



# **Planning Delegated Committee Meeting Agenda**

**Wednesday 10 November 2021 at 7pm  
Gisborne Administration Centre  
40 Robertson Street, Gisborne**

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**1. ACKNOWLEDGEMENT OF COUNTRY**

Macedon Ranges Shire Council is on Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Countries. Council acknowledges that those attending today's meeting are gathering on their land. Council pays its respects to their Elders past, present and emerging and any Aboriginal and/or Torres Strait Islander People who may be viewing this meeting

**2. RECORDING AND LIVE STREAMING OF THIS COMMITTEE MEETING**

This meeting will be held in person and streamed live on the internet.

The meeting will be recorded. The recording will be available on Council's website within 48 hours of the end of the meeting.

**3. PRESENT**

**4. APOLOGIES**

**5. DECLARATION OF CONFLICTS OF INTEREST**

**6. PURPOSE OF PLANNING DELEGATED COMMITTEE**

The Planning Delegated Committee provides 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.

It is also 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**

Planning Committee Meeting: **Wednesday 13 October 2021**

**Recommendation:**

**That the minutes of the Planning Delegated Committee of the Macedon Ranges Shire Council held on Wednesday 13 October 2021 as circulated be confirmed.**

<b>8.</b>	<b>APPLICATION FOR PLANNING PERMIT PLN/2020/497</b>
	<b>Use and development of Restricted Place of Assembly (meditation retreat centre) and business identification signage 286 Central Road, Tylden</b>
<b>Officer</b>	<b>Alexia Paterson – Senior Statutory Planner</b>
<b>Council Plan Relationship Attachments</b>	<b>Healthy environment, healthy people 1. Statement of Planning Policy Assessment 2. Use and Development Plans 3. Locality Plan</b>
<b>Applicant</b>	<b>YBL Remmus Architecture &amp; Building Consultants</b>
<b>Date of Receipt of Application</b>	<b>26 November 2020</b>
<b>Trigger for Report to Council</b>	<b>Councillor call in</b>

### **Purpose and Overview**

The application proposes to use the site for a meditation retreat centre, construct buildings and works to extend the existing dwelling and construct a new outbuilding, and display of 0.78m<sup>2</sup> sized business identification signage. A maximum of ten (10) patrons are proposed at the meditation centre at any one time, once a calendar month for a maximum of 8 hour duration.

The application was advertised with four (4) objections received.

Key issues to be considered in the assessment of this application relate to the impact of the proposal on noise and privacy of adjoining land owners/occupiers and alignment of the proposal with the purpose of the zone.

The application has been assessed against the relevant provisions of the Macedon Ranges Planning Scheme and is considered appropriate. On balance, the use and development is responsive and consistent with objectives of the relevant provisions of the Planning Policy Framework, Local Planning Policy Framework, zone, particular provisions and general provisions. It is recommended that a Notice of Decision to Grant a Permit be issued subject to conditions.

### **Recommendation**

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**That the Planning Delegated Committee issue a Notice of Decision to Grant a Planning Permit for use and development of a Restricted Place of Assembly (meditation retreat centre) and business identification signage for the land at 286 Tylden Road, Tylden subject to the following conditions:**

1. **Before the use and development commences amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The amended plans must be drawn to scale with dimensions and an electronic copy must be provided. The amended plans and documentation must be generally in accordance with the plans submitted and assessed with the application but modified to show:**
  - a) **Delinate a landscape strip buffer of suitable planting species along the existing southern domestic fenced boundary line with the objective to screen the approved outbuilding and extension to existing dwelling from public viewing.**

**When approved, these plans will be endorsed and will form part of this permit.**

2. **The use and development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.**
3. **Unless with the prior written consent from the Responsible Authority, the use hereby permitted must only operate as follows:**
  - a) **One (1) day each calendar month**
  - b) **A maximum of eight (8) hour duration, closing at 6:00pm**
  - c) **A maximum of ten (10) patrons at any one time for the permitted use**
  - d) **No operation on public holidays**
4. **No amplified music may be played and/or activities performed outside the buildings dedicated to the use as shown on the endorsed plans.**
5. **No music may be audible outside the permitted outbuilding dedicated to the use as shown the endorsed plans.**
6. **Noise levels emanating from the premises must not exceed those required to be met under Environment Protection Regulations under the Environment Protection Act 2017.**
7. **The use must not detrimentally affect the amenity of the neighbourhood, including through the:**
  - a) **Transport of materials, goods or commodities to or from the land.**
  - b) **Appearance of any building, works or materials.**
  - c) **Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.**
8. **The permitted signage expires 15 years from the date of this permit.**

## **MRSC Engineering Conditions**

9. **Prior to the commencement of works, an “Asset Protection Permit” must be obtained from Council for any of the following circumstances:**
  - a) **Entering a building site by means of a motor vehicle having a gross weight exceeding two tonnes.**
  - b) **Occupying a road for works.**
  - c) **Connecting any Council land to a stormwater drain.**
  - d) **Opening, altering or repairing a Council road.**
  - e) **Opening, altering or repairing a Council drain.**
  - f) **Accessing a building site from a point other than a crossover.**
  - g) **Construct/repair/widen/remove any crossover**
10. **Before the use commences and/or occupation of the development, the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:**
  - a) **Constructed;**
  - b) **Properly formed to such levels that they can be used in accordance with the plans;**
  - c) **Surfaced with an all-weather sealcoat or treated to the satisfaction of the Responsible Authority to prevent dust and gravel being emitted from the site;**
  - d) **Drained and maintained;**
  - e) **Clearly marked to show the direction of traffic along access lanes and driveways;**

**to the satisfaction of the Responsible Authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times, to the satisfaction of the Responsible Authority.**
11. **Prior to the commencement of use, the existing crossover must be sealed to Central Road to the satisfaction of the Responsible Authority.**
12. **All stormwater discharging from the approved development must be discharged to any existing water tank, soak well or otherwise discharged so as not to cause erosion, flooding or nuisance to the subject or surrounding land to the satisfaction of the Responsible Authority**
13. **No polluted and/or sediment laden runoff is to be discharged directly or indirectly into drains or watercourses. Soil erosion control measures must be employed throughout the development works in**

accordance with Construction Techniques for Sediment Pollution Control (EPA 1991) to the satisfaction of the Responsible Authority.

#### **Coliban Water conditions**

14. Prior to the commencement of the construction of buildings or other works, the status and capability of the existing wastewater system and disposal area to meet the needs of the proposed use must be assessed.
15. All wastewater must be must be disposed of via connection to the existing septic tank system which must be an EPA-approved system, installed, operated and maintained in compliance with the relevant EPA Code of Practice, Certificate of Approval and council-issued septic system permit. If necessary, the system must be upgraded to the satisfaction of council's Environmental Health Department.
16. The disposal area must be fenced for the prevention of trafficable access to the disposal area, which must be shown on the site plans that form part of the permit.
17. The wastewater treatment system and disposal area must be installed, and, at all times, must be operated and managed, in accordance with a council-issued septic tank permit.

#### **Permit Expiry**

18. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within two (2) years of the date of this permit.
  - b) The development is not completed within four (4) years of the date of this permit.
  - c) The use is not commenced within two (2) years of the completion of the development.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within 6 months afterwards if the development has not commenced, or 12 months after if the development has commenced but is not yet completed.

#### **Permit Notes:**

- Future owners of the land must be made aware of the existence of this permit.

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### **Existing conditions and relevant history**

#### Subject land

The subject site is located on the east side of Central Road, Tylden on land covered by Farming Zone and Environmental Significance Overlay Schedule 4. The land size is approximately 11 hectares, has flat topography and has established septic system

drainage infrastructure. Occupying the site is an existing dwelling and several ancillary outbuildings clustered towards the front half of the property, obscured from view by a vegetation buffer. An existing access way is located along the northern property title boundary via Central Road and is visually buffered by mature vegetation along the boundary. The residual land is largely described as grassland, although the rear quarter of the lot is a dedicated tree plantation. The grassland area between dwelling and tree plantation is currently occupied by grazing sheep from an adjoining property. This is achieved via an arrangement between neighbours. The subject site currently contains a dwelling and farming activities as a secondary use. An existing septic system supports the dwelling, and would continue to be the only septic system on site.

#### Surrounds

The immediate surrounding area to the north and east direction are similar in attributes to the subject site, occupied by dwellings and outbuildings with small scale farming activities of the same land allotment size. To the south and east, lots are notably larger and used more productively with agriculture activities with ancillary dwellings and outbuildings. The street block, whilst covered by the Farming Zone, comprises small to medium sized farm blocks with residential dwellings less than 100 metres apart not in the same ownership. The subject site's dwelling is approximately 85 metres setback to its closet neighbouring dwelling to the north.

#### 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 found the following permit history:

Permit No.	Description
PLN/2015/403/E	Use of land as a Place of Assembly (Meditation Retreat Centre) and development including an extension to the main dwelling, habitable outbuilding, conversion of three outbuildings to meeting/storage areas, and advertising signage. (Secondary consent sought for minor changes)
PLN/2015/403/D	Use of land as a Place of Assembly (Meditation Retreat Centre) and development including an extension to the main dwelling, habitable outbuilding, conversion of three outbuildings to meeting/storage areas, and advertising signage. (Request for Secondary Consent to allow minor changes to plans)
PLN/2015/403/C	Use of land as a Place of Assembly (Meditation Retreat Centre) and development including an extension to the main dwelling, habitable outbuilding, conversion of three outbuildings to meeting/storage areas, and advertising signage.
PLN/2015/403/B	Use of land as a Place of Assembly (Meditation Retreat Centre) and development including an extension to the main dwelling, habitable outbuilding, conversion of three outbuildings to meeting/storage areas, and advertising signage. (Request for Secondary Consent to allow minor changes)



PLN/2015/403/A	Use of land as a Place of Assembly (Meditation Retreat Centre) and development including an extension to the main dwelling, habitable outbuilding, conversion of three outbuildings to meeting/storage areas, and advertising signage. Amendment to the Conditions on the Permit
PLN/2015/403	Use of land as a Place of Assembly (Meditation Retreat Centre) and development including an extension to the main dwelling, habitable outbuilding, conversion of three outbuildings to meeting/storage areas, and advertising signage.

The subject site was previously approved under a 2016 issued Planning Permit PLN/2015/403 for *Use of land as a Place of Assembly (Meditation Retreat Centre) and development including an extension to the main dwelling, habitable outbuilding, conversion of three outbuildings to meeting/storage areas, and advertising signage*. This planning permit allowed the use of the site as a meditation retreat centre to operate every Sunday with maximum 50 people, and three (3) times a year maximum of 80 people. Existing outbuildings to the north formed part of the use. Planning Permit PLN/2015/403 expired 8 July 2018 as the development did not commence.

