral agencies were notified directly and invited to make a submission. A total of eighteen (18) submissions were received.

All submissions were generally supportive and no submissions objected to the principle of preparing the Development Plan or for future housing development within the study area. In response to submissions, several changes were made before the Development Plan was finalised in August 2012.

Conclusion

An updated Conservation Management Plan has now been prepared to meet the requirements of item 3.0 in Schedule 16 of the Development Plan Overlay. The Conservation Management Plan has been prepared by Brett Lane & Associates Pty Ltd in consultation with the Department of Environment and Primary Industries (DEPI). DEPI has reviewed the Conservation Management Plan and confirmed in writing that it is suitable for approval. The Conservation Management Plan does not require changes to the August 2012 version of the New Gisborne Development Plan.

Council can now be satisfied that the work to meet the requirements of Schedule 16 of the Development Plan Overlay has been completed and that the New Gisborne Development Plan (August 2012) is ready for formal adoption under Clause 43.04 of the Planning Scheme.

It is recommended that Council adopt the New Gisborne Development Plan – Final Report (August 2012) prepared by Hansen Partnership Pty Ltd and endorse the Conservation Management Plan prepared by Brett Lane & Associates Pty Ltd (December 2013).

10. PE.4 EARLY CONVERSION OF RESIDENTIAL 1 ZONE TO GENERAL RESIDENTIAL ZONE

Officer: **Michelle Wyatt, Coordinator Policy Implementation**

File Ref: **48/02/88**

Council Plan Relationship: An inspiring place – Our lifestyle, culture and sense of place are strengthened by best practice planning and development

Synopsis:

This report summarises the process and reasoning for a request to the Minister for Planning to exercise his powers under 20 (4) of the *Planning and Environment Act 1987* to implement the General Residential Zone to areas currently zoned Residential 1 prior to the end of the financial year.

Council have previously been advised of the Minister for Planning's advice that all Residential 1, 2 and 3 zoned land across Victoria will be automatically translated to the General Residential Zone on 30 June 2014. The Department of Transport, Planning and Local Infrastructure (DTPLI) have subsequently advised that it would be advantageous to initiate this direct translation via a Ministerial amendment prior to 30 June. If Council wishes to pursue this option, a request will need to be sent to the Minister for Planning in the next two months. DTPLI have offered to prepare and give effect to this planning scheme amendment, resulting in no resource implications for Council.

Officer Recommendation:

That Council resolves to request the Minister for Planning to prepare and approve an amendment to the Macedon Ranges Planning Scheme that converts the Residential 1 Zone to the General Residential Zone in accordance with Section 8(1b) and Section 20(4) of the *Planning and Environment Act 1987*.

10. PE.4 EARLY CONVERSION OF RESIDENTIAL 1 ZONE TO GENERAL RESIDENTIAL ZONE (Continued)

Background

The Minister for Planning made available a new suite of residential zones for Victoria on 1 July 2013.

The suite of new residential zones comprises:

- **Residential Growth Zone (RGZ)** – provides for higher density development up to and including 4 storeys. Default discretionary height limit of 13.5m. Encouraged in and around activity centres and along transit corridors.

- **General Residential Zone (GRZ)** – equivalent of the existing Residential 1 Zone. Default discretionary height limit of 9m.

- **Neighbourhood Residential Zone (NRZ)** – provides for limited housing growth. Default mandatory height limit of 8.5m. Default mandatory limit of 2 dwellings on a lot. Opportunity to specify a mandatory minimum subdivision area.

Councils have until 30 June 2014 to implement the new zones or all existing Residential 1 land will automatically be converted to the General Residential Zone by the Minister for Planning.

Early direct translation to General Residential Zone

DTPLI have advised that this automatic translation on 30 June 14 may not include changes to the current planning scheme maps. This would result in the maps showing the then redundant Residential 1 Zone (R1Z) which will have been replaced by the General Residential Zone. That is, the maps and the planning scheme ordinance will not match. This is the current situation with the commercial zones where the planning scheme maps show Business 1 Zone (B1Z) whilst the planning scheme ordinance refers to the Commercial 1 Zone. This situation can cause confusion for the community who may have difficulty understanding the zones.

In order to address this issue, DTPLI have advised that Councils have the option to progress a planning scheme amendment to effect a direct translation from the Residential 1 Zone to the General Residential Zone prior to 30 June 2014. As a part of this process, DTPLI will implement all necessary mapping changes for both the commercial and residential zones. The Department has also advised that they will provide resources and assistance to prepare and give effect to this amendment.

