

ORDINARY COUNCIL MEETING MINUTES

Mission Statement:

*To support and develop a sustainable, thriving and resilient Community
through leadership and partnership.*

COMMITTEE: Indigo Shire Council Councillors & Senior Management Group/Officers
TO BE HELD: Tuesday 9th June, 2009 at 3.00pm
LOCATION: Senior Citizens Hall, Yackandandah

PRESENT:

<u>Councillors:</u>	<u>Senior Management/Officers</u>
Peter Graham – Mayor	Brendan McGrath – CEO
Bernard Gaffney – Deputy Mayor	Mark Crouch
Peter Croucher	Mark Florence
Larry Goldsworthy	Sally McCarron
Barbara Murdoch	David Montgomery
Ali Pockley	Frank Bonacci
Vic Issell	Stuart Perry
	Alex Showers
	Phil Prior
	Susan Cheetham

APOLOGIES: Robert Uebergang, Colin Haldane

- 1.0 WELCOME**
Cr Peter Graham welcomed those in attendance.
- 2.0 OPENING PRAYER**
Cr Ali Pockley read the Opening Prayer.

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3.0 APOLOGIES AND LEAVE OF ABSENCE

**Moved Cr Peter Croucher
Seconded Cr Larry Goldsworthy**

**That leave of absence be extended for:
Cr Vic Issell from 10th – 12th June 2009
Cr Barb Murdoch from 29th June – 10th July, 2009
Cr Ali Pockley from 30th June – 3rd July, 2009**

CARRIED

4.0 DECLARATION OF PECUNIARY INTEREST AND CONFLICT OF INTEREST

Cr Ali Pockley advised of an interest in item 10.4 and that her mother in law lived adjacent to the property in question.

Cr Barb Murdoch disclosed a conflict of interest in item 10.4 also, given that one of the authorities was the North East Regional Water Board at which she is a Director.

5.0 OPEN FORUM

The Mayor invited comments from the gallery:

Ms Bronte Keeble (Yackandandah Primary School) made a brief presentation on the Junior Council.

Brett Newbound introduced himself and advised that he had handed in a letter prior to the commencement of the meeting requesting the matter of planning department issues be heard at today's public Council Meeting.

Mr Newbound enquired as to whether Council had been adequately advised the anomalies in the planning department in Council and whether it was Councils intention to investigate activities of the planning department. He believed it was vexatious in the way some applicants had been treated.

Ron Furrs advised that he was concerned about the purported rate increase and whether the Council was going to continue rates increases in the future.

6.0 CONDOLENCES

Cr Graham advised the passing of Les Lawson (great grandson of Henry Lawson). Mr Lawson was described as a "character" who contributed much to the Community of the Rutherglen area. He asked that Councils condolences be extended to Maggie Lawson the late Les's widow.

Cr Pockley advised of the passing of Allan Issell (Cr Vic Issell's Father).

Cr Pockley advised of the passing of Ted Elliott (Cr Goldsworthy Grandfather).

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**Moved Cr Gaffney
Seconded Cr Murdoch**

That Council condolences be extended to the family of the late Les Lawson, to Cr Issell and family and to Cr Goldsworthy and family.

CARRIED

7.0 CONFIRMATION OF MINUTES

**Moved Cr Goldsworthy
Seconded Cr Ali Pockley**

That the Minutes of the Council meeting held 12th May, 2009 be adopted and amended as follows:

The motion at item 17.0 to move into Confidential session was moved by Cr Issell rather than by Cr Goldsworthy.
The subsequent motion to accept the Shared Services, Private Works and Contracts and Completion of Capital Works document was moved by Cr Goldsworthy rather than Cr Murdoch.

Subject to these changes, the meeting held on 12th May 2009 are to be accepted.

CARRIED

8.0 BUSINESS ARISING FROM PREVIOUS MINUTES

Nil.

9.0 DEPUTATIONS AND PETITIONS

The CEO (Brendan McGrath) tabled a petition just received prior to the commencement of the meeting which had been signed by approximately 290 people, stating the following:

We the undersigned wish to object the Indigo Shire Councils project to modify the zoning in Barnawartha that restricts commercial activities. In particular existing businesses in High Street will be affected. We propose that existing businesses be allowed to operate in their current form. This is vital as other wise it will force some businesses to cease thereby creating financial ruin. These businesses are locally based and are a service to the local community.

**Moved Cr Peter Croucher
Seconded Cr Larry Goldsworthy**

That the petition be received and a report be included at a future meeting.

CARRIED

10.0 SUSTAINABLE COMMUNITIES

10.1 SECTION 173 AGREEMENT - (PP07/116) (ATP/MSD)

For Decision

INTRODUCTION

The following Section 173 Agreement is presented to Council with a recommendation for approval under the seal of Council.

Such agreement, made under Section 173 of the Planning and Environment Act, is legally binding and is registered against the Title of the land. That is, it runs with the land so that subsequent owners are also bound to the terms of the agreement. This agreement can be removed from the Title at some later date only with the consent of the Responsible Authority (in this case Council).

COMMENT

In the Agreement referred to, the responsibility of making application on behalf of Council to the Registrar of Titles office for the registration of the Agreement and the payment of all legal costs is that of the other party entering into the Agreement with Council.

BACKGROUND

(a) Owner: J Arbuthnot

Planning Permit 07/116 relates to the proposed use and development of a dwelling on the subject land, being 3.85ha in the Farming Zone. As the proposed dwelling was proposed to be within proximity of a waterway, the permit was issued on the basis that the owner of the land enter into an Agreement with Council under Section 173 of the Planning and Environment Act 1987 to provide that:

1. The wastewater treatment and disposal facility be maintained as required by the EPA.
2. An annual inspection of the wastewater treatment and disposal facility be undertaken at the cost of the landholder by a competently trained person or servicing agent, and a report of the inspection must be forwarded to the Responsible Authority and G-MW.
3. All repairs and maintenance undertaken to the wastewater treatment and disposal facility must be documented and reported to the Responsible Authority and G-MW.
4. The owner shall meet the cost of the registration of the agreement on the title of the land and the costs of the annual inspection and reports.
5. The owner must provide evidence of registration of the Agreement to Goulburn-Murray Water as soon as possible after the registration has occurred.

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RECOMMENDATION

That Council as the relevant Responsible Authority resolve to enter into the subject Section 173 Agreement with the owner of the following land and to sign and seal the appropriate documentation:

- (a) Lot 2 Plan of Subdivision 428800, Pit Lane Staghorn Flat.

Appendix A
Locality/Site Plan – PP07/116 Pit Lane, Staghorn Flat

**Moved Cr Larry Goldsworthy
Seconded Cr Barb Murdoch**

That Council as the relevant Responsible Authority resolve to enter into the subject Section 173 Agreement with the owner of the following land and to sign and seal the appropriate documentation:

- (a) Lot 2 Plan of Subdivision 428800, Pit Lane Staghorn Flat.**

CARRIED

10.2 PLANNING APPLICATION, IAN JACK, 109 MCSWEENS ROAD, INDIGO VALLEY

(PP08-4376 – Senior Town Planner)

For Decision

SUMMARY

Application No: PP08-4376

Applicant: Ian Jack

Subject Land: The subject site is known as 109 Mc Sweens Road Indigo Valley and contains 13 parcels of land. The land is described as:

Crown Allotment 1, 2, 2A, 3 and 7, Section G, Parish of Wooragee

Crown Allotment 1 and 2, Section H, Parish of Wooragee

Crown Allotment 4, 4A, 5A, 5B, 5C and 5D, Section I, Parish of Wooragee.

Purpose: The application is for the following uses:

Use of a winery;

6 Accommodation units;

Use of an olive processing (Rural Industry);

Use of produce sales (Retail and cellar door sales);

7 dwelling envelopes; and,

Re-subdivision of land into 9 lots and creation of common property.

Date application lodged: 29 January 2009

Subject site land area: 244 hectares

Current use of subject site: The site is currently use for the production of olives and wine, shedding and other farm infrastructure is located to the middle of the subject site.

BACKGROUND

Description of the site:

The subject site is located within the Indigo Valley approximately 14.5 km from Barnawartha and 14.8 km from Yackandandah. Indigo Creek Road, being a sealed road is the main access road to the site. McSweens Road is a short gravel pavement road located to the southern side of the valley. The bridge crossing over the Indigo Creek has recently been upgraded.

The site is cradled within a small valley. The general fall of the land is to the north. The property shares 3 boundaries to the Chiltern-Mt Pilot National Park which rises to the south and south west of the site with a dramatic granite hillside.

There are five dams on the site. Four are located within the spring belt on the property while a fifth dam provides a water retention function within the main valley floor of the property.

Established native vegetation covers part of the site in four main stands, each abutting a different boundary to the site.

Significant areas of established horticulture and viticulture plantings (45 ha olives and 8 ha wines) are located on the site. Efficient irrigation infrastructure has been established to all planted areas.

An internal road runs central to the site.

Views from the property are to the north down the Indigo Valley towards Barnawartha.

Surrounding land use:

The surrounding country is cleared undulating grazing land. A number of properties in the area have been established with more intensive forms of agriculture. Several vineyards and olive groves have been established in the locality.

Zoning of surrounding land:

Land abutting the subject property to the south, east and west are zoned "Public Recreation and Conservation Zone" and the land abutting the subject property to the north west is zoned "Farming Zone".

PROPOSAL

The proposal is for the use of a winery, olive processing (Rural Industry), 6 accommodation units, use and construction of 7 dwelling envelopes and for the re-subdivision of the land into 9 lots and the creation of common property. These aspects are discussed below.

Production

The site has significant areas of established plantings already under production. There are plans for increased areas of both vines and olive plantings and for some cherries. This will occur on the 110 hectares of cleared land available for expansion.

The additional plantings will be for vines (30 ha), 15 hectare of cherries and the remaining 60 ha for either olives or vines. Investment in mechanical harvesting equipment has eliminated the need for contract harvesting of olives.

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Processing

Production of wine and olive oil has occurred with the use of mobile crushing facilities or fruit processing off site. A purpose built facility will be established to house the olive oil and wine making processing and storage on site. A mobile plant will be used.

The mobile olive oil processing plant has been purchased and it is planned to be commissioned in early 2009. The plant was part funded through the Food Processing in Regional Australia Program, as an innovative way to manage small scale production economically. The plant will be used by other growers in the region.

The applicant has advised that to date there has been an investment of over \$500 000 in new technology solutions. The mobile plant will provide for new business opportunities and be a benefit to other growers in the region.

Sales and Merchandise

The region has a well established tourism market. The project has the opportunity to provide for a small shop to promote and sell produce. The location of the site part way between the tourist centres of Beechworth and the Rutherglen wine tourism district will complement the existing rural based tourism developments in the Indigo Valley.

The property has a number of important environmental sites with stands of Warby Swamp gums and natural wetlands containing diverse understorey in the "break of slope" spring areas on the site. The conservation of the sites provides a unique opportunity for the education and enjoyment of visitors to the property. It is also complementary to the adjacent Chiltern-Mt Pilot National Park which forms an attractive back drop to the property and produce sales area.

Re-subdivision of the property

The applicant argues that re-subdivision of the property will be necessary to achieve a workable land tenure arrangement that acknowledges land constraints, established viticultural and horticultural plantings, and establishes common property within the development to address access rights and servicing.

The 13 existing crown allotments are proposed to be re-subdivided down to 9 allotments. The number of lots and alignment of boundaries have been developed following a site analysis and design response. Each allotment contains established plantings, areas for additional plantings and a water supply protected by easements.

Access to the lots is via a central roadway which will remain as a common property area. It is proposed that the ongoing management of the road will be the responsibility of the lot owners, and not Indigo Shire Council.

A number of easements are proposed to be created over the main water supply bodies. The actual rights to the water would be controlled separately.

A copy of the proposed plan of re-subdivision is included at Attachment 2.

Farm Accommodation

The agricultural expansion of the property is proposed to double the area currently under intensive production of the property, requiring investment of further capital and labour. The applicant submits that there is an accommodation need for staff and family members. New

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owners buying into the co-operative farming arrangement would need and have the ability to build a dwelling to work and reside on the property.

Building envelopes have been nominated to control the location of dwellings and farm buildings on the site. They are proposed to be controlled as a restriction on the Plan of Subdivision.

Grazing

Grazing of sheep and cattle is presently carried out on the balance of the land. It is expected that this farming practise will be progressively reduced as the land take up for the intensive expansion of horticulture and viticulture on the properties occurs.

Management

It is proposed to utilise the new provisions of the Owners Corporation Act 2006, to set up a formal management structure between the land owners within the development.

The main purposes of the new Act are:

- (a) To provide for the management, powers and functions of owners corporations; and
- (b) To provide for appropriate mechanisms for the resolution of disputes relating to owners corporations; and Victoria
- (c) To amend the Subdivision Act 1988 in relation to the creation of owners corporations.

The applicant suggests that the Act will provide a mechanism to manage the shared infrastructure on the site, including the:

- Water capture and supply system;
- Internal roadways and car parking areas, and;
- Ongoing obligations to land owners within the subdivision.

The Act could provide a means of legally binding the land owners within the development to share and co-operate with common infrastructure and participate in the operation of the property.

Legal rights to the licensed water entitlements are proposed to be managed under a separate water syndicate, with the new land owners being required to buy into the syndicate at the time of purchasing a property.

Development Plan

The development plan includes elements which require specific planning approval under the Indigo Planning Scheme together with notations that illustrate and demonstrate the overall expansion of the farming enterprise.

Re-subdivision of land into 9 lots and Common Property

Attachment 2 shows the proposed plan of subdivision.

Lot 1 has an area of 43.03 hectares. A planning permit is not required for the use of a dwelling on this lot as the area is greater than 40 hectares. However a building envelope has been chosen for the lot to avoid the potential for a dwelling to be sited in a poor location, or where valuable established plantings exist. There are currently approximately 8 hectares of olives producing fruit on this proposed lot. There are limited areas available for horticultural expansion due to the native vegetation on the lot which backs up into the National Park. The position of the building envelope has been chosen to provide for privacy, as well as being outside of the drainage lines and 200 meters away from the dam bank on the adjoining lot 2.

Lot 2 is central to the property. It has an area of 43.27 hectares and again does not require a planning permit for the use of a dwelling on the lot. A portion of the large shed has been used as a staff amenities and a temporary dwelling. This will be altered to be the main office. The lot contains two dams, a well and stock yards.

This lot is proposed to be retained by the Jack's and will be developed to contain the small winery, 6 group accommodation units, produce sales area and the olive processing. A group accommodation area for 6 units is proposed to provide an opportunity for overnight and longer stay accommodation options for eco and winery tourism would provide a further opportunity to diversify the economic base of the development.

The waste water treatment for the proposed 6 accommodation units is proposed to be subject to further approval. It is proposed to be pumped to an onsite EPA approved package treatment plant. The application does not provide details of the accommodation units. Details would be required if Council was to consider approval of this part of the proposal.

Lot 3 has been partly developed as a vineyard. The 17.14 hectares property has significant area available for the expansion of the plantings. The headland between the plantings on Lot 2 and 3 is protected by a proposed carriageway easement. A site has been identified for the a farm dwelling and sheds.

Lot 4 is 20 hectares in area. It contains approximately 7 hectares of olive plantings and a large registered dam site. The location of the building envelope is to the east of the site in proximity of a dispersed stand of scattered native vegetation. There is an opportunity to expand the plantings of olives. Lot 5 is located to the most southern portion of the property. The 20 hectare site has established olive plantings and a significant area for expanded plantings. The irregular shape of the lot provides an opportunity for a secluded house site located on cleared land in proximity to an area of native vegetation. A bore can potentially provide for an independent water supply to this site.

Lot 6 has an area of 23.5 hectares. Approximately half of the area available for production is under olives. A building envelope has been chosen on cleared land on the southern boundary. The eastern side of the property rises to meet the boundary of the National Park and is proposed to remain as a stand of stringy bark trees.

Lot 7 also contains an area of 23.5 hectares. Approximately 9 hectares of the property is under olives. The eastern side of the property contains a stand of eucalyptus forest which forms part of a wildlife corridor linking the national park with nearby stands of native

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vegetation to the north of the site and to the wetland areas on proposed Lot 2. It is proposed to leave the new boundary between lots 7 and 8 unfenced. The dwelling and shed site for the lot has been located mid way along the southern boundary of the lot in an area that is sparsely treed. It is shown as providing for a gentle northern aspect with a bush back drop to the buildings. Sufficient area is available to obtain a modified fuel area for bushfire risk.

An area of cleared land currently used to produce fodder has the potential to be developed as a vineyard or for expanded horticultural plantings.

Lot 8 has an area of 20 hectares. It has a similar orientation to Lot 7 sharing the wildlife corridor to the east and has established olive plantings to the middle of the property. An area is also available for the expansion of plantings. A dwelling site has been chosen on the northern property boundary with an aspect that enables the whole of the property to be in view. The area is a stony rise which has proven to be less suitable for horticultural production.

Lot 9 has an area of 25.46 hectares. It is proposed to contain three existing dams under easement together with water supply in favour of the other lots in the re-subdivision of the land. A significant portion of the land contains a natural wetland with a stand of Warby Swamp gums, arguably the most important native vegetation on the site.

The allotment building envelope for the dwelling and farm sheds has been sited on the east of the lot 150 m to the nearest dam and drainage line. While there are some existing red gum trees in proximity to the building site there would be no need for the clearing of vegetation. An existing farm road has been constructed to the proposed building envelope site.

In addition to the 9 proposed lots there is a common property area shown. The common property area provides for a central access road through the property. It largely follows the alignment of old government roads but deviates to the west of the main water supply dam, widening out at this point to make space of the common car parking area adjacent to the winery and olive processing areas and produce sales facility. The common property is a total of 2.79 hectares in area.

SECTION 60 HEADS OF CONSIDERATION

Section 60 of the Planning and Environment Act, 1987 lists matters which Council must consider in coming to a decision on planning applications. The following matters are provided for in this Section.

