



Murrindindi
Shire Council

Scheduled Meeting of Council

Agenda

Wednesday 3 May 2023
Yea Council Chambers
The Semi Circle
6:00 PM

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1 ACKNOWLEDGEMENT OF COUNTRY AND COUNCILLORS' PLEDGE

1.1 Acknowledgement of Country

The meeting will be opened with the Mayor reading the following on behalf of the Murrindindi Shire Council:

“Murrindindi Shire Council is proud to acknowledge the Taungurung and Wurundjeri people as the traditional custodians of the land we now call Murrindindi Shire.

We pay our respects to their Elders past, present and emerging, who are the keepers of history, traditions, knowledge and culture of this land.”

1.2 Councillors' Pledge

“The Councillors, democratically elected to represent our community as the Murrindindi Shire Council, are committed to working together in the best interests of the people who live in our municipality, those who conduct business here and those who visit.”

2 PROCEDURAL MATTERS

2.1 Privacy Note

This public meeting is being streamed live via our Facebook page and website. A recording of the meeting along with the official Minutes of the meeting will also be published on our website.

2.2 Apologies and Request for Planned Leave

2.3 Disclosure of Interest or Conflict of Interest

In accordance with section 130 (1)(a) of the *Local Government Act 2020* Councillors are required to disclose any “conflict of interest” in respect of a matter to be considered at a Council Meeting.

Disclosure must occur immediately before the matter is considered or discussed.

3 PUBLIC PARTICIPATION

3.1 Open Forum

Section 8 of the *Governance Rules 2020* allows for Community Participation in Council Meetings. Open Forum is an opportunity for the general public to present to Council on a matter listed on the Agenda or any other matter.

3.2 Questions of Council

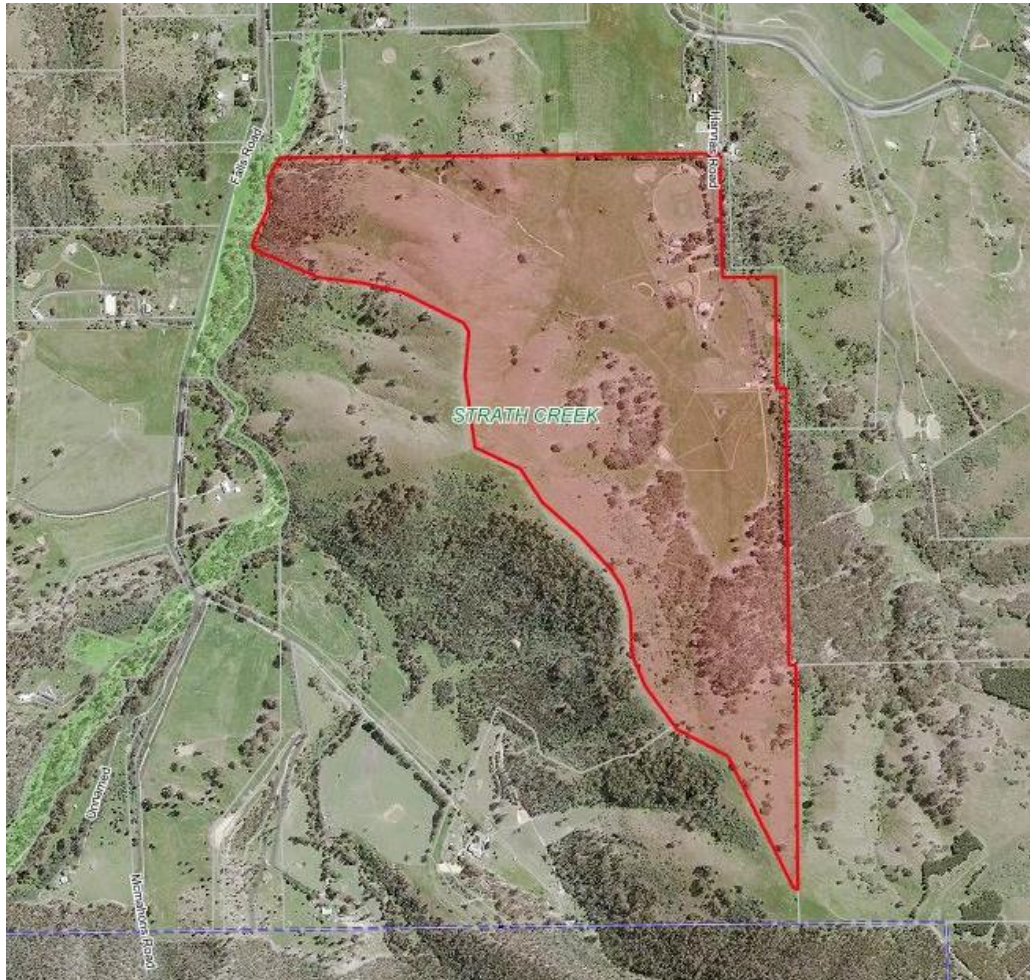
Questions of Council are an opportunity for the general public to submit a question prior to the Scheduled Meeting and receive a response from Council in the Questions of Council time.

4 PLANNING REPORTS

4.1 Planning Application - 26 Hannas Road, Strath Creek - Amendment to Permit

Attachment(s)	Attachment 1 - 26 Hannas Road Strath Creek - Application Documents [4.1.1 - 22 pages] Attachment 2 - 26 Hannas Road Strath Creek - Plans [4.1.2 - 23 pages] Attachment 3 - 26 Hannas Road Strath Creek - Landscape Master Plan [4.1.3 - 7 pages] Attachment 4 - 26 Hannas Road Strath Creek - Draft Planning Permit [4.1.4 - 7 pages] Confidential Attachment 1 - 26 Hannas Road Strath Creek – Submissions (<i>distributed to Councillors separately</i>) Confidential Attachment 2 - 26 Hannas Road Strath Creek – Submissions (<i>distributed to Councillors separately</i>)
Presenter	C Fraser, Coordinator Planning
Approved by	Acting Director Corporate & Shared Services in consultation with Acting Director Assets & Development
Purpose	For decision
Land:	26 Hannas Road, STRATH CREEK 3658
Proposal:	Amendment to permit to update preamble and conditions and to include construction of new swimming pool and gym, multi-use courts, golf nets, solar array, path works, accommodation for additional 36 guests and alterations to existing pavilion
Applicant:	Strath Creek Pty Ltd
Zoning:	Farming Zone
Overlays:	Bushfire Management Overlay
Triggers:	Clause 35.07-4 (Buildings and works associated with a Section 2 Use in the Farming Zone).

Locality Plan



Executive Summary

An application has been received to amend the existing permit and endorsed plans to allow for the upgrade of the existing pavilion and development of additional accommodation and recreation facilities to be used as part of the operation of the site.

The land is in the Farming Zone and is affected in part by the Bushfire Management Overlay. The land has been used as a tourism facility including minor sports facilities and recreation, function centre, accommodation, and a liquor licence for over 20 years.

The site is located at the southern end of Hannas Road which is sealed to the property entrance. Access to Hannas Road is only available via Falls Road and Allandale Road. Allandale Road and part of Falls Road are unsealed.

The application has been referred to CFA who have consented to the proposal subject to conditions.

Notice was provided to GMW as the rural water authority, DELWP as an adjoining land manager and all properties on Allandale Road between Falls Road and Hannas Road. GMW and DELWP have consented to the proposal subject to conditions.

Four objections and one letter of support have been received. The objections raise issues in relation to the current condition of the road and additional traffic, noise, and rural amenity.

This report recommends that a Notice of Decision to grant an amended planning permit be issued for the proposed additional facilities at 26 Hannas Road, Strath Creek.

RECOMMENDATION

That Council issue a Notice of Decision to grant an amended planning permit to allow for amendments to permit to update preamble and conditions and to include construction of new swimming pool and gym, multi-use courts, golf nets, solar array, path works, accommodation for additional 36 guests and alterations to existing pavilion at 26 Hannas Road, Strath Creek 3658 (Lot 1 on Plan of Subdivision 548220E Volume 10978 Folio 056), subject to the following conditions:

(1) Amend Permit Preamble to read:

- The use and the development of land at 26 Hannas Road, Strath Creek, as a tourist establishment including a minor sports and recreation facility, accommodation, a function centre and camping/caravan use, including and on premises liquor licence.

(2) Delete Conditions 1, 4, 10, 11, 12, 13, 14, 15 and 16.

(3) Amend Condition 5 of the permit to read:

- The bunkhouse and Village Green Lodge shall only be used for overnight accommodation purposes for up to sixty two (62) guests at any one time.

(4) Amend Condition 22 of the permit to read:

- The landscape areas shown on the endorsed plans must continue to be maintained to the satisfaction of the Responsible Authority.

(5) Replace Condition 23 in relation to the permit expiry to read:

- This permit will expire if one of the following circumstances applies:
 - a) the additional development approved is not started within three years of the date of this amended permit.
 - b) the additional development approved is not completed within five years of the date of this amended permit.
 - c) the use of the buildings approved by the amended permit are not started within five years of the date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

(6) Add the following additional conditions:

- Prior to commencement of the use of the pool/gym, multi courts, covered shelter, an Operational Management Plan for these facilities is to be submitted to the satisfaction of the Responsible Authority.
- The Operational Management Plan (pool/gym, multi courts, covered shelter) may be amended from time to time and should include as relevant:
 - Outline of activities to be undertaken on site associated with the pool/gym, multi courts and covered shelter.
 - Details of staffing and management arrangements associated with the pool/gym, multi courts, covered shelter.

- Details of measures and processes to deal with community questions, complaints and general operational issues associated with these facilities.

Environmental Health

- All wastewater is to be treated and contained on-site in accordance with supplied LCA Report No: L35822 undertaken by Mansfield Land Capability and Assessments.
- A permit to install a septic system will be required from Council prior to the commencement of any works.

Engineering Conditions

- ***Drainage***
 - All stormwater and surface water discharging from the building and works must be conveyed to a point of discharge, approved by the relevant authority. No stormwater discharge from downpipes or overflow from storage tank and surface water shall be directed or caused to be directed in a concentrated form that will cause erosion and or adverse effects within the site or to adjoining land or properties.
 - The approved works must not cut off natural drainage to adjacent properties.
- ***Internal Access***
 - Before any of the approved additional buildings are occupied all internal access roads must be constructed, formed, and drained to avoid erosion and to minimise disturbance to natural topography of the land to the satisfaction of the Responsible Authority.
 - The internal access road to the building shall be constructed to a size and standard satisfactory to the Responsible Authority to provide all weather access for emergency service vehicles.
 - The works must include the provision of suitable pavement material of at least 3.5 metres in width with 0.5m side clearances and 4 m vertical clearance and designed to provide passing lanes at least 200 m intervals.
- ***Parking***
- ***Carpark Construction***
 - Prior to the occupation of any of the approved additional development, the area(s) set aside for parking of vehicles, access lanes and parking signs as shown on the approved plans must be constructed and completed to the satisfaction of the Responsible Authority.
 - Car spaces, access lanes and driveways must be kept available for these purposes at all times.

Additional CFA Conditions

- **Endorsement of Bushfire Management Plan (Gym/Pool, Lodge & Pavilion)**
Before the development starts, the Bushfire Management Plan prepared by Keystone Alliance Bushfire Assessments, Reference No. B3882/2.1 (Appendix 4 BMP), dated October 2022 must be endorsed by the Responsible Authority. Once endorsed the plan must not be altered unless agreed to in writing by CFA and the Responsible Authority.
- **Endorsement of Bushfire Management Plan (Shelter)**
Before the development starts, the Bushfire Management Plan prepared by Keystone Alliance Bushfire Assessments, Reference No. C3882/2.1 (Appendix 5 BMP), dated October 2022 must be endorsed by the Responsible Authority. Once endorsed the plan must not be altered unless agreed to in writing by CFA and the Responsible Authority.
- **Endorsement of Bushfire Management Plan (Multi Courts)**
Before the development starts, the Bushfire Management Plan prepared by Keystone Alliance Bushfire Assessments, Reference No. D3882/2.1 (Appendix 5 BMP), dated October 2022 must be endorsed by the Responsible Authority. Once endorsed the plan must not be altered unless agreed to in writing by CFA and the Responsible Authority.

GMW Conditions

- **All construction and ongoing activities must be in accordance with sediment control principles outlined in EPA Publication 275, Construction Techniques for Sediment Pollution Control (May 1991). There must be no transport of sediment or other materials off-site either during or following construction of any buildings or structures.**
- **Stormwater run-off from buildings, structures and other impervious surfaces must be dissipated as normal unconcentrated overland flow or directed to storage tanks or dams.**
- **All wastewater from proposed unsewered buildings must be treated to a standard of at least 20mg/L BOD and 30mg/L suspended solids using a package treatment plant or equivalent. The system must be an EPA approved system, installed, operated and maintained in accordance with the relevant EPA Code of Practice and Certificate of Conformity.**
- **The wastewater disposal area must be at minimum setback distances of at least 60 metres from the nearest waterway or dam and 20 metres from any bores.**
- **The wastewater disposal area must be kept free of stock, buildings, paths, driveways, car parking and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. Unless wastewater disposal is by subsurface irrigation methods, a reserve wastewater disposal field of equivalent size to the**

primary disposal field must be provided for use in the event that the primary field requires resting or has failed.

Department of Transport and Planning (DELWP at the time of Referral) Conditions

- **No structures are to encroach upon the adjoining Crown land.**
- **No effluent or run-off is to be discharged onto Crown land.**
- **Crown land is not to be utilized as defensible space to satisfy a Bushfire or Wildfire Management Overlay (BMO or WMO).**
- **Crown land is not to be utilized as an easement or as legal access.**
- **Crown land is not to be used for temporary access or storage associated with the proposal.**

The Land and Surrounds

The Land is described as 26 Hannas Road, Strath Creek or Lot 1 on Plan of Subdivision 548220. The site is located approximately 6km south of the Strath Creek Township. The site has an area of approximately 78 hectares and contains a private cricket ground with associated pavilion, a dwelling, bunk house, 5 individual guest accommodations used for short term accommodation and associated services and infrastructure.

The site has a gentle upward slope up from the front of the site which is where the current infrastructure on site is located with a number however becomes quite steep and inaccessible around the perimeter of the site.

Access to the site is existing from Hannas Road which is accessible only from Allandale Road off Falls Road. While Hannas Road is sealed, Falls Road and Allandale Road are not. The land is surrounded by on the north, south and eastern boundaries by private land which varies in size and is used for a range of purposes including agriculture and dwellings. Crown land is located to the west of the site which adjoins Falls Road.

