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## COUNCIL MEETING MINUTES - 16 MAY 2023

***Vision:***

***Indigo Shire - leading sustainable growth, community and cultural diversity, and climate action***

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**HELD:** Tuesday, 16 May 2023 at 6.30pm

**LOCATION:** Council Chambers, 2 Kurrajong Way, Beechworth, and livestreamed on Council's website

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<b>ATTENDEES:</b>	<b>NAME</b>	<b>TITLE</b>
	Cr Sophie Price	Mayor
	Cr Bernard Gaffney	Deputy Mayor
	Cr Peter Croucher	Councillor
	Cr Larry Goldsworthy	Councillor
	Cr Roberta Horne	Councillor
	Cr Diane Shephard	Councillor
	Cr Emmerick Teissl	Councillor
	Trevor Ierino	Chief Executive Officer
	Ian Ellett	Director Infrastructure Services
	Greg Pinkerton	Director Planning & Corporate Services
	Sally Rice	Director Community & Economic Development
	Annabel Harding	Governance Coordinator (by Zoom)

**These Minutes were confirmed at the Council meeting held on 27 June 2023.**



**Cr Sophie Price**  
**Mayor**

*These Minutes are not a verbatim transcript of the discussions in the Council meeting; a recording of this meeting can be found on Council's webpage.*

*Responses given by Councillors and Council Staff are the opinion of the individual responders, and accurate at the time of response, to the best of their knowledge.*

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### 1. WELCOME

The Mayor welcomed all to the meeting of Council and noted that it would be live streamed and recorded, and the voices and images of those participating in the meeting, and in the gallery, captured as part of the recording.

### 2. ACKNOWLEDGEMENT OF THE TRADITIONAL OWNERS OF THE LAND

The Mayor acknowledged on behalf of the Council the original custodians of these lands. The people of the rivers and the hills have walked these lands for thousands of years as well as today, and we pay respect to the elders of the past, present and emerging.

The Mayor noted that Councillors have all taken an oath to carry out their duties in the best interests of the people of Indigo Shire and to do this in a fair and impartial manner. They are all committed to exercising the Council's powers and functions to the best of their skills and judgement.

### 3. APOLOGIES AND LEAVE OF ABSENCE

Nil

### 4. DECLARATION OF CONFLICT OF INTEREST

Nil

### 5. OPEN FORUM

Questioner: Neil Higgins

*Question 1:*

*PP22-0008 With the 213 Lower Nine Mile Rd property being incorporated into the Indigo Shire Stanley Planning Scheme (Settlement area) and situated to the North, South, East and West of other properties within the scheme, what is Councils outlook when addressing isolated planning applications for these types of situations that fall within the boundary of the Stanley Planning Scheme when they can't be added to adjoining agricultural land?*

Response provided by Trevor Ierino, Chief Executive Officer:

There are three questions from Neil Higgins in relation to a planning permit consideration which is before Council tonight and is elsewhere on this agenda. There is also a series of three questions from Leonnie Williams, also relating to the same agenda item.

In relation to agenda item 11.5, it was foreshadowed that the officers recommendation is that Council defers the item. There is some new information that has been provided to Council today that is important and needs to be assess properly.

Given that the six questions all relate to the same agenda item in relation to the planning permit, should Council be of mind to defer this item tonight, the six questions in Open Forum can well be considered by Council staff, and will bring back this report another time. Should Council decide to go ahead and consider this item tonight, the six questions (which have all been circulated to Councillors and they've had a chance to consider them) should be

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considered by Councillors in their deliberation. I don't believe it would be appropriate for me to assume to be able to answer these on Councillors' behalf as these are about how you would consider the matter, and I don't think I could foreshadow how you would take these on board, other than to say that you have this information in hand.

The CEO requested that same answer as above be provided for the remainder of the questions.

The Mayor read out the rest of the questions, noting the above response from the organisation.

*Question 2:*

*PP22-0008 With the environmental assessment that forms part of this application being assessed and reported on by the required third parties being N E C M, G M W, N E W & D E L W P responding without objection (subject to conditions) and also by Council's environmental health team as being acceptable, does council consider current and recent home constructions in the immediate area downstream of Nine Mile Creek, as comparable environmental assessments?*

*Question 3:*

*PP22-0008 With this application for the parcel of land forming Lot 1 on 1550 m2 within the settlement area of the planning scheme, does council draw comparisons to other recent new building approvals within the Stanley Planning Scheme (Settlement area) for 9 Ration Hill Rd, 26-28 Myrtleford Rd, 44-50 Mt Stanley Rd, 63 Mt Stanley Rd, 6 Little Scotland Rd?.*

Questioner: Leeonie Williams

The CEO requested that same answer as above be provided for the following three questions.

*Question 1:*

*PP 22-0008 Lower Nine Mile Rd Stanley - With the ongoing discussions and recent onsite positive meeting between the CFA and the applicants with their assistant Shannon O'Brien from Habitat Planning, whereby a resolve was reached, does council seek to defer the outcome of the meeting to allow time to include the response from the CFA as part of their decision-making process?*

*Question 2:*

*PP 22-0008 Lower Nine Mile Rd Stanley- With the planning report that uses examples of other planning applications that were refused by other councils and VCAT. The report addressing these applications shows important aspects were not disclosed in this report, How does Council make a determination when there is an absence of important information when being presented as a comparable?*

*Question 3:*

*PP 22-0008 Lower Nine Mile Rd Stanley - Why would council planning report to Councillors for the purpose of this hearing not use more relevant VCAT comparables relating to this application in the report that are within Indigo Planning scheme such as "Mueller v Indigo SC [2010] VCAT 1871" or "Gordon V Indigo SC[2013] VCAT 1829" ?*

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### 6. COMMUNITY AND COUNCIL ACHIEVEMENTS

Cr Croucher recognised the success of the annual Milk Run held on Sunday 30 April 2023 at Huon Reserve. Proceeds raised will go towards medical treatment for Adeline, a child in the Shire who suffered a brain injury during birth and requires vital stem cell treatment.

### 7. CONDOLENCES

Cr Goldsworthy acknowledged the passing of past Councillor Graeme Herman Gallus on 9th April 2023.

Graeme was elected to the United Shire of Beechworth 1987 – 1991 and was President from 1990 - 1991. He was born on the Mornington Peninsula in 1938 and arrived in Beechworth in 1981 after purchasing a taxi service and then went into real estate. He was involved in the Beechworth community and in resurrecting the Promotion Council with some other business owners, distributing town brochures throughout Victoria. In recent times one could see Graeme walking his dog in High St.

#### RESOLUTION

That a letter of condolence be sent under Council Seal to Graeme Gallus' family.

**Moved: Cr Goldsworthy**

**Seconded: Cr Shephard**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

### 8. CONFIRMATION OF MINUTES FROM PREVIOUS MEETING(S)

#### RESOLUTION

That the following minutes be confirmed:

1. Minutes of the Council Meeting held on 18 April 2023, as published on Council's website; and
2. Confidential Minutes of the Council Meeting held on 18 April 2023, as provided to Councillors under separate cover.

**Moved: Cr Shephard**

**Seconded: Cr Croucher**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

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### 9. BUSINESS ARISING FROM PREVIOUS MINUTES

Nil reports

### 10. PETITIONS

Nil reports

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### 11. PLANNING & CORPORATE SERVICES

#### MOTION

That Council brings forward Item 11.5 to deal with the Planning Permit Application PP22-0008 - Lower Nine Mile Road Stanley.

#### RESOLUTION

That Council brings forward Item 11.5 to deal with the Planning Permit Application PP22-0008 - Lower Nine Mile Road Stanley.

**Moved: Cr Gaffney**

**Seconded: Cr Shepherd**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shepherd and Emmerick Teissl

**Against:** Nil

**CARRIED**

### 11.5 PLANNING PERMIT APPLICATION PP22-0008 - LOWER NINE MILE ROAD STANLEY

**File No: 2023/260**

**James Turner - Manager Planning & Statutory Services      Planning & Corporate Services**

#### **For Decision**

#### RECOMMENDATION

That Council resolve to issue a notice of decision to refuse a planning permit for the proposal to use and develop the land for a dwelling in on lot 1 on Title Plan 962100R, Lower Nine Mile Road, Stanley, on the following grounds:

1. The proposal is not consistent with the following clauses of the Planning Policy Framework:
  - a. 02.03-1 Settlement
  - b. 02.03-2 Environmental risks and amenity
  - c. 02.03-4 Natural resource management
  - d. 11.01-1S Settlement
  - e. 11.01-1L-08 Stanley
  - f. 13.02-1S Bushfire planning
  - g. 13.02-1L Bushfire planning
  - h. 14.01-1S Protection of agricultural land
  - i. 16.01-3S Rural residential land
2. The proposal is not consistent with the purpose and decision guidelines of the Farming Zone.
3. The proposal is not consistent with the purpose and decision guidelines of the Bushfire Management Overlay and Clause 53.02 Planning for bushfire.
4. The proposal is inconsistent with the decision guidelines of clause 65.01.



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5. The CFA has failed to consent to the development as a determining referral authority.

### Preamble

Some new information has been provided to Council this afternoon that may be important in the assessment of this application. It is appropriate for Council to allow time to review this information.

### RESOLUTION

That Council defers item 11.5 to allow time for staff to consider the new information provided by the applicant.

**Moved: Cr Gaffney**

**Seconded: Cr Shepherd**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shepherd and Emmerick Teissl

**Against:** Nil

**CARRIED**

### SUMMARY

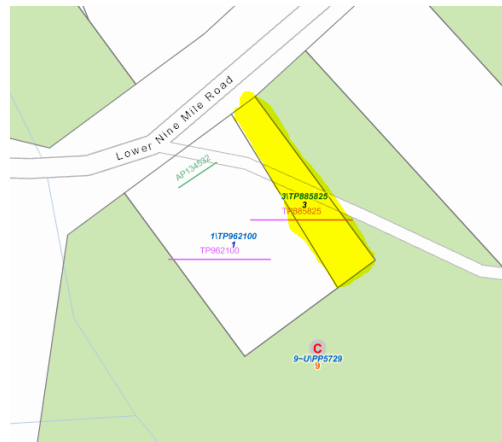
<b>Application No:</b>	<b>PP22-0008</b>
<b>Subject Land:</b>	<b>Lot 1 on Title Plan 962100R, Lower Nine Mile Road, Stanley. The lot does not have a street address.</b>
<b>Proposal:</b>	<b>Use and development of a dwelling in the Farming Zone. Buildings and works within prescribed setbacks in the Farming Zone. Buildings and works in association with accommodation in the Bushfire Management Overlay. Buildings and works in the Environmental Significance Overlay – Schedule 4.</b>
<b>Recommendation:</b>	<b>Refusal.</b>

### BACKGROUND

Date application lodged:	13 <sup>th</sup> January 2022
Purpose:	Seek approval to use and/or develop the subject site for the purposes of a dwelling.
Subject site land area:	2020 sqm
Current use of subject site:	Vacant
Site constraints:	The land slopes moderately towards the south-east. The proximity to a waterway limits effluent disposal options.  One lot comprising the site is not currently in the ownership of

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the applicant:



The lot highlighted in yellow is listed as being last transferred in 1876. The applicant is attempting to obtain this land through adverse possession, but this process is only in its early stages.

Surrounding land use:

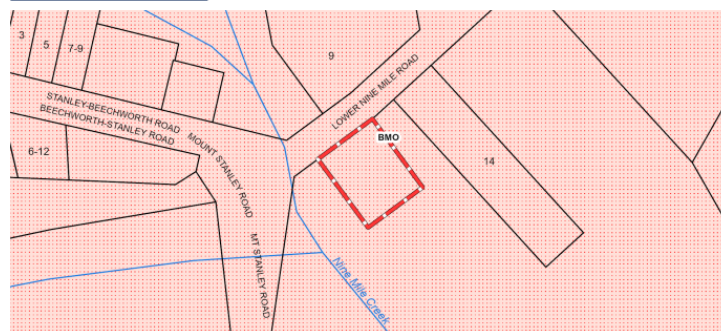
To the south and east, the land is public land maintained for conservation. To the west is the main part of the Stanley township. Land to the north is generally used for agriculture.

Zoning of surrounding land:

Publicly owned land is zoned Public Resource and Conservation Zone. Private land is zoned Farming Zone.



BUSHFIRE MANAGEMENT OVERLAY (BMO)



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[ENVIRONMENTAL SIGNIFICANCE OVERLAY \(ESO\)](#)  
[ENVIRONMENTAL SIGNIFICANCE OVERLAY - SCHEDULE 4 \(ESO4\)](#)



### PROPOSAL

The proposal seeks planning permission to construct a single dwelling and associated works in the Farming Zone, Bushfire Management Overlay and Environmental Significance Overlay.

The proposed dwelling contains two bedrooms, one bathroom, and two living areas.



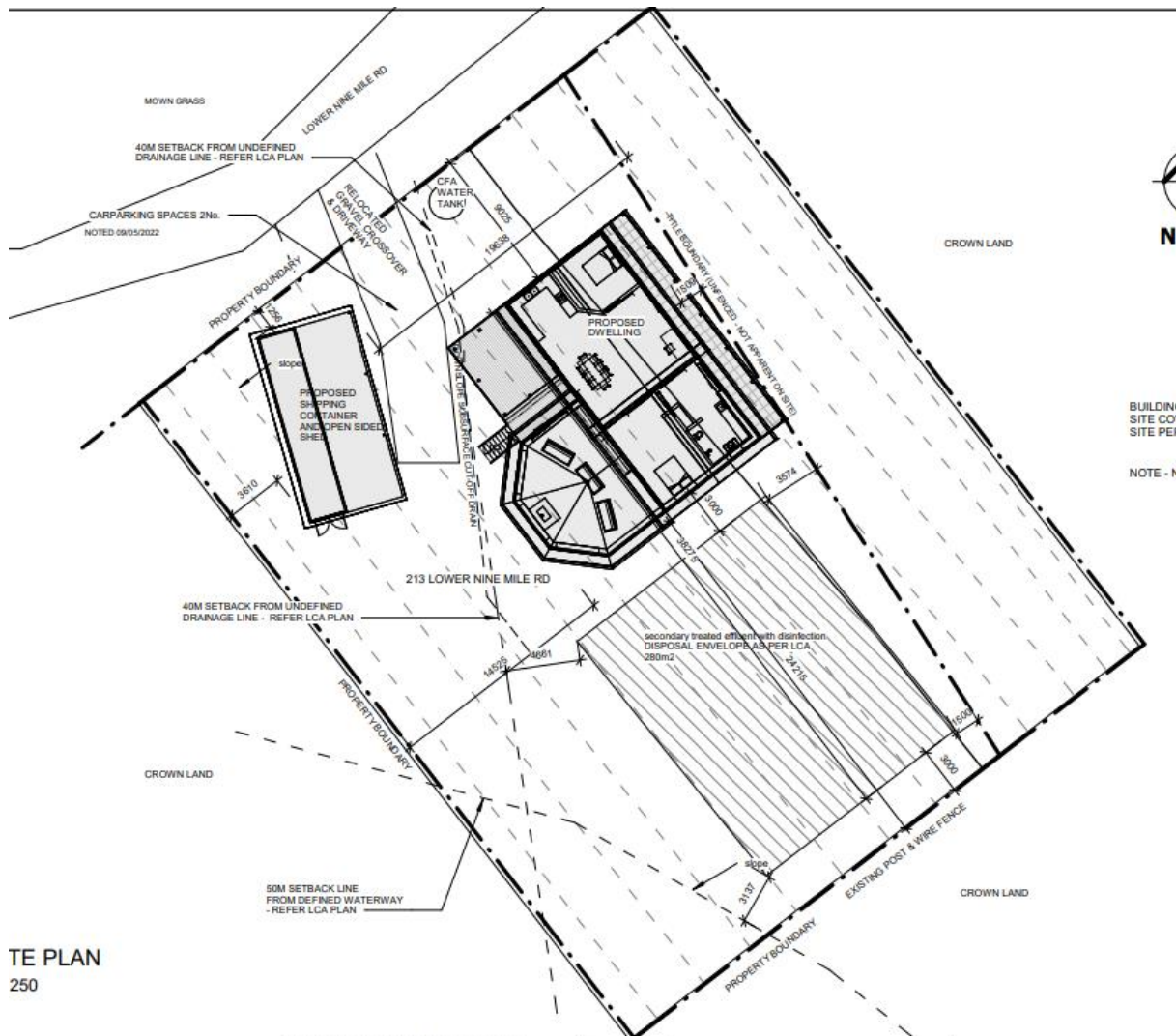
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The proposed dwelling is located near the road frontage of the lot, to allow for an appropriate effluent disposal field. An associated structure, a shed based around a shipping container, is also located near the front of the lot forward of the building line for the proposed dwelling.



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## ZONING AND PLANNING CONTROLS

Zoning: Farming Zone  
 Overlay/s: ESO4 (Stanley Township)  
 Bushfire Management Overlay

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Permit Trigger:

Farming Zone

Pursuant to Clauses 35.07-1 Table of Uses and 35.07-4 Buildings and works, a planning permit is required for use of the land for a dwelling and buildings and works associated with a section 2 use.

The exact triggers are:

- Buildings and works associated with a section 2 use;
- Buildings and works within 20m of a road;
- Buildings and works within 5m of a boundary;
- Buildings and works within 100m of a dwelling not in the same ownership; and
- Buildings and works within 100m of a waterway.

Bushfire Management Overlay

Pursuant to clause 44.06-2, a planning permit is required for buildings and works associated with the use of the land for a dwelling.

Environmental Significance Overlay

Pursuant to clause 42.01-2, a planning permit is required to construct a building or construct and carry out works.

### Planning and Environment Act 1987 - SECT 60

Section 60 of the Act provides that before deciding on an application, the responsible authority must consider:

- (a) the relevant planning scheme; and
- (b) the objectives of planning in Victoria (which include at Section 4(1)(b) to provide for the protection of natural and man-made resources...); and
- (c) all objections and other submissions which it has received and which have not been withdrawn; and
- (d) any decision and comments of a referral authority which it has received; and
- (e) any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development.

Section (1A) of the Act provides that the responsible authority, if the circumstances appear to so require, may consider:

- (a) any significant social and economic effects of the use or development for which the application is made; and...
- (j) any other relevant matter.

### PLANNING POLICY FRAMEWORK

The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria are met and encouraged through land use and development. The following policies and clauses are deemed to be relevant to this proposal and have been taken into account in the assessment of this application:

02-03-1 Settlement

02-03-2 Environmental and landscape values

02-03-3 Environmental risks and amenity

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02-03-4 Natural resource management

02-03-5 Built environment and heritage

02-03-6 Housing

11.01-1S Settlement

11-01-1R Settlement – Hume

11.01-1L-08 Stanley

11.03-6S Regional and local places

12.03-1S River and riparian corridors, waterways, lakes, wetlands and billabongs

12.05-1S Environmentally sensitive areas

13.02-1S Bushfire planning

13.02-1L Bushfire Planning

14.01-1S Protection of agricultural land

14.02-1S Catchment planning and management

14.02-2S Water quality

14.02-2L-02 Effluent disposal and water quality

15.01-2S Building design

15.01-6S Design for rural areas

16.01-3S Rural residential development

16.01-3L-1 Rural building siting and design

19.03-3L Stormwater management

### PARTICULAR PROVISIONS

53.02 – Bushfire Planning

### GENERAL PROVISIONS

#### **65 Decision Guidelines**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

65.01 Approval of an application or plan

Before deciding on an application or approval of a plan, the responsible authority must consider:

- The matters set out in section 60 of the Act
- Any significant effects the environment, including the contamination of land, may have on the use or development.
- The Municipal Planning Strategy and the Planning Policy Framework.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.

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- The effect on the environment, human health and amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.
- The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.
- The impact the use or development will have on the current and future development and operation of the transport system.

### REFERRAL AUTHORITIES

The application was referred to the following referral authorities in accordance with Section 55 of the Planning and Environment Act 1987 and/or advice was sought from the following:

- CFA;
- North East Water;
- North East Catchment Management Authority (NECMA); and
- Goulburn Murray Water

North East Water did not object, and proposed no conditions. NECMA and Goulburn Murray Water both did not object, subject to conditions.

The CFA indicated that they did not consent to the application in its current form. The applicant and the CFA engaged in negotiations, which did not result in an acceptable outcome to both parties. As a result, the CFA is taken to have refused consent to the current application.

### PUBLIC NOTICE

Notice of the application was given to adjoining owners and occupiers and other relevant persons in accordance with Section 52 (1) of the Planning and Environment Act 1987.

4 submissions were received in response.

Issues raised include:

- Compromise of downstream water quality, particularly for agriculture;
- Use of Farming Zone land for non-agricultural purpose;
- Sewerage, and in particular inaccuracies in the Land Capability Assessment;
- Bushfire risk; and
- Contrary to local planning policy.

These issues form part of the discussion below.



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### DISCUSSION

The proposal raises four primary topics of concern:

- Suitability of the proposed effluent disposal arrangements

The subject site adjoins an unnamed creek to the west. A small buffer of native vegetation is on public land near the creek, however parts of the site are within 30m of the creek, and a large area is within 100m of the creek, both of which act as constraints to any effluent disposal arrangements.

A number of policies in the PPF address the protection of waterways, and the location of the site within the special water supply catchment of the water source for Yackandandah reinforces this importance.

The objections raise a number of concerns regarding the land capability assessment, and assert the assumptions used are inappropriate. The author of the assessment is suitably qualified, and Council is entitled to rely on the advice within. Council's environmental health team and Goulburn Murray Water are satisfied the proposal can deal with effluent, subject to conditions.

- Proposed bushfire arrangements

The applicant has submitted bushfire documents in line with the requirements of the BMO. However, these documents do not meet the requirements of the scheme or the CFA. Particular issues include reliance on the lot being adversely possessed to provide defensible space, failing to meet the relevant approved or alternate measures in clause 53.02, and a failure to respond to the relevant parts of the planning policy framework discouraging development in high risk bushfire areas.

This forms part of the recommended grounds of refusal.

- Appropriateness of development in the Farming Zone

The planning policy framework strongly discourages residential development in Farming Zones unless strictly necessary for agriculture. This particular site relies on an argument around size and unsuitability for agriculture to overcome these policy directions. The policies do not contain any exemptions regarding size, and it is an explicit aim to encourage the consolidation of small lots into larger agricultural enterprises.

While it is accepted the lot is too small to allow for an independent agricultural enterprise, there is no reason it could not be added to an existing enterprise. The land around Stanley has been identified as having high horticulture values, and adding more land to an existing orchard could increase the viability of an existing orchard.

The argument relating to the existing configuration of the area has been rejected by VCAT. VCAT has found that past mistakes in subdivisions are not a reason to permit a dwelling which should otherwise be refused.

The proposed dwelling is contrary to the relevant policy framework and the purpose of the zone, and this forms part of the grounds of refusal.

- Other issues

A number of minor issues also form part of the assessment, however these could be generally be dealt with by appropriate permit conditions. These include stormwater runoff, environmentally sustainable design issues, landscaping and revegetation of the land.

Various elements of the zone, overlay and planning policy framework highlight these issues, and some deficiencies in the proposal have been identified. These issues are not, on their own, sufficient to justify the refusal of a permit.