ZONING AND PLANNING CONTROLS

Zoning: Farming Zone

Permit Triggers:

Use of a winery

A “Winery” can be defined as land used to display, and sell by retail, vineyard products, in association of the growing of grape vines and the manufacture of the vineyard products. It may include the preparation and sale of food and drink for consumption on the premises. A “Winery” is a Section 2 use under the Farming zone and therefore triggers a Planning Permit.

Group accommodation

Land in one ownership, containing a number of dwellings use to accommodate persons away from their normal place of residence.

Accommodation other than Dependents persons unit, Dwelling, Group accommodation, Host Farm and Residential hotel is prohibited under the Farming Zone.

Thus group accommodation becomes a Section 2 use under the Farming Zone - a planning permit is required.

Olive processing – Rural industry

All industrial development is prohibited in the Farming Zone other than a rural industry. If a use is not a Section 1 use (as of right use no permit required) and it is not prohibited either, then it becomes a Section 2 use as in this case, where a permit is required to operate the rural industry in the Farming Zone.

Produce sales – Cellar door sales

Retail premises are prohibited in the Farming Zone other than Primary produce sales and Restaurant. Again if a use is neither a Section 1 use (as of right use no permit required) nor is prohibited, then it becomes a Section 2 use as in this case, where a permit is required to conduct a cellar door business from the subject site.

Seven dwelling envelopes

Application has been made for seven dwellings and building envelopes which have been located on Proposed Lots 1, 3, 4, 5, 7, 8 and 9. A planning permit is required for the use and construction of dwellings on lots smaller than 40 ha in the Farming Zone. If a lot is larger than 40 ha a planning permit is only triggered for the development of the dwelling. The applicant has not applied for a building envelope on either proposed Lot 2 or 6.

Re-subdivision of the land in nine lots and the creation of common property

A permit is required to subdivide land.

STATE PLANNING POLICY

The State 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:

Settlement

- 15.01 Environment
- 15.07 Protection from wildfire
- 15.09 Conservation of native flora and fauna
- 15.12 Energy efficiency
- 17.05 Agriculture

LOCAL PLANNING POLICY FRAMEWORK

The Local Planning Policy Framework (LPPF) provides relevant discussion in relation to land use and development in the Shire. 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:

Municipal Strategic Statement

Relevant clauses of MSS include:

- 20.01 Operation of Local Planning Policies
- 21.01-4 Economy
- 21.01-5 Environment
- 21.01-6 Vision
- 21.01-7 Local Planning Policies
- 21.01-8 22.01-2 Rural dwelling sitting and design guidelines
- 21.01-9 22.02-2 Land use development and Subdivision in Rural Areas
- 21.01-10 22.02-4 Tourism development
- 21.01-11 22.03-1 Land care and catchment management
- 21.01-12 22.03-1 Fire Hazard
- 21.01-13 22.03-4 Effluent disposal and water quality
- 21.01-14 22.03-5 Classified National Trust Landscapes
- 21.01-15 22.03-8 Floodplain and Rural Drainage Management

REFERRAL AUTHORITIES

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

- SP Ausnet
- Telstra
- Assets
- Goulbourn Murray Water
- North East Catchment Management Authority
- Department of Sustainability & Energy

None of the referral authorities have any objection to the issuing of a planning permit subject to inclusion of conditions.

PUBLIC NOTICE

Council gave notice of the application by mail to the owners and the occupiers of adjoining lots. No objections or submissions were received specific to this application. Council's

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attention at this point needs to be drawn to the fact that notice of this application PP08-4376 (9 lot subdivision) and the 6 lot application (PP08-4449) for the same property was undertaken at the same time. One objection was received only for the 6 lot subdivision. It can safely be argued that the proposed 9 lot subdivision will cause a greater degree of material detriment and is it appropriate that Council consider the issues raised in the objection aimed at the proposed 6 lot subdivision.

The grounds of objection are:

- Access to the proposed subdivision is insufficient considering the amount traffic that this development will generate.
 - In case of a fire there is only one escape route which will which will put people's lives as risk.
 - The access route to the proposed subdivision is very steep and with increased traffic will quickly deteriorate and drainage along the road is not sufficient.
- A focus meeting was held on the 30 April 2009. At this meeting all these issues were raised and discussed. The applicant at the Focus Meeting argued that the proposed development meets the requirements of the Indigo Planning Scheme. The objector however is concerned that increased traffic along McSweens Road will negatively impact on his site with regard to dust pollution and increased stormwater runoff on to his property. Council's Assets Department has addressed these issues in requiring the applicant to undertake significant works to the satisfaction of Council to upgrade stormwater discharge and to seal McSweens Road for up to 100 metres past the objector's house. The objector was not satisfied and requested that McSweens road be sealed for a further 50 meters past his house to the south. This is a reasonable request considering the amount of traffic which this proposed development will generate.
 - The application was referred to the CFA (as a non mandatory Section 52 referral) and the CFA did not raise any objections with the proposed development, subject to the inclusion of conditions on any planning permit. The objector was not satisfied that the conditions requested by the CFA be contained on any permit as permit conditions but has requested Council to include these conditions both on any planning permit and in an agreement under a Section 173 of the Act.

DISCUSSION

Consideration of the planning merits of the proposal:

SPPF Clause 17.05 Agriculture

Land capability is a fundamental factor considered in rural land use planning matters. The subject site is located in an area that can be classified in general as containing medium quality soil. The applicant however has submitted information that suggests the soil is of reasonably quality for the production of grapes, olives and cherries. The microclimate of the location support's the production of these crops.

On Regional and State levels the proposed development would contribute to agricultural production and contribute to the agricultural activity of Indigo Shire, whose economy is predominantly based on agriculture. The applicant has argued that the suggested local climate and soil conditions are beneficial for the production of the proposed crops (olives, wines and cherries).

The proposed development would require only a small area of the overall site to be withdrawn from agriculture for the development of dwellings. Rather the proposed development supports effective agricultural production by intensifying the agricultural activity in establishing large areas under irrigation and the applicant has invested significant funds to establishing processing infrastructure. This would allow the processing of crops on the farm (thereby value-adding). These proposed changes to the status quo could provide flexibility to the proposed development to adjust to changes experienced in the market place.

Whether the proposed development will be sustainable is questionable considering the water requirements of the proposed crops and the area proposed to bring under production. The property has a total harvestable entitlement of 500 Mega Litres of water per year. The registered storage dams constructed on the site to date have a capacity of 120 Mega Litres. The applicant hasn't provided a detail breakdown of water requirements for each of the crops and their water requirements per hectare. It must also be pointed out that when water requirements are assessed, variations and cycles in rainfall should be considered in calculating the minimum available water per year available for irrigation purposes. In this regard VCAT in the case *Bussell v Wangaratta* 15 December 2006 commented as follows:

14 The Applicant makes reference to a land management plan and the ongoing relationship between a dwelling and agricultural production on the land. Part of this information is the intended layout for olives and quinces on the sloped parts of the site. There is not, however, any whole farm plan or business plan and the information set out in Mr Meagher's submission relating to estimated production and returns is quite generalised.

15 I was advised that the Applicant could proceed with the dwelling in the very short term and she works with the Shire in Wangaratta. Although Ms Bussell intends to plant corps, there can be no guarantee or surety that more intensive agriculture would follow in the immediate or longer term if a dwelling was approved. That can be for various reasons, several of which I refer to next. First is water availability. Spring-fed dams might ensure some water supply but the quantity required to service olives and quinces does not seem to have been estimated relative to the available capacity of the dams which is also unknown, The prospect of supplementary water via a bore is not certain. Second are other climatic factors that may defer a decision to proceed with the orchard(s). Third is the possibility that the Applicant is not in a position to pursue crop raising for whatever reason, be that financial, personal or market-related. I note of the information available to me, olives are grown locally but there are no quince crops. It is significant that there is no overall plan relating to crop production.

A critical question in considering the merits of this application is whether the proposed subdivision will detract from the long term productivity of the land. The applicant proposed to realign the boundaries of the subject site which currently exists in 13 separate titles so as to create 9 lots of which 7 lots are approximately 20 hectares in size and 2 lots which are just over 40 hectare in size each. Council has approved at a previous Council Meeting the realignment of the subject site in to 6 lots, which are all just above 40 hectares in size. The proposed 9 lots thus represent an intensification of the development. The applicant is in a process of developing the subject site and has established substantial areas under olives (45ha) and (8ha) under wines. Considering the fact that the applicant has changed the enterprise from a broad acre grazing property to an intensive irrigation enterprise and proposes to continue the intensification process, the proposed realignment of the subject site as presented may potentially not detract from the long term productivity of the subject

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site. There are however some issues with such a proposition and the detail of what is proposed does not ensure that productivity intensification will continue,

It has been suggested that quite substantial expansions are possible on the subject site, but the evidence provided is limited and the fact that the availability of water was not taken into consideration raises some doubts.

It can further be argued that although the proposed development will not detract from the long term productivity of the subject site the proposed crops, olives and wines in general are in over supply currently in the market. Is it then environmentally sensible to allow a development that not only intensifies current production, but puts more strain on existing resources to produce crops that are in over supply? It is not for Council to become prescriptive as to what crops should be cultivated, or enter into the current economics of this, but it is a Council responsibility to balance the impacts of a development that is predicated on intensification of agricultural production to achieve a density of development which is significantly above that which is anticipated in this area and significantly over and above what the Indigo Planning Scheme anticipates. It is also necessary for Council to assess environmental implications associated with such a development. As indicated above these possible environmental impacts (mainly the availability of water and the downstream effects from harvesting all available water thereby significantly reduced down stream flows) have not been addressed in detail in the applicant's submission, therefore Council cannot consider whether the development will have a negative impact on the environment.

The proposed off-site effects of the proposed development (such as degradation of soil or water quality and land salinisation) are likely to be limited considering that the application was referred to relevant authorities and no concerns were raised.

The proposed development will have an impact on land values of surrounding properties. It probably can be argued that the impact will be limited, but the fact that the proposed development will result in smaller lots will increase the expectation of subdivision and speculative dwelling approvals on surrounding properties – thus inflating land values of surrounding properties.

Clause 21.04-2-1 Agriculture

The minimum subdivision size for rural properties in the Farming Zone in general is 40 hectares. The Indigo Shire however under Clause 21.04-2-1 (Agriculture) recognised that the use of land zoned for rural production is paramount to the economic future of the Shire. Across the Shire there is a great variability in land capability and production potential. Consequently the concept of a uniform minimum lot size is not appropriate for the Shire. Much of the Shire already comprises lots less than 40 hectares as a result of the subdivisions made during the gold rush era. Further subdivisions in the rural area particularly new lots less than 40 hectares should facilitate productive use of the land and ensure sustainable practises in respect of the resource base. In this case it could not be conclusively demonstrated that the proposed subdivision will contribute to productive use of the land for agricultural purposes. The applicant in his submission provided a broad overview as to possible future development but no action plan was submitted. In *Gaffy v Greater Shepparton CC (2005) VCAT 2180 (12 October 2005)* VCAT commented as follows regarding maintaining agricultural land in commercially productive agriculture:

7 In this respect it was put that when considering such an application in terms of the policy requirements of the planning scheme consideration should be given to maintaining

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agricultural land in commercially productive agricultural use and not to stifle opportunities for diversification through the interpretation of policy and strategic objectives which may put limitations upon subdivision. It was the applicant's view that to artificially maintain land sizes through a rigid interpretation of planning controls in a manner that does not allow new entrants into diversified agricultural pursuits would be counter productive and produce uncompetitive outcomes.

8 Whilst this may be a valid philosophical view consideration in this application relates specifically to the request to subdivide land in agricultural use to allow a particular landowner to change his focus of activity. In terms of the planning scheme and the matters required to be considered it is not relevant to take into account the personal circumstances, ultimate goals and desires of an individual landowner. Rather the consideration must be focused on the policies that underpin the particular zone provisions in the planning scheme.

17 The subdivision of the land could therefore detract from the long term productive capacity of the land or remove the land from primary production. Whilst there is no one size that fits all in term of land capability and productivity to divide an area that is only 26.67ha resulting in the fragmentation of this already small sized lot in terms of the envisage lot sizes in the zone, into two lots is considered to more than likely lead to removal of the land from primary production contrary to the policies within the planning scheme.

18 There has been no demonstration of the need to subdivide this land except for the personal circumstances and preference of the applicant such criteria not being supported by the policies in the planning scheme.

22.02-2 Land use, development and subdivision of land in the Farming Zone.

The policy seeks to achieve a balanced approach to the use, development and subdivision of land in the farming zone. Not all land uses and developments are compatible with agricultural land uses, particular intensive uses.

The applicant argues that it is proposed to establish an intensive operation which is physical removed from neighbours due to the unique location of the subject site and for this reason will have limited impact on surrounding properties. On the other hand it needs to be acknowledged that the subdivision of rural land within the Shire for a variety of uses including rural living opportunities has been a major element of development in the Shire.

The provision for the re-subdivision of existing properties containing existing lots needs to be managed. The following decision guidelines set out which elements need to be addressed in managing re-subdivisions.

Does the proposal impact detrimentally on existing agricultural practices?

The proposal will not have a negative impact on the surrounding agricultural land uses. The proposed land use of the subject site has been altered significantly from a broad acre grazing property to intensive cropping under irrigation and therefore the proposal will potentially not have a negative impact on the existing land use of the subject site either. Unfortunately it is considered that the impact of creation of a large number of rural residential lots in this location may result in complaint or other negative impact in relation to agricultural practices on other properties. This is addressed further below.

Does the proposal create rural living or low density residential areas?

In considering this it needs to be understood what the term rural living or low density residential areas means. In terms of the Indigo Planning Scheme “Low Density Residential” areas have a minimum lot size of 5000 square meters and “Rural living” areas have a minimum lot size is 8 hectares. Although the minimum lot size for lots in the proposed subdivision is 20 hectares, which certainly is much larger than 8 hectares, in practice lots in the Rural Living areas of the Shire vary in size from 8 hectares to approximate 30 hectares. The proposed subdivision therefore has the potential to create a rural living environment. This is one of the major concerns Council has with this application. This concern is further articulated in one of the objections of this policy, which states that land should be retained in larger parcels suitable to the relevant production requirements of the viticultural, horticultural and grazing industries. The applicant in his application sets out the existing development on the subject land and also pointed out additional areas that may be brought under irrigation. No detailed justification has been provided as to why a dwelling is required on each and every proposed allotment. The applicant in his application provided some broad statements relating to the potential of the subject site and areas that might be brought under cultivation, but did not provide a detailed breakdown of the potential of each lot and the proposed development capacity of each individual lot. Further no justification from an agricultural point of view was given as to why a dwelling must be constructed on each property.

VCAT in *Napolitano v Greater Shepparton CC (2006) VCAT 2098 (9 October 2006)* comments as follows:

...the proposed dwelling is component infrastructure required as part of the dairy farm. It is necessary to support the use of the land for agriculture, it is part of the productive agricultural use of the land and it is not a non-agricultural activity, therefore the proposed dwelling is consistent with the purpose of the zone.

23 We disagree. There was not necessary connection demonstrated between the need for a dwelling and the farming operations. These days there is rarely a need for farmers to live on their farm. Farms frequently consist of more than one property (as is the case here). The desire to live on the property is more often based on residential rather than farming purposes. In the present case, it cannot be said that the operation of the farm is jeopardised by denying a further dwelling for occupation by one of the owners. The property is close to Mooroopna, which is a more suitable location for new residential development. There is already a dwelling on Lot 2. It was asserted that this dwelling was not in good condition and the proposed dwelling would replace it. The applicant however failed to demonstrate why the existing dwelling could not be restored or replaced within Lot 2 if the farm owners felt it was imperative for one of them to live on the property. There was therefore a failure to demonstrate a fundamental need for a new dwelling to be located on Lot 1 to support the agricultural enterprise.

The applicant therefore has failed to justify why the land should not be retained in larger parcels suitable to the relevant production requirements of the viticultural, horticultural and grazing industries. Further the matter of water rights is also of concern, although the applicant has indicated that water rights will not be sold of separately.

There are two fundamental issues with this application flowing from the failure of the applicant to provide a detailed management plan for each proposed lot demonstrating how

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each prospective purchaser will be locked into a agreement to ensure continued operation of the agricultural activity on each proposed lot. The applicant however has alluded to the fact that a formal structure will be set up utilising the new provisions of the Owners Corporation Act. While it is appreciated that the proposal is only in a conceptual stage, there are far too many uncertainties as to the proposed outcome of this proposal. The above mentioned policy "Land use, development and subdivision in rural areas" requires Council to assess the appropriateness of requesting the applicant to enter into a Section 173 agreement requiring a capital investment to be put in place for an agricultural enterprise prior to a dwelling being approved. This is a mechanism whereby Council to a certain degree can ensure compliance to the proposed agricultural enterprise. In this case the proposed development plan is vague in that it does not set out clearly how much land of each lot will be brought under cultivation what crops will be cultivated, a detailed description of the Owners agreement and whether water rights can be protected in terms of a Section 173 agreement.

The main concern is that if the development for one or other reason does not proceed as planned or alternatively in the absence of an agreement that will ensure that each and every property owner in this development puts in place the infrastructure for intensive agricultural production, this development could contribute to rural development in the area and the fragmentation of rural land.

Of particular note is that a positive requirement to ensure all owners carry out intensive agricultural production does not appear to be enforceable. This could result in lifestyle residents who object to the effects of intensive agricultural production (or object to the off site effects of broadacre agricultural production). This would impact on the very basis/justification of the development proposed.

Does the proposal impose infrastructural, servicing and environmental impacts on the area?

The proposal does impose higher infrastructural requirements especially in relation to the access road (McSweens Road) to the subject site. The development of 9 additional dwellings and the proposed 6 accommodation units on the subject site will generate a minimum of 90 additional vehicle movements per day which represents a significant increase in traffic along McSweens Road. This will not only will increase wear and tear of the access road but the associated noise and dust pollution will impact detrimentally on an existing dwelling located just off the intersection of McSweens Road and the Indigo Valley Creek Road across the bridge over the indigo Creek. For this reason has Council's Asset Department required the applicant to seal McSweens Road for a distance of 150m from the bridge past the existing house.