10. PE.4 EARLY CONVERSION OF RESIDENTIAL 1 ZONE TO GENERAL RESIDENTIAL ZONE (Continued)

The direct translation of the Residential 1 Zone to the General Residential Zone prior to 30 June 2014 will not preclude Council's ability to implement the full suite of new residential zones at a later date. Such a planning scheme amendment will need to be supported by sound strategic work.

Residential 1 Zone v General Residential Zone

The Residential 1 Zone and the General Residential Zone are almost identical apart from some minor changes to the structure of the zone provisions and three differences in the table of uses. These differences are:

- Bed and breakfast – Under the GRZ no permit is required for a bed and breakfast that caters for up to 10 guests. Under the R1Z no permit is required for a bed and breakfast that caters for up to 6 guests.

- Medical centre – Under the GRZ no permit is required for a medical centre provided it does not exceed 250 square metres and adjoins a main road (Road Zone), in which case the use requires a permit. Under the R1Z a medical centre is a permit required use regardless of its size and location.

- Convenience shop – Under the GRZ a permit can be granted for a convenience shop, regardless of its size. Under the R1Z convenience shops over 80 square metres are prohibited.

The General Residential Zone also provides Council with the ability to specify a mandatory maximum height limit for buildings. If no limit is specified, the height limit defaults to the discretionary ResCode standard of 9 metres. Should a Council wish to set a different mandatory height limit for a particular part of the municipality, this would need to be strategically justified.

In summary the difference between the two zones is negligible and conversion will not disadvantage Council.

Current strategic planning work

Council is in the process of finalising structure plans and neighbourhood character studies for the townships of Kyneton, Riddells Creek and Woodend. When complete and if adopted, this strategic work will provide the basis for Council to implement the full suite of new zones in these three towns. The adopted plans and strategies for Gisborne, New Gisborne and Romsey will form the basis for applying the new zones in these locations.

10. PE.4 EARLY CONVERSION OF RESIDENTIAL 1 ZONE TO GENERAL RESIDENTIAL ZONE (Continued)

In addition to applying the full suite of zones in townships with adopted plans and strategies, officers will also review the existing residential zones in the shire's smaller townships where the Residential 1 Zone currently applies (i.e. Lancefield and Malmsbury) and recommend which new residential zone should be applied in these towns. This will ensure the new residential zones are applied in a consistent and logical manner across the shire.

The implementation of the Kyneton, Riddells Creek and Woodend Structure Plans, and the introduction of the full suite of new residential zones across the shire is programmed for next financial year. This will involve a series of planning scheme amendments which will be prepared and progressed concurrently in order to maximise efficiency and ensure consistency.

The DTPLI has advised that the current offer of conversion to the General Residential Zone will in no way preclude or compromise Council's ability to progress the introduction of the other new Residential Zones through the structure plans implementation project, should they be justified.

- **Consultation/Communication**

No internal or external consultation will be undertaken as part of the conversion amendment as it is an administrative process.

There has been significant consultation undertaken through the various town structure plans and other strategies. Further consultation will occur as a part of the implementation of the structure plans and the application of the new residential zones in accordance with the standard planning scheme amendment process.

- **Resource Implications**

There will be limited resource implications for Council with the Department of Transport, Planning and Local Infrastructure offering support and resources to do the work associated with the amendment. All amendment fees will also be waived.

- **Conclusion**

The Minister for Planning has introduced a new suite of residential zones. Councils have until 30 June 2014 to implement these new zones in their planning schemes. After this time, if Councils have not introduced the new suite of zones, the existing Residential 1 Zone will be converted to the General Residential Zone. Council has subsequently been advised that this conversion process will not include updates to the planning scheme maps which will continue to show the Residential 1 Zone. This is likely to cause confusion for the community.

10. PE.4 EARLY CONVERSION OF RESIDENTIAL 1 ZONE TO GENERAL RESIDENTIAL ZONE (Continued)

Consequently, DTPLI has advised Councils that opportunity exists to request that the direct translation occur prior to 30 June 2014. Requesting this early conversion will avoid community confusion. This request will not have any significant resource implications for Council.