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### VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

There are a number of cases in recent years that have some relevance to this particular application and in particular:

#### **Mischkulnig v Moyne SC [2013] VCAT 2110**

In this case the acceptability of a small lot development was considered. The member stated:

24. *The applicant submitted three propositions in support of the dwelling. Firstly, the area is one that contains many dwellings on lots smaller than 40 ha. In essence, the “horse has bolted” and the area’s proximity to Warrnambool makes it a rural lifestyle precinct that is a satellite “exurb” of that city. Secondly, notwithstanding the transition in the predominant land use in the area, a dwelling is required on this land to enable it to be farmed more intensively. Thirdly, Amendment VCA103 has loosened the nexus between a dwelling and agricultural activity and made the Rural Zone more flexible.*
25. *I am not persuaded by any of these propositions. I do not accept that the “horse has bolted” in this area and there has been a transformation of the predominant land use from agriculture to rural lifestyle. To do so would be tantamount to saying that agricultural activity has vacated this area and is unlikely to return, hence the best remaining land use is rural lifestyle. In fact, in my view, agricultural production remains the dominant land use in this area. Apart from the rural living precinct nearby, the number of dwellings are limited and they are generally subordinate to agriculture.*
26. *Secondly, policy confirms this to be an agricultural area. The planning authority has chosen to apply 40 hectares as the minimum lot size. This suggests that it views the preferred future of this area as comprising farming rather than smaller rural lifestyle lots. The area containing the review site is to continue to be a productive farming area. A dwelling on the land should be secondary to the agricultural activity, necessary only to support that activity rather than a reasonable development expectation. To accept the horse has bolted proposition and grant a permit is to ensure the transition of this area to rural lifestyle contrary to the policy framework.*

#### **Estate of JE Walker v Wangaratta RCC [2021] VCAT 1257**

This case highlights that all proposals in the Farming Zone need to have a direct link to agricultural uses. It also highlights that just because a permit can be granted in a zone, the proposal needs to show this link in order to be approved.

#### **O’Brien v Wangaratta RC [2022] VCAT 1355**

This case related to a development of a dwelling on a small lot in a Farming Zone, and in refusing the permit highlighted the following:

17. *I find that the general thrust of both state and local planning policy and the zone and overlays applying to this land require careful consideration of a dwelling in this area. The policy setting clearly does not support a dwelling on a small lot where unrelated to agriculture.*

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18. *There was no farm management plan or land management plan proposed, although the applicant did indicate a willingness to make improvements to the land.*
19. *The proposed use would comprise a rural living lot that is at odds with outcomes sought for farming areas. While there are similar sized properties surrounding the review site that are used for rural lifestyle purposes, there are also some larger parcels such as the land to the immediate west of the review site. The location of dwellings in Greta West are somewhat scattered and i am not persuaded that there is a clear settlement character. The evidence of Ms Bohn was that while this individual lot had limited agricultural capacity, it retains value for agriculture when combined with other land as at present.*
20. *An additional dwelling on a small lot in this location will contribute to a concentration of dwellings on small lots that has negative implications for agriculture use of land due to potential amenity expectations and increased land values affecting ability to expand onto existing small lots.*

### CONCLUSION

The proposal has not responded appropriately to the planning requirements of the site, and a notice of decision to refuse a planning permit should be issued on the following grounds:

1. The proposal is not consistent with the following clauses of the Planning Policy Framework:
  - a. 02.03-1 Settlement
  - b. 02.03-2 Environmental risks and amenity
  - c. 02.03-4 Natural resource management
  - d. 11.01-1S Settlement
  - e. 11.01-1L-08 Stanley
  - f. 13.02-1S Bushfire planning
  - g. 13.02-1L Bushfire planning
  - h. 14.01-1S Protection of agricultural land
  - i. 16.01-3S Rural residential land
2. The proposal is not consistent with the purpose and decision guidelines of the Farming Zone.
3. The proposal is not consistent with the purpose and decision guidelines of the Bushfire Management Overlay and Clause 53.02 Planning for bushfire.
4. The proposal is inconsistent with the decision guidelines of clause 65.01.
5. The CFA has failed to consent to the development as a determining referral authority.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Greg Pinkerton – Director Planning and Corporate Services
- James Turner - Manager Planning and Statutory Services
- Steven Hawkins - Coordinator Planning

## COUNCIL MEETING MINUTES - 16 MAY 2023

### CONFIDENTIAL ATTACHMENT

The following confidential attachment has been provided to Councillors under separate cover. Recent changes to Section 197A of the *Planning and Environment Act 1997* have clarified and tightened the way Councils are able to make certain planning documents available to the public. The Act provides that the confidential document listed below can only be made available for public inspection:

- at Council offices during business hours, or
- electronically via Council's website subject to strict public availability requirements, requiring significant editing of individual documents.

Council currently does not have the resources to provide the document online in line with the public availability requirements of the Act, and so is at this stage unable to publish it in the public agenda online.

### **Attachments**

1. PP22-0008 - Application (Confidential)

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 11.1 APRIL FINANCE REPORT

File No: 2023/299

Sharon Phillips - Acting Manager Finance

Planning & Corporate Services

For Information

#### RECOMMENDATION

That Council accepts the year to date April Finance Report noting the progress against Council's quarter 2 forecast.

#### RESOLUTION

That Council accepts the year to date April Finance Report noting the progress against Council's quarter 2 forecast.

**Moved: Cr Goldsworthy**

**Seconded: Cr Croucher**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### PURPOSE OF REPORT

This finance report covers the year to date position for the first ten months of the 2022/23 financial year.

The following report shows Council's April position against the adopted Quarter 2 forecast, and provides an indication of Council's financial performance of the 2022/23 year.

#### BACKGROUND

Each month Council reports the year to date (YTD) financial result. The year to date figures contained within this report shows Council's April position against the second quarter forecast.

#### DISCUSSION

The income statement shows Council's net financial result was a deficit of \$1,307 million which is \$552k favourable to the forecast position of \$1,859 million surplus. Details of the result and main variances are reported below.

## COUNCIL MEETING MINUTES - 16 MAY 2023

April 2023 - income statement							
Account Group	Year to Date ( YTD )				2022/23 Annual budget	2022/23 Quarter 2 Forecast	2021/22 April YTD Actuals
	YTD actuals	YTD forecast	YTD variance \$	YTD variance %			
<b>Income</b>							
Contributions - developer	38,750	0	38,750	(100%)	21,500	21,500	68,978
Contributions - operating	51,769	54,950	(3,181)	(6%)	51,148	61,818	47,894
Operating grants	3,987,957	3,805,126	182,831	5%	6,496,518	9,889,217	7,773,265
Interest income	378,124	288,979	89,146	31%	217,773	303,273	142,281
Other revenue	1,636,704	1,653,603	(16,899)	(1%)	2,669,414	2,609,516	1,999,135
Rates & charges	18,809,325	18,790,226	19,099	0%	18,777,585	18,794,226	18,261,391
Reimbursements	278,042	259,607	18,435	7%	71,420	291,237	125,826
Statutory fees & fines	918,899	895,946	22,953	3%	1,085,096	1,112,405	1,092,309
User charges	3,202,824	3,138,722	64,102	2%	3,918,411	4,098,922	2,534,375
<b>Total income</b>	<b>29,302,395</b>	<b>28,887,160</b>	<b>415,235</b>	<b>1%</b>	<b>33,308,865</b>	<b>37,182,115</b>	<b>32,045,454</b>
<b>Expense</b>							
Borrowing costs	41,885	41,947	63	0%	50,926	48,883	45,535
Contract payments	5,786,464	5,704,161	(82,304)	(1%)	6,301,907	9,437,985	4,799,873
Depreciation	6,347,615	6,351,147	3,532	0%	6,497,105	6,636,048	5,160,153
Employee costs	10,554,522	10,996,549	442,027	4%	13,626,090	13,288,261	10,888,322
Materials & consumables	4,422,807	4,325,839	(96,968)	(2%)	4,659,027	4,978,054	3,382,136
Other expenses	3,027,853	2,880,656	(147,197)	(5%)	3,080,944	3,652,269	3,043,345
Utilities	428,670	446,196	17,526	4%	609,116	606,784	402,100
<b>Total expense</b>	<b>30,609,816</b>	<b>30,746,496</b>	<b>136,679</b>	<b>0%</b>	<b>34,825,115</b>	<b>38,648,283</b>	<b>27,721,464</b>
<b>Surplus / (deficit)*</b>	<b>(1,307,422)</b>	<b>(1,859,336)</b>	<b>551,914</b>	<b>30%</b>	<b>(1,516,250)</b>	<b>(1,466,168)</b>	<b>4,323,990</b>

\* For both actual and budget a positive net result means a favourable contribution to Council, which is referred to as a surplus and a negative net result means a unfavourable contribution to Council, which is referred to as a deficit.

(Red variance) is unfavourable  
Black variance is favourable

### Income

#### Operating Grants

YTD favourable variance of \$183k is due to;

- \$80k – Tree Management – Naturally Cooler Indigo Project Grant.
- \$60k – Planning – Heritage Assessment Study Grant.
- \$30k – Early Years – Immunisation Program.
- \$19k – Environmental Health Services – Domestic Waste Water Plan.

#### Interest Income

YTD favourable variance of \$89k is due to;

- \$72k - Investment income – Interest rate increases on cash investments maintaining a higher than predicted forecast.
- \$17k – Interest on rates – Interest calculated on outstanding rate debtors.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### User Fees

YTD favourable variance of \$64k is mainly due to;

- \$53k – Beechworth and Rutherglen transfer station fees with higher usage than expected. (Beechworth \$22k and Rutherglen \$32k). This is offset by \$46k of additional income from these locations.
- \$19k – Higher than budgeted Buller Gas sales.
- (\$8k) – unfavourable result for Burke Museum entry and group booking.

### Expenditure

#### Contract Payments

YTD unfavourable variance of \$82k is due to;

- \$40k – Temporary employment costs across multiple service areas, these costs are offset by the \$442k favourability in employee costs.
- \$46k – Waste Management – Disposal of landfill costs for Beechworth and Rutherglen transfer stations which is offset by the \$53k increase in both transfer station fees.

#### Employee costs

YTD favourable variance of \$442k continues as is due to staff vacancies. This is offset by the additional \$40k of expenditure in contract payments.

#### Materials and consumables

YTD unfavourable variance of \$97k is due to;

- \$50k – Maintenance costs in Information Technology.
- \$25k – Natural Disaster costs unbudgeted with costs to be reimbursed at the end of the process.
- \$23k – Additional costs unbudgeted across Roads and Bridge maintenance and Parks and Gardens.

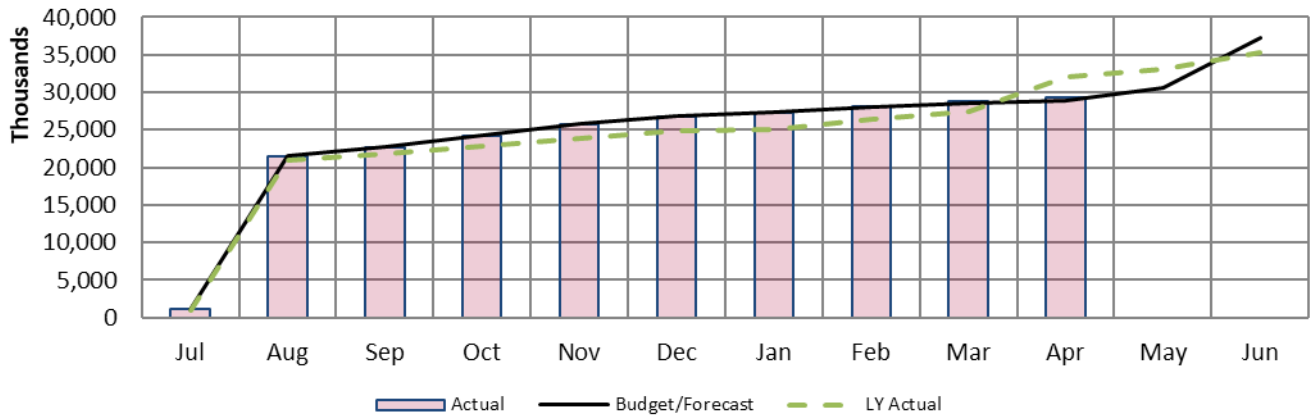
#### Other expenses

YTD unfavourable variance of \$148k is due to;

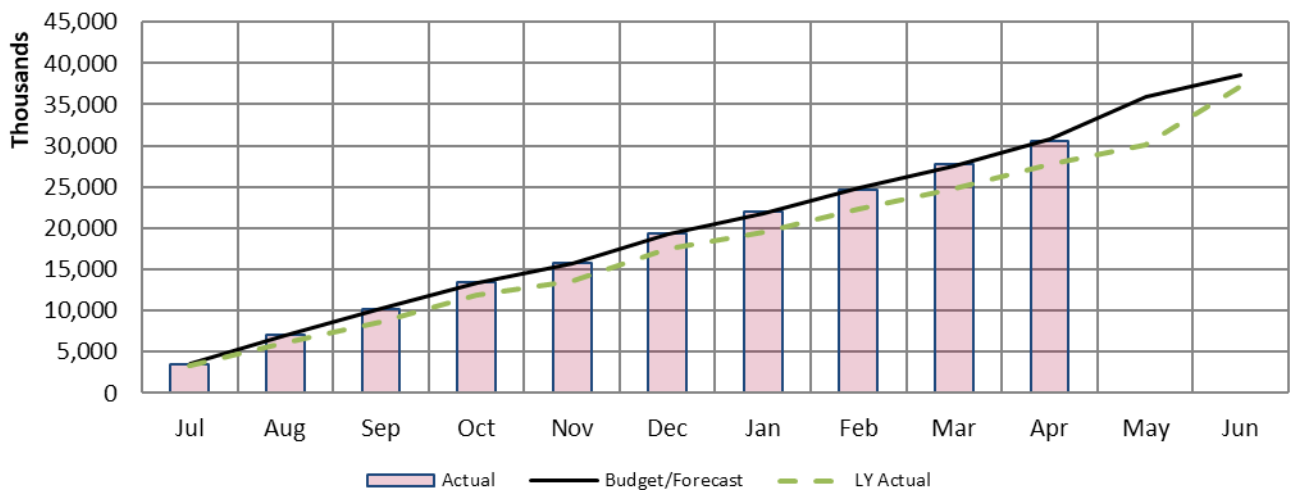
- \$68k – Internal and external plant hire which is mainly relates to \$80k of the January Natural Disaster works.
- \$45k – Planning costs not budgeted for (note that the overall planning position – including this unfavourable result in “other expenses” is \$151k favourable).
- \$20k – People and Culture service area additional costs relating to recruitment and advertising.
- \$14k – Plant and fleet repairs and maintenance.

## COUNCIL MEETING MINUTES - 16 MAY 2023

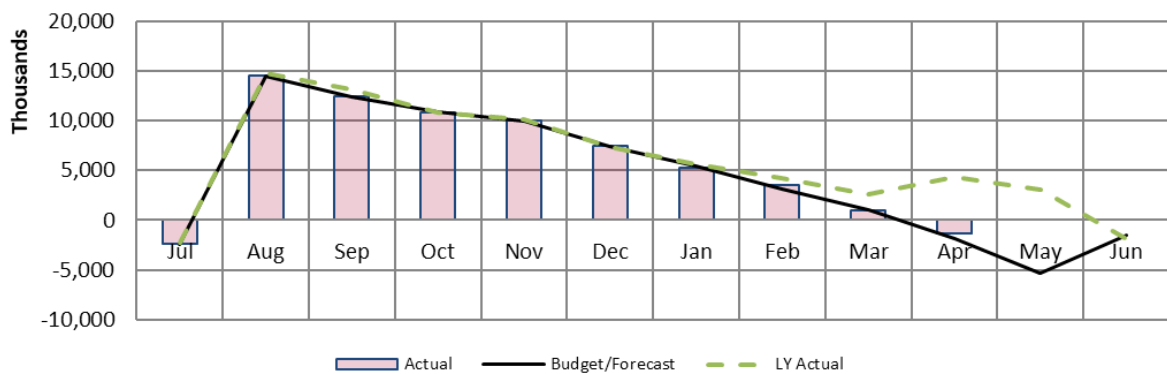
### Income (YTD)



### Expense (YTD)



### Net Position (YTD)





## COUNCIL MEETING MINUTES - 16 MAY 2023

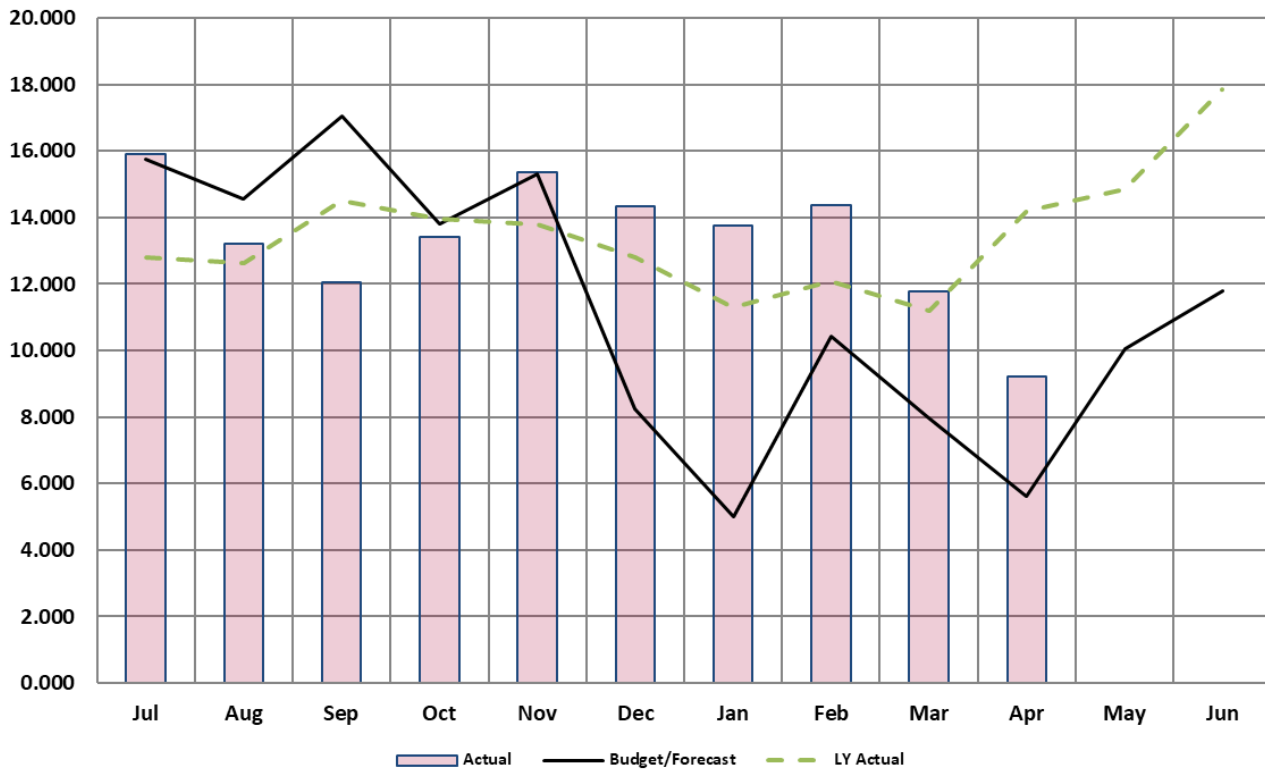
### CASH

Council's Cash position at the end of April 2023 was \$9.2 million. This is lower than the same period last year (\$14,192 million) due to the progress of the capital works program

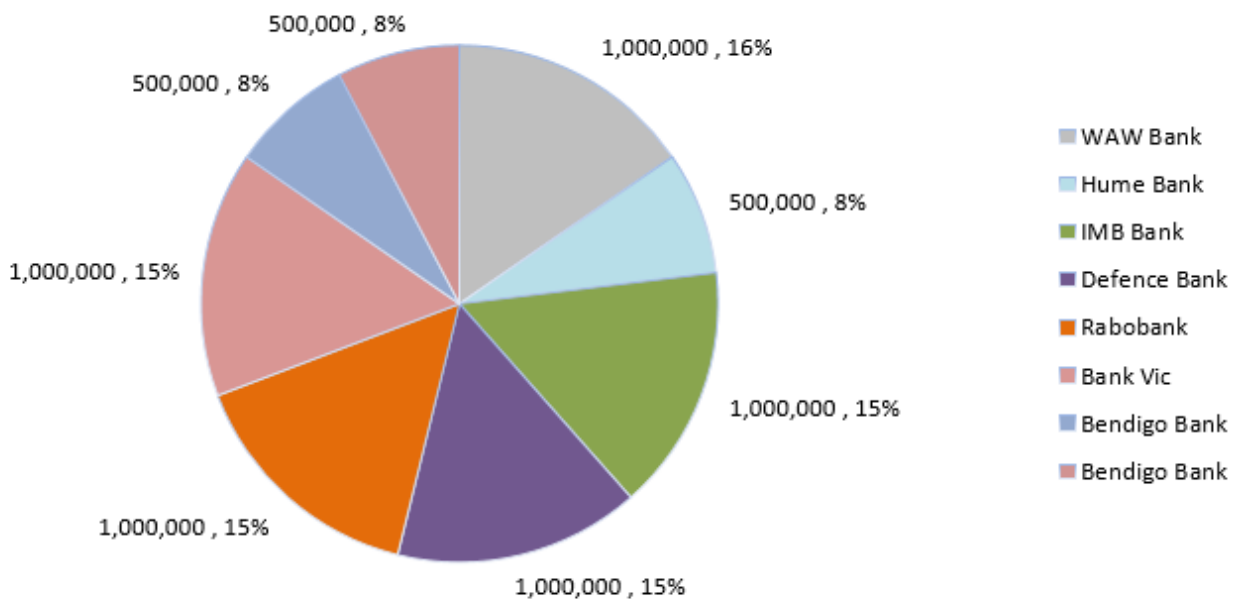
<b><u>Indigo Shire Council - Cash &amp; Investment Report as at 30th April 2023</u></b>				
<b>Bank</b>	<b>Term</b>	<b>Rate %</b>	<b>Due Rollover</b>	<b>Amount</b>
WAW	153	3.75	7/09/2023	1,000,000
Hume Bank	89	1.80	5/05/2023	500,000
IMB Bank	123	3.95	6/06/2023	1,000,000
Defence Bank	90	3.00	26/05/2023	1,000,000
Rabobank Bank	153	3.70	31/08/2023	1,000,000
Bank Vic	180	4.45	9/10/2023	1,000,000
Bendigo Bank	152	4.15	10/07/2023	1,000,000
<b><u>Total of All Investments</u></b>				<b>6,500,000</b>
Indigo Shire Operating Account		3.00		2,700,546
WAW Credit Union S13		0.01		114
<b><u>Total Operating Cash Position</u></b>				<b><u>2,700,660</u></b>
<b><u>Total Cash Position</u></b>				<b><u>9,200,660</u></b>

## COUNCIL MEETING MINUTES - 16 MAY 2023

### Cash (\$ Millions)



### Investment Spread as at 30 April 2023



## COUNCIL MEETING MINUTES - 16 MAY 2023

### BORROWINGS

Below is a summary of Council's borrowings. The table shows original loans borrowed, term of loans, rates and maturity with outstanding balances at the end of April 2023 of \$1,451,436