Power is available on the subject site and water will also be sourced from bores and dams on the subject site.

The proposed development will impose a significant impact on community service infrastructure of the area and surrounding towns. The municipal strategic statement under Clause 21.03-3 recognise that towns performs distinct roles providing not only commercial services to their residence and surrounding areas but also importantly community focus through the presence of facilities such as public halls, sporting facilities etc. The towns of the Shire also provide an important nexus between the more sparsely rural areas and the large regional centre of Albury-Wodonga. The Municipal Strategic Statement at Clause 21.02 (Key Issues) amongst others articulated the need to support rural living opportunities

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through the Shire in appropriate locations in particular the Yackandandah valley, Beechworth and Barnawartha areas. The subject land is not located in any of the areas nominated for rural living development and to provide services would be a very costly exercise and not sustainable. 3)

Clause 22.03-2 Fire Hazard

The risk of wild fire to the property has been considered. In locating building envelopes for each of the proposed allotments, sites have been chosen to meet the requirements of the CFA. There are sufficient setbacks from stands of native vegetation (which contains the higher fuel loadings) to meet current CFA standards. Water supply on the property exceeds the CFA requirements. There will be a need to provide for some emergency water supply reserve at each dwelling site. The access road location to each building envelope has been chosen to meet the slope requirements for appliance access. This has been relatively easy to achieve as the combined property is within a valley with gradual slopes to the north.

It is noted that the application was referred to the CFA who has no objections to the proposed development subject to some conditions. It is likely that CFA requirements will undergo a substantial change once the final findings of the Teague Royal Commission are known. It is however not appropriate to delay consideration of the application on the basis of this unknown future report.

It is also noted that a full fire assessment hasn't been undertaken regarding the use of the site for the use of a winery, 6 Accommodation units, use of an olive processing (Rural Industry), and the use of produce sales (Retail and cellar door sales), as these could be dependent on whether the proposed re-alignment will proceed.

CONCLUSION

The proposed development and use has the theoretical potential to provide for intensive agricultural production. On balance however the proposal is considered to fail to satisfy the objectives and policies of the Indigo Planning scheme. In particular the proposal is likely to fail to achieve intensive agricultural production, result in creation of an inappropriately located pocket of rural living development and create potential conflict with agricultural activities.

RECOMMENDATION

It is recommended that planning permit application PP08-4376 for the re-subdivision of land into 9 lots and creation of common property, use of a winery, 6 accommodation units, use of an olive processing (Rural Industry), use of produce sales (Retail and cellar door sales) and the creation of 7 building envelopes on 109 Mc Sweens Road be refused for the following reasons:

- 1) The proposal is inconsistent with the State and Local Planning Policy Framework;
- 2) The proposal is inconsistent with the purposes of the Rural Zone (Clause 35.01), and in particular:
 - a) The development of the subject land is not compatible with the purpose of the Rural Zone and will contribute to an increase in the concentration of dwellings in this locality;
 - b) It cannot be demonstrated that the proposal is not solely for the purposes of providing for a future dwelling for rural living purposes only
- 3) The proposal if approved would set an undesirable precedent in the area leading to

ORDINARY COUNCIL MEETING MINUTES

- 4) an increase in concentration of dwellings in this locality and the fragmentation of rural land
- 5) The proposal is contrary to the provisions of Clause 65.01 of the Indigo Planning Scheme and in particular the orderly planning of the area.
- 6) Appendix B
- 7) Attachment1- Location plan
- 8) Attachment 2 - Proposed plan of re-subdivision
- 9) Attachment3 - Farm Management Plan
- 10) Attachment4 - CFA endorsed plan
- 11) Attachment 5 - Figure 1 Water supply identification CFA
- 12) Attachment 5 Figure 2 - Plumbing CFA requirement
- 13) Attachment 5 Figure 3 - Appropriated access for fire truck
- 14) Attachment 5 Figure 4 - Turning requirement Fire Truck
- 15) Attachment 5 Figure 5 - Appropriated passing bay
- 16)

**Moved Cr Larry Goldsworthy
Seconded Cr Barb Murdoch**

That planning permit application PP08-4376 for the re-subdivision of land into 9 lots and creation of common property, use of a winery, 6 accommodation units, use of an olive processing (Rural Industry), use of produce sales (Retail and cellar door sales) and the creation of 7 building envelopes on 109 Mc Sweens Road be refused for the following reasons:

- 1) **The proposal is inconsistent with the State and Local Planning Policy Framework;**
- 2) **The proposal is inconsistent with the purposes of the Rural Zone (Clause 35.01), and in particular:**
 - a) **The development of the subject land is not compatible with the purpose of the Rural Zone and will contribute to an increase in the concentration of dwellings in this locality;**
 - b) **It cannot be demonstrated that the proposal is not solely for the purposes of providing for a future dwelling for rural living purposes only**
- 3) **The proposal if approved would set an undesirable precedent in the area leading to an increase in concentration of dwellings in this locality and the fragmentation of rural land**
- 4) **The proposal is contrary to the provisions of Clause 65.01 of the Indigo Planning Scheme and in particular the orderly planning of the area.**
- 5)
- 6) **CARRIED**

DIVISION

**For: Crs, Graham, Pockley, Issell, Murdoch and Goldsworthy,
Against: Crs, Croucher and Gaffney**

CARRIED

10.3 PLANNING APPLICATION PP09-0014 BLUEPRINT PLANNING ON BEHALF OF BARNAWARTHA TYRE CENTRE, 51-53 HIGH STREET BARNAWARTHA

(File No.: PP09-0014 – Senior Town Planner)

For Decision

SUMMARY

Application No:	PP09-0014
Applicant:	Indigo Shire Council
Subject Land:	Crown Allotment 8 Section 3 Township of Barnawartha, 51-53 High Street Barnawartha
Proposal:	Retrospective approval for the part use of 51-53 High Street, Barnawartha for the purpose of tyre services and repairs

BACKGROUND

Date application lodged:	23 January 2009
Purpose:	The applicant seeks a retrospective approval for the part use of 51-55 High Street, Barnawartha for the purpose of tyre service and repair.
Current use of subject site:	The subject site is used for residential purposes and for the operation of a tyre and service repair centre.

Site description:

The subject site is located approximately 300meters to the east of the commercial centre of Barnawartha along High Street. The subject site is approximately 1.770 square meters in size, developed and contained a dwelling located towards the front of the site along the eastern boundary and a shed located in the north western corner of the site, where the tyre centre operated from. Along High Street the site slopes down from the eastern to the western boundary. The site also slopes down from the existing house towards high Street and has a good view towards the south and south west. The rear portion of the site from the house towards the back fence is relatively flat. A couple of European trees exist between the dwelling and the shed. Good access to the subject site is obtained via High Street.

The surround area depicts a typical small town residential character with single dwellings varied in style and age on quite large sites.

All available services are connected to the site.

PROPOSAL

The applicant seeks a retrospective approval for the part use of 51-53 High Street,

Barnawartha for the purposes of tyre service and repairs.

ZONING AND PLANNING CONTROLS

Zoning: Township Zone
 Overlay/s: The south western corner of the subject site is covered by a Land Subject to Inundation Overlay.
 Permit Trigger: Clause 32.05-1 of the Indigo Planning Scheme defined the use as a “service industry” which is included in the definition of “industry” which is listed as a section two use in the Township Zone.

Planning controls in the Indigo Planning Scheme relevant to the assessment of the application are included the State Planning Policy Framework, the Local Policy Planning Framework, the Municipal Strategic Statement and Local Planning Policies.

STATE PLANNING POLICY

The State 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:

Settlement:
 14.01 Planning for Urban Settlement

Environment:
 15.04 Air Quality
 15.05 Noise Abatement
 15.12 Energy efficiency

Economic Development:
 17.03 Industry

Infrastructure:
 18.02 Car parking and public transport access to development
 18.09 Water supply, sewerage and drainage

LOCAL PLANNING POLICY FRAMEWORK

The Local Planning Policy Framework (LPPF) provides relevant discussion in relation to land use and development in the Shire. 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:

Municipal Strategic Statement
 Settlement & Infrastructure
 Economy
 Environment
 21.01-3 Settlement and infrastructure
 21.03-1 Vision and strategic framework
 21.03-2 Corporate Plan

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21.04- 1-6 Barnawartha

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.

What matters must a responsible authority consider?

- (1) Before deciding on an application, the responsible authority must consider:
- (a) the relevant planning scheme; and
 - (b) the objectives of planning in Victoria; 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 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.
- (e)
- (f) (1A) Before deciding on an application, 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
 - (b) any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council; and
 - (c) any amendment to the planning scheme which has been adopted by a planning authority but not, as at the date on which the application is considered, approved by the Minister or a planning authority; and
 - (d) any agreement made pursuant to section 173 affecting the land the subject of the application; and
 - (e) any other relevant matter.
- (f)
- (g) (2) The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the [Subdivision Act 1988](#)) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer:
- (a) financial loss; or
 - (b) loss of amenity; or
 - (c) loss arising from change to the character of the neighbourhood; or
 - (d) any other material detriment as a consequence of the removal or variation of the restriction.
- (e)

These requirements have been addressed through the permit process as set out in this document.

REFERRAL AUTHORITIES

The application was not referred to any referral authority considering the fact that services are connected to the site and the proposed small scale of the operation.

A relatively small portion of the south western corner of the subject site just off High Street is covered by a Land Subject to Inundation Overlay. The existing shed is located to the rear of the property and is therefore not affected by this overlay. It was for this reason that the application was not referred to North East Catchment Authority.

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.

One submission were received in response. The objection is summarised as including:

- The proposed development will have a negative impact on the amenity of the surrounding area.
- The approval of a commercial enterprise on the subject site could set a precedent for further commercial development in the area.
-
- A focus meeting was planned but did not eventuate as the objector did not believe that it would achieve anything.
-
- Considering the merits of the application

The existing Barnawartha tyre centre is currently operated on a small scale and provides a service to the community of Barnawartha. The topography of the subject site is unique in that the site raises quite steeply from High Street towards the middle of the site from where it level out to form a relative flat area towards the back. As a result of the topography of the site and the relatively large trees located between the house and the shed, the shed is not the dominant structure on the site and becomes less visible from High Street.

Notwithstanding the above the area displays a typical residential character with predominantly single dwellings located on relatively large lots. The area has an “open feel” to it and its residence experience a high degree of amenity due the absence of noise and the spacious character of the area.

The two critical questions that needs to be answered in this case is whether the proposed use will negatively impact on the amenity of the area and whether the establishing of a commercial activity on the subject site confirms to the strategic intent of the development of Barnawartha.

The use is currently operated on a small portion of the site that does not negatively impact on the amenity of the neighbourhood and due to the unique features of the site it is out of the public eye. Although this might be the case now, the use will escalate once a permit for the use is approved. The applicant in his submission argued that the amenity of the neighbourhood can be protected by including relevant permit conditions that will protect the amenity of the area. The flaw in this argument is that in reality once a permit is issued and the applicant does not comply too the permit conditions it becomes a very hard and usually drawn out process to ensure compliance. The counter argument to this would be to direct future commercial development to an area set aside for this purpose and in doing so contribute to the orderly planning of the area. The Township Zone does allow for residential

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development and a range of commercial, industrial and other land uses in small towns and also encourage residential development that respects the neighbourhood character. In summary it can be argued that although the use currently does not have a major impact on the amenity and character of the neighbourhood if it escalates it could have a major impact on the character and amenity.

Noise was not specifically mentioned in the objector's submission as an issue, but a tyre repair service does have the potential to generate noise levels that would not be consistent with level of noise generated normally in a residential area and therefore would have a negative impact on the amenity of the area. In *McGill v Campaspe SC* [1999] VCAT 1636 (30 September 1999), Member Jennifer A. Moles commented as follows on the issue of amenity in a Township Zone:

I have considered the submissions and evidence and have formed the view that the permit should be refused. I recognise that the Township Zone adopted in this locality is one commonly applied in small country towns where a mix of land uses occur throughout the urban area. I acknowledge also that the zone specifically identifies non-residential uses as appropriate. However, it is also clear that consideration needs to be given to the nature of the particular part of the Township Zone. Further consideration needs to be given to the particular use and development proposed. Thus, the question to be determined is, whether the use is one which is compatible with other uses in the particular area. Where it is not, the policies of the scheme encouraging separation of incompatible uses come into play.

40. *In the case of the subject use, I am not persuaded that it could operate without adversely affecting the amenity of surrounding residential properties. Those properties form part of an established residential area: it is an uninterrupted residential area - one adjacent to schools and parkland, incorporating special accommodation for the elderly, and with access to commercial facilities. I believe the proposed use would principally erode the amenity of that area in terms of the noise disturbance to residential properties by trucks moving to and from the subject land, particularly in the early hours of the morning. The objectors' properties would be largely shielded from site noise, it is acknowledged, by the McGill's own house. However, there are other residential properties opposite to the south-west, and no shielding would occur for any property once trucks moved onto the roadway. It is my belief that it would be contrary to orderly planning to introduce such a use offering a serious erosion of the amenity of that established residential area. I also believe that the use would be visually inappropriate one. While views from parkland and residential properties to the east might in time be shielded by vegetation, views into the site at the wide entry gate would inevitably remain.*

41. *I also share Mr Tweedie's safety concerns about the undesirability of locating what is essentially a "transport depot" opposite a school given that there is a gateway to the school on Torney Street. Also, while it was suggested that the trucks would be returning to the depot after school closing times, it was nevertheless Mr McGill's own evidence under cross-*

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examination that the trucks sometimes return earlier. I think to establish potential road hazards by juxtaposing a use which involves the movement of trucks to and from a site and a school for young children would be contrary to orderly planning.

42. *Further, I am of the view that if approved, the use would establish a poor precedent for other uses which would further erode the amenity of the area.*

Clause 21.04-1-6 (Barnawartha) "Strategies" set out the strategies which Council should implement to ensure that future development of Barnawartha occurs in an orderly way and to further ensures that amenity and character of the township is not compromised due to unplanned decisions. These strategies amongst others direct that commercial development to areas around the existing commercial uses in the precinct of Havelock and high Street. Service industries are to be directed to the railway station area. The proposed development is not in either of the above mentioned precincts. If Council therefore approved the proposed use in its current location it would act contrary to its strategic intent for the long term development objectives of Barnawartha.

In considering this application on balance notwithstanding the fact that the current use of the subject site does not detrimentally impact on the neighbourhood character of the area it has the potential to do so and the location of the subject site which is removed from the proposed commercial or service industry precinct does not conform to the long term strategic intent for the development of Barnawartha.

The subject site forms part of an area that is earmarked for rezoning, in terms of Amendment C24.

In terms of this Amendment the subject site is earmarked for future Residential development which will prohibit the proposed use of the site for commercial purposes.

CONCLUSION

ORDINARY COUNCIL MEETING MINUTES

The proposal is considered inconsistent with the provision of the zone, overlay and other applicable clauses in the Indigo Planning Scheme. Therefore this application is not supported.

7.

RECOMMENDATION

That Council refuse Planning Application PP 09-0014 to use Crown Allotment 8 Section 3 Township of Barnawartha, 51-53 High Street Barnawartha, for the purposes of a tyre centre (service industry) for the following reasons:

1. The proposal is inconsistent with the State and Local Planning Policy Framework;
 2. The proposal is inconsistent with the Municipal Strategic Statement for Barnawartha (Clause 21.04-1-6);
 3. The proposal if approved would set an undesirable precedent in the area leading to uncoordinated development in the area, and;
 4. The proposal is contrary to the provisions of Clause 65.01 of the Indigo Planning Scheme and in particular the orderly planning of the area.
5. Appendix C
6. Locality plan and proposed subdivision plan
- 7.

**Moved Cr Ali Pockley
Seconded Cr Vic Issell**

That this matter be deferred until Council's July 2009 meeting and Council staff enquire as to the issue of a permit with appropriate conditions.

CARRIED

10.4 PLANNING APPLICATION PP09-0020 INDIGO SHIRE COUNCIL
(RUEBERGANG), 33A RAILWAY AVENUE YACKANDANDAH
(File No.: PP09-0020 – Senior Town Planner)

For Decision

SUMMARY

Application No: PP09-0020
Applicant: Indigo Shire Council

ORDINARY COUNCIL MEETING MINUTES

Subject Land: 33A Railway Avenue Yackandandah
 Proposal: To subdivide Council's Depot into 6 lots (5 industrial lots and 1 residential lot).

BACKGROUND

Date application lodged: 12 February 2009

Purpose:

The applicant (Council) seeks approval to subdivide the Yackandandah Depot site. The application is to subdivide this site into 4 industrial lots, 1 residential lot and the remainder containing the depot. The proposed industrial lots varied in size from 1337 square metres to 3040 square metres with an average size of 1784 square metres. The proposed residential site is approximately 1167 square metres.

Current use of subject site:

The subject site is currently used as Council's depot and the YCDCo service station.

Site description:

The subject site is located approximately 700 meters north west of the centre of the Township of Yackandandah along the Yackandandah Wodonga Road. The subject site is approximately 6.9 hectares in size and contains the Council Depot with various buildings located approximately in the middle of the site. From the entrance of the subject site it is relatively flat towards the back (west) boundary of the site. In order to achieve this relative flat surface a substantial site cut was undertaken towards the northern boundary resulting in a quite high embankment towards the northern boundary. Towards the southern boundary the site drops down quite steeply. Vegetation is scattered along the boundaries of the subject site with denser vegetation along the northern boundary and it appears more scattered along the southern boundary. Good access to the subject site is obtained via Railway Avenue passed the YCDCo service station located on proposed Lot 1.

The character of the area towards the south of the subject site can be described as a residential character, depicting dwellings on relatively large residential lots. This area is appropriately zoned in the Indigo Planning Scheme as Township Zone. The area towards the north of the subject site contains generally larger lots, which depicts a low density residential character and is zoned Low Density Residential Zone.