Background

A search of Council's Electronic Records system shows that the following permits have been issued for the subject site:

- Planning Permit 1996/4 issued 20/2/1996 for a machinery shed.
- Planning Permit 1996/58 issued 14/11/1996 for a bed and breakfast.
- Planning Permit 1996/144 issued 22/10/1996 for an extension of operating hours, extension of playing season and use of pavilion for evening functions.
- Planning Permit 1997/154 issued 23/6/1997 for an extension to existing dwelling.
- Planning Permit 1998/309 issued 19/2/1999 for a Tourism establishment including minor sports ground, accommodation, function centre and on premises licence.
- Planning Permit 2004/297 issued 6/10/2005 Additions to existing Tourist Development
- Planning Permit 2012/5 issued 21/1/2012 for a variation of liquor licence from on premises to café restaurant.
- Planning Permit 2013/223 issued 6/12/2013 for an extension to existing pavilion to include toilet facilities.
- Planning Permit 2014/116 issued 21/8/2014 for the construction of an ornamental dam.
- Planning Permit 2007/105 issued 31/8/2015 for a two lot subdivision.
- Planning Permit 2022/163 issued 26/8/22 for the development of land for a shed.
- Planning Permit 2022/164 issued 26/8/22 for the development of land for a deck extension and pergola attached to existing bunkhouse.

Proposal

The application proposes to amend the existing permit and endorsed plans to allow for the upgrade of the existing pavilion and development of the new buildings to be used as part of the operation of the site.

Facilities on site are proposed to operate in accordance with the requirements of the existing permit.

The application includes an increase in the accommodation for an additional 36 guests as well as offering additional recreation facilities on site including a swimming pool, gymnasium, multi-purpose courts, golf net and outdoor retreat.

The application also proposes a redevelopment of the existing pavilion building to remove the existing accommodation capacity, improve its useability for functions and to contemporise the facilities.

The application proposes the following works:

Pavilion

The works include internal changes to the facilities, removal of the accommodation facilities and replacement of external doors and windows:

Village Green Lodge

A new building is proposed which will accommodate up to 36 People across 5 bedrooms with shared facilities.

The building is a single storey, 7.78m wide and 41m in length and is to be constructed with timber, concrete and corrugated iron.

Pool and Gym

The proposed pool and gymnasium facilities on site are to be contained within a new building measuring 11.3m wide and 39.5m in length. The building will also contain equipment storage. The building is single storey and will be constructed of timber, glass and corrugated iron.

Multi-Purpose Courts

An open sided building constructed over two multipurpose courts is also proposed on the site. The courts will have the capacity for use as netball, basketball or tennis courts. The proposed structure is 46.7m wide and 40.6 metres long with an overall height of 13.7 metres above the court surface from the top of the roof pitch.

Outdoor Retreat

The application proposes the construction of a sheltered area towards the rear of the site measuring 8.8m by 13 metres with an overall height of 5.6 metres. This area is proposed to be used by groups using the site but not requiring equipment.

Cultural Heritage Management Plan

The site is not in an area of cultural sensitivity as defined by the *Aboriginal Heritage Regulations 2018*. Consequently, a Cultural Heritage Management Plan is not required.

Community and Stakeholder Consultation

Notice of the application was provided in accordance with the requirements of the *Planning and Environment Act 1987* by way of letters to all adjoining properties and all other properties between the subject site and Falls Road.

Following notice, four submissions have been received as well as one letter of support. The issues raised in the four submissions are detailed below:

- Impact on roads.
- Noise.
- Rural Amenity.

Responses to the above objections are discussed in greater detail later in this report.

Referrals

The application was referred to the Country Fire Authority (CFA) under Section 55 of the *Planning and Environment Act 1987* as the land is in the Bushfire Management Overlay. CFA have consented to the proposal subject to conditions.

Notice of the application was given to DELWP (now DEECA) as an adjoining land owner. DELWP have consented to the proposal subject to conditions.

Notice was also given to Goulburn Murray Water as the rural water authority who have consented to the proposal subject to conditions.

Discussion - Planning Considerations

Planning Policy

The proposal has been assessed against state, regional and municipal Planning Policy Framework (PPF) contained in the *Murrindindi Planning Scheme*. Overall, it is considered to be consistent with the objectives and strategies of this framework as is discussed below.

Clause 02.02 Vision

- Council will facilitate sustainable population and economic growth.
- The municipal rate base will be actively grown through sound planning, support for continued economic development and protection of the natural and built environment.
- A strong economy will attract people to the municipality, creating further opportunities for lifestyle choice, business investment and prosperity.
- Increased economic growth and investment will enhance population growth, employment and social and cultural benefits for the municipality.

Clause 02.03 Strategic Directions

Economic Growth

- In promoting economic development, Council supports:
 - Encouraging business expansion, investment and employment.

Clause 11.01-1L Settlement – Murrindindi

Strategies

- Support the recovery and rebuilding of communities affected by the 2009 bushfires.
- Support the rebuilding of destroyed homes and damaged infrastructure from the 2009 bushfires.
- Support the re-establishment of commercial centres and opportunities for local employment arising from the 2009 bushfires.

Strath Creek was impacted by the 2009 Bushfires. Despite not being directly affected by the fires, the site played an integral role in the community by hosting numerous community events.

In recent years, the use of the site has been constrained, primarily due to the COVID-19 restrictions. However, with the recent sale of the land, there has been an increase in the use of the site and its existing facilities. The site is well located within close proximity to the metropolitan area, and is easily accessible via the Hume Freeway, which is located only 19 km away by road.

Clause 13.02-1S Bushfire Planning

Objective

- To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

Clause 13.02-1L Bushfire Planning

Strategies

- Support:
 - the rebuilding of communities, destroyed homes and damaged infrastructure affected by the 2009 bushfires.
 - the re-establishment of commercial centres affected by the 2009 bushfires in a way that mitigates bushfire risk.

This policy seeks to strengthen the resilience of settlements and communities to bushfire through risk-based planning prioritising the protection of human life. The objectives of this policy must be applied to this application as the land is in the Bushfire Prone Area and the proposal will result in a Bushfire Hazard.

In an effort to achieve this objective, the application was referred to the CFA. The CFA have consented to the proposal subject to a number of conditions.

Clause 14.01-1S - Protection of agricultural land

Objective

- To protect the state's agricultural base by preserving productive farmland.

The site has been used as a sports and recreation facility since 2004. The use of the land has grown in this time. The land is not identified as being of particular significance from an agricultural perspective.

Clause 15.01-6S – Design for Rural Areas

Objective

- To ensure development respects valued areas of rural character.

New buildings proposed as part of this application have been sited so as to be located away from any ridgelines and are to be constructed of materials to complement existing facilities on the site as well as the wider area.

The use of materials traditionally used for agricultural buildings is intended to allow the newer development to appropriately blend into the site and surrounding area. It is considered that the application is consistent with this objective of the Murrindindi Planning Scheme.

Clause 17.01-1S (Diversified economy) and Clause 17.01-1R (Diversified economy – Hume) State planning policy aims to ‘strengthen and diversify the economy’ by implementing the following strategies:

- Protect and strengthen existing and planned employment areas and plan for new employment areas.
- Facilitate regional, cross-border and inter-regional relationships to harness emerging economic opportunities.
- Facilitate growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services based on the emerging and existing strengths of each region.
- Support rural economies to grow and diversify.

Clause 17.01 – 1R (Diversified economy – Hume) requires the Responsible Authority to encourage appropriate new and developing forms of industry.

The application proposes an expansion of an existing facility which has been somewhat underutilised in recent times.

Clause 17.04-1S Tourism

Objective

- To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.

It is generally expected that tourists using the accommodation facilities available of the site will primarily be on site to use the facilities on site, whether this be a sporting or social occasion.

Zone

Farming Zone

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

The subject site is in the Farming Zone. Pursuant to Clause 35.07-4 of the Murrindindi Planning Scheme, a permit is required for any buildings and works associated with a Section 2 Use. A permit is not required for the use of the land as it is considered that the use for a function centre, sports and recreation facilities and accommodation are existing.

It is considered that the buildings and works associated with the proposed amendment are able to be accommodated on the subject site. A land capability assessment has been submitted by the applicant and referred to Council’s Environmental Health Department who have consented to the proposal subject to conditions.

The proposed buildings and works are considered to be appropriate and will not detract from the rural amenity of the area. Having regard to the proposed materials, these are to be constructed of materials that will blend with the subject site and surrounding area. While the increase in people

on the site may create amenity impacts, it is considered that the siting of the buildings away from surrounding residential uses will minimise this impact.

While the land is zoned for agriculture, the use of the subject site and surrounding areas has a character expected in a Rural Living Zone. It is considered that the proposed buildings and works will not impact on agriculture, nor will the buildings be affected by agriculture on surrounding properties.

Overlays

Bushfire Management Overlay

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
- To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
- To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

No buildings and works are proposed in the area of the site affected by the Bushfire Management Overlay

Particular Provisions

Clause 52.06 Car Parking

- To ensure that car parking is provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
- To support sustainable transport alternatives to the motor car.
- To promote the efficient use of car parking spaces through the consolidation of car parking facilities.
- To ensure that car parking does not adversely affect the amenity of the locality.
- To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

Car parking rates in relation to the new buildings proposed are not specified in relation to the proposed new buildings on site. Particularly in relation to the accommodation buildings, there are a number of different ways in which the number of spaces could be determined such as calculating based on the number of bedrooms, beds or for the building as a whole. The building is intended for sporting groups who will likely arrive on site together however it could also be used by larger groups arriving to the site separately. It is considered that the site already has sufficient parking area, and it is likely that any parking associated with the new structures can comfortably be accommodated on site.

Clause 52.17 Native Vegetation

- To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):
 - 1. Avoid the removal, destruction or lopping of native vegetation.
 - 2. Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.

- 3. Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.
- To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

No native vegetation is proposed to be removed.

Discussion - Submissions

A response to the issues raised by the objectors is set out below.

No consultation with neighbours

Objectors have raised the issue that the notice provided by Council is the first contact they have received in relation to the proposed upgrades of the facilities at The Village Green. Although it is recommended by Council Officers that permit applicants inform their neighbours prior to submitting an application, it is not a mandatory requirement under the *Planning and Environment Act 1987*.

Road is unsuitable for proposed use

The proposed additional facilities in addition to the recent utilisation of the existing facilities has resulted in additional traffic using the local roads. While Hannas Road is sealed, Allandale Road and part of Falls Road, the only way to access the site, is not sealed.

The application has been referred internally to Council's Development Engineering Unit who have consented to the proposal subject to conditions. These conditions do not require any additional road upgrades.

Facilities not available to the community

The proposed facilities are not intended to be made available to the community. This would require separate approval and has not been applied for as part of this application.

Overlooking from the proposed retreat

The proposed retreat building is located to the south of the site and will only be accessible by foot. The building is a considerable distance from other buildings on site and even further from neighbouring dwellings.

There are a number of dwellings in proximity of the subject site, the closest of which is approximately 800m to the north of the site. Additionally, there are dwellings on Falls Road which are approximately 1km from the proposed retreat site which are not visible from the site. Additional dwellings are located along Allandale Road which are further away.

Given the extensive distance between the nearby dwellings and the proposed retreat it is unlikely that there would be any loss of privacy. The policy in the Murrindindi Planning Scheme relating to loss of privacy is generally only applicable to medium to high density development, typically in urban areas.

The policy does not provide any guidance for privacy protection in rural areas.

Increase in noise from patrons

The applicant has acknowledged that an increase in patrons on site will result in an increase in noise which may impact on the amenity of surrounding land owners, particularly in relation to the sporting amenities.

In response, the applicant has suggested they would be amenable to a requirement for an Operational Management Plan for these facilities which would restrict the use of these facilities, including how they would be managed in terms of staffing and complaint management.

Conclusion

It is considered that the proposal is appropriate and will contribute to the growth of the existing operations on the subject site. On the balance it is considered that the proposed additional accommodation and recreational facilities is consistent with the provisions of the Murrindindi Planning Scheme.

Council Plan/Strategies/Policies

This report supports the strategies under the *Council Plan 2021-2025 Beautiful Townships and Rural Settings* pillar:

- “to create a better place for our community and visitors to live in harmony with our rural character, natural beauty and heritage”.
- “deliver efficient, sustainable land use planning outcomes to enhance liveability, protect our unique rural character and natural beauty, and to enable growth”.

This report also supports the following strategies under the *Council Plan 2021-2025 Growth and Opportunity* strategic pillar:

- “to prioritise and promote a culture in which the economy, businesses and community can grow and thrive”.
- “boost local investment and employment opportunities through activities that encourage businesses, social enterprise, and industry sectors to thrive and grow”.

Relevant Legislation

The proposal is being considered under the provisions of the *Murrindindi Planning Scheme* and the *Planning and Environment Act 1987*.

Financial Implications and Risk

There are no financials implications or risks associated with the consideration of this application for planning permit.

Conflict of Interest

There were no conflicts of interest declared by Council officers in relation to the matters contained in this report.

4.2 Planning Application - 287 Smiths Road, Toolangi - Place of Assembly

Attachment(s)	Attachment 1 - 287 Smiths Road Toolangi - Planning Application [4.2.1 - 3 pages] Attachment 2 - 287 Smiths Road Toolangi - Noise Management Plan [4.2.2 - 2 pages] Attachment 3 - 287 Smiths Road Toolangi - Business Plan [4.2.3 - 6 pages] Attachment 4 - 287 Smiths Road Toolangi - LCA [4.2.4 - 39 pages] Attachment 5 - 287 Smiths Road Toolangi - Site Plan [4.2.5 - 1 page]
Presenter	C Fraser, Coordinator Planning
Approved by	Acting Director Corporate & Shared Services in consultation with Acting Director Assets & Development
Purpose	For decision

Land: 287 Smiths Road, Toolangi, 3777
 Proposal: Use and development of land for a Place of Assembly (Events and Weddings for 80 patrons).
 Applicant: Brendan Ricci
 Zoning: Farming Zone (FZ)
 Overlays: Bushfire Management Overlay (BMO), Environmental Significance Overlay (ESO1)

Locality Plan



Executive Summary

An application has been received for the use and development of land for a place of assembly on the land at 287 Smiths Road, Toolangi.

The land is located in the Farming Zone and is affected by the Environmental Significance Overlay (Schedule 1) and the Bushfire Management Overlay.

The land is on the western side of Smiths Road adjoining land used for residential and agricultural purposes. The land has a total area of approximately 24 Hectares in two parts. The application has been broadly advertised to all properties in Smiths Road and 11 objections have been received. The objections raise issues in relation to amenity, biosecurity and traffic.

