

WANGARATTA RURAL CITY COUNCIL



BUSINESS PAPER FOR THE SPECIAL MEETING  
OF THE WANGARATTA RURAL CITY COUNCIL, TO BE HELD  
IN THE COUNCIL CHAMBERS, MUNICIPAL OFFICES,  
62-68 OVENS STREET, WANGARATTA  
ON **TUESDAY, 17 DECEMBER 2013** COMMENCING AT 6.00PM

Kelvin Spiller  
**ACTING CHIEF EXECUTIVE OFFICER**



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1. **ACKNOWLEDGEMENT OF TRADITIONAL OWNERS**

*We acknowledge the traditional owners of the land on which we are meeting.  
We pay our respects to their Elders and to Elders from other communities who  
may be here today.*

2. **OPENING PRAYER**

*Almighty God, we humbly ask thee to bless and guide this council in its  
deliberations so that we may truly preserve the welfare of the people whom we  
serve. Amen*

3. **PRESENT**

4. **ABSENT**

5. **ACCEPTANCE OF APOLOGIES & GRANTING OF LEAVE OF ABSENCE**

**ORDER OF BUSINESS**

6. **CONFLICT OF INTEREST DISCLOSURE**

In accordance with sections 77A, 77B, 78 and 79 of the *Local Government Act 1989* Councillors are required to disclose a 'conflict of interest' in a decision if they would receive, or could reasonably be perceived as receiving, a direct or indirect financial or non-financial benefit or detriment (other than as a voter, resident or ratepayer) from the decision.

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

## 7. BUSINESS

### 7.1.1.1 DRAFT AMENDMENT NO C56 – REZONING OF LOT 2 PS704122 REITH ROAD TO FACILITATE EQUINE PRECINCT DEVELOPMENT

Amendment C56

#### Introduction

This report seeks Council's agreement to request the Minister's authorisation to prepare and place on public exhibition a draft amendment to rezone Lot 2 PS 704122 Reith Road, Wangaratta from Farming Zone to Special Use Zone (with new Schedule 6). This amendment would also include a Development Plan Overlay for the site to facilitate an equine based precinct development associated with the Wangaratta Turf Club and Racecourse.

#### Background

Habitat Planning, an Albury based planning consultancy acting on behalf of the landowner, approached Council in July 2012 with a concept to develop the subject land for an equine village. Following negotiations over a period of months, Council advised the proponent that it was premature to consider the rezoning until Council had adopted its draft Population and Housing Strategy (the Strategy) and a review was conducted of the Rural Land Strategy.

Despite this advice, Habitat Planning formally submitted a request to Council on 21 August 2013 to seek Ministerial authorisation to rezone the subject land (**refer attachment 1 - site details**). The submitted amendment included rezoning the site from Farming Zone to Rural Activity Zone; introduction of a new Schedule to the Rural Activity Zone with minimum lot size of 8,000 m<sup>2</sup>; new Local Planning Policy relating to intensive horse stabling; and application of the Development Plan Overlay with the new Schedule. A Concept Plan is also included to give an indicative guide to the proposal (**refer attachment 2 - Concept Plan**).

#### Current Situation

Council adopted the Draft Population and Housing Strategy at the Council meeting on 10 December 2013.

The Draft Strategy makes specific reference to, the rezoning of two sites on Reith Road to facilitate an equine based development precinct to complement the activities and proposed upgrades to the Wangaratta Racecourse.

The Draft Strategy (as adopted) specifically identifies the subject site at Figure 15 *Wangaratta City Strategic Framework Plan* for future 'equine related development'. At Clause 9.1.1.3 *Greenfield Residential* the following action is recommended:

- *Support the designation of the land to the south-west of the Wangaratta Racecourse over Three Mile Creek for equine related development including horse stabling and training facilities with ancillary dwellings as follows:*
  - i. *Option 1. An integrated equine live/work precinct controlled by an expanded Special Use Zone 2 that currently applies to the Wangaratta Racecourse. This option should only proceed where there is a clear agreement in writing between the Racecourse, the landowners on the western side of Three Mile Creek, Goulburn- Ovens TAFE and the Rural City. Given the eastern half of the land being in close proximity to the Three Mile Creek, any proposal to develop the land is to be supported by a detailed land capability and suitability assessment for intensive horse stabling/training establishments. Subject to the findings of that land capability and suitability assessment it is considered that an average lot size of between 1 and 2 hectares will be sufficient to accommodate satellite stabling facilities. This will also allow for future expansion as well as key infrastructure including stables and dwelling houses. The planning controls for this precinct are required to respond to the land capability and suitability assessment, Zone purposes, linkages to the Wangaratta Turf Club site and master planning for future development and subdivision of the land. Other restrictions relating to the dominant land use are also to be considered.*
  - ii. *Option 2. Should Option 1 not proceed, retain the land as Farming Zone (or similar) and limit any further subdivision on the land in order to encourage larger, more intensive equine related development on these sites.*

The amendment submitted by the proponent has been modified by the proponent to align with the recommendations of the Draft Strategy.

