



MINUTES  
of the  
SCHEDULED MEETING OF COUNCIL  
WEDNESDAY 9 SEPTEMBER 2020  
at  
6.00 pm  
Conducted via Videoconference

This Meeting was conducted virtually (*as per COVID-19 Omnibus (Emergency Measures) Act 2020, made by Victorian Parliament on 23 April 2020*)

The proceedings were live streamed for public viewing.

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## **1. PLEDGE AND RECONCILIATION STATEMENT**

The meeting was opened with the Mayor declaring the following Pledge on behalf of all Councillors:

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

We would like to acknowledge the traditional owners of the Taungurung Nation, and pay our respect to their Elders past and present, and its emerging and future leaders.”

## **2. APOLOGIES AND REQUESTS FOR LEAVE OF ABSENCE**

### **Present:**

Councillors L Dunscombe (Chair), M Rae, R Bowles, J Ashe, C Bisset, E Lording, S McAulay

### **In attendance:**

Chief Executive Officer: Craig Lloyd

Director Corporate and Shared Services: Michael Chesworth

Director Assets and Development: Vito Albicini

Manager Development Services: Natalie Stewart

Coordinator Planning: Matthew Schreuder

Senior Planner: Clara Gartland

## **3. DISCLOSURES OF INTEREST OR CONFLICT OF INTEREST**

Cr C Bisset disclosed a material conflict of interest in agenda 5.1 being the Thornton Primary School – Use and Development of Land for the Purpose of Café, as a family member of hers has a financial interest in the works that may result if a planning permit is issued.

## **4. PUBLIC PARTICIPATION TIME**

The Mayor invited each submitter to speak to their submission for a 5 minute period.

### **4.1 HEARING OF SUBMISSIONS - THORNTON PRIMARY SCHOOL – USE OF LAND FOR THE PURPOSE OF A CAFE**

Angelina Bell, spoke in support of the Thornton Primary School – Use of land for the purpose of a cafe planning application.

### **4.2 HEARING OF SUBMISSIONS – 86 MOORES ROAD, FLOWERDALE – GROUP ACCOMMODATION**

Tony Humphrey, spoke against the 86 Moores Road, Flowerdale - Group Accommodation planning application.

Donna Humphrey, spoke against the 86 Moores Road, Flowerdale - Group Accommodation planning application.

Vikki Patten, spoke against 86 the Moores Road, Flowerdale - Group Accommodation planning application.

Paul McNamara, spoke against 86 the Moores Road, Flowerdale - Group Accommodation planning application.

Sarah Hart, spoke against 86 the Moores Road, Flowerdale - Group Accommodation planning application.

Langton McKenzie-McHarg, spoke against 86 the Moores Road, Flowerdale - Group Accommodation planning application.

Shane Sylvanspring, spoke in support of 86 the Moores Road, Flowerdale - Group Accommodation planning application.

**RESOLUTION**

**Cr E Lording / Cr J Ashe**

**That Public Participation be extended until 8:15pm**

**CARRIED UNANIMOUSLY**

**4.3 HEARING OF SUBMISSIONS – 2020/97 – 265 WHITTLESEA-KINGLAKE ROAD, KINGLAKE CENTRAL (C/A:2023)**

Jemima Richards, spoke against Kinglake Cemetery planning application.

Linda Brodersen, spoke against Kinglake Cemetery planning application.

Shane Sparkes, spoke against Kinglake Cemetery planning application.

Bron Sparkes, spoke against Kinglake Cemetery planning application.

Ann Burgess, spoke against Kinglake Cemetery planning application.

Paul Rogers, spoke against Kinglake Cemetery planning application.

John Griffiths, spoke against Kinglake Cemetery planning application.

Colin French, spoke against Kinglake Cemetery planning application.

Nigel Head, spoke against Kinglake Cemetery planning application.

Lola Sparkes, spoke against Kinglake Cemetery planning application.

Dom Sparkes, spoke against Kinglake Cemetery planning application.

**RESOLUTION**

**Cr E Lording / Cr M Rae**

**That Public Participation be extended further until 8:45pm**

**CARRIED UNANIMOUSLY**

Bev Johns, spoke against Kinglake Cemetery planning application.

Craig Lloyd, CEO read a submission on behalf of Lyn Gunter against the Kinglake Cemetery planning application.

Craig Lloyd, CEO read a submission on behalf of Nina Lunde against against the Kinglake Cemetery planning application.

Craig Lloyd, CEO read a submission on behalf of Mei-Ling Griffiths against the Kinglake Cemetery planning application.

Christine Stonehouse, spoke in support of Kinglake Cemetery planning application.

Alex Pottage, spoke in support of Kinglake Cemetery planning application.

Cheryl Phillips, spoke in support of Kinglake Cemetery planning application.

Liane Dawson, spoke in support of Kinglake Cemetery planning application.

Craig Lloyd, CEO read a submission on behalf of Les Joynson in support of the Kinglake Cemetery planning application.

The Chairperson closed Public Participation Time.

The Mayor adjourned the meeting for a break at 8:51pm

The Mayor resumed the meeting at 9:00pm

#### **RESOLUTION**

**Cr M Rae / Cr J Ashe**

**That the meeting be extended for a further 30 minutes until 9:30pm**

**CARRIED UNANIMOUSLY**

### **5. OFFICER REPORTS**

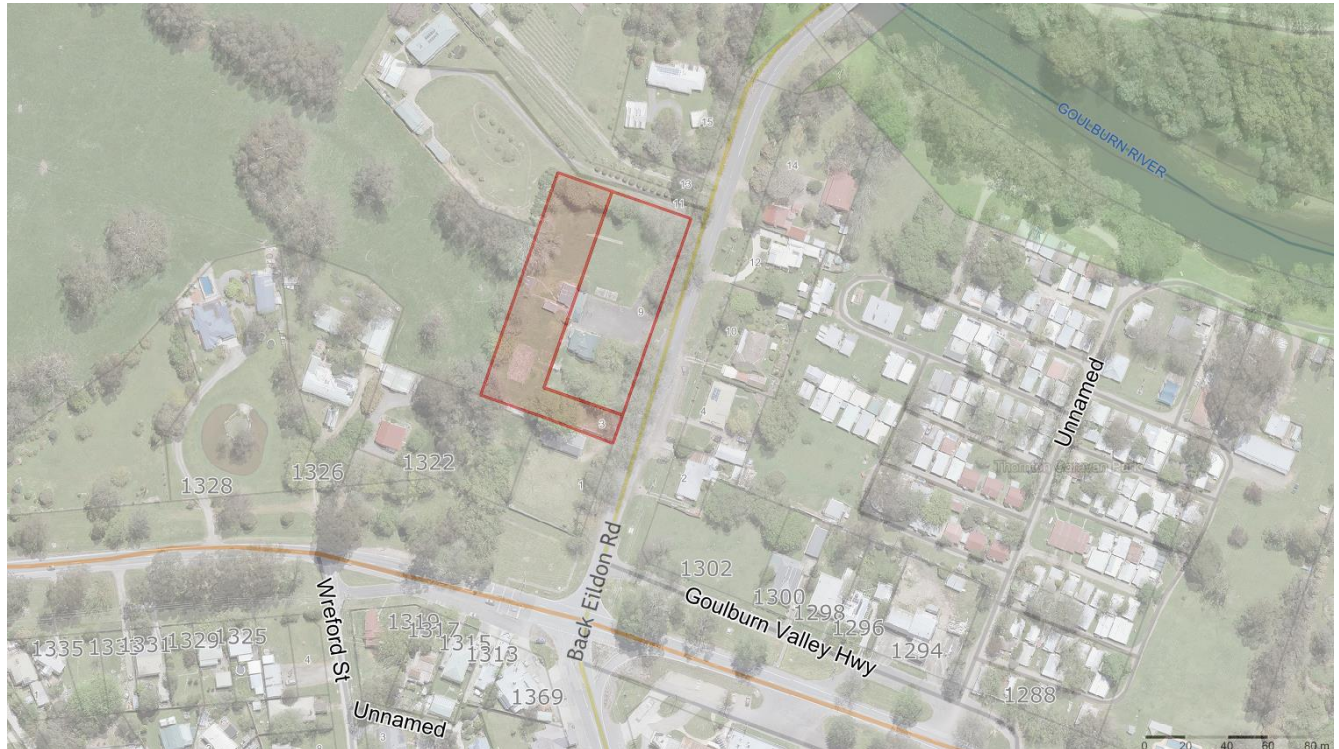
Cr C Bisset left the meeting at 9.02pm

#### **5.1 THORNTON PRIMARY SCHOOL – USE OF LAND FOR THE PURPOSE OF A CAFE**

Attachment(s):            *Attachments (Attachment 5.1)*  
                                     *Submissions (distributed to Councillor separately)*

Land:                        3 Back Eildon Road Thornton  
Proposal:                Use of the land for a Cafe  
Applicant:                Bell Legal & Planning  
Zoning:                    Township Zone  
Overlays:                Heritage Overlay (HO90)  
                                     Floodway Overlay

## Locality Plan



### Purpose

This report recommends that a Notice of Decision to Grant a Permit be issued for the use of the land for a Cafe at 3 Back Eildon Road Thornton.

### Officer Recommendation

That Council issue a Notice of Decision to Grant a Permit for the use of the land for a Cafe at 3 Back Eildon Road Thornton 3712 (LOT: 1 TP: 431776, Lot: 1 TP: 962705, Parish of Thornton), subject to the following conditions:

- (1) Prior to the commencement of the use, Lot: 1 TP: 431776 and Lot: 1 TP: 962705 must be consolidated.
- (2) Prior to the commencement of works an amended site plan must be submitted and approved by the Responsible Authority. Such plan must be generally in accordance with the submitted plan but amended to show:
  - a) The relocation of the carpark so it does not encroach by more than 10% of the Tree Protection Zone of the Elm tree at the front of the site
  - b) Additional detail defining the area for the outdoor seating including any tables and chairs
  - c) The location of staff parking.
- (3) The layout of the site as shown on the endorsed plans, shall not be altered or modified without the consent in writing of the Responsible Authority
- (4) The café may only be open to the public between the hours of 6:30am to 5:30pm daily except with the written consent of the Responsible Authority
- (5) The café may only have a maximum of thirty-six patrons (including indoor and outdoor seating areas) at any one time unless with the prior written consent of the Responsible Authority

- (6) The use hereby permitted shall not cause nuisance or injury to, or prejudicially affect the amenity of the locality, by reason of the appearance of any building, works, or materials on the land, the emission of noise, light spill, vibration, smell, fumes, smoke, vapour, steam soot, ash, dust, waste water, waste products, or otherwise
- (7) All sewage and sullage waters shall be treated in accordance with the requirements of the Environment Protection Authority and the Council. All effluent shall be disposed of and contained within the curtilage of the land and shall not discharge directly or indirectly to an adjoining property, street or any water course, water storage or dam. Sufficient land shall be set aside and kept available for the purpose of effluent disposal
- (8) All wastewater must be treated to minimum 20/30 standard and disposed of according to the supplied LCA Report No: A200505 and is to be contained on-site. Due to proximity of Goulburn River and Flood Overlay over land, treated wastewater disposal must be located in the area as per LCA
- (9) Prior to the commencement of any works, including site works, the applicant shall obtain a septic tank permit from Council. Sewerage treatment must be by package treatment plant to the satisfaction of the Responsible Authority
- (10) All refuse and rubbish associated with the use allowed must be removed from the area at least once weekly, and more often if required by the Responsible Authority
- (11) Prior to commencing construction a suitable prepared engineering plan detailing the proposed driveway, earthworks and drainage, erosion and sediment control measures must be submitted to the Responsible Authority and receive its endorsement
- (12) Before construction works start associated with the provision of driveway, drainage and car parking, detailed construction plans in accordance with the endorsed plan, AS 2890 Part 1 Off Street Car parking and AS 3500 Part 3 Stormwater Drainage and to the satisfaction of the relevant authority must be submitted to and approved by the responsible authority. The design and plans must be drawn to scale with levels and dimensions and prepared by a suitable qualified person
- (13) 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
- (14) The vehicular crossing which would be used for this development must be constructed or upgraded to the satisfaction of the responsible authority. Construction of the vehicular crossing must comply with the SD 255 of IDM for Rural Vehicle Crossings
- (15) Car spaces, access lanes and driveways must be kept available for these purposes at all times and guest car parking must be confined to the designated parking area within the site, as set out on the endorsed plan

Signs to the satisfaction of the Responsible Authority must be provided directing drivers to the area/s set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The area of each sign must not exceed 0.3 square metres.

#### Planning Permit Expiry

This permit shall expire if the use has not commenced within two (2) years of the date hereof, or any extension of such period the Responsible Authority may allow in writing. A request for an

extension of time may be made before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet commenced, or within 12 months after the permit expiry date, where the development allowed by the permit lawfully commenced before the permit expired.

### **The Land and Surroundings**

The subject site is rectangular in shape and 7,800m<sup>2</sup>. There is a frontage to Back Eildon Road of 144 metres and a depth of 68 metres.

The site was previously used as a primary school and contains an old school building and associated shedding. There is also a bitumen basketball court and an oval along with significant established native exotic vegetation primary along the property boundaries.

The subject site has four direct abuttals, three of which are of similar size and are residential properties. The site abutting the site to the west is an agricultural lot of approximately 49 hectares. There are five properties on the eastern side of Back Eildon Road which face the subject site.

The area can generally be characterised as a small mixed use township, with residential and commercial uses throughout the town. Thornton consists of a population of approximately 300 people (2016 census) and includes a butchers, general store, Rubicon Hotel-Motel, Goulburn River Lodge, a memorial hall, recreation reserve and some food and drink premises. The town is located on the Goulburn Valley Highway which is a major thoroughfare for tourists visiting Lake Eildon.

### **Background**

The site was previously used for Thornton Primary School. The building proposed to be used for a café was constructed in 1902 and moved to the site in 1923. The use of the site for a primary school ceased in 2013 and the site has not been used since.

The subject site was previously zoned Public Use Zone – Schedule 2 (PUZ2). The PUZ2 identifies public land used for educational purposes. The site was rezoned in 2018 by the State Government to Township Zone.

### **Proposal**

The application is for the use of the existing school building for a café with a seating capacity of 36 patrons.