All services are available to the site.

PROPOSAL

The applicant seeks approval to subdivide the subject site in 5 industrial lots and 1 residential lot as shown on the submitted plans.

- Lot 1 (Yackandandah service station) 2762 m²
- Lot 2 (industrial) 1337m²
- Lot 3 (industrial) 3040m²
- Lot 4 (industrial) 2121m²
- Lot 5 (residential) 1167m²
- Lot 6 (Depot Site) approximately 2.8ha

ZONING AND PLANNING CONTROLS

Zoning: Mixed Use Zone
 Overlay/s: There are no overlays over the subject site.
 Permit Trigger: A permit is triggered in this case under the provisions of the Mixed Use

Zone (Clause 32.04-3) for the subdivision of the subject site.

Planning controls in the Indigo Planning Scheme relevant to the assessment of the application are included in State Planning Policy Framework, Local planning Policy Framework and Particular Provisions.

STATE PLANNING POLICY FRAMEWORK

The State 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:

Settlement

14.01 Planning for Urban Settlement

Environment

- 15.04 Air Quality
- 15.05 Noise Abatement
- 15.09 Conservation of native flora and fauna.
- 15.12 Energy efficiency

Economic Development

17.03 Industry

Infrastructure

- 18.02 Car parking and public transport access to development
- 18.09 Water supply, sewerage and drainage

Particular Uses and Development

- 19.01 Subdivision
- 19.03 Design and build form

LOCAL PLANNING POLICY FRAMEWORK

The Local Planning Policy Framework (LPPF) provides relevant discussion in relation to land use and development in the Shire. 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:

Municipal Strategic Statement

- Settlement & Infrastructure
- Economy
- Environment
- 21.01-3 Settlement and infrastructure
- 21.03-1 Vision and strategic framework

21.03-2 Corporate Plan
21.04-1-4 Yackandandah

Local Planning Policies
22.01-3 Residential Subdivision and development
22.01-6 Yackandandah Depot

PARTICULAR PROVISIONS
Clause 56 Residential subdivision

REFERRAL AUTHORITIES
The application was referred to the following referral authorities in accordance with Section 55 of the Planning and Environment Act 1987:
NERWA (North East Water);
SP Ausnet; and
Telstra

None of the referral authorities had any objection to the issuing of a planning permit subject to inclusion of conditions.

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. Four [4] submissions were received in response. All submissions objected to the proposal. The objections are summarised as including:

Power poles are not shown on the subdivision plans and servicing details are not included indicating how power is to be provided to Lot 5.

Flooding occurs on the neighbouring properties due to inadequate drainage of Lot 5 during heavy rainstorms and the flooding also contributes to the erosion of the eastern boundary of lot 4.

Concern expressed and a request made that Council should impose height restrictions for proposed Lot 5 so as to prevent a building on the subject site that would restrict the view of neighbouring properties.
Instability of the bank towards the northern boundary of both Lots 3 and 4 should development be allowed on the bank.

Maintenance of the site
Amenity issues:
Noise;
Dust;
Increased traffic;
Light spills;
Obstruction of views;
Impact on privacy; and
The type of industrial development that may be allowed.
Need for this site – specifically why does Council not develop an Industrial Estate in Steel Road.

ORDINARY COUNCIL MEETING MINUTES

A focus meeting was held on the 30 April 2009. At this meeting all these issues were raised and discussed. Responses to the issues raised follow:

Power poles

Power poles are not shown on the subdivision plans and servicing details are not included indicating how power is to be provided to Lot 5. This type of detail (where services are to be located) is normally worked out in the final design process and it is proposed that this be subject to a condition requiring the design to be to the satisfaction of the Responsible Authority.

Flooding

The concern is that flooding occurs on the neighbouring properties due to inadequate drainage of Lot 5 during heavy rainstorms and the flooding also contributes to the erosion of the eastern boundary of lot 4. This is not disputed. It is proposed to be addressed by way of inclusion of comprehensive conditions in the planning permit to address the stormwater issues on the site.

Height restrictions for Lot 5

It was suggested that Council should impose height restrictions for proposed Lot 5 so as to prevent a building on the subject site that would restrict the view of neighbouring properties.

Instability of bank on northern boundary

Concerns were raised relating to the stability of the bank towards the northern boundary of both Lots 3 and 4 should development be allowed on the bank. – No works are to be undertaken on the bank. If a prospective purchaser wishes to develop any of these sites in future a planning permit will be triggered and if any development would impact the bank, the possible consequences of this can be addressed through the permit process to ensure stability of the bank.

Site maintenance

Concerns were raised relating the maintenance of the site. – This is an issue that cannot be addressed in the planning context. It is a matter for Council's Assets Department, who have been made aware of the concern.

Amenity issues

The amenity issues cover a range of factors. In general terms the issue appears to be around concern that heavy/noxious industries could be developed on the subject site without further reference to Council. This is not the case. The Mixed Use Zone allows for an application to be submitted to the Responsible Authority for the use and development of an industry. In other words an industrial use is a Section 2 use under the provisions of the Mixed Use Zone. Firstly this would require an applicant to apply for a planning permit for the development or use of an industry. Secondly, conditions apply to the use or development of an Industry under Section 2, specifically the industry must not be a purpose listed in the table to Clause 52.10, which nominates all uses with adverse amenity potential. It can therefore be argued that the type of uses which could be allowed are industrial/commercial/light industrial operations that are appropriate close to the commercial centre of town.

Obstruction of views is specifically addressed here as this is a matter which is both part of the general amenity argument and a separate matter also.

ORDINARY COUNCIL MEETING MINUTES

Lot 5 is proposed for residential use. It has frontage to Station Street. The maximum height of any residential building will be controlled by the provisions of Clause 54 and 55 in The Indigo Planning Scheme, which are universal for all lots in the Mixed Use Zone. Although there are no legal rights to a view VCAT in a number of cases has stated that consideration in assessing an application should be given to the importance of the view to be lost within the overall panorama available; and whether those objecting have taken all appropriate steps to optimise development of their own properties. In this case some views to the south will be lost dependant on the height of any future building. In this case the subject site is lower than the objectors site to the north and it is therefore consider that a two story dwelling on the subject site will not detrimentally impacted on the view.

Need

The question was raised as to why does Council not develop an Industrial Estate in Steel Road. In fact Council is developing additional industrial sites in Steel Road. As pointed out above the development of the Council Depot site is to cater for a different market (commercial /light industrial type uses) where the Steel Road sites will cater for heavier industries.

RESPONSE TO CLAUSE 56 (RES-CODE)

The proposal has been assessed in detail against Clause 56 (Residential subdivision). Copies of the res-code assessments are contained on file and are not repeated here. The application does meet all objectives and standards set out under clause 56.

PLANNING MERITS OF THE APPLICATION

The proposed Railway Avenue Yackandandah industrial development will enable appropriate subdivision of the existing service station and Council Depot, provide three new industrial allotments and 1 new residential allotment.

The land to be developed is appropriately zoned Mixed Use and will require only minimal landscaping to provide appropriate buffers to all sides. The completed development will provide serviced industrial allotments with sealed access and a streetscape in character with industrial/commercial development fronting Railway Avenue. In addition a new residential allotment fronting Station Street will be developed as part of this subdivision.

The subject site is conveniently located approximately 700 meters from the commercial centre of the township of Yackandandah and good accesses are obtained to the site via Railway Avenue. The subject site is relatively flat which is ideal for the proposed development. Although the northern sections of both Lots 3 and 4 are quite steep, both lots are relatively large which allows the development of a substantial building on each site without having to cut into the bank.

The Yackandandah Depot site is important in the context of Yackandandah as a high exposure area with historical light industrial uses which make it attractive for similar uses. These uses do not necessary fall into the "industrial" definition, they would probably fall more easily into a retail/commercial category.

The historical uses of this land for a railway station until the late fifties and thereafter for Council's Depot pose potential contamination problems for sensitive uses, and as such, future development should be restricted to a certain range of uses. It appears that some

areas of the subject site may be contaminated and could not be utilised for the purpose of residential development or any other sensitive use. A condition is included in the permit conditions to ensure that prior to the development of any sensitive use on any of the proposed sites an environmental audit is to be undertaken to ensure compliance with regulations.

Proposed Lot 5 is earmarked for future residential development. It can be argued in this case that proposed Lot 5 was not used for any purpose in the past due to its location, which is physically separated from the main activity area on the subject site and would be unlikely to be contaminated. It is for this reason and the convenient location of proposed Lot 5 along Station Street which makes it a candidate for residential development.

Both the Municipal Strategic Statement under Clause 21.04-1-4 (Yackandandah) and the Local Planning Policy under Clause 22.01-6 (Yackandandah Depot) encourage the development of the subject site for large-scale commercial development/light industrial operations that would not be able to find a suitable location in the existing commercial centre of town (i.e. High Street).

ASSESSMENT AGAINST CLAUSE 65 CONDITIONS.

The suitability of the land for subdivision

Comments:

The subject site is located in a predominantly residential area. The subject site is Zoned Mixed Use Zone which does allow for commercial/light industrial type uses. The immediate area of the subject site adjacent to the Depot buildings on the site and the Yackandandah service station display a commercial character and the proposed subdivision will therefore contribute to the character of the area and cater for a specific market. Due to the configuration of the subject site the proposed residential lot (Lot 5) is located between two residential sites both containing dwellings. As a result of the topography of the site the proposed residential lot can be seen as an infill development and would contribute to the residential character along Station Street. The subject site is therefore suitable for development.

The existing use of the site and the possible future development of the land and nearby land

Comments:

As pointed out above the future development of the subject site will contribute to the overall development of the area.

The availability of subdivided land in the locality, and the need for the creation of further lots

Comments:

The area to the north of the subject site is Zoned Low Density Residential and cannot be further subdivided. The area to the east and south of the subject site is Zoned Township Zone and some sites can be further subdivided. Infill development can happen on these sites. The fact that the subject site is not use for any purpose other than proposed Lot 2 for the Yackandandah service station and further that the site is the ideally located makes

ORDINARY COUNCIL MEETING MINUTES

contribute to its development potential. Most of the site in Yackandandah is developed and there are not many sites available for development in this locality.

The effect of development on the use and development of other land which has a common means of drainage

Comments:

The development of the subject site might cause some flooding on neighbouring properties. This has been addressed through permit conditions.

The subdivision pattern having regard to the physical characteristics of the land including existing vegetation

Comments:

The layout of the proposed subdivision is appropriate having regard to the topography of the site and physical characteristics. Some vegetation may be removed as a result of this subdivision.

The density of the proposed development

Comments:

The surrounding area depicted large residential sites which varied in size and which give an "open feel " to the area. The proposed sites are also quite large and will conform to the lots size of surrounding sites.

The area and dimensions of each lot in the subdivision

Comments:

As pointed out above the proposed lots conform to this principal.

The layout of road having regard to their function and relationship to existing roads

Comments:

The proposed road will follow the existing alignment of the road into the depot site and the proposed sites are design to obtain good access via the proposed road. The proposed road is designed so as to safely intersect with Railway Avenue which provide to provide sufficient sight distances.

The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots

Comments:

The proposed residential lot is located along Station Street and access will be taken off Station Street. The proposed lot will not impede on the movement of vehicles or pedestrians. The proposed industrial lots are located along an internal road which intersects with Railway Avenue, which provide easy and safe access to proposed industrial lots. A turning circle (hammerhead) will be provided at the end of the internal road to facilitate vehicle movement.

The provision and location of reserves for public open space and other community facilities

Comments:

The applicant has been requested to make an open space contribution.

The staging of the subdivision

Comments:

Not applicable

The design and sitting of buildings having regard to safety and risk of spread of fire

Comments:

No buildings are proposed this application only relates to subdivision. The proposed lots however are quite large and the location of buildings therefore can be located in such a way that will enhance safety and reduce the risk of spread of fire.

The provision of off street parking

Comments:

Off street parking will be required in terms of Clause 52.06

The provision and location of common property

Comments:

No common property has been provided.

The function of anybody corporate

Comments:

No body corporate will be setup

The availability and the provisions of utility services, including water, sewerage, drainage electricity and gas

Comments:

All services are available and will be connected to the proposed sites.

If the land is not sewed and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewerage and sullage within the boundaries of each lot.

Comments:

The subject land is sewered.

Whether in relation to subdivision plans, native vegetation can be protected through subdivision and sitting of open spaces

Comments:

The design of the lots is such that it facilitates the protection of vegetation on the subject

ORDINARY COUNCIL MEETING MINUTES

site. No physical open space will be provided on the subject site.

Overall, the development is a good response to the site's opportunities (relatively large sized lots) and constraints (a neighbourhood with a low density character including detached dwellings and informal landscaping).

CONCLUSION

The proposal is considered generally consistent with the matters set out in Section 60 of the Act.

The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

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, and .

The effect on the amenity of the area.

RECOMMENDATION

That Council approve planning Application PP09-0020 and issue a Notice of Decision to Grant a Planning Permit for the subdivision of Lot 3 on Plan of Subdivision 316384S subject to the following conditions and in accordance with the endorsed plans to be submitted pursuant to Condition 1 hereunder.

APPROVED SUBDIVISION

Before a plan of subdivision can be certified, plans prepared by a licensed surveyor must be submitted to and approved by the Responsible Authority. The plans must be generally in accordance with the plans submitted with the application. The plans must be drawn to scale showing all bearings, distances, levels, street names, lot numbers, lot sizes, and easements.

LAYOUT NOT ALTERED

The layout as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

CONTAMINATION

Prior to statement of compliance under the Subdivision Act 1988) the applicant must provide:

- (i) A Certificate of Environmental Audit in accordance with Section 53Y of the Environment Protection Act 1970; or
- (ii) A Statement of Environmental Audit under Section 53Z of the Environment Protection Act 1970.

The applicant must enter into a Section 173 agreement with Council that prior to development of any sensitive use (residential use, childcare centre, pre-school centre or primary school) on the site, the applicant will comply with the conditions of the Statement of Environmental Audit. Written confirmation of compliance must be provided by a suitably qualified environmental professional or tother suitable person acceptable to the responsible authority.

SEDIMENT POLLUTION CONTROL

ORDINARY COUNCIL MEETING MINUTES

Any clearing or construction associated with development must be conducted in accordance with the plans approved pursuant to Conditions 9 and 14 and the sediment control principles as outlined in "Construction Techniques for Sediment Pollution Control" (Environment Protection Authority 1991). Specifically, the applicant must ensure:

- Grading, excavation and construction must not proceed during periods of heavy rainfall;
- Sediment traps must be designed, installed and maintained to maximise the volume of sediment trapped from the site during development and construction, and;
- Disturbed areas must be stabilised and revegetated following the completion of works.

PAYMENT IN LIEU OF OPEN SPACE

The applicant/owner must pay to the Council a sum equivalent to five per cent (5%) of the site value of proposed lots 1, 2, 3, 4 and 5 in the subdivision towards public open space. This payment must be made before a statement of compliance is issued and may be varied under Section 19 of the Subdivision Act 1988. The site value shall be the site value at the date the plan is submitted for certification.

NORTH EAST REGION WATER AUTHORITY REQUIREMENTS

Prior to the issue of the Statement of Compliance the owner/applicant must:

- (i) make a payment to the North East Region Water Authority of a contribution of money (Headworks) towards the water supply system supplying the area as determined by North East Water's policy for development charges;
- (ii) enter into an agreement with North East Water to construct all necessary works to provide water supply to serve all lots of the proposed subdivision, at the applicant's cost, and in accordance with the Authority's specifications and requirements.
- (iii) make a payment to North East Region Water Authority of a contribution of money (Headworks) towards the Authority's sewers and disposal systems serving the area as determined by North East Water's policy for development charges.
- (iv) enter into an agreement with North East Water to construct all necessary works to provide sewerage to serve all lots of the proposed subdivision, at the applicant's cost, and in accordance with the Authority's specifications and requirements.
- (v) provide easements in favour of the North East Region Water Authority over all existing and proposed sewer mains located within the proposed subdivision.
- (vi) ensure that any private water services do not traverse property boundaries and are supplied independently from an approved point of supply.

Prior to the issue of a Statement of Compliance under the Subdivision Act 1988 consent must be obtained from North East Region Water Authority.

SP AUSNET REQUIREMENTS

Prior to the issue of the Statement of Compliance the applicant/owner must enter into an agreement with SPI Electricity Pty Ltd for the extension, upgrading or rearrangement of the electricity supply to lots on the plan of subdivision as required by SPI Electricity Pty Ltd. A payment to cover the cost of such work will be required and easements internal and external to the subdivision and provision of sites for substations may also be required.

Conditions required by Council's Assets Department

ROAD IMPROVEMENTS – INTERNAL ROAD

- (i) The applicant/owner must undertake road improvements to Internal Road from Railway Avenue to the point of access to Lot 6 to a modified U3 standard in

accordance with the Indigo Shire Council Road Hierarchy.

- (ii) Prior to Certification of the Plan of Subdivision all design plans relating to the proposed works must be submitted to and approved by the responsible authority. Prior to the issuing of the Statement of Compliance all works must be completed in accordance with approved plans.
- (iii) The applicant/owner must ensure that the following minimum standards are met:
 - a) 6.8m minimum total width of trafficable lanes.
 - b) 250mm minimum depth of approved crushed rock, 14/7 prime & seal, or as otherwise directed, with a 200mm overlap into the existing pavement;
 - c) Barrier kerb and channel to the northern and eastern side
 - d) "No Standing" signage must be provided in all locations where on-street parallel parking would result in trafficable lanes of less than 6.8m minimum width. Where road width is insufficient, on-street parking spaces may be provided by the construction of a parking lane 2.3m in width or by providing indented parking bays of 2.3m width.
 - e) A court bowl or hammer head at the western extent of the road, prior to the point of access to Lot 6, suitable for a three point turn by a single unit truck.
 - f) Prior to the Statement of Compliance any gates or fencing on the proposed road reserve must be removed and the road reserve left in a tidy manner.

POINT OF ACCESS

The point of access to Lots 1 to 6 must be a point that gives practical access to the satisfaction of the Responsible Authority.