As detailed in the draft Explanatory Report (**refer attachment 3**), it is proposed to use the following planning tools to facilitate the proposal:

1. Apply the Special Use Zone with a new Schedule 6 to address intensive horse stabling (i.e. satellite stables) with ancillary dwellings and to complement existing Schedule 2 (Racecourse);

2. Apply the Development Plan Overlay with new Schedule 3 to detail the requirements of a Development Plan to be prepared to coordinate the proposed use and development of the site for an equine precinct development.

Once suitable Schedules to the Special Use Zone and Development Plan Overlay are created, there will be little need for a specific Local Planning Policy. The zone and overlay provisions should provide adequate objectives, application requirements and decisions guidelines to aid in the exercise of discretion.

### **Implications**

#### **Sustainability**

The outcomes of this amendment are positive for the sustainability of:

- Local Economy;
- Local Environment; and
- Local Community

#### **Community Engagement**

The land owner has approached Council to undertake this amendment and has engaged consultants to prepare the required documentation.

The consultants have engaged with Council, the Department of Transport Planning Local Infrastructure, the Minister for Racing and the Wangaratta Turf Club in preparation of the amendment. The Wangaratta Turf Club has provided written support for the proposal, although it is noted that its recently prepared Master Plan in June 2012 does not specifically mention the equine development precinct on the western side of Three Mile Creek.

Once authorisation has been obtained from the Minister for Planning, the Draft Amendment will be placed on public exhibition, notified to adjoining owners and statutory agencies and submissions will be invited.

#### **Financial Impact**

The amendment documentation has been largely prepared by Habitat Planning on behalf of Property Holdings (Vic) Pty Ltd and at their cost; therefore, there is negligible financial impact to Council. The appropriate planning fee has been paid to Council.

### **Recommendation**

***That Council resolves to:***

- 1. seek authorisation from the Minister for Planning to prepare and exhibit Draft Amendment C56 to the Wangaratta Planning Scheme once the draft documentation is complete.***
- 2. authorise the Chief Executive Officer to make any minor amendments or changes to the Draft Amendment as may be required prior to being placed on exhibition.***

### **Communication**

A formal written request is to be forwarded to the Minister for Planning seeking authorisation once draft documentation is complete.

### 7.1.1.2 COMBINED DRAFT AMENDMENT C41 AND PERMIT 12/090 WALDARA GOLF COURSE

Amendment C41 – North East Survey Design – 68 Waldara Drive

12/090

#### **Introduction**

This report seeks Council's decision on how to proceed with Amendment C41 (in accordance with section 23 of the *Planning and Environment Act 1987*) having received submissions to the amendment during its formal exhibition period.

#### **Background**

In May 2012, Council received a formal request from North East Survey Design (the proponent) to prepare a combined planning scheme amendment and planning permit to develop a fifty lot residential subdivision on land at the Wangaratta Golf Course. Following preparation of the detailed draft planning permit, including consultation with Department of Transport, Planning and Local Infrastructure (DTPLI) and relevant agencies, Council determined to proceed with the proposal and seek Ministerial authorisation (***refer attachment 1 – Explanatory Report and Draft Permit***).

The Minister for Planning (the Minister) authorised Council to prepare and exhibit combined Amendment C41 and draft Planning Permit 12/090 to the Wangaratta Planning Scheme on 2 August 2013. Council placed Amendment C41 on public exhibition and gave notice of the amendment in accordance with the requirements of the *Planning and Environment Act 1987* (the Act). The Public exhibition period closed on 21 October 2013.

A total of 27 submissions were received. A table summarising the issues raised, changes requested and recommended actions by Council is provided for information (***refer attachment 2 – Table of Submissions***). A total of 23 submissions from private citizens were received, consisting of 10 objections and 13 letters of general support. Four agencies responded to the amendment, two requesting revised conditions of permit and two raising broader issues for clarification.

#### **Issues**

Following exhibition of the amendment, and pursuant to sections 22 and 23 of the Act, Council must consider all submissions received and, where a submission requests a change to the amendment, Council must –

- (a) Change the amendment in the manner requested; or
- (b) Refer the submission to a Panel appointed by the Minister; or
- (c) Abandon the amendment or part of the amendment.