### Proposal

The proposal is to use and development the Land for a Restricted Place of Assembly (Meditation Retreat Centre) and associated business identification signage. It has the following attributes:

#### Proposed Use

- Restricted Place of Assembly (meditation retreat centre) activity to operate within an extended section of existing dwelling building and new habitable outbuilding
- Maximum ten (10) patrons at any one time, for a total of eight (8) hours duration (closing at 6pm), for one (1) day per calendar month
- Eight (8) on-site car parking spaces including one (1) accessible on-site car parking space
- Maintain two (2) car parking spaces dedicated to the existing dwelling use.

#### Proposed Development

- Extension to the existing dwelling building to incorporate separate kitchen, bathrooms and storage dedicated to the Use.
- Convert existing garage to a prayer room.
- An outbuilding with a total area of 77.9m<sup>2</sup>.
- Maximum building height of 4.80metres.
- Constructed in a weatherboard clad exterior and colorbond roofing addressed in a white and cream colour palette

#### Proposed Signage

- 0.78m<sup>2</sup> (0.65m x 1.2) or 1.2m<sup>2</sup> (0.8m x 1.5m) including the signpost (rock)
- Non-reflective and non-illuminated
- Modest sized red text with white background.

## Relevant Macedon Ranges Planning Scheme controls

### Planning Policy Framework

Clause No.	Clause name
14.01	Natural Resource Management – Agricultural
14.02	Natural Resource Management – Water quality
17.04	Economic Development – Tourism

### Local Planning Policy Framework

Clause No.	Clause name
21	Municipal Strategic Statement
21.02	Key Issues and Influences
21.03	Vision – Strategic Framework Plan
21.10	Economic Development and Tourism
21.05	Significant Environments and Landscapes

### Zoning

Clause No.	Clause name
35.07	Farming Zone

### Overlay

Clause No.	Clause name
42.01	Environment Significance Overlay – Schedule 4

### Particular Provisions

Clause No.	Clause name
52.06	Car parking

### 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

	<b>Assessment criteria</b>	<b>Assessment response</b>
2	Does the application proposal include significant ground disturbance as defined in Part 1 Regulation 5 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A
3	Is the application proposal an exempt activity as defined in Part 2 Division 2 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A
4	Is the application proposal a high impact activity as defined in Part 2 Division 5 <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 Regulation 7 of *Aboriginal Heritage Regulations 2018* as the subject site is not within a defined Cultural Heritage Sensitivity area.

#### Referral

<b>Authority (Section 55)</b>	<b>Response</b>
Coliban Water	No objection subject to conditions
Goulburn Murray Water	No response

<b>Authority (Section 52)</b>	<b>Response</b>
MRSC Engineering	No objection subject to conditions
MRSC Health	No objection, no 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. Four (4) objections have been received to date.

#### **Officer assessment**

#### PLANNING POLICY AND LOCAL PLANNING POLICY FRAMEWORK

Relevant policies to the proposal are:

Clause 14.01-1S (Protection of agricultural land) and Clause 21.07-1 (Agriculture) which aims to protect the state's agricultural base by preserving productive farmland and to facilitate productive agricultural activity in areas of high soil quality. With a number of strategies of note are:

- *To protect productive agricultural land from unplanned loss due to permanent changes in land use*
- *Discourage conversion of productive agricultural land to non-productive uses*

- *in considering a proposal to use, subdivide or develop agricultural land, consider:*
  - *Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production;*
  - *Compatibility between the proposed or likely development and the existing use of the surrounding land;*
  - *The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas and Land capability.*

Clause 14.02-2S (Water quality) and Clause 21.07-3 (Water) aims to protect water quality. A number of strategies of note are:

- *Protect reservoirs, water mains and local storage facilities from potential contamination.*
- *Ensure that land use activities potentially discharging contaminated runoff or wastes to waterways are sited and managed to minimise such discharges and to protect the quality of surface water and groundwater resources, rivers, streams, wetlands, estuaries and marine environments*
- *Discourage uses and development in Special Water Supply Catchments and elevated areas that have the potential to reduce water quality.*
- *Ensure use and development, including dwellings, on land which cannot be serviced by a reticulated sewerage system is designed, sited, managed and maintained to prevent the contamination of water supplies in the catchment.*
- *Ensure the design of effluent disposal systems is suitable to the soil type and topography of the site and land capability assessments demonstrate development and use will not compromise water quality.*

Clause 17 (Economic Development) and Clause 21.10 (Economic Development and Tourism) aims to promote rural business and tourism development with key objectives to strengthen and diversify the economy. It also outlines the need for planning to contribute to the economic wellbeing of communities and the State as a whole by supporting economic growth and development.

Clause 21.05 (Significant Environments and Landscapes) aims to protect and enhance the Shire's visual and landscape qualities, including views and vistas. It notes open areas of rural land used for grazing and some cropping activities make up the remaining areas of the municipality. The policy recognises the competing demands on natural areas may also erode the significant landscapes; they include fire risk, nature conservation, recreation, vegetation protection and bushland living environments. One notable related objective, Objective 1, is to maintain and enhance the existing rural landscapes. A Related strategy is to ensure development and works complement the Shire's rural landscape character.

### **Response**

The proposal aligns with policy that advocates economic development and protection/retention of agricultural land. The proposal offers a good example of how

non-agricultural uses can be compatible with agricultural uses, without impacting or limiting the site's and adjoining properties capabilities of agricultural uses and agricultural enhancements. The use is of low impact and low scale operation, utilising an area and infrastructure already identified as being used for non-agricultural use; i.e. a dwelling. Whilst the dwelling would have a level of direct connection and influence over the performance of existing residual land's agricultural activities, the proposal would not limit / compromise that connection. There is no permanent loss of agricultural activities or capabilities to operate the site for such uses as a result of this application. The proposal simply piggy backs on the already well defined domestic component to this site, with a low key operation ancillary to the dwelling.

All use activities are to be contained solely within the designated advertised buildings. The existing septic system can comfortably support the proposed use without any additional impact to site's soil or water quality.

The proposal is an opportunity for the landowner to offer a community service and a tourism element to this part of the municipality at a scale that is not indifferent to a rural residential lifestyle to which is predominated noted to already exist within the immediate area.

With a series of the operational and amenity control permit conditions, this proposal suitably aligns with ensuring objectives and strategies of the listed relevant policies are met.

New development includes the extension to the existing dwelling and habitable outbuilding. These new built forms are co-located within the existing domestic footprint and would be constructed with appropriate non-reflective materials and be of a scale matching the existing built form on site. The existing rural open landscape is protected from the proposed development.

#### FARMING ZONE

The subject site is covered by the Farming Zone. The purpose of the Farming Zone relative to this proposal is, to provide for the use of land for agriculture, to encourage the retention of productive agricultural land, to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

The proposal is aligned with the zone through considerations to decision guidelines as follows:

#### The relevant general issues are:

- *Any Regional Catchment Strategy and associated plan applying to the land.*
- *The capability of the land to accommodate the proposed use or development, including the disposal of effluent.*
- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*
- *How the use and development makes use of existing infrastructure and services*

Agricultural issues and the impacts from non-agricultural uses are:

- *Whether the use or development will support and enhance agricultural production.*
- *Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.*
- *The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.*
- *The capacity of the site to sustain the agricultural use.*
- *Any integrated land management plan prepared for the site.*

The proposal for a restricted place of assembly is generally confined to the area of the existing dwelling. The agricultural use of the land, that is residual land beyond the domestic land, remains intact and not impeded by this proposal.

Both the dwelling and proposed use are non-agricultural. The existing dwelling provides the benchmark on the capabilities and value of the land agricultural attributes and pursuits. As equally does the size of the land, which is approximately 11.0 hectares, similar sized to adjoining allotments.

The proposed use and development will be concentrated on a relatively small part of the site and will not have a significant impact on the agricultural potential of the site.

The new habitable outbuilding is to provide additional facilities for the use, and would be quite easily converted to storage whether domestic or agricultural items when not in use, if the entire proposed use ceases.

Whilst there may not be a direct contribution in supporting and enhancing the existing agricultural activities, the proposal would not impact whatsoever both directly or indirect to the land's capabilities to continue its agricultural activities fitting to the site characteristics.

*Amenity*

Minimising neighbouring amenity and even potential noise impacts experienced by livestock from the proposed use and development, would be necessary to ensure compatibility. Protecting amenity can be comfortably managed by permit conditions, namely by restricting patron numbers, restricting activities to be within the building and limiting the use of music, particularly amplified music.

The introduction of a landscaping buffer along the southern section of the domestic area is recommended, adding a soft noise barrier and visual concealment between nearby residents.

*Operating hours*

The proposal seeks to operate 8 hours, closing at 6 pm, once per calendar month for no more 10 patrons at any one time. Duration of sessions is unknown however it is reasonable to suggest that a few sessions would be held over the 8 hours and not all sessions would always be full. Closing at 6pm is a compatible time to reinforce rural residential lifestyle that is notable within the immediate area. Overall, the proposed operation hours is considered acceptable.

CLAUSE 42.01 - ENVIRONMENT SIGNIFICANCE OVERLAY – SCHEDULE 4

The site is affected by the Environmental Significance Overlay Schedule 4. This overlay applies to properties within the Eppalock Proclaimed Catchment and aims to ensure the protection and maintenance of water quality and water yield within the Eppalock Water Supply Catchment Area.

The subject site has an existing septic system. The proposal does not seek increase the septic system capacity for this site. All proposed toilets will be connected to the existing system.

The application was referred to Coliban Water and Goulburn Murray Water being catchment authorities for this area. Coliban Water provided no objection subject to standard condition requiring proposed toilets to be connected to existing septic system. Goulburn Murray Water provided no response.

MRSC Health department provided no objection and advised that the current infrastructure is adequate to cater for the proposal.

Therefore, it is considered that the proposed development would no adverse impact to protection water quality within regions catchment areas.

CLAUSE 51.07 – MACEDON RANGES STATEMENT OF PLANNING POLICY

Section 46AZK of the Planning and Environment Act 1987 and Clause 51.07 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. The proposal in general complies with the Statement of Planning Policy and the application will meet the objectives and strategies specified in the policy. See separate assessment document against relevant Statement of Planning Policy objectives.