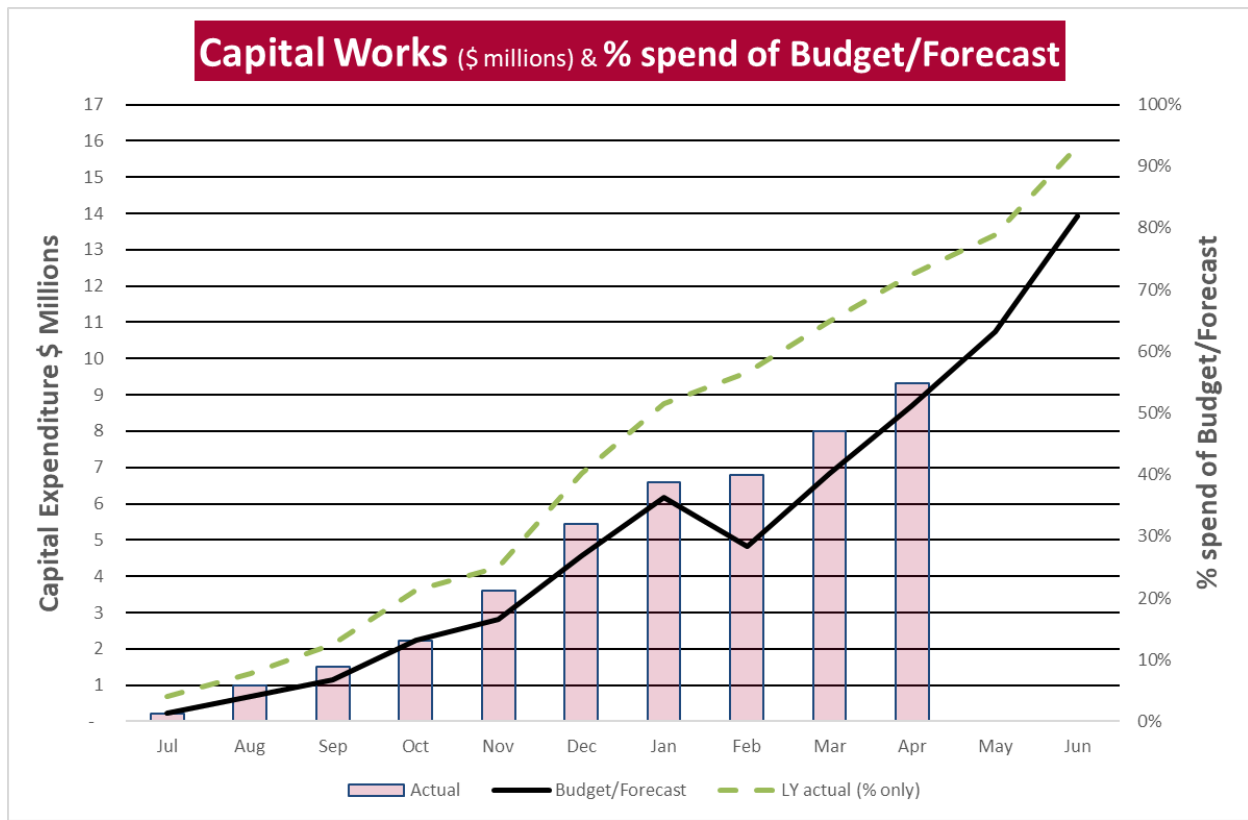
<b>Indigo Shire Council - Borrowing Report as at 30 April 2023</b>					
<b>Bank</b>	<b>Term - Years</b>	<b>Rate %</b>	<b>Date of Maturity</b>	<b>Original loan amount</b>	<b>Balance owed</b>
NAB	10	5.14	28/06/2023	1,000,000	21,252
WAW	10	5.25	28/06/2024	1,000,000	145,393
ANZ	10	3.78	29/04/2025	1,500,000	346,906
TCV	10	2.08	27/06/2032	1,000,000	937,885
<b>Total of All Borrowings</b>				<b>4,500,000</b>	<b>1,451,436</b>

### CAPITAL WORKS

The combined YTD project expenditure as at the end of April, across both the Capital Works and Non ISC asset project areas totals \$10,479,977. This total is comprised of \$9,311,396 in capital projects and \$1,168,581 against Non ISC assets.

<b>Capital works expenditure</b>	<b>2021/22</b>			<b>2022/23</b>		
	<i>Qtr2 Forecast</i>	<i>YTD actuals</i>	<i>% Complete</i>	<i>Qtr2 Forecast</i>	<i>YTD actuals</i>	<i>% Complete</i>
<b>Capital works total</b>	<b>11,721,159</b>	<b>9,493,402</b>	<b>81.0%</b>	<b>13,764,605</b>	<b>9,311,396</b>	<b>67.6%</b>

## COUNCIL MEETING MINUTES - 16 MAY 2023



A more detailed commentary on capital works and non-Council expenditure is provided in the monthly capital report later in the Council meeting agenda.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.1 Our financial management is sound, responsible and effective.

N/A

### SOCIAL/COMMUNITY IMPLICATIONS

This report provides details of Council’s performance across a range of services, works and programs that support and enhance the wellbeing of residents and visitors to Indigo Shire.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### ENVIRONMENTAL IMPLICATIONS

In May 2017 Council adopted the following resolution.

*That Council:*

1. *divests its investments (when they become due) to financial institutions that do not invest in the fossil fuel industry;*
2. *divests future long-term borrowings when they fall due, to financial institutions that do not invest in the fossil fuel industry;*
3. *notes that Council will retain the current (non-divested) transactional banking provider at this time, however Council will advise this bank the intention to move to a divested provider in the future if they continue to support the fossil fuel industry; and*
4. *writes to Council's current banking providers to advise them of Council's stance on fossil-free financial institutions*

In accordance with this resolution:

- All investments are held with financial institutions that have divested their interests away from fossil fuel companies.

Transactional banking has not been reassessed since the resolution and remains with a non-divested bank.

### FINANCIAL IMPLICATIONS

Addressed throughout the report.

### LEGISLATIVE IMPLICATIONS

The Local Government Act requires Council to report financial information quarterly. Indigo Shire Council report financials on a monthly basis, as well as a more comprehensive Report at completion of each quarter.

All financial reporting is compliant with the Australian Accounting Standards and audited annually by the Victorian Auditor General Office.

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
Poor performance against budget/forecast	Possible	Moderate	Medium	Regular monitoring and reporting of financial position

The current pandemic does provide uncertainty therefore regular reporting and monitoring is critical in identifying any impacts.

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## COUNCIL MEETING MINUTES - 16 MAY 2023

### COMMUNITY ENGAGEMENT

#### **Engagement undertaken**

Nil

#### **Engagement outcomes**

Nil

#### **Engagement proposed**

Nil

### CONCLUSION


In summary, at the end of April the bottom line financial position is favourable to the Quarter 2 forecast. With only three months to the end of the financial year it is expected that this favourability will continue, however a lower surplus is expected in coming months as Council completes this year's projects, and finalises 2022/23 action plans.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Greg Pinkerton – Director Planning and Corporate Services
- Sharon Phillips – Acting Manager Finance

#### **Attachments**

1.  April Service Plan Statement

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 11.2 DRAFT COUNCIL PLAN 2021-2025 (YEAR 3)

File No: 2023/283

Melinda Collis - Executive Manager Customer Experience & Engagement      Executive Management

**For Decision**

#### **RECOMMENDATION**

That Council:

1. Endorses the updated Draft Council Plan 2021-2025 (Year 3), noting adjustments to the phasing and rewording of some actions; and
2. Places it on public exhibition for 21 days from 17 May 2023 and invites submissions.

#### **RESOLUTION**

That Council:

1. Endorses the updated Draft Council Plan 2021-2025 (Year 3), noting adjustments to the phasing and rewording of some actions; and
2. Places it on public exhibition for 21 days from 17 May 2023 and invites submissions.

**Moved: Cr Goldsworthy**

**Seconded: Cr Teissl**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### PURPOSE OF REPORT

To consider the amended Council Plan 2021-2025, and revised actions therein.

#### BACKGROUND

The Council Plan 2021-2025 was adopted by Council on 29 June, 2021.

It is a requirement of the *Local Government Act 2020* that a Council must prepare and adopt a Council Plan for a period of at least four financial years after a general election in accordance with its deliberative engagement practices.

The Council Plan sets out the key priorities for Council to focus on over its term and guides decision making and prioritisation through the annual budget. The plan is reviewed annually to help inform capital works planning, service planning as well as budget and resource allocations.

## COUNCIL MEETING MINUTES - 16 MAY 2023

The plan was developed in consultation with the community as well as the following:

- Current priorities identified by Councillors.
- Previous Council priorities and decisions, including adopted plans and strategies.
- Council’s 10-Year Financial Plan.
- Opportunities and challenges and other influences.
- State and Federal Government Legislation.

### DISCUSSION

The proposed changes to the Council Plan are detailed in the table below. There have also been updates to the Mayor and CEO Message (added current Mayor’s photo and signature), the organisation chart, and Councillor photographs.

Page No.	Action item	Proposed change
17	1.1.2 Review way-finding signage, street lighting, seating, shade and pedestrian crossings across the Shire to encourage outdoor gatherings in town centres	Phasing – project to commence 24/25
17	1.1.11 Develop a Master Plan for the Allans Flat Recreation Reserve Precinct	Phasing – project to continue in 23/24
17	1.1.12 Determine the future development of the Beechworth Pool and advocate for funding	Phasing – project to continue in 23/24
17	1.1.13 Review town and Shire entry signage and develop an appropriate Upgrade Action Plan	Phasing – project to commence 24/25
19	1.5.3 Support the development of a signature arts event and spaces	Phasing – project to commence 23/24  Action reworded - Support a variety of creative arts and culture events across the Shire
23	2.3.5 Develop a Public Toilets Improvement Strategy	Phasing – project to continue in 23/24
27	3.1.3 Implement the Better Approvals system to make it easier for businesses to obtain planning and building permits	Phasing – project to continue in 23/24  Action reworded - Improve accessibility to planning and building permit applications for all applicants, including principles from the Better Approvals project.
30	4.1.3 Develop a Tree Canopy Strategy	Phasing – project to continue in 23/24
31	4.4.4 Consider the development of a Dark Skies Policy	Phasing – project to continue 23/24  Action reworded - Include dark skies into planning policy and consider the role of dark skies in the new Tourism Strategy.



## COUNCIL MEETING MINUTES - 16 MAY 2023

Community feedback captured as part of the pre-budget survey was also taken into consideration. There was strong alignment with actions already included in the Council Plan and Municipal Public Health and Wellbeing Plan and therefore no changes have been made to the document based on the feedback received.

### Options

1. Endorse the updated Council Plan 2021-2025 (Year 3) with the proposed amendments. (recommended)
2. Reject the proposed changes and propose further amendments.
3. Reject the proposed changes and endorse the Council Plan 2021-2025 with no changes.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.5 Our Councillors and organisation are committed to the highest level of governance practices and conduct.
Strategic Action	5.5.1 Develop and deliver an ongoing internal Integrity Program to ensure both staff and Councillors are aware of and carrying out their responsibilities with the highest levels of governance

### SOCIAL/COMMUNITY IMPLICATIONS

The Council Plan reflects what the community expressed to Council it wants for Indigo Shire, both in the long term and immediate future. In developing the plan, community input and involvement was strongly encouraged. Through drop-in sessions, online feedback, submissions and surveys, Council received constructive and well considered feedback from almost 250 individuals and organisations which was used to shape the document.

Overwhelmingly, the community expressed the importance of a Shire united by a desire for sustainable living, care for the environment, action to address climate change along with progress, prosperity and community pride, but also for the Shire’s towns and villages to be recognised for their individual character and charm and unique sense of identity.

### ENVIRONMENTAL IMPLICATIONS

The Council Plan has a strong focus on addressing climate change. Theme 4 Environment, has a number of strategic objectives and actions that reinforce Council’s commitment to ensuring that it considers mitigation and planning for climate change risks in any decisions that affect the economic, social and environmental sustainability of the Shire.

### FINANCIAL IMPLICATIONS

The Council Plan is a central part of Council’s integrated planning framework and the items in the action plan are identified for priority funding in each budget cycle. Year three actions in this plan have been included in the draft 2023/24 budget. Actions that are shown in future years in this plan will be considered in subsequent budget cycles.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### LEGISLATIVE IMPLICATIONS

#### Council Plan

Under section 90 of the *Local Government Act 2020*:

1. *A Council must prepare and adopt a Council Plan for a period of at least the next 4 financial years after a general election in accordance with its deliberative engagement practices.*
2. *A Council Plan must include the following:*
  - a. *the strategic direction of the Council;*
  - b. *strategic objectives for achieving the strategic direction;*
  - c. *strategies for achieving the objectives for a period of at least the next 4 financial years;*
  - d. *strategic indicators for monitoring the achievement of the objectives;*
  - e. *a description of the Council's initiatives and priorities for services, infrastructure and amenity;*
  - f. *any other matters prescribed by the regulations.*
3. *A Council must develop or review the Council Plan in accordance with its deliberative engagement practices and adopt the Council Plan by 31 October in the year following a general election. Authorised by the Chief Parliamentary Counsel*
4. *The Council Plan adopted under subsection (3) has effect from 1 July in the year following a general election.*

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
The Council Plan does not reflect the requirements of the Local Government Act	Unlikely	Minor	Low	The plan has been guided by the requirements of the Act

### COMMUNITY ENGAGEMENT

#### **Engagement undertaken**

Extensive community and stakeholder engagement were undertaken in 2021 to help inform the Council Plan 2021-2025.

#### **Engagement proposed**

It is proposed that following endorsement by Council, the updated Council Plan will be placed on public exhibition for 14 days from 17 May 2023 and submissions invited.

### CONCLUSION

The Council Plan reflects both Council and community aspirations and now guides the work Council does over its four-year term. Community feedback has been vital to ensure alignment between the services Council provides for residents and community aspirations.

The proposed changes further strengthen what the community has expressed it wants for the ongoing sustainability of the shire.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Trevor Ierino – Chief Executive Officer
- Melinda Collis – Executive Manager Customer Experience and Engagement

### **Attachments**

Due to the size of this attachment, it has been provided separately on Council's website  
1. Draft Council Plan 2021-2025 (Year 3)

### **Attachments**

Nil

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 11.3 2023/24 DRAFT BUDGET

File No: 2023/263

Sharon Phillips - Acting Manager Finance

Planning & Corporate Services

#### For Decision

#### RECOMMENDATION

That Council;

1. endorses the attached documents for public exhibition:
  - a. 2023/24 draft Budget for the purposes of Section 94 of the Local Government Act 2020; and
  - b. 2023/24 draft Ten Year Financial Plan; and
  - c. 2023/24 draft Revenue and Rating Plan; and
  - d. 2023/24 draft Operating Income and Expense by Service; and
2. authorises the Chief Executive Officer to give public notice of the preparation of the draft budget, in accordance with Section 96(2) of the Local Government Act 2020; and
3. places the endorsed documents on public exhibition for a period of 21 days from 17 May 2023 to 6 June, 2023; and
4. invites any person wishing to provide feedback on the exhibited documents to do so prior to 5pm, 6 June 2023; and
5. considers a recommendation to adopt the 2023/24 Budget at the June Ordinary Meeting of Council on 27 June 2023.

#### MOTION

That Council;

1. endorses the attached documents for public exhibition:
  - a. 2023/24 draft Budget for the purposes of Section 94 of the Local Government Act 2020; and
  - b. 2023/24 draft Ten Year Financial Plan; and
  - c. 2023/24 draft Revenue and Rating Plan; and
  - d. 2023/24 draft Operating Income and Expense by Service; and
2. authorises the Chief Executive Officer to give public notice of the preparation of the draft budget, in accordance with Section 96(2) of the Local Government Act 2020; and
3. places the endorsed documents on public exhibition for a period of 21 days from 17 May 2023 to 6 June, 2023; and
4. invites any person wishing to provide feedback on the exhibited documents to do so prior to 5pm, 6 June 2023; and
5. considers a recommendation to adopt the 2023/24 Budget at the June Ordinary Meeting of Council on 27 June 2023.

## COUNCIL MEETING MINUTES - 16 MAY 2023

6. Requests the CEO to meet with VicPol Local Area Command and producers of CCTV and prepares a report for Council on the purchase of CCTV for the safety of our communities across our Shire.

**Moved: Cr Gaffney**

**Seconded: Cr Teissl**

**For:** Crs Peter Croucher, Bernard Gaffney and Emmerick Teissl

**Against:** Crs Larry Goldsworthy, Roberta Horne, Sophie Price and Diane Shephard

**LOST**

### RESOLUTION

That Council;

1. endorses the attached documents for public exhibition:
  - a. 2023/24 draft Budget for the purposes of Section 94 of the Local Government Act 2020; and
  - b. 2023/24 draft Ten Year Financial Plan; and
  - c. 2023/24 draft Revenue and Rating Plan; and
  - d. 2023/24 draft Operating Income and Expense by Service; and
2. authorises the Chief Executive Officer to give public notice of the preparation of the draft budget, in accordance with Section 96(2) of the Local Government Act 2020; and
3. places the endorsed documents on public exhibition for a period of 21 days from 17 May 2023 to 6 June, 2023; and
4. invites any person wishing to provide feedback on the exhibited documents to do so prior to 5pm, 6 June 2023; and
5. considers a recommendation to adopt the 2023/24 Budget at the June Ordinary Meeting of Council on 27 June 2023.

**Moved: Cr Goldsworthy**

**Seconded: Cr Shephard**

**For:** Crs Peter Croucher, Larry Goldsworthy, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Crs Bernard Gaffney and Roberta Horne

**Carried**

### PURPOSE OF REPORT

The purpose of this report is to present the attached draft 2023/24 budget documents and seek Council's endorsement to proceed to community consultation.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### BACKGROUND

The 2023/24 draft budget (and supporting documents) is the result of significant work by Councillors and staff that began in late 2022. This then informed a number of workshops and briefing meetings that have culminated in the attached draft budget.

This 2023/24 draft budget, has been impacted by the significant increase in inflation (7.8% PA as at the December 2022 quarter) compared to the rate cap of 3.5% (announced by the Minister for Local Government in December 2022). This gap between income and expense has resulted in the budget being significantly tightened.

This budget does ensure that Council can continue to deliver the range and quality of services that the community expects, from road construction, maternal and child health services, libraries, town planning, actions to protect and enhance our environment, providing leisure facilities, waste services and much more. It also details the funding that is required to deliver these services and maintain important assets and infrastructure.

### DISCUSSION

The budget build commenced in late 2022 with management reviewing the budget principles for the upcoming budget that included a number of key financial objectives, including:

- No rate cap variation
- Cash to align with long term financial plan expectations.
- New borrowings only considered for long-term infrastructure
- Low / Medium risk (as measured by the Victorian Auditor General's Office indicators)
- Maintain a level of own sourced expenditure on roads
- Capital renewal expenditure aligned with Council's renewal needs
- Total capital expenditure greater than total depreciation
- Capital expenditure & income based on current 10-year Capital works program
- Capital net cost to Council to be stable
- No additional 'contingency' included in the capital budget

Over the course of the last five months Council has built the attached draft budget based on the financial principles shown above. The draft budget has the following highlights:

- Council's capital works program totals \$20M and includes \$8M in carry forwards to complete projects already approved in previous years' budgets as well as \$11M of new projects. Of this, \$4.6M for the Rutherglen Wine Walk Cycle Trail is fully grant funded.
- \$1.8M to upgrade rural roads
- \$1.4M for a new bridge on Indigo Creek Road
- \$700K to improve urban and rural drains
- \$350K to upgrade the female change rooms at Barkly Park (subject to state government grant of \$1M)
- \$170K to progress the Kiewa River Community park improvements

## COUNCIL MEETING MINUTES - 16 MAY 2023

- \$100K for accessibility improvements to the public toilets behind the Beechworth Visitor Information Centre
- \$300K towards construction of pump tracks at Tangambalanga and Wahgunyah (State also contributing \$300K)
- Council maintains its low-medium risk, as assessed by the Victorian Auditor General's standardised measures.
- No rate cap variation. Council rates will be increased in line with the Minister's rate cap of 3.5%.

Attached to this report are the following documents;

- 2023/24 draft Budget.
  - This is the main budget document that contains the key information.
- 2023/24 draft Ten Year Financial Plan.
  - A document that sets out Council's long-term financial strategy.
- 2023/24 draft Revenue and Rating Plan.
  - Containing important information about how Council raised revenue and rates.
- 2023/24 draft Operating Income and Expense by Service.
  - Income and expense details of each service area in Council.

The first three of these documents are required from all Victorian Councils as part of the budget process. Together they cover the full budget position of Council, with associated policy and strategy statements.

The main budget document is created from the Victorian model budget, as published by the State Government. Whilst some additional information is added by Indigo Shire Council to improve project information, the core of the document is very close to that of the Victorian model. This is to assist with consistency between councils and ease of comparison between organisations and between years.

The final document is information that Indigo Shire Council chooses to voluntarily publish to aid transparency and understanding of the budget detail.

### **Waste management charges**

Indigo Shire does not seek to make a surplus from the waste services. In any one year the financial result will vary depending on the number of services, contact cost (linked to CPI) and the cost of landfill rehabilitation calculations. Therefore, it is possible that any one year may result in a surplus or a deficit position.

Council monitors this over several years to ensure an appropriate long-term position is maintained. Over the past 14 years Council has a cumulative deficit in waste management of approximately \$1 million. The proposed 2023/24 budget predicts a deficit of \$54.6k.

## COUNCIL MEETING MINUTES - 16 MAY 2023

Indigo Shire Council believes that the waste management charges have been legally raised, and that all of these funds have been appropriately used to deliver waste management services to the community.

### Options

As part of the draft budget build a number of different options have been considered by management, as well as through a series of budget workshops with Councillors. The draft budget is now ready to be presented to the community to gain feedback before Council considers final adoption of the 2023/24 budget at the June meeting.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.1 Our financial management is sound, responsible and effective.

### SOCIAL/COMMUNITY IMPLICATIONS

The annual budget provides funding for a wide range of programs and services that provide significant social and community benefits throughout Indigo Shire.

### ENVIRONMENTAL IMPLICATIONS

The annual budget provides funding for several of Council’s environmental programs and services.

### FINANCIAL IMPLICATIONS

The adoption of Council’s draft Budget is one of the most fundamental financial decision that the Council must make on an annual basis. It sets in place the framework by which officers can implement Council’s strategic direction contained within the Council Plan, with Council having allocated appropriate resources.

In summary, the attached budget document details;

- Total income of \$42.577 million.
- Rates increasing by the 3.50% cap to a total rates and charges of \$19.603 million.
- Total expenses of \$38.194 million.
- Total capital works of \$20M including \$8M in carry forwards to complete projects already approved in previous years’ budgets as well as \$11M of new projects.
- Total borrowings at the end of 2023/24 of \$0.985 million (down from \$1.368 million at the end of 2022/23).

### LEGISLATIVE IMPLICATIONS

The preparation of Council’s budget is guided by a strict and prescriptive set of rules including the *Local Government Act (2020)* and associated Finance and Reporting Regulations. This act ensures that Council’s draft budget is provided to the community for a period of time and allows members of the community to make representations to Council on any particular area.

*Local Government Act 2020.* Requires for a *Revenue and Rating Plan* takes key information form the budget and presents it alongside the policy information from Council’s Rating Strategy.



## COUNCIL MEETING MINUTES - 16 MAY 2023

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
Failure to meet legislative requirements of budget preparation	Unlikely	Minor	Low	The budget is prepared using a set process that complies with the Local Government Act requirements. Council use the standard budget
The adopted budget does not anticipate and provide for future demands.	Unlikely	Minor	Low	An extensive process has been used to develop this budget. Council also maintains ample cash reserves for unanticipated expenditure.
Failure to achieve budget throughout the year, or at the end of the year	Possible	Minor	Low	Monthly monitoring of all service budgets. Cash reserve.