Under Ministerial Direction 15, Council has 40 business days from the closing date of submissions to request the appointment of a Panel. This period closes on 17 December 2013.

The majority of objections to the amendment request that the proposed zoning of the land be changed from General Residential Zone to Low Density Residential Zone. The increased lot size (minimum 2,000m<sup>2</sup>) required by the Low Density Residential Zone would, in turn, decrease lot yield, and help address concerns regarding increased traffic, loss of visual amenity, impact on stormwater drainage and native vegetation.

The proponent is not prepared to consider a change to the proposed zoning. Low Density Residential Zone would not allow for a suitable lot yield to make the project financially viable. The proponent also believes issues of visual amenity, drainage and traffic management are adequately addressed through the subdivision layout, development controls and provision of infrastructure.

Adequate servicing and subdivision design are not ultimately in question here. The conditions of service authorities and requirements of draft Planning Permit 12/090 can ensure that the residential subdivision functions efficiently and safely. Council must consider whether or not the proposed zoning, being General Residential Zone, and the resultant residential development it will allow, are appropriate in this location.

Surrounding residential development is low density, with lot sizes ranging from 2,000-8,000m<sup>2</sup>. Objections to the amendment argue that this proposal is out of keeping with existing and preferred neighbourhood character, being large lots, large houses and gardens, minimal fencing and a rural feel. Despite an attempt to make a unique golf course related estate, the overall effect is an intense and poorly integrated suburban enclave.

### **Implications**

#### Corporate Plan 2013-17 Objectives

The proposal is partly consistent with Objective 5.2 '*To ensure land use planning provides balanced outcomes for community, growth, existing land use, environment and heritage*'. The proposal will provide an additional fifty lots to meet ongoing demand for residential lots complementary to the surrounding pattern of residential development, however the proposed development is intensive compared to its immediate surrounding context.

#### Policies

##### *Population and Housing Strategy*

The proposal is consistent with Council's recently adopted Population and Housing Strategy. The Strategy acknowledges the site as a residential growth opportunity for the north-west area of the city.

### Sustainability

The outcomes are positive for the sustainability of:

- Local Economy;
- Local Environment; and
- Local Community.

### Community Engagement

Submissions to Amendment C41 are a result of the formal public exhibition process required by the Act. Submitters will continue to be informed of the progress of the amendment and will have an opportunity to present at any formal Panel hearing.

### Options

Council must consider every submission it receives to an amendment and has three options in response to those submissions.

#### Option 1

In respect of submissions where issues can be resolved, Council is able to make changes and further consult with parties to respond to the issues raised. For this application to adequately resolve all submissions, the proponent would need to be prepared to change the zoning to Low Density Residential Zone, or as an absolute minimum, be prepared to increase proposed lot sizes in the plan of subdivision to 1,500-2,000m<sup>2</sup>. This option is not supported by the proponent and, therefore, cannot be pursued by Council at this time.

#### Option 2

In respect of the 10 objections to the proposal, Council cannot proceed with the current amendment as the proponent has indicated that a change to the proposed zoning will not be considered. The only option available is to proceed to a Planning Panel. The appointment of a Panel by the Minister for Planning to review submissions will result in a thorough and independent strategic assessment of issues raised by the community and agencies.

The documented benefits of the proposal to the Wangaratta Golf Club and the wider community are important considerations, as well as the support Council has provided to this proposal.

To proceed with the current amendment it is recommended that:

- Council makes changes to the draft Planning Permit conditions as requested in submissions 25 (VicRoads) and 26 (North East Water);
- Council commences discussions with Department of Environment and Primary Industries (submission 24) and North East Catchment Management Authority (submission 27) to ensure issues raised in their submissions are addressed to the satisfaction of each agency; and

- Council requests the Minister for Planning appoint a Panel under Part 8 of the Act to consider the ten submissions it cannot address.

### Option 3

Council also has the option to abandon the current amendment. This decision should be based on a clear objective assessment of the submissions received. This assessment has been made to Council, as far as practical, within the context of this report and the attached Table of Submissions. It is clear that the majority of submissions can be addressed and are not fatal to the proposal.

As discussed previously, the core issue is whether the General Residential Zone is the most appropriate zone to use in this location and consequently, will use of this zone facilitate residential development of an inappropriate density and character for the area.

If Council considers that the rezoning proposal is so fundamentally flawed that it should not proceed, it must resolve to abandon the amendment under section 23(c) of the Act.