CLAUSE 52.05 – SIGNS

Clause 52.05 is relevant to the consideration of this application. This clause controls signage to ensure signage does not impose visual cluster or loss of vistas, is of appropriate scale and location and does not impose general amenity impact or cause a driving hazard. In the Farming Zone, signage is category 4 Sensitive areas – Maximum limitation. A permit is required for a business signage and maximum allowance is must not exceed 3m<sup>2</sup>.

The business identification signage is of 0.78sqm size, non-illuminated and sited at the front entrance. The proposed signage is considered unobtrusive and appropriately positioned to identify the site to others.

CLAUSE 52.06 CAR PARKING

Clause 52.06 is relevant to the consideration of this application. This clause seeks to ensure there is the provision of an appropriate number of car parking spaces, to ensure that car parking does not adversely affect the amenity of the locality, and to ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

The proposal provides car parking as set out in the table below:

	Required	Provision
Restricted place of assembly 0.3 per patron	3	8
Dwelling	2	2
Total	5	10

The design of car spaces and access ways generally complies with the requirements of this clause, having regard to the required dimensions, access way design, safety, urban design and landscaping.

The surplus of the car parking spaces is reasonable and sensible given the lack of public transport location and likely solo patrons to this retreat. The retreat operates with a maximum of the ten (10) patrons at any time, and therefore eight (8) car spaces is more likely to accommodate patron demand. All car spaces are located within proximity to the use venue and within the existing domestic area, where there is no impact on primary agricultural land.

#### RESPONSE TO OBJECTIONS

Objection	Officer Response
Inconsistent with the zone	The proposal presents a significant reduction in use and development to the previous Council approval made in 2016. There have been no significant policy provisions introduced into the scheme that would otherwise overwhelming influence to revert once approved 2016 use and development to now be refused; particularly acknowledging the use and development's lessor particulars.
Noise impacts	Noise and amenity impacts to be managed by conditions on the permit and would resolve objectors related concerns. See main report of more details.
Increase traffic – difficult to move stock between land adjacent	MRSC Engineering department raised no concerns to traffic management. The use would operate once a calendar month and only passenger vehicles would be used to gain access to the site.



Objection	Officer Response
	<p>The objector did not provide more details of how passenger vehicles would disrupt movement of stock on public roads.</p> <p>The local roads in this area can sometimes be used by livestock and vehicles to travel and all road users (animals and cars) need to be mindful and respectful of each other.</p> <p>It is unclear what part of public roads are used for stock moving. Passenger vehicles used by patrons are no different to passenger vehicles used by residents who reside in dwelling on the adjacent lots.</p> <p>It is not envisaged one (1) day per calendar with (ten) 10 people maximum of site any one time would impose obstruction for stock movement during the use day.</p>
Devaluation of property	Not a planning consideration.
Loss of privacy	<p>Entire use will be performed within dedicated buildings within designated existing domestic activity area, largely concealed by mature planting that acts a soft and noise buffer between domestic area and residual land. It is noted the proposal seeks a finishing time of 6pm. That is considered a compatible time having regard existing secondary residential uses of property immediately surrounding the subject site.</p> <p>Additional people on the site is no different from having seasonal and continuous farm workers performing agricultural activities on one's land. The latter scenario is more likely to be more frequent than the proposed use 1 day per calendar month; 12 days per year.</p> <p>Level of domestic privacy expectation differ from those residing in the residential areas. One cannot expect a</p>

<b>Objection</b>	<b>Officer Response</b>
	<p>high level of domestic privacy in a farming zone.</p> <p>There are fundamental differences to residential expectations between areas covered by rural zone and residential zone. To seek full protection for residential amenity standards in a farming zone area would not align with the inherent difference between the zoning types and overall zoning structure. Protecting residential amenity in a farming zone goes two ways. Objectors are encouraged to consider visual and noise vegetation buffers along their property boundaries or around their dwellings areas to reduce their residential impacts to their adjoining neighbours' activities within their dedicated residential area.</p> <p>Landscape buffer on the south end of domestic area is recommended as fair contribution to provide privacy between proposed use and objector to the south.</p>
<p>Compromised security</p>	<p>. The proposal is a discretionary use and concerns around compromising the security of adjoining properties alone is not sufficient reason to refuse.</p> <p>The adjoining lots are all occupied by the dwellings and farming activities. People are regularly moving in and out of these lot as result of these uses.</p>
<p>New outbuilding and associated noise too close to property boundary – frighten animals – causing death</p>	<p>The outbuilding is located within the existing domestic area and is approximately 55 metre setback from the shared boundary and presumed paddock where animals are kept.</p> <p>To support this use, it is fair and reasonable to conclude that any noise omitted from the outbuilding interfacing animal keeping paddock adjacent should be kept at the utmost minimal.</p> <p>A condition is proposed to restrict that no music is to be audible outside the outbuilding.</p>

Objection	Officer Response
	<p>A condition is proposed to provide a landscape buffer to the south eastern edge of outbuilding to assist with softening and external patron noise whilst traversing moving from one building to the other.</p>
<p>Past and current behaviour on general management of the land, particularly during fire season</p>	<p>Not a planning consideration.</p> <p>Planning Officer has advised the applicant to pass on to their client (property owner) information about bushfire risk and managing property during bushfire seasons.</p> <p>Concerns raised with previous behaviour associated with previous use would be reduced by the nature of this application's particulars and additional standard amenity conditions are to be included on the permit for completeness.</p>

**Officer declaration of conflict of interest**

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

**Conclusion**

The application has been assessed against the relevant provisions of the PPF, LPPF and the relevant Particular and General Provisions of the Macedon Ranges Planning Scheme, exhibiting modest use and development within an already define non-agricultural use area. The use and development utilises the existing infrastructure and exhibits no direct or indirect implications to current and future land agricultural capabilities. There is no loss to agricultural activities. In light of the above, it is considered that the proposal should be supported, subject to conditions.

<b>9.</b>	<b>APPLICATION FOR PLANNING PERMIT PLN/2020/524</b>
	<b>Use and development of a place of worship and reduction in car parking requirement –</b>
<b>Officer</b>	<b>148 High Street, Kyneton Christo Crafford – Coordinator Statutory Planning</b>
<b>Council Plan Relationship</b>	<b>Healthy environment, healthy people</b>
<b>Attachments</b>	<b>1. Locality / Aerial Photo 2. Development Plans 3. Planning Application report 4. Statement of Planning Policy</b>
<b>Applicant</b>	<b>Bodkin Gospel Trust</b>
<b>Date of Receipt of Application</b>	<b>16 December 2020</b>
<b>Trigger for Report to Council</b>	<b>Councillor call in</b>

### **Purpose and Overview**

The application is for use and development of a place of worship and associated reduction in standard car parking requirements.

Key issues to be considered relate to the suitability of the land for the proposed use given its location in a residential area and potential neighbourhood amenity and traffic impacts.

Three objections were received relating to noise, car parking, traffic, hours of operation, loss of privacy and visual impact of the new building on the streetscape.

The application has been assessed against the relevant provisions of the Macedon Ranges Planning Scheme and is considered appropriate. On balance it is considered that the use and development of a place of worship and associated reduction in standard car parking requirements is in keeping with the relevant provisions of the Planning Policy Framework, Local Planning Policy Framework, zone, overlay, particular provisions and general provisions. It is recommended that the application be approved subject to conditions.

### **Recommendation**

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**That the Planning Delegated Committee issue a Notice of Decision to Grant a Planning Permit for use and development of a place of worship and reduction**

in car parking requirement for the land at 148 High Street Kyneton subject to the following conditions:

1. The use and development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
2. Unless with the prior written consent from the Responsible Authority, the use hereby permitted may only operate between the following hours:

Day / Service	Operating hours
Monday Prayer Meeting	6.30pm – 7.00pm
Friday Bible Teaching	6.30pm – 7.45pm
Sunday Communion Service	5.30am – 6.15am
Sunday Preaching	4.00pm – 5.00pm (once per month)

3. Unless with the prior written consent from the Responsible Authority, the number of persons present on the property at any one time must not exceed the following to the satisfaction of the Responsible Authority:
  - a) Monday prayer meeting and Sunday communion service, as identified in condition 2: 50 people
  - b) All other times: 160 people
4. No sound amplification equipment or loud speakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the Responsible Authority.
5. Sunday communion services are not to include singing or music of any kind, whether amplified or unamplified, to the satisfaction of the Responsible Authority.
6. The premises is not to be available for public hire or bookings.
7. All external lighting must be designed, baffled and located so as to prevent adverse effect on adjoining land, to the satisfaction of the Responsible Authority.
8. All security alarms or similar devices installed on the land must be of a silent type to the satisfaction of the Responsible Authority.
9. All external plant and equipment must be acoustically treated or placed in sound proof housing to reduce noise to a level satisfactory to the Responsible Authority.
10. Unless with the prior written consent of the Responsible Authority, before the use commences the landscaping works shown on the

endorsed plans must be carried out, completed and thereafter maintained to the satisfaction of the Responsible Authority.

11. Prior to the commencement of the use a minimum of three (3) bicycle spaces must be provided on the subject land to the satisfaction of the Responsible Authority.

**MRSC Engineering Conditions**

12. Prior to the commencement of works, an “Asset Protection Permit” must be obtained from Council for any of the following circumstances:

- a) Entering a building site by means of a motor vehicle having a gross weight exceeding two tonnes.
- b) Occupying a road for works.
- c) Connecting any land to a stormwater drain.
- d) Opening, altering or repairing a road.
- e) Opening, altering or repairing a drain.
- f) Accessing a building site from a point other than a vehicle crossing.

13. Prior to the commencement of works, a Construction Management Plan must be submitted to and approved by the Responsible Authority. The management plan must show:

- a) Measures to control erosion and sediment and sediment laden water runoff including the design details of structures.
- b) Dust control.
- c) Where any construction wastes, equipment, machinery and/or earth is to be stored/stockpiled during construction.
- d) Where access to the site for construction vehicle traffic will occur.
- e) The location of any temporary buildings or yards.

Development works on the land must be undertaken in accordance with the endorsed Construction Management Plan to the satisfaction of the Responsible Authority.

14. Prior to the commencement of the use, all works shown on the approved Engineering Plans must be constructed or carried out all to the satisfaction of the Responsible Authority.

