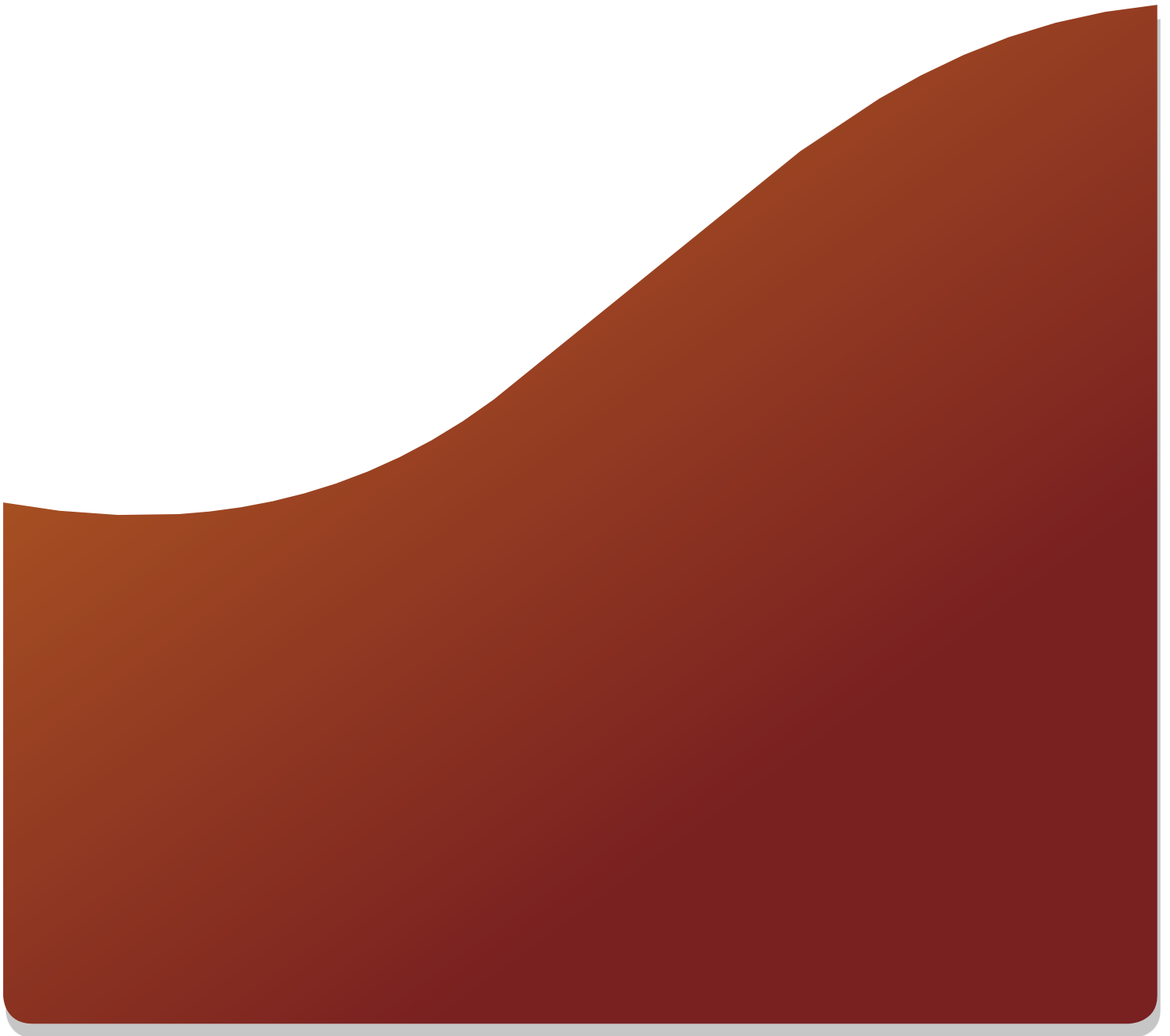


Planning Delegated Committee Meeting Agenda

**Planning Delegated Committee Meeting
Wednesday 9 October 2024 at 7:00 PM
Held online and livestreamed at mrsc.vic.gov.au**



**Notice is hereby given that a Planning Delegated Committee Meeting will be held in the Held online and livestreamed at mrsc.vic.gov.au on:
Wednesday 9 October 2024 at 7:00 PM**

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1 ACKNOWLEDGEMENT OF COUNTRY

Macedon Ranges Shire Council acknowledges the Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Peoples as the Traditional Owners and Custodians of this land and waterways. Council recognises their living cultures and ongoing connection to Country and pays respect to their Elders past, and present.