### Recommendation

***Based on the requirements of Section 23 of the Planning and Environment Act 1987, it is recommended that Council either:***

1. ***a) approve the changes to conditions of draft Planning Permit 12/090 as requested by Submissions 25 and 26 and detailed in the Table of Submissions at Attachment 2;***
  - b) consult directly with the Department of Environment and Primary Industries and North East Catchment Management Authority to resolve issues in their respective submissions; and***
  - c) request the Minister for Planning (via Planning Panels Victoria) to appoint a Panel under Part 8 of the Planning and Environment Act 1987 to consider the ten submissions it cannot address;***

***Or***

2. ***resolve to abandon the combined Amendment C41 and draft Planning Permit 12/090 on the basis that objections to the amendment argue that this proposal is out of keeping with existing and preferred neighbourhood character, being large lots, large houses and gardens, minimal fencing and a rural feel.***

### **Communication**

Recommendation 1: A formal written request be forwarded to the Minister for Planning (via Planning Panels Victoria) seeking the appointment of a Panel under Part 8 of the Act and the proponent. All submitters will be notified of the decision.

Recommendation 2: A formal written notice will be forwarded to the Minister for Planning advising of Council's decision to abandon the amendment. The proponent and all submitters will be notified of the decision.

### 7.1.1.3 REVIEW OF DELEGATIONS FOR FURTHER IMPROVING PLANNING PERMIT TIMELINES

Planning Delegations

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#### **Introduction**

This report seeks Council's approval for variations to Planning Delegations which will contribute to improved efficiency of the planning process.

#### **Background**

Section 3C(1) of the *Local Government Act 1989* states that:

*'The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions'; and*

Further, part (2)(b) provides that in order achieve this primary objective, Council must have the following objective:

*'to ensure that resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community.'*

Section 98 of the *Local Government Act 1989* provides for Council to delegate powers duties and functions to the most appropriate level of Council operation:

- (1) *A Council may by instrument of delegation delegate to a member of its staff any power, duty or function of a Council under this Act or any other Act other than—*
  - (a) *this power of delegation; and*
  - (b) *the power to declare a rate or charge; and*
  - (c) *the power to borrow money; and*
  - (d) *the power to approve any expenditure not contained in a budget approved by the Council; and*
  - (e) *any power, duty or function of the Council under section 223; and*
  - (f) *any prescribed power.*
- (2) *The Chief Executive Officer may by instrument of delegation delegate to a member of the Council staff any power, duty or function of his or her office other than this power of delegation unless subsection (3) applies.*
- (3) *The instrument of delegation to the Chief Executive Officer may empower the Chief Executive Officer to delegate a power, duty or function of the Council other than the power of delegation to a member of the Council staff.*

Councils planning unit generally determines planning permit applications in a timely manner. The majority of applications are determined within the statutory period. These determination timelines also compare favourably to the Regional Victorian Average. However, in some instances the process takes a longer time than expected. In order to minimise such delays and to further improve the planning processes for achieving quality and timely planning outcomes, a number of enhancements to the planning approval process are recommended.

### **Issues**

Some of these improvements have been implemented. However, two issues require Council's consideration and are outlined below.

#### **1. Determination of Applications when a Referral Authority Objects to a Planning Application**

Under the provisions section 55 of the *Planning and Environment Act 1987*, Council must refuse a planning application if a Statutory Referral Authority has objected to the proposed use/development. Presently, such applications are determined at Council meetings. This necessitates preparation of a Council report, adhering to agenda deadlines and Council's ultimately refusal of the applications. In summary, this causes delays in determination, additional unnecessary work for staff and Administrators for Council to eventually endorse the decision of the Referral Authority.

If such applications are determined at staff level, determination would be quicker, cut unnecessary work and Council does not have to go through the lengthy process for achieving the same outcome.

#### **2. Determination of applications when Council Receives Objections to a Planning Application**

Currently, at the Rural City of Wangaratta, a planning application is determined in a Council meeting if one or more objections are received following its advertisement. This practice is followed by a number of Councils in Victoria. Some Councils, however, delegate the determination of such applications to the management or staff where the objections are no more than a certain number.

In order to improve timelines, management could be given delegation to determine applications where there are (3) objections and those with four (4) or more objections continue to be determined by Council.

### **Implications**

The measures suggested above would result in better utilisation of Council resources, reduce lengthy and unnecessary processes, lessen unnecessary workload for staff and Councillors and significantly improve timeframes for planning permits.

The timely determination of planning applications and improved service would raise the satisfaction level of Council's customers and positively impact the economic development in the municipality.

### **Recommendation**

***That Council resolves to delegate authority to the Manager - Planning and Customer Services to:***

- 1. refuse a planning application where a Statutory Referral Authority has objected to the proposed use and /or development; and***
- 2. determine a planning application where the number of objections to an application is three (3) or less.***

## **8. CLOSURE OF MEETING**