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Contact: Leanne Khan - 5421 9672

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Matt Cohen
Director, Development Approvals and Design
Department of Transport and Planning
priority.projects@transport.vic.gov.au

Re: Amendment C161macr – Amess Road Riddells Creek – Response to Additional Consultation

This addendum submission is made by Macedon Ranges Shire Council (**Council**) in response to the extended exhibition of the combined Macedon Ranges Planning Scheme Draft Amendment C161macr (**Amendment**) and planning permit application PLN/2024/129 (**Permit Application**). In particular it addresses the significant change in the Amendment to the Development Contributions Plan, made suddenly in the course of the consideration of the proposal.

In summary, Council submits that there has not been sufficient time to adequately and sensibly consider the significant changes to the revised amendment documents provided. Council submits that if the Amendment proceeds in its current form and without adequate and reasonable time being provided to affected parties such as Council, the process is flawed and amounts to a denial of natural justice. Council reserves its rights to take such action as is necessary in respect of the Amendment.

In reviewing the Amendment, Council notes that it is nominated as the Collecting Agency and Development Agency in relation to the DCP. Therefore, Council will ultimately determine whether the DCP is implemented or not. Council will also determine whether it is satisfied that the DCP is properly conceived with robust costings and adequate design of stormwater facilities. This is especially the case given that the stormwater facilities present risks to downstream environments and in that regard, Council takes its obligations under the Environment Protection Act's General Environmental Duty seriously. This is particularly the case since the recent publication of the Order in Council in respect of Managers of Land and Infrastructure. Accordingly, we wish to be clear so that there is no surprise down the track that if the DCP is approved without Council having been given adequate time to properly

consider it, it will not be implemented via work in kind arrangements until Council has properly considered its implications on the stormwater facilities.

In the inadequate time that has been allowed to review the ad hoc changes made in the extended exhibition, Council is concerned about what these changes mean in terms of the potential risks in the management and costs associated with Council now being designated as the drainage authority for the Amess Road Precinct Structure Plan.

The changes to the amendment documents have been made by the proponent primarily due to Melbourne Water's recent advice that a Drainage Services Scheme (DSS) would not be prepared for the precinct structure plan area and therefore other mechanisms would be required to deliver and manage the drainage assets. This has made Council the responsible drainage authority, a role which Council had not previously envisioned or expected and which now places responsibilities on Council under various pieces of legislation.

Council has been provided with the amended documents for Amendment C161macr to review during the formal second round of community consultation running initially from 30 July 2024 – 13 August 2024 but recently extended to 27 August 2024.

The following documents were circulated under the updated July 2024 Documents:

- *Schedule to Clause 72.04 Incorporated documents Compare – s20(5) DRAFT – July 2024.*
- *C161macr – Amess Road Precinct Structure Plan (Echelon Planning, July 2024) – s20(5) DRAFT.*
- *C161macr – Amess Road Development Contributions Plan (Echelon Planning, July 2024) – S20(5) DRAFT.*
- *C161macr – Explanatory Report – s20(5) DRAFT – July 2024.*
- *C161macr – Revised Land Valuation Report – July 2024*
- *C161macr – Schedule to Clause 72.04 Incorporated Documents – s20(5) – July 2024.*
- *C161macr – Statement of changes from Echelon – July 2024.*
- *C161macr – Schedule 3 to Clause 45.06 Development Contributions Plan Overlay – s20(5) Draft – July 2024.*

Council has since it received the revised amendment documents been reviewing the changes and working through what these mean in the context of proposal while seeking technical expert advice on the proposed drainage scheme including the estimated costs and its implications for the proposed development contributions plan as well as liaising with Melbourne Water around the changes.

In order for Council to give its views on the proposed DCP and the incorporation of the various stormwater assets to be responsibility of Council, Council requires an additional three months to sufficiently consider and inform itself of the changes made and in particular to review the various assets, their design, costing and adequacy against relevant guidelines and standards.

Based on a preliminary review of the updated amendment documents Council raises the following concerns.

Stormwater Management Plan (SWMP)

- Council is concerned that in amending the relevant documents listed above, the Stormwater Management Plan by Stormy Water (February 2024) has not been updated to reflect changes to the updated amendment documents provided during the second round of consultation. This includes references still to a DSS and other components that are no longer features of the draft PSP itself such as the provision of a sports field.
- Council is also concerned with the lack of details about the lack of assessment of the impact on downstream flows, the lack of any real assessment of the lack of volumetric reduction required by the General Environmental Duty (see further below), the challenges of having drainage assets across separate boundaries and lack of detail about interim solutions. Furthermore, given the recent Order in Council for Managers of Land and Infrastructure made under the Environment Protect Act, if Council is to take on assets, there is a need to accept the plans as functional and in accordance with Council's requirements.