10. PE.5 HANGING ROCK

Officer: **Sophie Segafredo, Director Planning and Environment**

File Ref: **1168841**

Council Plan Relationship: An inspiring place – Our lifestyle, culture and sense of place are strengthened by best practice planning and development

Synopsis:

At the 26 February 2014 Ordinary Meeting, Council resolved to undertake further investigation and consultation in relation to the future of Hanging Rock and surrounds. This report articulates the tasks and timeframes recommended to implement that resolution which include the development of information packages, a communications strategy and a three month consultation phase culminating in a formal public hearing followed by a report to Council. It is anticipated that the project will cost in the order of tens of thousands of dollars, depending on the degree of detail and actions required in each stage and be completed by the end of this year or very early in 2015.

Officer Recommendation:

That Council adopts the following approach to implementing the information and consultation strategy for Hanging Rock and the surrounding precinct:

1. **Preparation of a package of information including; a summary of all relevant information regarding the Development and Investment Plan, options for generating income specifically to invest in Hanging Rock, and a land use precinct plan.**
2. **Preparation of a communications plan including a comprehensive consultation phase.**
3. **Undertake the consultation which incorporates a one month information provision period followed by a two month feedback period.**
4. **Incorporates a public hearing process that conforms with the intent of Section 223 of the Local Government Act 1989.**
5. **Considers all feedback and report findings and recommendations to Council.**
6. **Commit to a project timeframe with the following major milestones;**
    a. **Information gathering and document preparation by June**
    b. **Consultation over July-September**
    c. **Public hearing in October**
    d. **Consideration of issues and report to Council in December/February**

10. PE.5 HANGING ROCK (Continued)

Background

At the 26 February 2014 Ordinary Meeting Council considered an item of urgent and other business regarding Hanging Rock and resolved:

Following the decision of the 28 August 2013 on the proposed Hanging Rock Development and Investment Plan that Council:

Continue further investigations widening the view on sustainable financial opportunities as contained in the 28th August, 2013, Ordinary Council meeting notice paper and briefing papers as well as to carry out the additional following activities –

PART A
Resolves to carry out a focused one month community education on use and development of the Hanging Rock Reserve Precinct, and
Investigate the merits in planning protection specifically to protect the immediate area of Hanging Rock area within an area yet to be determined as the Hanging Rock Reserve Precinct, note: not limited to the Hanging Rock Reserve or East Paddock but to include the immediate and adjoining developed residential land.

PART B
Seek community comment for the period of two months ending with a Section 223 Committee of Council to hear separate or joint submissions on the Hanging Rock Reserve Precinct Plan and Council Hanging Rock Investment Plan with a final report on both to come back to Council no later than the Ordinary Council meeting in July, 2014.

Officers have considered the detail of the resolution and in response prepared a suggested outline of the required tasks and timeframe.

Task One

Preparation of a package of information to include:

- The Hanging Rock Development & Investment Plan summary (excluding any commercially sensitive data) and a review of bulletin and Frequently Asked Questions documents;
- Review of income options explaining the exploration of sourcing increased incomes via general municipal rates and private investment options;
- Precinct Plan to firstly define the area based on a notional 2km radius to be further informed by existing terrain and environment, specifically the surrounding canopies and corridors. Prepare an assessment of the existing planning provisions, any policy or control gaps and recommendations;

10. PE.5 HANGING ROCK (Continued)

Task Two

Preparation of a Communications Plan to be guided by and include:

- Council's consultation matrix
- Draft letters and notification area
- Media messages/release dates
- Promotional material
- Web based material

Task Three

Conduct of the consultation phase including:

- One month concentrated provision of information out to the community, per the communications plan;
- Two months further period of receiving feedback from the community in accordance with the details resolved through the communications plan. The methods could include written submissions, social media feedback tools, survey etc;
- Conduct of public hearing process that conforms with the intent of the provisions of Section 223 of the Local Government Act.

Task Four

Consider feedback and prepare documents for Council consideration.

Costs and Timeframe

The costs cannot be estimated at this time and will be dependant of the level of detail Council wishes to provide in the information packages and the extent of materials and actions proposed under the communications plan. Some costs can be absorbed in officer time but in order to implement the proposal above some costs will need to be budgeted and/or other existing projects deferred.

It is anticipated that the costs will be in the order of tens of thousands of dollars and greatly depends on the level of detail required in the investigations phase, the number and type of communication activities undertaken, the conduct of the hearing, assessment of feedback required following consultation and the production of any resulting reports etc.

Having considered the process of implementing Council's resolution including preparation of materials and the consultation period the timelines committed to in the resolution should be revised. This will ensure adequate time to deliver a robust consultation process with comprehensive material and adequate time for the community to consider the issues and offer a considered response.