The café will include both sit-down and takeaway food, serving breakfast and lunch, as well as morning and afternoon teas and hot drinks for patrons.

There are no external works proposed for this building. A shelter shed will be updated to provide for food preparation services and office. The existing former school toilet block will also be updated to provide toilet facilities to patrons.

It is proposed that 5 car parking spaces will be provided for onsite with 7 additional car parking spaces available on the road reserve.

### **Community and Stakeholder Consultation**

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

- letters to adjoining and nearby property owners and occupiers (25 properties)
- sign on site.

Three submissions objecting to the proposal were received from three neighbouring properties.



The objections received in relation to the current proposal cover a number of matters which include:

- It is considered an inappropriate use in a residential area
- The café will result in increased noise impacts
- Increased traffic will impact on the amenity of the area
- The proposed opening hours will impact residential amenity of the area
- An insufficient number of car parks have been proposed
- Concern that effluent disposal is not sufficient for the proposed use
- Other businesses within the Thornton Township will be negatively impacted.

The above objections are discussed in greater detail later in this report.

While no meeting of parties was held the concerns raised by the objectors have been discussed with the objectors.

A response was provided by the applicant which has been forwarded to them for their consideration.

### **Referrals**

The application was referred to Goulburn Broken Catchment Management Authority who did not object or provide conditions.

### **Discussion – Planning Considerations**

#### State Planning Policy - Clause 11.01-1S Settlement

The objective of this policy is to promote the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements and includes a strategy to develop sustainable communities offering convenient access to jobs, services, infrastructure and community facilities.

The proposed use of the land will provide access to employment and services for the community. The central location of the café will be within walking distance for several residential dwellings as well as the caravan park.

#### State Planning Policy – Clause 13.07-1S Land Use Compatibility

The objective of land use compatibility policy is to safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site amenity impacts.

It seeks to achieve this involves ensuring the compatibility of a use or development as appropriate to the land use functions and character of the area by using a range of building design, operational and land use separation measures.

The proposed use of the land for a café of this scale is unlikely to have significant impact on the nearby residential uses.

The characteristics of the proposal are such that the amenity impacts will be limited. The use of land is for a maximum of 36 patrons on the site.

The proposed café is to be located in an existing school building which is setback approximately 55 metres from residential uses. This allows for an appropriate distance of the proposed use from the more sensitive residential uses.

The car parking required for the proposed use will be required to be constructed to the appropriate standards. Given the small amount of parking associated with the use, it is unlikely to have significant amenity impacts on nearby residences.

The subject site is located in the centre of the Thornton Township and on route to Lake Eildon. It is in close proximity to the existing hotel, Caravan Park and main shopping strip. Given the

inherent amenity impacts of this area it is unlikely that the use of a café on this site will have a significant impact on the amenity of the area for residential properties.

It is considered that any minor amenity impacts generated by the use of café and associated traffic and car parking can be mitigated through appropriate conditions on any planning permit issued.

#### State Planning Policy – Clause 13.05-1S Noise Abatement

The objective of this policy to assist the control of noise effects on sensitive land uses.

The strategies to achieve this ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.

It is unlikely that the proposed use will unreasonably increase noise impacts given the central location of the proposed café. However, appropriate conditions are proposed to be included on a planning permit should one be issued to ensure this is the case.

#### State Planning Policy - Clause 15.01-1S Urban Design

The objective of this clause to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity. Strategies include ensuring 'that development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads'.

The subject site is currently in poor condition as it has not been maintained or used since the primary school ceased operating in 2013. The proposal includes plans to improve the site from an amenity perspective while protecting the heritage of the site. It is considered that there will be an improved visual amenity outcome associated with the proposal. As a result of the development it is proposed that the school building will be painted and the grounds appropriately maintained.

#### State Planning Policy – Clause 17.02-1S Business

This policy encourages the development that meets the community's needs for retail, entertainment, office and other commercial services.

This can be achieved through the location of commercial facilities in existing activity centres to provide small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

The proposed café will provide the community and visitors to the area with an additional food and drink premises within the existing activity centre.

#### Clause 32.05 - Township Zone

The purpose of the Township Zone is:

- to provide for residential development and a range of commercial, industrial and other uses in small towns
- to encourage development that respects the neighbourhood character of the area
- to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

The Township Zone allows for the consideration of a range of uses where commercial area is not able to be separately zoned due to the size of the township itself. This zone allows for residential and commercial uses to be placed closer together than would normally be considered for bigger towns with more capacity to provide for separation of uses.

The proposed use for a café within the township of Thornton is consistent with the purpose of Township Zone.

The decision guidelines to be taken into consideration when assessing this proposal include:

- the protection and enhancement of the character of the town and surrounding area including the retention of vegetation
- in the absence of reticulated sewerage, the capability of the lot to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria) under the *Environment Protection Act 1970*
- the effect that existing uses on adjoining or nearby land may have on the proposed use
- the safety, efficiency and amenity effects of traffic to be generated by the proposal.

The location of the site, being on the main road through Thornton, is considered appropriate for a business such as this, as it is serviced by sealed roads, and will allow the business to attract through traffic.

The planning scheme supports the locating of business in existing townships to provide for local and tourism needs, as this proposal will do.

The site has formerly been used as a primary school and the site has not been remediated for a more sensitive use such a residential use. As such, it is not unreasonable to anticipate that the site with the infrastructure available would be used for a commercial purpose.

#### Clause 44.03 - Floodway Overlay

The purpose of the Floodway Overlay is, 'to ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting'.

As no development was proposed as part of this application a mandatory referral was not required to Goulburn Broken Catchment Management Authority (GBCMA). Notice of the application was provided to GBCMA who did not object to the proposal or provide conditions.

#### Clause 52.06 - Car Parking

The purpose of Clause 52.06 is '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'.

The proposal included 5 car parking spaces on the site and the availability of 7 car parking spaces on the road reserve.

Clause 52.06 of the Murrindindi Planning Scheme requires that 6 car parking spaces be provided for the proposed café. It has been demonstrated that this achievable for this site with the requirements of the scheme being met.

The location of the car parking spaces on the site are within close proximity of an elm tree and it is considered that the proposed works would have an impact on the long term life expectancy of the tree. A condition for amended plans to ensure no more than 10% of the tree protection zone is encroached has been included in the officer recommendation. Under the Australian standards for tree protection an encroachment of greater than 10% would deem the tree as lost.

### **Discussion – Submissions**

#### It is considered an inappropriate use in a residential area

As discussed above, the subject site is located within the Township Zone which promotes mixed uses within the township of Thornton. Furthermore the subject site is located in close proximity to the commercial centre of town.

The proximity of the proposed café to residential properties has been considered in the assessment of this proposal. Given the scale of the use and the setbacks from residential uses

and substantial vegetation separating the use it is considered that the amenity impacts can be mitigated.

The café will result in increased noise impacts

The use of the land for a café is not expected to generate an unreasonable level of noise to surrounding residential properties above existing noise levels and what could be expected in a mixed use area. However, conditions have been placed on the planning permit to ensure that there will not be excessive noise associated with the use.

Increased traffic will impact on the amenity of the area

The site is located within the township on a sealed collector road that is maintained by Council. It is considered that the road is of sufficient width and quality to accommodate any increases in traffic due to the proposed café.

The proposed opening hours will impact residential amenity of the area

The proposed operating hours are considered reasonable for the area and the use of the land. The opening time is typical of a cafe as it will capture those driving to work. The applicant highlighted that the proposed hours were required to accommodate the needs of residents, tourists and passing traffic.

The proposed operating hours are appropriate as the proposal would not unreasonably impact the surrounding residential amenity whilst also serving the needs of the community.

Insufficient number of car parks being proposed resulting in parking on nature strips

As discussed above, the applicant has proposed more spaces than required by the planning scheme. Furthermore, it is likely that patrons may walk to the café from nearby accommodation and residences.

Concern that effluent disposal is not sufficient for the proposed use

The application was accompanied by a Land Capability Assessment detailing how effluent disposal will be dealt with on site. This was referred to Councils Environmental Health Unit who were satisfied that the proposed system was sufficient to accommodate all waste water generated by the proposed use.

Other businesses within the township of Thornton will be negatively impacted

This is not a planning consideration and therefore has not been able to be considered in assessing this application.

## **Conclusion**

Council officers are satisfied that this application proposal is consistent with the provisions of the Murrindindi Planning Scheme. The use of the existing building for a café is considered an appropriate activity in the Township Zone. It is supported by local and state planning policy as it will provide a service to the community and tourists to the area. It is considered that any amenity impacts can be mitigated with appropriate conditions.

## **Relevant VCAT cases**

*Tossoll v Murrindindi Shire Council (VCAT reference P1723/2019)* related to an application to reinstate the use of a building for a petrol station. The decision of Council was upheld by VCAT and allowed for the petrol station site to operate during the hours of 6am to 10pm Monday to Friday inclusive and 7am to 8pm Saturday and Sunday. The following findings by Member Fong are relevant to this application:

- 12 As commented at the hearing, the Township zoning of the land is clear of what land uses are anticipated. It is a zone for smaller towns in Murrindindi which are compact and where a number of commercial and industrial uses are permitted subject to a permit. Relevant planning policies also seek to facilitate commercial and industrial uses that serve the local community and promote the economic well-being of the region. The proposed re-use of a

former service station on a main road and abutting a caravan park is one that service the local community and in assisting and enhancing the tourism attraction of the region.

- 25 A proposal causing some amenity impact does not mean a proposal must fail. The zoning of the land and relevant planning policies demonstrate that planning is to facilitate uses that would be of benefit to the community. It is a matter whether the amenity impact is excessive or can be managed to achieve community accepted standards.

### **Council Plan/Strategies/Policies**

This report is consistent with the *Council Plan 2017-2021* 'Our Place' and 'Our Prosperity' strategic objectives:

- "we will maintain and enhance places to be attractive and liveable, in balance with our natural environment"
- "through good land use planning enhance the liveability, prosperity and rural character of our Shire"
- "work with our businesses, regional partners and communities to support a diverse visitor experience that promotes our natural assets, and a vibrant range of events".

### **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 are no declared officer's conflicts of interest in relation to this report.

### **RESOLUTION**

**Cr J Ashe / Cr M Rae**

**That Council issue a Notice of Decision to Grant a Permit for the use of the land for a Cafe at 3 Back Eildon Road Thornton 3712 (LOT: 1 TP: 431776, Lot: 1 TP: 962705, Parish of Thornton), subject to the following conditions:**

- (1) Prior to the commencement of the use, Lot: 1 TP: 431776 and Lot: 1 TP: 962705 must be consolidated.**
- (2) Prior to the commencement of works an amended site plan must be submitted and approved by the Responsible Authority. Such plan must be generally in accordance with the submitted plan but amended to show:**
  - a) The relocation of the carpark so it does not encroach by more than 10% of the Tree Protection Zone of the Elm tree at the front of the site**
  - b) Additional detail defining the area for the outdoor seating including any tables and chairs**
  - c) The location of staff parking.**
- (3) The layout of the site as shown on the endorsed plans, shall not be altered or modified without the consent in writing of the Responsible Authority**
- (4) The café may only be open to the public between the hours of 6:30am to 5:30pm daily except with the written consent of the Responsible Authority**
- (5) The café may only have a maximum of thirty-six patrons (including indoor and outdoor seating areas) at any one time unless with the prior written consent of the Responsible Authority**

- 
- (6) The use hereby permitted shall not cause nuisance or injury to, or prejudicially affect the amenity of the locality, by reason of the appearance of any building, works, or materials on the land, the emission of noise, light spill, vibration, smell, fumes, smoke, vapour, steam soot, ash, dust, waste water, waste products, or otherwise**
  - (7) All sewage and sullage waters shall be treated in accordance with the requirements of the Environment Protection Authority and the Council. All effluent shall be disposed of and contained within the curtilage of the land and shall not discharge directly or indirectly to an adjoining property, street or any water course, water storage or dam. Sufficient land shall be set aside and kept available for the purpose of effluent disposal**
  - (8) All wastewater must be treated to minimum 20/30 standard and disposed of according to the supplied LCA Report No: A200505 and is to be contained on-site. Due to proximity of Goulburn River and Flood Overlay over land, treated wastewater disposal must be located in the area as per LCA**
  - (9) Prior to the commencement of any works, including site works, the applicant shall obtain a septic tank permit from Council. Sewerage treatment must be by package treatment plant to the satisfaction of the Responsible Authority**
  - (10) All refuse and rubbish associated with the use allowed must be removed from the area at least once weekly, and more often if required by the Responsible Authority**
  - (11) Prior to commencing construction a suitable prepared engineering plan detailing the proposed driveway, earthworks and drainage, erosion and sediment control measures must be submitted to the Responsible Authority and receive its endorsement**
  - (12) Before construction works start associated with the provision of driveway, drainage and car parking, detailed construction plans in accordance with the endorsed plan, AS 2890 Part 1 Off Street Car parking and AS 3500 Part 3 Stormwater Drainage and to the satisfaction of the relevant authority must be submitted to and approved by the responsible authority. The design and plans must be drawn to scale with levels and dimensions and prepared by a suitable qualified person**
  - (13) 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**
  - (14) The vehicular crossing which would be used for this development must be constructed or upgraded to the satisfaction of the responsible authority. Construction of the vehicular crossing must comply with the SD 255 of IDM for Rural Vehicle Crossings**
  - (15) Car spaces, access lanes and driveways must be kept available for these purposes at all times and guest car parking must be confined to the designated parking area within the site, as set out on the endorsed plan**

**Signs to the satisfaction of the Responsible Authority must be provided directing drivers to the area/s set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The area of each sign must not exceed 0.3 square metres.**

### **Planning Permit Expiry**

This permit shall expire if the use has not commenced within two (2) years of the date hereof, or any extension of such period the Responsible Authority may allow in writing. A request for an extension of time may be made before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet commenced, or within 12 months after the permit expiry date, where the development allowed by the permit lawfully commenced before the permit expired.