Active management of Council's financial performance will include;

- Daily management of receivables and payables.
- Weekly oversight of cash and investments.
- Monthly management oversight at cost centre and account level.
- Reporting to Council's Finance Committee.
- Monthly reporting to Council's Ordinary Meeting.
- Quarterly reporting to Council's Audit Committee.
- Quarterly exception reporting to Council.
- Mid-year budget review and forecasting for 2<sup>nd</sup> half of the year.
- Annual close process and audit by VAGO.

The attached budget has been built to balance the needs of the community with the need to reduce operating costs. This has been achieved whilst keeping Council in the low risk category for financial sustainability.

Council have undertaken a 10-year financial plan which will inform and guide Council in addressing financial sustainability in the medium and long-term.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### COMMUNITY ENGAGEMENT

#### Engagement undertaken

An online survey seeking community input into the development of Council’s 2023/24 draft budget opened on 25 September 2022 and closed on 16 December 2022.

Respondents were asked a series of questions relating to what, where and how they would like Council to prioritise spending over the next 12 months.

The survey also included a number of open-ended questions, providing respondents with the opportunity to provide more detail.

The survey questions reflected those asked in preparation of the 2022/23 budget, with the addition of a question around Council’s advocacy action plan.

## Survey promotion & engagement



82

days survey open



11

Editions promoting survey



315

surveys completed



22,727

Reach from 4 paid Facebook ads

#### Promotion and advertising

- Engaged Indigo x 3
- Community forums – posters on tables at Rutherglen/Wahgunyah, Chiltern/Barnawartha and Yackandandah
- Facebook – organic posts
- Website – Have your say page and banner on home page
- Yackity Yak – November/December editions
- Kiewa River Gazette– October and November edition
- Posters – displayed in Customer Service Centres and Libraries
- Advisory Committee meetings
- Tourism and Economic Development eDMs



#### Engagement outcomes

Council received 315 survey responses.

The feedback was collated into themes and a report presented to Councillors and budget mangers for review and consideration into the development of the 2023/24 draft budget.

#### Engagement proposed

The draft budget documents will be placed on public exhibition from Wednesday 17 May until close of business on Tuesday 6 June (21 days). Promotion will be via Council’s website

## COUNCIL MEETING MINUTES - 16 MAY 2023

[www.indigoshire.vic.gov.au](http://www.indigoshire.vic.gov.au), Facebook, a media release, newspaper advertising, and displayed at Customer Services Centres.

Any person wishing to give feedback on the draft budget can do so online (links will be provided) or can address an email or letter to the CEO. Feedback must be received by 5 pm on Tuesday 6 June.

Budget feedback will be provided to Councillors for their information and the overall feedback will be summarised in the June Council report.

The budget includes a separate *10Year Financial Plan, Revenue and Rating Plan, and Income and Expense by Service* to provide additional transparency of the budget to the community.

### CONCLUSION

This report details and explains the process by which the 2023/24 draft Budget and accompanying 10-year Financial Plan projections are prepared and advertised in accordance with the provision of the Local Government Act. Council is asked to consider the attached documents with a recommendation that the draft Budget be adopted for the purpose of public comment.

This budget document sets a clear path for the achievement of Council's objectives in the 2023/24 financial year.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Greg Pinkerton - Director Planning and Corporate Services
- Ian Ellett – Director Infrastructure Services
- Sharon Phillips - Acting Manager Finance
- Nathan Mullane– Manager Capital Projects and Waste
- Adam Kimball – Manager Assets and Property

### **Attachments**

Due to the size of these attachments, they have been provided separately on Council's website

1. 2023-24 – Draft Budget
2. 2023-24 – Draft Operating Income and Expense – All Service Plan
3. 2023-34 – Draft Revenue and Rating Plan
4. 2023-2032 – Draft Ten Year Financial Plan

### **Attachments**

Nil

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 11.4 PLANNING PERMIT APPLICATION PP22-0211 - 454 SANDY CREEK ROAD, SANDY CREEK

File No: 2023/234

James Turner - Manager Planning & Statutory Services      Planning & Corporate Services

#### For Decision

#### RECOMMENDATION

That Council, having caused notice of Planning Application PP22-0211 to be given under Section 52 of the *Planning and Environment Act 1987*, and having considered all matters under Section 60 of the *Planning and Environment Act 1987*, determines to issue a Notice of Decision to Refuse to Grant a Planning Permit for Application PP22-0211, for the use and development of a dwelling on Crown Allotment A4 Section 6 Parish of Tangambalanga, for the following reasons:

1. The proposal is inconsistent with the Planning Policy Framework in relation to agricultural land and rural development, specifically Clauses 11.01-1S, 14.01-1S, 14.01-1L-03, 14.01-2S and 16.01-3S, which aim to manage development in rural areas to protect and enhance agriculture and avoid inappropriate rural residential development. The scale of agricultural activity proposed can be reasonably managed without the presence of an on-site dwelling, with the proposed dwelling creating the potential for land use conflict to existing agricultural activities and affecting the operation or expansion of other agricultural activities.
2. The proposal is inconsistent with the Municipal Planning Strategy in relation to agricultural land, specifically Clause 02.03-4, which seeks to avoid fragmentation of productive agricultural land and discourage rural dwellings for hobby farming and rural residential purposes in the Farming Zone.
3. The proposal is inconsistent with the purpose and decision guidelines of the Farming Zone, which seeks to encourage the retention of productive agricultural land and to ensure that non-agricultural uses do not adversely affect the use of land for agriculture. The scale of agricultural activity proposed does not reasonably require a dwelling and the proposal could lead to the concentration and proliferation of dwellings and impacts on existing agricultural activities, contrary to the decision guidelines of the zone.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### RESOLUTION

That Council, having caused notice of Planning Application PP22-0211 to be given under Section 52 of the *Planning and Environment Act 1987*, and having considered all matters under Section 60 of the *Planning and Environment Act 1987*, determines to issue a Notice of Decision to Refuse to Grant a Planning Permit for Application PP22-0211, for the use and development of a dwelling on Crown Allotment A4 Section 6 Parish of Tangambalanga, for the following reasons:

1. The proposal is inconsistent with the Planning Policy Framework in relation to agricultural land and rural development, specifically Clauses 11.01-1S, 14.01-1S, 14.01-1L-03, 14.01-2S and 16.01-3S, which aim to manage development in rural areas to protect and enhance agriculture and avoid inappropriate rural residential development. The scale of agricultural activity proposed can be reasonably managed without the presence of an on-site dwelling, with the proposed dwelling creating the potential for land use conflict to existing agricultural activities and affecting the operation or expansion of other agricultural activities.
2. The proposal is inconsistent with the Municipal Planning Strategy in relation to agricultural land, specifically Clause 02.03-4, which seeks to avoid fragmentation of productive agricultural land and discourage rural dwellings for hobby farming and rural residential purposes in the Farming Zone.
3. The proposal is inconsistent with the purpose and decision guidelines of the Farming Zone, which seeks to encourage the retention of productive agricultural land and to ensure that non-agricultural uses do not adversely affect the use of land for agriculture. The scale of agricultural activity proposed does not reasonably require a dwelling and the proposal could lead to the concentration and proliferation of dwellings and impacts on existing agricultural activities, contrary to the decision guidelines of the zone.

**Moved: Cr Teissl**

**Seconded: Cr Goldsworthy**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

### SUMMARY

<b>Application No:</b>	<b>PP22-0211</b>
<b>Subject Land:</b>	<b>454 Sandy Creek Road, Sandy Creek</b> <b>Crown Allotment A4, Section 6 Parish of Tangambalanga</b>
<b>Proposal:</b>	<b>Use and development of a dwelling</b>
<b>Recommendation:</b>	<b>Refusal in accordance with the Recommendation above.</b>

## COUNCIL MEETING MINUTES - 16 MAY 2023

### BACKGROUND

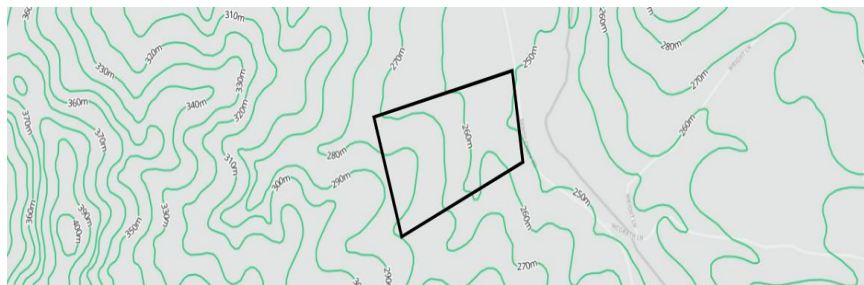
Date application lodged: 26 July 2022

Purpose: Use and development of land for a dwelling

Subject site land area: 9.205ha

Current use of subject site: Vacant

Site constraints: The site has 2 waterways, running along the northern and southern boundaries respectively. The land slopes up from Sandy Creek Road (approx. 250m AHD) to approximately 285m AHD at the rear of the site (refer contour map below):



Surrounding land use: The surrounding area comprises a combination of agricultural activities and dwellings used both to support agricultural activities and for rural lifestyle purposes.

Zoning of surrounding land: Farming Zone, Public Conservation and Resource Zone applying to Sandy Creek on the eastern side of Sandy Creek Road

### PROPOSAL

This application seeks approval for the use and development of the subject land at 454 Sandy Creek Road, Sandy Creek, for the purpose of a dwelling. The application material states that the proposed dwelling is proposed to be constructed to support the establishment and ongoing operation of a finger lime farm across approximately 2ha of the site.

The dwelling would comprise the following features:

- 1 x bedroom with ensuite and WIR, 3 x bedrooms with BIR, open family/dining area with adjoining kitchen and walk in pantry, separate 'theatre' room, bathroom with bath, shower and adjoining WC and adjoining laundry.
- Single storey-built form, setback:
  - 106m from the northern boundary; and
  - 31m from the western boundary (22m for outbuilding);
- Maximum height of 4.4m above ground level.

## COUNCIL MEETING MINUTES - 16 MAY 2023

An outbuilding associated with the dwelling is also proposed, with an area of 240m<sup>2</sup> (20m x 12m). The outbuilding is proposed to comprise car parking, storage and home office facilities. Copies of the proposed plans are provided below:



Figure 1: Proposed site plan. Source: Application documents



**COUNCIL MEETING MINUTES - 16 MAY 2023**

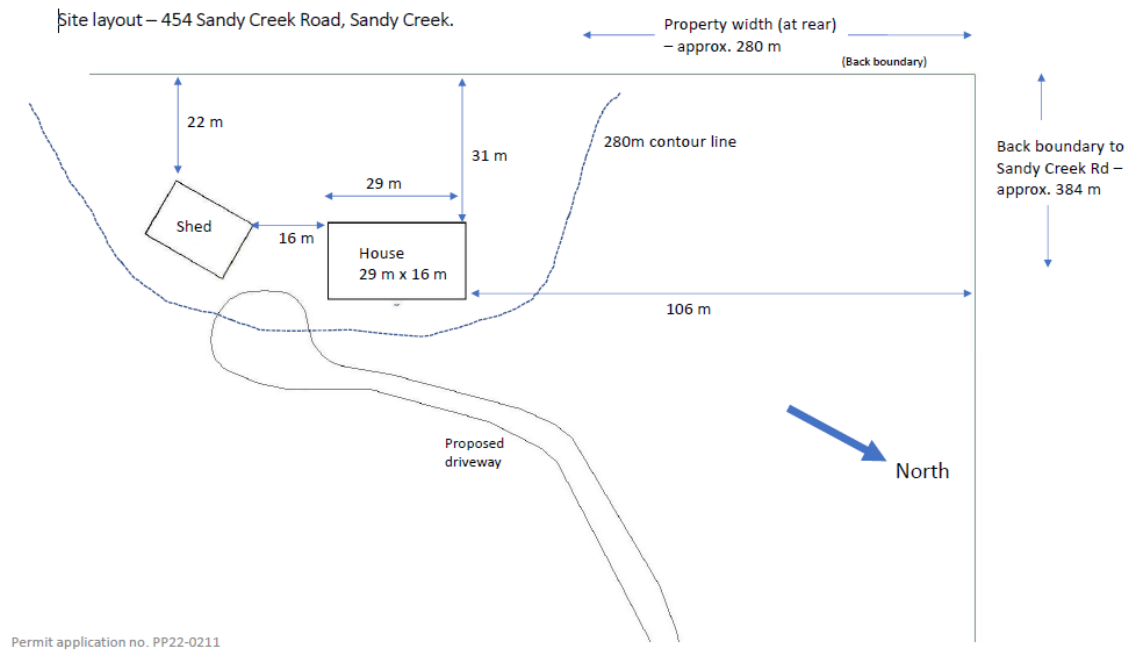


Figure 2: Proposed partial site plan. Source: Application documents

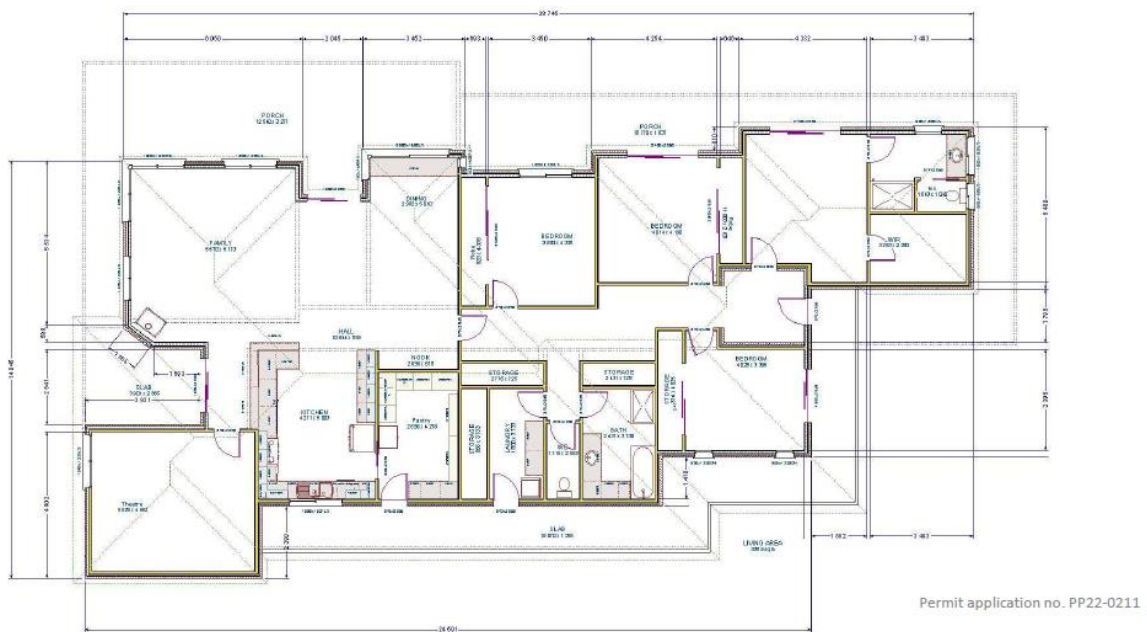


Figure 3: Proposed dwelling floor plan. Source: Application documents



## COUNCIL MEETING MINUTES - 16 MAY 2023

Elevation NE – 454 Sandy Creek Road, Sandy Creek.



Elevation SW



Permit application no. PP22-0211

Figure 4: Proposed dwelling elevations. Source: Application documents

### ZONING AND PLANNING CONTROLS

Zoning: Clause 35.07 – Farming Zone

Overlay/s: Nil

### PERMIT TRIGGER:

- Clause 35.07-1 – A permit is required to use land for a dwelling, as the Section 1 condition is not met (land less than 40ha in area).
- Clause 35.07-4 – A permit is required to:
  - Construct a building or construct or carry out works associated with a use in Section 2 of Clause 35.07-1; and
  - Construct a building within 100 metres of a waterway, wetland or designated flood plain.

### Planning and Environment Act 1987 - SECT 60

Section 60 of the Act provides that before deciding on an application, the responsible authority must consider:

- (a) the relevant planning scheme; and
- (b) the objectives of planning in Victoria (which include at Section 4(1)(b) to provide for the protection of natural and man-made resources...); and
- (c) all objections and other submissions which it has received and which have not been withdrawn; and
- (d) any decision and comments of a referral authority which it has received; and

## COUNCIL MEETING MINUTES - 16 MAY 2023

- (e) any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development.

Section (1A) of the Act provides that the responsible authority, if the circumstances appear to so require, may consider:

- (a) any significant social and economic effects of the use or development for which the application is made; and...
- (j) any other relevant matter.

### MUNICIPAL PLANNING STRATEGY AND PLANNING POLICY FRAMEWORK

The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria are met and encouraged through land use and development. As a result of Planning Scheme Amendment c78indi (gazetted 9 March 2023), the Planning Policy Framework captures all relevant policy at a Local (L) level, Regional (R) level and State (S) level.

The following policies and clauses are deemed to be relevant to this proposal and have been taken into account in the assessment of this application:

- Clause 02.03-4 – Natural resource management
- Clause 02.03-6 – Housing
- Clause 11.01-1S – Settlement
- Clause 11.01-1R – Settlement – Hume
- Clause 13.02-1S – Bushfire planning
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.01-1L-03 – Land use in the Rural Zones
- Clause 14.01-2S – Sustainable agricultural land use
- Clause 15.01-6S – Design for rural areas
- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural building siting and design

### PARTICULAR PROVISIONS

No relevant Particular Provisions are identified in relation to this application.

### GENERAL PROVISIONS

#### **65 Decision Guidelines**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

#### 65.01 Approval of an application or plan

Before deciding on an application or approval of a plan, the responsible authority must consider:

- The matters set out in Section 60 of the Act.
- The Municipal Planning Strategy and Planning Policy Framework
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### REFERRAL AUTHORITIES

Pursuant to Section 55 of the *Planning and Environment Act 1987* and Clause 66 of the Indigo Planning Scheme, the application was required to be referred to the following authorities:

- Goulburn Murray Water – Clause 66.02-5

At the time of preparing the report no response had been received from GMW. The absence of a formal comments is considered acceptable given the report is recommending refusal.

Additionally, advice was sought from the following agencies in accordance with Section 52 of the *Planning and Environment Act 1987*:

- Agriculture Victoria

Agriculture Victoria relevantly note that:

- *A land use for horticulture requires regular supervision and management of the trees but this can be achieved without the need for a dwelling on the site.*
- *The location of the proposed dwelling places the dwelling at the furthest point from the property access point maximising land lost to agricultural production.*
- *The proposed agricultural use of the land (orchard) represents a relatively small footprint, being limited to 2 hectares of the 9-hectare site.*
- *The provided plans do not appear to effectively establish a domestic building envelope to minimise the domestic use impact on the land and, ensure maximising and maintaining the use of the land for agriculture.*
- *Without the establishment of a domestic building envelope there is a risk of further loss to available productive land over time. The area set aside for the domestic envelope, including the dwelling, should include any domestic outbuildings, yards, pool, garden, primary and secondary wastewater envelopes etc. and accessway.*
- *A fenced and revegetated 30 metre buffer along all waterways should be specified on the site plans within the Farm Management Plan.*
- *The approval of a dwelling would have the potential to set a precedent for further dwellings in the surrounding area given the pattern of small lots without dwellings which appear to be currently used for broad scale agriculture, and lead to a proliferation of dwellings in the Farming Zone.*
- *The approval of a dwelling on the currently vacant land would permanently remove the ability of the land to be incorporated into surrounding agricultural enterprises and has the potential to limit the operation and expansion of adjoining and nearby agricultural uses.*

The response also refers to a number of VCAT decisions, which are considered further in this report.

Agriculture Victoria concludes by stating:

*Agriculture Victoria considers that the proposed use and development of a dwelling for rural residential purposes on the land does not meet the strategic objectives of the Indigo Planning Scheme, with particular reference to Clause 14.01-1S Protection of agricultural land and Clause 22.01-6 Rural Land Use Policy.*

*The refusal of the application would appear supported by the VCAT cases cited above*

See Attachment.... for a full copy of responses.

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### PUBLIC NOTICE

Notice of the application was given to adjoining owners and occupiers and other relevant persons in accordance with Section 52 (1) of the Planning and Environment Act 1987.

No objections were received in relation to the application.

### PLANNING ASSESSMENT

#### PLANNING POLICY

##### **Clause 11.01-1S – Settlement**

###### **Objective:**

- *To promote the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements.*

###### **Relevant Strategies:**

- *Develop sustainable communities through a settlement framework offering convenient access to jobs, services, infrastructure and community facilities.*
- *Focus investment and growth in places of state significance in Metropolitan Melbourne and the major regional cities of Ballarat, Bendigo, Geelong, Horsham, Latrobe City, Mildura, Shepparton, Wangaratta, Warrnambool and Wodonga.*
- *Create and reinforce settlement boundaries.*
- *Limit urban sprawl and direct growth into existing settlements.*

###### Comment:

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.

The proposal is considered to be contrary to the provisions of Clause 11 in that:

- The land is not zoned or serviced for residential use.
- It will create an expectation that other lots below 40ha will be able to be developed with dwellings for rural-residential purposes.
- While there is an agricultural use proposed, as discussed throughout this report, the scale of activity proposed is not considered to be of such a size/intensity that warrants a full-time residential dwelling to be established on the land. The subject site is approximately 12km by road to Tangambalanga, with insufficient justification provided as to why the agricultural activity could not be managed from residentially zoned land within the township.

##### **Clause 14.01-1S – Protection of agricultural land**

###### **Objective:**

- *To protect the state's agricultural base by preserving productive farmland.*

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### Relevant Strategies:

- *Identify areas of productive agricultural land, including land for primary production and intensive agriculture.*
- *Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.*
- *Protect productive farmland that is of strategic significance in the local or regional context.*
- *Protect productive agricultural land from unplanned loss due to permanent changes in land use.*
- *Prevent inappropriately dispersed urban activities in rural areas.*
- *In considering a proposal to use, subdivide or develop agricultural land, consider the:*
  - *Desirability and impacts of removing the land from primary production, given its agricultural productivity.*
  - *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.*
  - *Land capability.*
- *Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.*

### Comment:

Agricultural production is one of the most significant industries in the Indigo Shire (Clause 02.03-4), and as such productive agricultural land should be protected. In considering a proposal to use or develop agricultural land, the following factors listed above must be considered:

- *The desirability and impacts of removing the land from primary production, given its agricultural productivity:* While the proposed use and development does not claim to remove the land from primary production, as highlighted by Agriculture Victoria, 'The approval of a dwelling on the currently vacant land would permanently remove the ability of the land to be incorporated into surrounding agricultural enterprises and has the potential to limit the operation and expansion of adjoining and nearby agricultural uses'. The proposal also has the potential to lead to the loss of the whole site from potential agricultural use, and create an expectation that other similar lots in the area (of which there are multiple) could be similarly developed with dwellings.
- *The compatibility between the proposed or likely development and the existing uses of the surrounding land:* A proliferation of non-agricultural land uses in this area would be incompatible with the existing agricultural land uses surrounding the subject land, and would limit the expansion of those same agricultural uses. The proposed dwelling is sited at the rear of the lot and in relatively close proximity to the western boundary with other agricultural activities occurring.
- *Assessment of the land capability:* A land capability assessment has been provided in relation to the treatment and retention of wastewater. It is noted that the proponents have prepared a farm management plan, however as highlighted by Agriculture Victoria;

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- *The proposed agricultural use of the land (orchard) represents a relatively small footprint, being limited to 2 hectares of the 9 hectare site; and*
- *A land use for horticulture requires regular supervision and management of the trees but this can be achieved without the need for a dwelling on the site.*

It is noted that the applicants' own assessment of the viability of the activity shows that it will take 3 years to make a gross profit of \$3,085.06 (based on a 1.85ha activity area), and after 7 years of the agricultural activity (that will only commence after the dwelling is constructed according to the application), the activity would be making a gross profit of \$40,836.90, assuming that all the inputs into this estimate prove correct (and not accounting for factors such as natural disasters, disease or the like).