10. PE.5 HANGING ROCK (Continued)

Proposed Timeframe:

- Commission projects & package information materials: March/April
- Carryout investigation: April - June
- Information out month: July
- Feedback months: Aug – September
- Receive feedback & conduct Section 223 hearing: October
- Consider feedback & prepare project recommendations: October/November
- Report to Council: December/February

Conclusion

The implementation of the February Council resolution would benefit from formal clarification. It is suggested that officers prepare an information package and a communications plan to provide adequate opportunity for the community to offer feedback on the process of providing sustainable, long term funding sources for the upkeep and environmental improvement of Hanging Rock.

11. CX.1 COUNCILLOR GRANTS – CONSIDERATION OF GRANT APPLICATIONS

Officer: **Trudy Campbell, Governance Administration Officer**

File Ref: **02/13/08/09**

Council Plan Relationship: A high performing organisation – We proactively engage with, and demonstrate accountability to, the community; and build and sustain financial strength.

Synopsis:

Council at its March 2013 Ordinary Council Meeting endorsed the guidelines which govern the Councillor Grants Scheme.

Not-for-profit community groups can apply for small financial donations via this scheme. Applications are evaluated and presented to Council as they are received.

Councillor grants are offered to assist projects/initiatives that are unlikely to be funded through existing funding schemes. Applications can be made at any time of year[1] and generally are processed within 3–4 weeks.

Officer Recommendation:

That Council endorse the following applications for funding:

a. **Kyneton Community Park for Taste of Kyneton food festival $850; and**
b. **Riddells Creek Pony Club for mower upgrade for grass cutting $1,500.**

[1] except in a General Election year, specifically from 1 July to the date of the election and during the Community Funding Scheme open for application period annually

11. CX.1 COUNCILLOR GRANTS – CONSIDERATION OF GRANT APPLICATIONS (Continued)

Officer Comment:

The following guidelines govern the use and administering of these funds:

1. Application for funding is via an application form which must be endorsed by the Councillor/s.
2. The maximum grant is $1500.
3. All applications will be presented to Council for determination.
4. A group can receive funding only once in a financial year.
5. Funding:

a. must be for a ‘one off’ project or activity (not the basis for ongoing funding)
b. will not be offered to individuals
c. can be offered to government and non-government schools; however the purpose of the request must be outside the accepted responsibilities of the school and the State Government, i.e. all curriculum-related activities, student welfare activities and other functions that are generally performed by schools
d. community/township festivals and events are eligible
e. associated with works to a Council facility or building must be approved by the relevant building manager
f. shall not be used for political purposes
g. must be identified as being consistent with Council Plan
h. may be pooled by two or more Councillors to fund a specific project or activity
i. Is at the discretion of the Councillor/s in consultation with the Manager Council and Customer Services
j. is for projects that will commence and finish in the same financial year
k. applications will not be accepted and works/undertakings shall not occur, in the period between 1 July and the date of a General Election of that same year.

6. Once funding is approved, all parties are required to sign a partnership agreement.
7. The promotion of activities/projects funded by the Councillor grants must not include reference to individual Councillors; i.e. the funding must be promoted as simply Council funding.
8. Any funds not spent on the specified project/activity will be returned to Council.

11. CX.1 COUNCILLOR GRANTS – CONSIDERATION OF GRANT APPLICATIONS

The following applications are presented for consideration:

Applicant:	Kyneton Community Park
Date received:	11 March 2014
Project:	Taste of Kyneton food festival
Amount requested:	$850
Amount recommended:	$850
Sponsor Councillor(s):	West Ward
Previous funding received for group/project:	Yes
Compliant with guidelines:	Yes
Officer comment:	Eligible for funding
Officer recommendation:	To be funded

Applicant:	Riddells Creek Pony Club
Date received:	18 March 2014
Project:	Upgrade of mower
Amount requested:	$1,500
Amount recommended:	$1,500
Sponsor Councillor(s):	East Ward
Previous funding received for group/project:	Yes
Compliant with guidelines:	Yes
Officer comment:	Eligible for funding
Officer recommendation:	To be funded

12. CS.1 CONTRACTS TO BE AWARDED AS AT 26 MARCH 2014

Officer: **Corinne Farley, Contracts Coordinator**

File Ref: **60/03/01**

Council Plan Relationship: A high performing organisation – We proactively engage with, and demonstrate accountability to, the community; and build and sustain financial strength

Synopsis:

Currently a report is issued to all Councillors on a weekly basis which summarises the status of tenders from specification stage to contract awarded stage.