15. Before the use commences the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:

- a) Constructed;
- b) Properly formed to such levels that they can be used in accordance with the plans;
- c) Surfaced with an all-weather sealcoat or treated to the satisfaction of the Responsible Authority to prevent dust and gravel being emitted from the site;

- d) **Drained and maintained;**
- e) **Line marked to indicate each car space and all access lanes;**
- f) **Clearly marked to show the direction of traffic along access lanes and driveways;**

**to the satisfaction of the Responsible Authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times, to the satisfaction of the Responsible Authority.**

- 16. The vehicle crossing must be constructed in accordance with the Macedon Ranges Shire Council's standards. Crossings are to be a minimum of 10.0m from any intersection, 1.0m from any power pole, sign or service pit and an absolute minimum of 3.0m from any street tree. Crossings must be sealed when connecting to a sealed road.**
- 17. The internal access driveway must be constructed to a sealed standard with appropriate drainage in accordance with plans to be submitted and approved by the Macedon Ranges Shire Council**
- 18. The areas set aside for car parking and vehicle access ways must be maintained in a continuously useable condition to the satisfaction of the Responsible Authority.**
- 19. Prior to the commencement of use, the development is to be provided with a drainage system to a design approved by the Responsible Authority and such that:**
  - a) The development as a whole is provided with legal point/s of discharge approved by the Responsible Authority and any other statutory authority from which approval must be received for the discharge of drainage.**
  - b) Stormwater runoff from all buildings, tanks and paved areas must be drained to a legal point of discharge.**
  - c) All stormwater drains required to the legal point of discharge and which pass through lands other than those within the boundaries of the development must be constructed at no cost to the Responsible Authority.**
  - d) Details of stormwater detention system to ensure 10 year ARI post-development flows are restricted to pre-development level.**
  - e) Stormwater quality treatment system that meet the current best practice performance objectives for stormwater quality as contained in the Urban Stormwater - Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999). Alternatively, payment of the stormwater quality offset contribution to the Responsible Authority.**

**Prior to the commencement of any works detailed construction plans for the above works must be submitted to and approved by the Responsible Authority.**

20. The development is to be constructed in accordance with Macedon Ranges Shire Council's Policy Engineering Requirements for Infrastructure Construction (June 2010).
21. No polluted and/or sediment laden run-off is to be discharged directly or indirectly into drains or watercourses. Soil erosion control measures must be employed throughout the development works in accordance with Construction Techniques for Sediment Pollution Control (EPA 1991) and Environmental Guidelines for Major Construction Sites (EPA 1995) to the satisfaction of the Responsible Authority.

#### **Coliban Water Conditions**

22. The owner is required to provide reticulated water and sewerage services to the development site and comply with any requirements arising from any effect of the proposed development on Coliban Water assets.

Services are to be provided in accordance with our specifications.

23. All Coliban Water assets within the development site, both existing and proposed, are to be protected by an easement in favour of Coliban Region Water Corporation.
24. Easements in favour of Coliban Region Water Corporation are required to be a minimum of 2.5 metres wide and if a shared easement the minimum width is 3.0 metres.

#### **Expiry of Permit**

25. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within two years of the date of this permit.
  - b) The development is not completed within four years of the date of this permit.
  - c) The use is not commenced within two years of the completion of the development.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

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### **Existing conditions and relevant history**

#### **Subject land**

The subject site is located on the eastern edge of the Kyneton Township, on the south side of High Street, approximately 95m south east of the intersection with Bourke Street. The site is a parallelogram shape with a 33.53m frontage to High Street and a depth of 50.29m resulting in a site area of 1506m<sup>2</sup>.

The site is currently vacant and appears to have been vacant for approximately a decade, having previously been used as a commercial premises (auto parts recycler). The land falls slightly from north to south. The site is grassed but contains



no other vegetation other than established planted exotic garden trees and shrubs along the common boundary with the property to the west.

There is a 1.83m wide drainage and sewerage easement along the full length of the rear boundary.

#### Surrounds

The land adjoining the site to the east is developed with a single storey dwelling, which has a driveway adjacent to the shared boundary.

The land to the west, contains a single storey dwelling and associated mechanical repair business. The dwelling is closest to the boundary, with a separate building used for the mechanical repair business beyond that.

To the rear is vacant land which is part of the BUPA aged care facility. The main buildings for that use are located further to the south. There is also a small abuttal to a dwelling which fronts Ridgeway Crescent to the south.

All surrounding land to the south of High Street is included in the Neighbourhood Residential Zone Schedule 10 and Environmental Significance Overlay Schedule 4.

Land opposite to the north of High Street is zoned Commercial 2 Zone and exhibits a more mixed character, both due to its zoning and also the double-fronted nature of these sites, which are positioned between High St and Bourke St. This land is included in an Environmental Significance Overlay Schedule 4 and Bourke Street is a Category 1 Road.

Immediately to the north is a site developed with both a commercial building which is currently vacant (most recently used as a shop) and a dwelling. There is one further dwelling to the east of that, and then a continuous run of commercial properties all having dual frontages to High and Bourke Streets. These comprise varied commercial uses which continue to the freeway entry ramp further to the east. The land west of the shop, as High Street and Bourke Street intersect, is currently vacant; the westernmost portions of this land are very constrained due to their narrowness.

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

A current copy of title has been provided with the application which shows the land is encumbered with a 1.83m wide drainage and sewerage easement along the full length of the rear boundary.

#### Previous planning permit history

No relevant planning permit history for the subject property has been found.

#### **Proposal**

#### Use and Development

The proposal is to develop and use the land for a place of worship (lodged by the Kyneton Plymouth Brethren Christian Church) and for a reduction in car parking provision on site.

The submitted plans show a single storey rectangular shaped building of utilitarian design with a hipped roof located adjacent to the western boundary. The building footprint will be 244.80m<sup>2</sup>. The minimum setbacks from boundaries are as follows:

- front (High Street) - 3.5m
- west side boundary - 1m
- east side boundary - 16.9m
- rear (south) boundary - 17.9m

The building comprises a church hall area, toilet and maintenance facilities, lobby and an entry porch on the south east corner. The building will have window and door openings on the north and east elevations. The roof, trims, and window frames will be in Colorbond 'Ironstone' and walls in a combination of reclaimed red brick and mid toned timber slats.

The site will be fenced along the front boundary with 1.35m high timber posts and black metal pickets with a 6.6m wide sliding gate towards the east boundary. The remaining boundaries will be fenced with 1.8m high timber paling fencing.

The site will be accessed via a crossover from High Street located 5.5m from its east boundary. The balance of the site will be used for car parking, vehicle access ways, and landscaping. A total of 35 sealed car parking spaces will be provided on site. The submitted landscaping plan shows most will be provided along the property boundaries with a larger area provided within the front setback of the building. Species, planting and maintenance plans and information have also been submitted. The place of worship will be the new home for the local community church group as an addition to a number of other similar sites in the Kyneton Township.

The building would be used as a place of worship as follows:

Day Service /	Service Duration	Typical operating hours	Typical attendees	Maximum attendees	Frequency
Monday Prayer Meeting	30 mins	6.30pm – 7.00pm	30	Up to 50	Weekly
Friday Bible Teaching	1 hour and 15 mins	6.30pm – 7.45pm	120	Up to 160	Weekly
Sunday Communion Service	45 mins	5.30am – 6.15am	30	Up to 50	Weekly
Sunday Preaching	60 mins	4.00pm – 5.00pm	120	Up to 160	Monthly

This would result in the site being used for a total of 2.5 hours, three (3) days per week (7.5 hours total); and for an additional 1 hour on a Sunday, monthly.

The meeting hall would not be available for public bookings or hire and no amplified music will be used.

### Car parking reduction

The reduction in car parking sought is for thirteen (13) car parking spaces. The submitted plans show 35 car parking spaces can be provided on site. The required car parking rate for a place of assembly (which includes a place of worship) is 0.3 car parking spaces for each patron permitted. This results in a standard provision of 48 car parking spaces for the one weekly event and one monthly event when there may be 160 attendees. When the site is being used in accordance with the typical attendees of a maximum of 120, only 36 car parking spaces would be required therefore the shortfall would be one (1) car parking space.

The applicant has indicated that the maximum number of attendees is in excess of what is expected under normal operation of the premises, however they wish to retain the opportunity to cater for those circumstances if and when they occur.

### **Relevant Macedon Ranges Planning Scheme controls**

#### State Planning Policy Framework

Clause No.	Clause name
11	Settlement
19.02	Community Infrastructure

#### Local Planning Policy Framework

Clause No.	Clause name
21	Municipal Strategic Statement
21.03	Vision - Strategic Framework Plan
21.04	Settlement
21.05	Environment and Landscape Values
21.08	Built Environment
21.12-1	Community Development and Infrastructure
21.13-2	Kyneton

### **Statement of Planning Policy**

Section 46AZK of the Planning and Environment Act 1987 and Clause 51.07 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. The proposal in general complies with the Statement of Planning Policy and the application will meet the objectives and strategies specified in the policy.

### Zone

Clause No.	Clause name
32.09	Neighbourhood Residential Zone 10: Township Residential Village East

Overlay

Clause No.	Clause name
42.01	Environmental Significance Overlay 4: Eppalock Proclaimed Catchment

Particular Provisions

Clause No.	Clause name
51.07	Macedon Ranges Statement of Planning Policy
52.06	Car Parking

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 in Part 1 Regulation 5 <i>Aboriginal Heritage Regulations 2018</i> ?	Yes
3	Is the application proposal an exempt activity as defined in Part 2 Division 2 <i>Aboriginal Heritage Regulations 2018</i> ?	No
4	Is the application proposal a high impact activity as defined in Part 2 Division 5 <i>Aboriginal Heritage Regulations 2018</i> ?	Yes

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*.

### Permit Triggers

Clause No	Details
32.09-2	Place of Worship is a Section 1 use, but conditions are not met as access is not off a Road Zone Category 1 and a permit is required under Clause 52.06-3. The use therefore is Section 2.
32.09-9	A permit is required to construct a building and carry out works associated with a Section 2 use.
52.06-3	A permit is required to reduce the standard car parking provision.

### **The process to date**

The application was referred to the following authorities:

Authority (Section 55)	Response
Goulburn Murray Water	No objection and no conditions.
Coliban Water	No objection subject to conditions.

Authority (Section 52)	Response
MRSC Engineering	No objection 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 land and by requiring notices to be erected on the land for a period of 14 days.

Four (4) objections were received in response to notification, noting one of these objections was subsequently withdrawn.

Concerns raised relate to:

- Noise impacts;
- Car parking and reduction sought;
- Traffic generation and road safety;
- Hours of operation of the use;
- Loss of privacy;
- Visual impact on streetscape.

### **Officer assessment**

#### General

The proposal is required to be assessed against the provisions of the PPF, LPPF, the Neighbourhood Residential Zone, Clause 52.06 – Car Parking, and the decision guidelines of Clause 65. The key issues are considered to be the suitability of the use in the zone (especially with regards to amenity issues) and the adequacy of car parking supply.