VEHICLE CROSSINGS

Prior to the commencement of any on-site works the owner at the time must construct the vehicle crossing(s) in accordance with Council standards. A crossing permit must be obtained from the Responsible Authority and levels fixed.

PATHWAYS

Prior to Certification of the Plan of Subdivision the applicant must undertake an assessment of suitable footpath alignments and grade to service the development from Railway Avenue to the existing vehicle crossing accessing Lot 1. The assessment must be to satisfaction of the responsible authority. Should a suitable footpath alignment be determined, and at the direction of the responsible authority, the applicant must construct the footpath to the following minimum standard, prior to the issuing of the Statement of Compliance.

- 1.5m width;
- 75mm depth concrete;
- 50mm bedding sand

ENVIRONMENTAL MANAGEMENT

Prior to the commencement of any on-site works plans for the management of sediment pollution must be prepared and submitted to the responsible authority for approval. Plans and subsequent works must be prepared and undertaken in accordance with EPA Publication 275 "Construction Techniques for Sediment Pollution Control".

STORMWATER DRAINAGE

- (i) The applicant/owner must adopt the "major/minor" approach to the design of

drainage systems associated with this development. Prior to Certification of the Plan of Subdivision all design plans relating to proposed and existing stormwater must be submitted to and approved by the responsible authority. Designs must include a drainage catchment plan showing the total area and sub-areas that are the basis of the design. Prior to the issuing of the Statement of Compliance all works must be completed in accordance with approved plans.

- (ii) The applicant must provide a “minor” drainage system designed to a 1 in 10 Year ARI. The design must take into account any flows from upstream properties.
- (iii) The applicant must model the 1 in 100 year ARI storm based upon a whole of catchment assessment and ensure that the design takes into consideration the need to convey this storm to the approved outfall with no property damage.
- (iv) The applicant must ensure the “minor” drainage system is contained within easements accessible by Council. All major flow paths are to be contained within road reserves or drainage reserves.
- (v) Stormwater drainage design must take into account the principles of Water Sensitive Urban Design and the requirements of the Indigo Shire Council Stormwater Management Plan and the CSIRO publication Urban Stormwater - Best Practice Environmental Guidelines. All works to be constructed in accordance with approved plans. An approved litter trap must be provided on the drainage line servicing Lots 1, 2, 3 and 4 prior to stormwater discharging to Isaacs Park or as otherwise approved. The litter trap must be provided within the road reserve in a position suitable for maintenance requirements and to the satisfaction of the responsible authority.
- (vi) The development must be designed to ensure that flows downstream of the development are restricted to pre-development levels. This may be accomplished by a suite of treatments including retention of stormwater onsite by water tank and subsequent stormwater re-use, by the provision of detention basins, ponds or underground structures, and by the provision of permeable paving. Calculations demonstrating how this condition is met must be submitted to and approved by the responsible authority prior to Certification of the Plan of Subdivision.
- (vii) The applicant must ensure that all existing stormwater drainage infrastructure including property connection drains complies with current Council standards. Plans of existing drains and all necessary upgrades must be submitted to the responsible authority for approval

SIGNAGE AND INTERSECTION LINE-MARKING

Prior to the issuing of the statement of compliance the applicant must provide road signage at the entrance of Lot 6 to prevent access by unauthorised vehicles.

STREET LIGHTING

Prior to the issuing of the statement of compliance the applicant must install public street lighting to relevant Australian Standard AS1158, 2007. Light poles must be of a type that is included in the standard maintenance schedule of the relevant power distribution authority, and is subject to the approval of the responsible authority. Lanterns must be Sylvania Suburban Eco Compact Fluoro or an approved equivalent.

FUTURE WORKS

- (i) The applicant must ensure that drainage works or the provision of underground services on the northern side of the internal road adjacent to Lots 3 and 4 make provision for future road widening, and in particular as required for on-street parking.

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- (ii) Underground services should be offset outside the line of future on-street parking lanes, or otherwise constructed to a standard as required by the responsible authority for under road applications.

FEES

Prior to issuing of the statement of compliance the applicant must pay, to Council, Plan Checking Fees of 0.75% and Engineering Inspection Fees of 2.5% of the value of roads pathways and drainage works. The value of works must be the final actual cost of works (GST Inclusive).

PLANS SUBMITTED

Prior to the Statement of Compliance being issued, as built documents of roads pathways and drainage works must be submitted to Council in the following format:-

- a) Plans:- Electronic:- .dwg format – 1:1 scale
- b) Hard Copy:- A1 Paper
- c) Schedule & Specification: -Electronic: - MS Word
Hard Copy:- A4 Paper

WORKS WITHIN THE ROAD RESERVE

Prior to the commencement of any works required as a condition of this approval within the road reserve, an application for consent for “Works within Road Reserves” (formerly known as a road opening permit) is to be obtained by the works manager, in accordance with the Road Management Act 2004.

STREET TREES

- (i) Prior to the issuing of the statement of compliance the applicant must provide for a street tree along Station Street for Lot 5. This requirement can be met by planting a tree greater than 2 metres in height, with a species as listed in Council’s Street Tree Plan and in accordance with Council’s Street Tree Planting Policy.
- (ii) The applicant must maintain this tree for a period of 12 months from the date of issue of the Statement of Compliance. If the tree dies or are deemed by Council to need replacement due to lack of maintenance and watering during dry climatic conditions must be replaced at the developers cost and maintained for an additional 12 month period to the satisfaction of the Responsible Authority.
- (iii) Subject to the approval of the responsible authority the applicant may make a payment in lieu in accordance with Councils policy at the time. The current rate for payment in Lieu is \$130 (GST inclusive) per tree.

EXPIRY DATE

This permit will expire if the Statement of Compliance pursuant to the provisions of the Subdivision Act 1988 is not issued within two (2) years of the date of this permit. The Responsible Authority may extend the periods referred to if a request is made in writing before the period expires or within three months of the date of expiration.

Appendix D
Locality plan
Proposed subdivision plan

Cr Ali Pockley advised of an interest in item 10.4 and that her mother in law lived adjacent to the property in question.

ORDINARY COUNCIL MEETING MINUTES

Cr Barb Murdoch disclosed a conflict of interest in item 10.4 also, given that one of the referral authorities was the North East Regional Water Board at which she is a Director.

Both Cr Pockley and Murdoch left the meeting prior to commencement of the discussion on this matter at 3.38pm.

The Manager Sustainable Development advised that concerns had been expressed about a contamination issues at the site which had just been brought to Council attention. Accordingly the item was withdrawn and will be reported to a future meeting.

Cr Pockley and Murdoch returned to the meeting at 3.39pm.

CARRIED

10.5 INDIGO HERITAGE ADVISORY COMMITTEE MINUTES (E511, SPM)

For Information

SUMMARY

This report provides minutes from Indigo Heritage Advisory Committee meetings held in April and May this year and provides a summary of the main issues arising at meetings, including the successful 2009 Indigo Heritage Awards.

BACKGROUND

A copy of minutes from the meetings held in April and May are attached in Appendix E.

Matters of note from the meetings are:

2009 INDIGO HERITAGE AWARDS

This year's Awards were presented at The Old Priory, Beechworth on 22 May. The event was attended by approximately 70 people. Again it was evident that recognition of conservation, restoration and other work on heritage places is both deserved and appreciated by members of our community who put in considerable effort into maintaining and creating the built environment that we value and benefit from.

The winners of the Indigo Shire Heritage Awards for 2009 are:

ORDINARY COUNCIL MEETING MINUTES

Works in historic landscapes: Traditional Haystacks, 594 Cookinburra Road, Barnawartha –John and Carol White (owners and crafters).

Best restoration of an historic public building: The Yackandandah Museum - Yackandandah & District Historical Society and Greg Owen, Period Restoration (builder).

Best restoration of an historic house: 39 Loch Street, Beechworth - John and Chris McColl (owners and crafters).

Best addition to an historic house/public building: 46 Main Street, Chiltern - Sharon and Alison Jones (owners), David James, James Drafting Service (designer), and Alby and Nick Maras, Maras Brothers Building Contractors (builders).

Best restoration of a commercial or other non domestic building: 34-40 Camp Street, Beechworth - shop restoration - Beechworth Properties (owners), Leonardo Belci (building designer), and Daryl Leary, D& A Building Contractors Pty Ltd (builder).

Highly commended in this category were: The Christ Church Anglican church hall, Church Street, Beechworth - Kurt Wagner, Versatile Woodworks (builder/woodworker), John Rouch (builder), and Max Suter, representing the Church, and Rutherglen Country Cottages B&B, 236 Main Street, Rutherglen – Alister and Heather Chisholm (owners).

Best signage in an historic area: LJ Hooker sign, 75 Ford Street, Beechworth - Brian Archer, LJ Hooker Beechworth (owners), and Matt Easy, Insite Organisation (designer).

Voluntary works associated with the maintenance and/or restoration of an historic place: The Yackandandah Museum, Members of the Yackandandah and District Historical Society (volunteers).

Best garden/landscaping of an heritage building or area: “Lakeview”, Chiltern - National Trust (owner), Anne Vyner and Dawn Disher (curators).

Most appropriate in-fill development amongst heritage buildings: Rutherglen telecommunications infrastructure, Douglas Road, Rutherglen - Allan Bringolf, Design and Integration Manager, Telstra Corporation 3 West (owners), Mitchell Gooden and Steve

ORDINARY COUNCIL MEETING MINUTES

Bainbridge, ICS Industries Pty Ltd (design and construction), and Martin Gamble, Gamcorp Pty Ltd (structural engineers).

Highly commended in this category were: 7 accommodation units at the rear of 34-40 Camp Street, Beechworth - Beechworth Properties (owners), Leonardo Belci (building designer), and Daryl Leary, D& A Building Contractors Pty Ltd (builder).

Best moveable heritage – collections, vehicles, furniture: Standish Lodge furniture collection Chiltern Athenaeum, Chiltern - Chiltern Athenaeum Trust.

MELLISH STREET, BEECHWORTH - RECONSTRUCTION

The committee has had concern at the approach to design of the reconstruction works on Mellish Street. The works did not TAKE into account the heritage values of the brick drains. It has been noted that the bricks removed have been stored at Council's Yackandandah Depot and will now be used in future projects.

- Old Beechworth Gaol
- The committee is concerned at the continuing deterioration of the fabric of the Gaol walls and buildings. Council is requested to contact Heritage Victoria to examine the buildings and walls and ascertain their state and advice Council of their findings.
- Integrated Planning Group
- The committee is pleased to see reactivation of a coordinated officer group to address matters that concern more than one operational area of Council.
- Managing Collections
- The management of collections is an integral part of maintaining the high quality heritage assets that Indigo Shire is renowned for. The Committee desire to provide a briefing to all Councillors on collections within the municipality. The suggested location for this briefing is the site of one of our most significant collections – the Beechworth Burke Museum.
- Burke Museum
- The Draft review of the Burke Museum has been received by Council and is currently under review. The Committee has requested an opportunity to provide comment or input into the Draft review. Discussion with the General Manager Corporate Services and the Economic Development Officer is requested when reviewing the brief.
-

DISCUSSION

ORDINARY COUNCIL MEETING MINUTES

It is suggested that Council approach Heritage Victoria to advise of continuing concerns at deterioration of the Old Beechworth Gaol walls and buildings fabric.

The date for a briefing on collections will be confirmed with both the Councillors and the Committee.

The draft report on the Burke Museum will be provided to the Committee once available for release.

Appendix E:

23rd April 2009 Indigo Heritage Advisory Committee Minutes

21st May 2009 Indigo Heritage Advisory Committee Minutes

**Moved Cr Ali Pockley
Seconded Cr Larry Goldsworthy**

That thanks be extended to Council Staff and Mr Bill Wilson on the organisation of the Indigo Heritage Shire Awards for 2009 which was a very successful event.

**CARRIED
Moved Cr Barb Murdoch
Seconded Cr Peter Croucher**

That Officers ensure a detailed photographic record of the foot bridge in Oxford Street, Chiltern be carried out before the removal of the bridge with the aim of having an historical record of the Bridge.

CARRIED

Cr Issell enquired as to the status of the Beechworth Gaol and noted that Heritage Victoria guidelines stated that the Developer must carry out under the Heritage order within two (2) years. He believed that two (2) years was up and also concerned about the razor wire on the Gaol wall and requested that these matters be brought to the attention of Heritage Victoria.

10.6 LOCAL LAW 2 REVIEW – FOCUS ON BIRD SCARE DEVICES AND USE

(File No.: [M202.5-02](#) - Mark Florence - General Manager Sustainable Communities)

For Information

INTRODUCTION

The Environmental Local Law (Local law 2) was adopted by Council on 14 December 1999. The Local Law has not been revised since its introduction.

Under the Local Government Act there is a requirement for a review of local laws within 10 years of its adoption. If no review is undertaken the local law will lapse 10 years after its introduction. It is thus necessary to undertake a review of Local Law 2.

The Environmental Local Law is proposed to be changed by inclusion of provisions relating to bird scaring devices, changes to definitions throughout the document to be more consistent with words that are defined in the Indigo Planning Scheme, and some amendments to waste requirements.

The changes to definitions do not change the intent of the document.

The main attention of the process relating to the review of Local Law 2 has been on the management and use of bird scare devices. Any changes to other parts of Local Law 2 are quite minor and are identified in the full draft Local Law 2 document attached to this report which details and highlights changes and amendments.

The majority of the report is dedicated to the management and use of Bird Scaring devices.

BACKGROUND

Bird Scaring Devices:

Particular issues have arisen with the operation of certain bird scaring devices over the past two years. These issues have been centred on the Stanley area. The review of the Local law provided the opportunity to consider appropriate controls on the use of these devices.

Electronic bird scaring devices are a relatively new means to manage bird activity in fruit growing areas, and since 2006 Council has received noise complaints relating to the use of an electronic bird scaring device on a cherry farm in Stanley. Councils Environmental Local Law and legislation do not specifically address the use of this type of equipment. The Environment Protection Authority has guidelines for the use of scare guns specifically and rural noise in general. The EPA has been active over the last year in monitoring the local situation and has been working with the farmer to manage noise levels from the property.

However as Council's Local Law does not presently address electronic bird scaring devices, it is proposed to address their use with some amendments to the Local Law. At the same time it was felt opportune to review the controls relating to the use of bird scare devices overall.

Presently the Local Law as others throughout the state specifically address bird scare guns and the like and not electronic bird scaring devices. A state wide search failed to find any information to aid in the drafting of proposed changes and therefore information was sought from other states including South Australia and overseas, including Canada, where such devices are used and controls are in place. Proposed changes to the Local Law were then developed based on this research and specific local conditions, in an effort to address bird scare devices overall rather than just bird scare guns.

The changes to the provisions relating to bird scaring devices will seek to address issues relating to the use of such devices and attempts to provide a balance between the right to farm on one side and expectations of residents to be able to enjoy a quiet living environment on the other.

The Draft Local Law was placed on public exhibition for a period of two months and submissions were received until 12th December 2008. As part of the consultation process copies of the document were made available at each of Council's four service centres, on Council's website and sent out to known specific interested parties.

Due to the level of stakeholder interest it was decided to extend the submission period until after a stakeholder meeting was held on 17th February 2009. Due to the impact of bushfires this meeting was postponed for one week and the stakeholder meeting was subsequently held on 24th February 2009. Further submissions were then received up until Friday 6th March 2009.

Submissions received and opinions expressed focussed on key elements:

- Ability of farmers to responsibly manage practices to protect crops and business
- Need for controls to be reasonable and practical in application and based on established guidelines e.g. EPA
- Understanding of potential impacts on neighbouring properties
-
- The changes to the Draft clause dealing with Bird Scaring Devices reflects important criteria. This criteria seeks to ensure that the clause is:
 - Based on EPA guidelines for Scareguns and 1999 Local Law
 - Inclusive of Electronic Bird Scaring Devices
 - Reflective of Best Management Practice/Science/Efficacy
 - Not designed to address a specific problem issue, but the overall situation
 - Mindful of submissions, EPA, and stakeholder input
 - Practicable, Understandable, Reasonable, and Enforceable
 -

COMPARISON OF CHANGES

The following table shows a comparison of the Proposed Draft and Revised Changes following the submission process.