Council also acknowledges local Aboriginal and/or Torres Strait Islander residents of Macedon Ranges for their ongoing contribution to the diverse culture of our community.

2 RECORDING AND LIVESTREAMING OF THIS COMMITTEE MEETING

This meeting is being recorded and streamed live on the internet, in accordance with Council's 'Live Streaming and Publishing Recordings of Meetings' policy, which can be viewed on Council's website.

3 PRESENT

4 APOLOGIES

5 CONFLICTS OF INTEREST

6 PURPOSE OF PLANNING DELEGATED COMMITTEE

Council established the Planning Delegated Committee to provide a regular forum for hearing from people who have made a submission to Council or who are an applicant or objector in relation to a planning permit application.

The Committee is authorised to determine statutory planning applications and Planning Scheme amendments only in relation to the Planning and Environment Act 1987. Its purpose is to hear from applicants/land owners and objectors/submitters on statutory and strategic planning matters, planning applications and to determine other planning matters.

7 ADOPTION OF MINUTES

Recommendation

That the Committee confirm the minutes of the Planning Delegated Committee of Macedon Ranges Shire Council held on Wednesday 11 September 2024, as circulated.

8 REPORTS

8.1	PLN/2023/333 - WALLS LANE, PIPERS CREEK VIC 3444
Application Details:	Use and Development of the Land for a Single Dwelling and Associated Outbuilding (Shed)
Officer:	Lipi Patel, Senior Statutory Planning Officer
Council Plan relationship:	3. Improve the built environment
Attachments:	Proposed plans and accompanying reports
Triggers for a planning permit	<p>Clause - 35.06-1 – Use of the land for a dwelling.</p> <p>Clause - 35.06-5 – Buildings and works associated with a Section 2 use outlined in Clause 35.06-1 and a building within 100 metres of a waterway, wetlands or designated flood plain.</p> <p>Clause 42.01-2 – Construct a building or carry out works for a building not connected to reticulated sewerage and located within 30 metres of a waterway.</p>
Zones and Overlays	Rural Conservation Zone – Schedule 1 Environmental Significance Overlay – Schedule 4 Vegetation Protection Overlay – Schedule 9
No. of objectors	None
Trigger for report to the Committee	Councillor Call-in
Key Considerations	<p>Whether the use of the land for a dwelling is consistent with the purpose of the Rural Conservation Zone and relevant policy relating to rural dwellings and the protection and conservation of rural land for its environmental features or attributes</p> <p>Whether the design and siting of the dwelling and outbuilding is appropriate in a rural context</p> <p>Whether an existing use right has been established for the agricultural land use</p>
Conclusion	Issue a Notice of Refusal to Grant a Planning Permit
Date of receipt of application:	30 August 2023

Summary

The application seeks approval for the use and development of a dwelling and associated outbuilding (shed).

The key issue for the proposal is whether the residential use meets the objectives of the Rural Conservation Zone which seeks to preserve and enhance the environmental values of the area. The application has not sufficiently demonstrated that the dwelling use is required to protect and enhance the environmental values, natural resources, biodiversity and landscape values of the area in any meaningful way. Further to this, no application has

been made for the proposed agricultural land use (which requires planning permission under the zone) and existing use rights have not been established through the issuing of a Certificate of Compliance.

The proposed buildings and works associated with the dwelling are supported by the relevant policies. However, the proposal fails to provide adequate justification as to why the dwelling is required to undertake the land management practices proposed.