**CARRIED UNANIMOUSLY**

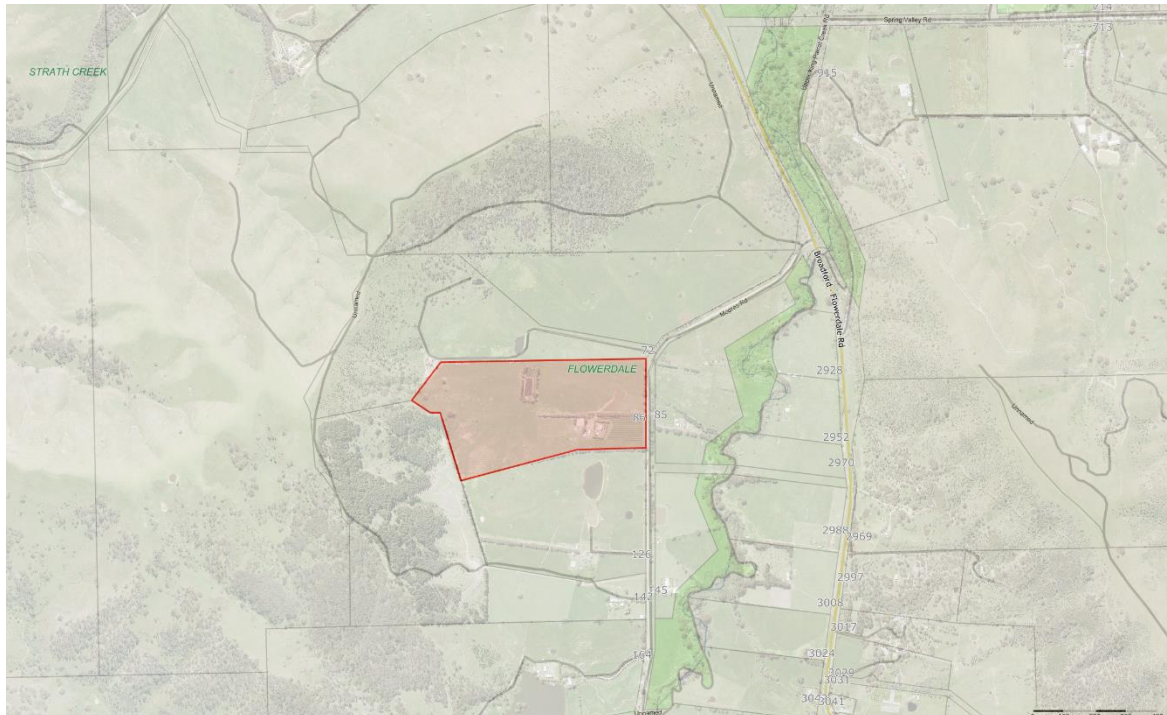
Cr C Bisset re-joined the meeting at 9:08pm.

## **5.2 86 MOORES ROAD, FLOWERDALE – GROUP ACCOMMODATION**

Attachment(s): *Attachments (Attachment 5.2)*  
*Submissions (Distributed to Councillors separately)*

Land: 86 Moores Road FLOWERDALE 3717  
Proposal: Use and development of the land for the purpose of group accommodation  
Applicant: Planning Sustainable Solutions  
Zoning: Farming Zone  
Overlays: Bushfire Management Overlay (Partial)  
Permit Triggers: Clause 35.07 – 1 – Use of land for group accommodation  
Clause 35.07- 4 - Buildings and works associated with a Section Use

### **Locality Plan**



### **Purpose**

This report recommends that a notice of decision to grant a permit be issued for the 'Use and development of the land for the purpose of group accommodation' at 86 Moores Road, Flowerdale.

**Officer Recommendation**

That Council issue a notice of decision to grant a permit for 'Use and development of the land for the purpose of group accommodation' at 86 Moores Road FLOWERDALE 3717 (Lot: 3 PS: 306336, Parish of Flowerdale), subject to the following conditions:

- (1) Prior to the commencement of works an amended Farm Management Plan and site plan are required to be submitted to and approved by the Responsible Authority. Once approved the amended plans will be endorsed and form part of this permit. The plans must be generally in accordance with those provided but amended to include the following:

**Farm Management Plan**

- a) A scaled and dimensioned plan showing:
- i. Proposed fencing, including fencing and appropriate gates along the boundary
  - ii. Contours of the land and the natural drainage lines which run through the land
  - iii. The riparian area along the waterway to the north of the site and the protection of this waterway
  - iv. Existing and proposed access including details relating to the vehicle crossing of the drainage lines
  - v. Screen planting on the north western boundary, opposite the residence at number 72 Moores Road is to be setback 30 metres from the boundary to avoid increased threat from bushfires.
- b) Details relating to:
- i. Proposed staging for the establishment of farm infrastructure, including the fencing and preparation works to be established prior to the construction of the group accommodation on the land
  - ii. The timing of plantings of the revegetation area and for the food forests.
  - iii. The quantity of the native vegetation to be planted in the revegetation area
  - iv. The quantity of the different varieties of trees and herbs in the food forest
  - v. A schedule of proposed plantings for landscaping. Plantings must not include *Robinia Pseudoacacia* or any pest plants
  - vi. Management and eradication programs for weeds and pest animals
  - vii. Vegetation planting and weed control within the riparian zone of the waterway to the north of the subject site.
- c) A schedule of works to implement the plan requirements over a five year period.

**Site Plan**

- d) An updated site plan that is generally in accordance with the plan submitted but amended to show
- i. Removal of reference to the community building which is to be relabelled as communal space.
  - ii. The waterway to the north of the site.
- (2) Prior to the commencement of any buildings and works associated with the cabins and communal space the permit holder must demonstrate that the endorsed Farm Management Plan has substantially commenced, with the completion of fencing, the establishment of the walnut and chestnut farms and evidence of the reestablishment of the cherry farm to the satisfaction of the Responsible Authority.
- (3) The property is to be managed on a continuing basis in accordance with the Farm Management Plan endorsed under condition 1. This condition continues to have force and effect after the development approved by this permit is complete.
- (4) Prior to the commencement of any buildings or works the owner must enter into an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987*. The agreement must state:
- a) The property is to be managed in accordance with the Farm Management Plan, endorsed under this permit or as amended with the consent of the Responsible Authority, and to the satisfaction of the Responsible Authority on a continuing basis



- b) The use of the land for accommodation may only occur in conjunction with the land managed in accordance with Farm Management Plan endorsed under this permit or as amended with the consent of the Responsible Authority.

The land owner must pay the reasonable costs of the preparation, execution and registrations of the Section 173 Agreement.

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.

- (5) The layout of the site and the size and type of the proposed buildings and works, including the materials of construction, as shown on the endorsed plans, shall not be altered or modified without the consent in writing of the Responsible Authority
- (6) A copy of this planning permit must be provided to any new land owner
- (7) The group accommodation approved by this permit must not exceed 6 cabins with a total maximum occupancy of two people per cabin and 12 people in total
- (8) The use of the cabins must not be used as a permanent place of residence
- (9) The existing dwelling must be occupied by the permit holder at all times when the site is being used for group accommodation
- (10) All external cladding including the roof and trims of the building must be coloured or painted in muted shades of green, brown or charcoal, or in a colour approved in writing by the Responsible Authority
- (11) 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
- (12) The owner/operator must ensure that litter is not deposited beyond the boundaries of the premises to the satisfaction of the Responsible Authority
- (13) 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
- (14) The use 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 or otherwise
- (15) All sewage and sullage waters shall be treated in accordance with the requirements of the Environment Protection Authority, Land Capability Assessment and the Responsible Authority. All effluent shall be disposed of and contained within the boundaries of the land and shall not discharge directly or indirectly to an adjoining property, street or any water course, water storage or dam. Sufficient land shall be set aside and kept available for the purpose of effluent disposal
- (16) At the time of the development all onsite wastewater and stormwater management shall be in accordance with the recommendations outlined within the Land Capability Assessment prepared by Paul Williams, LCA Report No: A190803
- (17) Existing septic system to have full report undertaken by a licensed plumber to determine its operational condition prior to commencement of works
- (18) Permits to install septic systems will be required from Council prior to the commencement of works

- (19) Prior to commencing construction a suitable prepared engineering plan detailing the proposed driveway, earthworks and drainage, including erosion and sediment control measures must be submitted to the Responsible Authority and receive its endorsement.
- (20) 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.
- (21) Prior to commencing the use of land for group accommodation, any new or otherwise vehicular entrance to the subject land from the road must be constructed at applicant's expense to provide ingress and egress to the site at a location and of a size and standard satisfactory to the Responsible Authority. Refer to Council's Infrastructure Design Manual Section 12.9.2 - Rural Vehicle Crossings and standard drawing SD 255. An appropriate rural road number plaque at the access point to development to the satisfaction of the Responsible Authority
- (22) Prior to the commencement of works associated with the provision of the driveway, drainage and car parking, detailed construction plans must be submitted to and approved by the Responsible Authority. Such plans must be in accordance with AS 2890 Part 1 Off Street Car Parking and AS 3500 Part 3 Stormwater Drainage. The design and plans must be drawn to scale with levels and dimensions and prepared by a suitable qualified person
- (23) Signs to the satisfaction of the Responsible Authority must be provided directing drivers to the area(s) set aside for car parking and must be located and maintained to the satisfaction of the responsible authority. The area of each sign must not exceed 0.3 square metres
- (24) Prior to the commencement of use or the occupation of the development starts, 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
- (25) Car spaces, access lanes and driveways must be kept available for these purposes at all times
- (26) Before the building is 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.
- (27) Prior to the commencement of the use, the 20,000 litre water tank of effective water supply for firefighting purposes as depicted in drawing – (Map 1 – Bushfire Emergency Plan – 86 Moores Road Flowerdale) must meet the following requirements:
- a) Be stored in an above ground water tank constructed of concrete or metal
  - b) Have all fixed above ground water pipes and fittings required for firefighting purposes made of corrosive resistant metal
  - c) Include a separate outlet for occupant use
  - d) Be readily identifiable from the building or appropriate identification signage to the satisfaction of the relevant fire authority
  - e) Be located within 60 metres of the outer edge of the approved buildings
  - f) The outlet/s of the water tank must be within 4 metres of the access way and unobstructed
  - g) Incorporate a separate ball or gate valve (British Standard Pipe (BSP 65 millimetre) and coupling (64 millimetre CFA 3 thread per inch male fitting)
  - h) Any pipework and fittings must be a minimum of 65 millimetres (excluding the CFA coupling).
- (28) Prior to the commencement of the use, access for firefighting purposes must be provided which meets the following requirements:

- a) All-weather construction
  - b) A load limit of at least 15 tonnes
  - c) Provide a minimum trafficable width of 3.5 metres
  - d) Be clear of encroachments for at least 0.5 metre on each side and at least 4 metres vertically
  - e) Curves must have a minimum inner radius of 10m
  - f) The average grade must be no more than 1 in 7 (14.4 per cent) (8.1 degrees) with a maximum of no more than 1 in 5 (20 per cent) (11.3 degrees) for no more than 50m
  - g) Dips must have no more than a 1 in 8 (12.5 per cent) (7.1 degrees) entry and exit angle
  - h) Incorporate a turning area for fire fighting vehicles close to the building by one of the following:
    - i. A turning circle with a minimum radius of eight metres
    - ii. A driveway encircling the dwelling
    - iii. The provision of vehicle turning heads – such as a T or Y head – which meets the specification of Austroad Design for an 8.8 metre Service Vehicle.
  - i) Incorporate passing bays at least every 200m which must be at least 20 metres long and have a minimum trafficable width of 6 metres.
- (29) Before the development is occupied or the use commences, a Bushfire Emergency Plan (BEP) to the satisfaction of the Responsible Authority and CFA must be submitted to and endorsed by the Responsible Authority. The BEP must clearly describe the proposed emergency management arrangements and should address the following matters:
- a) Premises details
    - i. Describe property and business details
    - ii. Identify the purpose of the BEP stating that the plan outlines procedures for:
      - Closure of premises on any day with a Fire Danger Rating of Code Red & Extreme
      - Evacuation (evacuation from the site to a designated safer off-site location)
      - Shelter-in-place (remaining on-site in a designated building).
  - b) Review of the BEP
    - i. Outline that the plan must be reviewed and updated annually prior to the commencement of the declared Fire Danger Period
    - ii. Include a Version Control Table
  - c) Roles & Responsibilities
    - i. Detail the staff responsibilities for implementing the emergency procedures in the event of a bushfire
  - d) Emergency contact details
    - i. Position/contact details for emergency services personnel
  - e) Bushfire monitoring procedures
    - i. Details the use of radio, internet and social networks that will assist in monitoring potential threats during the bushfire danger period
    - ii. Describe and show (include a map) the area to be monitored for potential bushfire activity
  - f) Action Statements – trigger points for action
    - i. Prior to the Fire Danger Period
      - Describe on-site training sessions and fire equipment checks
        - a. Identify maintenance of bushfire protection measures such as vegetation management (including implementation of protection measures required by any endorsed Bushfire Management Plan)
    - ii. Closure of premise during forecast Fire Danger Rating of Code Red & Extreme days
      - Outline guest notification procedures and details of premises closure (including timing of closure)

- iii. Evacuation
    - Identify triggers for evacuation from site. For example, when evacuation is recommended by emergency services
    - Details of the location/s of the offsite emergency assembly location
    - Transport arrangements for staff and guests including details such as:
      - a. Number of vehicles required
      - b. Name of company providing transportation
      - c. Contact phone number for transport company
      - d. Time required before transportation is likely to be available
      - e. Estimated travelling time to destination
      - f. Actions after the bushfire emergency event
  - iv. Shelter-in-place
    - Show the location and describe the type of shelter-in-place
    - Triggers for commencing the shelter-in-place option
    - Procedures for emergency assembly in the shelter-in-place building
- (30) The use of the Group Accommodation Building approved under this permit and the use of the Cabin Accommodation must not operate after 10.00am on any day with a declared Fire Danger Rating of Code Red & Extreme.

#### Planning Permit Expiry

The permit shall expire if the development hereby permitted is not completed and the use commenced within two years of the date hereof, or any extension of such period the Responsible Authority may allow in writing. A request for an extension of time may be made before or within six months after the permit expiry date, where the use of development allowed by the permit has not yet commenced, or within 12 months after the permit expiry date, where the development allowed by the permit lawfully commenced before the permit expired.

#### NOTATIONS

An application for consent to work 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 Land and Surroundings**

The subject site is an irregular shaped lot and approximately 21 hectares in size. The site is developed by way of a single dwelling and agricultural sheds. The existing dwelling is located 140 metres from the eastern boundary and 56 metres from the southern boundary. The agricultural sheds are located 20 metres to the west of the dwelling.