#### Planning Policy Framework and Local Planning Policy Framework

While the policy framework does not address religious institutions in great detail, the proposal is considered broadly consistent with the general focus on supporting a wide range of community infrastructure, most explicitly expressed a Clause 19.02

Community Infrastructure and Clause 21.12-1 Community Development and Infrastructure.

The Local Policy Framework also places an emphasis upon appropriate built form responses in residential areas (most clearly at Clause 21.08-3 Built Environment) but given the modesty of the proposed building and its consistency with surrounding built form it is considered that the proposal adequately responds to this guidance.

### Zone

The purpose of the zone relevant to non-residential uses is as follows:

*To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

The proposal is consistent with the purpose of the Neighbourhood Residential Zone as the development maintains the existing neighbourhood character whilst allowing a non-residential use which will not result in unacceptable amenity impacts.

The proposed use is consistent with the above purpose due to its serving religious needs for the local community. Places of worship are traditionally embedded in residential areas and are considered an appropriate use as long as amenity issues are adequately addressed.

The key issue with amenity relates to the operating hours, which include early opening for the Sunday communion service. However the Sunday service is a small service and, subject to appropriate conditions, the amenity impacts are considered to be controllable.

The hours of operation of the use and associated noise impacts can be managed via appropriate permit conditions; only one weekly 45 minute service with a maximum of 50 attendees will be conducted at a time which may impact residential neighbours (Sunday 5.30am – 6.15am) which is considered reasonable. Later services are at a time where the amenity impacts are well within the reasonable expectations for the zone.

It is noted that two other similar Bodkin Gospel Trust local community churches operate in residential zones in the Kyneton Township (Duncan Street and Bodkin Street). These churches are long established and have no history of complaint regarding amenity impacts to neighbouring properties. The applicant has submitted that on any occasions where patron numbers exceed the capacity of the local churches services, these services are held at their larger premises located in Ebdon Street Kyneton.

The building is considered unobtrusive and responsive to its context, which is characterised by a mix of single storey residential buildings and some commercial buildings (especially, but not only, on the north side of the street). The site layout, design and building materials, landscaping and fencing are of a domestic scale and nature, responding to the character of High Street.

### Car Parking and Traffic

The car parking demand assessment submitted in accordance with Clause 52.06-7 of the planning scheme shows the proposed on-site car parking would meet the expected demand under typical operation of the place of worship use, with all the services being conducted out of normal business hours when any overflow could be accommodated without impacting on-street car parking availability for commercial or residential properties.

Furthermore, it is expected that most visitors to the site will approach from the west. This means parking is likely to be concentrated along the north (commercial) side of the street, reducing impact on the south (residential) side.

The nature of the use is also conducive to a significant proportion of patrons walking or cycling to the site, which will reduce the need for car parking.

Traffic volumes will remain well within the capacity of the street and do not raise safety concerns.

The application has been reviewed by MRSC Engineering Unit with consent to the reduction provided subject to conditions.

### Environmental Significance Overlay Schedule 4

The use and development and car parking reduction will have no impact in regard to the proclaimed water catchment. Both Goulburn Murray Water and Coliban Water have assessed the application and provided consent.

### Objections

Objections raised concerns with amenity impacts, built form, car parking and traffic that are addressed above.

Privacy of adjoining residents may be impacted during the limited hours of operation (7.5 hours weekly plus an additional hour once a month) however the majority of the time the use will be dormant and it is considered of less impact than a standard single or multi dwelling development. Additionally timber paling fencing and landscaping will be provided along property boundaries to provide visual screening.

In regard to noise impacts, permit conditions are proposed limiting use of amplified sound equipment and specifically prohibiting any music or singing at the Sunday early morning services.

Stormwater drainage was raised as a concern. However this issue has been assessed by MRSC Engineering Unit and permit conditions recommended to manage this issue.

### **Officer declaration of conflict of interest**

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

### **Conclusion**

The proposal meets the policy requirements of the PPF, LPPF and the zone with regards to supporting limited cultural and religious activities within residential areas

to serve the local area. The key concern is considered to be amenity issues associated with the early opening hours, but this can be managed with conditions given the limited number of people involved.

For the above reasons the application is supported subject to appropriate conditions.



<b>10.</b>	<b>APPLICATION FOR PLANNING PERMIT PLN/2020/496</b>
	<b>Use and Development of Land for Dog Breeding CA 9 Section 1 P/Newham</b>
	<b>64 Boundary Road, Woodend North</b>
<b>Officer</b>	<b>Yousef Taibeh, Senior Statutory Planning Officer</b>
<b>Council Plan Relationship</b>	<b>Healthy environment, healthy people</b>
<b>Attachments</b>	<b>1. Statement of Planning Policy Assessment 2. Plans 3. Locality Plan 4. Acoustic Report</b>
<b>Applicant</b>	<b>Stephen Ariss (Owner)</b>
<b>Date of Receipt of Application</b>	<b>23 November 2020</b>
<b>Trigger for Report to Planning Delegated Committee</b>	<b>Councillor Call-In</b>

### **Purpose and Overview**

The application proposes the use and development of the land for dog breeding.

The application was advertised and eight (8) objections were received. Key issues to be considered relate to the impact of the proposal on the amenity of the area, degradation of the environment, the appropriateness of the proposal in relation to the zone and the relevant provisions of Macedon Ranges Planning Scheme that seek to protect agricultural land.

The application has been assessed against the Macedon Ranges Planning Scheme and is considered appropriate. It is recommended that a Notice of Decision to Grant a Permit be issued.

### **Recommendation**

**That Planning Delegated Committee issues a Notice of Decision to Grant a Permit for the Use And Development Of Land For Dog Breeding at CA 9 Section 1 P/Newham, 64 Boundary Road Woodend North subject to following conditions:**

- 1. Before the commencement of the development, amended plans drawn to scale to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this**

permit. The plans must be generally in accordance with the plans submitted with the application but modified to show:

- a) A landscape plan providing for the establishment of planting for visual buffering of the approved facility must be submitted to and approved by the Responsible Authority. The landscaping plan must include a mix of locally indigenous trees, shrubs and other plants chosen from the Ecological Vegetation Class (EVC) for the site and including the use of advanced trees for expedient establishment of landscaping. The landscape plan must detail the species, location, number and pot size of plants as well as planting and ongoing maintenance details. The location of planting should also incorporate suitable spacing and separation from the approved facility to ensure compatibility with bushfire safety provisions.
- b) Replacement of roof and walls material to Colorbond in a darker muted tone colour;
- c) Environmental and Risk Management Plan in accordance with Condition 10 of this permit;
- d) Increase of the internal floor area for pens to meet minimum standards as specified in Code of Practice for the Operation of Breeding and Rearing Businesses (2014);
- e) Land Management Plan in accordance with Condition 2 of this permit;
- f) An amended Acoustic report to incorporate the following:
  - i. Any changes required to the facility to comply with Condition 11 of this permit;
  - ii. Latest location and design of the dog breeding facility with associated day yards and to incorporate correct number of dogs.

All to the satisfaction of the Responsible Authority.

2. Before the use commences, a Land Management Plan shall be submitted to and approved by the Responsible Authority. The plan must show:

- a) Any domestic garden zone;
- b) Any effluent zone;
- c) Areas where construction work is to occur and vegetation and soil disturbance may occur;
- d) Areas where no construction work is to occur and vegetation destruction and soil disturbance is not to occur;
- e) Erosion control;
- f) Revegetation using species;
- g) Measures to protect and enhance waterways;
- h) Measures to protect and enhance remnant vegetation;
- i) Measures to control noxious and environmental weeds;
- j) Measures to control pest animals; and

**k) Details of how fire safety issues will be addressed throughout the property.**

**The approved Land Management Plan must be carried out and completed to the satisfaction of the Responsible Authority.**

- 3. The layout of the use and development on the endorsed plans must not be altered without the written consent of the Responsible Authority.**
- 4. Unless with the prior written consent of the Responsible Authority, before the use commences, the landscaping works shown on the endorsed plans must be carried out, completed and thereafter maintained to the satisfaction of the Responsible Authority.**
- 5. No exterior plant or equipment shall be placed on the roof of the approved building, unless with the prior written consent of the Responsible Authority.**
- 6. Goods and waste must not be stored or left exposed outside the building so as to be visible from any public view or thoroughfare.**
- 7. Within fourteen (14) days of Commercial Breeder registration with Agriculture Victoria, evidence must be provided to the Responsible Authority.**
- 8. Not more than a total of 40 dogs (including adults and puppies) as part of the breeding operation may be kept on the land at any one time. This total must include:**
  - a) Not more than ten (10) fertile female adult dogs (over 12 months of age) may be kept, all of which must be registered with Dogs Victoria;**
  - b) Not more than four (4) fertile male dogs (over 12 months of age) may be kept, all of which must be registered with Dogs Victoria;**
  - c) The following additional requirements:**
    - i. Not more than five (5) litters of puppies (up to 16 weeks of age) that must be registered as a litter with Dogs Victoria;**
    - ii. Pet/companion dogs (even if de-sexed) are included in the total number of dogs permitted.**

**This condition ceases to have effect upon the satisfaction of Condition 7 of this permit.**

- 9. Upon the registration of Commercial Breeder with Agriculture Victoria and satisfaction of Condition 7 of this permit, not more than a total of 50 dogs (including adults and puppies) as part of the breeding operation may be kept on the land at any one time. This total must include:**
  - a) Not more than eighteen (18) fertile female adult dogs (over 12 months of age) may be kept, all of which must be registered with Dogs Victoria;**
  - b) Not more than four (4) fertile male dogs (over 12 months of age) may be kept, all of which must be registered with Dogs Victoria;**
  - c) The following additional requirements:**

- i. Not more than five (5) litters of puppies (up to 16 weeks of age) that must be registered as a litter with Dogs Victoria;**
  - ii. Pet/companion dogs (even if de-sexed) are included in the total number of dogs permitted.**
- 10. Before the commencement of the development, an Environmental and Risk Management Plan must be prepared, submitted and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must detail:**
  - a) Waste management of both solid and liquid waste produced by the dogs and during the wash down and cleaning of kennels and other dog areas;**
  - b) Stormwater management to ensure no water contaminated with waste be discharged beyond the boundary of the premises;**
  - c) Noise control measures, including any sound proofing, fencing or management measures to ensure compliance with Condition 11;**
  - d) The permit holder or a nominated responsible person must be resident on the subject land and reasonably available 24 hours per day when dogs are present on the subject land;**
  - e) Continuous attendance of the permit holder or a nominated responsible person is required for the NIRV defined night period;**
  - f) Feeding times of the dogs consistent with Condition 12(e);**
  - g) Management measures regarding biosecurity, disease and animal welfare in accordance with relevant legislation and best practice standards including details of veterinary practitioner;**
  - h) Management of odour and dust on the site and measures to be implemented;**
  - i) Details of the fencing including permanent internal and external fencing and temporary fencing in association with dog runs/kennels building;**
  - j) An Emergency Management Plan which details the proposed response to any emergency, including but not limited to flooding or fire:**
    - i. Details of short term emergency accommodation of dogs on-site due to temporary, limited loss of facilities;**
    - ii. Plans for the longer term evacuation of the site including dog destinations, off-site evacuation facilities, means of transportation and dog welfare concerns;**
    - iii. Measures to address complaints including:**
      - Names and telephone numbers for out of hours contact;**