Recommendation

That the Committee issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application PLN/2023/333 at Walls Lane, Pipers Creek on the following grounds:

- 1. The proposal is contrary to the relevant planning policy objectives that seek to protect and enhance the natural environment including Clause 12 as it fails to conserve, protect or enhance the environmental values, natural resources, biodiversity and landscape values of the area in any meaningful way.**
- 2. The proposal is contrary to the purpose of the Rural Conservation Zone as the Land Management Plan fails to demonstrate clear environmental outcomes related to the management and enhancement of existing landscape features. The proposal results in a rural-residential outcome that undermines conservation objectives.**
- 3. The application proposes to use the land for an agricultural purpose (Horse husbandry) but has not sought planning permission for the agricultural land use.**

Existing conditions and relevant history

Subject land

The subject site is located on the south side of the unsealed Walls Lane. The subject site of this application comprises one lot (Lot 4 LP112012) having an area of approximately 16.20740 hectares.

Currently, the site comprises of largely open pasture with predominant land slope to the west and towards waterways. There are two prominent dams located in the northeast and southwest sections of the site, along the site boundary. The dams are fed by waterways trending east-west across the site. There are also mature eucalypts in small numbers across the site (~20) and fallen timbers with hollows, mainly within the southern portion of the site.

Surrounds

The surrounding area displays rural character comprising of larger allotments with most of them developed with dwellings and associated outbuildings. Some of the allotments in the area are also used for small-scale agricultural operations.



Figure 1 Existing Conditions of subject site and surrounds. image: IntraMaps

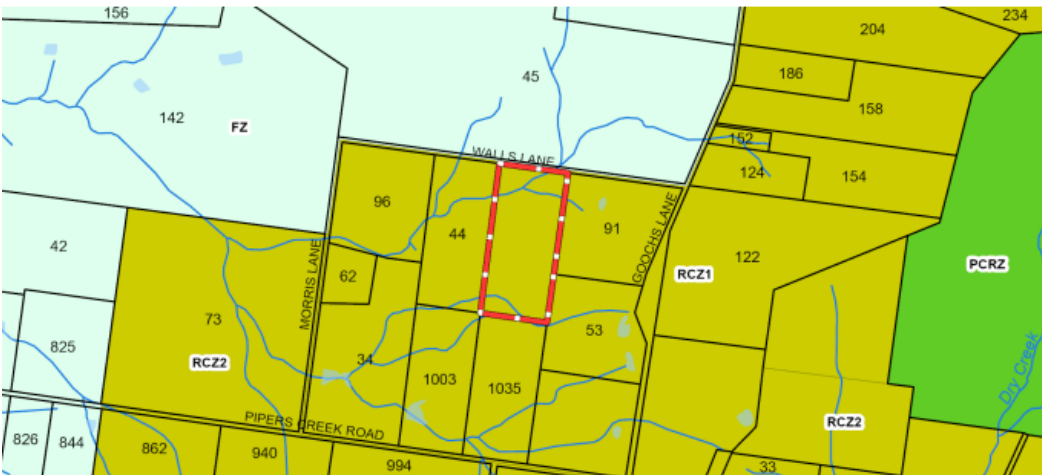


Figure 2 Zoning of subject site and surrounding. Image: VicPlan

Registered restrictive covenants and/or Section 173 Agreements affecting the site

A current copy of title has been provided with the application which shows no Covenants, Section 173 Agreements or restrictions have been registered on the title to this property.

Previous planning permit history

A search of Council’s records has not found any planning permit history.

Proposal

The application proposes the use and development of a single dwelling and associated outbuilding (shed).

The access to the lot is via the unsealed Walls Lane. The existing crossover within Walls Lane will be upgraded to a gravel all weather standard. The proposed dwelling will be located in a cleared area within proximity of the creek, providing a 178 metre setback from the front property boundary, towards Walls Lane to the north.