There is a waterway cutting through the north east of the site and 3 large dams. There is an existing cherry orchard located on the south east of the site which covers approximately 1.3 hectares of the site. Aside from the cherry orchard the site is clear of significant areas of vegetation.

The subject site is located to the west of Moores Road with the existing access being approximately 800 metres from Broadford – Flowerdale Road. There are three direct abuttals, all of which are used for both agricultural and residential purposes and range in size from between approximately 20 to 40 hectares.

The area is generally characterised by agricultural and rural living uses. King Parrot Creek is located approximately 200 metres to the east. On the eastern side of King Parrot Creek are properties in the Rural Living Zone. Flowerdale Primary School and Flowerdale Hall are located approximately 2 kilometres to the south of the site.

**Proposal**

The proposal is for the use of the land for group accommodation which will comprise of 6 cabins and a building to be used by guests to eat meals and gather. The area to be developed for group accommodation is located 380 metres from Moores Road in line with the existing dwelling.

The cabins can be described as having the following features:

- Gross floor area of 34m<sup>2</sup> in size including outdoor area
- Consisting of a single bedroom, bathroom and sitting area
- Small private garden
- Constructed of strawbale walls with a render- tan finish.

The building identified on the plans as a community building has the following features:

- Seating area for meals
- Administration area
- Kitchen
- Constructed of strawbale walls with a plasterboard finish as well as transparent profiled wall sheeting with a tan finish.

The application was accompanied by a Land Capability Assessment, Emergency Bushfire Management Plan and Farm Management Plan.

**Cultural Heritage Management Plan**

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

**Community and Stakeholder Consultation**

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

- letters to adjoining and nearby property owners and occupiers (8 properties).

19 objections were received in relation to this proposal.

The grounds of objection can be summarised as follows:

- Biosecurity risks and trespassing
- Potential for wastewater to impact adjoining properties and creeks
- Visual impacts (the cabins will be visible from adjoining properties)
- The impacts of organic farming on surrounding properties ability to spray blackberries
- Potential for increased bushfire risk
- Traffic Impacts
- Exclusive for Chinese nationals
- Current management of the land.

The applicant provided a response to the above grounds of objection. This can be summarised as follows:

- It is not intended to be exclusive for people of Chinese background
- The development will result in employment during the construction phase
- The development will attract visitors to the area who will explore the area
- The community building would be used exclusively to the guests at this stage. Further approval would be required should the building be open to the community
- Traffic from the site will be minimal and guests will be directed to access the site from Broadford Flowerdale Road and consequently impacting one neighbouring property
- The development is 300 metres from the closest residential building creating a considerable setback. Vegetation screening has been proposed by the Farm Management Plan and would commence prior to the development
- No outdoor lighting is proposed

- A wastewater plan has been provided that details the capability, required space and capacity of the system
- The owners will be working with local experts to repair the existing cherry orchard and use the farm to its full capacity. This will be a conditional outcome of any planning permit issued
- The development will not impact adjoining farming uses as there are considerable buffers between the development and agricultural use
- The owners wish to achieve the outcomes detailed in the farm plan, however it is a working document and will further evolve with specific details relating to irrigation, water capacity and soil types
- Due to the fire risk associated with the windrow along the boundary of 72 Moores Road this can be removed
- The inclusion of *Robinia Pseudoacacia* can be removed from the Farm Plan given concern from neighbouring properties.

Attempts to mediate an outcome relating to the objection have not been successful. The issues raised by the submitters are discussed further in this report.

### **Referrals**

The application was not required to be referred to external referral authority.

The Country Fire Authority was notified of the application and invited to comment. The Country Fire Authority did not object to the application subject to conditions being included on any permit issued.

### **Discussion - Planning Considerations**

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)

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.

The proposed use of land for group accommodation will increase the exposure of the municipality to local and international travellers. It will provide for additional income to assist in the development and running of the cherry farm while ensuring the protection of the natural environment.

#### Planning Policy - Clause 02.03 (Strategic Directions)

This local planning policy requires the consideration of the economic development policies in making a determination of planning permit application. Council supports the following strategies to promote economic development:

- Encouraging sustainable growth in tourism, leveraging Murrindindi Shire's natural assets, proximity to Melbourne and links with neighbouring regions
- Encouraging small enterprises in tourism, creative arts, home-based businesses, overnight visitor accommodation and farm enterprises and markets that showcase local produce.

The use of the land for group accommodation with a connection to the agricultural use of the land achieves the objectives of this planning policy.

Planning Policy - Clause 12.01-1S (Protection of Biodiversity)

Clause 12.01-1S (Protection of Biodiversity) aims to assist the protection and conservation of Victoria's biodiversity. To ensure that decision making takes into account the impacts of land use and development on Victoria's biodiversity, the following strategies have been considered:

- Cumulative impacts
- Fragmentation of habitat, the spread of pest plants, animals and pathogens into natural ecosystems.

The proposal has located the group accommodation in close proximity to the existing dwelling. Additionally, land management strategies have been included to achieve the protection and enhancement of biodiversity of the site. This includes protection of waterways, the removal of pest plants and animals and the planting of native vegetation to the south east of the lot.

Planning Policy - Clause 13.07-1S (Land Use Compatibility)

Planning decisions must take into consideration Clause 13.07-1S (Land use compatibility) policy which requires the Responsible Authority to, 'safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects'.

To meet this objective, council officers must consider whether the proposed land use is appropriate for the existing functions and character of the area. Land use compatibility concerns can be reduced by directing land uses to appropriate locations and using a range of building design, urban design, operational and land use separation measures.

The proposed use of the land for group accommodation is compatible with the agricultural and rural living characteristics of the area. Given the proposed setbacks of the development and required landscaping there will be a considerable buffer between this use and the neighbouring residential uses. Furthermore, the small scale of the proposed group accommodation will limit any amenity impacts to surrounding residential uses.

Planning Policy - Clause 14.01 (Agriculture)

Along with the above decision guidelines, the application is required to be considered in relation to Clause 14.01 (Agriculture). This planning policy aims to protect productive agricultural land which is of strategic significance in the local or regional context by ensuring that the State's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land uses.

The proposed development and use will remove a minimal amount of land from agricultural production. The location of the group accommodation is in close proximity to the existing dwelling. Furthermore, it will be required to be used in conjunction with significant agricultural activities through endorsement of an appropriate farm management plan.

The group accommodation is setback an appropriate distance from surrounding agricultural activities, sufficient to create a buffer from these activities that it will not limit the use and expansion of surrounding agricultural uses. The additional impacts on agricultural production are considered to be minor given the existing use of neighbouring properties for residential uses, the proximity to the Rural Living Zone and to King Parrot Creek. These existing characteristics of the area limit its agricultural productivity.

Planning Policy - Clause 17.03 - 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.  
Strategies:

- Promote tourism facilities that preserve, are compatible with and build on the assets and qualities of surrounding activities and attractions
- Create innovative tourism experiences
- Encourage investment that meets demand and supports growth in tourism.

The proposal is consistent with the above objectives of state policy relating to tourism. There will be an increased exposure of the municipality which may result in additional visitors to the area. The experience provided by this type of use is sought after and its close proximity to Melbourne will make it an accessible rural tourist experience.

#### Clause 36.04 (Farming Zone)

The subject site is located in the Farming Zone. Under the *Planning Scheme* the use of the land for group accommodation requires a planning permit.

The following decision guidelines have been considered in the assessment of this proposal:

- Capability of the land to accommodate the proposal
- Compatibility with adjoining and nearby land uses
- How agricultural production is supported and enhanced
- The impact on physical features and resources of the area, in particular on soil and water quality
- Visual impact of development on surrounding land
- Whether the use and development will require traffic management measures.

It is considered that the size and characteristics of the subject site make it capable of accommodating the proposed use as well as the proposed land management and agricultural activities. Given the small scale of the proposed group accommodation it is considered that the subject site will be able to accommodate this use and development. It was demonstrated by the Land Capability Assessment that effluent disposal can be appropriately managed on site.

Given the surrounding properties use of land for residential and low scale farming enterprises it is considered that the proposal is consistent and compatible with surrounding land uses. By having a limitation 12 guests the impact on the rural amenity of the area is considered to be minimal and manageable. Land compatibility concerns can be further managed by considerable buffers and landscaping requirements from residential uses.

The proposed use of the land for group accommodation is supported by activities to increase and enhance the agricultural productivity of the site. This includes, the improved maintenance of the existing cherry orchard, cell grazing and cropping areas, a walnut and chestnut orchard and perennials and annuals in a permaculture type food forest.

The application has been assessed against any potential impacts on soil and water quality. There will be a requirement to ensure that waterways are protected. The development is of a minor scale in comparison to the size of the site. It is unlikely that the proposal will have significant impacts on the soil quality. Cell grazing and cropping will ensure that the soil is not significantly degraded.

The visual impacts of the proposed cabins and building on adjoining landowners can be reduced to acceptable level. This will be achieved by the use of muted tones on buildings and landscaping.

The proposed group accommodation is located in close proximity to the existing domestic zone and will remove a small portion of the land from agricultural purposes. However, the proposal was accompanied by a Farm Management Plan that included both agricultural and environmental outcomes.



The impacts of the proposed group accommodation have been considered against the potential agricultural and land management outcomes. On balance, it is considered that the benefits of this proposal outweigh the amenity and land use compatibility concerns. It is further submitted that these concerns can be addressed through appropriate conditions.

#### Clause 44.06 – Bushfire Management Overlay

The proposed development is situated outside of the Bushfire Management Overlay and as such did not require a planning permit under this clause. However, documents detailing bushfire measures were provided with this application and conditions ensuring bushfire safety are included in the officer recommendation.

#### **Discussion – Submissions**

##### Trespassing and biosecurity

Concerns were raised in relation to biosecurity risks that may occur as a result of trespassers on the land. It is suggested that visitors to the group accommodation may import agricultural disease on their clothing. Additionally concerns have been raised for the safety of visitors entering neighbouring properties where firearms are used to control pest animals. The property is appropriately fenced which delineates the property boundaries. In the officer recommendation a planning permit condition has been included that requires the dwelling onsite to be occupied by the landowners when the land is used for accommodation. The landowner is to ensure visitors will not enter neighbouring properties. Given the small numbers of guests this is considered to be a manageable risk.

##### Potential for wastewater to impact adjoining properties and creeks

Concerns have been raised that overland water will flow directly from the proposed wastewater disposal area into their farming property. Council's Environmental Health Officer is satisfied that the proposal is appropriate for the landscape and that the wastewater can be treated and retained within the subject site. Conditions of any permit issued will seek to ensure this outcome. A septic permit will also be required.

##### Visual impacts (the cabins will be visible from adjoining properties)

While the cabins are likely to be visible from the road, they will be well set back and will not be a dominating influence within the landscape. The colours and materials have been chosen to blend in with the surrounding rural landscape. The proposed development is considered to be modest in the context of the other uses, buildings and works on the land. Furthermore, landscaping plans will be required to be endorsed and implemented to further reduce the likelihood of any visual amenity impacts.

##### The impacts of organic farming on surrounding properties ability to spray blackberries

A planning permit is required for the use of the land for group accommodation. While the applicant has included in their documents an intention to implement organic farming methods this has not been assessed as part of the application as no planning permit is required for agriculture. If a planning permit was issued for the proposed use it would not result in limitations to surrounding property owners to manage their properties.

##### Increased bushfire risk

The land is not affected by a Bushfire Management Overlay and a bushfire management plan is not required. Notwithstanding, the land is within a Bushfire Prone Area and it is appropriate that conditions be put in place to ensure adequate access, water supply and cessation of use during high fire danger periods. The conditions provided by the Country Fire Authority included in the officer recommendation seek to ensure this outcome.

##### Traffic Impacts

The use of the land for no more than 12 guests onsite at any one time will be likely to generate no more than 24 vehicle movements per day. Given the minor increase in use and proximity to Broadford- Flowerdale Road it was considered that a Traffic Impact Report was not required.

### Exclusive use of the group accommodation for Chinese nationals

There was some confusion over whether the proposed group accommodation would only be accessible to Chinese tourists. The applicant has further clarified that all nationalities would be welcome to use the group accommodation. This is not a planning matter.

### Current management of the land

Concern has been raised over the legitimacy of the enterprise given the current management of the land. The officer recommendation includes requirements for a comprehensive Farm Management Plan to be endorsed and the land maintained in accordance with this plan. It is considered that this will result in a better land management outcome and is consistent with the decision guidelines of the Farming Zone. The applicant has sought local advice to increase the agricultural knowledge of the area.

### **Conclusion**

Council officers are satisfied that this application proposal is consistent with the provisions of the Murrindindi Planning Scheme. The proposal is for a defined area and, subject to conditions, will not have an adverse impact on agriculture on the subject site or on adjoining land. As the accommodation is modest in scale, is to be undertaken in association with improved land management and will achieve tourism objectives for the municipality, it is recommended that the application be approved.

### **Council Plan/Strategies/Policies**

This report is consistent with the *Council Plan 2017-2021* 'Our Place' and 'Our Prosperity' strategic objectives:

- "we will maintain and enhance places to be attractive and liveable, in balance with our natural environment"
- "through good land use planning enhance the liveability, prosperity and rural character of our Shire"
- "work with our businesses, regional partners and communities to support a diverse visitor experience that promotes our natural assets, and a vibrant range of events".

### **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 are no declared officer's conflicts of interest in relation to this report.