PROPOSED PROVISIONS (DRAFT)	FINAL PROPOSED CHANGES AFTER STAKEHOLDER CONSULTATION MEETING AND RECEIPT OF SUBMISSIONS
<p>(17.1) A person must not allow the use of an audible bird scaring device unless all of the following are satisfied:</p> <ul style="list-style-type: none"> (a) the use of the audible bird scaring device is minimised; including non audible and visual method first. (c) the audible bird scaring device is only used for the bona fide purpose of scaring birds away from crops during a recognised crop-growing period; (d) the person has prepared a bird management plan (refer to Appendix A for details required) which clearly identifies where and how the audible bird scaring device is to be operated and provided a copy of the bird management plan to an authorised officer or the Council upon request; (e) the audible bird scaring device is used in accordance with the bird management plan referred to in sub clause (c); (f) the audible bird scaring device is not used on land within a residential zone; (f) the audible bird scaring device is located as far away as possible from 	<p style="text-align: center;">Same</p> <ul style="list-style-type: none"> (a) wherever possible, the use of the audible bird scaring device is minimised, (b) the audible bird scaring device is only used for the bona fide purpose of scaring birds away from crops during what is a recognised "crop protection" period; <li style="text-align: center;">Clause Deleted <li style="text-align: center;">Clause Deleted (c) the audible bird scaring device is only used on land within a farming or rural living zone; (d) the audible bird scaring device is located as far away as possible from any dwelling on neighbouring properties; (e) whenever possible the shielding effects of natural features, buildings or the like are used to reduce the level of noise from the device at any

(e)

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<p>any dwelling on adjoining properties and whenever possible the shielding effects of natural features, buildings or the like are used to reduce the level of noise from the device at any dwelling (other than the owners home);</p> <p>(g) The audible bird scaring device is located so that it is not directing noise at or facing dwellings on adjoining properties;</p> <p>(h) the audible bird scaring device is not operated before sunrise or after sunset on any day</p>	<p>(f) dwelling on neighbouring properties;</p> <p>(g) the audible bird scaring device is located so that it is not directing noise at or facing any dwelling on neighbouring properties;</p> <p>(h) the audible bird scaring device is not operated before 7am * or after sunset on any day. * NEEDS COUNCILLOR DISCUSSION</p>	(h)
<p>(17.2) A gas gun shall not be used if the distance between the gas gun and any dwelling on an adjoining property is less than 300 metres</p>	<p>(17.3) A scaregun must not be used if the distance between the scaregun and any dwelling on neighbouring properties is less than 300 metres; (Note 1)</p>	(17.3)
<p>(17.3) An electronic bird scarer or other similar device shall not be used if the distance between the device (which includes speakers) and any dwelling on an adjoining property is less than 200m</p>	<p>(17.2) An electronic bird scarer or other similar device shall not be used if the distance between the device (which includes speakers) and any dwelling on neighbouring properties is less than 200 metres;</p>	
<p>(17.4) A gas gun shall not be used if the distance in a straight line between a gas gun and another gas gun in use (whether located on the same or another property) is 150 metres or less</p>	<p>(17.4) A scaregun must not be used if the distance in a straight line between a scaregun and another scaregun in use (whether located on the same or another property) is 150 metres or less;</p>	
<p>(17.5) No more than one gas gun is to be used for every four (4) hectares of area under crop with a maximum of four audible bird scaring devices in total;</p>	<p>(17.5) No more than one (1) scaregun is to be used for every four (4) hectares of area under crop;</p>	
<p>(17.6) In the case of a single shot gas gun, blasts must not be less than five (5) minutes apart;</p>	<p>(17.6) Blasts from a single shot scaregun, must not be less than five (5) minutes apart;</p>	(17.6)
<p>(17.7) A gas gun must not emit more than</p>	<p>(17.8) A scaregun must not emit more</p>	

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<p>70 blasts per day; and the total time of operation of a gas gun must not exceed 12 hours in any one day</p>	<p>(17.9) than seventy (70) blasts per day;</p> <p>(17.10) The total time of operation of a scaregun must not exceed twelve (12) hours in any one day. However, the time of operation may be divided into two separate periods, provided the interval between blasts is not less than six (6) minutes;</p>
<p>(17.8) In the case of a multiple shot gas gun (up to 3 blasts), the gas gun must complete its firing sequence within thirty (30) seconds and the firing sequences must not be less than five (5) minutes apart;</p>	<p>(17.7) Multiple shot scareguns (up to 3 blasts) must complete their firing sequence within thirty (30) seconds and the firing sequences must not be less than five (5) minutes apart;</p>
<p>(17.9) An electronic bird scarer must not have interval between activation of less than fifteen (15) seconds</p>	<p style="text-align: center;">Clause Deleted</p>
<p>(17.10) The maximum noise level of the electronic bird scarer when measured at the affected premises must not exceed:</p> <ul style="list-style-type: none"> (a) 45dB(A) during the day (7am-6pm) (b) 37dB(A) during evening (6pm-10pm) (c) 32dB(A) at night (10pm-7am) 	<p style="text-align: center;">Clause Deleted</p>
<p>(17.11) The maximum noise level from any shot from a gas gun when measured from a dwelling on an adjoining property must not exceed an average minimum level of 100dB LIN Peak (Loudest 20% of blasts) when the weather favours noise propagation</p>	<p>(17.10) The maximum noise level from any shot from a scaregun when measured at any dwelling on neighbouring properties, when the weather favours noise propagation (Note 2) must not exceed an average maximum level of 100dB LIN Peak of the loudest 20 per cent of blasts (Note 3).</p> <p style="text-align: center;">NOTES</p>

(1)

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<p>Clause Deleted</p>	<p>(1) Where the level of the blast from a scaregun can be adjusted then the distance between the scaregun and any dwelling on a neighbouring property may be less than 300 metres. In this case the adjusting mechanism must be permanently fixed such that the average maximum level of the blasts at the dwelling on the neighbouring property does not exceed 100 dB LIN Peak (Note 3).</p> <p>(2) Weather conditions affect the propagation of noise. Received levels are loudest when the wind blows from the source to the receiver. Temperature inversions which often occur in the early mornings after a clear night also increase noise propagation.</p> <p>(3) The dB LIN Peak is measured with the sound level meter set to linear ('Z') frequency weighting and Peak ('P') time weighting</p>
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CONCLUSION

It is now important the new proposed Local Law clause relating to Bird Scaring Devices be provided to interested stakeholders for final comment before the Local law 2, including the Bird Scaring Devices clause is brought to Council for formal decision.

The process to assess the merits of the Bird Scare issue has been extensive and provided opportunity for all parties to express opinions and views. Council officers have been able to reflect on these submissions and determine an approach which is balanced and reasonable, and able to be managed.

Draft Local Law 2 document, including the clause relating to bird scaring devices will be made available to interested stakeholders for comment for 14 days, before final adoption by Council.

10.7 SUSTAINABLE COMMUNITIES (COMMUNITY PLANNING) PROGRESS REPORT – JUNE 2009

For Information

PROJECT	ACTION/ PROGRESS
Student Representative Council (SRC)	i86 members will participate in a SRC Forum being held on the 16 th June at Wodonga Senior Secondary College. Roger Holdsworth, from the Youth Research Centre, will facilitate the region's young people as they explore local and global issues.

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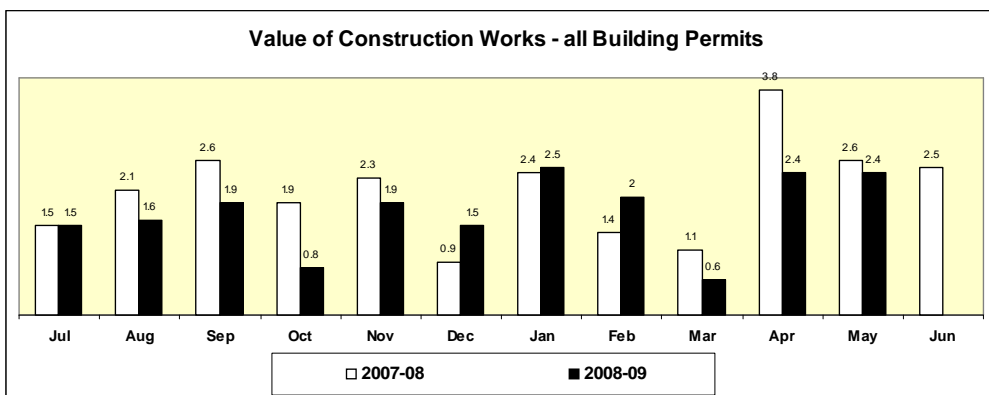
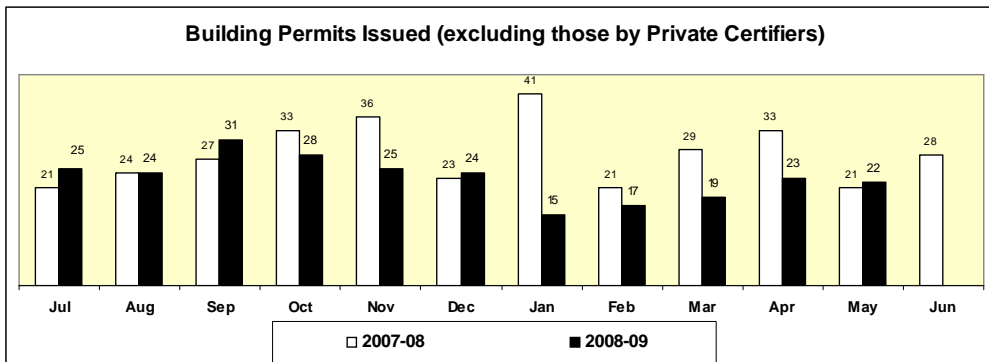
All Abilities Day	In conjunction with Rural Access, Indigo North Health and Rutherglen High School, an All Abilities Day will be held at the school on the 23 rd June. The day will include wheelchair basketball activities, information about disability supports and listening to the inspirational stories of those who live, and thrive, with a disability.
FReeZA	We've engaged the services of a local young person to assist with the delivery of FReeZA across the Shire. The first event will be on the 26 th June in Rutherglen, entitled Riot Detonation. It will be a PUSH Battle of the Bands and should see the best of our musical talents showcased on the night.

BUILDING STATISTICS

Glen Colwell, Municipal Building Surveyor

PROPERTY LOCALITY	DESCRIPTION	PROJECT VALUE	APPROVAL DATE
Beechworth	Dwelling	\$194,916	18/02/09
Yackandandah	Change of Use	\$10,000	05/05/09
Wooragee	New Building	\$23,000	06/05/09
Beechworth	Extension	\$315,000	07/05/09
Yackandandah	Extension	\$3,000	08/05/09
Yackandandah	Dwelling	\$260,000	11/05/09
Beechworth	Alteration	\$10,000	11/05/09
Beechworth	Alteration	\$15,000	12/05/09
Yackandandah	Extension	\$102,031	13/05/09
Tangambalanga	Dwelling	\$200,000	14/05/09
Beechworth	Dwelling	\$400,000	15/05/09
Beechworth	Dwelling	\$164,851	18/05/09
Beechworth	Dwelling	\$165,000	18/05/09
Beechworth	Dwelling	\$230,000	18/05/09
Cornishtown	Dwelling	\$80,000	18/05/09
Indigo Valley	New Building	\$15,000	20/05/09
Staghorn Flat	Extension	\$19,800	20/05/09
Rutherglen	Extension	\$40,000	20/05/09
Yackandandah	Alteration	\$102,031	20/05/09
Tangambalanga	Re-erect Building	\$33,572	21/05/09
Osbornes Flat	New Building	\$9,000	21/05/09
Chiltern	New Building	\$11,323	21/05/09
Huon	New Building	\$10,000	25/05/09
Chiltern	Extension	\$24,570	26/05/09
Wahgunyah	Swimming Pool	\$11,615	27/05/09
TOTAL		\$2,449,708.58	

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Building Permits	May 2009	Financial Year To Date	Same Period 2008
Value of Works (including Private Certifiers)	\$2.4M	\$19.1M	\$22.6M

10.8 PLANNING STATISTICS

Susan Cheetham – Manager Sustainable Development

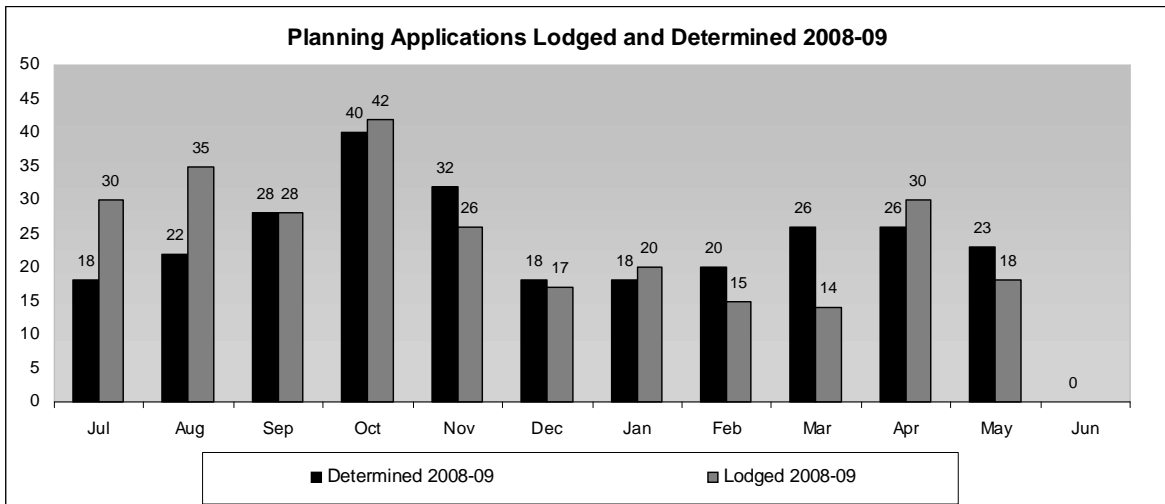
APPL. NO	LOCALITY	PROPOSED USE	PROJECT VALUE	DECISION
PP084382	Beechworth	Enclose and Extend Carport	10,000	Approved
PP084406	Yackandandah	Liquor License	0	Lapsed
07136.1	Stanley	Amended Permit - Dwelling (including studio)	0	Approved
PP084447	Chiltern	Dwelling	188,852	Withdrawn
PP090010	Osbornes Flat	Shed	4,900	Approved
PP090011	Kergunyah	Dwelling	210,000	Approved
PP090019	Norong	Alterations and Additions to Dwelling	120,000	Approved
PP090021	Yackandandah	3 lot Industrial Subdivision	117,000	Approved
PP090033	Wahgunyah	Removal of Native Vegetation	200	Approved
PP090042	Wooragee	Farm Shed	23,000	Approved
PP090043	Yackandandah	Rotunda	2,800	Approved
PP090045	Indigo Valley	Shed and Additions to Dwelling	180,000	Approved

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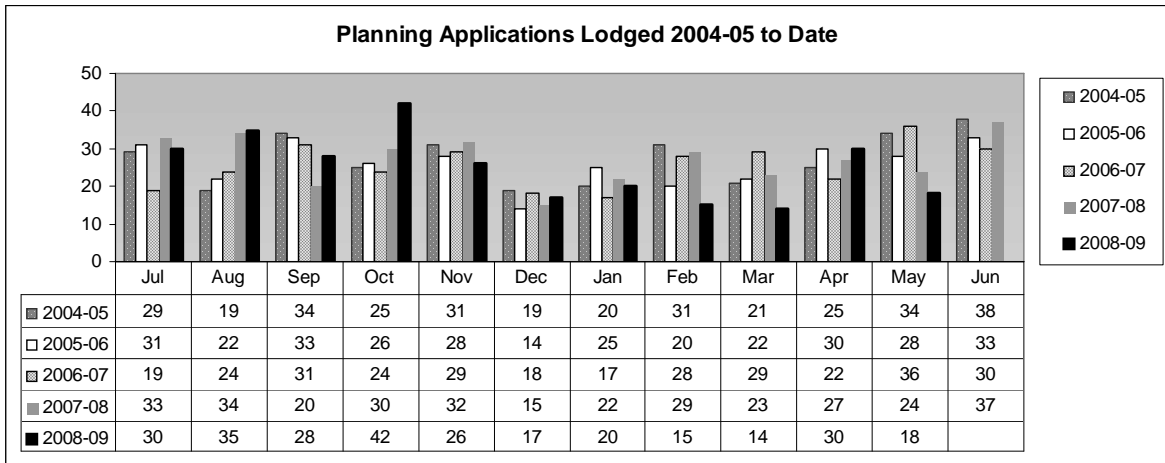
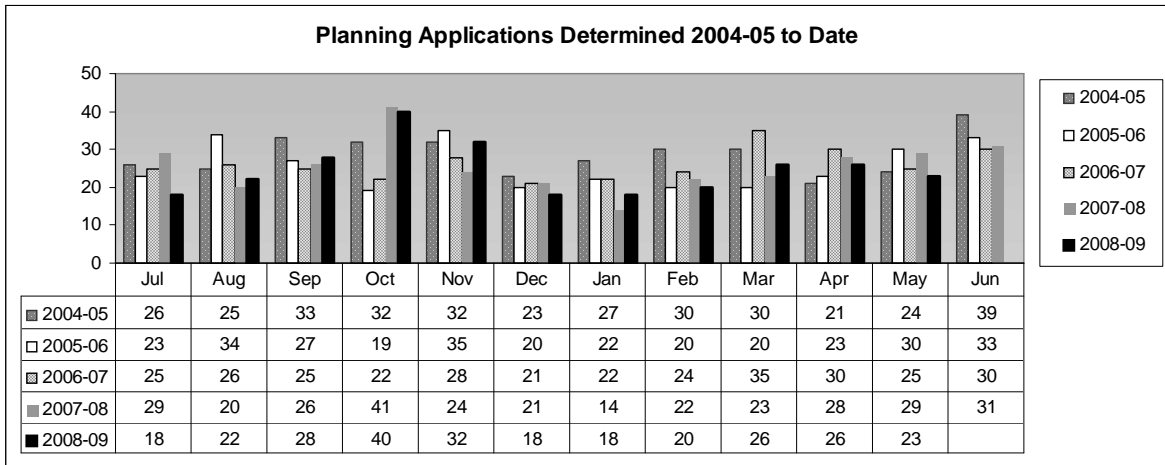
PP090050	Yackandandah	Alterations & Additions to Dwelling	100,000	Approved
PP090051	Beechworth	2 Lot Subdivision	0	Approved
PP090054	Huon	Shed	10,000	Approved
PP090055	Chiltern	Home Occupation	500	Approved
PP090058	Yackandandah	Certificate of Compliance - Dwelling	0	Approved
PP090065	Yackandandah	Additions to Unit 13	80,000	Approved
PP090066	Osbornes Flat	Pergola & Carport	9,000	Approved
PP090068	Allans Flat	Dual Occupancy	0	Approved
07122.1	Yackandandah	Amended Permit - 2-Lot Subdivision	0	Approved
06288.1	Yackandandah	Amended Permit - Dual Occupancy	0	Approved
PP084417.1	Tangambalanga	Amended Permit - Staged Industrial Subdivision - Stage 1 being 8 Lots	0	Approved
TOTAL			\$1,056,252	

NOTE: Figures for May are as at the time reports due, April figures have been adjusted accordingly. All figures have been adjusted to include the full range of determinations.

DETERMINATION	MAY 2009	FINANCIAL YEAR TO DATE	SAME PERIOD FINANCIAL YEAR 2008
Permit/Amended Permit Issued	21	232	235
Refused	0	2	11
Other Determinations	2	37	31
TOTAL	23	271	277



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10.9 SUSTAINABLE COMMUNITIES WORK IN PROGRESS AND PROJECTS – JUNE 2009

For Information

Projects underway are show in the following table.