### Gross Margin Analysis (Years 3, 5 and 7)

Projection	Year 3	Year 5	Year 7
	\$/Ha	\$/Ha	\$/Ha
<b>Gross Income</b>	<b>\$ 10,000.00</b>	<b>\$ 30,000.00</b>	<b>\$ 70,000.00</b>
<b>Variable Costs</b>			
Machinery Operations (F.O.R.M)	\$ 105.00	\$ 105.00	\$ 205.00
Pruning Costs	\$ 1,200.00	\$ 3,200.00	\$ 4,000.00
Fertilisers	\$ 725.00	\$ 910.00	\$ 1,910.00
Herbicide	\$ 104.80	\$ 104.80	\$ 98.40
Insecticide	\$ 466.50	\$ 716.50	\$ 716.50
Fungicide	\$ 66.10	\$ 66.10	\$ 66.10
Irrigation	\$ 25.00	\$ 37.50	\$ 50.00
Harvest, packing and marketing	\$ 5,640.00	\$ 17,520.00	\$ 40,880.00
<b>Total Variable Costs</b>	<b>\$ 8,332.40</b>	<b>\$ 22,659.90</b>	<b>\$ 47,926.00</b>
<b>Gross Income</b>	<b>\$ 10,000.00</b>	<b>\$ 30,000.00</b>	<b>\$ 70,000.00</b>
<b>Gross Margin</b>	<b>\$ 1,667.60</b>	<b>\$ 7,340.10</b>	<b>\$ 22,074.00</b>

*Note: it is assumed that by year 5 that an estimated 800 trees (or 1.85 Hectares) will be at different stages of production. The above gross margin analysis is based on 1 hectare.*

*Figure 5: Applicants' indicative margin analysis. Source: Application documents*

In light of this, the land capability of the site is such that agriculture can be undertaken without the prospect of residential use being required.

Based on the above, the application is at odds with the objective and strategies of this clause.

### Clause 14.01-1L-03 – Land Use in the Rural Zones

#### Objective:

- *To ensure the use of land is in conjunction with agricultural production.*
- *To minimise conflict between land uses.*
- *To provide for the residential use of land only where associated with and required to support agriculture.*
- *To encourage consolidation of rural lots.*

## COUNCIL MEETING MINUTES - 16 MAY 2023

### Relevant Strategies:

- *Support the ongoing use of land for agriculture.*
- *Encourage sustainable agricultural industries which incorporate best management practice.*
- *Discourage the residential use of existing small lots.*

### Comment:

As discussed above, while the proposal is put forward on the basis of an agricultural activity, it is considered that the scale of activity proposed does not ensure that the use and development of a dwelling is in conjunction with this activity or required to support agriculture. Policy seeks to discourage residential use of existing small lots and encourage consolidation of rural lots; of which this application does the opposite. Approval of a dwelling on this parcel will likely discourage rural consolidations and instead incentivise the disposal of small rural parcels from agricultural use into separate ownership and development.

### Clause 14.01-2S – Sustainable Agricultural land use

#### Objective:

- *To encourage sustainable agricultural land use.*

#### Relevant Strategies:

- *Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.*
- *Support the development of innovative and sustainable approaches to agricultural and associated rural land use practices.*

### Comment:

The proposal is considered contrary to the objective and strategies of this clause. The proposal will permit a non-agricultural use of the land at the expense of its agricultural and environmental values. As noted above, the scale of activity can be reasonably managed without an on-site dwelling, and introduces additional effluent disposal into an open potable water catchment .

The issue of achieving the outcomes demonstrated in the state agricultural policies has been discussed countless times at the Tribunal. A particular case to mention is *Bourke-Finn v Ballarat CC & Anor [2013] VCAT 908*, where Member Potts states:

*“State planning policy supports these outcomes by seeking to:*

- *Prevent inappropriate dispersal of urban activity by limiting new housing and encouraging consolidation of small lots in rural zones.*
- *Protect productive farmland of state or local strategic significance by preventing loss through permanent land use changes.*
- *Address the impact of a non-agricultural development in farming areas that conflict with the productive use of such land.*
- *In short having regard to the first three of the above points, it can be seen that State policy seeks to avoid the use of agricultural/farming land from rural lifestyle living.”*



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In the absence of information demonstrating that the proposed dwelling is genuinely required and will result in a long-term agricultural benefit, Council cannot reasonably support the application of a dwelling in an agricultural area. It is of particular concern that the activities proposed on the site are all to come after a dwelling has been constructed, where the scale of activity and land remediation works could reasonably occur prior to the commencement of a dwelling use on the site.

### **Clause 16.01-3S – Rural residential development**

#### **Objective:**

- *To identify land suitable for rural residential development*

#### **Relevant Strategies:**

- *Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.*
- *Encourage the consolidation of new housing in existing settlements where investment in physical and community infrastructure and services has already been made.*
- *Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.*
- *Ensure planning for rural residential development avoids or significantly reduces adverse economic, social and environmental impacts by:*
  - *Maintaining the long-term sustainable use and management of existing natural resource attributes in activities including agricultural production, water, mineral and energy resources.*
  - *Protecting existing landscape values and environmental qualities such as water quality, native vegetation, biodiversity and habitat.*
  - *Minimising or avoiding property servicing costs carried by local and state governments.*
  - *Maintaining an adequate buffer distance between rural residential development and animal production.*
- *Ensure land is not zoned for rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural resources.*
- *Discourage development of small lots in rural zones for residential use or other incompatible uses.*
- *Encourage consolidation of existing isolated small lots in rural zones.*
- *Ensure land is only zoned for rural residential development where it:*



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- *Is located close to existing towns and urban centres, but not in areas that will be required for fully serviced urban development.*
- *Can be supplied with electricity, water and good quality road access.*

### Comment:

The proposal is considered contrary to the objective and strategies of this clause. The subject site and surrounding area are not zoned or serviced for rural residential use, being located outside of residential or rural living areas and in the heart of the Farming Zone. The proposal is for the development of a small lot in the Farming Zone for residential use, contrary to policy, and as discussed is not considered to provide a net agricultural benefit.

### **Clause 16.01-3L-01 – Rural building siting and design**

#### **Objective:**

- *To ensure that buildings are compatible with the environment and agricultural land uses.*
- *To ensure that servicing infrastructure is provided.*
- *To protect the character and visual quality of rural landscapes.*
- *To minimise the visual impact of development on or near prominent hilltops, steep slopes, and ridgelines.*
- *To protect significant views from the public domain of hilltops, creek valleys and other important features of landscape interest.*

#### **Relevant Strategies:**

- *Support development that:*
  - *Demonstrates the capability and suitability of roads to safely accommodate traffic.*
  - *Demonstrates energy efficient orientation.*
  - *Is sheltered from strong winds.*
  - *Demonstrates a relationship to landscape and avoidance of visually prominent sites;*
  - *Addresses privacy and noise.*
  - *Protects vegetation cover.*
  - *Responds to the level of risk associated with environmental constraints of the site such as flooding and fire hazard.*

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### Comment:

The siting of the proposed dwelling is contrary to the objectives of this clause. The dwelling is sited at the rear of the site, approximately 30-35m higher (AHD height) than the front of the site, and approximately 200m west of existing structures on the land. The siting will result in the dwelling being visible in the landscape (despite being a single storey building) and increase the land removed from potential agricultural production on the site. This siting necessitates additional servicing by way of accessways and effluent disposal areas that could reasonably be sited with existing development on the land.

### FARMING ZONE

The purpose of the Farming Zone, as stated at Clause 35.07 of the Scheme is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *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.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

The proposed dwelling requires a permit for both land use and development, as the subject land is less than 40ha in area.

Clause 35.07-6 of the Scheme requires consideration of the following matters:

#### **General issues**

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *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.*
- *How the use or development relates to sustainable land management.*
- *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**

- *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.*

## COUNCIL MEETING MINUTES - 16 MAY 2023

- *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.*
- *The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.*
- *Any integrated land management plan prepared for the site.*

### **Accommodation issues**

- *Whether the dwelling will result in the loss or fragmentation of productive agricultural land.*
- *Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.*
- *Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.*
- *The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.*

### **Environmental issues**

- *The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.*
- *The impact of the use or development on the flora and fauna on the site and its surrounds.*
- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.*
- *The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.*

### **Design and siting issues**

- *The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.*
- *The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.*
- *The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.*

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- *The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.*
- *Whether the use and development will require traffic management measures.*

State and Local Planning Policy emphasises the need to protect agricultural land from loss due to permanent changes in land use, in large part by limiting the development of dwellings and non-agricultural uses in rural areas. This is encapsulated by the above decision guidelines of the Farming Zone and the elevated weight that agricultural factors carry in deciding on an application. The planning scheme is unequivocal in ensuring that productive agricultural land is protected from continued encroachment of non-agricultural uses. Ultimately, these practices around rural planning emphasise the fact that every new dwelling has the potential to undermine genuine agricultural activity.

It is noted that the applicant has made this application on the basis of a proposed agricultural activity. However, there are a number of identified issues with this. Firstly, as identified by Agriculture Victoria, an orchard of this scale can be reasonably managed off-site. Secondly, the proposed dwelling is to be constructed before any other improvements, which creates the potential for a rural-residential land use to occur without agricultural benefit. Thirdly, the proposal is for an orchard which is largely untested, with potential that the activity is unsuccessful and ultimately results in a dwelling in the Farming Zone supporting no agricultural activity. Finally, the proposal is of a scale that would not cover infrastructure costs for a significant timeframe, is unlikely to generate sufficient income to be reliable, and will take an extraordinary long time to generate sufficient income to cover the dwelling that is claimed to be required for the activity.

Notwithstanding the above, it must be noted and emphasised that the conducting of any form of agricultural activity does not, in and of itself justify the use and development of a dwelling – each application must be considered on its own merits and whether a dwelling is reasonably required in order to support and enhance agricultural production.

This view has been aptly summarised by the Victorian Civil and Administrative Tribunal (VCAT) in *Bailey v Moyne SC [2010] VCAT 771 (3 May 2010)*, where Member Bennett stated that:

*[5] Although it seems harsh to refuse a dwelling on this site, **it is unfortunately true that every new individual dwelling cumulative undermines the agricultural use of land. It may even seem unfair given the dwellings that already exist on lots less than the zone minimum. While some of these predate the current planning controls and policies,** in other cases it is also because Moyne Shire has taken a lenient approach to dwellings on small rural lots...*

*[7] ... **I accept that allowing a single dwelling on this 28ha lot will not, on its own, undermine the long term future of agricultural activities in this part of the Moyne Shire. However it is the cumulative impact of individual approvals that eventually undermines the very attributes that provide Moyne Shire with such a strong agricultural economy.***

*[my emphasis]*

It is considered that the application has the potential to lead to a concentration or proliferation of dwellings in the surrounding area. There are a number of lots below the minimum lot size (40ha) in

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the surrounding agricultural landscape, which are held and farmed as tenements rather than stand-alone holdings. The policy context of such applications requires close analysis to ensure that dwellings are genuinely related to agricultural production and are not proposed to achieve rural lifestyle or other non-agricultural outcomes.

It is a well-accepted fact in rural land use planning that the value of land per acre increases when a dwelling can be or has been built on the land. It is noted from public records that the property was sold in May 2017 for \$90,000, which would appear to be a fair reflection of the lands' agricultural value at that time. The current owners subsequently purchased the land in May 2022 for \$430,000 (an increase of approximately 478% over 5 years). The increase in land value is not reflected in any improvements on the land and would appear to reflect an inflation in value purely based on an expectation that a dwelling may be able to be constructed on the site.

The information provided in the application, and comments from Agriculture Victoria, raise real concerns as to the potential fragmentation of agricultural land and proliferation of dwellings in the landscape. Review of cadastral data shows dozens of lots within a 1km radius of the site, with most agricultural activities occurring across multiple small lots that would not be viable units of production in isolation (for example, the abutting property at 494 Sandy Creek Road is shown as comprising 20 lots used for agriculture). Approval of a dwelling in this location would increase the prospect of further rural-residential developments being sought and small lots being sold into separate ownership, undermining the primary agricultural use and development of the area. It is also of concern that the proposed dwelling would precede all activities proposed on the site, creating the prospect that the dwelling will be developed and that no agricultural benefit will result from the activity (which the Tribunal considered in the decision of *Strachan v Latrobe CC*, discussed further in this report).

In relation to environmental issues, the proposed dwelling may impact on the quality of water in the Lake Hume Catchment, and does not meet the Minister's Guideline for development of dwellings in potable water catchments, '*Planning Permit Applications in Open, Potable Water Supply Catchment Areas (2012)*'. The development of a dwelling on the subject land exceeds the maximum density requirement, as it will result in more than 7 dwellings within a 1km radius of the subject land (this dwelling would represent the 8th dwelling within a 1km radius, resulting in a dwelling density of 1:39.32ha).

It is noted that the proposal is appropriately setback from waterways and does not necessitate removal of native vegetation. While there are concerns with the siting of the dwelling in terms of its appropriateness from an agricultural perspective, these are not environmental factors that weigh against the grant of a permit.

As discussed in the policy section of this report, the siting of the dwelling is away from other existing development on the land, and reflects a dispersal of development across the site that has the potential of directly and indirectly removing agricultural land from potential use. The dwelling location is sited at one of the highest points of the land, approximately 30m higher than the frontage of the site to Sandy Creek Road, which increases the dwellings' visibility in the landscape. It is noted that the dwelling is single storey and presents as a typical rural dwelling with conventional colours and materials, however there are reasonable alternate siting's that would reduce impacts on agricultural activity and visual impacts in the landscape.

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For these reasons, the proposal is considered to be inconsistent with the purpose and decision guidelines of the Farming Zone.

### RELEVANT VCAT DECISIONS

There are a number of cases in recent years that have some relevance to this particular application and in particular:

- the appropriateness of allowing the use and development of dwellings on small rural lots; and
- the need to consider the strategic intent of the Planning Scheme as a whole rather than focusing on individual policies.

In *Moore v Greater Bendigo CC [2023] VCAT 418 (19 April 2023)*, Senior Member Bennett conveniently set out the major issues that arise with dwelling applications in the Farming Zone:

- 18. I consider that just because other smaller lots have been used and developed for dwellings it does not justify further approvals which would undermine those policies seeking to avoid construction of dwellings on small rural lots.*
- 19. I do not know the circumstances of those other approvals, whether some predate current planning provisions, and what agricultural activity related to the more recent dwelling approvals. It is not my task to critique or review those decisions. Instead, my task is to assess this particular application having regard to my understanding of the relevant zone and policy provisions.*
- 20. The fact that agricultural land is fragmented into lots smaller than a zone minimum is common across much of the rural areas of Victoria. Such lots, particularly the multitude of crown allotments created in the 19th century, have often been owned and managed as part of a larger farming enterprise. They are in essence 'paper lots' and it is only when they are sought to be developed for dwellings that the number and size of such lots becomes obvious. Although the subject land is not an original crown allotment, the title submitted with application indicates that it was created in 1975 as part of the re-subdivision of crown allotment 12B, Section 3, Parish of Nerring.*
- 21. The review site, despite its relatively small size, may also have been managed as part of a larger farming enterprise before it and surrounding lots were either subdivided or sold off into separate ownership.*
- 22. For at least four decades the advice to purchasers wanting to live on vacant rural land is 'don't buy without a valid planning permit for a dwelling or a contract of sale that is conditional on obtaining a planning permit for a dwelling'.*
- 23. It is my experience that without such guarantees there is a high probability that a planning permit for a dwelling will not be granted on small rural lots across Victoria. I can recall that in the 1970's the State Government published a booklet which strongly advised prospective landowners not to buy small rural lots unless and until a planning permit for a dwelling had been obtained. That advice is equally relevant today.*
- 24. It appears to be the case here where Ms Moore (and Mr Coates) jointly purchased the land in 2017 without a permit to use the land for a dwelling.*

In *Strachan v Latrobe CC [2022] VCAT 35 (14 January 2022)*, Member Halliday found in relation to a dwelling proposed in conjunction with a Farm Management Plan (for small scale agriculture comprising fattening of cattle and vegetable farming) in the Farming Zone:

## COUNCIL MEETING MINUTES - 16 MAY 2023

53. *The Council submits that the FMP concludes that the land is well suited to the breeding and fattening of small beef cattle and producing vegetables once it is rehabilitated in accordance with the recommendations set out in the FMP. The timing of the agricultural undertakings referred to in the FMP is relevant to the question of whether the proposed dwelling is consistent with the purposes of the FZ2, which seek to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture and which encourage the use and development of land based on comprehensive and sustainable land management practices.*
- 54 *In terms of the timing of the agricultural activities associated with the hobby farm, conditions 7 and 8 in the notice of decision require:*
- a. the FMP to be endorsed and to form part of a permit, and to be implemented and maintained for five years after the initial occupation of the dwelling (condition 7); and*
  - b. the owner/occupier to demonstrate commencement of the FMP before occupation of the dwelling (or such other time as approved in writing by the responsible authority) (condition 8).*
- 55 *The FMP contains a 'loose timeframe' for each major agricultural undertaking, which includes stock being brought on to the property after the construction of the house is complete and 'someone is on the property 24/7' (which I understand to mean permanently living in the dwelling). In a practical sense, this means that it is possible that after the house is constructed, an occupant could live in the dwelling for a period of time that is less than '24/7' and reside somewhere else for some of the time and arguably there would then be no requirement to bring any stock onto the land at all. Alternatively, permission can be granted by the Council for the extension of the time to demonstrate 'commencement of' the FMP (condition 8).*
- 56 *At the hearing during a discussion regarding condition 7, the permit applicants representative indicated that condition 7 could be amended so that it could apply 'in perpetuity' (not just for five years). The Council submitted that condition 7 is not necessary but that it would accept its imposition. Council's position is that five years is acceptable and that the Council does not want to have to monitor compliance with the condition after 5 years.*
- 57 *I have not been persuaded by the submissions of the permit applicants or the Council that the requirements at conditions 7 and 8 regarding the FMP will be effective in ensuring the proposed hobby farm associated with the dwelling will be sustained in the long term for the following reasons:*
- a. Condition 7 purports to limit the time within which the endorsed FMP is to be maintained and implemented to five years, because the Council does not want to bear the time and costs associated with monitoring and enforcing compliance with condition 7 after five years;*
  - b. The FMP does not make it clear what will happen if the agricultural use ceases after the house is constructed. Is the use of the land for a dwelling to cease?*
  - c. I accept the Council's submission that it is not reasonable for the Council to incur the time and expense of monitoring and enforcing compliance with condition 7 if it is required to be implemented on an ongoing basis;*



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- d. *Even if the permit was granted with a requirement for the FMP to be implemented for five years, the likelihood that the agricultural activities will cease (if they ever commence) increases at the end of the five-year period. Although there will be an endorsed FMP under the permit, in my view there is not a great deal of motivation for the agricultural activities to be sustained in the long term if the owner is aware that the Council does not wish to monitor or enforce compliance with condition 7 beyond five years. In that case, the agricultural use may cease.*

58 *On this basis, I have not been persuaded that if the hobby farm operation is started, it will sustainably persist in the long term. The FMP makes no provision for what is to occur if the hobby farm operation ceases, after the dwelling is constructed. In my view, once the dwelling is constructed, there is real risk that if the proposed hobby farming activity commences, it will not be sustained. After the five-year period referred to in condition 7, there is not a great deal of motivation for the agricultural activities to be sustained in the long term, particularly if a subsequent owner has no interest in rearing cattle. I consider that this is inconsistent with:*

- a. *the purposes of the FZ2, which seek to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture and which encourage the use and development of land based on comprehensive and sustainable land management practices;*
- b. *Clause 14.01-1S (Protection of agricultural land) which seeks to limit new housing development in rural areas by directing housing growth into existing settlements; discouraging development of isolated small lots in rural zones from use for dwellings;*
- c. *Clause 16.01-3S (Rural residential development) which discourages development of small lots in rural zones for residential use and encourages consolidation of existing isolated small lots in rural areas; and*
- d. *The efficient development of zoned Rural Living estates and established commercial agricultural enterprises, which are issues that are raised in the RLU Strategy.*

The referral response of Agriculture Victoria also highlights a number of Tribunal decisions<sup>1</sup> of relevance where dwellings have been refused due to the potential land use conflicts, loss of agricultural land, proliferation of dwellings and/or not being required to undertake the required agricultural activity. These decisions further reinforce the position that dwellings on agricultural land are only to be permitted in specific circumstances and where it is genuinely demonstrated that:

- The dwelling is required for the activity;
- There will be net agricultural benefit from the activity;
- There will be no impact on other agricultural activities; and
- There will be no proliferation of dwellings as a consequence.

### CONCLUSION

This application proposes the use and development of a dwelling at the site known as Crown Allotment A4 Section 6, Parish of Tangambalanga (being 454 Sandy Creek Road, Sandy Creek). Having assessed the application against the relevant clauses of the Indigo Planning Scheme, it is considered

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<sup>1</sup> Kennedy v Baw Baw SC [2022] VCAT 787, Morabito v Macedon Ranges SC [2018] VCAT 1313, Estate of JE Walker v Wangaratta RCC [2021] VCAT 125



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that the use and development is not supported by relevant state and local agricultural policies; as well as the Farming Zone's purposes and appropriate decision guidelines.

While it is accepted that there is an agricultural use proposed, the scale of activity is such that there is insufficient justification that a dwelling is genuinely required to support the agricultural use of the land, as required by applicable planning policy. The siting of the dwelling does not minimise agricultural land lost to residential use and is contrary to Council's 'Rural Building Siting and Design' policy at Clause 16.01-3L-01 of the Scheme.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Greg Pinkerton – Director Planning and Corporate Services
- James Turner – Manager Planning and Statutory Services


### CONFIDENTIAL ATTACHMENT

The following confidential attachment has been provided to Councillors under separate cover. Recent changes to Section 197A of the *Planning and Environment Act 1997* have clarified and tightened the way Councils are able to make certain planning documents available to the public. The Act provides that the confidential document listed below can only be made available for public inspection:

- at Council offices during business hours, or
- electronically via Council's website subject to strict public availability requirements, requiring significant editing of individual documents.

Council currently does not have the resources to provide the document online in line with the public availability requirements of the Act, and so is at this stage unable to publish it in the public agenda online.

### **Attachments**

1. PP22-0211 - Application (Confidential)
2.  PP22-0211 - Referral Response

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 11.6 PLANNING PERMIT APPLICATION PP18-0074 - 12 KIRBY FLAT ROAD, YACKANDANDAH

File No: 2023/271

James Turner - Manager Planning & Statutory Services      Planning & Corporate Services

#### For Decision

#### RECOMMENDATION

That Council refuses planning permit application (PP22-0088) at 12 Kirby Flat Road, Yackandandah, for a roof over storage containers on the following grounds:

1. FAILURE TO RESPOND

The applicant has failed to respond to requests for further information required to assess the application in accordance with the requirements of the Low Density Residential Zone (Clause 32.03 – Indigo Planning Scheme) and the Rural Living Zone (Clause 35.03– Indigo Planning Scheme).