The application has been externally referred to Agriculture Victoria, CFA, Department of Transport, Goulburn Murray Water and the Department of Environment, Land, Water and Planning (now DEECA).

This report recommends that a refusal to grant a permit be issued for the use and development of land for a place of assembly (events and weddings for 80 patrons) at 287 Smiths Road, Toolangi.

RECOMMENDATION

That Council issue a refusal to grant a planning permit for use and development of the land for a place of assembly (events and weddings for 80 patrons) at 287 Smiths Road, Toolangi (Lot 1 PS336190), based on the following grounds of refusal:

The proposal is not in accordance with the purpose of clause 35.07 (Farming Zone).

- 1. The scale and intensity of the proposed use do not contribute to the character of the area and sought after agricultural uses.**
- 2. The frequency of the use is intensive considering the surrounding agricultural uses and character of the area.**
- 3. The proposal is not consistent with the policy directions in the state and local Planning policy frameworks.**

The Land and Surrounds

The subject site is located on the west side of Smiths Road, approximately 2.8 km north- east of Healesville-Kinglake Road Junction.

The site has an existing dwelling and multiple other structures, including natural swimming hole, pergola, sheds and retaining walls. An access track has been cut into the north side of the site and swings around through the centre, with retaining wall supporting the upslope side. A site dam is located in the northeast corner with the existing septic tank and absorption trenches located to the south. The east half of the site has a moderate to steep slope down to the east, the site levels off at the top of the hill (west half of site) Vegetation on the site comprises open turf with a permitter of native shrubs and trees.

Background

A search of Council's electronic records system shows the following planning permits have been issued for the subject site.

- 2003/364 issued 20 February 2004 for the Construction and Use of a dwelling.
- 2004/363 issued 27 January 2005 for the Construction of a Shed.
- 2007/211 issued 9 January 2008 for the Construction and Use of a dwelling.
- 2014/143 issued 14 January 2015 for the Construction and use of one dwelling and detached pergola and deck (retrospective)
- 2021/209 issued 14 October 2021 for the Development of land for an outbuilding.

Proposal

The application is for the use and development of the land for a place of assembly (for events and weddings for 80 patrons).

In summary the proposed operation is as follows:

Event Type	Micro Weddings / Elopements - (Up to 40 guests)	Small Events such as Weddings (Up to 80 Guests)
Months	October - April	October - April
Frequency	Throughout Daylight Savings (mostly weeknights) [Up to 3 per week]	Up to 6 per annum
Duration	3-5 Hours typically	Up to 12 hours (2pm - 11pm is typical)
Bump In	5pm	Friday afternoon
Bump Out	10pm	Sunday morning
Guests	Up to 40	Up to 80
Car Limits	Up to 20 guests cars	Up to 40 guests cars

The proposed works can be summarised as follows:

- Existing driveway providing dual access to the existing dwelling.
- An extended loop driveway that surrounds most of the activity area.
- A crushed rock parking area for 40 cars.
- Two camping and ceremony areas.
- Two existing small sheds and pergola located in close proximity to a pond and two additional sheds located away from the function areas.
- A poolside ceremony area surrounding by a pool safety barrier.
- Proposed amenities building.
- Effluent disposal area to services amenities building.
- The toilet block building is located close to the embankment of the existing terrace area and is 48 m from the southern boundary. The toilet block building is 9.97 m long x 5.39 m wide or 53.8 m² containing amenities included showers and a change room.

Cultural Heritage Management Plan

The site is not in an area of cultural sensitivity as defined by the *Aboriginal Heritage Regulations 2018*. Consequently, a Cultural Heritage Management Plan is not required.

Community and Stakeholder Consultation

Notice of the application was provided in accordance with the requirements of the *Planning and Environment Act 1987* by sending letters to all landowners on Smiths Road. No sign was required to be displayed as the site is located at the end of road.

Council received 11 objections to the proposal which can be summarised as follows:

- Inappropriate Use.
- Noise.
- Traffic Impact.
- Bushfire Risk.
- Privacy and Safety Concerns.
- Environmental risk.
- Prior noncompliance.

Responses to the above objections are discussed in greater detail later in this report.

Referrals

The application was referred to the authorities listed below under Section 52 of the *Planning and Environment Act 1987*.

Notice was given to the following authorities:

- Department of Transport.
- County Fire Authority.
- Goulburn Murray Water.
- Department of Energy, Environment and Climate Change.
- Agriculture Victoria.

The Department of Transport did not object to the proposal with a number of conditions requested to be on the permit as follows:

1. Prior to commencement of the use, a Transport Impact Assessment report must be submitted to and approved by the Head, Transport for Victoria and the Responsible Authority. The Transport Impact Assessment must include the following:
 - i. An assessment of the safe intersection sight distance (as per the *Austrroads Guide to Road Design Part 4A: Unsignalised and Signalised Intersections*) at the Smiths Road / Healesville-Kinglake Road intersection.
 - ii. Identify any mitigation measures that may be required to improve the safe intersection sight distance at the Smiths Road / Healesville-Kinglake Road intersection to comply with the requirements in the *Austrroads Guide to Road Design Part 4A: Unsignalised and Signalised Intersections*.
2. Prior to commencement of the use, or any such time as agreed with the Head, Transport for Victoria, the mitigation measures outlined in condition 1 must be constructed to the satisfaction of and at no cost to the Head, Transport for Victoria and the Responsible Authority

Goulburn Murray Water did not object to the proposal with a number of conditions requested to be on the permit as follows:

1. All construction and ongoing activities must be in accordance with sediment control principles outlined in 'Construction Techniques for Sediment Pollution Control' (EPA, 1991).
2. All wastewater from the amenities block must be treated and disposed of using an EPA approved system, installed, operated and maintained in compliance with the relevant EPA Code of Practice and Certificate of Conformity. The system must be designed to cater for wastewater surge events associated with site usage.
3. The wastewater disposal area must meet minimum setback distances of 60m from the nearest waterway, 60m from any dams and 40m from any drainage lines where land slopes towards those features. The wastewater disposal area must be setback at least 20m from any bores. *Where wastewater is treated to at least a secondary standard, the distance may be reduced in accordance with the current EPA Code of Practice – Onsite Wastewater Management. However, where possible, setback distances must be maximised.
4. The wastewater disposal area must be kept free of camping, car parking, paths, pedestrian access, stock, buildings, driveways, and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.

The Country Fire Authority provided the following comments:

- No report addressing the provisions of Clause 13.02-1S & 13.02-1L were contained within the application documents submitted and;
- The Bushfire Emergency Management Plan for the site requires significant work to bring it up to an acceptable level suitable to be considered suitable for endorsement for this high-risk bushfire site for the intended use proposed.

Agriculture Victoria made the following comments:

- That traffic movements for service delivery and supplies and pre and post event activities (setup and pack down) could be significant and have not been detailed.
- The proposal does not detail how the proposed biosecurity measures will be implemented, by whom, and how compliance will be ensured.
- The proposal represents a sensitive land use encroachment into an area that is predominately used for high value agriculture.
- The proposed land use does not protect or adequately consider the impacts on surrounding primary production and productivity.
- The proposed tourism land use is located in an area that has the potential to be incompatible with surrounding agricultural activities as guided by Clause 17.04-1S.
- Sensitive land uses can create land use conflict with surrounding agricultural land uses. Planning permit conditions can nominate a fixed permit expiry timeframe. An approach of this type prioritises the longer-term agricultural use of subject land and the surrounding area.

- Agriculture Victoria considers that the proposed land use location in the Farming zone which is mapped high quality agriculture land, noted as nationally significant agricultural land, is partially surrounding by land under intensive horticulture production that would not be compatible with the proposed use and has the potential to impact on adjoining and nearby agricultural production.
- The proposed Place of assembly in the Farming Zone would appear contrary to the purpose of the zone and the strategic objectives of the Murrindindi Planning Scheme, with particular reference to Clause 14.01-1S Protection of agricultural land and Clause 02.03, *in ensuring that the use and development of rural land protects and enhances agricultural potential and the productive capacity of the land and surrounding land.*

Agriculture Victoria did provide commentary on conditions should Council support the proposal, but these are not included in the report as the proposal is not being supported.

Discussion - Planning Considerations

Planning Policy

The proposal has been assessed against state, regional and municipal Planning Policy Framework (PPF) contained in the *Murrindindi Planning Scheme*. Overall, it is considered to be consistent with the objectives and strategies of this framework as is discussed below.

Clause 02.02 – Vision

- Council seeks to enhance the liveability, amenity, and quality of life in the municipality.
- Council will facilitate sustainable population and economic growth.
- The municipal rate base will be actively grown through sound planning, support for continued economic development and protection of the natural and built environment.
- A strong economy will attract people to the municipality, creating further opportunities for lifestyle choice, business investment and prosperity.
- Increased economic growth and investment will enhance population growth, employment, and social and cultural benefits for the municipality.
- Residential growth will be provided in established townships and settlements with existing communities and infrastructure, where natural environment is protected and a high level of community safety is achieved.

Clause 02.03 – Natural resource management

The agricultural sector in Murrindindi Shire is diverse, economically significant and has potential to expand. Agricultural activities include beef and sheep grazing, horticulture, cropping, vegetable growing, aquaculture, forestry, and niche products.

The Goulburn River valley and tributaries is a fertile valley of high agricultural quality. The Kinglake Ranges has high quality soils and agricultural value, while the Toolangi area is of national horticultural significance.

Favourable climatic and environmental conditions and proximity to the Melbourne market have seen the recent development of intensive agricultural industries, including an expansion of the viticultural, stone fruit, berries, vegetables, and turf production.

Agricultural land is under increasing pressure for conversion into non-agricultural uses. Council aims to protect the viability of agricultural land and waterways by:

- Protecting high quality agricultural land for ongoing agricultural use.
- Protecting rural land for productive agricultural uses and compatible rural uses.

- Ensuring that the use and development of rural land protects and enhances agricultural potential and the productive capacity of the land and surrounding land.
- Supporting existing agricultural production activities, including beef and sheep grazing, horticulture, cropping, vegetable growing, aquaculture, timber production and niche products.
- Supporting emerging agricultural industries that are compatible with existing agricultural practices, including horticulture, intensive animal production, agroforestry, farm gate agricultural sales, boutique, niche agriculture, agricultural processing, value adding industries and carbon farming.
- Supporting the evolution of agriculture in response to improved practices and climate change.
- Ensuring that agricultural land is not developed for primarily residential purposes.
- Discouraging the fragmentation of rural land into lots incapable of productive agricultural and rural use.
- Protecting water catchments from inappropriate use and development, particularly the Goulburn River valley and its tributaries.

Clause 02.03 – Economic Development

In promoting economic development, Council supports:

- Encouraging business expansion, investment, and employment.
- Facilitating the growth of home-based business, small businesses, niche industries and rural based industries.
- Supporting new and emerging industries.

Clause 12.01-2S – Native vegetation management

Objective

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.

Clause 13.07-1S – Land Use Capability

Objective

- *To protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts.*
- Clause 14.01-1S – Protection of agricultural land

Objective

- To protect the state's agricultural base by preserving productive farmland.
- Clause 14.01-2S – Sustainable agricultural land use

Objective

- To encourage sustainable agricultural land use.

Strategies

- *Ensure that use or development of land is compatible with adjoining and nearby land uses.*
- *Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial, and other uses.*
- *Avoid or otherwise minimise adverse off-site impacts from commercial, industrial, and other uses through land use separation, siting, building design and operational measures.*

- *Protect existing commercial, industrial, and other uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.*

The proposal will result in excessive negative amenity impacts on the surrounding agricultural land. Furthermore, the scale of the proposed use and associated works will not contribute to the maintenance or progression of agricultural land value. Overall, the impacts of the proposal do not protect the amenity of the local community and is not necessary for the improved function of the agricultural site.

The negative impacts on the amenity to the surrounding community is representative from the 10 objections that have been received. The general sentiment of these objections reflects how the existing operation on the site has had a number of negative impacts on surrounding community.

The proposed use is for a private venue/operation and not one that will contribute to the economy of agricultural land uses of the area. The area is not nominated for tourism, and this is consistent with the overall desire to maintain land uses to agricultural and farming uses. Furthermore, Toolangi is an area known for valuable agricultural land and the scheme does not suggest Toolangi to be a destination for tourism. The scheme identifies Toolangi as an area of 'National Horticultural significance (Clause 02.03). Therefore, any use that may pose a biosecurity risk would be at odds with the direction of the scheme and the values of the local community. The proposal could represent a change to the isolated nature of Toolangi and a potential risk to the agricultural productivity of the Toolangi area and result in a fragmentation of farmland.

The proposal does not comply with local policy for the following reasons:

- The proposed use does not minimise offsite amenity impacts and is considered to compromise the function of adjoining agricultural uses (Clause 13.07)
- The proposal poses a biodiversity risk to adjoining agricultural land. (Clause 12.01)
- The proposal will not enhance the site's ability to be productive agricultural land.

Clause 35.07 – Farming Zone

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

Pursuant to Clause 35.07-1 of the Murrindindi Planning Scheme, a permit is required for the use of the land for a Place of Assembly (Wedding and events venue) as it is a Section 2 use.

Pursuant to Clause 35.07-4 of the Murrindindi Planning Scheme, a permit is required for:

- any buildings and works associated with a Section 2 Use (there are minor works associated with the use)

The proposed use and development have been assessed against the purpose and decision guidelines of the Farming Zone.

- *The capability of the land to accommodate the proposed use and development, including disposal of effluent.*
- *How the use or development relates to sustainable land management.*
- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*
- *How the use and development make use of existing infrastructure and services*
- *Whether the use or development will support and enhance agricultural production.*
- *Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.*
- *The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.*
- *The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.*
- *The impact of the use or development on the flora and fauna on the site and its surrounds.*
- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.*
- *The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.*
- *The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.*
- *The impact of the siting, design, height, bulk, colours, and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.*
- *The impact on the character and appearance of the area or features of architectural, historic, or scientific significance or of natural scenic beauty or importance.*
- *The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications, and sewerage facilities.*
- *Whether the use and development will require traffic management measures.*

The proposal is not an agricultural land use and is in direct conflict with this objective of the Murrindindi Planning Scheme. However, the proposed use of the land offers the potential for a number of benefits to the wider community, which is discussed further into this report, the site is not suitable for the use when balancing competing objectives and its refusal is warranted. In terms of the use of land for a place of assembly, the proposal will only operate for approximately 7 months in a year, this will unlikely include consecutive days. During days of operation, the trading hours are up to 12 hours with a maximum of 80 patrons at one time. The events, while contained in the subject site, are perceived to pose risk to surrounding agricultural uses and is overall unclear the indirect impacts it will have on the surrounding agricultural environment.