- **A complaint resolution mechanism so that any concerns raised by the local community can be appropriately addressed.**

**All details of the Environmental and Risk Management Plan must be to the satisfaction of the Responsible Authority. The recommendations of the plan are to be implemented to the satisfaction of the Responsible Authority.**

- 11. At all times the use must comply with Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues (Publication 1826.2, Environment Protection Authority, March 2021) as amended from time to time, to the satisfaction of the Responsible Authority.**
- 12. At all times during the operation of the Dog Breeding use hereby approved, the following requirements, to the satisfaction of the Responsible Authority, must be met:**
  - a) Access to dogs must be restricted solely to the permit holder, a veterinary surgeon, a member of the permit holder's family, a person over the age of 18 years entrusted with the care or effective control of the dogs ("a nominated responsible person", a current list of whom must be provided by the permit holder to the Responsible Authority, if the latter so requests), a person (which may be a member of the public) accompanied by the permit holder or a nominated responsible person, a person acting in an emergency, or a Council officer or other person on official business associated with the dogs;**
  - b) The dogs must not be allowed within the subject land outside the enclosures shown on the endorsed plans unless on a leash or under the effective control of the permit holder or a nominated responsible person;**
  - c) If any dogs escape, the permit holder or nominated responsible person must ensure that they are brought back to the subject land as soon as possible once the escape is known;**
  - d) The permit holder or nominated responsible person must ensure that the dogs do not leave the subject land unless on a leash and/or in a vehicle from which they are unable to escape;**
  - e) Unless with the prior written consent of the Responsible Authority, feeding of the dogs must only occur within the day time hours of 7:00 am to 6:00 pm and exercise or training of the dogs must only occur between the hours of 9.00 am and 5.30 pm, unless in unforeseen circumstances whereby the dogs would otherwise go unfed or exercised, to the satisfaction of the Responsible Authority. The permit holder or nominated responsible person must document any such unforeseen circumstances in writing, with times, dates and reasons;**

- f) **Dog Breeding use with associated buildings and works must be maintained so that dogs are enclosed at all times and so that the use continues to visually screen stimuli such as other dogs, animals, traffic or passers-by;**
  - g) **All pens, cages and modules used to house dogs must be cleaned out at least once per day (or more often as required) by hosing or other appropriate means. Dog housing areas must not be allowed to remain wet if the dog is returned to the area. All faeces, used bedding, used litter and uneaten food must be removed prior to cleaning. Used litter and uneaten food must be placed in a waste disposal device. Waste disposal must be in accordance with the requirements of the appropriate statutory authority;**
  - h) **Exercise areas must be securely fenced and designed to prevent the escape of the dogs and the dogs must be monitored to ensure the dogs are not in danger of attack or other injury;**
  - i) **Dog housing areas and holding facilities must not have gaps in the design that would allow a dog to protrude its head outside the housing area.**
- 13. Where external lighting is provided it must be fitted with suitable baffles and located so as to prevent the emission of direct light into adjoining properties or roadways to the satisfaction of the Responsible Authority.**
- 14. Dog food must be stored in vermin proof containers to the satisfaction of the Responsible Authority.**
- 15. All solid waste associated with the keeping of the dogs must be collected, stored, treated and disposed of to the satisfaction of the Responsible Authority. This includes the collection of waste from the kennels on a daily basis and disposal via an industrial Cleanaway bin (or similar) at least on a fortnightly basis. The dog pens and surrounding area must be kept in a clean and hygienic state, to the satisfaction of the Responsible Authority.**
- 16. There must be no discharge or seepage of waste or chemicals from the premises to the land or (including stormwater) environments, to the satisfaction of the Responsible Authority.**
- 17. The development and use hereby permitted must be managed so that the amenity of the area is not detrimentally affected, through the:**
- a) **Transport of materials, good or commodities to or from the land;**
  - b) **Appearance of any building, works or materials;**
  - c) **Emissions of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;**
  - d) **Presence of vermin.**

**All to the satisfaction of Responsible Authority.**

**MRSC Engineering Conditions**

**18. Prior to the commencement of works, an “Asset Protection Permit” must be obtained from Council for any of the following circumstances:**

- a) Entering a building site by means of a motor vehicle having a gross weight exceeding two tonnes.**
- b) Occupying a road for works.**
- c) Connecting any land to a stormwater drain.**
- d) Opening, altering or repairing a road.**
- e) Opening, altering or repairing a drain.**
- f) Accessing a building site from a point other than a crossover.**
- g) Construct/repair/widen/remove any crossover.**

**19. No polluted and/or sediment laden run-off is to be discharged directly or indirectly into drains or watercourses. Soil erosion control measures must be employed throughout the development works to the satisfaction of the Responsible Authority.**

**MRSC Local Laws Conditions**

**20. The owner/s must at all times fully comply with all relevant Victorian animal legislation including the Domestic Animals Act 1994, the Prevention of Cruelty to Animals Act 1986, subordinate Regulations and Codes of Practice of these Acts.**

**21. The owner/s must at all times comply with Macedon Ranges Shire Council Local Law No. 10.**

**22. All dogs at the premises must have current registration with the Macedon Ranges Shire Council.**

**23. The applicant must at all times hold a valid Dogs Victoria membership (suspension from Dogs Victoria (excluding showing and administrative offences) invalidates such membership) and must comply with Dogs Victoria’s Code of Practice (or equivalent).**

**MRSC Health Condition**

**24. The kennels should be constructed of materials appropriate to the minimisation/ reduction of noise and should be constructed to visually screen stimuli such as other dogs, traffic or passers-by.**

**Goulburn-Murray Water Conditions**

**25. All construction and ongoing activities must be in accordance with sediment control principles outlined in ‘Construction Techniques for Sediment Pollution Control’ (EPA, 1991).**

- 26. No buildings or works may be erected or carried out within 30 metres of a waterway.**
- 27. All wastewater from the dog breeding facility must be treated and disposed of using an EPA approved system, installed, operated and maintained in compliance with the relevant EPA Code of Practice and Certificate of Conformity.**
- 28. All wastewater from the dwelling must be treated to a standard of at least 20mg/L BOD and 30mg/L suspended solids using a package treatment plant or equivalent. The system must have a certificate of conformity issued by the Conformity Assessment Body (or equivalent approval) and be installed, operated and maintained in accordance with the relevant Australian Standard and EPA Code of Practice.**
- 29. All wastewater must be applied to land via pressure-compensating sub-surface irrigation installed along the contour.**
- 30. The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.**
- 31. The wastewater management system must be appropriately designed to manage the potential volume of wastewater generated under full occupancy (based on a minimum 22 dogs and puppies), including an appropriately sized disposal area based on a full water balance specific to the proposal and subject land.**
- 32. The wastewater disposal area must be located at minimum setback distances of at least 100 metres from the nearest waterway and at least 60 metres from any dams and 20m from any bores.**
- 33. The dog breeding facility and new onsite wastewater management system must not encroach on the existing wastewater treatment system (servicing the dwelling) or disposal area or breach the minimum setback distances specified in the relevant EPA Code of Practice – Onsite Wastewater Management.**
- 34. Solid faecal waste must be collected from the pens/kennels and managed to the satisfaction of council's Environmental Health Department.**
- 35. Stormwater run-off from buildings (and other impervious surfaces such as dog pens) must be dissipated as normal unconcentrated overland flow or directed to a storage tank or dam.**

#### **EPA Condition**

- 36. There must be no emissions of noise and/or vibrations from the premises which are detrimental to either of the following:**
  - a) The environment in the area around the premises.**
  - b) The wellbeing of persons and/or their property in the area around the premises.**



## **Permit Expiry**

### **37. This permit will expire if one of the following circumstances applies:**

- a) **The development is not commenced within 2 years of the date of this permit.**
- b) **The development is not completed within 4 years of the date of this permit.**
- c) **The use is not commenced within 2 years of the completion of the development.**

**The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within 6 months afterwards if the development has not commenced, or 12 months after if the development has commenced but is not yet completed.**

#### **Permit Notes:**

- **Future owners of the land must be made aware of the existence of this permit.**

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## **Existing conditions and relevant history**

### Subject Land

The subject land comprises an agricultural property aligning the eastern side of Boundary Road between Anderson Road and Jim Road. The land is mostly open pasture used previously and currently for broad acre grazing and cropping. There is a development area in the southern half of the site area adjacent to Boundary Road containing dwelling, outbuilding and some other smaller farm buildings.

The site's topography is gently undulating, reaching a high point at its centre, falling downhill to the south toward Anderson Road and in the north toward Jim Road. An ephemeral waterway runs through the northern end of the site. A number of rows of mature conifers are located along boundaries and around the developed area of the site with some mature native trees sparsely located throughout the property. Native vegetation is also located within the road reserves surrounding the property, with Jim Road retaining significant remnant native vegetation.

### Surrounds

Surrounding area displays a rural character with similar sized allotments. It comprises an undulating terrain being an open valley located between Mount Macedon to the south, Hanging Rock to the east, the Jim Jim to the north, and the more open landscape toward Woodend in the south-west and Carlsruhe to the west. Properties abutting the north, east and south are larger rural properties with a cluster of smaller properties including located to the west side of Boundary Road. Most of the lots in the surrounding area are developed with single dwellings with some level of associated agriculture.

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

The title provided with the application shows that the property is not encumbered by any restrictive covenants and/or Section 173 Agreement.