The dwelling will be single storey having an area of approximately 490m² comprising of a living room, dining and kitchen, three bedrooms, an ensuite, bathroom, laundry, rumpus, study room, alfresco and verandah/external decking. A separate outbuilding is proposed that will comprise an approximate area of 80sqm² and will be constructed to the west of the proposed dwelling.

The maximum height of the dwelling will be 8.15 metres and the outbuilding will have an overall height of approximately 5 metres. The selected external cladding will be weatherboard and Taubmanns 'Country Beige' in colour. The dwelling will have a Colorbond roof and gutters that will be shale grey in colour.

There is no vegetation removal proposed as part of the application. The application has been accompanied by a revegetation plan and Land Management Plan.

Uses on the site

The Land Management Plan (LMP) submitted with the application proposes that the site will be split into three different zones. A housing zone of 1ha, a conservation zone of 8.4ha, and a grazing zone of 8ha.

The Soil and Pasture plan submitted with the application details that the site is on colluvial deposits associated with the neighbouring Cobaw Range. The soil is prone to dispersion and are non-sodic.

The LMP details weed control methods and detailed revegetation plan.

The Land Management Plan submitted in support of the application details a stock grazing plan for 4 to 6 horses on the site. No other farming activity is proposed for the property. The Soil and Pasture plan submitted with the application describes the current land as unimproved native pastures which contain a combination of native and introduced grass species and weeds. It describes the current pastures as being relatively good condition and subject to good grazing management, capable of providing good volumes of 'feed on offer'.

Relevant Macedon Ranges Planning Scheme controls

Section 46AZK of the Planning and Environment Act 1987

Section 46AZK of the Planning and Environment Act 1987 and Clause 51.07 of the Macedon Ranges Planning Scheme require Council as a Responsible Public Entity to not act inconsistently with any provision of the Statement of Planning Policy (SOPP) in exercising decision making powers.

Objective 8 of the SOPP clearly states that settlement growth in the declared area should be planned and managed in accordance with the protection of the area's significant landscapes and biodiversity, as well as the unique character, role, and function of each settlement. Notwithstanding, the fact that Pipers Creek does not have a specific form of settlement under Clause 02.03-1 of the Scheme. However, it is important to note that the subject site is located in the 'Rural Area' of Map 3 of SOPP and is outside of the settlement boundaries; hence, any urban growth must be balanced against the site's potential and service constraints. On the basis of thorough review of the relevant assessments provided, the proposal is deemed unsatisfactory.

Planning Policy Framework

Clause no.	Clause name
02.02	Vision
02.03-1	Settlement
02.03-2	Environment and landscape values
02.03-3	Environmental risks and amenity
02.03-4	Natural resource management
02.03-6	Housing

11.03-3S	Per-Urban Areas
11.03-5S	Distinctive areas and landscapes
12.01-1S	Protection of biodiversity
12.01-1L	Protection of biodiversity – Macedon Ranges
12.03	Water bodies and wetlands
12.05-2S	Landscapes
12.05-2L	Landscapes – Macedon Ranges
14.01-1S	Protection of agricultural land
14.01-1L	Protection of agricultural land – Macedon Ranges
14.01-2S	Sustainable agricultural land use
14.02	Water
16.01-3S	Rural residential development
16.01-3L	Rural residential development – Macedon Ranges

Zoning

Clause no.	Clause name
35.06	Rural Conservation Zone – Schedule 1

Overlay

Clause no.	Clause name
42.01	Environmental Significance Overlay – Schedule 4
42.02	Vegetation Protection Overlay – Schedule 9

Particular provisions

Clause no.	Clause name
51.07	Macedon Ranges Statement of Planning Policy

General provisions

Clause no.	Clause name
65	Decision Guidelines
66	Referral and Notice Provisions

Cultural Heritage Management Plan assessment

	Assessment criteria	Assessment response
1	Is the subject property within an area of cultural heritage sensitivity as defined within the cultural heritage sensitivity mapping or as defined in Part 2 Division 3 or 4 of the <i>Aboriginal Heritage Regulations 2018</i> ?	No
2	Does the application proposal include significant ground disturbance as defined	N/A

	Assessment criteria	Assessment response
	in Part 1 Regulation 5 of <i>Aboriginal Heritage Regulations 2018</i> ?	
3	Is the application proposal an exempt activity as defined in Part 2 Division 2 of <i>Aboriginal Heritage Regulations 2018</i> ?	N/A
4	Is the application proposal a high impact activity as defined in Part 2 Division 5 of <i>Aboriginal Heritage Regulations 2018</i> ?	N/A

Based on the above assessment, a cultural heritage management plan is not required in accordance with Part 2 Division 1 of *Aboriginal Heritage Regulations 2018*.