### **RESOLUTION**

**Cr M Rae / Cr R Bowles**

**That Council issue a notice of decision to grant a permit for 'Use and development of the land for the purpose of group accommodation' at 86 Moores Road FLOWERDALE 3717 (Lot: 3 PS: 306336, Parish of Flowerdale), subject to the following conditions:**

- (1) Prior to the commencement of works an amended Farm Management Plan and site plan are required to be submitted to and approved by the Responsible Authority. Once approved the amended plans will be endorsed and form part of this permit. The plans must be generally in accordance with those provided but amended to include the following:**

**Farm Management Plan**

- a) A scaled and dimensioned plan showing:**

- i. Proposed fencing, including fencing and appropriate gates along the boundary
  - ii. Contours of the land and the natural drainage lines which run through the land
  - iii. The riparian area along the waterway to the north of the site and the protection of this waterway
  - iv. Existing and proposed access including details relating to the vehicle crossing of the drainage lines
  - v. Screen planting on the north western boundary, opposite the residence at number 72 Moores Road is to be setback 30 metres from the boundary to avoid increased threat from bushfires.
- b) Details relating to:
- i. Proposed staging for the establishment of farm infrastructure, including the fencing and preparation works to be established prior to the construction of the group accommodation on the land
  - ii. The timing of plantings of the revegetation area and for the food forests.
  - iii. The quantity of the native vegetation to be planted in the revegetation area
  - iv. The quantity of the different varieties of trees and herbs in the food forest
  - v. A schedule of proposed plantings for landscaping. Plantings must not include *Robinia Pseudoacacia* or any pest plants
  - vi. Management and eradication programs for weeds and pest animals
  - vii. Vegetation planting and weed control within the riparian zone of the waterway to the north of the subject site.
- c) A schedule of works to implement the plan requirements over a five year period.

#### Site Plan

- d) An updated site plan that is generally in accordance with the plan submitted but amended to show
- i. Removal of reference to the community building which is to be relabelled as communal space.
  - ii. The waterway to the north of the site.
- (2) Prior to the commencement of any buildings and works associated with the cabins and communal space the permit holder must demonstrate that the endorsed Farm Management Plan has substantially commenced, with the completion of fencing, the establishment of the walnut and chestnut farms and evidence of the reestablishment of the cherry farm to the satisfaction of the Responsible Authority.
- (3) The property is to be managed on a continuing basis in accordance with the Farm Management Plan endorsed under condition 1. This condition continues to have force and effect after the development approved by this permit is complete.
- (4) Prior to the commencement of any buildings or works the owner must enter into an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987*. The agreement must state:
- a) The property is to be managed in accordance with the Farm Management Plan, endorsed under this permit or as amended with the consent of the Responsible Authority, and to the satisfaction of the Responsible Authority on a continuing basis
  - b) The use of the land for accommodation may only occur in conjunction with the land managed in accordance with Farm Management Plan endorsed under this permit or as amended with the consent of the Responsible Authority.

The land owner must pay the reasonable costs of the preparation, execution and registrations of the Section 173 Agreement.

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**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.**

- (5) The layout of the site and the size and type of the proposed buildings and works, including the materials of construction, as shown on the endorsed plans, shall not be altered or modified without the consent in writing of the Responsible Authority**
- (6) A copy of this planning permit must be provided to any new land owner**
- (7) The group accommodation approved by this permit must not exceed 6 cabins with a total maximum occupancy of two people per cabin and 12 people in total**
- (8) The use of the cabins must not be used as a permanent place of residence and must comply with the time frames applicable to holiday and short stay accommodation**
- (9) The existing dwelling must be occupied by the permit holder at all times when the site is being used for group accommodation**
- (10) All external cladding including the roof and trims of the building must be coloured or painted in muted shades of green, brown or charcoal, or in a colour approved in writing by the Responsible Authority**
- (11) 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**
- (12) The owner/operator must ensure that litter is not deposited beyond the boundaries of the premises to the satisfaction of the Responsible Authority**
- (13) 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**
- (14) The use 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 or otherwise**
- (15) All sewage and sullage waters shall be treated in accordance with the requirements of the Environment Protection Authority, Land Capability Assessment and the Responsible Authority. All effluent shall be disposed of and contained within the boundaries of the land and shall not discharge directly or indirectly to an adjoining property, street or any water course, water storage or dam. Sufficient land shall be set aside and kept available for the purpose of effluent disposal**
- (16) At the time of the development all onsite wastewater and stormwater management shall be in accordance with the recommendations outlined within the Land Capability Assessment prepared by Paul Williams, LCA Report No: A190803**
- (17) Existing septic system to have full report undertaken by a licensed plumber to determine its operational condition prior to commencement of works**
- (18) Permits to install septic systems will be required from Council prior to the commencement of works**
- (19) Prior to commencing construction a suitable prepared engineering plan detailing the proposed driveway, earthworks and drainage, including erosion and sediment control measures must be submitted to the Responsible Authority and receive its endorsement.**

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- (20) 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.
- (21) Prior to commencing the use of land for group accommodation, any new or otherwise vehicular entrance to the subject land from the road must be constructed at applicant's expense to provide ingress and egress to the site at a location and of a size and standard satisfactory to the Responsible Authority. Refer to Council's Infrastructure Design Manual Section 12.9.2 - Rural Vehicle Crossings and standard drawing SD 255. An appropriate rural road number plaque at the access point to development to the satisfaction of the Responsible Authority
- (22) Prior to the commencement of works associated with the provision of the driveway, drainage and car parking, detailed construction plans must be submitted to and approved by the Responsible Authority. Such plans must be in accordance with AS 2890 Part 1 Off Street Car Parking and AS 3500 Part 3 Stormwater Drainage. The design and plans must be drawn to scale with levels and dimensions and prepared by a suitable qualified person
- (23) Signs to the satisfaction of the Responsible Authority must be provided directing drivers to the area(s) set aside for car parking and must be located and maintained to the satisfaction of the responsible authority. The area of each sign must not exceed 0.3 square metres
- (24) Prior to the commencement of use or the occupation of the development starts, 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
- (25) Car spaces, access lanes and driveways must be kept available for these purposes at all times
- (26) Before the building is 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.
- (27) Prior to the commencement of the use, the 20,000 litre water tank of effective water supply for firefighting purposes as depicted in drawing – (Map 1 – Bushfire Emergency Plan – 86 Moores Road Flowerdale) must meet the following requirements:
- a) Be stored in an above ground water tank constructed of concrete or metal
  - b) Have all fixed above ground water pipes and fittings required for firefighting purposes made of corrosive resistant metal
  - c) Include a separate outlet for occupant use
  - d) Be readily identifiable from the building or appropriate identification signage to the satisfaction of the relevant fire authority
  - e) Be located within 60 metres of the outer edge of the approved buildings
  - f) The outlet/s of the water tank must be within 4 metres of the access way and unobstructed
  - g) Incorporate a separate ball or gate valve (British Standard Pipe (BSP 65 millimetre) and coupling (64 millimetre CFA 3 thread per inch male fitting)
  - h) Any pipework and fittings must be a minimum of 65 millimetres (excluding the CFA coupling).
- (28) Prior to the commencement of the use, access for firefighting purposes must be provided which meets the following requirements:

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- a) **All-weather construction**
  - b) **A load limit of at least 15 tonnes**
  - c) **Provide a minimum trafficable width of 3.5 metres**
  - d) **Be clear of encroachments for at least 0.5 metre on each side and at least 4 metres vertically**
  - e) **Curves must have a minimum inner radius of 10m**
  - f) **The average grade must be no more than 1 in 7 (14.4 per cent) (8.1 degrees) with a maximum of no more than 1 in 5 (20 per cent) (11.3 degrees) for no more than 50m**
  - g) **Dips must have no more than a 1 in 8 (12.5 per cent) (7.1 degrees) entry and exit angle**
  - h) **Incorporate a turning area for fire fighting vehicles close to the building by one of the following:**
    - i. **A turning circle with a minimum radius of eight metres**
    - ii. **A driveway encircling the dwelling**
    - iii. **The provision of vehicle turning heads – such as a T or Y head – which meets the specification of Austroad Design for an 8.8 metre Service Vehicle.**
  - i) **Incorporate passing bays at least every 200m which must be at least 20 metres long and have a minimum trafficable width of 6 metres.**
- (29) Before the development is occupied or the use commences, a Bushfire Emergency Plan (BEP) to the satisfaction of the Responsible Authority and CFA must be submitted to and endorsed by the Responsible Authority. The BEP must clearly describe the proposed emergency management arrangements and should address the following matters:**
- g) **Premises details**
    - i. **Describe property and business details**
    - ii. **Identify the purpose of the BEP stating that the plan outlines procedures for:**
      - **Closure of premises on any day with a Fire Danger Rating of Code Red & Extreme**
      - **Evacuation (evacuation from the site to a designated safer off-site location)**
      - **Shelter-in-place (remaining on-site in a designated building).**
  - h) **Review of the BEP**
    - i. **Outline that the plan must be reviewed and updated annually prior to the commencement of the declared Fire Danger Period**
    - ii. **Include a Version Control Table**
  - i) **Roles & Responsibilities**
    - i. **Detail the staff responsibilities for implementing the emergency procedures in the event of a bushfire**
  - j) **Emergency contact details**
    - i. **Position/contact details for emergency services personnel**
  - k) **Bushfire monitoring procedures**
    - i. **Details the use of radio, internet and social networks that will assist in monitoring potential threats during the bushfire danger period**
    - ii. **Describe and show (include a map) the area to be monitored for potential bushfire activity**
  - l) **Action Statements – trigger points for action**
    - i. **Prior to the Fire Danger Period**
      - **Describe on-site training sessions and fire equipment checks**
        - a. **Identify maintenance of bushfire protection measures such as vegetation management (including implementation of**

- protection measures required by any endorsed Bushfire Management Plan)**
- i. **Closure of premise during forecast Fire Danger Rating of Code Red & Extreme days**
    - **Outline guest notification procedures and details of premises closure (including timing of closure)**
  - ii. **Evacuation**
    - **Identify triggers for evacuation from site. For example, when evacuation is recommended by emergency services**
    - **Details of the location/s of the offsite emergency assembly location**
    - **Transport arrangements for staff and guests including details such as:**
      - a. **Number of vehicles required**
      - b. **Name of company providing transportation**
      - c. **Contact phone number for transport company**
      - d. **Time required before transportation is likely to be available**
      - e. **Estimated travelling time to destination**
      - f. **Actions after the bushfire emergency event**
  - iii. **Shelter-in-place**
    - **Show the location and describe the type of shelter-in-place**
    - **Triggers for commencing the shelter-in-place option**
    - **Procedures for emergency assembly in the shelter-in-place building**
- (31) **The use of the Group Accommodation Building approved under this permit and the use of the Cabin Accommodation must not operate after 10.00am on any day with a declared Fire Danger Rating of Code Red & Extreme.**

#### **Planning Permit Expiry**

The permit shall expire if the development hereby permitted is not completed and the use commenced within two years of the date hereof, or any extension of such period the Responsible Authority may allow in writing. A request for an extension of time may be made before or within six months after the permit expiry date, where the use of development allowed by the permit has not yet commenced, or within 12 months after the permit expiry date, where the development allowed by the permit lawfully commenced before the permit expired.

#### **NOTATIONS**

An application for consent to work 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.

**CARRIED**

#### **RESOLUTION**

**Cr E Lording / Cr S McAulay**

**That the meeting be extended for a further 30 minutes until 10:00pm**

**CARRIED UNANIMOUSLY**

**5.3                    2020/97 – 265 WHITTLESEA-KINGLAKE ROAD, KINGLAKE CENTRAL  
(C/A:2023)**

Attachment(s):        *Attachments (Attachment 5.3)*  
                              *Submissions (Distributed to Councillors separately)*



<b>Land:</b>	265 Whittlesea-Kinglake Road Kinglake Central 3757 (C/A:2023)
<b>Proposal:</b>	Use and development of the land for the purpose of a cemetery, associated signage, car parking to the satisfaction of the Responsible Authority, alteration to access to a road in a Road Zone - Category 1 and the removal of native vegetation (2 trees).
<b>Applicant:</b>	Maureen Jackson Planning
<b>Zoning:</b>	Public Use Zone –schedule 5
<b>Overlays:</b>	Bushfire Management Overlay, Environmental Significance Overlay – Schedule 1
<b>Triggers:</b>	Clause 36.01-1 – For a use which does not meet the section 1 use condition Clause 36.01-2 – Buildings and works associated with a section 2 use Clause 52.05-14 – Business identification sign Clause 52.17 – Removal of native vegetation Clause 52.29-2 – To create or alter access to a road in a Road Zone – Category 1

### Locality Plan



### Purpose

This report recommends that a Notice of Decision to grant a planning permit be issued for the use and development of the land for the purpose of a cemetery, associated signage, car parking to the satisfaction of the Responsible Authority, alteration to access to a road in a Road Zone - Category 1 and the removal of native vegetation (2 trees) at 265 Whittlesea-Kinglake Road Kinglake Central, C/A:2023.

### Officer Recommendation

That Council issue a Notice of Decision to grant a planning permit for the use and development of the land for the purpose of a cemetery, alteration to access to a road in a Road Zone - Category 1 and the removal of native vegetation (2 trees) at 265 Whittlesea-Kinglake Road Kinglake Central 3757 (C/A: 2023, Parish of Kinglake), subject to the following conditions:

- (1) Prior to the commencement of any buildings or works, amended plans shall be submitted and approved by the Responsible Authority. Such plans must be generally in accordance with the advertised plans but modified to show:
  - a) The proposed shed relocated to a location not requiring access from off Blackwood Lane, south of the dwelling at 30 Blackwood Lane



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- b) A notation that no fencing will use barbed wire and that animal friendly fencing will be used
  - c) A full landscape plan including a schedule of all proposed trees, shrubs/small trees and ground cover and locations of where they will be planted. When approved these plans shall be endorsed and form part of this permit.
- (2) The layout of the site and the size and type of the proposed buildings and works, including the materials of construction, as shown on the endorsed plan shall not be altered or modified without the consent in writing of the Responsible Authority
  - (3) Prior to the commencement, a Bushfire Emergency Plan (BEP) to the satisfaction of the Responsible Authority and CFA must be submitted to and endorsed by the Responsible Authority
  - (4) The signage shown on the endorsed plan can only be altered or modified with the written approval of the Responsible Authority
  - (5) The sign shall be located wholly within the subject land and shall be kept in good order and maintained to the satisfaction of the Responsible Authority
  - (6) 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 or otherwise.
  - (7) 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.
  - (8) The use for ceremonies hereby permitted shall take place only between the hours of 8am to 6pm Monday to Friday inclusive, 10am to 4pm Saturday, and 10am to 2pm Sunday, unless with prior written consent of the Responsible Authority.
  - (9) Prior to the commencement of the use allowed, the landscaping, as shown on the endorsed plan, must be completed to the satisfaction of the Responsible Authority. This area must then be maintained to the satisfaction of the Responsible Authority, and must not be used for any other purpose except with the prior written approval of the Responsible Authority.
- Vegetation offsets
- (10) Prior to the removal of any native vegetation, the permit holder must secure a native vegetation offset, in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017) as specified below:
    - a) A general offset of 0.045 general habitat units:
      - i. located within the Port Phillip and Westernport CMA boundary or the Murrindindi Shire Municipal District
      - ii. with a minimum strategic biodiversity score of at least 0.672
    - b) Evidence that the required offset for the development has been secured must be provided to the satisfaction of the Responsible Authority. The evidence required is at least one of the following:
      - i. an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site. The applicant must provide the annual offset site report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.
- AND/OR

- ii. credit extract allocated to the permit from the Native Vegetation Credit Register. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit.