Considering the land use character of the area, the amenity of the area and the potential negative impacts on property and person, the proposed use is not appropriate. Notice of the application was given to Agriculture Victoria who have provided comments that suggest the proposal is at odds with the purpose of the zone and may pose a risk to surrounding agricultural uses.

Overall, the proposed use and development will compromise the future use and development of the site and neighbouring sites and does not fit the local context. The proposal does not have regard for the purpose and decision guidelines of the farming zone and is therefore not acceptable.

A response to the relevant decision guidelines of the Farming Zone is as follows:

- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*
 1. The site is not suitable for the proposal, and the proposal is incompatible with adjoining and nearby land uses.
- *Whether the use or development will support and enhance agricultural production.*
 1. The proposal will not support or enhance agricultural production but will instead put agricultural production at risk.
- *The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.*
 1. There is concern that there will be off-site amenity impacts that will encroach onto neighbouring land and impose restrictions or impact on the existing or future agricultural land uses.
- *Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.*
 1. The approval of a place of assembly will potentially remove the site from primary agricultural production and may impact soil quality, both on the site and surrounding properties.
- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.*
 1. The proposal will not protect or enhance the biodiversity of the area but rather will present a significant biodiversity risk.
- *Whether the use and development will require traffic management measures.*
 1. *There is concern with the level of traffic that will be generated to and from the site and the impact on neighbouring farming sites and their ability to access their sites.*

Furthermore, an increase in traffic and patronage to the area will increase biosecurity risks to the site. The increase in potential pathogens and pests within the Toolangi area cannot be justified for the economic improvements to the land in question,

Clause 44.06 – Bushfire Management Overlay

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
- To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
- To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

Pursuant to Clause 44.06-2 a permit is required for the buildings and works associated with a place of assembly.

No buildings and works are proposed as part of this application.

Clause 42.01 Environmental Significance Overlay- Schedule 1 (ESO1)

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify areas where the development of land may be affected by environmental constraints.
- To ensure that development is compatible with identified environmental values.

No permit is required for use or development under this overlay.

Discussion - Submissions

A number of issues were raised by surrounding landowners as part of the assessment of this application. A summary and response to these issues are detailed below: A response to the issues raised by the objectors is set out below. The objections can be summarised with the following subheadings:

- Inappropriate Use.
- Noise.
- Traffic Impact.
- Bushfire Risk.
- Privacy and Safety Concerns.
- Environmental risk.

The use of the land for a place of assembly is a Section 2-Permit Required use under the provisions of the Farming Zone. The use of this land for such a purpose must take into consideration the purpose of the zone and the impacts of a proposal on agriculture both on the subject site and the wider area. This area of the municipality is protected under Commonwealth Legislation for the growth of the Strawberry Runners which contributes significantly to the national economy.

Biosecurity risks associated with the proposal relate to the increase in people entering the area from outside of the Toolangi district. This takes into account not only the number of people but also the areas from which they come. Of relevance to this, in *Toolangi Certified Strawberry Runner Growers Co-op Ltd v Murrindindi SC [2021] VCAT 1085* it was concluded:

- *For these reasons I prefer Dr Greenhalgh's evidence over that of Mr Elliot's. I accept that the introduction of up to 30,000 visitors within the Toolangi DPP presents a conservative low to very low risk for entry/spread/establishment of the key pathogens and pests. Notwithstanding such a low likelihood, the consequential extreme impacts to the strawberry runner growers and overall moderate to high risk to this agricultural industry are sufficient to demonstrate a material threat to the agricultural activity at Toolangi.'*

Impacts on biosecurity as a result of the proposal are a low risk to the site however the consequences for the Strawberry Runner growers in the immediate and surrounding area are catastrophic.

As discussed above the site is located within the Farming zone which presents a clear objective of maintaining valuable agricultural land, including for surrounding land. The proposal is determined not to enhance the agricultural use of the land and the intensity of the use will have a detriment to the subject site and surrounding land.

Overall, the impact of the proposed use is at odds with context of the agricultural land and surrounding uses. The safety risk, biodiversity concerns and impact on adjoining land is considered excessive and a number of points made by the objectors is warranted. Due to the number of patrons and vehicles accessing the site, there are no measure in place to protect the high agricultural quality of the area.

Traffic has been raised as an issue by a number of objectors. Smiths Road is a narrow, winding road used by various types of vehicles from standard passenger cars to larger trucks, tractors, and other agricultural machinery. The increase in traffic will place a considerable burden on already inadequate infrastructure.

Privacy and safety concerns have been raised as an issue in relation to alleged trespass at previous unauthorised events held on the land. Issues of trespass and behaviour of patrons are not an issue within the scope of the Murrindindi Planning Scheme or the Planning and Environment Act 1987. Conditions of permit can only be included which restrict the areas on the site in which patrons can be, not how they behave.

A response was provided by the applicant in response to the 10 objections that were made. This was forwarded to the objectors. As a result, no objections have been withdrawn. Council has determined that this response has failed to address the concerns of the objectors.

Furthermore, the applicant has failed to justify how the proposed use and development of the land is consistent with the objectives and decision guidelines of the farming zone. The proposal contradicts the following decision guidelines:

- A. *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land use.*
- B. *How the use or development relates to sustainable land management.*
- C. *The impact of the use or development on the flora and fauna on the site and its surrounds.*

Conclusion

The proposed use and development of the land for a place of assembly is at odds with the character of the surrounding area and deemed to cause unreasonable amenity impacts to adjoining properties, therefore, it is recommended a refusal to be issued, as it is inconsistent with the provisions of the Murrindindi Planning Scheme.

Council Plan/Strategies/Policies

This report supports the *Council Plan 2021-2025 Beautiful Towns and Rural Settings* strategy to “deliver efficient, sustainable land use planning outcomes to enhance liveability, protect our unique rural character and natural beauty, and to enable growth”.

Relevant Legislation

The proposal is being considered under the provisions of the *Murrindindi Planning Scheme* and the *Planning and Environment Act 1987*.

Financial Implications and Risk

There are no financials implications or risks associated with the consideration of this application for planning permit.

Conflict of Interest

There were no conflicts of interest declared by Council officers in relation to the matters contained in this report.

4.3 Planning Application - 181 Switzerland Road, Ghin Ghin - Extractive Industry

Attachment(s)	Attachment 1 - 181 Switzerland Road, Ghin Ghin - Application [4.3.1 - 4 pages] Attachment 2 - 181 Switzerland Road, Ghin Ghin - Title Documents [4.3.2 - 10 pages] Attachment 3 - 181 Switzerland Road, Ghin Ghin - Planning Report [4.3.3 - 44 pages] Attachment 4 - 181 Switzerland Road, Ghin Ghin - Statutory Endorsement Referral Authority Checklist [4.3.4 - 7 pages] Attachment 5 - 181 Switzerland Road, Ghin Ghin - Statutory Endorsement work plan [4.3.5 - 2 pages] Confidential Attachment 1 – 181 Switzerland Road, Ghin Ghin – Submissions (<i>distributed to Councillors separately</i>)
Presenter	C Fraser, Coordinator Planning
Approved by	Acting Director Corporate & Shared Services in consultation with Acting Director Assets & Development
Purpose	For decision
Land:	181 Switzerland Road, Ghin Ghin (Lot 1 PS704695L Volume 11406 Folio 779 and Lot 2 PS 704695L Volume 11406 Folio 780)
Proposal:	Use and Development of land for gravel extraction
Applicant:	Rayner Group Pty Ltd
Zoning:	Farming Zone
Overlays:	Erosion Management Overlay & Bushfire Management Overlay
Triggers:	Use and development pursuant to Clause 35.07 (Farming Zone), building and works pursuant to Clauses 44.01 (EMO) and 52.08 (Earth and Energy Resource Industry)

Locality Plan



Executive Summary

An application has been received for the use and development of land for gravel extraction under the Murrindindi Planning Scheme. The use of the land is a change from the extraction activities currently allowed on the site.

The land is in the Farming Zone and is affected by the Erosion Management Overlay and the Bushfire Management Overlay.

The land is located on the northern side of Switzerland Road with access via an unnamed road. The site has an area of approximately 79 Hectares and is currently used for extractive purposes and agriculture.

The application has been broadly advertised to all properties in Switzerland Road and 5 objections were received. The objections raise issues in relation to Traffic, Amenity and Agriculture.

The Earth Resources Regulation (ERR) branch of the Department of Jobs, Precincts and Regions (DJPR) statutorily endorsed Work Plan PLN-001531 for WA007536 for the Proposed Quarry on 1 October 2021 (the Endorsed Work Plan), pursuant to section 77TD of the Mineral Resources (Sustainable Development) Act 1990 (the MRSDA).

This report recommends that a notice of decision to grant a permit be issued for the Use and Development of land for gravel extraction at 181 Switzerland Road, Ghin Ghin (Lot 1 PS704695L Volume 11406 Folio 779 and Lot 2 PS 704695L Volume 11406 Folio 780).

RECOMMENDATION

That Council issue a Notice of Decision to grant a planning permit for Use and Development of land for gravel extraction at 181 Switzerland Road, Ghin Ghin (Lot 1 PS704695L Volume 11406 Folio 779 and Lott 2 PS 704695L Volume 11406 Folio 780), subject to the following conditions:

Endorsed Plans

1. The use and development must at all times be in accordance with any work plan approved under the Mineral Resources (Sustainable Development) Act 1990.

Use and Development

2. All excavation, sales and processing activities associated with the proposed quarry will occur as follows:
 - Monday to Friday: 7:00am to 6:00pm
 - Saturday: 7:00am to 1:00pm
 - Sunday & Public Holidays: No Work
3. The crushing or other processing of any extracted material other than from the approved working area shall not occur without the consent of the Responsible Authority.
4. No more than two (2) staff associated with the approved extractive industry use are permitted on the Subject Land at any one time unless with the prior written consent of the Responsible Authority.
5. Trucks associated with the approved extractive industry use must only enter or leave the Subject Land during the following hours unless with the prior written consent of the Responsible Authority:
 - Monday to Friday: 7:00am to 3:30pm
 - Saturday: no trucks
 - Sunday: no trucks
6. All car parking and loading/unloading of materials are to take place within the subject land. No car parking or loading/unloading is to occur outside of the subject land.
7. The use or development hereby permitted shall not cause nuisance or injury to, or prejudicially affect the amenity of the locality, by reason of the transportation of materials, goods and commodities to and from the land, the appearance of any building, works, or materials on the land, the emission of noise, vibration, smell, fumes, smoke, vapour, steam soot, ash, dust, waste water, waste products, grit, oil or the presence of vermin.
8. The emission of noise from the premises including the surrounding environment and carpark areas either during or immediately after the hours permitted, must not cause annoyance to persons beyond the site.

9. The subject land must be kept neat and tidy at all times and its appearance must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality.
10. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority such that no direct light is emitted outside the boundaries of the subject land.
11. Bushfire Safety precautions must be provided and maintained to the satisfaction of the Responsible Authority.
12. The building/s must be constructed of materials that are non-reflective and of muted tones.

Engineering Requirements

13. Prior to the commencement of use, the permit holder must provide, to the satisfaction of the Responsible Authority the following plans detailing the required road upgrades:
 - a. Upgrade of Switzerland Road from Ghin Ghin Road to the access road:
 - i. Road shall have a 4m gravel surface with 1.5m shoulders as per IDM SD610 for Rural Access – Group A Councils.
 - ii. Permit holder shall undertake a road safety audit at the intersection of Switzerland Road and Ghin Ghin Road at their own expense to the satisfaction of the Responsible Authority.
 - iii. Design of the intersection between Switzerland Road and Ghin Ghin Road must be in accordance with the recommendations of the road safety audit.
 - iv. Road safety audit is to consider current conditions and proposed conditions following commencement of permit activities.
 - b. Upgrade of access road:
 - i. Shall be 4m gravel wearing course with 1.5m shoulders as per IDM SD610 for Rural Access – Group A Councils.Once approved, the plans will be endorsed to form part of this permit.
14. Prior to the commencement of any works on the road reserve
 - a. Detailed engineering drawings shall be prepared for the upgrade of both Switzerland Road and the access track to the property entrance. The road shall be designed to IDM guidelines to the satisfaction of the Responsible Authority and incorporate reporting requirements listed above in condition 11.
 - b. The permit holder shall appoint a competent and suitably qualified Project Manager who shall be responsible for the supervision and management of the road upgrades, to the satisfaction of the Responsible Authority.
 - c. A cash bond is to be provided of 1.5 times the road construction cost as guarantee that the works will be constructed accordingly.
15. The total number of truck movements along Switzerland Road per year generated by the approved extractive industry use must not exceed 1000 per year with a maximum of 84 per month unless with the prior written consent of the Responsible Authority. Within 6 months of the commencement of the approved extractive industry use and every six months thereafter, the permit holder must provide to the Responsible Authority a report recording the total transported

tonnage of extracted material associated with the approved extractive industry use for the preceding six (6) month period.

16. Prior to the issue of a Statement of Compliance for the subdivision under the *Subdivision Act 1988*, a Section 173 Agreement shall be entered into at no cost to Council, which ensures the following:
- a. The permit holder acknowledges that any increase in truck movement allowed by this permit or any subsequent permit will require Switzerland Road to be sealed to the satisfaction of the Responsible Authority.

The Section 173 Agreement must be prepared by Council's Solicitors, to the satisfaction of the Responsible Authority and must be registered at the Office of Titles pursuant to Section 181 of the *Planning and Environment Act 1987*.

Council will undertake to have the Agreement prepared upon written notification from the applicant. All fees associated with the documentation must be fully paid prior to execution and registration of the document by Council.

17. An application for asset protection and consent to work on the road reserve is required to be made prior to commencing any works on the road reserve and must comply with the requirements of the *Road Management Act 2004* and associated Regulations. The asset protection permit must remain in place throughout the use of the land approved in this permit.
18. For the duration that the permit is in place, the permit holder will be responsible for the maintenance of both access road (noting allowance for any future naming changes to the "access road") between Switzerland Road and the site. Council reserves the right to request maintenance works to be undertaken at any point during this period as deemed necessary.

Drainage

19. All stormwater and surface water discharging from the building and works must be conveyed to a point of discharge, approved by the relevant authority. No stormwater discharge from downpipes or overflow from storage tank and surface water shall be directed or caused to be directed in a concentrated form that will cause erosion and or adverse effects within the site or to adjoining land or properties.
20. The approved works must not cut off natural drainage to adjacent properties.