#### RESOLUTION

That Council refuses planning permit application (PP22-0088) at 12 Kirby Flat Road, Yackandandah, for a roof over storage containers on the following grounds:

1. FAILURE TO RESPOND

The applicant has failed to respond to requests for further information required to assess the application in accordance with the requirements of the Low Density Residential Zone (Clause 32.03 – Indigo Planning Scheme) and the Rural Living Zone (Clause 35.03– Indigo Planning Scheme).

**Moved: Cr Croucher**

**Seconded: Cr Shephard**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### SUMMARY

<b>Application No:</b>	<b>PP22-0088</b>
<b>Subject Land:</b>	<b>12 Kirby Flat Road, Yackandandah</b>
<b>Proposal:</b>	<b>“Roof over storage containers”</b>
<b>Recommendation:</b>	<b>Refusal in accordance with the Recommendation above.</b>

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### BACKGROUND

Date application lodged:	07/04/2022
Purpose:	Seek approval to develop the subject site for the purposes of constructing a roof over some “storage containers”.
Subject site land area:	16.794 Hectares.
Current use of subject site:	Residence / Accommodation.
Site constraints:	Unable to determine due to insufficient information.
Surrounding land use:	Accommodation.
Zoning of surrounding land:	Low Density Residential Zone & Rural Living Zone.

### PROPOSAL

#### ZONING AND PLANNING CONTROLS

Zoning:	As the location of the containers on the site has not been disclosed through the application or follow up enquiries it is unknown the Low Density Residential Zone or Rural Living Zone controls are applicable.
Overlay/s:	Development Plan Overlay (5) (Rural living Zone)

#### PERMIT TRIGGER:

**32.03-4** - A permit is required to construct or carry out any of the following: A building or works associated with a use in Section 2 of Clause 32.03-1.

The storage containers were classified as a ‘Store’, which is a Section 2 Use in the Low Density Residential Zone.

**35.03-4** - A permit is required to construct or carry out any of the following: A building or works associated with a use in Section 2 of Clause 32.03-1.

The storage containers were classified as a ‘Store’, which is a Section 2 Use in the Rural Living Zone.

#### REFERRAL AUTHORITIES

The application was unable to be progressed to the referral stage, due to insufficient information.

#### PUBLIC NOTICE

The application was unable to be progressed to public notice, due to insufficient information.

#### DISCUSSION

The applicant has failed to provide the required information as required to make a determination on the application. Clause 59.13-1 outlines information requirement for an application, stating:

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*An application must be accompanied by the following information as appropriate:*

- *A copy of title for the subject land and a copy of any registered restrictive covenant.*
- *A description of the use of the land and the proposed buildings and works.*
- *A layout plan, drawn to scale and fully dimensioned showing:*
  - *The boundaries and dimensions of the site.*
  - *Adjoining roads.*
  - *The location of any waterway or wetlands.*
  - *The location and use of buildings and works on adjoining land.*
  - *Relevant ground levels.*
  - *The layout of existing and proposed buildings and works.*
  - *All existing and proposed driveways, car parking and loading areas.*
  - *Existing and proposed landscape areas.*
  - *All external storage and waste treatment areas.*
- *Elevation drawings to scale showing the height, colour and materials of all proposed buildings and works.*
- *A photograph of the building or area affected by the proposal.*

The applicant failed to submit the following:

- *A copy of title for the subject land and a copy of any registered restrictive covenant.*
- *A layout plan, drawn to scale and fully dimensioned showing:*
  - *The boundaries and dimensions of the site.*
  - *Adjoining roads.*
  - *The location of any waterway or wetlands.*
  - *The location and use of buildings and works on adjoining land.*
  - *Relevant ground levels.*
  - *The layout of existing and proposed buildings and works.*

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- *All existing and proposed driveways, car parking and loading areas.*
- *Existing and proposed landscape areas.*
- *All external storage and waste treatment areas.*
- *Elevation drawings to scale showing the height, colour and materials of all proposed buildings and works.*
- *A photograph of the building or area affected by the proposal.*

The applicant did provide a very brief and insufficient description of the proposal within the application form.

The applicant was contacted by the Planning Department (via a letter, sent 10/05/2022), requesting the missing information. This letter has still not been answered nor the required information provided. A meeting with the applicant was arranged for the 20<sup>th</sup> of March, 2023 in an attempt to get the information required. On the day of the meeting the applicant contacted the Planning Department to cancel, due to poor health. The required information is still outstanding.

### VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

There are a number of cases in recent years that have some relevance to this particular application and in particular:

- the appropriateness of assessing applications without sufficient information;
- the responsibility of the applicant to provide sufficient information, and;
- the danger in granting planning permits for proposals without considering all of the relevant information.

For instance:

In the case of *Twait's v Macedon Ranges SC* [2023] VCAT 170 the Tribunal concluded that:

- **23.** There is no requirement in the Victorian planning system for applicants to seek professional advice in preparing applications; it can be a costly exercise to do so.
- **24.** However, the risk in not seeking such advice is that applications do not contain the information a decision maker reasonably needs to properly consider applications against the policy and decision guidelines in the planning scheme.
- **25.** Such consideration by the responsible authority needs a base level of description of what is proposed, clear articulation of potential impacts against the policy objectives and strategies in the planning scheme and where necessary, responses to ensure that an acceptable planning outcome can be achieved.

In this case, the decision of the Responsible Authority was set aside, and the matter remitted to the responsible authority for reconsideration subject to directions and recommendations.

In the case of *Crothers V Moira SC* [2019] VCAT 342 the Tribunal concluded that:

## COUNCIL MEETING MINUTES - 16 MAY 2023

- **7.** I am amazed that a permit applicant can expect a permit from an authority to build a structure, without actually providing any plans or elevations of that proposed structure. In effect, I am being asked to approve a building I have almost no details about, do not know what it will look like, how tall it is, what its walls are made of, or any other important details. To provide two analogies, that is like asking the Australian Tax Office to approve your tax return without revealing to them your taxable income, or asking a bank to approve your loan, without telling them how much money you wish to borrow.
  
- **32.** This is one of the most poorly conceived and incomplete applications I have been asked to review as a Tribunal Member. The Applicant in this proceeding has sought to establish a major live music entertainment venue without any documented concept of what is actually going to occur on site, and how the proposal will be managed. I make that observation even after reading the Applicant's Venue Management Plan. The Council in this proceeding has sought to grant a permit for a large licensed venue without having any control over the built form outcomes, the impact of patron noise on residential amenity, the frequency and impact of live music occurring in the venue, and the car parking and traffic impacts on the surrounding neighbourhood. If it had not been for the lodgement of this Application for review by one resident, the approval by Council would likely have caused significant amenity impacts on this residential neighbourhood.

In this case, the decision of the Responsible Authority was set aside. The Member refused to grant the planning permit.

### CONCLUSION

Given the failure of the applicant to provide information despite repeated requests, as well as the significant time that has elapsed since the lodgement of the application, it is recommended that the current Planning Permit Application PP18-0074 be refused.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Greg Pinkerton – Director Planning and Corporate Services
- James Turner - Manager Planning and Statutory Services
- Joshua Bellette - Planner

**Attachments**  
Nil

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## COUNCIL MEETING MINUTES - 16 MAY 2023

### 12. COMMUNITY & ECONOMIC DEVELOPMENT

Nil reports

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 13. INFRASTRUCTURE SERVICES

#### 13.1 CONTRACT FOR FLOOD REHABILITATION WORKS, WESTERN AREA

File No: 2023/302

Brett Direen - Manager of Municipal Operations    Infrastructure Services

For Decision

#### RECOMMENDATION

That Council:

1. Conditional on the approval of funding from the *Department of Justice and Community Safety* for these works, awards Contract No. 22/6119 for Flood Rehabilitation works in the West of the Shire to Beechworth Excavations for the lump sum of \$620,696 ex GST;
2. Authorises the CEO to sign the contract documents and affix the Council's Common Seal; and
3. Notes that additional flood rehabilitation works may be required to be undertaken by the same contractor and authorises the CEO financial delegation to approve contract variations up to a total of 50% of the signed contract value.

#### RESOLUTION

That Council:

1. Conditional on the approval of funding from the *Department of Justice and Community Safety* for these works, awards Contract No. 22/6119 for Flood Rehabilitation works in the West of the Shire to Beechworth Excavations for the lump sum of \$620,696 ex GST;
2. Authorises the CEO to sign the contract documents and affix the Council's Common Seal; and
3. Notes that additional flood rehabilitation works may be required to be undertaken by the same contractor and authorises the CEO financial delegation to approve contract variations up to a total of 50% of the signed contract value.

**Moved:** Cr Teissl

**Seconded:** Cr Shephard

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### PURPOSE OF REPORT

The purpose of the report is to provide an evaluation of tenders received for rehabilitation of a number of damaged infrastructure assets in the western part of the Shire during the January 2022 Flood event and to provide a recommendation to Council for the award of a contract.



## COUNCIL MEETING MINUTES - 16 MAY 2023

### BACKGROUND

In January 2022 Indigo Shire was hit with a significant flooding event which caused widespread damage to infrastructure among other impacts.

A number of assets were damaged with many made safe under DFRA guidelines under short term remedial safety restoration works. Remaining repair works to essential public infrastructure that meet the guidelines, provided they are approved for funding and market tested by public tender, are fully recoverable.

The works in this contract vary in nature from road re-sheeting and culvert works through to a large number of drainage repairs and sediment removal.

### DISCUSSION

Tenders were advertised on Council's eProcure portal on 3 April 2023 and closed on 20 April 2023. A tender evaluation panel comprising the Manager Municipal Operations, Manager of Capital Works & Waste, and external consultant Robert Bon assessed the tenders based on weighted criteria, as detailed in the tender documents, as follows:

1.	Price	60%
2.	Experience & capability	20%
3.	OH&S	10%
4.	Local content	10%

The panel assessed the tender from Beechworth Excavations as representing the best overall value for Council based on the above criteria. This locally based tenderer (Beechworth) demonstrated a good understanding of the requirements of the contract and has successfully completed a number of similar projects for Indigo Shire Council, DEECA and Parks Victoria. Whilst not having undertaken recent flood rehabilitation works, the panel is comfortable that Beechworth Excavations has the necessary skills, capability and equipment to deliver the works in a suitable timeframe.

The tender evaluation scores and further details of the assessment are included in the attached (confidential) Tender Evaluation Report.

Splitting the works into two tenders (east and west) will potentially enable works in both areas to be undertaken concurrently, rather than having lengthy delays before all the infrastructure damage is repaired.

The decision to award the contract is referred to Council as the contract value exceeds the financial delegation of the CEO.

### Options

The tender is for the rehabilitation of various infrastructure repairs across the West of the Shire. There are no other viable options as the works must be undertaken to restore our road and drainage networks back to pre-flood event condition.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	1. Communities
Strategic Objective	1.7 Our preparedness to respond and recover from increasing natural disasters is well planned and executed.

The rehabilitation of damaged infrastructure assets supports Council’s Strategic Objective 1.7.

### SOCIAL/COMMUNITY IMPLICATIONS

The repairs to the many damaged assets will reflect well on Council and its ability to recover from major events. The community will value seeing roads and other infrastructure restored to pre-flooding condition.

### ENVIRONMENTAL IMPLICATIONS

Whilst no allowance was specifically made for environmental implications in the score weighting process, there is considered to be little or no difference between contractors due to the nature of the works and materials specified.

### FINANCIAL IMPLICATIONS

	Approved Budget \$	This Proposal \$	Variance to Approved Budget \$	Comments
Revenue	(\$620,696)	(\$620,696)	0	Funding from the <i>Department of Justice and Community Safety</i> awaiting approval
Expense	\$620,696	\$620,696		Cost of tendered works (subject to funding approval)
Net Result	0	0		

### LEGISLATIVE IMPLICATIONS

This recommendation is being made following a procurement process that is compliant with Council’s Procurement Policy. This process included consideration of opportunities for collaborative procurement with other Councils and public bodies and identified no material, social or economic benefit in a collaborative procurement process.

It is considered good governance when exercising financial delegations to consider the likely or possible total value over the life of the contract rather than just the original contract sum. It is not practical for individual variations to a contract to be referred to Council for approval as the resultant delays may interrupt the progress of works and incur additional costs.

In this instance, there are further flood recovery works (from the October/November 2022 Floods) that may require the same contractor to carry out additional repairs on the same assets or in the same area that they are already working. It is therefore recommended that Council authorises financial delegation to the CEO to approve variations to the contract sum, up to 50% of the contract sum, subject to the same conditions on funding approval.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
Tender is not approved	Possible	Moderate	Medium	Procurement process ensures that due diligence has been applied to determine best value tender
Tender approval is delayed	Possible	Moderate	Medium	In constant communication with the Hume Flood Recovery assessor
Construction commencement date is delayed	Possible	Moderate	Medium	Unlikely but time-frame is flexible – expected to be completed by late July weather permitting

### COMMUNITY ENGAGEMENT

#### **Engagement undertaken**

No specific community engagement was undertaken in relation to the contract itself. However, community feedback helped form a complete picture of damage caused by the floods which has been assessed for inclusion in this contract.

### CONCLUSION

It is recommended that Council accepts the tender for Flood Rehabilitation works in the Western area of the Shire for the Lump Sum of \$620,696 ex GST and authorises the CEO to approve contract variations up to 50% of the contract sum where damage from the October/November Flood event are identified in the same locations.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Ian Ellett - Director Infrastructure Services
- Brett Direen - Manager Municipal Operations
- Nathan Mullane – Manager Capital Works & Waste

### CONFIDENTIAL ATTACHMENTS

The attachment to this report is confidential under the following sections of the Act:

- *3(a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.*

## COUNCIL MEETING MINUTES - 16 MAY 2023

This section applies because the matter concerns commercial contracts around which negotiations have not been finalised, and it would prejudice the Council's position in the negotiations.

- *3(g) private commercial information, being information provided by a business, commercial or financial undertaking that -
  - (i) relates to trade secrets; or
  - (ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.*

This section applies because the information contains details of the rates charged across the business and it would unreasonably expose the business by providing an unfair advantage to their competitors.

### **Attachments**

1. Storm Damage Tender Evaluation West (Confidential)

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 13.2 CONTRACT FOR FLOOD REHABILITATION WORKS, EASTERN AREA

File No: 2023/300

Brett Direen - Manager of Municipal Operations    Infrastructure Services

#### For Decision

#### RECOMMENDATION

That Council:

1. Conditional on the approval of funding from *Department of Justice and Community Safety* for these works, awards Contract No. 22/6118 for Flood Rehabilitation works in the East of the Shire to Richardson Earthworks and Maintenance for the lump sum of \$322,505 ex GST;
2. Authorises the CEO to sign the contract documents and affix the Council's Common Seal; and
3. Notes that additional flood rehabilitation works may be required to be undertaken by the same contractor and authorises the CEO financial delegation to approve contract variations up to a total of 50% of the signed contract value.

#### RESOLUTION

That Council:

1. Conditional on the approval of funding from *Department of Justice and Community Safety* for these works, awards Contract No. 22/6118 for Flood Rehabilitation works in the East of the Shire to Richardson Earthworks and Maintenance for the lump sum of \$322,505 ex GST;
2. Authorises the CEO to sign the contract documents and affix the Council's Common Seal; and
3. Notes that additional flood rehabilitation works may be required to be undertaken by the same contractor and authorises the CEO financial delegation to approve contract variations up to a total of 50% of the signed contract value.

**Moved:** Cr Shephard

**Seconded:** Cr Teissl

**For:**        Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### PURPOSE OF REPORT

The purpose of the report is to provide an evaluation of tenders received for rehabilitation of a number of damaged infrastructure assets in the eastern part of the Shire during the January 2022 Flood event and to provide a recommendation to Council for the award of a contract.

#### BACKGROUND

In January 2022 Indigo Shire was hit with a significant flooding event which caused widespread damage to infrastructure among other impacts.

## COUNCIL MEETING MINUTES - 16 MAY 2023

A number of assets were damaged with many made safe under DFRA guidelines under short term remedial safety restoration works. Remaining repair works to essential public infrastructure that meet the guidelines, provided they are approved for funding and market tested by public tender, are fully recoverable.

The works in this contract vary in nature from road re-sheeting and culvert works through to a large number of drainage repairs and sediment removal.

### DISCUSSION

Tenders were advertised on Council’s eProcure portal on 3 April 2023 and closed on 20 April 2023. A tender evaluation panel comprising the Manager Municipal Operations, Manager of Capital Works & Waste, and external consultant Robert Bon assessed the tenders based on weighted criteria, as detailed in the tender documents, as follows:

1.	Price	60%
2.	Experience & capability	20%
3.	OH&S	10%
4.	Local content	10%

The panel assessed the tender from Richardson Earthworks and Maintenance as representing the best overall value for Council based on the above criteria. This locally based tenderer (Kergunyah) demonstrated a thorough understanding of the requirements of the contract and has successfully completed a number of similar projects, including Flood Rehabilitation works for Alpine Shire Council. Alpine Shire could not fault their workmanship and organisational works.

The tender evaluation scores and further details of the assessment are included in the attached (confidential) Tender Evaluation Report.

Splitting the works into two tenders (east and west) will potentially enable works in both areas to be undertaken concurrently, rather than having lengthy delays before all the infrastructure damage is repaired.

The decision to award the contract is referred to Council as the contract value (with the potential for approved variations from the October/November Flood event), may exceed the financial delegation of the CEO.

### Options

The tender is for the rehabilitation of various infrastructure repairs across the East of the Shire. There are no other viable options as the works must be undertaken to restore our road and drainage networks back to pre-flood event condition.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	1. Communities
Strategic Objective	1.7 Our preparedness to respond and recover from increasing natural disasters is well planned and executed.

The rehabilitation of damaged infrastructure assets supports Council’s Strategic Objective 1.7.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### SOCIAL/COMMUNITY IMPLICATIONS

The repairs to the many damaged assets will reflect well on Council and its ability to recover from major events. The community will value seeing roads and other infrastructure restored to pre-flooding condition.

### ENVIRONMENTAL IMPLICATIONS

Whilst no allowance was specifically made for environmental implications in the score weighting process, there is considered to be little or no difference between contractors due to the nature of the works and materials specified.

### FINANCIAL IMPLICATIONS

	Approved Budget \$	This Proposal \$	Variance to Approved Budget \$	Comments
Revenue	(\$322,505)	(\$322,505)	0	Funding from the <i>Department of Justice and Community Safety</i> awaiting approval
Expense	\$322,505	\$322,505		Cost of tendered works (subject to funding approval)
Net Result	0	0		

### LEGISLATIVE IMPLICATIONS

This recommendation is being made following a procurement process that is compliant with Council's Procurement Policy. This process included consideration of opportunities for collaborative procurement with other Councils and public bodies and identified no material, social or economic benefit in a collaborative procurement process.

It is considered good governance when exercising financial delegations to consider the likely or possible total value over the life of the contract rather than just the original contract sum. It is not practical for individual variations to a contract to be referred to Council for approval as the resultant delays may interrupt the progress of works and incur additional costs.

In this instance, there are further flood recovery works (from the October/November 2022 Floods) that may require the same contractor to carry out additional repairs on the same assets or in the same area that they are already working. It is therefore recommended that Council authorises financial delegation to the CEO to approve variations to the contract sum, up to 50% of the contract sum, subject to the same conditions on funding approval.

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
Tender is not approved	Possible	Moderate	Medium	Procurement process ensures that due diligence has been applied to determine best value tender

## COUNCIL MEETING MINUTES - 16 MAY 2023

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
Tender approval is delayed	Possible	Moderate	Medium	In constant communication with the Hume Flood Recovery assessor
Construction commencement date is delayed	Possible	Moderate	Medium	Unlikely but time-frame is flexible – expected to be completed by late July weather permitting

### COMMUNITY ENGAGEMENT

#### **Engagement undertaken**

No specific community engagement was undertaken in relation to the contract itself. However, community feedback helped form a complete picture of damage caused by the floods which has been assessed for inclusion in this contract.

### CONCLUSION

It is recommended that Council accepts the tender for Flood Rehabilitation works in the Eastern area of the Shire for the Lump Sum of \$322,505 ex GST and authorises the CEO to approve contract variations up to 50% of the contract sum where damage from the October/November Flood event are identified in the same locations.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Ian Ellett - Director Infrastructure Services
- Brett Direen - Manager Municipal Operations
- Nathan Mullane – Manager Capital Works & Waste

### CONFIDENTIAL ATTACHMENT

The attachment to this report is confidential under the following sections of the Act:

- *3(a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.*

This section applies because the matter concerns commercial contracts around which negotiations have not been finalised, and it would prejudice the Council's position in the negotiations.

- *3(g) private commercial information, being information provided by a business, commercial or financial undertaking that -*  
  - (i) relates to trade secrets; or*



## COUNCIL MEETING MINUTES - 16 MAY 2023

*(ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.*

This section applies because the information contains details of the rates charged across the business and it would unreasonably expose the business by providing an unfair advantage to their competitors.

### **Attachments**

1. Storm Damage Tender Evaluation East (Confidential)

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 13.3 APRIL CAPITAL WORKS REPORT

File No: 2023/303

Nathan Mullane - Manager Capital Works and Infrastructure Services  
Waste

For Information

#### RECOMMENDATION

That Council notes the April Capital Works Report and year to date progress in the delivery of the capital works program.

#### RESOLUTION

That Council notes the April Capital Works Report and year to date progress in the delivery of the capital works program.

**Moved: Cr Teissl**

**Seconded: Cr Croucher**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### PURPOSE OF THIS REPORT

The purpose of this report is to update Council about progress of the 2022/23 capital works program and to provide details on individual projects.

At the February meeting, Council adopted the Q2 Forecast for the Capital and Non-ISC budgets. The forecast includes a combined \$14.97 m of expenditure (\$13.76 m capital and \$1.21 m Non-ISC) and \$9.78 m of income (\$8.55 m capital and \$1.23 m Non-ISC).

	Budgeted Expenditure			Budgeted Income		
	Capital	Non-ISC	Combined	Capital	Non-ISC	Combined
2022/2023 Adopted Budget	16,797,980	2,670,679	19,468,659	(4,639,902)	(1,126,040)	(5,765,942)
Revised Q1 Adjusted Budget	\$17,816,869	\$2,955,846	\$20,772,715	(\$7,825,790)	(\$1,513,326)	(\$9,339,116)
Revised Q2 Forecast Budget	<b>\$13,764,605</b>	<b>\$1,213,375</b>	<b>\$14,977,980</b>	<b>(\$8,556,353)</b>	<b>(1,229,930)</b>	<b>(\$9,786,283)</b>

	YTD Expenditure (April)			YTD Income (April)		
	Capital	Non-ISC	Combined	Capital	Non-ISC	Combined
April YTD Actuals	9,311,395	1,168,580	10,479,975	(3,711,533)	(1,133,393)	(4,844,927)

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### DISCUSSION

Due to the early Council Meeting date for May, the monthly Capital Works Monitor has been updated with April Actuals that have been taken prior to the full close off of the monthly accounts. As a result they may not correlate exactly with the financial month end. The updated Capital Works Monitor is provided as an attachment for this report.

Notable highlights across the capital program, since the last reporting period are;

#### **Annual Gravel Road Resheeting**

The annual gravel road resheeting program has commenced across priority identified roads, with almost half the program completed in March and April.

#### **Yackandandah Changing Places Facility**

Works are underway at Sir Isaac Isaacs Park with the demolition of the old toilet facility and commencement of site works for the installation of the new facility.

#### **Barnawartha Cricket Nets**

Works commenced on the construction of the new cricket nets at the Recreation Reserve, with the new concrete surface being poured.