### Plans

- (11) Prior to commencing construction a suitable prepared engineering plan detailing the improvements to Blackwood Lane, proposed access lanes, earthworks and drainage, including erosion and sediment control measures must be submitted to the Responsible Authority and receive its endorsement
- (12) Prior to the commencement of the approved use, the developer must construct the access in accordance with approved construction drawings.

### Crossovers

- (13) Prior to commencing of any construction works, two new sealed vehicular entrances to the subject land from Blackwood Lane must be constructed at applicant's expense to provide ingress and egress to the site at a location and of a size and standard satisfactory to the Responsible Authority. Refer to Council's Infrastructure Design Manual Section 12.9.2 - Rural Vehicle Crossings and standard drawing SD 255
- (14) Vehicle movement within the site shall be one way only, using separate crossover for ingress and egress to and from the site
- (15) An application for consent to work 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.

### Blackwood Lane

- (16) Intersection and turning lanes at the intersection of Whittlesea-Kinglake Road and Blackwood Lane shall be upgraded to the satisfaction of Responsible Authority, at the developer's expense.
- (17) Blackwood Lane shall be upgraded and sealed from Whittlesea-Kinglake Road to the western end of the property to the satisfaction of the Responsible Authority, at the developer's expense. Pavement design must include geotechnical investigation to confirm appropriate depth, a minimum of 250mm in accordance with the Infrastructure Design Manual SD 610.

### Parking

- (18) Carpark design

Before construction works start associated with the provision of driveway, drainage and car parking, detailed construction plans in accordance with the endorsed plan, AS 2890 Part 1 Off Street Car parking and AS 3500 Part 3 Stormwater Drainage and to the satisfaction of the relevant authority must be submitted to and approved by the responsible authority. The design and plans must be drawn to scale with levels and dimensions and prepared by a suitably qualified person.

- (19) Parking signs

Signs must be provided directing drivers to the area(s) set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The area of each sign must not exceed 0.3 square metres.

- (20) Carpark Construction

Prior to the commencement of use or the occupation of the development starts, 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

- (21) Car spaces, access lanes and driveways must be kept available for these purposes at all times.

### Access

#### (22) Internal Access

Before the building is 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.

### Department of Transport

(23) No direct access will be permitted from the subject land to the Whittlesea-Kinglake Road. Access will only be permitted from Blackwood Lane.

(24) Before the development starts the following must be submitted to and approved by the Department of Transport (Head, Transport for Victoria),

- a) A Functional Layout Plan (FLP) drawn to scale and undertaken by a VicRoads prequalified consultant, clearly dimensioned to show (but not limited to) the following:
  - i. The intersection of Whittlesea-Kinglake Road and Blackwood Lane;
  - ii. A Short Channelised Right (CHR(S)) turn treatment at the intersection of Whittlesea-Kinglake Road and Blackwood Lane in accordance with Austroads (2017) Guide to Road Design Part 4 (Figure A29);
  - iii. A Basic left (BAL) turn treatment at the intersection of Whittlesea-Kinglake Road and Blackwood Lane in accordance with Austroads (2017) Guide to Road Design Part 4A, Figure 8.2;
  - iv. Any proposed kerb and channel as required at the intersection of Whittlesea-Kinglake Road and Blackwood Lane.
- b) Functional Layout stage Road Safety Audit (RSA) audit must be undertaken by a suitably qualified road safety auditor, and must include the following:
  - i. Street lighting requirements in accordance with VicRoads TCG 006: Guidelines to Street Lighting Design.

(25) Prior to the commencement of use, the following works must be constructed at the intersection of Whittlesea-Kinglake Road and Blackwood Lane to the satisfaction of and at no cost to the Department of Transport:

- a) CHR(S) right turn treatment;
- b) BAL left turn treatment; and
- c) Any other works recommended in the findings of the Functional Layout
- d) Road Safety Audit.

### Permit Expiry

This permit shall expire if the development hereby permitted is not completed and the use commenced within two (2) years of the date hereof, or any extension of such period the Responsible Authority may allow in writing. A request for an extension of time may be made before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet commenced, or within 12 months after the permit expiry date, where the development allowed by the permit lawfully commenced before the permit expired.

### Notations:

Department of Transport:

Separate 'detailed design' approval (fees and charges apply) and the specifications of these are required under the *Road Management Act*. For the purposes of this application the works will include provision of:

- CHR, BAL; and
- Any other works in the Functional Layout Road Safety Audit.

This assessment does not include any future considerations for a crematorium, this would require a separate planning application.

### **Background**

On 4th November 2010, Amendment C33 to the Murrindindi Planning Scheme was gazetted to rezone land at 265 Whittlesea-Kinglake Road Kinglake Central from Farming to Public Use 7-Other. The land was purchased by the State Government in 2010 for the purpose of providing a site to enable the replacement of the Kinglake National Park Office and Depot, and the development of the Kinglake Ranges Cultural and Community Facility. No development of the land has occurred since the approval of the amendment.

The eastern portion of this land (identified as Lot 2022) of approximately 5 hectares was gifted to the Kinglake Ranges Foundation to establish a Multi-Purpose Facility. Based on advice from the Parliamentary Secretary for the Environment, the land identified as Lot 2023 (western section) has been reserved in accordance with the *Crown Land (Reserves) Act 1978* for cemetery purposes and declared a public cemetery by the Governor in Council under the *Cemeteries and Crematoria Act 2003*, to be managed by the Kinglake Ranges Cemetery Trust by Order in Council on 10th March 2016.

On the 31 August 2020, the applicant requested to amend the proposal, under Section 57A of the *Planning and Environment Act 1987*, to include the removal of native vegetation. This was in response to an arborist report, which identified that the proposed road works would require the removal of two trees. It was considered that the change to the proposal did not warrant the readvertising of the application as the arborist report confirmed that one of the trees is dead and the other is 7 metres in height and of poor structure.

### **The Land and Surroundings**

The subject land comprises a vacant reserve located at 265 Whittlesea-Kinglake Road, Kinglake Central. The land is located 1.5 km south of the Middle Kinglake Primary School on Extons Road and 2.5 km northwest of the Kinglake Township.

The subject land comprises an area of 5.1 Ha which is cleared other than a few scattered mature trees. Road access is available from Blackwood Lane which is currently an unsealed local access road that intersects with the Whittlesea-Kinglake Road adjacent to the northern portion of the land. The reserve has a 133m abuttal to Blackwood Lane.

The northern portion of the reserve forms part of the Great Dividing Range and provides panoramic views to the south across the greater Melbourne area. The land falls approximately 30m in elevation from the northern to southern boundary over a distance of approximately 400m. Whittlesea-Kinglake Road is located to the north of the site and on the opposite side of Whittlesea-Kinglake Road there is rural residential development on an assortment of various sized lots ranging from approximately 1 – 2.5 Ha. More dense residential development is located further to the east (approximately 450m) where some lots are in the order of approximately 0.2Ha.

The land immediately to the north of the subject site is No.305 Whittlesea-Kinglake Road which has an area of 11Ha and is a cleared property with a dwelling situated approximately 225m from the subject site.

The land to the east (which is also known as 265 Whittlesea-Kinglake Road (C/A: 2022) comprises further reserved land similar in size to the subject site. Further to the east is the Frank Thomson Reserve which contains a bushfire memorial and other public facilities.

To the west of the subject site is Blackwood Lane and a government road reserve (extension of Blackwood Lane). The lane provides access to No.30 Blackwood Lane which is a partially cleared property with an area of 23 Ha with a dwelling close to the shared southern boundary of the subject site. The northern portion of the site is cleared of vegetation apart from some planted

vegetation along the shared boundary. The southern portion of the site is heavily vegetated native bushland.

### **Proposal**

This application seeks approval for the use and development of the land for the purpose of a cemetery, associated signage, car parking to the satisfaction of the Responsible Authority, alteration to access to a road in a Road Zone - Category 1 and the removal of native vegetation. The proposal can be summarised as follows:

#### Proposed Use

The land would be used as a cemetery which would be developed over time as determined by the public demand. The application has suggested that the cemetery would predominately be utilised to intern the ashes of deceased people (60-70%) and lawn burials would occur to a lesser degree. The cemetery would primarily operate during business hours from Monday to Friday with some provision for weekend funerals by special appointment. Maximum numbers of people attending the site have not been proposed however the provision of up to 136 car spaces suggests that it could be reasonably expected that up to around 200 people could attend a large funeral.

It is proposed that the use will primarily cater to the needs of the Kinglake and wider Murrindindi community. The site would include a lawn cemetery, Children's Memorial, Pioneers Memorial Garden (Memorial Blackwood Grove), Veterans Memorial Garden (Lone Pine Memorial Garden).

The proposal suggests that the site will provide for up to 5350 cremated remains. The total number of burial sites has not been determined in the application.

#### Proposed Development

The proposed development of the site as submitted will consist of the following buildings and works:

- construction of lawn beams and wall plaques across the site;
- landscaping providing a series of stepped levels for burials and cremation sites;
- low walls which would provide seating as well as the repository for memorialising ashes;
- an internal access road with a 6m carriageway width with a length of approximately 700m;
- 46 indented 90 degree parking spaces and an additional 90 parallel spaces along the access way creating a total of 136 car spaces;
- A stone entry and exit portal 1.8-2.4m in height onto Blackwood Lane;
- A timber paling fence with stone posts along Blackwood Lane with a height of 1.2-1.3m;
- Various plantings of selected drought resistant ground covers, shrubs and trees;
- Regrading of Blackwood Lane to 7m in width;
- A small shed (less than 100sqm for the storage of garden equipment);and
- A post and wire fence along the south western boundary.

#### Proposed Access

The proposal also includes the construction of a right hand turning lane to Whittlesea-Kinglake Road onto Blackwood Lane in accordance with previous advice from VicRoads (now Department of Transport).

The applicant has noted in their submission that there will be no crematorium on site as part of this proposal.

#### Vegetation removal

The creation of the access to Whittlesea-Kinglake Road into Blackwood Lane requires the removal of two trees. One of the trees is already dead and the other has been determined by an arborist as having poor structure.

**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* as follows:

- letters to adjoining and nearby property owners and occupiers (42 properties)
- a sign displayed on the subject site
- an advertisement in the Alexandra Standard, Yea Chronicle and Local Paper on 15 and 22 July 2020
- displayed on Councils website and Facebook page.

In response to the notification of the proposal 105 submissions have been received and it is likely that more will continue to be received. The submissions included letters of support, objections and comments neither for nor against the proposal. The key issues raised by the objectors are identified and discussed further in the discussion section of this report.

On Monday 3 August, the public consultation meeting for the proposed 'Use and development of the land for the purpose of a cemetery, associated signage, car parking to the satisfaction of the Responsible Authority and alteration to access to a road in a Road Zone – Category 1' at 265 Whittlesea-Kinglake Road, Kinglake was held as an online meeting. The meeting was attended by Mayor Dunscombe, Cr Rae, Craig Lloyd (CEO), Vito Albicini (Director Assets & Development) Natalie Stewart (Manager Development Services), Matthew Schreuder (Coordinator Planning), the applicant Maureen Jackson (Maureen Jackson Planning), Alex Pottage (Kinglake Cemetery Trust) and a large number of submitters to the application.

At the consultation meeting a number of the submitters addressed the meeting to raise their concerns or support for the proposal. As there were numerous people wishing to speak, responses were limited to 3 minutes. Many of those who spoke agreed with points already made and in the interest in keeping to time they were requested to avoid duplicating issues that had already been raised.

In addition to the notification and consultation undertaken by Council, the applicant has provided the following in relation to consultation that was undertaken by the Kinglake Cemetery Trust. Prior to the application being made the Trust reported that they consulted widely with the community between September 2017 and June 2018. They have suggested that they received letters of support and positive feedback on social media.

During the application process the Trust ran a feature article on the proposal in the Mountain Monthly. The article was also posted on Facebook. The Trust held 3 information sessions in July 2020 which was advertised on the Kinglake Ranges Community Facebook page and through a letter box drop to 30 properties in the area.

**Referrals**

The application was required to be referred to the Department of Environment, Land, Water and Planning (DELWP), the Country Fire Authority (CFA) and the Department of Transport (DoT). Each of these authorities did not object to the proposal subject to conditions being included on any permit that may be issued.

**Discussion – Planning Considerations****Planning Policy**

The proposal has been assessed against state, regional and municipal Planning Policy Framework (PPF) of the Murrindindi Planning Scheme and has been found to be consistent with the relevant objectives and strategies as outlined below:

### Clause 02.02 (Vision)

The planning scheme outlines the overall vision for the municipality. Relevant to this proposal is that:

- Council seeks to enhance the liveability, amenity and quality of life in the municipality. It is considered that the proposal is consistent with this vision. The development of a cemetery for the use of the local community will enhance the liveability, amenity and quality of life in the municipality through allowing the grieving for and celebration of the memories of past loved ones.

### Clause 02.03 (Strategic Directions)

This local planning policy includes strategies related to the provision of community infrastructure and requires that community infrastructure planning must strive to enhance the liveability, wellbeing, amenity and quality of life in the shire. It is considered that the provision of accessible local cemeteries are required to be provided to achieve that outcome.

### Clause 11 (Settlement)

This clause requires that planning anticipates and responds to the needs of existing and future communities through the provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure. This policy also requires that planning prevent environmental and amenity problems by siting incompatible land uses close together.

It is considered that the proposed use of the land for a cemetery and the associated works appropriately respond to these objectives in that the cemetery has been identified as being required to service the surrounding communities and while there are two residential property abutments, the development has been designed in such a manner to minimise the impact on the rural landscape. The proposal is also consistent with the policy in that it is located in an area which is well connected to existing transport networks, being accessed off a main road and within close proximity to the Kinglake Township and other community infrastructure.