Construction Environment Management Plan

21. Before on-ground works commence, an environmental management plan for the construction (and operation) of work authority 007536 must be prepared to the satisfaction of the responsible authority in consultation with the Department of Environment, Land, Water and Planning. All works must be conducted in accordance with the endorsed plan. The environmental management plan is to include (but is not limited to):
- a. Overview of construction methods including management zones and construction zones, site preparation, access, construction activities, schedule and timing of works, and contractor briefing.
 - b. Management Structure and Roles including an environmental audit process

c. Environmental considerations; management of and/or mitigation of impacts on:

- surface water pollution
- erosion and sediment
- waterway crossings
- terrestrial ecology
- aquatic ecology
- land management, reinstatement and rehabilitation
- dust, odour and air quality
- noise and vibration
- waste management
- hazardous materials
- environmental incidents and emergencies
- fire hazards.

Permit Expiry

22. The use and development must commence within five years of the issuing of the permit.

23. This permit will expire if the work authority is cancelled under section 77O of the *Mineral Resources (Sustainable Development) Act 1990*.

The Land and Surrounds

The subject site is located approximately 10km to the northwest of Yea and has an area of approximately 79 hectares.

Access to the site is from Switzerland Road via an unmade section of road. The land is undulating in topography with scattered vegetation throughout the site. The land is currently used for grazing purposes.

Surrounding land comprises a mixture of bushland to the north, west and east, and cleared pasture, orchards and rural farming activities to the south.

There are no dwellings within 500m of the Proposed Quarry. Two dwellings will be within 1km of the Work Authority, at approximately 510m to the east (570m from the extraction area) and 520 metres to the south (680m from the plant and stockpile area and 800 metres from the extraction area). There are an additional 16 dwellings within 2km of the Proposed Quarry.

Stony Creek lies approximately 210 metres east and south of Proposed Quarry and runs through the southern part of the Subject Land before joining with the Goulburn River, approximately 6km to the south.

Another extractive industry operates (WA200) within the subject Land adjoining the Proposed Quarry to the south-east. The resource within WA200 is nearing the end of its approved reserve.

There are no other current or proposed extractive industries nearby the Subject Land. The nearest Work Authority to the Proposed Quarry is WA516, 2.5km to the south at 324 Switzerland Road, Highland.



Entrance to site

Background

On 9 April 1992, Council issued Planning Permit No. 2776 (the Existing Permit). The Permit allows for Extractive Industry (removal of slate) on the Subject Land, and relates to the existing quarry operated under WA200.

The Permit Applicant purchased the Subject Land in 2019 which included the extractive industry at WA200, which has been in operation for almost 30 years. Areas of the Subject Land not used for extractive industry have been used for agricultural purposes.

A Work Plan for the proposed use of the land for a Quarry was approved on 1 October 2021.

The Earth Resources Regulation (ERR) branch of the Department of Jobs, Precincts and Regions (DJPR) statutorily endorsed Work Plan PLN-001531 for WA007536 for the Proposed Quarry on 1 October 2021 (the Endorsed Work Plan), pursuant to section 77TD of the Mineral Resources (Sustainable Development) Act 1990 (the MRSDA).

The Endorsed Work Plan is enclosed with this permit application in accordance with the requirements of Clause 52.09-2 of the Murrindindi Planning Scheme.

Meeting of Parties – 30 March 2023

Following presentation of this report to Council on 22 March 2022, officers met with the permit applicant and objectors on 30 March 2023 at the Yea Library. Prior to the meeting, the permit applicant provided amended conditions (without prejudice) which were part of the basis for discussion. The proposed changes included changes to the road upgrade conditions, reduction in hours of operations and deletion of duplicate conditions already included in the approved work plan.

Changes to the road upgrade requirements were taken on notice with the Responsible Authority to share the response to these changes prior to the meeting of Council on 26 April 2024.

Agreement was unable to be reached in relation to the hours of operation, with weekends being a key point of contention from the meeting.

Following the meeting, the permit applicant proposed to provide a revised version of their permit conditions which were shared with all objecting parties in attendance at the meeting.

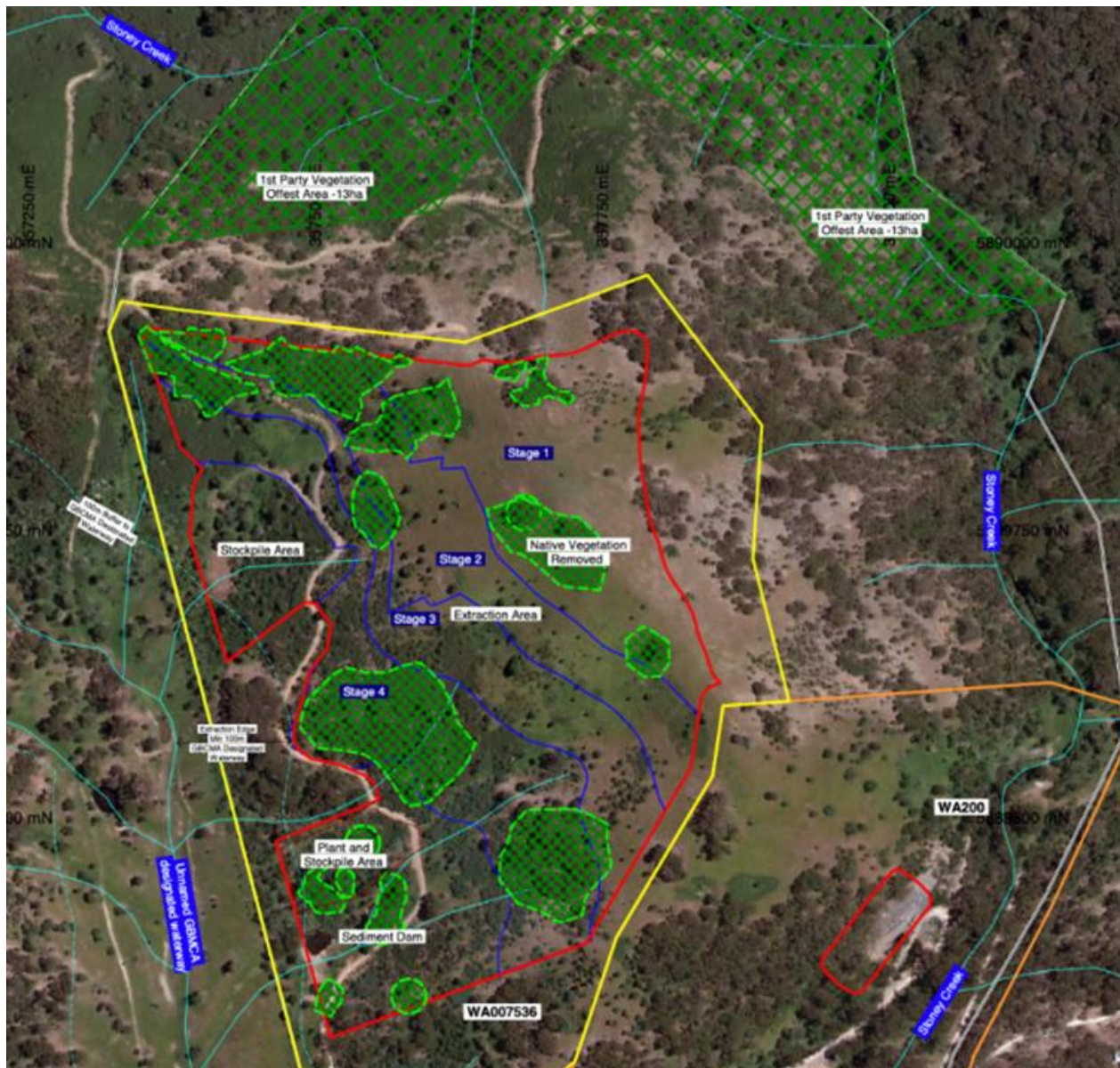
The amended conditions provided allowed for a reduction in the hours of operation, the sealing of the road requirements. The amended conditions also deleted conditions from DELWP (Department of Environment, Land, Water and Planning) and GMW (Goulburn Murray Water) which are duplicated in the approved Work Plan.

The recommendation has been updated to amend hours of operation and delete duplicate conditions.

Proposal

The Permit Application seeks planning approval to use and develop the subject land for Extractive Industry in accordance with the Endorsed Work Plan.

It is proposed to establish the Proposed Quarry to extract landscaping rock from the subject land as shown below.



Excerpt of Site Layout Plan (source: Figure 3 of the Endorsed Work Plan)

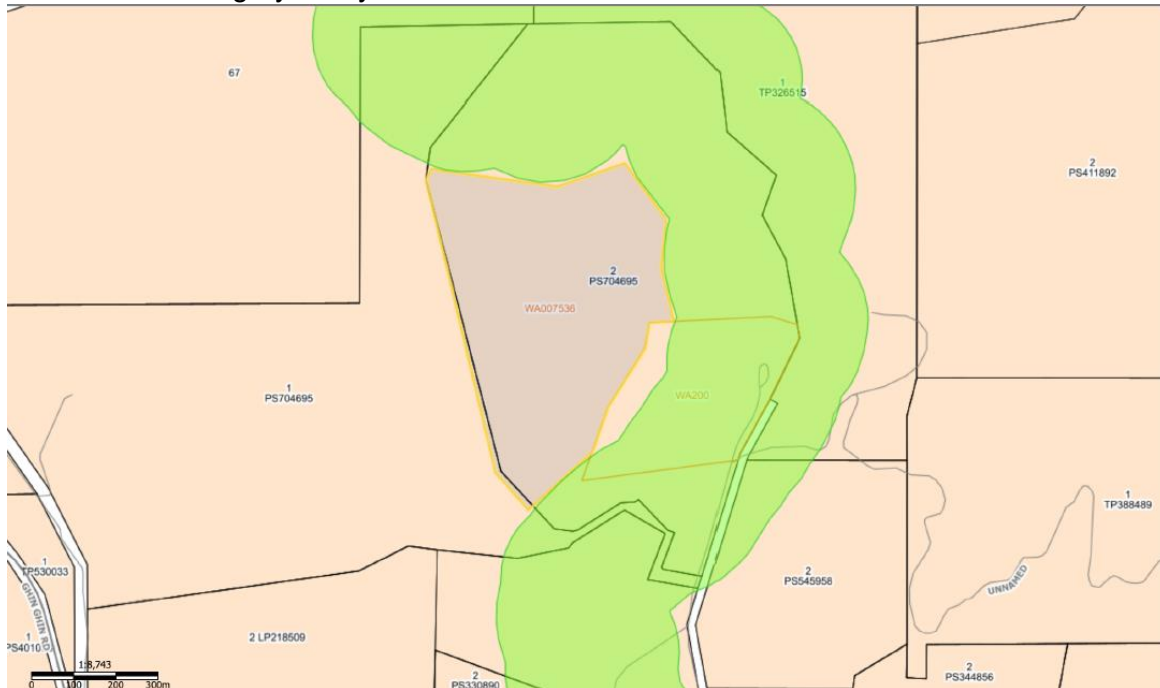
Particulars include:

- A total Work Authority area of 29.6ha.
- A maximum extraction area within the Work Authority to be worked at any one time is approximately 9ha to allow extraction activity and associated infrastructure to be limited to the area currently used for agricultural activities.
- The proposed extraction area is at least 500 metres from the nearest dwelling.
- The estimated maximum terminal depth for the extraction area is 40 metres measured perpendicular to the natural surface. The bulk of the resource will be extracted from the western aspect of the ridge after removing the apex of the ridge

- The ridge line will be extracted to RL 360, and the terminal batter will roughly parallel the natural surface topography by working to a terminal cut batter of 1V:3H, which is similar to (and in some parts flatter) than the existing topography, ultimately leaving no vertical faces and a landform that will mirror the pre- extraction topography.
- The total disturbed area of approximately 18.3 hectares, including the extraction area, site access road and processing and stockpile areas.
- Soil stockpile heights will be limited to not greater than maximum 2 metres in height. Overburden stockpiles will be limited in height to a maximum 10 metres when located within the excavation, or 6 metres if places on the natural surface.
- Product stockpiles will generally be located close to the mobile processing plant, with a maximum height of 12 metres.
- The Proposed Quarry extraction area provides access to the following estimated resource volumes:
 - Soil – 21,000 cubic metres.
 - Overburden – 140,000 cubic metres.
 - Landscaping rock – 2.41 million cubic metres.
- Extraction of the Proposed Quarry will take place in four stages, commencing initially in the northeast area of the Work Authority (as shown on Figure 3 Site Layout Plan as 'Stage 1').
- Excavation will continue west of the initial area in subsequent stages, also expanding north and south as material quality allows. Working faces will be transitioned to the terminal batter design and cut into natural material at a batter of 1v:3h and will be rehabilitated by covering with overburden and soil and revegetated to pasture as soon as practicable.
- To establish the extraction area, native vegetation is required to be removed from an area of approximately 4.45 hectares. The Native Vegetation Report (Appendix 8) identifies that offsets are required for 29 large trees and 1.808 general habitat units. The northern area of the Subject Land will be set aside for first party vegetation offsets and will be managed according to the Offset Management Plan (Appendix 6 to the Native Vegetation Report).
- There will be no fixed infrastructure, with only temporary relocatable site office hut, storeroom and workshop being established adjacent to the plant and stockpile area.
- All excavation, sales and processing activities associated with the Proposed Quarry will occur as follows:
 - Monday to Friday: 7:00am to 6:00pm.
 - Saturday: 7:00am to 1:00pm.
 - Sunday & Public Holidays: No Work.
- The Proposed Quarry will employ between two to three staff on a permanent basis, with casuals or contractors engaged for specific activities such as, but not limited to, stripping, maintenance, and progressive rehabilitation.
- At least six light vehicle parking spaces will be provided for employees and visitors, located in the southwest of the Subject Land and close to the site entrance.

Cultural Heritage Management Plan

The site is in an area of cultural sensitivity as defined by the Aboriginal Heritage Regulations 2018. The map below shows the areas to be of cultural heritage significance (in green) and the extraction area in grey with yellow outline.



Map showing sensitivity area in relation to work area (supplied)

The proposed works are outside of the areas considered to be of significance. The quarry will be at least 200m from the top of the bank of Stony Creek.

The Subject Land contains an existing mudstone quarry near the eastern boundary, operating under Work Authority 200 (WA200) (shown on the map above in the south-east), which has been in operation for approximately 30 years. The Permit Applicant purchased WA200 and the Subject Land in 2019. The use of this area operates under existing permits and the proposal under this application does not include this area.