PROJECT	CURRENT ACTIONS
STRATEGIC PLANNING	
Amendment C21 - Kiewa-Tangambalanga	Independent Panel hearing was held 1, 2 June at Yackandandah.
Municipal Strategic Statement and Indigo Planning Scheme Amendment C24 – Major review	No change from last month.
Amendment C36 – Chiltern Flood Study	No change from last month.
Indigo Planning Scheme Amendment C44 – Back Creek Road, Yackandandah	No change from last month.

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and Buckland Gap Road, Beechworth	
Indigo Planning Scheme C48 – Kiewa Valley Highway	No change from last month.
Indigo Planning Scheme C49 – Old Beechworth Gaol	No change from last month.
Indigo Planning Scheme –environmental/biodiversity overlay	No change from last month.
Rural Land Use Strategy	CPG Australia (formerly known as Coomes Consultants) are undertaking this strategy. Two rounds of consultation completed. Issues and opportunities paper finalised. Draft strategy now being prepared and will come to Council for consideration at the July meeting.
Indigo Planning Scheme Amendment C50 - Chiltern Business 3 rezoning	Notification of successful application received late May. Preparation of amendment will proceed following this strategic work. Further work on the project scheduled for July/August.
STATUTORY PLANNING	
VCAT Appeals	<ul style="list-style-type: none"> • P97/015 Appeal by Powercount Developments requesting modification of a condition of this permit which was issued at the direction of the AAT. Final VCAT listing was 3 May 2009. Decision dated 8 May directs modification of the permit conditions. • PP05-281 Appeal by O & Z von Wilpert against Council's refusal to amend a planning permit for a dwelling at Elgin Road, Beechworth. Hearing date 3 May 2009. Decision of 8 May affirms Council's refusal to amend the permit. • PP08-4222 Appeal by J Hemmerling against conditions of a Planning Permit for a dwelling at Gemmell Road, Wooragee. Hearing set for 30 June 2009 in Wodonga.
NATURAL RESOURCE MANAGMENT	
North East Greenhouse Alliance	<p>There is still very much a focus on the sustainability of the group (e.g. incorporation), as well as pressure to find interim funding. Recently some new members have been added to the group which will assist with the longer term outlook.</p> <p><u>Update on Projects:</u> Solar Communities project</p> <ul style="list-style-type: none"> • Alternate Fuels project has been a sub-committee of NEGHA looking at ways to inform and adopt alternate fuel use in the North East. This project has been taken the form of trailing Biodiesel in select plant (now at the Rutherglen depot). Discussions have commenced with YCDCo regarding installation of a community bowser for Biodiesel.

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	<p>Climate change vulnerability</p> <ul style="list-style-type: none"> • NEGHA successful with funding for risk assessments for Towong and Alpine Shires. 	•
Lake Sambell	<ul style="list-style-type: none"> • EOI for completion of walking track & amenity block previously submitted to RDV. EOI now accepted and formal application now submitted 	•
Roadside weeds	<ul style="list-style-type: none"> • Focus weeds of Gorse, Broom & Blackberry and Serrated Tussock have been sprayed. Expenditure of this \$20,000 DPI fund has been finalised. 	•
Code of Forest Practice	<ul style="list-style-type: none"> • Harvesting of burnt coupes has largely occurred – some sections still underway. 	•
Environmental Advisory Committee	<ul style="list-style-type: none"> • Next meeting scheduled for Wednesday 10 June 2009 in Beechworth. Group to focus on content for the Environment Strategy now the framework has been defined. 	•
Roadside Management Plan	<ul style="list-style-type: none"> • Second phase of field assessment to occur with remaining funding - June 2009. This phase will look at previously unassessed roadsides and points of interest. • Roadside Partnership Program remaining elements include an education event (wildlife evening) for all participants – now due for June 2009 school holidays & completion of evaluation report by CSU before 30 June 2009. 	•
Environment Strategy	<ul style="list-style-type: none"> • Strategy development continuing. Current focus on content and development with inclusion of GAP and all relevant Council plans and policy. 	•
BUILDING SERVICES		
Bushfire Prone Designation	<ul style="list-style-type: none"> • As of March 11th, 2009 the whole of Victoria has been designated as being prone to Bushfires and AS3979 for Construction of Dwellings in Bushfire Areas has consequently become much more complicated. Assessment of any new construction requires more detailed consideration. 	•
Shared accommodations and essential safety measures	<ul style="list-style-type: none"> • Retrospective legislation in relation to Shared Accommodation buildings comes into effect on June 14th, 2009. This chiefly affects many of the Alpine Resort buildings but local accommodation buildings may also require upgrading of fire safety provisions or sprinkler systems. • New Essential Safety Measures apply as of June, 2009. All Class 2 – 9 Buildings need to complete an annual Essential Safety Measures Report. In many cases this will involve assessment of the Essential Safety Measures in buildings particularly those built prior to 1994. 	•

Cr Vic Issell requested an update and future directions on the North East Greenhouse Alliance and a report be included in the next Ordinary Meeting of Council.

Cr Graham requested a report as to the implications regarding shared accommodations and essential safety measures. General Manager Sustainable communities to supply report to next meeting of Council on this matter.

11.0 OPERATIONS AND ASSETS

11.1 CHILTERN TOWN CENTRE REVITALISATION PROJECT

2.

11.2 (File No: D670.1-02 - Phil Prior - General Manager Operations & Assets)

11.3

11.4 For Decision

11.5

INTRODUCTION

Council has called for submissions in relation to the closure of Martins Lane and Old Greens Lane onto Conness Street as required under the Local Government Act. One submission has been received from the owner of property immediately adjacent to Old Greens Lane. The submitter currently accesses his property from the Lane via entry from Conness Street as he does not then have to do any backing manoeuvres. He therefore objects to the closure of access from Conness Street to Old Greens Lane.

The Council needs to consider the attached letter and following information and make a decision as to whether the Laneway closure will proceed.

BACKGROUND

The Council adopted a report at the February 2009 Council meeting authorising Council Officers to proceed with the purchase of land and other actions to facilitate the construction of Greens Lane onto Main Street and allied car park construction and closure of access from Greens and Martin's Lanes onto Conness Street.

The statutory advertisements for the closure of vehicular traffic from Martin's Lane and Greens Lane onto Conness Street appeared in the Border Mail and the Chiltern Grapevine on 4th and 3rd of April respectively with a 28 day period for submissions closing on 2nd May. Please note that this report has been prepared prior to the closure of submissions (30th of April) to meet Council Agenda preparation deadlines.

Phil Prior met with the submitter on site on Wednesday 29th April to discuss his issues and to see if any could be resolved.

The outcome of the site inspection and discussions in relation to the above points is:

1. By closing the laneway the submitter will certainly not be able to drive off Conness Street and directly into his property in a forward motion. However, there is enough room to drive forward into Old Greens Lane from Greens Lane and do a right hand manoeuvre into his property in a forward motion if the existing gates are relocated and the existing dilapidated shed removed.
2. The submitter indicated that he was considering demolishing the shed and building a two car carport closer to the next door neighbour's property on the eastern side at

3. some time in the future. 5.
4. It was agreed that even now, vehicles need to back from the property into Old Greens Lane and exit south into the existing Greens Lane. This would therefore continue in the future with the current proposals.
5. The outcome of the discussions was that Mr Prior would write to the submitter with the following offer which the submitter would consider and respond to prior to the Council meeting
6. The offer is that Council would:
 - a. Provide some fill to the property along the Old Greens Lane boundary to better match the property level with the Old Greens Lane new construction level to facilitate ease of access.
 - b. Shift the existing gates further south along the property line to an agreed location after a turning circle/access template is agreed upon.
 - c. Reconstruct the existing fence along this boundary including approximately 3 metres of additional fencing.
 - d. The submitter would construct a new carport at his own cost at some time in the future.
 - e. In relation to street furniture in the closed section of the laneway it was suggested that Council and the property owners would monitor the placement of any furniture and its use and if there were adverse effects it would be removed. The area would then only be used on an ad hoc basis eg. as part of a street festival or other such activity or as part of either of the adjacent property's future activities eg. an open air eating area with temporary placement of tables and chairs on a daily basis so long as they didn't interfere with adjacent property access.

If this is all agreed upon and there are no further submissions received Council will be in a position to adopt a motion that both Martins Lane and Greens Lane be closed to vehicular access to and from Conness Street by the placement of permanent barriers.

KEY IMPLICATIONS

By the 30th April only one submission had been received from the owner of the property immediately adjacent to Old Greens Lane.

The submitter's submission is circulated in full for Councillors' consideration. In summary, his main points are:

1. The proposed closure will affect access to the rear yard.
2. They currently access the yard by entering from Conness Street into Old Greens Lane. This allows two vehicles to access the rear yard through the double gates with one vehicle accessing the garage.
3. The proposed closure would mean that they would have to enter Old Greens Lane from the extended Greens lane and then reverse into the yard.
4. On leaving the yard the vehicles would need to reverse back down the Lane to the new Greens Lane.

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5. Changes to the property access and numbers of vehicles parked thereon may impact on the value of the property and interest in the property by prospective tenants.
6. He believes that he would lose one car space and his existing garage will need to be moved to allow enough room to access the yard without any problems.
7. He suggests that previous correspondence from Council indicates that Council will pay for any necessary changes that need to be made.
8. He also believes that increased foot/bicycle traffic may present issues with vehicles entering or leaving the property due to the narrow width of the laneway.
9. Closing the lane (and having a public meeting place there) may cause issues with people meeting there after dark with litter, security and access to the side entrance of the building.

Whilst there has not been any submissions on the closure of Martin's Lane, Council should note that in the previous consultation sessions and meetings of the steering committee concern was expressed with large trucks backing out of the closed area of Martin's Lane across Greens Lane after unloading for the supermarket.

To overcome safety issues associated with this there is a requirement on the supermarket via the Town Planning Permit for its development that temporary safety barriers must be established whilst unloading takes place and that a supermarket employee must supervise any backing manoeuvres from the unloading area.

It will be incumbent on the supermarket to ensure that these actions are undertaken any time a vehicle unloads in the unloading area in the closed section of Martin's Lane.

FINANCIAL IMPLICATIONS

The Council has previously approved the budget for the overall project. These works will add a very small amount to the overall cost but are necessary to arrive at the best result for the given objectives of the project.

POLICY IMPLICATIONS

This report recommends further actions that have resulted from previous Council decisions, budget allocations and grant provisions for capital works in improving Chiltern's central business area. VicRoads has been consulted and has consented to the road modifications for this Project. The immediate physical closure of Old Greens Lane is not vital to the current project and could be undertaken at some time in the future.

CONCLUSION

Not applicable.

RECOMMENDATION

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That Council:

1. Receives the one submission on the Martins Lane and Old Greens Lane
2. Proceed with the closure of Martins Lane as there were no submissions.
3. Note the objection to the closure of Old Greens Lane and proceed with the legal closure but undertake the physical closure following further discussions with the objector.

4. Appendix F

5. Chiltern Town Centre Project Map

6.

**Moved Cr Vic Issell
Seconded Cr Barb Murdoch**

That Council:

1. **Receives the one submission on the Martins Lane and Old Greens Lane**
2. **Proceed with the closure of Martins Lane as there were no submissions.**
3. **Note the objection to the closure of Old Greens Lane and proceed with the legal closure but undertake the physical closure following further discussions with the objector.**

4.

5. CARRIED

Cr Gaffney left the meeting at 4.09pm and didn't vote on this motion. He returned to the meeting at 4.11pm

11.6 INDIGO SHIRE COUNCIL land PURCHASE FROM ESTATE ELLIGATE –
INDIGO CREEK RD & McSWEENS RD, INDIGO VALLEY

11.7 (File No: Q07/07 - Alex Showers - Manager Operations)

11.8

11.9 **For Decision**

11.10

INTRODUCTION

Not applicable.

BACKGROUND

During the planning for the replacement of McSweens Bridge in Indigo Valley it was found that the road was not actually constructed on the designated road reserve and was actually located on private land. The objective of this land acquisition is to acquire the land that the road is located on.

The land owner has been involved with the process. This deal has been negotiated through the landowner, Council and solicitors representing both parties.

ORDINARY COUNCIL MEETING MINUTES

KEY IMPLICATIONS

Not applicable.

FINANCIAL IMPLICATIONS

The sum of \$2500 has been negotiated with the landowner as consideration for the land. There are also associated legal costs and the cost for fencing of the land.

POLICY IMPLICATIONS

Not applicable.

CONCLUSION

Not applicable.

RECOMMENDATION

That Council sign and seal Transfer of Land documentation for purchase of land from the Estate of the late John Elligate being Road R-1 and being part of the land in Volume 1458 Folio 482, in the sum of \$2,500 plus costs.

**Moved Cr Larry Goldsworthy
Seconded Cr Peter Croucher**

That Council sign and seal Transfer of Land documentation for purchase of land from the Estate of the late John Elligate being Road R-1 and being part of the land in Volume 1458 Folio 482, in the sum of \$2,500 plus costs.

CARRIED

11.11 OPERATIONS & ASSETS DEPARTMENT – PROGRESS REPORT – TO JUNE 2009

(Phil Prior – General Manager Operations & Assets)

For Information

PROJECT	DESCRIPTION
ASSETS CAPITAL WORKS	
Rutherglen Wine Bottle	NEW have inspected structure to review restoration options for steel tank and bottle top. Report expected by mid-June.
Chiltern Floodplain Works	Purchase of the detention basin site has been completed. Designs are being finalised to manage a 100 year flood. Together with other completed works this will effectively flood proof Chiltern from known occurrences.

ORDINARY COUNCIL MEETING MINUTES

Chiltern Commercial Area Parking	Land acquisition finalised, works commencement June. All streetscape concepts have been endorsed by the Steering Committee and heritage adviser with the exception of the kiosk relocation.
Rutherglen Heavy Vehicle Deviation.	Traffic analysis complete. Consultant shortlisting report due for public release 4 June with stakeholder meetings scheduled for 10 June and a public meeting at 7 pm on that night. All residents to be advised by mail with details to be available at Rutherglen office and on our website.
Tangambalanga Industrial Estate	Planning Permit for this development has been issued and detailed design process commenced. 50% RDV funding announced in May.
Yackandandah Depot Industrial Estate and Steel Road industrial area	Planning Permit application currently being processed for Depot site with Planning Permit issued for Steel Road site. 50% RDV funding announced in May.
Wahgunyah Boat Ramp	Issues generally finalised and concept layout agreed by interested authorities. Funding application can be lodged June subject to endorsement in Council's coming capital works program. Corowa Shire has provided half of the local contribution (\$25,000) in their coming budget which is subject to final adoption.
Rutherglen Hall Upgrade	Works completed to provide full stage lighting, sound system and high quality lighting rack.
Osborne's Flat Hall Upgrade	Regional Development Victoria (RDV) \$70,000 formal application lodged and decision pending. \$50,000 grant from DPCD approved
OPERATIONS CAPITAL WORKS	
Rutherglen to Wahgunyah Rail Trail	Construction has commenced on the Riverside Loops section of the Rail Trail with the track being cut through and gravel being laid. The rail removal contractors have commenced work.
Kiewa Bonegilla Road	Contractor has completed 30% of the work and is progressing well. Problems with one small section of land acquisition.
Sutherland Road Bridge – Indigo Valley	The tenders have been awarded and the contractor will commence work on site in late June.
Indigo Creek Road widening	Tenders have closed. Works to commence mid-June.
Bus Stops - Yackandandah	Hammond St widening works completed in conjunction with car parking. Wellsford St works commenced, to be completed in June.
Wahgunyah-Moodemere Walking Trails	Works 50% complete, progressing very well.
OPERATIONS MAINTENANCE WORKS	
GENERAL MAINTENANCE	
Road Maintenance	Some rain has enabled road grading to be undertaken.
EXTERNAL PRIVATE CONTRACTS	
Falls Creek Waste	All specialised plant and equipment successfully sold to the new contractor. Scania compactor truck lease expires end

ORDINARY COUNCIL MEETING MINUTES

	June and Indigo street bin collection will then revert to Cleanaway.
ASSETS MAINTENANCE WORKS	
Subdivisional Works by Developers	Works commenced on site on Racecourse Rd footbridge. No other works happening.

12.0 CORPORATE SERVICES

12.1 MURRAY TO THE MOUNTAINS RAIL TRAIL LOCAL LAW NO. 4/2009

(File No. T250-06 - David Montgomery - Manager Governance & Risk)

For Decision

INTRODUCTION

This report has been held over since the May 2009 Ordinary Meeting of Council, to clarify some legal issues. Legal opinion has been sought on the matters raised, which are detailed in the report.

This Report recommends the adoption of a Local Law to control activities on the Rail Trail. Similar Local Laws are also in the process of adoption in the Rural City of Wangaratta and the Alpine Shire.

BACKGROUND

The 1st stage of the Murray to the Mountains Rail Trail was completed and officially opened in September 2002. The former railway reserves are crown land reserved as, Public Purposes (Rail Trail) Reserve, in accordance with the provisions of the Crown Land (Reserves) Act 1978. In accordance with the provisions of that Act, the Councils of Alpine and Indigo Shires and Rural City of Wangaratta have been appointed as the Committee of Management Murray to the Mountains Rail Trail to manage that reserve in accordance with the purposes of the reservation.

Crown Land Reserves (Murray to the Mountains Rail Trail Reserve) Regulations 2003 were gazetted to assist the Committee of Management in managing the reserve. However the power to enforce the regulations have not been realised and it was determined by the Committee of Management to investigate the feasibility of managing the crown land reserve through the introduction of a Local Law.

KEY IMPLICATIONS

The main reason for the introduction of Local Laws (refer attachment) for the Murray to the Mountains Rail Trail are the long standing land reserve issues which have been unable to be resolved by other means. These issues include disused car wrecks parked on the crown land reserve in close proximity to the trail, barb wire fences built on crown land reserve without a permit and in close proximity to the trail and vehicles using the trail as an access route causing damage to property on the trail.