Current challenges being faced in the capital program, since the last reporting period are;

#### **Securing resources**

Internal project delivery resources have begun to steady with new staff commencing in several roles. Settling these staff into the organisation and their roles, is a priority action. Even with these new resources, it continues to be a challenge to secure necessary construction contractors, plant, and materials in a timely fashion.

#### **Chiltern Hub**

Ongoing budget pressure continues to be a challenge for the completion of the Chiltern Hub. The main construction contract has been completed, with construction of the carpark to begin in late May. Landscaping along the building frontage and the rear recreation area, and access signage needs are yet to be finalised. Recent re-estimating completed for the anticipated works, indicates that additional budget will be required due to significant price increases with materials.

#### **Courthouse Kelly Trials Experience**

Activities are continuing with the curatorial and design development required for the interpretative experience. Although collaboration has been ongoing with Heritage Victoria and Council's heritage advisor, the project is yet to receive heritage approval, which depending on the timing of receipt, and any conditions imposed, may delay completion of the installation works.

#### **Bells Flat Road, Yackandandah**

Savings from within the Annual Resealing Program have been reassigned to required activities to complete the sealing of Bells Flat Road.

#### **Pool Liner Installation**

The tender for the pool liner replacement at the Beechworth Swimming Pool is scheduled to be advertised in late May.

However, expected long lead times with the supply of the liner, creates a risk of the pool not being ready for the season opening if works are done prior to the season. Accordingly, the tender package

## COUNCIL MEETING MINUTES - 16 MAY 2023

will include some flexibility in the timing of the delivery of the work and will seek an option to delay the works until after the 2023/24 summer season. More will be known when tenders are received.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	2. Liveability
Strategic Objective	2.2 Our built environment, streetscapes, facilities, amenities and open spaces are safe, inviting, attractive, well maintained, contributing to a sustainable sense of place and pride.

There is no specific reference in the Council Plan to the broader capital works program, however many of the individual projects and programs are referred to in the Council Plan.

### SOCIAL/COMMUNITY IMPLICATIONS

Capital works projects often have a direct positive impact on the community. Project staff engage closely with the community and stakeholders to identify the project scope and ensure expectations align with deliverables.

### ENVIRONMENTAL IMPLICATIONS

Project staff continue to consider potential environmental impact in all aspects of their works and to adopted works practices to minimise the impact.

Each project’s environmental impact is assessed by project officers during the planning and implementation of the project. When required an Environmental Management Plan (EMP) is developed to control and minimise potential impacts.

### LEGISLATIVE IMPLICATIONS

Council is required to responsibly manage and report on the budget quarterly including capital works.

The procurement requirements of the Local Government Act as well as Council’s Procurement Policy are adhered to with all expenditure.

### RISK & OPPORTUNITY MANAGEMENT

Every project has unique risks and opportunities. Risk management is conducted at the project level and is embedded as part of the project delivery methodology.

### COMMUNITY ENGAGEMENT

Community and other stakeholder engagement is carried out at a project level and varies according to the project deliverables and impacts on the community.

### CONCLUSION

To achieve the Q2 forecast end of year position will continue to be challenging, with a shortage of delivery resources in the key construction months, and a significant increase in labour and material prices, also having had an impact.

## COUNCIL MEETING MINUTES - 16 MAY 2023

However, progress as at the end of April shows that approximately \$10.5 million has been spent so far across both the capital and Non-ISC programs. 2023/24 remains on track to exceed expenditure levels in prior years.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Ian Ellett – Director Infrastructure Services
- Nathan Mullane – Manager Capital Works & Waste

### **Attachments**

Due to the size of this attachment, it has been provided separately on Council's website

1. April 2023 Capital Works Monitor

### **Attachments**

Nil

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 14. EXECUTIVE MANAGEMENT

#### 14.1 ADVOCACY ACTION PLAN 2021-2025 (AS AT 1 MAY 2023)

File No: 2023/246

Trevor Ierino - Chief Executive Officer

Executive Management

For Decision

#### RECOMMENDATION

That Council endorses the updated Advocacy Action Plan 2021-2025 (as at 1 May 2023).

#### RESOLUTION

That Council endorses the updated Advocacy Action Plan 2021-2025 (as at 1 May 2023).

**Moved: Cr Goldsworthy**

**Seconded: Cr Teissl**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### PURPOSE OF REPORT

The purpose of the report is to present to Council the updated Advocacy Action Plan 2021-2025 (as at 1 May 2023).

#### BACKGROUND

In December 2021, Council adopted a new Advocacy Action Plan to align with the new Council Plan 2021-2025.

The projects and initiatives included in the action plan are mostly supported by strategic documents such as the *Council Plan*, the *Municipal Health & Wellbeing Plan* or other Council strategies and plans. They are initiatives that Council cannot achieve alone and for which further funding or intervention is required. It also includes items of high community interest.

The document was updated and adopted by Council at its September 2022 meeting and included several new advocacy action items at that time.

This document does not include any new items but provides a status update on advocacy activity that has occurred since the last report to Council.

#### DISCUSSION

As a small rural Council, we need to work in partnership with and advocate to a range of stakeholders and other levels of government to deliver on community expectations.

Our advocacy efforts include direct lobbying of decision-makers, writing submissions to federal and state governments; ongoing community consultation and engagement and public campaigns.

## COUNCIL MEETING MINUTES - 16 MAY 2023

The Advocacy Action Plan has the following objectives:

- Identify priority projects and initiatives to generate economic activity, employment growth and community benefit.
- Increase levels of funding for infrastructure and services from other levels of government to meet community needs and aspirations.
- Influence state and federal legislation, policy, standards and guidelines to improve the health and wellbeing of our residents.
- Keep the community informed about our advocacy activities through regular reporting.

### Options

Council may wish to alter the Advocacy Plan, add or delete items. Council is not mandated to have an Advocacy Action Plan, but has committed to develop and pursue an advocacy action plan as an action in the Council Plan 2021-2025, Strategic objective 5.2.1.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.2 Council advocates on issues, priorities and needs that matter to our community.
Strategic Action	5.2.1 Develop a new Advocacy Plan and report to the community quarterly on progress

### FINANCIAL IMPLICATIONS

There are no immediate costs to implement the Advocacy Action Plan, however costs may arise on a project-by-project basis, and advocacy for grants would usually require Council to provide matching funding. Any requirement for funding associated with the advocacy plan would be subject to Council's financial approval processes and policies.

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
Failure to align the advocacy plan with community priorities	Unlikely	Minor	Low	Consulting Council's strategic documents such as the Council Plan to inform priorities.

### COMMUNITY ENGAGEMENT

#### **Engagement undertaken**

Extensive consultation was undertaken in the development of the Council Plan and other strategies and plans which have informed this action plan. Feedback was also sought from Council's Advisory Committees.

#### **Engagement proposed**

There are no plans for any further engagement, however the updated action plan will be available on the Council website and progress against action items will be communicated as appropriate and as part of the Council Plan reporting process.

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### CONCLUSION

The updated Advocacy Action Plan 2021-2025 (as at 1 May 2023) sets out a broad range of opportunities that Council can advocate for over at every opportunity. The plan is a living document and reflects the items considered most relevant at this time, but they may be added to or altered as needed on an ongoing basis.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Trevor Ierino – Chief Executive Officer
- Melinda Collis – Executive Manager Customer Experience and Engagement

### **Attachments**

Due to the size of this attachment, it has been provided separately on Council's website

1. Advocacy Action Plan 2021-2025 (as at 1 May 2023)

### **Attachments**

Nil



## COUNCIL MEETING MINUTES - 16 MAY 2023

### 14.2 REVIEW - INSTRUMENTS OF DELEGATION

File No: 2023/288

Carla Hanlon - Executive Manager People & Governance                      Executive Management

For Decision

### RECOMMENDATION

That Council:

1. Delegates to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions set out in the attached *Instrument of Delegation to the Chief Executive Officer*, subject to the conditions and limitations specified in that Instrument;
2. Delegates to the members of Council staff holding, acting in or performing the duties of the positions referred to in the attached *Instrument of Delegation to Members of Staff* and *Instrument of Sub-Delegation to Members of Staff*, the powers, duties and functions set out in these instruments, subject to the conditions and limitations specified in these Instruments;
3. Appoints members of Council staff under the *Environment Protection Act 2017* (the 'Act') and the Instrument of Delegation of the Environment Protection Authority dated 6 December 2022, as set out in the attached *Instrument of Appointment & Authorisation*;
4. Notes that the delegations and appointments come into force immediately upon this resolution being made;
5. Revokes all previous delegations and appointments to the Chief Executive Officer and to members of staff;
6. Notes that the duties and functions set out in the instruments must be performed, and the powers set out in the instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt; and
7. Notes that:
  - a) the *Instrument of Delegation to the Chief Executive Officer* includes a power of delegation to the Chief Executive Officer in accordance with section 11(1)(b) of the *Local Government Act 2020*;
  - b) the *Instrument of Delegation to Members of Staff* is in accordance with the legislation referred to in the attached instrument of delegation;
  - c) the *Instrument of Sub-Delegation to Members of Staff* is in accordance with section 437(2) of the *Environment Protection Act 2017* and the *Instrument of Delegation of the Environment Protection Authority* dated 6 December 2022; and
  - d) the *Instrument of Appointment & Authorisation* is in accordance with section 242(2) of the *Environment Protection Act 2017* and the *Instrument of Delegation of the Environment Protection Authority* dated 6 December 2022.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### RESOLUTION

That Council:

1. Delegates to the person holding the position, acting in or performing the duties of Chief Executive Officer the powers, duties and functions set out in the attached *Instrument of Delegation to the Chief Executive Officer*, subject to the conditions and limitations specified in that Instrument;
2. Delegates to the members of Council staff holding, acting in or performing the duties of the positions referred to in the attached *Instrument of Delegation to Members of Staff* and *Instrument of Sub-Delegation to Members of Staff*, the powers, duties and functions set out in these instruments, subject to the conditions and limitations specified in these Instruments;
3. Appoints members of Council staff under the *Environment Protection Act 2017* (the 'Act') and the Instrument of Delegation of the Environment Protection Authority dated 6 December 2022, as set out in the attached *Instrument of Appointment & Authorisation*;
4. Notes that the delegations and appointments come into force immediately upon this resolution being made;
5. Revokes all previous delegations and appointments to the Chief Executive Officer and to members of staff;
6. Notes that the duties and functions set out in the instruments must be performed, and the powers set out in the instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt; and
7. Notes that:
  - a) the *Instrument of Delegation to the Chief Executive Officer* includes a power of delegation to the Chief Executive Officer in accordance with section 11(1)(b) of the *Local Government Act 2020*;
  - b) the *Instrument of Delegation to Members of Staff* is in accordance with the legislation referred to in the attached instrument of delegation;
  - c) the *Instrument of Sub-Delegation to Members of Staff* is in accordance with section 437(2) of the *Environment Protection Act 2017* and the *Instrument of Delegation of the Environment Protection Authority* dated 6 December 2022; and
  - d) the *Instrument of Appointment & Authorisation* is in accordance with section 242(2) of the *Environment Protection Act 2017* and the *Instrument of Delegation of the Environment Protection Authority* dated 6 December 2022.

**Moved:** Cr Shephard

**Seconded:** Cr Teissl

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

## COUNCIL MEETING MINUTES - 16 MAY 2023

### PURPOSE OF REPORT

To present the following reviewed Instruments of Delegation to Council for adoption:

- *Instrument of Delegation to Chief Executive Officer*
- *Instrument of Delegation to Members of Council Staff*
- *Instrument of Sub-Delegation to Members of Council Staff under the Environment Protection Act 2017*
- *Instrument of Appointment & Authorisation Under the Environment Protection Act 2017*

### BACKGROUND

#### **What is the Purpose of Each Instrument?**

The Instruments were last reviewed in April 2022 and each have their own purpose and require Council adoption as follows:

1. The *Instrument of Delegation – Council to Chief Executive Officer* (s5) allows the general delegation from Council to the CEO (pursuant to section 11(1) of the Act) and is required to be adopted by Council.
2. The *Instrument of Delegation - Council to Members of Council Staff* (s6) - allows for a direct delegation of power, duties and functions from Council to staff, for acts and regulations other than the Local Government Act. Other acts do not provide an express power of sub-delegation, and so there is a presumption that they may not be sub-delegated. This means the power of delegation contained in the other acts may only be delegated directly by Council to staff. A separate instrument is therefore required, to be adopted by Council.
3. *Instrument of Sub-delegation – Council to Members of Staff under the Environment Protection Act 2017* (s18)– sub-delegates powers given to Council by the Environment Protection Authority (EPA). Council may then sub-delegate these powers to staff via this instrument. Powers include the regulation and enforcement of residential and commercial noise, litter and waste and on-site wastewater management systems
4. *Instrument of Appointment & Authorisation Under the Planning & Environment Act 2017* (s11b) – enables Council to appoint officers who are authorised to regulate residential and commercial noise, litter and waste and on-site wastewater management systems. Appointments must be made by Council.

### DISCUSSION

In February 2023, a review of the instruments was commenced, using the RelianSys delegations module. It incorporated two legislative updates from the Maddocks Delegations & Authorisations Service. The updates include legislative changes which were made on or after 22 July 2022. The changes in the attached documents reflect amendments in legislation since this time as well as changes to delegates to accommodate team work-flows, the organisational structure change and updated role titles.

## COUNCIL MEETING MINUTES - 16 MAY 2023

The changes for each instrument are summarised as follows:

Legislation	Changes	Comment
Instrument of Delegation – Council to Chief Executive Officer (s5)		
Local Government Act 2020	Wording amended to be clearer regarding expenditure to up to \$2,000,000 in limited circumstances (ie payments required by legislation, under approved contracts, payment of staff salaries, transfer of funds between Council bank accounts)	The addition of this delegation was made last November, there is no further proposed change apart from the wording to clarify meaning.
Instrument of Delegation – Council to Staff (s6)		
Cemeteries and Crematoria Act 2003	<p>Delegates amended to other roles within the responsible team (Executive Manager Customer Experience &amp; Engagement changed to Coordinator Customer Experience and Senior Customer Experience Officer).</p> <p>Removal of provisions relating to Class A cemeteries.</p> <p>New provisions added by the legislative update relating to annual financial reporting to the Secretary, and which has been delegated to the Coordinator Customer Service.</p>	<p>This reflects the operational functions and work flow of the team.</p> <p>Council now manages only one Class B cemetery, and no Class A cemeteries.</p>
Planning & Environment Act 1987	<p>Legislative updates:</p> <p>The following new provisions have been added by the update:</p> <ul style="list-style-type: none"> <li>to consider late submissions to amend the Planning Scheme – this is delegated to senior planners;</li> <li>duty to share personal information with the Minister if requested (delegated to senior planners).</li> </ul>	

## COUNCIL MEETING MINUTES - 16 MAY 2023

Legislation	Changes	Comment
	<p>Minor wording changes to some provisions. Council updates:</p> <p>Shift in power:</p> <ul style="list-style-type: none"> <li>• s22(1) – duty to consider all submissions to amend the Planning Scheme – previously remained with Council, now delegated to the Director Planning &amp; Corporate Services and Manager Planning &amp; Statutory Services.</li> <li>• S61(1) – determining planning permits - addition of ability to refuse permits in certain circumstances – delegated to Director Planning &amp; Corporate Services and Manger Planning &amp; Statutory Services.</li> </ul> <p>Some changes to delegates within the planning team, enabling the Coordinator Planning to execute additional powers/duties/functions under the Act.</p> <p>Addition of Strategic Planner to various delegations to allow for this newly created role.</p>	<p>Delegation has been re-interpreted to refer to the internal process of considering submissions before making a recommendation to Council. The need to have any amendments decided by Council remains.</p> <p>Refusals Only the Director Planning &amp; Corporate Services and the Manager Planning &amp; Statutory Services are delegated to refuse a permit, and only when;</p> <ul style="list-style-type: none"> <li>• A determining referral authority objects to the application, or;</li> <li>• The application is not complete, or information requests relating to critical information has not been responded to for more than 60 days, or;</li> <li>• The applicant has stopped responding for more than 60 days, or has abandoned the application.</li> </ul> <p>In all other cases, recommendation for refusal must be reported to Council for determination.</p>

## COUNCIL MEETING MINUTES - 16 MAY 2023

Legislation	Changes	Comment
Planning and Environment Regulations 1987	Regulations 25(a) and (b) of the Planning and Environment Regulations 1987 have been slightly amended by the Planning and Environment Amendment Regulations 2022, to refer to the public availability requirements.	
Instrument of Sub-delegation – Council to Members of Staff under the Environment Protection Act 2017 (s18)		
Environment Protection Act 2017	Amended date of Instrument of Direction made to Council, as this was updated by the Environment Protection Authority dated 6 December 2022.	Amendments allow Council to appoint non-employees as Authorised Officers, and allows employees to take proceedings for offences related to delegated powers. There is no resulting impact on delegations, therefore no changes to the delegations are proposed.
Instrument of Appointment & Authorisation Under the Environment Protection Act 2017 (s11b)		
Environment Protection Act 2017	Updated list of officer names to current staff, removing those who have ceased their role with Council.	<p>Appointments under this Act are to be made by Council. The appointees are authorised to exercise enforcement powers under the Act.</p> <p>Names have been updated to current employees, and have removed officers that do not hold Environment Health Officer (EHO) roles. Only EHO roles may carry out the powers delegated to them by Council under the Instrument of Direction from the EPA, so it is these roles that are appointed to execute these powers under the Act.</p>

### Options

- Do nothing – this is not recommended for the reasons outlined in this report.
- Adopt the reviewed instruments of delegation, as attached to this report.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.5 Our Councillors and organisation are committed to the highest level of governance practices and conduct.

This delegations review will assist with the achievement of the key strategic objective 5.5 “Our Councillors and organisation are committed to the highest level of governance practices and conduct.”, as set out in the Council Plan 2021-2025, by supporting Council decision-making and ensuring that decisions are well considered, transparent and in the best interests of the whole community.

Instruments of delegation allow for the considered and systematic delegation of many powers and duties that would be impossible for Council to perform in its own right. They enable tasks and decisions to be delegated to the appropriate roles, ensuring decisions are executed under the appropriate legislation and with the correct authority.

### SOCIAL/COMMUNITY IMPLICATIONS

The review of instruments of delegation assures the community that Council executes its decision-making processes in line with legislative requirements and within the appropriate roles.

The provision of the instruments via this report enables the community to have full information on the roles that are responsible for the execution of powers, duties and functions under various legislation.

### ENVIRONMENTAL IMPLICATIONS

There are no environmental implications with this report.

### FINANCIAL IMPLICATIONS

The management of Council’s delegations involves two annual subscription, including the Maddocks Delegations Service and the RelianSys Delegations module (web-based software which assists with the allocation and approval of delegations), both of which are funded within the budget.

### LEGISLATIVE IMPLICATIONS

Section 11(1) of the Act provides that a council may, by instrument of delegation, delegate to the members of a delegated committee and to the Chief Executive Officer, any power, duty or function of a council under the Act or any other legislation, other than certain specified powers.

Section 47(1) provides that the Chief Executive Officer (CEO) 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 the power of delegation itself.

Other Acts also empower a council to delegate certain powers, duties or functions. For example, section 188 of the Planning and Environment Act 1987 and section 58A of the Food Act 1984, empower councils to delegate their powers under those Acts to members of council staff.

Certain powers under the Environment Protection Act 2017 are delegated to Council by the Environment Protection Authority under an Instrument of Direction. These in turn are sub-delegated to officers under section 437(2), and the same officers are appointed to carry out these powers under section 242(2).

## COUNCIL MEETING MINUTES - 16 MAY 2023

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
If delegations are not updated the legality of a decision or an action purportedly made on behalf of the council could be questioned.	Possible	Minor	Low	Adopt the revised instruments.

### COMMUNITY ENGAGEMENT

#### **Engagement undertaken**

No public consultation was undertaken. The instruments have been reviewed by the appropriate internal stakeholders, including the Executive Management team and relevant managers.

#### **Engagement outcomes**

The Delegations were adjusted in accordance with feedback received.

#### **Engagement proposed**

No future consultation is proposed.

### CONCLUSION





In accordance with requirements under the *Local Government Act 2020* and Council's usual practice of updating all delegations, the attached instruments have been reviewed to ensure that they are lawful, up to date and allow for the effective operation of the organisation.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Carla Hanlon – Executive Manager People & Governance
- Annabel Harding - Governance Coordinator

#### **Attachments**

1.  Instrument of Delegation - Council to Chief Executive Officer (s5)
2.  Instrument of Delegation - Council to Staff (s6)
3.  Instrument of Sub-Delegation Under the Environment Protection Act 2017 (s18)
4.  Instrument of Appointment & Authorisation Under the Environment Protection Act 2017 (s11B)



## COUNCIL MEETING MINUTES - 16 MAY 2023

### 14.3 INSTRUMENT OF APPOINTMENT AND AUTHORISATION - PLANNING AND ENVIRONMENT ACT 1987

File No: 2023/236

Carla Hanlon - Executive Manager People & Governance      Executive Management

For Decision

#### RECOMMENDATION

In the exercise of the powers conferred by Section 224 of the *Local Government Act 1989* and the other legislation referred to in the attached Instruments of Appointment and Authorisation, Indigo Shire Council resolves that:

1. The member of Council staff referred to in Attachment 1 be appointed and authorised as set out in the Instrument; and
2. The Instrument in the attachment comes into force immediately upon resolution of Council, and is revoked on the date the officer ceases employment with Council, or until Council determines to vary or revoke it.

#### RESOLUTION

In the exercise of the powers conferred by Section 224 of the *Local Government Act 1989* and the other legislation referred to in the attached Instruments of Appointment and Authorisation, Indigo Shire Council resolves that:

1. The member of Council staff referred to in Attachment 1 be appointed and authorised as set out in the Instrument; and
2. The Instrument in the attachment comes into force immediately upon resolution of Council, and is revoked on the date the officer ceases employment with Council, or until Council determines to vary or revoke it.

**Moved: Cr Teissl**

**Seconded: Cr Shepherd**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shepherd and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### PURPOSE OF REPORT

The purpose of this report is for Council to appoint an authorised officer under the *Planning and Environment Act 1987* (the "Act") as detailed in the attached instrument.

#### BACKGROUND

The new planning officer commenced with Indigo Shire Council in May 2023. As the role is required to execute statutory powers and functions under the *Planning and Environment Act 1987*, Council must make the appointment under this Act.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### DISCUSSION

Under the Act, officers must be appointed and authorised directly by Council rather than by the Chief Executive Officer, as there are no powers provided for this sub-delegation.

The Instrument of Appointment and Authorisation provide the legal basis to undertake inspections and other planning duties as required.

The attached instrument is based on the template provided by Maddocks Lawyers Delegations and Authorisations Service. This legal service provides templates for Instruments of Appointments that meet legislative requirements. The use of these model documents will ensure Council is compliant when appointing and authorising relevant Council staff.

### Options

Council could decide to not appoint the new officer under the Act, however this would prevent the officer from carrying out the statutory functions required of the role. For this reason, it is strongly recommended that the officer is appointed.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.5 Our Councillors and organisation are committed to the highest level of governance practices and conduct.

The appointment of authorised officers under the Act demonstrates the due consideration Council gives to allowing officers to perform certain duties under specific legislation. This indicates that Council complies with legislation, ensuring its officers are duly authorised when appropriate, and that Council’s business is conducted with transparency.

### SOCIAL/COMMUNITY IMPLICATIONS

The formal appointment assures the community that Council authorises the officers to perform planning duties within the scope of the *Planning and Environment Act 1987*.

### ENVIRONMENTAL IMPLICATIONS

Nil.