Community and Stakeholder Consultation

Notice of the application was provided in accordance with the requirements of the *Planning and Environment Act 1987* by way of a sign on site and letters to all properties on Switzerland Road and those adjoining the site. Five objections were received. The issues raised in the objections are summarised below:

- Traffic Impacts on Switzerland Road and Ghin Ghin Road
- Inadequate Road Maintenance
- Noise
- Visual Impact
- Impact on land values
- Environmental impacts
- Not consistent with the Farming Zone
- Impacts on agricultural uses on adjoining properties.

Responses to the above objections are discussed in greater detail later in this report.

Referrals

The application was referred to Heritage Victoria, DELWP, DJPR, GBCMA (Goulburn Broken Catchment Management Authority), CFA (Country Fire Authority), Agriculture Victoria and the TLaWC (Taungurung Land and Waters Council).

Responses were received from DELWP, EPA (Environment Protection Authority), CFA and Agriculture Victoria consenting to the proposal. It is also noted that referral authorities were also given the opportunity to comment on the proposal as part of the Work Plan approval process. This has been included in the application documentation.

Discussion - Planning Considerations

Planning Policy

The proposal has been assessed against state, regional and municipal Planning Policy Framework (PPF) contained in the *Murrindindi Planning Scheme*. Overall, it is considered to be consistent with the objectives and strategies of this framework as is discussed below.

Clause 02.02 – Vision

- *Council seeks to enhance the liveability, amenity and quality of life in the municipality.*
- *Council will facilitate sustainable population and economic growth.*
- *The municipal rate base will be actively grown through sound planning, support for continued economic development and protection of the natural and built environment.*
- *A strong economy will attract people to the municipality, creating further opportunities for lifestyle choice, business investment and prosperity.*
- *Increased economic growth and investment will enhance population growth, employment and social and cultural benefits for the municipality.*
- *Residential growth will be provided in established townships and settlements with existing communities and infrastructure, where natural environment is and a high level of community safety is achieved.*

Clause 02.03 – Natural resource management

The agricultural sector in Murrindindi Shire is diverse, economically significant and has potential to expand. Agricultural activities include beef and sheep grazing, horticulture, cropping, vegetable growing, aquaculture, forestry and niche products.

The Goulburn River valley and tributaries is a fertile valley of high agricultural quality. The Kinglake Ranges has high quality soils and agricultural value, while the Toolangi area is of national horticultural significance.

Favourable climatic and environmental conditions and proximity to the Melbourne market have seen the recent development of intensive agricultural industries, including an expansion of the viticultural, stone fruit, berries, vegetables and turf production.

Agricultural land is under increasing pressure for conversion into non-agricultural uses.

Council aims to protect the viability of agricultural land and waterways by:

- *Protecting high quality agricultural land for ongoing agricultural use.*
- *Protecting rural land for productive agricultural uses and compatible rural uses.*
- *Ensuring that the use and development of rural land protects and enhances agricultural potential and the productive capacity of the land and surrounding land.*
- *Supporting existing agricultural production activities, including beef and sheep grazing, horticulture, cropping, vegetable growing, aquaculture, timber production and niche products.*

- *Supporting emerging agricultural industries that are compatible with existing agricultural practices, including horticulture, intensive animal production, agroforestry, farm gate agricultural sales, boutique, niche agriculture, agricultural processing, value adding industries and carbon farming.*
- *Supporting the evolution of agriculture in response to improved practices and climate change.*
- *Ensuring that agricultural land is not developed for primarily residential purposes.*
- *Discouraging the fragmentation of rural land into lots incapable of productive agricultural and rural use.*
- *Protecting water catchments from inappropriate use and development, particularly the Goulburn River valley and its tributaries.*

Clause 02.03 – Economic Development

In promoting economic development, Council supports:

- *Encouraging business expansion, investment and employment.*
- *Facilitating the growth of rural based industries.*
- *Supporting new and emerging industries.*

Clause 12.01-2S – Native vegetation management

Objective

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.

Clause 13.04-2S – Erosion and landslip

Objective

To protect areas prone to erosion, landslip or other land degradation processes.

Clause 14.01-1S – Protection of agricultural land

Objective

To protect the state's agricultural base by preserving productive farmland.

Clause 14.01-2S – Sustainable agricultural land use

Objective

To encourage sustainable agricultural land use.

Clause 14.03-1S – Resource exploration and extraction

Objective

To encourage exploration and extraction of natural resources in accordance with acceptable environmental standards.

Clause 14.03-1R – Resource exploration and extraction – Hume

Strategy

Support the availability of construction materials locally and consider measures to facilitate and manage their extraction.

Clause 17.01-1R – Diversified economy – Hume

Strategy

Encourage appropriate new and development forms of industry, agriculture, tourism and alternative energy production.

Response:

- The proposed quarry is consistent with the Council vision at Clause 02.02 to grow the rate base through sound planning, support for continued economic development and protection of the natural and built environment.
- The Proposed Quarry will satisfy a strategic direction in Clause 02.03 Natural Resource Management that seeks to facilitate more intensive and diversified use of rural land for niche products in areas designated for agricultural land uses without detrimentally affecting the environmental qualities of the Subject Land.
- The Proposed Quarry satisfies one of the key strategies of Clause 02.03 Economic Development which seeks to support value adding industries and service industries, particularly those that relate to agriculture, farming and those that service locally grown products.
- The Proposed Quarry appropriately responds to Clause 14.01-1S Protection of agricultural land as the proposed use and development is temporary in nature. It will occupy only part of the Subject Land, leaving the balance available for use in the Permit Applicant's agricultural business. Once the extraction area is rehabilitated, the entire site will be returned to agricultural use.
- As Extractive industries are recognised as suitable land uses in agricultural areas and the Proposed Quarry will have no impact on surrounding farms, the Proposed Quarry appropriately responds to Clause 14.01-2S Sustainable agricultural land use.
- The Proposed Quarry will supply construction materials that will be made available locally and support the local demand for landscaping rock. In this way, the Proposed Quarry supports the achievement of Clause 14.03-1R Resource exploration and extraction – Hume through the provision of material to support other industries.
- The Proposed Quarry will supply needed materials to the state's demand for landscaping rock. In this way, the Proposed Quarry clearly supports the achievement of Clause 17.01-1 Diversified economy.
- In accordance with Clause 14.03-1S, the Proposed Quarry will establish extensive and clearly defined buffers to sensitive uses which will be controlled by the Permit Applicant over the life of the quarry.

Clause 35.07 – Farming Zone

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

Pursuant to Clause 35.07-1 a permit is required to use the land for an extractive industry which is an unspecified section 2 use.

Pursuant to Clause 35.07-4 a permit is required for buildings and works for a section 2 use.

The proposal is considered to comply with the decision guidelines of the Farming Zone for the following reasons:

- The proposed quarry is on agricultural land that is already used for extractive industries and has been for a number of years.
- The proposal does not seek to fragment the existing agricultural land.
- The quarry will not impact the surrounding land and is appropriately located.
- The quarry has been designed to establish buffers to sensitive surrounding uses.
- No blasting or slime dams are proposed with the quarry.

Furthermore;

- the site will not lead to the creation of new quarry uses within surrounding agricultural land.
- The site is within a bushfire prone area and is not considered ideal for agricultural services.
- The proposal will not diminish the surrounding landscape which is primarily agricultural in nature and will provide a use that should be considered as a continuation of the existing land use and not a new use that is impacting the site.
- The proposed quarry will retain the site as a large rural allotment, which will be rehabilitated and returned to agricultural use following the completion of the quarry use.

Amenity

As a large rural allotment currently used for extractive industry and surrounded by agricultural uses, the Subject Land is highly suited for additional extractive industry.

- The Proposed Quarry will not cause any unreasonable amenity impacts to surrounding and nearby properties, in particular for the following reasons:
 - The closest non-agricultural zoned land is located within the township of Yea, 10km south of the Subject Land.
 - The Proposed Quarry will not result in adverse visual amenity impacts as it is surrounded by rural agricultural and farming land with only two dwellings within 600m of the activity area. The main processing and stockpiling areas are set between two ridgelines and are not visible from neighbouring residences or public access points.
 - The extraction area is similarly obscured, and not unreasonably visible from outside vantage points. The quarry facilities will be located to the southwest of the Proposed Quarry, near the site access point. Further, these facilities comprise either single story temporary buildings or facilities at ground level and will not be visible to outside receptors.
 - The Proposed Quarry will continue operating with the same dry processing methodology as the existing quarry on the Subject Land, and there will be no blasting activities. The quarry is in a rural environment with the applicable guidelines set by the Noise from Industry in Rural Victoria (NIRV – EPA guideline 1411).
 - Furthermore, the processing plant will be at least 570m from the closest sensitive receptors to the east and south, with the natural undulating topography and existing intervening vegetation assisting in creating acoustic shielding. The processing plant and stockpile area will be located at ground level, with stockpiled material located strategically to act as a partial barrier to any noise mitigation.
 - Given the large separation distances of at least 570m, the potential for dust from the Proposed Quarry to detrimentally affect nearby dwellings is minimal. Standard

quarrying dust controls, detailed in the relevant Risk Treatment Plan, will be satisfactory to manage any fugitive dust from leaving the Work Authority.

- Site water management is designed to ensure no water containing suspended solids will leave the Subject Land. A GBCMA designated waterway (the unnamed drain line to the west) and Stony Creek to the east and south of the Work Authority are closest drainage lines. There is no activity that will directly impact any drain lines leading to Stony Creek. There are no downstream dams on the waterways that will be impacted by the Proposed Quarry. Incidental water falling on the disturbed areas and within extraction area will be collected in sediment traps, the main sediment dams, and quarry sumps.
- The Endorsed Work Plan contains a range of safety and environmental controls to address the potential for impacts on the surrounding area, including noise, dust, sediment control and stormwater runoff. All staff will be required to be aware of and comply with these requirements, which will be enforced through the Work Authority.

Clause 44.01 – Erosion Management Overlay

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To protect areas prone to erosion, landslip, other land degradation or coastal processes by minimising land disturbance and inappropriate development.*

Pursuant to Clause 44.01-2 a permit is required for buildings and works.

Pursuant to Clause 44.0-4, table of exemptions, a permit is not required for vegetation removal for extractive industry.

The proposal responds to the decision guidelines for the following reasons:

- Only a small portion of land within the subject site lies within the EMO.
- The provided risk management plan provides justification for the proposal.
- The referral authority has provided approval subject to conditions.
- Erosion will be managed through cut off drains, vegetation establishment, strategic location of batter swale drains, and any other surface water management strategies as required.
- Erosion will be monitored and in the event of any excessive erosion, it is proposed to repair the area, review pasture development, review surface water management activities, consider more appropriate location of drains and/or culverts and if required investigate alternative erosion control devices including rock armour, hay bales and vegetation.

Clause 44.06 – Bushfire Management Overlay

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.*

- *To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

No permit is required for buildings and works for the quarry pursuant to Clause 44.06-2.

Clause 52.08-1 Earth and Energy Resources Industry

Purpose

- *To encourage land to be used and developed for exploration and extraction of earth and energy resources in accordance with acceptable environmental standards.*
- *To ensure that geothermal energy extraction, greenhouse gas sequestration, mining and petroleum production are not prohibited land uses.*
- *To ensure that planning controls for the use and development of land for the exploration and extraction of earth and energy resources are consistent with other legislation governing these land uses.*

Pursuant to clause 52.08-1 a permit is required to use and develop land for earth and energy resource industry. The proposal does not meet the exemption in the table of exemptions.

Clause 52.09 Extractive Industry and Extractive Industry Interest Areas

Purpose

- *To ensure that use and development of land for extractive industry does not adversely affect the environment or amenity of the area during or after extraction.*
- *To ensure that excavated areas can be appropriately rehabilitated.*
- *To ensure that stone resources, which may be required by the community for future use, are protected from inappropriate use and development.*

An application to use and develop land for extractive industry must be accompanied by:

- *A copy of a work plan or a variation to an approved work plan that has received statutory endorsement under section 77TD of the Mineral Resources (Sustainable Development) Act 1990.*
- *The written notice of statutory endorsement under section 77TD (1) of the Mineral Resources (Sustainable Development) Act 1990.*
- *Any conditions specified under section 77TD (3) of the Mineral Resources (Sustainable Development) Act 1990.*

The permit applicant has provided the material referenced above.

Referrals under Section 55 of the Act to the person specified as the referral authority in Clause 66 is required.

Clause 52.09-5 also includes permit conditions which have been included where required.

Clause 52.09-6 includes requirements for extractive industry, which can be applied in the form of conditions. These have been included where relevant.

Assessment under clause 52.09

Flora and Fauna

The site has been largely cleared of native vegetation in the past and has been extensively farmed and grazed.

An ecological assessment of the disturbance area has identified some assessable native vegetation and no threatened or listed fauna, (refer to Native Vegetation Removal Offset Report) The extraction activity and associated infrastructure will require the loss of some assessable native vegetation. A permit is not required because exemption in 52.17 provides that the requirement to obtain a permit does not apply to native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of extractive industry in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority under that Act.

As part of the ERR endorsement process, an ecological assessment has been undertaken by Paul Kelly & Associates, Ecological Services. This report identifies offsets are required for 29 large trees and 1,808 general habitat units and that these offsets are available on the title and will be secured with a Section 173 agreement. The assessable vegetation for removal and the area required to secure the offsets is shown in the Site Layout Plan of the Endorsed Work Plan submitted with the application.

DELWP made specific native vegetation requirements that have been included as special conditions on the Endorsed Work Plan. These conditions are included above. The recommendations of the Ecology Report form part of the Endorsed Work Plan and will be implemented and enforced through the MRSDA.

For the reasons sets out above, the Proposed Quarry will cause any unreasonable impacts to native vegetation or fauna on the Subject Land and surrounding area and satisfies the objectives of Clause 12.01-2S Native vegetation management.

Landscape

The design of the Proposed Quarry, surrounding topography and significant buffers to sensitive receptors, will ensure that it does not cause any unreasonable landscape or visual impacts to the surrounding area.

The Proposed Quarry is surrounded by rural agriculture and farming land with only two dwellings within 600m of the activity area. The main processing and stockpiling areas are set between two ridgelines and are not visible from neighbouring residences or public access points.

The proposed location of the extraction area is similarly obscured, and not unreasonably visible from outside vantage points. Quarry facilities and plant will be located to the southwest of the Proposed Quarry, near the site access point. These facilities will all comprise either single story temporary buildings or facilities at ground level and will not be visible to outside receptors.

As shown on Figure 5 Sight Line Plan, the dwelling to the east, whilst not having direct views into the operation, may see disturbance around crest line and any machinery working the crest line. To soften this aspect and to protect the visual amenity of the surrounding area for nearby dwellings in this direction, it is proposed to establish a blue gums / sugar gums vegetation screen.