The process to date

Referral

Authority (Section 55)	Response
Goulburn-Murray Water	Consent, subject to conditions
Coliban Region Water Authority	Consent, subject to conditions

Authority (Section 52)	Response
Engineering Unit	Consent, subject to conditions
Environment Unit	Consent, subject to conditions requiring wildlife friendly fencing and increased planting in the conservation areas.
Health Unit	Consent, subject to conditions

Advertising

Pursuant to Section 52 of the Planning and Environment Act 1987, the application was advertised by sending notices to the owners and occupiers of surrounding/adjoining land and by requiring a notice to be erected on the land for a period of 14 days. No objection has been received to date.

Officer assessment

Whether the use of the land for a dwelling is consistent with the purpose of the Rural Conservation Zone and relevant policy relating to rural dwellings and the protection and conservation of rural land for its environmental features or attributes

There are several State and Local policies relevant to this application and provide direction around the suitable location of residential development within the municipality. The subject site has been identified as being part of the Cobaw Biolink at Clause 02.04. The importance of the distinctive landscape character of the Macedon Ranges to the state of Victoria is highlighted at Clause 11.03-5S (Distinctive areas and landscapes) which seeks to recognise important landscape areas and *protect and enhance the valued attributes of identified or declared distinctive areas and landscapes*. Strategies to support this objective include to:

- *Enhance conservation of the environment, including the unique habitats, ecosystems and biodiversity 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 the land in these areas.*

Clause 12.01-1L seeks to protect the biodiversity of the Macedon Ranges through various strategies. The following are relevant to this application:

- *Encourage revegetation in locations that contribute to the Cobaw Biolink area identified on the Rural Framework Plan at Clause 02.04.*
- *Support residential development on existing lots within the Cobaw Biolink area that provides for revegetation and environmental improvement works.*

This clause encourages the revegetation of land in the Cobaw Biolink area of 1 hectare or 10 per cent of the property area, up to 5 hectares, whichever is the greater, unless the property already contains 5 hectares of remnant native vegetation.

The importance of protecting Landscapes within the Macedon Ranges is dealt with at Clause 12.05-2L. This policy seeks to ensure development is sited appropriately to protect important views and vistas and to preserve and protect significant exotic and native vegetation.

Clause 14.01-1S Protection of agricultural land includes the following strategies relevant to the proposal:

- *Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.*
- *Prevent inappropriately dispersed urban activities in rural areas.*
- *Protect productive agricultural land from unplanned loss due to permanent changes in land use.*
- *Limit new housing development in rural areas, including:*
 - *Directing housing growth into existing settlements.*
 - *Discouraging development of isolated small lots in the rural zones from use for single dwellings, rural living or other incompatible uses.*
 - *Encouraging consolidation of existing isolated small lots in rural zones.*

Clause 16.01-3S (Rural residential development) seeks to *identify land suitable for rural residential development*. The strategies within this policy seek to avoid inappropriate rural residential development, to discourage the development of small lots in rural zones for residential use, and to locate any rural residential development close to existing towns.