### FINANCIAL IMPLICATIONS

There are no financial implications to Council relating to the issuing of an instrument of appointment.

### LEGISLATIVE IMPLICATIONS

It is important that officers are properly authorised by Council when undertaking a role as an authorised officer. This ensures that they are permitted to act under the relevant legislation and in their official capacity.

In order for the specified officer to undertake their day-to-day duties, the appointment is made under section 147(4) of the Act.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
An officer executes powers, duties and functions under the Act without being formally appointed by Council.	Unlikely	Moderate	Medium	When a new officer is appointed in a role, the governance team checks the authorised officer status. This triggers the process for formal appointment by Council in accordance with procedures.
An officer is appointed under inappropriate or wrong legislation	Unlikely	Moderate	Medium	Council's appointed legal service issues an updated template that Council uses to ensure the accuracy.  Once drafted, the Instrument is approved by various officers including the relevant manager.

### COMMUNITY ENGAGEMENT

No public consultation was undertaken or is proposed in relation to this matter. A register of Authorised Officers is available for public inspection.

### CONCLUSION

It is recommended that Council appoints the officer referred to in Attachment 1 to enable the execution of statutory powers under the *Planning & Environment Act 1987*.

### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Carla Hanlon – Executive Manager People & Governance
- Annabel Harding – Governance Coordinator

### **Attachments**

1.  Instrument of Appointment & Authorisation - Planning & Environment Act 1987 - Connop

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 14.4 ADVISORY COMMITTEE MINUTES

File No: 2023/273

Carla Hanlon - Executive Manager People & Governance

Executive Management

#### For Decision

#### RECOMMENDATION

That Council:

1. Receives the attached unconfirmed meeting minutes for the following Advisory Committees and endorses the officer recommendations:
  - a. Finance Committee;
  - b. Indigo Community Access Committee;
  - c. IndiGrow.

#### RESOLUTION

That Council:

1. Receives the attached unconfirmed meeting minutes for the following Advisory Committees and endorses the officer recommendations:
  - a. Finance Committee;
  - b. Indigo Community Access Committee;
  - c. IndiGrow.

**Moved: Cr Croucher**

**Seconded: Cr Goldsworthy**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

#### PURPOSE OF REPORT

The report provides the minutes, recommendations and accompanying officer comments from Council's advisory committees for Council noting and endorsement of Management Recommended Actions.

#### BACKGROUND

Council currently has seven advisory committees. The role of an advisory committee is to provide information and advice on issues relating to the committee's specific area of expertise (i.e. the Environment Committee provides advice on environmental issues).

## COUNCIL MEETING MINUTES - 16 MAY 2023

Each advisory committee meets regularly (the frequency of which depends on the committee) and records minutes and resolutions for Council decision. Each resolution reported to this month's meeting is highlighted in the table below, and has an accompanying officer comment.

### DISCUSSION

COMMITTEE	DATE OF MEETING	RECOMMENDATION	OFFICER RECOMMENDATION
Finance Committee	11 April 2023	<i>That Council accepts the YTD March Finance Report noting the progress against Council's quarter 2 forecast.</i>	This report was presented to and approved by Council at the April Council meeting. No further action required.
Indigo Community Access Advisory Committee	17 April 2023	Nil reported.	
IndiGrow	17 April 2023	<i>Given that key stakeholder views are considered, that IndiGrow support the process and project [Chiltern Destination Playspace] as a game changer project with enormous benefits for the whole community.</i>	Noted. The Chiltern Destination Playspace is included in this agenda for Council consideration.
		<i>That IndiGrow support and endorse Council's process and the intent of this project [Chiltern Land Project]. The Committee looks forward to seeing further action regarding cultural, heritage and planning to ensure the sustainable future of this project.</i>	Noted. The Chiltern Land Project is currently underway.

Note: Minutes of Advisory Committee meetings may not be available at the time the agenda is published. Any Minutes not included will be reported in the following month.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.5 Our Councillors and organisation are committed to the highest level of governance practices and conduct.

## COUNCIL MEETING MINUTES - 16 MAY 2023

The provision of advisory committee minutes and resolutions to Council at the monthly meeting ensures that Council considers the advice of the committees. This allows transparent decision-making and highest level of governance practices and conduct.

### FINANCIAL IMPLICATIONS

There are no financial implications with this report.

### LEGISLATIVE IMPLICATIONS

Council’s advisory committees are established by Council but do not have any delegated decision-making powers. Instead they work under terms of reference and provide advice to Council. The advice occurs in a variety of forms, including advice to relevant Council departments, as well as advice contained within resolutions that are reported to Council.

Some advisory committee meetings are open to the public and some are closed, however all minutes are reported to Council (with the exception of the Audit & Risk Committee - these meetings are held ‘in camera’ and the minutes are not available to the public – reporting to Council occurs as per the requirements under the *Local Government Act 2020*).

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
That advisory committee minutes and recommendations are not duly reported to Council, and the utility and confidence of the committees are undermined.	Unlikely	Insignificant	Low	Governance team follow up with officer secretariats to ensure that all meetings are reported to Council as soon as practicable.

### CONCLUSION




The advisory committee minutes included in this report are presented to Council for noting.

### DECLARATION OF CONFLICT OF INTEREST

In accordance with section 130(2) of the *Local Government Act 2020* and *Governance Rule 24*, the following officers declare that they have no interests to disclose in providing this report:

- Carla Hanlon - Executive Manager People and Governance
- Annabel Harding - Governance Coordinator

### **Attachments**

1.  Minutes - Finance Committee - 11 April 2023
2.  Minutes - Indigo Community Access Committee - 17 April 2023
3.  Minutes - IndiGrow - 17 April 2023

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 14.5 INFORMAL MEETINGS OF COUNCILLORS RECORDS

File No: 2023/274

Carla Hanlon - Executive Manager People & Governance                      Executive Management

**For Decision**

#### **RECOMMENDATION**

That Council accepts the attached Informal Meetings of Councillors records.

#### **RESOLUTION**

That Council accepts the attached Informal Meetings of Councillors records.

**Moved: Cr Teissl**

**Seconded: Cr Croucher**

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

This report tables the Informal Meetings of Councillors as required under Council's governance rules. Informal Meetings of Councillors Records are only required for meetings closed to the public.

#### PURPOSE OF REPORT

The report presents Informal Meetings of Councillors records to Council for recording in the minutes in accordance with Governance Rule 72(b)(iii).

#### BACKGROUND

Governance Rule 70 defines an Informal Meeting of Councillors as:

1. a meeting of an advisory committee of Council, if at least one Councillor is present, or
2. a planned or scheduled meeting of at least half the Councillors and one member of Council staff which considers matters that are intended or likely to be:
  - a. the subject of a decision of the Council; or
  - b. subject to the exercise of a function, duty or power of the Council that has been delegated to a person or a committee.

The Governance Rules specifically excludes the following meetings:

- Council Meetings
- Delegated Committee Meetings
- Community Asset Committee Meetings

Informal meetings of Councillors do not include meetings which are open to the public.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### DISCUSSION

Under Governance Rule 72(b)(iii), the CEO is required to provide a summary of matters discussed at Informal meetings of Councillors, which is to be tabled at the next Scheduled Council meeting and is to be recorded in the minutes.

The attached Informal Meetings of Councillors records are presented to Council for acceptance as summarised in the following table.

MEETING	DATE
Councillor Briefing	11 April 2023
Finance Committee Meeting	11 April 2023
Budget Workshop	12 April 2023
Indigo Community Access Advisory Committee	17 April 2023 (closed session)
Councillor Briefing	18 April 2023

### NOTE:

The timing of the agenda distribution will sometimes make it difficult to provide a complete month. Please note that any items not included will carry forward to the following month.

### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.5 Our Councillors and organisation are committed to the highest level of governance practices and conduct.

An Informal Meeting of Councillors record is a mechanism for Councillors and officers to openly declare and report any conflicts that may have arisen during a defined informal meeting of Councillors. This demonstrates to Council and the community that the meetings are conducted with transparency and good governance.

### FINANCIAL IMPLICATIONS

There are no financial implications with this report.

### LEGISLATIVE IMPLICATIONS

Informal Meetings of Councillors are dealt with under the Governance Rules.

### RISK & OPPORTUNITY MANAGEMENT

Description	Likelihood	Consequence	Final Risk Rating	Controls, treatments
That a defined Informal Meeting of Councillors is not reported to Council, and public confidence in transparency is undermined.	Likely	Insignificant	Medium	Regular reminders to officers about the requirement to report defined meetings. Follow up of missing records for known meetings.



## COUNCIL MEETING MINUTES - 16 MAY 2023

### CONCLUSION






The Informal Meetings of Councillors records attached to this report are a true and accurate record of all defined meetings reported since the last report to Council.

### DECLARATION OF CONFLICT OF INTEREST

In accordance with section 130(2) of the *Local Government Act 2020 and Governance Rule 24*, the following officers declare that they have no interests to disclose in providing this report:

- Carla Hanlon – Executive Manager People & Governance
- Annabel Harding - Governance Coordinator

### **Attachments**

1.  Informal Meeting of Councillors Record - Finance Committee - 11 April 2023
2.  Informal Meeting of Councillors Record - Council Briefing - 11 April 2023
3.  Informal Meeting of Councillors Record - Draft Budget Workshop - 12 April 2023
4.  Informal Meeting of Councillors Record - Indigo Community Access Committee - 17 April 2023
5.  Informal Meeting of Councillors Record - Council Briefing - 18 April 2023

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 14.6 CONTRACTS AWARDED UNDER CHIEF EXECUTIVE OFFICER DELEGATION - APRIL 2023

File No: 2023/292

Trevor Ierino - Chief Executive Officer

Executive Management

#### For Information

The following contract was awarded by the CEO under delegation, between the values \$250,000 and \$500,000, for the month of April 2023.

Date	Tenderer	Title	Project	Amount
18/04/2023	Roejen Services Pty Ltd	Swimming Pool Capital Works	Beechworth, Chiltern, Rutherglen, Tangambalanga and Yackandandah	254,810.60 (inc GST)

#### STRATEGIC CONTEXT

COUNCIL PLAN 2021 – 2025	
Theme	5. Accountability
Strategic Objective	5.5 Our Councillors and organisation are committed to the highest level of governance practices and conduct.
Strategic Action	5.5.2 Develop and maintain a Governance Schedule to give Council and Community visibility of future legislative requirements

#### DECLARATION OF CONFLICT OF INTEREST

Under section 130(2) of the *Local Government Act 2020* and Governance Rule 24, the following officers declare that they have no interests to disclose in providing this report:

- Trevor Ierino – Chief Executive Officer
- Kathryn Baldock – Executive Assistant CEO & Councillors

**Attachments**

Nil

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## COUNCIL MEETING MINUTES - 16 MAY 2023

### 15. NOTICES OF MOTION

Nil reports

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 16. COUNCILLORS REPORT

#### 16.1 MAYOR'S DIARY - APRIL 2023

##### For Information

Mayor Price attended the following functions/events/meetings in April 2023:

DATE	TIME	FUNCTION / EVENT / MEETING	LOCATION
3 April	10.30am	Meeting with CEO	Beechworth
4 April	9.00am	Local Government Mayoral Advisory Panel	Melbourne
11 April	11.00am	Meeting with Minister for Ambulance Representative & CEO	Online
11 April	1.00pm	Meeting with CEO	Beechworth
11 April	2.30pm	Council Briefing	Beechworth
11 April	6.00pm	Finance Meeting	Beechworth
12 April	9.00am	Budget Workshop	Beechworth
17 April	1.00pm	Indigo Community Access Committee Meeting	Rutherglen
18 April	10.00am	Meeting with CEO	Phone
18 April	2.30pm	Council Briefing	Via Zoom
25 April	9.30am	ANZAC Day Commemoration Service	Wahgunyah
25 April	11.00am	ANZAC Day Memorial Service	Chiltern
26 April	10.00am	Meeting with CEO	Beechworth
26 April	11.00am	Meeting with Leanne Mulcahy, Facilitator	Beechworth
26 April	11.00am	Hospital Advocacy Workshop – Wodonga Council	Wodonga
27 April	10.00am	MAV Goulburn Ovens Murray Regional Meeting	Online
27 April	12.30pm	Meeting with Greg Lumby, Rutherglen	Rutherglen
29 April	1.00pm	Opening of Home Energy Efficiency Expo	Beechworth
30 April	10.00am	Opening of Annual Milk Run	Huon Reserve

**Attachments**  
Nil

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 17. DECISIONS REGISTER

#### 17.1 DECISIONS REGISTER

File No: 2023/286

Carla Hanlon - Executive Manager People & Governance      Executive Management

#### For Information

The report outlines actions from Council Resolutions as at 30 April 2023, including those not previously listed as completed, but not including resolutions to note a report.

Trevor Ierino, Chief Executive Officer tabled an updated document with Council Resolutions outlined as at 30 April 2023. Below is the updated version which differs from the version published in the agenda.

Meeting date	Item	Name	Resolution	Status
28-Feb-23	12.1	Australia Day Review Process	That Council endorses: <ol style="list-style-type: none"> <li>the formation of an Australia Day Review Working Group; and</li> <li>the Australia Day Review Working Group's Terms of Reference.</li> </ol>	Completed
28-Mar-23	14.2	Audit and Risk Committee - Performance Survey 2021/2022	That Council: <ol style="list-style-type: none"> <li>Receives the results of the 2021/2022 Audit and Risk Committee performance survey; and</li> <li>Endorses the Mayor to thank the Audit &amp; Risk Committee for their work, at the next scheduled meeting.</li> </ol>	Part 1 – Completed  Part 2 – Incomplete (to be completed at the next Audit & Risk Committee meeting, scheduled for 17 July 2023)
18 April-23	8	Confirmation of Minutes from Previous Meeting(s)	That the Minutes of the Council Meeting held on 28 March 2023, as published on Council's website, be confirmed.	Completed
18 April-23	11.1	March Finance Report	That Council accepts the YTD March Finance Report noting the progress against Council's quarter 2 forecast.	Completed
18 April-23	11.2	Planning Permit	That Council refuses planning permit application PP22-0032 and issues a notice of	Completed

## COUNCIL MEETING MINUTES - 16 MAY 2023

Meeting date	Item	Name	Resolution	Status
		Application PP22-0032 - 59 Main Street, Chiltern	<p>decision to refuse a permit to carry out works (replace roof materials from tiles to corrugated iron, new air conditioner and painting of exterior) in a Heritage Overlay, on the following grounds:</p> <ol style="list-style-type: none"> <li>1. FAILURE TO RESPOND Insufficient information has been provided to assess the application, and the applicant has failed to respond to repeated requests for the further information required to assess the application.</li> </ol>	
18 April-23	11.3	Planning Permit Application PP22-0128 - 3515a Myrtleford-Yackandandah Road, Yackandandah	<p>That Council refuses the application for approval of a development plan (PP22-0128) at 3515A Myrtleford-Yackandandah Road, Yackandandah, in accordance with Clause 43.04 – Schedule 5 (Rural Living Zone) of the Indigo Planning Scheme as it applies to 3515A Myrtleford-Yackandandah Road, Yackandandah, on the following grounds:</p> <ol style="list-style-type: none"> <li>1. FAILURE TO RESPOND The applicant has failed to respond to repeated requests for further information required to assess the application in accordance with the requirements of Schedule 5 of the Development Plan Overlay (Clause 43.04 – Indigo Planning Scheme).</li> </ol>	Completed
18 April-23	11.4	Planning Permit Application PP22-0129 - 3515a Myrtleford-Yackandandah Road, Yackandandah	<p>That Council refuses planning permit application (PP22-0129) and issues a notice of decision to refuse a permit for the three-lot subdivision of 3515A Myrtleford-Yackandandah Road, Yackandandah, on the following grounds:</p> <ol style="list-style-type: none"> <li>1. FAILURE TO RESPOND The application has failed to respond to repeated requests for further information required to assess the application against relevant provisions of the Indigo Planning Scheme.</li> <li>2. LACK OF AN APPROVED DEVELOPMENT PLAN</li> </ol>	Completed

## COUNCIL MEETING MINUTES - 16 MAY 2023

Meeting date	Item	Name	Resolution	Status
			A Development Plan has not been prepared to the satisfaction of Council as the Responsible Authority. Clause 43.04-2 of the Indigo Planning Scheme provides that a permit must not be granted to subdivide land until a Development Plan has been prepared to the satisfaction of the Responsible Authority.	
18 April-23	12.1	Recreation Infrastructure Assessment Tool - Review	That Council: <ol style="list-style-type: none"> <li>1. Adopts the updated Recreation Infrastructure Assessment Tool; and</li> <li>2. Engages with clubs and community regarding the Tool to prepare for funding applications.</li> </ol>	Completed
18 April-23	12.2	Community Planning and Next Place Plan	That Council: <ol style="list-style-type: none"> <li>1. Notes the internal assessment undertaken for the next Place Plan township;</li> <li>2. Undertakes a small-town Community Planning pilot in 2023/2024 in Stanley and Barnawartha with the support of Emergency Recovery Victoria; and</li> <li>3. Undertakes Place Planning in Beechworth following the completion of these Community Plans.</li> </ol>	Completed
18 April-23	13.1	Tender Evaluation - Barnawartha Netball and Tennis Courts Redevelopment	That Council: <ol style="list-style-type: none"> <li>1. Awards Contract No. 2223/049-01 for the Barnawartha Netball and Tennis Courts Redevelopment to iDwala Pty Ltd for the lump sum of \$736,277.50 ex GST;</li> <li>2. Authorises the CEO to sign the contract documents and affix the Council's Common Seal; and</li> <li>3. Authorises the CEO financial delegation to approve contract variations up to a total of 10% of the signed contract value.</li> </ol>	Parts 1 and 3 completed.  Part 2 – incomplete (contract signing is currently underway)
18 April-23	14.1	Audit and Risk Committee -	That Council receives the Biannual Report of the Audit and Risk Committee and thanks	Completed

## COUNCIL MEETING MINUTES - 16 MAY 2023

Meeting date	Item	Name	Resolution	Status
		Biannual Report - March 2023	the Committee for its work.	
18 April 2023	7.0	Condolences	That a letter of condolence be sent under Council Seal to John Voss' family.	Completed
18 April 2023	14.4	Informal Meetings of Councillors Records	That Council accepts the attached Informal Meetings of Councillors records.	Completed
18 April 2023	14.5	Advisory Committee Minutes	<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Receives the attached unconfirmed meeting minutes for the following Advisory Committees:               <ol style="list-style-type: none"> <li>a. Indigo Cultural Heritage Advisory Committee;</li> <li>b. IndiGrow;</li> <li>c. Finance Committee.</li> </ol> </li> <li>2. Notes the following recommendations from the Indigo Shire Cultural Heritage Advisory Committee:               <ol style="list-style-type: none"> <li>a. <i>The committee reviewed the Terms of Reference and recommends:</i> <ol style="list-style-type: none"> <li>i. <i>adding "interpretation" to sections 14.1.1, 16.3, and 16.5.</i></li> <li>ii. <i>adding a three-year limitation to the deputy chair position, as seen in section 7.</i></li> </ol> </li> <li>b. <i>The Committee confirmed the Cultural Heritage Advisory Committee Terms of Reference for 2023, provided a request to update the Terms of Reference is submitted.</i></li> </ol> </li> <li>3. Notes the following recommendations from the Finance Committee, and that no further action is required:</li> </ol>	Completed



## COUNCIL MEETING MINUTES - 16 MAY 2023

Meeting date	Item	Name	Resolution	Status
			<ul style="list-style-type: none"> <li>a. <i>That Council accepts the YTD February Finance Report noting the progress against Council's quarter 2 forecast.</i></li> <li>b. <i>That the Finance Advisory Committee endorses the current Terms of Reference with no further changes.</i></li> </ul> <ul style="list-style-type: none"> <li>4. Adopts the attached amended Terms of Reference for the Cultural Heritage Advisory Committee. The attached document has been amended to support point 2a(i).</li> <li>5. Recommended amendments in point 2a(ii) will be considered by officers under delegation at a future review, and will be presented to a future Council meeting.</li> </ul>	
18 April 2023	19.1	Australia Day Review Working Group Appointment	<p>That Council:</p> <ul style="list-style-type: none"> <li>1. Adopt a revised version of the Australia Day Working Group's Terms of Reference;</li> <li>2. Appoint the following applicants to the Australia Day Review Working Group; and</li> <li>3. Maintains confidentiality until the appointees are notified, following which the appointments will be made public; and</li> <li>4. Make the revised Terms of Reference public, once adopted.</li> </ul>	Completed

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 18. GENERAL BUSINESS

- Cr Goldsworthy asked that the Chief Executive Officer examine the efficacy of using a fixed or mobile CCTV system. As a minimum this examination should include the following:
  - Type of systems;
  - Storage options;
  - Potential locations;
  - Costs;
  - Privacy impacts on members of the public;
  - That the CEO engage with the Wodonga Local Area Command regarding the benefits of any proposed system.

Cr Gaffney asked if there was a proposed timeframe.

Cr Goldsworthy confirmed that he does not propose a timeframe.

Trevor Ierino, Chief Executive Officer accepted the request (under Governance Rule 43 (c) - *Requests for action may be accepted by the CEO without the need for a formal vote*), and requested an open-ended timeframe to complete the action.

- Cr Price requested an update on the status of the Beechworth-Wodonga Road works and Reids Way diversion. Ian Ellett, Director Infrastructure Services responded that he has kept in close contact with Regional Roads Victoria (RRV) regarding the progress of works. RRV have contracted an expert in stone arch culverts and the report is imminent. The report may not give clear timeframes but will give a sense of the recommended works. RRV will then find a contractor to complete the works. RRV have a clear mandate that this work is their absolute priority and recognise that the community have to live with the uncertain deadlines and having to use the road during Winter/ short days. Council outdoor staff topped up the shoulders of Reids Way this week.
- Cr Horne asked about replacing the portrait of the late Queen. Trevor Ierino advised that the correct protocol is for the Queen's portrait to remain in place until an official post-coronation portrait of King Charles is released. The updated portrait is yet to be released.
- Cr Goldsworthy recognised IDAHOBIT (International Day Against Homophobia, Biphobia and Transphobia) celebrated on 17 May. Council held an event to celebrate this day at the Old Court House in Beechworth.
- Cr Price recognised Volunteers Week (15 to 21 May 2023) – celebrations are being held across the Shire to recognise the valuable resource that are our volunteers and the high rates of volunteerism in our community.

## COUNCIL MEETING MINUTES - 16 MAY 2023

### 19. CONFIDENTIAL

#### RESOLUTION

That the Council Meeting of Council be closed to the public in accordance with Section 66 of the *Local Government Act 2020*.

**Moved:** Cr Goldsworthy

**Seconded:** Cr Horne

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**CARRIED**

*This meeting moved into Confidential; members of the gallery were asked to leave; recording and live streaming ceased.*

#### RELEASING OF COUNCIL MOTIONS IN CONFIDENTIAL SESSION TO THE PUBLIC SESSION

##### 19.1 HERITAGE LOAN APPLICATION - 152 HIGH STREET, RUTHERGLEN

#### RESOLUTION

That Council has approved a heritage loan for \$20,000 in the Rutherglen area.

**For:** Crs Peter Croucher, Bernard Gaffney, Larry Goldsworthy, Roberta Horne, Sophie Price, Diane Shephard and Emmerick Teissl

**Against:** Nil

**Moved:** Cr Goldsworthy

**Seconded:** Cr Horne

**CARRIED**

**Meeting Concluded:** 7:48PM

**Next Meeting:** Tuesday, 27 June 2023 at 6.30pm