The upper batter of the extraction area may be visible from the dwelling to the south (approximately 680m from the site) over a narrow viewing window between the ridgelines. These impacts are considered to be minimal and will be further reduced by existing and proposed vegetation, which will obscure views into the extraction area from this direction.

The dwelling within the land to the west is behind the ridgeline and will not have direct sightlines into the extraction area.

The staged extraction and rehabilitation for the Proposed Quarry will also minimise the extent of disturbed areas during the life of the quarry and the potential for visual impacts, with only a small component of the Subject Land being worked at any given time.

Water Management

The Proposed Quarry is unlikely to be affected by flooding or have any noticeable effects on the flow of surface water.

The extraction area will be constructed to direct surface water to a low point on the quarry floor where a sump (at least 4 metres deep) will be established to collect storm water flows. Water from the quarry sump will be used by the Proposed Quarry for dust suppression.

A perimeter bund will be established around the extraction area to ensure turbid water does not leave the extraction area and will also act as a contingency if a storm event exceeds the capacity of the quarry sump. While quarry sump will move around the site as extraction progresses, it will always be capable of holding significant storm events.

Groundwater is estimated to be approximately 50 metres below the floor of the proposed excavation and is not expected to be encountered during excavation.

The Subject Land is in an unincorporated ground water system, and advice from Southern Rural Water is that obtaining a ground water license, if one is required, will not be problematic.

The base of the quarry is proposed at RL 280, with the Visualising Victoria's Groundwater (VVG) website indicating groundwater to 10-20m below Stony Creek, suggesting a groundwater level of RL 220-230, providing a separation distance between the quarry floor and ground water of approximately 50 metres.

There are no public or private assets or any infrastructure within the vicinity of the Work Authority area.

The Proposed Quarry will include two above ground sediment traps, one of 0.2MI in the stockpile areas on the western boundary, and a second an existing farm dam / sediment dam (approximately 1MI).

The existing farm dam has been on site for several years and will continue to be used for general farming activities as well as water for dust suppression.

The site will maintain a Water Management Plan that will be regularly reviewed and updated. This review will consist of an initial review of the Water Management Plan within six months of the commencement of the Proposed Quarry, then annually or as required to ensure it remains current and effective (refer to Water Management Plan).

Traffic

It is submitted that the traffic operations of the Proposed Quarry will be consistent with the Subject Land's rural farming area.

In the initial stages of the development there will be approximately two to three trucks per day through the Proposed Quarry based on the estimated output of 10,000 tonnes per year. Over the life of the development, it is anticipated that the number of trucks and trailers will increase to approximately five to six per day based on a maximum output of 50,000 tonnes per year.

The closest public road is the government road to the south, which is gated at the property entrance and additionally at the Proposed Quarry entrance. The Subject Land access road is an unsealed rural road utilized only by local traffic. The Proposed Quarry access will be via the government road from Switzerland Road, which has access to Ghin Ghin Road, with the vast majority of traffic then travelling south along the Goulburn Valley Highway.

There will be warning signs / authorised access only signs at Subject Land entrance, directing visitors to the Proposed Quarry. Signage within the Proposed Quarry area will direct visitors to the site office and stockpile areas. Additional signage at critical locations around the property and work authority warning of private property and deep excavations.

Traffic management signs will direct heavy vehicle traffic to designated parking and loading areas. Traffic management will also be implemented within the site around product stockpiles, travel routes designed to minimise reversing and limit vehicle speeds.

Rehabilitation

Over its life, the Proposed Quarry will be progressively rehabilitated in a staged manner, following which the Subject Land will be suitable for general farming activities including cropping and pasture for livestock grazing. This end use is consistent with the current surrounding land use and the activities conducted prior to extractive industry use and does not require any change in the planning permission. This rehabilitation concept is illustrated on Figure 4 Rehabilitation Plan, included in the WA007536 Rehabilitation and Site Closure Plan.

Discussion - Submissions

A number of issues were raised by surrounding landowners as part of the assessment of this application. A summary and response to these issues is detailed below:

Traffic Impacts on Switzerland Road and Ghin Ghin Road and Inadequate Road maintenance.

- The proposal will result in an increase in traffic along both Switzerland Road and Ghin Ghin Road. The application has been referred internally to Council's Development Engineering Unit who have provided conditions to be included on any permit issued. Works are required to ensure the condition of the road is maintained appropriately. These works are required to ensure public infrastructure and amenity are less impacted by the proposed development. While the planning process can accommodate increases in the use of roads through permit conditions, we cannot control driver behaviour in relation to speeding, alertness etc.

Noise

- Objections raised in relation to noise have been considered as part of the assessment of this application. It is acknowledged that the use of the land for extractive industry will create some noise issues. These can be mitigated by conditions which have been included in the Work Plan and will be managed by the EPA and Department of Jobs, Precincts and Regions as the authority charged with the approval of the work plan.

Visual Impact

- The applicant has provided for remediation works to minimise the visual impacts of the proposal, particularly in relation to screening of the site.

Impact on land values

- Impacts on land values cannot be considered under either the Murrindindi Planning Scheme or the *Planning and Environment Act 1987*.

Environmental impacts

- The application has been referred internally to our environmental programs team who have provided comments in relation to the application. There is considerable vegetation removal and a range of other environmental impacts such as erosion, sediment control and waterway protection which have been considered as part of the work plan approval and addressed in this report.

Not consistent with the Farming Zone

- The use of land for extractive industries is not one that is prohibited in the Farming Zone. While not prohibited, the use of land in this zone must have consideration for the adjoining on the use and amenity of surrounding properties. The use of the subject site will not impact on the use of adjoining land for agricultural or expansion of surrounding agricultural properties given the current approval for extraction on the site.

Conclusion

- The Subject Land is a large farming allotment situated within an area used for a range of agricultural activities. It is currently used for extractive industry and farming.
- The Proposed Quarry will supply a wide range of landscaping rock and crushed rock products used for lining low traffic areas, garden paths, landscaping and decorative uses.
- The siting and design of the Proposed Quarry incorporates significant buffers from sensitive receptors that will ensure it will not cause any unreasonable amenity impacts to adjoining and nearby land.
- The Endorsed Work Plan (which includes a technical ecology report) contains a range of safety and environmental controls to address the potential for impacts on the surrounding area, including noise, dust, sediment control and stormwater runoff.
- The extraction activity and associated infrastructure will require the loss of some assessable native vegetation, however appropriate native vegetation offsets are available within the Subject Land and will be secured with a Section 173 agreement.
- There is a GBCMA designated waterway to the west of the Proposed Quarry. The extraction area is at least 100 metres from this waterway, as per the GBCMA guidelines. Water management will be successfully achieved across the Proposed Quarry through the strategies and controls contained in Water Management Plan.
- The Subject Land is subject to an Erosion Management Overlay. Any erosion impacts will be managed through cut off drains, vegetation establishment, strategic location of batter swale drains, and any other surface water management strategies as required. Erosion management will be successfully achieved across the Proposed Quarry through the strategies and controls contained in Risk Management Plan.
- The Proposed Quarry will not result in unreasonable landscape or visual impacts to surrounding properties or the area. The remoteness of the Proposed Quarry, surrounding topography and existing vegetation will ensure that the visibility of any disturbed areas within the quarry will be minimised and the area's rural character maintained.
- The Proposed Quarry will provide for appropriate vehicular access and there will be no unreasonable impacts to local traffic conditions or traffic impacts. The traffic operations of the Proposed Quarry will be consistent with the Subject Land's rural farming context.
- The Proposed Quarry will be progressively rehabilitated and returned to agricultural production or other purposes consistent with the Farming Zoning of the land.
- The Proposed Quarry area is not impacted by any Aboriginal cultural heritage sensitivity areas and has been aligned to be at least 200 metres from the top of the bank of Stony Creek. Further, it will utilise an existing access track and consequently does not require a CHMP. Heritage Victoria has reviewed and advised that there are no archaeological sites or historic places currently included in the Victorian Heritage Inventory within the Proposed Area.

- The Proposed Quarry is consistent with the objectives of the Farming Zone and all relevant State and local planning policies related to rural areas and extractive industry, including Clause 14.03-1S Resource exploration and extraction, and the decision guidelines of Clause 52.09

It is considered that the proposed use and development for extractive industry is appropriate, and a planning permit be issued. On the balance it is considered that the use and development of extractive industry is consistent with the provisions of the Murrindindi Planning Scheme.

Council Plan/Strategies/Policies

This report supports the *Council Plan 2021-2025 Beautiful Townships and Rural Settings* strategy “to create a better place for our community and visitors to live in harmony with our rural character, natural beauty and heritage”.

Relevant Legislation

The proposal is being considered under the provisions of the *Murrindindi Planning Scheme* and the *Planning and Environment Act 1987*.

Financial Implications and Risk

There are no financials implications or risks associated with the consideration of this application for planning permit.

Conflict of Interest

No conflict of interest is identified with the assessment of this proposal.

4.4 Planning Application - High Street Median Strip, Yea - Outdoor Shelter

Attachment(s)	Attachment 1 - High Street Median Strip Yea - Application Documents [4.4.1 - 9 pages] Confidential Attachment 1 – High Street Yea Median Strip – Submissions (<i>distributed to Councillors separately</i>)
Presenter	N Maguire, Planning Officer
Approved by	Acting Director Corporate & Shared Services in consultation with Acting Director Assets & Development
Purpose	For decision

Land:	High Street road reserve, Yea
Proposal:	Construction of one (1) shelter over an existing table and chairs on land within the High Street Road reserve (median strip)
Applicant:	Rotary Club of Yea
Zoning:	Transport Zone 2
Overlays:	Heritage Overlay – HO9: Yea High Street, Streetscape
Triggers:	36.04 Transport Zone – Construct a building or construct or carry out works for any use in Section 2 (informal outdoor recreation), 43.01 Heritage Overlay – Construct a building or construct or carry out works

Locality Plan





Executive Summary

An application has been received for the construction of one (1) shelter over an existing table and chairs on land within the High Street Road reserve (median strip) at High Street Yea (subject land) under the provisions of the Murrindindi Planning Scheme.

The land is in the Transport Zone 2 (TRZ2 – Principal road network) and the Heritage Overlay (HO9 – Yea High Street, Streetscape) applies to the land. A planning permit is required to construct a building or construct or carry out works for any use in Section 2 in a Transport Zone, pursuant to Clause 36.04 of the Murrindindi Planning Scheme, and to construct a building or construct or carry out works in a Heritage Overlay, pursuant to Clause 43.01 of the Murrindindi Planning Scheme.

The proposal is to construct a roof structure (shelter) over an existing set of table and chairs on the northern side of the median strip of the High Street road reserve, east of the Pechell Street intersection. The proposed structure consists of 4 posts with a gabled corrugated iron roof measuring 5.25m long, 3.65m wide, and 2.35m high with a 15° pitch, featuring a decorative finial at the gable ends.

The application has been advertised in the Yea Chronicle and by way of a sign erected on site. A total of two (2) submissions were received and the objections related to the visual impact of the proposal on the landscape.

This report recommends that a refusal to grant a permit be issued for the construction of one (1) shelter over an existing table and chairs on land within the High Street road reserve (median strip) at High Street, Yea, in accordance with the grounds of refusal. The application is presented to Council due to the two (2) objections received and because the recommendation is to refuse the application.

RECOMMENDATION

That Council issue a Refusal to grant a planning permit for the construction of one (1) shelter over an existing table and chairs on land within the High Street road reserve (median strip) at High Street, Yea, based on the following grounds:

1. The development is not consistent with the purpose of clause 43.01 (Heritage Overlay).
2. The development is not consistent with the objective of clause 15.03-1S (Heritage conservation).
3. The development will adversely affect the significance, character and appearance of the heritage place.
4. The development will contribute to the visual clutter of the heritage place, which already contains street furniture, infrastructure, traffic signs, and public artwork.

The Land and Surrounds

The subject site is within the median strip of the High Street road reserve, east of the Pechell Street intersection, and currently contains a set of table and chairs.

The median strip is planted with semi-mature trees and much of the median is taken up with car parking. The median strip also contains street furniture, including numerous sets of table and chairs, public infrastructure, including rubbish bins, bicycle parking hoops, lighting, traffic signage, and public artwork.

The table and chairs over which the shelter is proposed are located opposite the Yea Bakery.

Proposal

The application proposes the construction of a roof structure (shelter) over an existing set of table and chairs. The proposed structure consists of 4 steel posts with a gabled corrugated iron roof measuring 5.25m long, 3.65m wide, and 2.35m high with a 15° pitch, featuring a decorative finial at the gable ends.



Cultural Heritage Management Plan

Part of the site is in an area of cultural sensitivity as defined by the *Aboriginal Heritage Regulations 2018*.

The proposed shelter is not considered a high impact development of the site and is exempt from the requirement of a Cultural Heritage Management Plan.

Community and Stakeholder Consultation

Notice of the application was provided in accordance with the requirements of the *Planning and Environment Act 1987* as follows:

Public notice was undertaken by means of a sign on site and a notice in the Yea Chronicle newspaper.

Following the notice, two (2) objections were received, and the submissions can be summarised as follows:

- The development will adversely affect the visual landscape.
- The development will contribute to the visual clutter of the streetscape.
- The development is unnecessary as the trees provide adequate shade.

Council also received a submission that was signed by 106 signatories, objecting to the granting of a permit. However, this could not be accepted as an objection to the application, under Section 57 of the *Planning and Environment Act 1987*, as it does not state the reasons for the objection or how the objector(s) would be affected by the grant of a permit.

Following receipt of the objections, copies of all submissions were provided to the permit applicant who provided a response to each objection. These responses were subsequently provided to objectors.

No objections have been resolved to date.

Referrals

The application was referred to the Department of Transport under Section 55 of the *Planning and Environment Act 1987* and was required as part of the assessment of this application.

The Department of Transport did not object to the proposal and did not specify any conditions to be included on any permit granted.

The application was also referred to Council's Heritage Advisor. The Heritage Advisor raised concerns about the proposal contributing to the visual clutter in the median strip, noting the sensitive location, and the potential for creating a precedent for further development, and recommended against granting a permit.

Discussion - Planning Considerations

Planning Policy

The proposal has been assessed against state, regional and municipal Planning Policy Framework (PPF) contained in the *Murrindindi Planning Scheme*. Overall, it is considered to be inconsistent with the objectives and strategies of this framework as discussed below.