Clause 16.01-3L specifically relates to rural residential development in the Macedon Ranges. The following strategies are of relevance:

- *Limit residential development of rural land that is not in a Rural Living Zone, unless related to the use of land for agriculture or other compatible economic development activities.*
- *Design rural residential development to:*
 - *Promote and reflect the rural character and activities of the area.*
 - *Respond to landscape values and environmental constraints including potential impacts on water quality.*
 - *Protect existing remnant native vegetation.*
 - *Add to the attractiveness of the area.*

- *Minimise the visual prominence of buildings in the landscape.*
- *Encourage consolidation or further subdivision of lots within the Cobaw Biolink area identified on the Rural Framework Plan at Clause 02.04 only where the proposed development will not compromise existing native vegetation.*
- *Ensure rural residential development utilises adequately constructed existing roads for access, or upgrades existing roads where necessary to provide a safe and integrated road and path network.*
- *Support rural residential development that provides supporting infrastructure, including sealed roads, road / junction improvements, path networks, fire access tracks, lighting and reticulated water (or an alternative potable water supply with adequate supply for domestic use) in addition to that required for firefighting purposes.*

It is important to understand the strategic purpose of the Rural Conservation Zone (RCZ) which is primarily concerned with protecting and conserving rural land for its environmental features or attributes. The RCZ includes the following purpose:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To conserve the values specified in a schedule to this zone.*
- *To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.*
- *To protect and enhance natural resources and the biodiversity of the area.*
- *To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.*
- *To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.*
- *To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.*

Schedule 1 of the RCZ outlines the following Conservation Values for the area.

- *To ensure that the existing forest mosaic is protected and that any development does not compromise native vegetation, but provides for its enhancement.*
- *To ensure that land use within water supply catchments, most particularly proclaimed catchments, will not compromise water quality.*
- *To protect the unique flora, fauna and landscapes that are fundamental to the character and biodiversity of the area from inappropriate land use and development.*
- *To protect the conservation and landscape values of adjoining public land.*
- *To ensure that the character and landscape values of the area are protected.*
- *To achieve sustainable agricultural practice.*

The primary purpose of the RCZ is to protect and conserve the environment and all other land uses must not diminish the primary objective. Any development or agriculture that occurs must be consistent with sustainable land management and land capability practices which considers the conservation values and environmental sensitivity of the locality. It is important to emphasise that in the RCZ, all uses are subordinate to the environmental values

of the land which is why a planning permit is required to use the site for both dwelling and agricultural purposes.

Member Naylor expanded on this point in *Cock v Nillumbik SC [2005] VCAT 2156* stating:

...there is recognition in the zone that residential and farming land uses may be appropriate land uses, but they need to be considered on their merits. Furthermore, this zone actually provides a very limited range of uses that do not require planning approval, and this leads to the question as to whether land zoned Rural Conservation should be developed and used.

As commented on in *Kapiris v Macedon Ranges SC*, the introduction of the Rural Conservation Zone 1 to an area signals a very strong strategic policy direction to protect smaller rural lots from more intensive residential development (*Kapiris v Macedon Ranges SC (Red Dot)[2012] VCAT 1969*).

As outlined in the proposal section of the report, the Land Management Plan (LMP) submitted with the application proposes that the site will be split into three different zones including the housing zone of 1ha, a conservation zone of 8.4ha, and a grazing zone of 8ha. The LMP details weed control methods and detailed revegetation plan.

A key question is whether the improved environmental outcomes resulting from the conservation works and the agricultural use (as proposed in the application documents) can be achieved without a dwelling on the land, and whether a dwelling is required in order to better manage the vegetation and manage the animals on the site.

Whilst Council's Environment Planer has advised that the works proposed under the LMP are generally considered acceptable, the application does not provide sufficient justification as to why the dwelling is required on the site and the proposed residential use will become the primary purpose of the land which is an outcome that the planning scheme seeks to avoid. It is argued that the proposed revegetation and weed control works can occur on the site without the need for an associated dwelling.

In assessing the suitability of the dwelling use, the following relevant decision guidelines in the RCZ must be considered:

- *The capability of the land to accommodate the proposed use or development.*
- *How the use or development conserves the values identified for the land in a schedule.*
- *Whether use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.*
- *Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.*
- *An assessment of the likely environmental impact on the biodiversity and in particular the flora and fauna of the area.*
- *The protection and enhancement of the natural environment of the area, including the retention of vegetation and faunal habitats and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge areas.*

It can be inferred that rural residential development is not to be encouraged in rural zones other than the Rural Living Zone, to ensure environmental values and productive agricultural land is protected. Residential development in the Rural Conservation Zone is likely to be supported if it is in association with an active farming activity (without any adverse environmental impacts) that requires constant care or when an adequate environmental

outcome can be achieved where features of environmental significance can and need to be protected and enhanced.