### Clause 11.03-5S (Distinctive areas and landscapes)

The objective of this clause is to protect and enhance the valued attributes of identified distinctive areas and landscapes. Strategies of this policy include:

- Recognise the significant geographic and physical features of these areas
- Recognise the important role these areas play in the state as tourist destinations
- Protect the identified key values and activities of these areas
- Support use and development where it enhances the valued characteristics of these areas
- Avoid use and development that could undermine the long-term natural or non-urban use of land in these areas
- Protect areas that are important for food production.

While the subject site has not specifically been identified as a distinctive area, it is clear that the natural attributes of the site, including views to Melbourne and surrounds in the distance, are of significance to the surrounding community. It is considered that the design of the cemetery has taken this into account in that the development will be low scale and sympathetic to the landscape. The works will be developed to align with the contours of the site and well-designed landscaping will obscure views of the access and car parking from the surrounding area. While the development will still be seen, it will not represent a dominant feature in the landscape.

The subject site has been identified as being significant as high quality agricultural land and is covered by the significant landscape overlay, however the development of the site will not remove any land from agricultural production due to the zoning of the land as Public Use Zone and the lack of any substantial agriculture in the immediate area. Soil based agriculture predominately occurs to the east of the subject site.

### Clause 12 (Environmental and landscape values) and Clause 12.01-1S (Protection of Biodiversity)

It is considered that the proposal is consistent with policies aimed at protecting significant natural values and biodiversity. Clause 12 Environment and landscape values states that planning should protect the health of ecological systems and the biodiversity they support (including ecosystems, habitats, species and genetic diversity) and conserve areas with identified environmental values.

While there are no specific environmental overlays that relate to the subject site, it is recognised that like much of the land abutting large areas of bushland, the area is frequented by various native animals such as Kangaroos and Eagles. It is considered however that the proposed development would have little impact on these types of animals which are capable of covering very large areas and freely moving through the landscape. The development is proposing additional landscaping across the site which is currently clear of vegetation and this in itself has the potential to provide habitat and support biodiversity. It is considered that the proposal is not inconsistent with the objectives and strategies of Clause 12.01-1S as the scale of the works is minor and the site is not an identified important area of biodiversity.

### Clause 12.05-2S (Landscapes)

This policy has the objective of protecting and enhancing significant landscapes and open spaces that contribute to the character, identity and sustainable environments. As stated above the subject site has been identified more for agriculture rather than cultural or natural values, despite not being an area that has significant agriculture being undertaken (within the immediate vicinity).

Regardless of that characterisation of the site, it is widely recognised that the site offers significant values as an open space. The subject site is located within close proximity (125m at the closest point) of the Frank Thomson Reserve, and while that reserve is renowned for the views of Melbourne, it is considered that the development of the subject site will not significantly impact on the amenity of that site. The quiet and contemplative nature of funeral services will be complementary to the use of the reserve and the relatively large parcel of land that separates the subject site from the Frank Thomson Reserve offers an appropriate buffer between the two uses to allow the expected uses of each site to be undertaken without significant impact on one another.

### Clause 13.02-1S&L (Bushfire Planning) and Clause 44.06 Bushfire Management Overlay

The development at the subject site does not propose any buildings and works which trigger a planning permit under the provisions of the Bushfire Management Overlay. Despite this, state and local planning policies for bushfire planning require that consideration must be given to strengthen the resilience of settlements and communities to bushfire through risk based planning.

These policies require that the protection of human life is given the highest priority when considering all other policies. While the proposal does not include significant buildings and works, the use will potentially result in large numbers of people attending that site at various times. It is therefore important to consider the potential risk in the event of a bushfire.

It is considered that the site provides appropriate access to a main arterial road that will allow evacuation of the site should that be required. The proposed upgrade of Blackwood Lane and the Whittlesea-Kinglake Road intersection will enable safer entry and egress from the site. The application was referred to the CFA who did not object to the proposal but recommended that an appropriate emergency management plan be prepared for the site. A condition has been included in the officer's recommendation requiring an appropriate emergency management plan. The site itself is predominately clear and the access road would provide suitable access across the site. Any landscaping proposed will be unlikely to contribute to the bushfire risk at the site.



Clause 13.07-1S (Land use compatibility)

The objective of this clause is to protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse offsite impacts.

While the low scale development that is proposed for the cemetery is unlikely to impact on the amenity of adjoining land uses, it could be suggested that the proximity of a cemetery to residential development is an amenity impact in its own right. It is considered that the use of this site will not create an unreasonable impact on the nearby residential properties with only 1 dwelling that is within close proximity of the site. The dwelling at the end of Blackwood Lane is the closest being located very close to the southern boundary of the subject site. Despite the proximity the dwelling does benefit from being primarily orientated towards the south to take advantage of the adjoining bushland and views towards Melbourne. The property also has some vegetation along the boundary which would offer some privacy and screen of the site. The development also proposes additional screen plantings along this shared boundary which will be capable of screening the view into the site. These measure will appropriately mitigate any amenity impacts. The hours of formal operation are also limited to primarily business hours and the infrequency of the funerals will both result in minimal impacts on adjoining land.

It is not unusual for cemeteries to have some residential interfaces and this low scale development should not interrupt the rural aesthetic of the area.

Clause 14.01-1S (Protection of agricultural land)

As stated above, while the land is covered by the Significant Landscape Overlay - schedule 1 'High quality agricultural land' the site is not zoned agricultural nor is there any significant agriculture at the site or on adjoining land. It is therefore considered that the proposal has little relevance to agricultural considerations.

Clause 18.02-3S (Road systems) and Clause 18.02-4S (Car parking)

The proposal is consistent with each of these clauses. The works include an upgrade to the access road and intersection with Whittlesea-Kinglake Road which will result in improved traffic safety. There are an appropriate number of car spaces to ensure that people will not attempt to park outside of the subject site. The proposal was referred to the Department of Transport and Council's Engineering Department and no objections were raised, subject to the approval of appropriate engineering designs. Conditions requiring these plans can be applied to a permit should one be issued.

Clause 19.02-4S (Social and cultural infrastructure)

This policy aims to provide fairer distribution of and access to, social and cultural infrastructure. In relation to this proposal this is achieved through adopting the strategy of identifying and protecting land for cemeteries. As the subject site has been identified by the DHHS for this purpose, the proposal is consistent with this clause.

Clause 36.01 (Public Use Zone)

The subject site is located in the Public Use Zone and has been identified in the table of public land use listed at Clause 36.01-1, of the Murrindindi Planning Scheme, as PUZ7 which relates to 'Other public use'.

The purpose of the Public Use Zone includes the following:

- To implement the Municipal Planning Strategy and the Planning Policy Framework
- To recognise public land use for public utility and community services and facilities
- To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

Pursuant to Clause 36.01 a planning permit is required where the proposed use of the land is not consistent with the schedule that is applied to that land. As this site is Public Use Zone 7 which is 'other public uses' and Public Use Zone 5 relates to Cemeteries, a planning permit is required.

Clause 36.01-2 also requires that a permit is required to construct a building or construct or carry out works for any use in Section 2 of Clause 36.01-1.

An application for a permit under the Public Use Zone must be accompanied by the written consent of the public land manager. In this particular proposal the applicant is the public land manager.

#### Decision guidelines

Before deciding on an application to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The Municipal Planning Strategy and the Planning Policy Framework
- The comments of any Minister or public land manager having responsibility for the care or management of the land or adjacent land
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

The relevant decision guidelines as discussed below:

- In relation to the relevant decision guidelines it is considered that the development is consistent with the state, regional and municipal Planning Policy Framework (PPF) of the Murrindindi Planning Scheme. The assessment of each of the relevant provisions has been discussed earlier in this report
- It is also considered that the proposal is consistent with the objectives of the land owner, DHHS and the public land manager who in this case is the applicant, the Kinglake Cemetery Trust
- It is considered that the design and siting is appropriate as assessed earlier in the report noting there is no specific use, design or siting guidelines that are specific to this site.

Overall it is considered that the use and development of land for the purpose of a cemetery is appropriate and consistent with the purpose of the zone. Despite not being aligned with the planning map annotation for that purpose, being PUZ7 Other public use instead of PUZ5 Cemetery, the zone provisions allow the consideration of uses that do not sit within the most relevant group and as the proposal has been found to comply with all the relevant planning considerations it warrants support.

#### Clause 36.04 (Road Zone) and Clause 52.29 Land adjacent to a Road Zone, Category 1

The road works that are required as part of the application are located within a Road Zone – Category 1. The purpose of the Road Zone is to:

- To implement the Municipal Planning Strategy and the Planning Policy Framework
- To identify significant existing roads
- To identify land which has been acquired for a significant proposed road.

Pursuant to Clause 52.29-2 a permit is required to:

- Create or alter access to a road in a Road Zone, Category 1.

The application was required to be referred to the Department of Transport under section 55 of the Act. The DoT did not object to the works subject to conditions in relation to construction standards being included on the permit. It is considered that the proposed works will result in improved safety and are therefore supported as part of the proposal.

#### Clause 42.01 (Environmental Significance Overlay – Schedule 1)

The purpose of the overlay is:

- 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.

Pursuant to Clause 42.01-2 a permit is required to construct or carry out works. The works proposed in this application are not exempt in the schedule to the zone.

Schedule 1 of the ESO relates to High Quality Agricultural Land and the following statement of environmental significance is included.

Murrindindi Shire has extensive high quality agricultural areas located along the Great Dividing Range at Toolangi and Kinglake and along the Goulburn River floodplain. The attributes of these areas consist of a combination of well-drained red soils, high rainfall and access to water.

While a permit is technically triggered under this overlay, as discussed earlier in the report, the subject site is not currently used for agriculture nor are the adjoining properties. The subject site is not in the Farming Zone and it is not likely that this parcel of land would ever be used for agricultural activities. The provisions of this overlay have little relevance to this site and are more relevant to the land to the east of the site on the northern side of Whittlesea Kinglake Road.

#### Clause 52.05 (Signs)

Pursuant to Clause 36.01-7, signage within the Public Use Zone is assessed under Category 4 – Sensitive areas. While these controls provide for the maximum limitation to ensure that the amenity of the area is not impacted, the signage for the cemetery is exempt from requiring a permit under Clause 52.05-10 – signs not requiring a permit. The clause states that no permit is required to construct or put up a sign identifying the functions or property of a government department, public authority or Municipal council.

#### Clause 52.06 (Car parking)

Clause 52.06 requires that before a new use commences, the number of car parking spaces required under Clause 52.06-5 must be provided to the satisfaction of the Responsible Authority. The table at Clause 52.06-5 sets out the number of spaces required for particular uses.

Where a use of land is not specified in Table 1 or where a car parking requirement is not specified for the use in another provision of the planning scheme or in a schedule to the Parking Overlay, before a new use commences, car parking spaces must be provided to the satisfaction of the responsible authority.

The cemetery is providing 46 indented 90 degree parking spaces and an additional 90 parallel spaces along the access way resulting a total of 136 car spaces. This number of spaces and the design of the car parks is considered acceptable and appropriate for the scale of the development.

#### Clause 52.17 (Native Vegetation)

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

- (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.

Pursuant to Clause 52.17-1 a permit is required to remove, destroy or lop native vegetation, including dead vegetation.

In order to construct the access to Blackwood Lane from Whittlesea Road, in the manner which has been approved by the Department of Transport, two trees are required to be removed from the southern road reserve. An arborist report has been provided with the report which identified the trees as:

- A dead eucalyptus
- A Eucalyptus radiata with a height of 7 metres. The tree is in fair health but with a poor structure.

Each of the trees require a permit under these provisions and a Native Vegetation Removal Report has been provided by the applicant in accordance with 'the Guidelines'. The report has identified the offset that will be required to be secured and a condition on the permit has been included to meet this requirement.

Overall it is considered that the trees to be removed are not significant and their removal is appropriate. In addition to the offset requirement the proposal includes landscaping on the site which will add to the biodiversity of the area.

#### Clause 52.25 (Crematorium)

This clause is not relevant to the application as there is no Crematorium proposed as part of this application. Any future consideration of a crematorium would require a separate planning application.

#### Clause 65 (Decision Guidelines)

Before deciding on an application or approval of a plan, the responsible authority must consider the relevant decision guidelines listed at Clause 65.01 approval of an application or plan.

The development complies with these guidelines as has been assessed under the relevant planning policies in this report. The application is consistent with the objectives and strategies of the state, regional and municipal Planning Policy Framework (PPF) of the Murrindindi Planning Scheme. The proposal is also consistent with the zones and overlays that relate to the site. The provision of a cemetery for the use of the community of Kinglake and more broadly the Murrindindi community is considered orderly planning for the municipality.

Significant impacts on the amenity of the area are unlikely to result from the proposed use and development as outlined throughout the report. The buildings and works associated with the cemetery have been designed to be sympathetic to the site and surrounds.

#### **Discussion – submissions**

This application received a very large number of submissions (105 as of 3/9/2020) from the public which included both letters of support and objections to the proposal. There were also a small number of submissions which were for comment and neither for or against the proposal. The applicant indicated that they did not wish to provide a written response to the objections received.

The grounds of objection can be summarised as follows:

The development would have an impact on the visual amenity of the area;

- The development will impact on the natural environment and native fauna, such as kangaroos and eagles that frequent the site;
- The development will impact on the experience of users of the nearby Frank Thomson Reserve;

- There is a desire to use the site for a different purpose such as an extension to the FT reserve;
- The development will impact on tourism in the area;
- There will be impacts on views from Frank Thomson Reserve towards Melbourne;
- There are potential psychological impacts of having a cemetery near dwellings;
- The development is not consistent with agricultural land use;
- The business case has not been made and cost of the development;
- There has not been sufficient community consultation;
- Potential traffic impacts and the traffic report is outdated;
- There is an alternative location that would be more appropriate;
- Bushfire risk;
- The use is not consistent with the zoning notation for the land;
- The scale and intensity of the development is not in keeping with the surrounding land;
- The use impacts on the future land uses of the Ranges Trust land adjoining the subject site;
- Poor standard of Blackwood Lane;
- Poor weather conditions that are a regular occurrence at the site is not consistent with the use;
- Aboriginal cultural heritage should be assessed; and
- Impacts on water table.

Many of the objections received, shared the concerns raised above.