Clause 02.02 - Vision

The planning scheme outlines the overall vision for the municipality. This includes:

- *Council seeks to enhance the liveability, amenity and quality of life in the municipality.*
- *Council will facilitate sustainable population and economic growth.*
- *The municipal rate base will be actively grown through sound planning, support for continued economic development and protection of the natural and built environment.*
- *A strong economy will attract people to the municipality, creating further opportunities for lifestyle choice, business investment and prosperity.*
- *Increased economic growth and investment will enhance population growth, employment and social and cultural benefits for the municipality.*
- *Residential growth will be provided in established townships and settlements with existing communities and infrastructure, where natural environment is protected and a high level of community safety is achieved.*

Clause 02.03 - Strategic Directions

Council supports the following strategies when making a determination of the planning permit application:

- *Protect sites, places and features of natural, archaeological and cultural heritage significance.*
- *Protect the cultural heritage of the municipality.*
- *Encourage high quality contemporary design that becomes a valued addition to heritage places.*
- *Encourage design and development of township entrances and streetscapes that respect the built environment, contribute to the overall appearance and character of the town.*
- *Encourage a consistent approach to the design and construction of infrastructure across the municipality.*

Clause 11.03-6S - Regional and local places

Objective

- To facilitate integrated place-based planning.

Strategies

- Integrate relevant planning considerations to provide specific direction for the planning of sites, places, neighbourhoods and towns.
- Consider the distinctive characteristics and needs of regional and local places in planning for future land use and development.

The proposed development will detract from the distinctive treed median of High Street by adding further infrastructure that does not respect the heritage character of the streetscape.

Clause 15.03-1S - Heritage Conservation

Objective

- To ensure the conservation of places of heritage significance.

Strategies

- Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
- Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.
- Encourage appropriate development that respects places with identified heritage values.

- Retain those elements that contribute to the importance of the heritage place.
- Ensure an appropriate setting and context for heritage places is maintained or enhanced.

The proposed shelter is an inappropriate addition of infrastructure in a sensitive area.

Clause 15.03-1L - Heritage Conservation

Policy application

- This policy applies to all land affected by the Heritage Overlay.

Strategies

- Encourage new development that maintains and enhances the setting of heritage places and the visual relationship between heritage places, including views of a heritage place from public places.
- Support new development including alterations or additions to existing heritage places that:
 - Creatively interpret and respond to its historic context.
 - Is visually recessive and compatible in terms of its scale, siting, design, form and materials.
 - Does not distort the historic evidence provided by heritage places by simply copying or reproducing historic styles or detailing.
 - Responds to special features such as views, vistas, mature vegetation and landmarks.
 - Includes landscaping that will enhance the historic cultural landscape character of a heritage place.
- Conserve historic public realm features, such as basalt gutters, unmade roadside verges and mature street trees.
- Design future development adjacent to a significant tree so that it will not have a detrimental impact upon the integrity and condition of the tree.

The proposed development will adversely affect the heritage character of the treed median in High Street and will contribute to the visual clutter of the area.

Clause 19.02-6S – Open space

Objective

- To establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community.

Strategies

- Plan for regional and local open space networks for both recreation and conservation of natural and cultural environments.
- Ensure that land use and development adjoining regional open space networks, national parks and conservation reserves complements the open space in terms of visual and noise impacts, preservation of vegetation and treatment of wastewater to reduce turbidity and pollution.
- Ensure that urban open space provides for nature conservation, recreation and play, formal and informal sport, social interaction, opportunities to connect with nature and peace and solitude.

- Ensure open space provision is fair and equitable with the aim of providing access that meets the needs of all members of the community, regardless of age, gender, ability or a person's location.
- Ensure the provision of buildings and infrastructure is consistent with the management objectives of the park.

Zone

Transport Zone (TRZ2 - Principal road network)

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for an integrated and sustainable transport system.*
- *To identify transport land use and land required for transport services and facilities.*
- *To provide for the use and development of land that complements, or is consistent with, the transport system or public land reservation.*
- *To ensure the efficient and safe use of transport infrastructure and land comprising the transport system.*

Pursuant to Clause 36.04-2 a planning permit is required within the principal road network to construct a building or to construct or carry out works for any use in Section 2 of Clause 36.04-1. The proposal is to construct a building associated with the use of the land for informal outdoor recreation, which is a Section 2 use in the TRZ2.

The decision guidelines for any development requiring a permit are as follows:

- *The effect of the proposal on the development, operation and safety of the transport system.*
- *Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.*

The Department of Transport is the authority responsible for managing the principal road network. The application was referred to the Department of Transport, who did not object to the granting of a permit.

Overlay

Heritage Overlay (HO9 – Yea High Street, Streetscape)

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To conserve and enhance heritage places of natural or cultural significance.*
- *To conserve and enhance those elements which contribute to the significance of heritage places.*
- *To ensure that development does not adversely affect the significance of heritage places.*
- *To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.*

Pursuant to Clause 43.01-1 a planning permit is required to construct a building or to construct or carry out works in a Heritage Overlay.

The decision guidelines for any development requiring a permit are as follows:

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.*
- *Any applicable statement of significance (whether or not specified in the schedule to this overlay), heritage study and any applicable conservation policy.*
- *Any applicable heritage design guideline specified in the schedule to this overlay.*
- *Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.*
- *Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.*
- *Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.*

The Yea High Street Heritage Guidelines (Context Pty Ltd, December 2018) (*The Guidelines*) detail the heritage character of the Yea High Street precinct. High Street is described as “very broad and features a wide treed median in the middle” and the “distinctive street creates a relaxed ‘country town’ feeling in Yea’s central commercial district.” The road reserve is planted with semi-mature trees “which have amenity value,” while “much of the median is now taken up with car parking.”

The proposed shelter will increase infrastructure in the median strip, contributing to the visual clutter and detracting from the significance, character and appearance of the heritage streetscape.

The proposed development will adversely impact the heritage character of the area and detract from the distinctive “relaxed ‘country town’ feeling” described in the *Guidelines*.

Overall, the shelter will detract from the heritage significance of the area and is not necessary for the improved function of the site.

Furthermore, the construction of the shelter may create precedent for further roof structures to be constructed over tables and chairs which can detract from the heritage character of the High Street streetscape.

Discussion - Submissions

A response to the issues raised by the objectors is set out below.

Submissions

Following the notice two (2) objections were received and the submissions can be summarised as follows:

- The development will adversely affect the visual landscape.
- The development will contribute to the visual clutter of the streetscape.
- The development is unnecessary as the trees provide adequate shade.

Council also received a submission that was signed by 106 signatories, objecting to the granting of a permit. However, this could not be accepted as an objection to the application, under Section 57 of the *Planning and Environment Act 1987*, as it does not state the reasons for the objection or how the objector(s) would be affected by the grant of a permit.

The additional infrastructure above eye level would detract from the visual landscape, which is characterised by semi-mature trees within the median strip that provide adequate shade. The

proposed shelter would contribute to the visual clutter of the area, which already contains public infrastructure, traffic signage, and public artwork. The proposal is not consistent with the decision guidelines of the Heritage Overlay, as it will adversely affect the significance, character and appearance of the heritage place.

Conclusion

It is considered that the construction of one (1) shelter over an existing table and chairs on land within the High Street road reserve (median strip) is inappropriate and due to the adverse impact on the heritage character of the streetscape and is inconsistent with the provisions of the Murrindindi Planning Scheme.

Council Plan/Strategies/Policies

This report supports the following strategies under the *Council Plan 2021-2025 Beautiful Townships and Rural Settings* pillar:

- “to create a better place for our community and visitors to live in harmony with our rural character, natural beauty and heritage.”
- “deliver efficient, sustainable land use planning outcomes to enhance liveability, protect our unique rural character and natural beauty, and to enable growth.”
- “to provide fit-for-purpose infrastructure that meets current and future service demands and needs for our community.”
- “provide spaces within our towns that are vibrant, attractive, safe and accessible.”

Relevant Legislation

The proposal is being considered under the provisions of the *Murrindindi Planning Scheme* and the *Planning and Environment Act 1987*.

Financial Implications and Risk

There are no financial implications or risks associated with the consideration of this application for planning permit.

Conflict of Interest

There were no conflicts of interest declared by Council officers in relation to the matters contained in this report.

5 OTHER REPORTS

5.1 Leckie Park Trial

Attachment(s)	Attachment 1 - Leckie Park Trial Record of Correspondence [5.1.1 - 2 pages]
Presenter	P Bain, Manager Sustainability & Assets
Approved by	Chief Executive Officer
Purpose	For decision

Executive Summary

This report seeks a decision by Council in relation to whether to continue or cease a wetland trial underway in a small area at Leckie Park, Alexandra. The trial is intended to encourage waterbirds to use the area and supply an additional experience for park users. The issues relating to objections, including a petition to Council requesting to abandon the trial, are discussed.

RECOMMENDATION

That Council:

1. **Shorten the duration of the wetland trial at Leckie Park, Alexandra, from the original two years, to instead finish on 30 November 2023.**
2. **Following the trial, receive a report that includes:**
 - **outcomes of regular monitoring of the trial site up to 30 November 2023**
 - **outcomes from consultation during December 2023 with the local community about the results of the year-long trial and**
 - **a recommendation as to whether to retain the small area as a wetland on an ongoing basis, or to reinstate the area to its condition prior to the commencement of the trial.**

Background

This report outlines the wetland trial being undertaken at Leckie Park, Alexandra, and views and feedback received to date by Council, including a petition lodged with Council at its meeting of 22 March 2023.

There is a swale depression that generally drains from the north-west side of the park. The contours of the park indicate the trial area is part of this depression that runs roughly parallel to Vickery Street and Paynes Avenue to drain to the UT Creek. The trial area remains wet over winter/spring and can be difficult to mow without churning up the area. An alternative action to fill this area has been suggested, which would require raising the area to redirect the drainage pattern to drain to the adjacent roads.

In early spring 2022, white-faced herons were observed foraging at this wet area of the swale and nesting in nearby trees. To take advantage of this natural behaviour and encourage biodiversity in the park, a trial was instigated to reduce disturbance and mowing in this area. The area is 270 square metres, situated among a treed area along Paynes Avenue and Vickery Street of around 7,000 square metres. To define the area, stumps were selected from the restumping of the CWA Hall and installed around the trial area. It was thought appropriate as the hall is also a feature of

the park area. Sound stumps were chosen to give a rustic look, being aged timber with different shapes and sizes. The posts also deter people from using an area under a Bunya Pine that drops heavy cones and branch debris that can be a hazard. Scheduled maintenance of the trial area by brush cutting will control the grass but let it remain long.

Before the trial area was commenced and defined with posts, letters about the proposal were sent to 22 owners around the park on 9 September 2022, using Council's mail database. From later feedback, it appears that two letters to Alexandra Post Boxes were not received by residents. A quarter page advertisement in the Alexandra Standard on 16 September notified the public generally about the trial. The trial was intended to be over two years and include, at its conclusion, a review of its success from an environmental perspective, and receive comment from the community as to whether it was supported on an ongoing basis.

Discussion

Since the inception of the trial, we have received numerous correspondence, expressing opinions both for and against the trial. This is detailed in the attachment.

A petition received by Council expresses the view of opponents of the trial to "Remove the recently dumped old redgum posts and clean up the synthetic mini wetlands area at Paynes Avenue and Vickery St corner where the general public and school children regularly walk daily to and from school and the shops. To clear this will avoid a potential human induced health and safety issue of snakes for people using Leckie Park for social activities and the children's playground." The petition is signed by 37 residents from 18 properties, mainly in the vicinity of Leckie Park, Alexandra.

Various risks have been raised, including increased mosquitoes (and associated disease) and snakes in the area. However, the drainage of the area has not changed, it is a naturally wet area. Therefore, the trial is unlikely to cause an increase in mosquitos and snake populations. UT Creek flows through the park which naturally poses all these potential risks and snakes are frequently sighted even in close mown areas of the park.

The issue of termites in wet rotting wood has been raised. The stumps were checked prior to installation and found to be sound and termite free. Given their positioning at the outer periphery of the swale area, the stumps are, for the most part, situated outside of the water. The risks to park users remain unchanged and may in fact be reduced by deterring use of this wetter area. A key issue seems to be the perceived impact on the park's overall character and amenity. The trial changes the visual appearance of a small section of the park, with no other material change. The park has a variety of uses, including exercise equipment, formal sports, hardstand area of disused tennis courts, walking paths and informal grassed areas. While there are mature specimen trees, only some areas are formal gardens.

Correspondence to Council in favour of the trial points out the opportunity to increase the diversity of plants and introduced diversity and nature-based experiences in urban areas. Several wetlands established by other Councils have been suggested as good examples. To form a viable wetland, it would be planted with wetland plants. Several letters to Council have suggested improvement by planting native grasses, including an offer of help from Landcare, but it is not intended to alter the area during the trial.

The trial is in keeping with the multiple uses of the park. The trial intends to test the opportunity to enrich the park experience by encouraging birdlife. The success of the trial will be assessed also by waterbirds continuing to forage in the area. This will be established through monitoring and a record of sightings by staff.

The trial is in keeping with Section 4 – Our Protected Environment of the 2021-2025 Council Plan where the community asked for ‘*biodiversity protection and habitat restoration.*’ The trial specifically improves biodiversity in Leckie Park and restores a small area of natural habitat.

In response to the petition and feedback received outlining concerns about the trial, it is suggested to shorten the trial to one year. This will allow for one spring season to monitor and observe the extent of waterbird attraction to the trial area. It will provide an opportunity to survey nearby residents and the wider Alexandra community towards this particular section of Leckie Park.

Council Plan/Strategies/Policies

This report supports the *Council Plan 2021-2025 Our Protected Environment* strategy “to protect and enhance our natural environment, supporting environmental sustainability, community resilience, innovation and adaptation to climate change to achieve net-zero emissions by 2035”. It specifically addresses a community desire to protect biodiversity and habitat restoration.

It also supports Strategic Action: *4.1.2 In partnership with the community, provide education and training to improve ecologically sustainable outcomes.*

Relevant Legislation

Nil.

Financial Implications and Risk

There are no financial implications if the trail continues, unless it is proposed to upgrade the quality of the stumps delineating the trail area, or plant new wetland species.

Conflict of Interest

There were no conflicts of interest declared by Council officers in relation to the matters contained in this report.

Community and Stakeholder Consultation

Council sent letters about the proposal to 22 property owners located around Leckie Park on 9 September 2022. A quarter page advertisement in the Alexandra Standard on 16 September notified the public generally about the trial. Notification about the proposed trial was also posted on Council’s social media pages. Numerous correspondence has been received since the trial began, expressing opinions both for and against the trial. This is summarised in the attachment.