At its meeting on 25 March 1998 Council resolved that a report be presented on a monthly basis to provide Council with the opportunity (upon resolution of Council) to revoke the delegated authority to award a contract(s) in any instance where Council deems it appropriate.

At its meeting on 9 April 2003 Council resolved to delegate to the Chief Executive Officer the authority to affix the Common Seal to all contracts awarded by officers in accordance with the limits of delegation, as applying from time to time, and subject to Council being previously informed of the intention to award the contracts under delegated authority.

Officer Recommendation:

That Council:

1. **Notes the existence of delegated authority to award the following contracts and to affix the Common Seal:**
    a) **C14.707 Gisborne Bowling Green Synthetic Rink**

12. CS.1 CONTRACTS TO BE AWARDED AS AT 26 MARCH 2014 (Continued)

Currently a confidential report that summarises the status of tenders from specification stage to contract awarded stage is regularly issued to all Councillors. The report is confidential because it provides officer's estimates of the expected value of the contracts (prior to tenders being invited). The report also indicates whether or not delegated authority to award the contract is expected to exist. The expected delegated authority is determined by the value of the contract.

At its meeting on 25 March 1998 Council resolved that in the event of any of the following conditions prevailing then delegated authority will not be exercised by the relevant officer, and instead the award of the contract will become Council responsibility and an evaluation report will be submitted to the first available Council Meeting:

- if the preferred tenderer is from outside the Shire of Macedon Ranges and other tenderers are from within the Shire of Macedon Ranges;
- if the preferred tenderer is a "not for profit" organisation;
- if the preferred tenderer is another Council.

At the Council Meeting on 26 February 2014 it was noted that delegated authority was expected to exist for the following contracts:

- C14.688 Simons Road Bridge Design and Construction
- C14.698 Baynton Road Major Culvert ID 35 Kyneton

Since then tenders have been invited for the following contracts:

C14.707 Gisborne Bowling Green Synthetic Rink
This is an Expression of Interest for the construction of 1 new synthetic bowling rink at the Gisborne Bowling Club. The project is to be undertaken in 2 stages. Stage 1 will involve all earthworks and all below ground infrastructure. Stage 2 works include the total synthetic green construction, including all above ground infrastructure.

It is expected that following the tendering and evaluation process, Council officers will be able to exercise the delegated authority and award the above contracts.

12. CS.2 REPORT FROM THE AUDIT COMMITTEE MEETING HELD ON 19 MARCH 2014

Officer: **Glenn Owens, Director Corporate Services**

File Ref: **02/03/02**

Council Plan Relationship: A high performing organisation – We proactively engage with, and demonstrate accountability to, the community; and build and sustain financial strength

Synopsis:

The most recent Audit Committee meeting was held on 19 March 2014 and the minutes from that meeting have been distributed to all Councillors. The minutes include the following items:

1. Internal Audit Plan – Auditor's quarterly report on the progressive completion of the current 18 month internal audit plan.

2. Internal Audit Actions – Management's quarterly progress comments on the status of outstanding Internal Audit Actions.

4. Internal Audit Plan 2014 to 2017 – A draft plan for the period 1 July 2014 to 30 June 2017 was considered and the Committee provided feedback to the Chief Executive Officer and Directors.

5. Internal Audit Services Contract – A draft specification for the period 1 July 2014 to 30 June 2017 was considered and the Committee provided feedback to the Chief Executive Officer and Directors.

6. Definitions of Volunteers and Volunteering – The definitions were considered and the Committee endorsed them, noting (a) the alignment with Volunteering Australia's National Standards (for involving volunteers in not for profit organisations) and (b) their inclusion in the relevant Manuals produced by Council for its Volunteers.

7. Information and Communications Strategic Plan 2012 to 2015 Progress Report – The report was considered and the Committee recommended that Council gives a high priority to including the replacement of the records management system in the 2014/15 Budget.

Officer Recommendation:

That Council note this report together with the minutes from the Audit Committee meeting held on 19 March 2014.

13. DIRECTOR COMMUNITY WELLBEING REPORTS

There are no reports presented by the Director Community Wellbeing.

14. AO.1 APPOINTMENT OF COUNCIL REPRESENTATIVE TO THE LODDON MALLEE REGIONAL WASTE AND RESOURCE RECOVERY REGIONAL LOCAL GOVERNMENT FORUM 2014/15

Officer: **Dale Thornton, Director Assets and Operations**

File Ref: **14/03549**

CRM Ref: **57600**

Council Plan Relationship: An inspiring place – Our environment and landscape is protected and sustained and our infrastructure supports the needs of future generations.