Previous planning permit history

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

<b>Permit Number</b>	<b>Description</b>
PLN/2020/215/A	Development of an Extension to an Existing Dwelling & Associated Outbuildings (Secondary Consent sought to alter layout and add skylights).
PLN/2020/88/A	Development of an Agricultural Building (Farm Shed) and associated works (Secondary consent sought to alter orientation of staircases within shed)
PLN/2020/215	Development of an Extension to an Existing Dwelling & Associated Outbuildings
PLN/2020/88	Development of an Agricultural Building (Farm Shed) and associated works
PLN/2020/503	Development of an agricultural building (hay shed)
PLN/2020/215/B	Development of an Extension to an Existing Dwelling & Associated Outbuildings (Secondary consent sought to alter footprint and internal layout of dwelling)

**Proposal**

The application is seeking approval for use and development of the land for dog breeding (King Charles Spaniel and Poodle). It will comprise 18 female dogs and 4 male dogs. A maximum of 5 litters will be expected at the any one time, with average litter size of 3-5 puppies as indicated by the applicant.

The development area for the proposed dog breeding facility will be located to the eastern side of the lot (where existing row of mature trees exist at the boundary), providing more than 500m setback to the nearest dwelling. The development associated with the use will comprise a rectangular building (17.4m by 96m) containing the dog pens and associated close run areas, in addition to the administration offices and services.

Four 600m<sup>2</sup> open exercise yards will be located to the east of the building in addition to staff and transport car parking (7 spaces). The proposed building will have a pitched roof having a 4.185m wall height to the top of the gutter. Proposed colours are dark grey as indicated on the originally submitted plans. The building will be sound insulated and the business will include and on-site waste treatment plant.

The development area for the proposed dog breeding facility will be located to the south eastern side of the lot where a row of mature trees exist along the boundary. A waste storage is also provided at the south-eastern corner of the facility.

Two (2) units from each side (4 in total) will be allocated for mating isolation and will be temperature regulated, while the 4 units in the middle of the facility will be dedicated for whelping. These whelping areas will be temperature regulated as well and the associated runs will be equipped with skylights to allow natural lighting. The

runs within the facility are facing east and will open to common areas leading to the external exercise yards via big doors (in galvanised metal mesh).

In addition to the owners, the staff will include two (2) employees to service the kennels including cleaning, feeding and husbandry. The facility will not be open to the public and all sales of puppies /dogs will be conducted online, with puppies ordered beforehand and delivered to buyers' locations.

No signage or tree removal is proposed as part of the application.

### **Relevant Macedon Ranges Planning Scheme controls**

#### **Statement of Planning Policy**

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. Attachment 1 contains the officer assessment against the SOPP.

#### Planning Policy Framework

<b>Clause No.</b>	<b>Clause name</b>
11	Settlement
12	Environmental and Landscape Values
13	Environmental Risks and Amenity
14	Natural Resource Management
17	Economic Development

#### Local Planning Policy Framework

<b>Clause No.</b>	<b>Clause name</b>
21	Municipal Strategic Statement
21.03	Vision – Strategic Framework Plan
21.04	Settlement
21.07	Natural Resource Management
21.10	Economic Development and Tourism
22.03	Intensive Animal Husbandry

#### Zone

<b>Clause No.</b>	<b>Clause name</b>
35.06	Rural Conservation Zone (RCZ2)

#### Overlays

<b>Clause No.</b>	<b>Clause name</b>
42.01	Environmental Significance Overlay (Schedule 4)
42.02	Vegetation Protection Overlay (VPO8)

#### Particular Provisions

<b>Clause No.</b>	<b>Clause name</b>
51.07	Macedon Ranges Statement of Planning Policy
52.06	Car Parking

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> ?	Yes
2	Is the application proposal an exempt activity as defined in Part 2 Division 2 <i>Aboriginal Heritage Regulations 2018</i> ?	Yes
3	Does the application proposal include significant ground disturbance as defined in Part 1 Regulation 5 <i>Aboriginal Heritage Regulations 2018</i> ?	N/A
4	Is the application proposal a high impact activity as defined in Part 2 Division 5 <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	No objection subject to conditions.
Western Water	No objection.
Authority (Section 52)	Response
EPA (Section 52)	No objection subject to condition.
MRSC Health Unit	No objection.
MRSC Local Laws	No objection subject to conditions.
MRSC Engineering	No objection subject to conditions.
MRSC Eco. Dev.	No objection

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. Eight (8) objections have been received to date.

Following are the concerns raised relate to:

- Contrary to the Rural Conservation Zone requirements and character;
- Potential degradation of the environment;

- Amenity impacts in terms of potential noise and odour;
- Potential risks of escaping dogs and attacking cattle;
- Ethical concerns surrounding Dog Breeding Businesses;
- Potential traffic impacts from increased number of visitors and customers.

### **Officer assessment**

#### Planning Policy Framework and Local Planning Policy Framework

Clause 11.03-3S – Peri-Urban Areas, explicitly seeks to manage growth in peri-urban areas to protect and enhance their identified valued attributes. The strategies of the clause can be taken to indicate that outcomes where the end result will be the removal of land from agricultural use is not desirable as this clause emphasises the need to protect agricultural land. The proposal will be in accordance with this clause as it will result in an agricultural use.

Clause 13.05-1S relates specifically to noise abatement and includes the objective to *'assist the control of noise effects on sensitive land uses.'* It is considered that the proposed land use is compatible with the area given the size of the land and location of dwellings in the area. No existing dwelling is located within 500m of the proposed use and any noise issues will be managed via the implementation of acoustic measures together with the management plan therefore resulting in an acceptable acoustic outcome in this location.

The policy also seeks to 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.'* A number of guidelines are listed for consideration. It is considered that any noise effects on adjoining properties can be addressed through appropriate permit conditions.

The owner's dwelling is on the same site and it is in their interest to ensure there is minimal noise (barking). Given this, it is considered that any noise effects on adjoining properties can be addressed through the intended insulation, existing and proposed vegetation, appropriate permit conditions, and by capping the maximum number of dogs as will be detailed later on this report.

Clause 14.01-1S aims to *'protect the State's agricultural base by preserving productive farmland'*. Dog breeding is classified as a form of agriculture. Although not a "traditional" form of agriculture like cropping or grazing, it is considered an appropriate land use and meets the purpose of the zone.

Clause 14.01-2S aims to *"encourage sustainable agricultural land use"*. The size of land is adequate to accommodate the proposed use and the proposal will result in sustainable use of the land in terms of agriculture by proposing a type of use which is agricultural in nature. It is acknowledged that the site is zoned Rural Conservation which seeks to protect the conservation values of the land. The location of proposed use is clear in terms of native vegetation and the zone does support agricultural uses where such uses would not impact the conservation values of the land.

The area of the land is large enough to accommodate the proposed use. The proposal is appropriately located and will not detrimentally impact the environment and the operation of surrounding land uses.

It is therefore considered, the land has the agricultural capability to support the use. In each instance, the Planning Policy Framework has emphasised the need to protect agricultural land and the proposal will achieve the relevant objectives in the framework as it involves a use which is agricultural in nature.

One of the guiding principle which is relevant to this application under Clause 21.03-2 states the following:

- *Agriculture is an important part of the character and economy of the Shire, and will be maintained and supported, especially on the high quality soils in the east of the Shire and in the north of the Shire where there has been less land fragmentation. Effective land management is a key priority.*

The above principle is implemented more fully through policy at Clause 21.07 (natural resource management), which forms the primary local policy reference in relation to development of agricultural areas within the Macedon Ranges Shire.

In relation to the objectives and the associated strategies under Clause 21.07-1, the subject site is a large lot in the Rural Conservation Zone and therefore its development for the purpose of a dog breeding facility which is agricultural in nature is generally encouraged. It will make appropriate use of the land given the size of land.

The policies in relation to the agriculture emphasised the importance of protecting the agricultural land from non-agricultural uses particularly dwellings. The proposed use is considered consistent with and supported by such policy in relation to rural and regional development.

This land use change will not limit the ability for agriculture to be facilitated in the context of the wider area as it does not propose a non-agricultural use. The surrounding area comprises larger lots and by proposing a kind of agricultural use on the land will enhance the protection of agricultural land.

Clause 22.03 specifically relates to intensive animal husbandry uses within the Macedon Ranges Shire Council. A total of eight criteria specified in this policy as mentioned above and the proposal generally complies with the majority of the criteria as discussed below:

- The area of the land is greater than 4 hectares and the proposed infrastructure associated with the use does not exceed 10% of the area of the site.
- The location of the use will not be within 200m from a waterway, within 500m from dwellings in the area and within 30m of the road.

- The enclosures, yards or buildings to be used for the holding of animals are suitably located and fenced.
- Landscaping will be conditioned to soften the overall appearance of the dog breeding facility.
- Size of the land is adequate to manage and dispose of waste within the property boundaries. Proper measures will be in-place to prevent any water contamination. This includes on site treatment plant, and regular facility cleaning in addition to solid waste removal to be conducted by a contractor.
- The submitted acoustic report confirms that the proposal will be in accordance with the relevant requirements of the Environment Protection Authority Noise Control Guideline. It is also noted that the subject land is zoned rural not residential as the EPA guidelines talk about meeting the 500m setback for residential area. Nevertheless the proposed facility will be located more than 500m from dwellings in the area which are located with rural zone.
- With the subject site being active farm, some of the required infrastructure is already in place. The planning officer has visited the site and the proposed location of the facility is clearly identifiable being next to existing screen planting along the eastern boundary (although not yet pegged on the ground).
- The application was referred to Environment Protection Authority in accordance with the Section 52 of the *Planning and Environment Act 1987* to obtain comments on the anticipated amenity impacts of the proposed use on adjoining area. EPA has no objection to the proposal and conditions will be included on the permit in relation to management of odour and noise.

Senior Member Baird in *Jones vs Bass Coast SC and Anor* [2000] VCAT 2285 has made following comments in relation to the appropriateness of EPA conditions:

*'The Tribunal is cognisant of Condition ... that specifies that noise and odour emissions must not exceed EPA standards. This condition is reasonable to demand that both the works proposed by the applicant in establishing the facility and its ongoing management are in accordance with these provisions.'*

As such it is considered that the proposal is considered to be in accordance with the relevant policies and vision within the LPPF relating to protection and sustainable use of agricultural land.

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### Rural Conservation Zone (Schedule 2)

One of the purpose of the Rural Conservation Zone is *“to provide for agricultural use consistent with the conservation of environmental and landscape values of the area”*.

Schedule 2 to the RCZ applies to an area extending northward from Mount Macedon to the Cobaw Ranges (the subject land is near the south-western extent of this zoned area). The statement of Conservation Values for the RCZ2 is:

- *To contribute to the existing remnant native vegetation to create a bio link between the Macedon and Cobaw Ranges.*
- *To protect the character and landscape of the area.*
- *To achieve sustainable agricultural practice.*

The Zone includes decision guidelines that set out a comprehensive range of matters to be considered. The decision guidelines include under general issues the suitability of the site for the use or development and whether the proposal is compatible with adjoining and nearby land uses. Under agricultural issues, relevant decision guidelines include impacts from non-agricultural uses and the potential for the use to limit the operation and expansion of adjoining nearby land uses.