Development Contributions Plan (DCP) changes

- Council's preliminary view is that the drainage scheme should not be included in the DCP because DCPs are an unsatisfactory vehicle to implement drainage schemes given their lack of flexibility as compared to a DSS. Council submits that drainage should in this instance be managed as a DSS for at least the northern part of the site and through direct developer works for the southern two drainage assets. In that regard, the PSP should be framed to provide the guidance (through requirements and guidelines) to properly equip decision makes with the ability to direct that outcome.

- The DCP lacks proper plans and costings to enable any sensible review. As Council has not been provided with any detailed functional drainage plans, there is an inability for Council to peer review the costings around the proposed infrastructure. This is crucial given the possible works and financial liabilities for Council as both the collecting and delivery agency for drainage works if the proposed development contributions plan is to prevail. Again, we wish to emphasise that even if the DCP is approved with inadequate drainage details as appears to be contemplated, it will not be implemented by Council until Council conducts a proper review of the various assets and satisfied itself that in implementing the drainage scheme Council is complying with the General Environmental Duty. Judging from the lack of any proper consideration, it seems to Council that the Department is completely unaware of the statutory obligations arising from the General Environmental Duty that attend the very matter that it is considering in this Amendment.
- The uncertainty of the costings due to the lack of material s is further compounded due to the lack of detailed studies in regard to cultural heritage or contamination having been factored into costing calculations in some areas which mean there could be significant cost increases to works or design if these matters are unresolved. Absent any proper assessment of these matters, the DCP costings present material financial risks that are not acceptable. A suitable contingency cost but preferably further studies are required to ensure appropriate cost allowances are made for this unknown. We note that the drainage works are proposed in areas of potential cultural sensitivity.
- Given the above, Council holds concerns about the potential development viability of some land parcels within the PSP area if drainage works are included in the DCP. The updated DCP now establishes a charge rate of \$466,436.62 per net developable hectare. This represents a significant increase in development costs to the previous proposed DCP. Sites at 44 Frosts Lane and 163 Main Road, 61 Amess Road, 1172 Kilmore Road and 1012 Kilmore Road Riddells Creek all require significant remediation of waterways and construction of drainage costs as well as the delivery of other infrastructure assets. No assessment has been made of the practical implications of the heavy burden those smaller sites are required to address.

General Environmental Duty

- Council is a Duty Holder under the Environmental Protection Act 2017. This means Council is bound to understand and manage for itself, the risks of harm from pollution and waste to people and the environment. Furthermore, on 7 May 2024, an Order in Council was published in the Victorian Government Gazette. This relates to

Obligations of Managers of Land or Infrastructure (Urban Stormwater Management and On-site Wastewater Management). This requires Council to prepare a Stormwater Management Plan managing risks of harm to human health and the environment posed by urban stormwater.

- Council (not the Department) would need to be satisfied that any proposed stormwater system approved as part of Amendment C161macr meets the requirements of this Order in Council. This includes the consideration of EPA Publication 1739 – Urban Stormwater Management Guidelines. The current Stormwater Management Plan on page 18 outlines *“This harvesting modelling will be undertaken to better quantify the volume impacts of the PSP regarding the EPA Updated Guidance, but not necessarily meet the targets of the Updated Guidance. Meeting the targets of the EPA Updated Guidance are not deemed reasonably practicable as infiltration systems are assumed not be appropriate for use in the region.”*
- Council is concerned that given the stormwater management plan does not properly consider the implications of the EPA Publication 1739, there has not been a proper assessment of the extent to which it is reasonably practical to reduce impacts. Neither has there been any assessment of downstream impacts to watercourses from the increased volume of stormwater being released to the system after being generated in the PSP area. One would have expected that the Department would be mindful of these obligations and ensure that the proponent adequately addresses these important matters. In circumstances where the proponent has not, Council will not release any DCP funding and will not endorse the stormwater management strategy until proper assessment has been undertaken.

The hurried approach to the consideration of this Amendment is unsatisfactory. The recent ad hoc changes made to the drainage scheme are concerning and indicative of a haphazard approach to planning.

In summary, Council requires additional time to continue discussions with Melbourne Water around the management and delivery of drainage assets, to complete a peer review of the functional design and costings for the proposed stormwater strategy and also review the risk under the General Environmental Duty. Council will also require the costs that are incurred in undertaking such review to be included as plan preparation costs in the DCP.

We strongly urge you to engage on a proper basis with Council lest the implementation of the Amendment be frustrated down the track.



Macedon Ranges
Shire Council

If you have any questions in relation to the above matter, please do not hesitate to contact Leanne Khan, Coordinator Strategic Planning on lkhan@mrsc.vic.gov.au or 5421 9672.

Yours sincerely

Rebecca Stockfeld
Director Planning and Environment