Attachment: Map

Synopsis:

The present current twelve Regional Waste Management Groups, currently responsible for planning and coordinating the management of municipal solid waste, will be consolidated into six new Waste and Resource Recovery Groups (WRRGs), each with its region from 1 August 2014.

This report seeks the nomination of a Council representative to the about to be created Loddon Mallee Regional Waste and Resource Recovery Regional Local Government Waste Forum, a statutory forum under proposed amendments to the Environment Protection Act 1970.

Officer Recommendation:

That Council endorse the appointment of [*name of Councillor*] to the Loddon Mallee Regional Waste and Resource Recovery Regional Local Government Forum for 2014/15 as the representative of the Macedon Ranges Shire Council.

14. AO.1 APPOINTMENT OF COUNCIL REPRESENTATIVE TO THE LODDON MALLEE REGIONAL WASTE AND RESOURCE RECOVERY REGIONAL LOCAL GOVERNMENT FORUM 2014/15 (Continued)

Background

The Environment Protection and Sustainability Victoria Amendment Bill 2014 establishes six new Waste and Resource Recovery Groups (WRRGs) across Victoria, in place for the current twelve Regional Waste Management Groups (RWMGs). The attached map shows the new Waste and Resource Recovery Regional areas.

The Victorian Government intends that the WRRGs will be established from 1 August 2014.

Councillor Connor is the current Macedon Ranges Shire Council representative on the Calder Regional Waste Management Group Board.

The new WRRGs will have boards consisting of four directors nominated to the Minister for Environment and Climate Change by local governments in their Waste and Resource Recovery Regions, and four appointed by the Minister.

The Victorian Government is establishing a Local Government Waste Forum in each region, to nominate the four local government directors, and be an ongoing conduit for consultation between all local governments and the new WRRGs.

The Minister for Environment and Climate Change has requested that each Council in a Waste and Resource Recovery Region nominate a Councillor to be its representative on the Local Government Waste Forum by 31 March 2014.

15. NOTICES OF MOTION

Notice of Motion No. 24/2013-14 – Councillor Mowatt

That the Chief Executive Officer writes to Premier Denis Napthine; Minister for Public Transport, Minister for Roads and Coordinating Minister for Department of Transport, Planning and Local Infrastructure, the Hon Terry Mulder; Minister for Planning, the Hon Matthew Guy; Amanda Millar MP and Joanne Duncan MP for the establishment and assistance in setting up a bus service in the Woodend town district.

Background information:
At the last state election the State Government had as its cornerstone policy a better public transport and roads system for Victoria. This is consistent with its current policy position. Hundreds of transport projects are currently underway and more are planned for the future of Victoria. Thus creating jobs and a modern, safe and connected transport system for all Victorians. The township of Woodend has recently presented a petition to our local State Government Member seeking a bus service for the town and surrounding areas as part of its future transport needs in line with the State Government's policy objective. The Macedon Ranges Shire's Settlement Strategy has also identified Woodend as a future town for potential grow to around 6,000 residents which would support the establishment of a bus service into the future.

Notice of Motion No. 25/2013-14 – Councillor Mowatt

That the Chief Executive Officer writes to Premier Denis Napthine; Minister for Planning Matthew Guy; Minister for Local Government Tim Bull MP; Amanda Millar MP and Joanne Duncan MP reaffirming that council rates will be set and determined by local councils in accordance with the Local Government Act 1989; and that any proposed capping of local rates to CPI will in essence potentially take away the decision making process from local communities and the current budgetary process by Victorian councils.

Notice of Motion No. 26/2013-14 – Councillor Jukes

That Council write to the Premier, Hon Denis Napthine, and the Minister for Education, Hon Martin Dixon outlining in-principle support for state funding for the development of a K12, creating a Kyneton Education Precinct to meet the educational needs of children in Kyneton and surrounding areas.

Background information:
Kyneton is the second largest town in the seat of Macedon and its secondary college encompasses a number of feeder schools from towns across the seat, including Woodend. The provision of government education from K–12 faces significant challenges in catering to the educational needs of the town and surrounding district. Lady Brooks Kindergarten is stretched to capacity; Kyneton Primary School has significant maintenance issues due in part to the age of the buildings and its enrolments have outpaced the school's land and building capacity. Kyneton Secondary College has a number of buildings in poor condition that are haphazardly located and ill-equipped to deal with the needs of 21st century learning. Kyneton Primary School missed out on crucial Building the Education Revolution funding and Kyneton Secondary College missed out on funding for a new Science and Language Centre. In 2010 there was a need and a community expectation that the Kyneton Education Plan, providing 21st century facilities and education for Kyneton, would be delivered. In the four years that have passed this need is now urgent and Friends of Kyneton Education are seeking a funding commitment to see it delivered in the next term of government (2015-18).