Whilst it is appreciated that dwellings can promote conservation, it is highly dependent on the subject site. The subject site is currently mostly cleared of vegetation and does not contain any significant environmental features such as named waterways. In this case, the proposed revegetation of approximately 480 trees and shrubs is insufficient to allow for a residential land use to become the predominant land use on the site.

The proposal is unlikely to contribute to existing remnant native vegetation or create a bio link between the Macedon and Cobaw Ranges. Notably for lots within the Cobaw Biolink, consolidation is encouraged as the minimum subdivision area for lots in the Rural Conservation Zone Schedule 1 is 40ha. Whilst the intent of the proponents may be to have a positive impact on the biodiversity of the area, typically the introduction of domestic animals, weeds and pathogens (that accompanies development) contributes to the degradation of the environment. The benefits of the conservation works do not outweigh the broader policy objectives that seek to limit dwellings on small lots in rural areas.

Whilst there exists residential development on the lots surrounding the subject site, this is not sufficient justification for supporting the proposed dwelling on this lot. Rather consideration must be given purpose of the zone and the broader strategic policies outlined earlier in this assessment. This area is identified as being rural and is not earmarked for rural residential development. The surrounding lots were developed prior to 2006, and since that time state and local policies, along with how they are assessed, has evolved.

As stated in the VCAT decision relating to another proposal for a dwelling in the Rural Conservation Zone 1 in Macedon (*Kapiris v Macedon Ranges SC (Red Dot) [2012] VCAT 1969*), the *incremental impact of individual changes which eventually undermines both the integrity of the non urban rural zones and the underlying policy of constraining development within much more intensively subdivided residential townships or designated rural living areas. Eventually each individual approval cumulatively forms part of an argument to allow yet one more dwelling.*

Allowing a dwelling on the land would undermine the environmental values and detrimentally impact the locality due to a permanent and irreversible change to the way the land is used. Further to this, the proposed dwelling has the potential to limit the operation or expansion of agricultural activities on surrounding and nearby parcels of land.

The proposed use of the land for a dwelling in this case is inconsistent with the objectives of the relevant policies within the Planning Policy Framework, which seek to direct residential development to allocated areas and protect productive agricultural land in addition to protecting the health of ecological systems and the biodiversity they support.

Overall, the proposal is inconsistent with the objectives and set out in the MPS and PPF. Further residential development in rural areas not associated with enhanced environmental values and sustainable site management is a clear contrast to the above requirements. There is also opportunity for the land management activities proposed to be undertaken without the need for a dwelling.

Whether the design and siting of the dwelling and outbuilding is appropriate in a rural context

As outlined at Clause 35.06-2 of the RCZ, a lot used for a dwelling must be provided with suitable emergency vehicle access, on-site wastewater management system, a potable water supply with adequate storage and suitable electricity supply.

The accessway to the dwelling on site will be via Walls Lane a crossover. Council's Engineering department has recommended in one of the conditions that the crossover must be sealed on the road surface. As Walls Lane is an unsealed road

this requirement is not necessary, and a gravel crossover is accepted in this location. The driveway will be developed as per the standards conditioned by the engineering department in their referral response.

An on-site wastewater management system will be installed in accordance with the submitted LCA that has been approved by the internal environmental health unit and two determining water authorities (Goulburn-Murray Water and Coliban Region Water Authority).

The site does not have access to reticulated potable water supply. The Land Management Plan outlines domestic water supply through rainwater tank (with minimum capacity of 110KL) and two existing dams on-site (with approximate storage capacity of 0.8ml).