A permit is required for dog breeding as it is classified as a Section 2 Use. Dog breeding is classified as a form of ‘agriculture’ pursuant to Clause 73.04 (Land Use - Nesting Diagrams). The use of the land for dog breeding in the Rural Conservation Zone is considered to be appropriate provided it is managed in such a way as to minimise potential adverse amenity impacts on adjoining properties.

It is important to be cognisant of Senior Member Rickards comments in Woolley v Mansfield SC [2010] VCAT 1190 in relation to the appropriateness of dog breeding and boarding use under the Framing Zone:

*‘Taking account of the provisions of the planning scheme and in particular the objectives of the Farming Zone and the nesting of the proposed uses within the broader use term of agriculture this leads me to the conclusion that the Farming Zone is an appropriate zone to consider locating such a use.’*

The proposed use of the land for dog breeding is therefore considered an appropriate use under the zone. The site is suitable for the use and the amenity impacts associated with the use are capable of being managed and contained to acceptable levels.

In considering the effect of the proposal on the amenity of the area, particular regard must be given to the potential impact of noise from barking dogs. Environment Protection Authority’s Noise Control Guidelines are *‘primarily intended to be used by municipal officers in the resolution of complaints or to avert a possible noise nuisance. Some guidelines have been prepared so that they could be incorporated into a permit condition of a development or embodied as a local law’*.

Guidelines refers to Dog Kennels and *the “problems caused by the perpetual barking of dogs”* which have been *“known to exist at distances as far as 500 metres from the*



*actual source". The Guidelines set out a number of criteria to "limit both the physical stimuli to the dogs as well as the outbreak of noise from the kennels."*

Senior Member Baird addressed this in Jones vs Bass Coast SC and Anor [2000] VCAT 2285 in relation to the appropriateness of such uses under the rural zone and the application of EPA guidelines:

*'The first criterion is that kennels should be located at least 500 metres away from residential areas. While the Tribunal notes that there are some residences within a 500 metre radius of the site, this is not a residential but a rural area. In that context, the Tribunal does not consider it reasonable to prohibit consideration of a relatively small kennel facility on the basis that some dwellings within a rural zone are nearby. Having said that, the Tribunal supports submissions that the amenity of the adjoining residents cannot be disregarded, although reasonable expectations must be tempered by the setting of their land within a rural area.'*

Senior Member Baird in the same VCAT case further highlights the viability of small agricultural lots:

*'The proposal is appropriate within a Rural Zone and is supported by the Council's policies. The use is one that is suitable for a small lot that is well under the minimum lot size allowable in the Zone... The proposal allows the use of the land, consistent with the purpose of the Zone...'*

*The issues raised in this Application highlight the tensions that may occur when small lots exist within rural areas and where occupants of those lots expect or seek to attain or retain a particular standard of amenity. It is not a situation, as may arise in a rural area, where different types of agricultural or rural activity are potentially incompatible. One must have regard to the fact that there are a number of residences in the immediate area ... to minimise noise associated with kennels positioned to both their north and south.'*

Similarly Member O'Leary in Cashman v Wellington SC [2008] VCAT 2439 discussed the implementation of EPA guidelines and their expectation:

*'The guidelines recommend a separation distance of 500 metres from a residential area. It is important to note that this is not a residential area, but rather a farming area...the locality contains various grazing uses, and whilst those farming uses may not be the sole income for each particular family in appearance and function they provide a rural environment where farming is the dominant use.'*

*It is quite inappropriate to describe this as a residential area, and following on from this, it is therefore quite inappropriate to argue that the kennels in being within 500 metres of a dwelling is in breach of the EPA guidelines. Any assumptions or expectations that this site is in a residential area and therefore should be subject to residential amenity is clearly a misunderstanding of fundamental planning*

*terminology.*

A total of 50 dogs (including adults and puppies) will be allowed on site at any one time which is considered reasonable in relation to the size of the land. This total includes 18 mature females, 4 mature males, 5 litters of puppies (on the average each litter having 5 puppies). Total number of dogs on site will also include pet/companion dogs. Any future increase in the number of dogs will require an amendment to the planning permit (if one should issue). The exercise hours for the dogs will be limited to between 9am and 5:30pm by a permit condition to avoid any potential amenity impacts. The kennel building will be internally insulated to help minimise noise impacts. Landscaping will be required to soften the visual appearance.

The requirement of a more detailed Environmental and Risk Management Plan (as a condition) will address and regulate any potential amenity impacts and animal welfare obligations relating to the appropriate management of the facility, the appearance of the site, noise control measures, effluent disposal, security and emergency management. The location of the proposal is appropriate to monitor the animals as the facility requires supervision at all times.

Wastewater from the proposal will be contained and disposed of within the subject land by an approved wastewater treatment system. Apart from general cleaning as mentioned above all areas cleaned and mopped 3 times a day a laundry facility will be part of the facility and all bedding will be washed twice weekly.

The application was referred to Goulburn Murray Water who requested conditions in relation to the protection of waterway, wastewater and stormwater management and faecal waste.

It is noted that VCAT cases mentioned in the report relates to farming zone however Rural Conservation Zone also falls within the broader category of rural zones which seek to encourage agriculture without impacting the conservation values of the land. A landscaping plan will be included as part of the condition to incorporate native vegetation to enhance the conservation values of the land. A condition has also been included for a land management plan to ensure that the site is managed properly in terms of its conservation values.

It is considered that the proposal would not limit the expansion and operation of adjoining and nearby agricultural uses. The proposed use is suited to and not inappropriate within the Zone. The proposal is appropriate given the location, and with appropriate conditions, no unreasonable amenity impacts on neighbouring properties is likely to occur as a result of noise.

#### Commercial Breeder and Domestic Breeder

The proposed number of breeding dogs in the application is for 18 fertile females and 4 fertile males. Under the Domestic Animals Act 1994 (DAA), a breeding business with more than 10 fertile females meets the definition of a commercial dog breeder.

To operate with more than 10 fertile females, the proprietor will need to first obtain approval from Council in addition to being approved by the Minister for Agriculture

and be registered under the State Government Commercial Dog Breeder Scheme. State Government requires an existing registration as a Domestic Animal Breeder (DAB) with the Council for no more than 10 fertile female dogs in order for a business to apply to become an approved commercial dog breeder with more than 10 fertile female dogs.

The deadline to apply to be a commercial breeder was 10 April 2020, but due to COVID-19 impacts has been extended through a Government in Council exemption order until further notice. Therefore, the applicant must first build and operate as a fully compliant and Council registered DAB with no more than 10 fertile female dogs before later progressing an application with the State Government to become a commercial dog breeder with increased fertile female dog numbers. It is also noted that if the operator is unable to get the Commercial Breeder registration then a maximum of 10 female dogs will be allowed on site at any one time. Planning permit conditions have been drafted to capture all this information.

There is a compulsory code of practice that specifies the minimum standards of accommodation, management, breeding and care that are appropriate to the physical and behavioural needs of dogs housed in businesses operating as breeding or rearing domestic animal businesses - Code of Practice for the Operation of Breeding and Rearing Businesses (2014) ('the Code'). An annual domestic animal business registration is required to operate and is contingent upon the business complying with the Code.

The mandatory Code requirements seek to ensure that the facilities proposed meet the legal requirements to obtain a domestic animal business permit. The proposed facility designs has pens of 12m<sup>2</sup> floor area in total without the use of the proposed guillotine door. The guillotine door could not be used to close off the kennel, as the internal floor area would no longer be compliant with minimum requirements. A condition will be included to increase the internal floor area to meet minimum standards with the guillotine door closed. Increased pen sizes also enable more than one dog per pen (to provide better welfare for dogs who may not cope or thrive behaviourally in a single dog housing environment).

#### Environmental Significance Overlay (Schedule 4)

In addition to implementing the Municipal Planning Strategy and the Planning Policy Framework the purpose of the Overlay is to identify areas where the development of land may be affected by environmental constraints, and to ensure that development is compatible with identified environmental values. Schedule 4 to the Overlay has regard to protection and maintenance of water quality in the Eppalock Water Catchment. A permit is not required under the overlay.

Clause 66.02-5 requires referral of applications within a Special Water Supply Catchment Area to be referred to the relevant water board or water supply authority, as Section 55 determining referral authorities, in this case being Goulburn Murray Water and Western Water. Both authorities responded with no objection to the proposal, subject to conditions from Goulburn Murray Water to form part of this permit.

Accordingly, the proposal is appropriately compliant with the ESO4 provisions in avoiding detrimental impacts to the Eppalock Proclaimed Catchment.

Car Parking

The car parking requirement for Dog Breeding have not been specified under Clause 52.06-5, Table 1: Car parking requirement. As per Clause 52.06-6, 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 or the floor area or site area of an existing use is increased, car parking spaces must be provided to the satisfaction of the responsible authority.

It was conveyed through the submitted documents that two (2) staff members in addition to the land owners will work at the facility. It was also confirmed that no customers will need to attend the facility. The submitted Plans show seven (7) car parking spaces to be located next to the facility. This is considered a suitable number of parking spaces in this instance and likely to exceed the number required for the land use.

The application has been referred to MRSC Engineering who have raised no concerns to the proposal in terms of access and car parking. The proposal will therefore not result in traffic congestion.

Objectors' Concerns

Concerns	Officer's Response
Contrary to the Rural Conservation Zone requirements and character.	Rural Conservation Zone seeks to protect the conservation values of the land. The location of proposed use is clear in terms of native vegetation and the zone does support agricultural uses where such uses would not impact the conservation values of the land.
Potential degradation of the environment;	A condition has been included for the provision of native landscaping which will enhance the environment of the area.
Amenity impacts in terms of potential noise and odour;	These concerns will be managed via appropriate conditions.
Potential risks of escaping dogs and attacking cattle;	The dogs will be kept in an enclosed facility to ensure safety and avoid any risk for the escape of dogs.
Ethical concerns surrounding Dog Breeding Businesses;	The applicant will be required to manage the facility in accordance with the relevant legislation.
Potential traffic impacts from increased number of visitors and customers.	No direct sales or visitors will be attending the site. Sales will be conducted online and then delivered to customers. The application was referred to MRSC Engineering Department and no concerns has been raised in relation to traffic.

**Officer declaration of conflict of interest**

No officers involved in the preparation of this report have any general or material conflict of interest in this matter.