Notice of Motion No. 27/2013-14 – Councillor Letchford

That Council approve the Chief Executive Officer, or his delegate, to engage and brief independent professionals to:

- **Part A: Engage legal services to assess and report back to Council on the validity of the alleged bullying within Council as per recent media reports, and S.77 Local Government Act, and allied sections, covering confidentiality within Council and Councillor Briefings; and**
- **Part B: Engage professional services conversant with Local Government to conduct Councillor engagement/interaction/ dynamic session/s, as identified, to address the overall group dynamic of Councillors as well as engagement with Council's Executive; not limited to group sessions but to include, if identified, individual session/s, and compile a report on the outcomes.**

16. URGENT AND OTHER BUSINESS

In accordance with Council's Local Law No. 9 Meeting Procedure, business which has not been listed on the Agenda may only be raised as urgent or other business by resolution agreed by Council.

17. CONFIDENTIAL REPORTS

Nil

18. DIVISION 1A – CONDUCT AND INTERESTS

76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

(a) act with integrity; and

(b) impartially exercise his or her responsibilities in the interests of the local community; and

(c) not improperly seek to confer an advantage or disadvantage on any person.

76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

(a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;

(b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;

(c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;

(d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;

(e) endeavour to ensure that public resources are used prudently and solely in the public interest;

(f) act lawfully and in accordance with the trust placed in him or her as an elected representative;

(g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

76C. Councillor Code of Conduct

(1) A Council must develop and approve a Councillor Code of Conduct for the Council within 12 months after the commencement of section 15 of the **Local Government Amendment (Councillor Conduct and Other Matters) Act 2008**.

(2) A Council must review the Councillor Code of Conduct within the period of 12 months after a general election.

(3) A Councillor Code of Conduct—

- (a) must include the Councillor conduct principles;
- (b) may set out processes for the purpose of resolving an internal dispute between Councillors;
- (d) must include provisions in respect of any matter prescribed for the purpose of this section;
- (e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

(5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.

(5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.

(6) A copy of the current Councillor Code of Conduct must be—

- (a) given to each Councillor;
- (b) available for inspection by the public at the Council office and any district offices.

(7) On and from the commencement of section 15 of the **Local Government Amendment (Councillor Conduct and Other Matters) Act 2008**, a Councillor Code of Conduct is taken to include the Councillor conduct principles.

76D. Misuse of position

(1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—

- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

(2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—

- (a) making improper use of information acquired as a result of the position he or she held or holds; or
- (b) disclosing information that is confidential information within the meaning of section 77(2); or

(c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or

(d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or

(e) using public funds or resources in a manner that is improper or unauthorised; or

(f) failing to disclose a conflict of interest as required under this Division.

(3) This section—

(a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and

(b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

76E Improper direction and improper influence

(1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.

(2) A Councillor must not direct, or seek to direct, a member of Council staff—

(a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or

(b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or

(c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or

(d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.

(3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

77. Confidential information

(1) A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information.

(2) For the purposes of this section, information is "confidential information" if—

(a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or

(b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or

(c) subject to sub-section (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

(3) Confidential information referred to in sub-section (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless sub-section (2)(a) or (2)(b) applies to the information.

77A Direct and indirect interests

(1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.

(2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.

(3) A relevant person has an indirect interest in a matter if the relevant person has—

(a) a close association as specified in section 78; or

(b) an indirect financial interest as specified in section 78A; or

(c) a conflicting duty as specified in section 78B; or

(d) received an applicable gift as specified in section 78C; or

(e) become an interested party as specified in section 78D; or

(f) a residential amenity that may be altered as specified in section 78E.

(4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or

indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.

(5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds—

(a) is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or

(b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.

(6) A relevant person does not have a conflict of interest in a matter if the relevant person—

(a) does not know the circumstances that give rise to the conflict of interest; and

(b) would not reasonably be expected to know the circumstances that give rise to the conflict of interest.

77B Direct interest

(1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.

(2) Without limiting subsection (1), a person has a direct interest in a matter if—

(a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;

(b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

(3) A person who has a membership in a club or organisation that has a direct interest in a matter—

(a) does not, by reason of that membership, have a direct interest in the matter under subsection (1); and

(b) does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.