The applicant will liaise with service providers for electricity in future. The proposed dwelling satisfies these requirements. The Land Capability Assessment confirms that a suitable on-site system has been provided. It is therefore considered that the proposal is able to satisfy the requirements for a dwelling outlined in Clause 35.06-2.

Further to this the dwelling and associated outbuilding have been sited and designed appropriately to ensure they will minimise their impacts on the surrounding area. The dwelling is proposed to be setback 178 metres from the front boundary with the outbuilding being setback 191 metres. The buildings are centrally located on the site with side setbacks of 97.3 and 98 metres. The materials and colours selected for the dwelling are light in tone, neutral and sympathetic to the rural landscape, along with the single storey form proposed.

The basis for refusal recommendation is not due to the servicing requirements nor is due to the design or siting of the dwelling and outbuilding. It is considered that the dwelling will fit comfortably within the rural landscape. However, as outlined above, the key reasoning for the proposal not being supported is due to the policies that seek to minimise residential development in rural areas and the conservation works proposed being insufficient to necessitate or justify a dwelling use on the land.

Whether an existing use right has been established for the agricultural land use

As outlined in the proposal section of the report, the application has been accompanied by a Land Management Plan (LMP) that proposes a grazing zone of 8 hectares. The LMP submitted in support of the application details a stock grazing plan for 4 to 6 horses on the site. No other farming activity is proposed for the property.

Under the RCZ, a planning permit is required use the land for agriculture (horse husbandry). The applicant was advised that they should amend the application to include the agricultural use, but they declined, rather the applicant is seeking to rely on existing use rights, having provided a number of statutory declarations from surrounding landowners. The submission of statutory declarations is not sufficient information to establish that an existing use right applies on the property. The appropriate avenue to establish an existing use right is to make an application for a Certificate of Compliance under Section 97N of the *Planning and Environment Act 1987*. The applicant seeks to rely on the agricultural use as part of the justification for the dwelling use on the site, however in the absence of a formal existing use being established, or the current application amended to apply for the agricultural use, this application is incomplete.

It is noted that should an application be made for a Certificate of Compliance for the existing use, Clause 63 of the Macedon Ranges Planning Scheme would be relevant. Specifically, Clause 63.02 – Characterisation of Use which states:

If a use of land is being characterised to assess the extent of any existing use right, the use is to be characterised by the purpose of the actual use at the relevant date,

subject to any conditions or restrictions applying to the use at that date, and not by the classification in the table to Clause 73.03 or in Section 1, 2 or 3 of any zone.

As the applicant has not lodged an application for a Certificate of Compliance, it is the assessing officers view that existing use rights for agriculture do not exist in this circumstance.

Should existing use rights be established on the site, there is no guarantee that they would align with the proposed agricultural use of the land as an existing use right if granted would be limited to the specific type of agriculture that has occurred. The application should therefore have been amended to include the proposed agricultural use to determine whether it is suitable within the RCZ. As the applicant has failed to demonstrate existing use rights apply and has not sought planning approval to apply for the proposed agricultural land use (Horse husbandry), the proposed agricultural activity should not be supported.

Summary

Whilst the proposal contains positive aspects regarding the proposed conservation works and dwelling design, the use of the land for residential purposes is not supported by the Rural Conservation Zone or broader strategic policy which seeks to minimise residential development in rural areas. The conservation works proposed do not necessitate or justify a dwelling use on the land. The agricultural (horse husbandry) use cannot be used as justification for the dwelling either as it has not been properly recognised through either the establishment of existing use rights (Certificate of Compliance application) or an application for planning permission. The application is therefore contrary to the purpose of the Rural Conservation Zone and the related strategic policies and is subsequently not supported.

Officer declaration of conflicts of interest

All officers involved in the preparation of this report have declared that they do not have a conflict of interest in relation to the subject matter.

Statement regarding the Election Period

The Chief Executive Officer has reviewed this report and is of the view that a decision taken on the matters raised in the report would not constitute a prohibited decision under section 69(2) of the Local Government Act 2020 and would not be inconsistent with section 4 of Council's Election Period (Caretaker) Policy.