Most of the key themes outlined in the objections have been discussed in relation to the relevant planning policies of the Murrindindi Planning Scheme earlier in the report. Below is additional discussion of those areas which were not considered.

- There is a desire to use the site for a different purpose such as an extension to the Frank Thomson reserve.

While it is true that a range of other uses could be considered under the zoning of the subject site, it is not the purpose of an assessment of a particular planning proposal to consider those options. This planning report is required to consider the merit of the proposal against the relevant planning policies that relate to the proposed use and development.

- The development will impact on tourism in the area and on views from Frank Thomson Reserve towards Melbourne.

It would be very difficult to ascertain whether the proposal will impact on tourism in the area. While the development is within close proximity to the Frank Thomson Reserve, the proposed development has been designed in a manner that will ensure that it is sympathetic to the natural environment. The works will be low scale and will not impede the views from the reserve to the south towards Melbourne. The property between the subject site and the Reserve will act as an appropriate buffer between the uses.

- There are potential psychological impacts of having a cemetery near dwellings;

While it is recognised that there are members of the community around the subject site that have been impacted by the bushfires in Kinglake, planning is not in a position to be able to determine whether there will be these types of impacts as a result of the development. While the cemetery may serve as a reminder of the past tragedies for some, it may also provide some consolation for others and several supporters of the development have expressed a desire to lay loved ones to rest at the cemetery. It is not unusual for cemeteries to have residential property abuttals.

- The business case has not been made and cost of the development;

The business credentials or business plan is not a relevant planning consideration and is not required to be provided for this type, nor most other types of planning applications.

- Potential traffic impacts and the traffic report is outdated.

The application was referred to the Department of Transport (formerly VicRoads) as the responsible authority for the management and development of Category 1 Roads. They have reviewed the information and have not objected to the proposal. They have however required that a number of conditions are included on any permit that may be issued. While it was suggested that the Traffic Impact report was out dated, the Department of Transport were satisfied with the data provided and did not raise that as an issue nor did they require that any additional data was provided.

- There is an alternative location that would be more appropriate;

This is not a relevant planning consideration as the purpose of the application is to consider the merits of the proposal at the subject site.

- The use impacts on the future land uses of the Ranges Trust land adjoining the subject site;

.As there are currently no plans before Council for that site this is not possible to fully consider. It is considered however, that the high quality design and low scale development will enable various other uses to be considered at the adjoining property.

- Poor standard of Blackwood Lane;

Council engineers have reviewed the application and provided a range of conditions that will require detailed engineering plans to be submitted and approved prior to the commencement of any works at the site. The Department of Transport have required plans to be submitted that detail the works to the intersection of Whittlesea-Kinglake Road and Blackwood Lane. The standard of the Lane will be improved as a result of the application and will be designed to cater for the increased traffic flows. This will be paid for by the applicant.

- Poor weather conditions that are a regular occurrence at the site is not compatible with the use.

While there may be numerous days with inclement weather, this is not a planning consideration. Cemeteries are located in a wide range of environments and the people who wish to attend the site would need to consider weather conditions themselves.

- Aboriginal cultural heritage should be assessed.

The subject site is not in an area of Aboriginal Cultural Heritage sensitivity and therefore no assessment is required under the *Planning and Environment Act 1987*.

- Impacts on water table.

The application was referred to The Department of Environment, Land, Water and Planning and no issues were raised with any potential impacts on the water table or any other environmental values of the site.

Submissions of support for the proposal state some of the following reasons for their position on the proposal:

- Family have wished to be buried at the site for many years;
- Perfect location for the development;
- Every town needs a cemetery;

- Appreciate the local memorials to be included at site;
- The land between Frank Thomson Reserve and the subject site offers an appropriate buffer;
- Locals deserve to be buried in Kinglake;
- The plans look great; and
- It would be a great asset to the community.

The submissions for and against the proposal have been considered in this planning assessment.

### **Conclusion**

This application for the use and development of the land for the purpose of a cemetery, alteration to access to a road in a Road Zone - Category 1 and the removal of native vegetation (2 trees) at 265 Whittlesea-Kinglake Road Kinglake Central (C/A: 2023, Parish of Kinglake) has been assessed against the relevant objectives and strategies of the state, regional and municipal Planning Policy Framework (PPF) of the Murrindindi Planning Scheme.

The assessment also considered the purpose and decision guidelines of the Public Use Zone, Clause 52.29 Land adjacent to a road in a Road Zone – Category 1 and Clause 65.01. The public submissions received for and against the proposal have also been considered. Overall it has been determined that the proposal is consistent with the policies and warrants support. Therefore a notice of decision to grant a planning permit is recommended.

### **Council Plan/Strategies/Policies**

This report is consistent with the *Council Plan 2017-2021* 'Our Place' and 'Our Prosperity' strategic objectives:

- "we will maintain and enhance places to be attractive and liveable, in balance with our natural environment"
- "through good land use planning enhance the liveability, prosperity and rural character of our Shire"

### **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 are no declared conflicts of interest in relation to this report.

### **MOTION**

**Cr L Dunscombe / Cr E Lording**

**That council refuse planning permit 2020/97 on the following grounds:**

- 1. The proposal is inconsistent with Clause 02.02 (Vision) and Clause 13.07-1S (Land use compatibility) of the Murrindindi Planning Scheme in that the cemetery will affect the liveability, amenity and quality of life of the residents adjoining the subject site.**
- 2. The proposal is inconsistent with Clause 11.03-5 (Distinctive areas and landscapes) and Clause 12.05-2S (Landscapes) as it will adversely impact on the significant geographic and physical features of the area and does not protect the key values and activities of the area.**

3. The proposal is inconsistent with Clause 14.01-1S (Protection of agricultural land) and Clause 42.01 (Environmental Significance Overlay – Schedule 1) as it will permanently remove land from any future agricultural production.
4. The proposal is inconsistent with the Public Use Zone as the land is scheduled as Public Use Zone 7 which is intended for ‘other public uses’ and cemeteries should be located within Public Use Zone 5.
5. The proposal is inconsistent with the decision Guidelines of Clause 65.01 of the Murrindindi Planning Scheme as it is not orderly planning of the area, it will affect the amenity of the area and it is within close proximity of public land where the use of that land will be negatively impacted.

**POINT OF ORDER**

Cr M Rae

That Cr L Dunscombe’s debate is irrelevant to the substantive matter of the motion.

Point of Order accepted by the Chairperson.

**MOTION**

Cr E Lording /

That Cr L Dunscombe be granted an extension of his speaking time to address the motion before Council.

Motion lapsed for want of a seconder.

Original Motion was put to the vote.

**RESOLUTION**

**MOTION LOST**

**RESOLUTION**

Cr J Ashe / Cr M Rae

That the meeting be extended for a further 10 minutes until 10:10pm

**CARRIED UNANIMOUSLY**

**RESOLUTION**

Cr M Rae / Cr R Bowles

That Council issue a Notice of Decision to grant a planning permit for the use and development of the land for the purpose of a cemetery, alteration to access to a road in a Road Zone - Category 1 and the removal of native vegetation (2 trees) at 265 Whittlesea-Kinglake Road Kinglake Central 3757 (C/A: 2023, Parish of Kinglake), subject to the following conditions:

- (1) Prior to the commencement of any buildings or works, amended plans shall be submitted and approved by the Responsible Authority. Such plans must be generally in accordance with the advertised plans but modified to show:
  - a) The proposed shed relocated to a location not requiring access from off Blackwood Lane, south of the dwelling at 30 Blackwood Lane
  - b) A notation that no fencing will use barbed wire and that animal friendly fencing will be used
  - c) A full landscape plan including a schedule of all proposed trees, shrubs/small trees and ground cover and locations of where they will be planted. When approved these plans shall be endorsed and form part of this permit.



- (2) The layout of the site and the size and type of the proposed buildings and works, including the materials of construction, as shown on the endorsed plan shall not be altered or modified without the consent in writing of the Responsible Authority**
- (3) Prior to the commencement, a Bushfire Emergency Plan (BEP) to the satisfaction of the Responsible Authority and CFA must be submitted to and endorsed by the Responsible Authority**
- (4) The signage shown on the endorsed plan can only be altered or modified with the written approval of the Responsible Authority**
- (5) The sign shall be located wholly within the subject land and shall be kept in good order and maintained to the satisfaction of the Responsible Authority**
- (6) 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 or otherwise.**
- (7) 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.**
- (8) The use for ceremonies hereby permitted shall take place only between the hours of 8am to 6pm Monday to Friday inclusive, 10am to 4pm Saturday, and 10am to 2pm Sunday, unless with prior written consent of the Responsible Authority.**
- (9) Prior to the commencement of the use allowed, the landscaping, as shown on the endorsed plan, must be completed to the satisfaction of the Responsible Authority. This area must then be maintained to the satisfaction of the Responsible Authority, and must not be used for any other purpose except with the prior written approval of the Responsible Authority.**

#### **Vegetation offsets**

- (10) Prior to the removal of any native vegetation, the permit holder must secure a native vegetation offset, in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017) as specified below:**
  - a) A general offset of 0.045 general habitat units:**
    - i. located within the Port Phillip and Westernport CMA boundary or the Murrindindi Shire Municipal District**
    - ii. with a minimum strategic biodiversity score of at least 0.672**
  - b) Evidence that the required offset for the development has been secured must be provided to the satisfaction of the Responsible Authority. The evidence required is at least one of the following:**
    - i. an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site. The applicant must provide the annual offset site report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.  
AND/OR**
    - ii. credit extract allocated to the permit from the Native Vegetation Credit Register. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit.**

**Plans**

- (11) Prior to commencing construction a suitable prepared engineering plan detailing the improvements to Blackwood Lane, proposed access lanes, earthworks and drainage, including erosion and sediment control measures must be submitted to the Responsible Authority and receive its endorsement
- (12) Prior to the commencement of the approved use, the developer must construct the access in accordance with approved construction drawings.

**Crossovers**

- (13) Prior to commencing of any construction works, two new sealed vehicular entrances to the subject land from Blackwood Lane must be constructed at applicant's expense to provide ingress and egress to the site at a location and of a size and standard satisfactory to the Responsible Authority. Refer to Council's Infrastructure Design Manual Section 12.9.2 - Rural Vehicle Crossings and standard drawing SD 255
- (14) Vehicle movement within the site shall be one way only, using separate crossover for ingress and egress to and from the site
- (15) An application for consent to work 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.

**Blackwood Lane**

- (16) Intersection and turning lanes at the intersection of Whittlesea-Kinglake Road and Blackwood Lane shall be upgraded to the satisfaction of Responsible Authority, at the developer's expense.
- (17) Blackwood Lane shall be upgraded and sealed from Whittlesea-Kinglake Road to the western end of the property to the satisfaction of the Responsible Authority, at the developer's expense. Pavement design must include geotechnical investigation to confirm appropriate depth, a minimum of 250mm in accordance with the Infrastructure Design Manual SD 610.

**Parking****(18) Carpark design**

Before construction works start associated with the provision of driveway, drainage and car parking, detailed construction plans in accordance with the endorsed plan, AS 2890 Part 1 Off Street Car parking and AS 3500 Part 3 Stormwater Drainage and to the satisfaction of the relevant authority must be submitted to and approved by the responsible authority. The design and plans must be drawn to scale with levels and dimensions and prepared by a suitably qualified person.

**(19) Parking signs**

Signs must be provided directing drivers to the area(s) set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The area of each sign must not exceed 0.3 square metres.

**(20) Carpark Construction**

Prior to the commencement of use or the occupation of the development starts, 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

- (21) Car spaces, access lanes and driveways must be kept available for these purposes at all times.

**Access****(22) Internal Access**

Before the building is 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.

#### Department of Transport

- (23) No direct access will be permitted from the subject land to the Whittlesea-Kinglake Road. Access will only be permitted from Blackwood Lane.
- (24) Before the development starts the following must be submitted to and approved by the Department of Transport (Head, Transport for Victoria),
- a) A Functional Layout Plan (FLP) drawn to scale and undertaken by a VicRoads prequalified consultant, clearly dimensioned to show (but not limited to) the following:
    - i. The intersection of Whittlesea-Kinglake Road and Blackwood Lane;
    - ii. A Short Channelised Right (CHR(S)) turn treatment at the intersection of Whittlesea-Kinglake Road and Blackwood Lane in accordance with Austroads (2017) Guide to Road Design Part 4 (Figure A29);
    - iii. A Basic left (BAL) turn treatment at the intersection of Whittlesea-Kinglake Road and Blackwood Lane in accordance with Austroads (2017) Guide to Road Design Part 4A, Figure 8.2;
    - iv. Any proposed kerb and channel as required at the intersection of Whittlesea-Kinglake Road and Blackwood Lane.
  - b) Functional Layout stage Road Safety Audit (RSA) audit must be undertaken by a suitably qualified road safety auditor, and must include the following:
    - i. Street lighting requirements in accordance with VicRoads TCG 006: Guidelines to Street Lighting Design.
- (25) Prior to the commencement of use, the following works must be constructed at the intersection of Whittlesea-Kinglake Road and Blackwood Lane to the satisfaction of and at no cost to the Department of Transport:
- a) CHR(S) right turn treatment;
  - b) BAL left turn treatment; and
  - c) Any other works recommended in the findings of the Functional Layout
  - d) Road Safety Audit.

#### Permit Expiry

This permit shall expire if the development hereby permitted is not completed and the use commenced within two (2) years of the date hereof, or any extension of such period the Responsible Authority may allow in writing. A request for an extension of time may be made before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet commenced, or within 12 months after the permit expiry date, where the development allowed by the permit lawfully commenced before the permit expired.

#### Notations:

Department of Transport:

Separate 'detailed design' approval (fees and charges apply) and the specifications of these are required under the *Road Management Act*. For the purposes of this application the works will include provision of:

- CHR, BAL; and
- Any other works in the Functional Layout Road Safety Audit.

**This assessment does not include any future considerations for a crematorium, this would require a separate planning application.**

**CARRIED**

**CALL FOR A DIVISION**

Division called by Cr L Dunscombe

For: Cr M Rae, Cr S McAulay, Cr J Ashe, Cr R Bowles

Against: Cr L Dunscombe, Cr E Lording, Cr C Bisset.

The meeting was closed at 9:57pm.

**CONFIRMED THIS**

21 September 2020

**CHAIRPERSON**

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