(4) In subsection (2), ***controlling interest*** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**.

78 Indirect interest by close association

(1) In this section—

daughter means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;

direct relative means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;

domestic partner of a person means—

(a) a person who is in a registered relationship with the person; or

(b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

(i) for fee or reward; or

(ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

family member means—

(a) a spouse or domestic partner of the person; or

(b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means—

(a) a direct relative of the person;

(b) a direct relative of a person who is the direct relative of the person;

son means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

(2) A person has an indirect interest by close association in a matter if—

(a) a family member of the person has a direct interest or an indirect interest in a matter; or

(b) a relative of the person has a direct interest in a matter; or

(c) a member of the person's household has a direct interest in a matter.

(3) For the purposes of the definition of ***domestic partner*** in subsection (1)—

(a) ***registered relationship*** has the same meaning as in the **Relationships Act 2008**; and

(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and

(c) a person is not a domestic partner of another person only because they are co-tenants.

78A Indirect interest that is an indirect financial interest

(1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.

(2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—

(a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);

(b) the person is owed money from another person and that other person has a direct interest in the matter.

(3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed $10 000 and the total value of issued shares of the company or body exceeds $10 million, the person's indirect financial interest is not a conflict of interest.

(4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.

(5) For the purposes of determining the value of shares under this section, the share value is to be taken from—

(a) the close of business on the most recent of 30 June or 31 December; or

(b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

78B Indirect interest because of conflicting duties

(1) A person has an indirect interest in a matter because of a conflicting duty if the person—

(a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;

(b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;

(c) is a trustee for a person who has a direct interest in a matter.

(2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.

(3) A person does not have an indirect interest because of a conflicting duty if—

(a) the person is, or has been, only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;

(b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed to the relevant special committee of the Council to be a representative of the non-for-profit organisation;

(ba) the person only holds a position, with the Council's approval as a representative of the Council, in an organisation for which the person receives no remuneration;

(c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;

(ca) the person is only a member of a development assessment committee established under Part 4AA of the **Planning and Environment Act 1987**;

(d) the person only holds a position that has been prescribed for the purposes of this section.

78C Indirect interest because of receipt of an applicable gift

(1) In this section, ***applicable gift*** means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—

(a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or

(b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.

(2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—

(a) a person who has a direct interest in the matter; or

(b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or

(c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.

(3) For the purposes of determining when a person became a Councillor or member of a special committee under subsection (1)(b), if the person is re-elected or reappointed as a Councillor or a member of a special committee, on completion of his or her term of office, the previous term of office served by that person as a Councillor or member of a special committee must be counted as continuous service with any service completed by the person after the person's re-election or reappointment.

78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

78E Indirect interest because of impact on residential amenity

A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.

79 Disclosure of conflict of interest

(1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).

(2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—

(a) by either—

(i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or

(ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and

(b) classifying the type of interest that has given rise to the conflict as either—

(i) a direct interest; or

(ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and

(c) describing the nature of the interest; and

(d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.

(5) The Chief Executive Officer must—

(a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and

(b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.

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

(a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and

(b) remain outside the room and any gallery or other area in view or hearing of the room.

(7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—

(a) consideration of the matter; and

(b) all votes on the matter.

(8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—
  (a) the declaration of the conflict of interest; and
  (b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.

(9) Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.

79B Conflicting personal interest

(1) This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.

(2) If a Councillor or a member of a special committee considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.

(3) If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.

(4) A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.

(5) If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

79C Certain situations where Councillor taken to not have a conflict of interest

(1) A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter only relates to—
  (a) the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;
  (b) the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);
  (c) a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2);
  (d) the adoption of a policy in relation to the reimbursement of expenses under section 75A;
  (e) the adoption of a Councillor Code of Conduct under section 76C;
  (f) an application to a Councillor Conduct Panel or VCAT under Division 1B;
  (g) an application for an exemption under section 80;
  (h) the appointment of members and Chairpersons of special committees;
  (i) a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation;
  (j) the conduct of a Councillor with respect to—
    (i) an internal dispute that involves the Councillor;
    (ii) an allegation of misconduct or serious misconduct (as defined in section 81A) by the Councillor;
  (k) a submission provided to an electoral representation review under section 219F;
  (l) a submission provided for the purposes of a subdivision review conducted under section 219N.

(2) If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if—
  (a) the Council approved the matter and the proposed funding previously; and
  (b) the Councillor disclosed the nature of the conflict of interest under this Division when the decision in respect of the funding was originally considered and made.