The purpose of this Local Law is to:

- a) prohibit, regulate and control activities which may be dangerous or unsafe or detrimental to the enjoyment and use of the Rail Trail;
- b) prohibit, regulate and control access to, behaviour on and use of, the Rail Trail; and
- c) to provide for the peace, order and good governance of the municipal district.

Given the Committee of Management is formally responsible as the Crown Land Reserve managers it was determined to thoroughly investigate the legal implications specific to enforcement activities.

FINANCIAL IMPLICATIONS

Not Applicable.

POLICY IMPLICATIONS

Consultation has been undertaken with the three member Councils through their nominated representatives to the Murray to the Mountains Rail Trail Committee of Management and with the Senior Land Manager for the Department of Sustainability and Environment.

The Enforcement Officers of each of the member municipalities were consulted during the development of the Local Laws.

The Alpine Shire and the Rural City of Wangaratta have resolved to adopt common Murray to the Mountains Rail Trail Local Laws to ensure the management of the Murray to the Mountains Rail Trail continues to be cohesive throughout the three municipalities as per the adopted Memorandum of Understanding.

The Community Advisory Group of the Murray to the Mountains Rail Trail has been consulted and is fully supportive in resolving this issue.

The ongoing development and maintenance of the MMRT is of significant community benefit given its utilisation by visitors and local residents alike.

Enforcement Officers within each of the relevant municipalities will be responsible for implementing the local laws. Whilst some initial work load is foreshadowed, it is expected to be managed within their current work tasks.

Adjoining landholders on the Murray to the Mountains Rail Trail will be formally advised of the new Local Laws and their implications. A planned approach is to be undertaken to consult with affected landholders and a period of 'amnesty' will be given to allow affected landowners time to conform with the new local laws.

LEGISLATIVE IMPACTS

Local Government Act 1989 - SECT 223
Right to make submission

223. Right to make submission

ORDINARY COUNCIL MEETING MINUTES

1. The following provisions apply if a person is given a right to make a submission to the Council under this section (whether under this or any other Act)-
2.
 - (a) the Council must publish a public notice-
 - (i) specifying the matter in respect of which the right to make a submission applies;
 - (ii) containing the prescribed details in respect of that matter;
 - (iii) specifying the date by which submissions are to be submitted, being a date which is not less than 28 days after the date on which the public notice is published;
 - (iv) stating that a person making a submission is entitled to request in the submission that the person wishes to appear in person, or to be represented by a person specified in the submission, at a meeting to be heard in support of the submission;
 - (v)
 - (b) if a request has been made under paragraph (a)(iv), the Council must-
 - (i) provide the person with the opportunity to be heard in support of the submission in accordance with the request at a meeting of the Council or of a committee determined by the Council;
 - (ii) fix the day, time and place of the meeting;
 - (iii) give reasonable notice of the day, time and place of the meeting to each person who made a request;
 - (iv)
 - (c) if the committee determined under paragraph (b)(i) is not responsible for making the decision in respect of which the submissions have been made, the committee must provide a report on its proceedings, including a summary of hearings, to the Council or the special committee which is responsible for making the decision;
 - (d)
 - (e) the Council or special committee responsible for making the decision must-
 - (i) consider all the submissions made under this section and any report made under paragraph (c);
 - (ii) notify in writing, each person who has made a separate submission, and in the case of a submission made on behalf of a number of persons, one of those persons, of the decision and the reasons for that decision.
 - (iii)
3. If a proposal by the Council involves the exercise of powers at the same time under more than one section giving a right to make a submission and written submissions are received under more than 1 of those sections the submission procedure may be carried out in respect of all the written submissions at the same time.
- 4.
5. Despite section 98, a Council may authorise the appropriate members of Council staff to carry out administrative procedures necessary to enable the Council to carry out its functions under this section.
- 6.
7. A member of a committee specified in subsection (1)(b)(i) is subject to section 79 as if that member were a member of a special committee.
- 8.

ORDINARY COUNCIL MEETING MINUTES

9. Clarification was sought at the May 2009 meeting about certain aspects contained in the local law. The queries with the response (in italics) are as follows:
- (i) Page 4 - Definition of Reserve, does it need to include all the areas outside the shire?
 - (ii) *No, however, it is prudent to have a standard or identical Local Law for all three municipalities. Also, each Local Law is restricted to its Councils Municipal District, refer section 116 of the Local Government Act 1989 which restricts the application of a Local Law to the Municipal District.*
 - (iii) Page 8 - Section 12 (2) so unicycles, tricycles, scooters are prohibited? Why not prohibit motor vehicles instead as defined under the Road Safety Act or the RS Vehicle Regs?
 - (iv) *Motor vehicles are limited to vehicles which are intended to have a motor. Vehicles include motor vehicles and non-motorised vehicles. You could prohibit motor vehicles and add on other prohibitions for vehicles that are not covered by motor vehicles. An example would be a four wheel trailer that a farmer may use or leave on the trail. The alternative which is being carried out in this Local Law, is to prohibit vehicles and then to allow certain types of vehicles, bicycles etc. The preference is to have an overall prohibition with exemptions rather than narrow prohibition with additions.*
 - (v) Section 12 - (2) d) do we need to include areas of the Great Alpine Road?
 - (vi) *The Committee has no jurisdiction over the Great Alpine Road.*
 - (vii) (iv) Page 10 - Section 22 so has the committee set aside the rail trail for use as a bicycle path?
 - (viii) *The setting aside of the Rail Trail as a bicycle path and for other potential uses will be one of the first duties of the Committee once the Rail Trail Local Law is effective. The Committee cannot do this until the Rail Trail Local Law comes into effect.*
 - (ix) Page 15 - Section 38 (1) and Section 39, Should the location where the definition of what constitutes a penalty unit be identified? Eg. Sentencing Act.
 - (x) *Because Section 110 (subsection 2 of the Sentencing Act 1991) provides that if in a Local Law there is a statement of a number of what are called "penalty units", that statement must, be constructed as stating a number of dollars equal to the product obtained by multiplying \$100 by that number of penalty units.*
 - (xi) Page 15 - Section 38, (2) & (3) Victoria Police gives 42 days for their penalty notices by giving 28 days is there an issue?

ORDINARY COUNCIL MEETING MINUTES

- (xii) Section 14 of the Infringements Act 2006 provides that a 28 day minimum period can apply.*
- (xiii) Page 16 - Section 40 – Notice to Comply - in what circumstances do you envisage this would apply?
- (xiv) These are common in many Local Laws and are used where there is ongoing non compliance where the Council does not wish to issue an Infringement Notice which automatically creates a liability for the payment of a penalty.*
- (xv) *Of course, there are some instances where a Notice to Comply would not be applicable, such as a one off offence, which is driving a motor vehicle on a Rail Trail.*
- (xvi) Will there be a schedule of fees?
- (xvii) It may be that fees will be set for certain events such as private uses on the Rail Trail e.g. food vans and these fees may vary from site to site and be determined by the Committee. However, fees in relation to licensing of lands by farmers will be carried out under the Crown Lands Reserve Act.*

RECOMMENDATION

1. That Council determine to adopt Murray to the Mountains Rail Trail Local Law No. 4/2009 as detailed in this report.

The Chief Executive Officer be authorised to:

- a. give public notice that submissions in respect of this matter will be considered in accordance with Section 223 of the Local Government Act; and
 - b. make available for public inspection the information required to be made available.
2. Submissions on the proposed Murray to the Mountains Local Law 4/2009, made in accordance with the Local Government Act 1989: be received by Monday 20 July 2009; and on a pursuant to Section 223 (1) (b) (1) and (c) of the Local Government Act 1989, be considered by a committee of all Councillors and to be formally considered by Council at its August 11 2009 Council meeting.

Appendix G
Draft Local Law No.4/2009
Correspondence and supporting maps

**Moved Cr Larry Goldsworthy
Seconded Cr Barb Murdoch**

That consideration of this item be held over until the next meeting of Council.

CARRIED

12.2 LOCAL LAW NO. 7 – MEETING PROCEDURE

(File No.: M200-04 - David Montgomery - Manager Governance and Risk)

For Decision

INTRODUCTION

This report recommends that Council make and adopt Local Law No. 7 (2009) Meeting Procedure.

BACKGROUND

At its January 2009 meeting, Council resolved that an immediate review of Local Law No. 7 be carried out to bring it in line with the Local Government Act.

There was an anomaly between the Local Law and the Local Government Act particularly in paragraph 23 which stated that “the Mayor, Chief Executive Officer or at least 2 councillors may by written notice call a Special Meeting of the Council”. This is incorrect, Section 84 of the Local Government Act actually states that “the Mayor or at least 3 Councillors may by written notice call a Special Meeting of Council”.

KEY IMPLICATIONS

Not Applicable.

FINANCIAL IMPLICATIONS

Not Applicable.

POLICY IMPLICATIONS

Not Applicable.

CONCLUSION

Not Applicable.

CONSULTATION

In accordance with the Local Government Act, Council’s proposal to make the Local Law was advertised in the Border Mail and the Government Gazette. At the close of submissions on the 25th of May 2009, no submissions had been received.

RECOMMENDATION

That in accordance with Section 119 of the Local Government Act 1989, Council hereby resolves to make and adopt the revised attached Local Law No. 7 (2009) – Meeting Procedure and:

1. give public notice of the making of the Local Law in the Border Mail and the Government Gazette; and
2. ensure that a copy of the made Local Law is sent to the Minister for Local Government.
- 3.

**Moved Cr Larry Goldsworthy
Seconded Cr Bernard Gaffney**

That consideration of this item be held over until the next meeting of Council.

CARRIED

12.3 RUTHERGLEN WINE CENTRE BOARD COMMITTEE OF
MANAGEMENT – CHANGE OF COUNCIL REPRESENTATIVE SUBSTITUTE

(File No.: D625-07 Manager Governance and Risk)

For Decision

INTRODUCTION

This report recommends the appointment of Councillor Barbara Murdoch to the Rutherglen Wine Centre Board in place of Councillor Peter Graham. There is no change to the main delegate position namely Councillor Bernard Gaffney

BACKGROUND

At Council's Statutory Meeting held in December 2008 Council appointed Councillor Bernard Gaffney as its representative to the Rutherglen Wine Centre Board with Councillor Peter Graham as the substitute representative. Councillor Peter Graham has requested a change to the substitute representative and Councillor Barbara Murdoch has agreed to become the substitute to this committee.

KEY IMPLICATIONS

Not Applicable.

ORDINARY COUNCIL MEETING MINUTES

FINANCIAL IMPLICATIONS

Not Applicable.

POLICY IMPLICATIONS

Not Applicable.

CONCLUSION

Not Applicable

RECOMMENDATION

That Councillor Barbara Murdoch is appointed as Council's substitute representative to the Rutherglen Wine Centre Board in place of Councillor Peter Graham.

**Moved Cr Vic Issell
Seconded – nil**

The Chairman declared the motion lapsed for lack of a seconder.

**CARRIED
Moved Cr Goldsworthy
Seconded Cr Vic Issell**

**That this matter be deferred until the next meeting of Council.
CARRIED**

Cr Graham requested that his vote against the motion be recorded.

12.4 TOURISM STRATEGY

(File No.: D400 - Stuart Perry - Tourism Manager)

For Decision

INTRODUCTION

This Indigo Shire Council Tourism Strategy is the result of a year long consultative process through which the community, industry, council and tourism department staff has developed this document. The draft document has had considerable input from the shires tourism advisory committee and has taken into consideration the various sectors and townships within the shire. This final document has been amended following the Councillors input at the May 26 2009 Council Briefing.

BACKGROUND

ORDINARY COUNCIL MEETING MINUTES

The document sits alongside the council budget and will be reflected in the departments' activities for the year. It forms a framework for the ensuing years' budgets.

KEY IMPLICATIONS

Tourism is one of the most important aspects of the shire's economy and is the third largest generator of revenue. Tourism is also the world's fastest growing industry (as it has been for 10 years) and the north east is a critical component of Victoria's visitor product. The shire has many opportunities through the historic assets associated with all four main towns and this reinforces the need for the district to be proactive in its visitor marketing. With the smaller villages, the visitor product fits very smoothly into the template that tourism Victoria and tourism Australia highlight as reasons to visit the country and the state.

FINANCIAL IMPLICATIONS

Many proposals considered in this plan are included in the Tourism Department Budget 2009/10, are forecast to be funded by external co-contributions or grants or are planned for later financial years.

CONCLUSION

This strategy is a document that will be updated on an annual basis as the success of the strategy must be in its flexibility. There is an expectation from the business and wider community that the Shire will work closely with the visitor industry and the town businesses to assist in the growth of the tourism products and events and work to continue to grow the visitor numbers for the economic benefit of the shire and its ratepayers..

RECOMMENDATION

That the 2009-2012 Indigo Shire Council Tourism Strategy be adopted.

Attachment I
Indigo Shire Council Tourism Plan 2009-2012

**Moved Cr Peter Croucher
Seconded Cr Bernard Gaffney**

That the 2009-2012 Indigo Shire Council Tourism Strategy be adopted.

CARRIED

12.5 COUNCILLOR AND MAYORAL ALLOWANCES

(File No.: 225.2 - David Montgomery - Manager Governance and Risk)

For Decision

INTRODUCTION

Section 74 (1) Local Government Act 1989 provides that within 7 months of the 29th of November 2008 election all Councils are required to perform a review. The review must include public consultation under Section 223 of the Local Government Act to determine the allowances that will be payable from the range available to each Council in its relevant category from that time and/or the next four years.

At Council's meeting in April 2009 Council resolved in accordance with Section 74 of the Local Government Act that it intended to increase its allowances to the maximum allowed for Category 1 Councils i.e. for Councillors \$16,200 and the Mayor \$48,400. An amount equivalent to the Superannuation Guarantee is also to be added to these relevant amounts. Council advised that it is reviewing the amounts to be made payable to the Mayor and Councillors and submissions where called for pursuant to Section 223 of the Local Government Act.

At the close of submissions on the 18th of May 2009 two submissions were received, both submitters did not request to be heard by Council.

Submitter one believed that at this time of economic hardship Council should not agree to the highest level rate of pay in the category for which the State Government recommends for Councils.

Submitter two believes that whilst the increase is warranted its impact on the ratepayers at this time is an issue of concern.

Copies of the submissions are attached to the agenda.

BACKGROUND

Not Applicable.

KEY IMPLICATIONS

PURSUANT TO THE LOCAL GOVERNMENT ACT 1989 (LGA89)

Section 73A Review of allowance categories:

1. The Minister must, at least once every year, review the allowance category for each Council.
- 2.
3. In conducting a review under subsection (1), the Minister must have regard to:
 4. (a) changes in the number of residents in each municipal area; and
 5. (b) variations in the total recurrent revenue of each Council after adjusting for inflation.
- 6.
7. If a review conducted by the Minister under this section results in a finding that one or more Councils in the categories of Councils require alteration, the Minister must specify by notice published in the Government Gazette, the Councils that are in each category of Councils following the review.
- 8.
9. A notice published under subsection (3), to the extent that it varies the amounts, limits, ranges or categories specified in an Order in Council made

ORDINARY COUNCIL MEETING MINUTES

10. under section 74B, varies the Order from the date specified in the notice as the date on which the variation has effect. 7.
- 11.
12. In subsection (2), *total recurrent revenue* means the total revenue of the Council reported in the financial statements of the Council for the previous financial year after adjusting for any items that are extraordinary, abnormal or non-recurring. 73B Review of allowance limits and ranges
- 13.
14. In this section, *adjustment factor* means the percentage increase to be applied to Councillor and Mayoral allowance limits and ranges.
- 15.
16. The Minister must, at least once every year, review the limits and ranges of Councillor and Mayoral allowances.
- 17.
18. The Minister must have regard to movements in the levels of remuneration of executives within the meaning of the Public Administration Act 2004 when reviewing the limits and ranges of Councillor and Mayoral allowances under subsection (2).
- 19.
20. If a review conducted by the Minister under this section results in a finding that Councillor and Mayoral allowances should be adjusted, the Minister must specify by notice published in the Government Gazette:
 - (a) an adjustment factor; and
 - (b) the new limits and ranges of allowances for each category of Councils, adjusted in accordance with the adjustment factor.
 - (c)
21. If a notice is published in the Government Gazette under subsection (4), a Council must increase Councillor and Mayoral allowances in accordance with the adjustment factor specified in the notice.
- 22.
23. 74. Councillor and Mayoral Allowances:
 1. A Council must review and determine the level of the Councillor allowance and the Mayoral allowance within the period of 7 months after a general election.
 - 2.
 3. A Council may review and determine the level of the Councillor allowance and the Mayoral allowance after an Order in Council is made by the Governor in Council under section 74B that varies the limits or ranges of allowances payable by the Council.
 - 4.
 5. A Council may review and determine the level of the Councillor allowance and the Mayoral allowance after:
 - a. the Minister, by notice published in the Government Gazette under section 73A or 74C,
 - b. has changed the category of the Council; or
 - c. an Order in Council under section 74B has been made changing the category of the Council.
 - d.
 6. Subject to sub-section (3), the allowances determined under subsections (1), (1A) or (1B) are payable from the date of the resolution of the Council determining the levels of allowances.

ORDINARY COUNCIL MEETING MINUTES

- 7.
8. A Council can only vary the allowances determined under subsection (1) if:
 - a. the Council has conducted a review under subsection (1), (1A) or (1B); or
 - b. the Council is required to increase allowances in accordance with a notice published under section 73B specifying an adjustment factor; or
 - c. the Council is required to increase allowances by an Order in Council under section 74B.
- d.
9. A person has a right to make a submission under section 223 in respect of a review of allowances.

POLICY IMPLICATIONS

Not Applicable.

CONCLUSION

Not Applicable.

RECOMMENDATION

That Council;

1. thank the two submitters who have made comment on the Councillor and Mayoral allowances proposal pursuant to Section 74 of the Local Government Act and advise them that their submission have been duly considered; and
2. increase the allowances to be paid to the Mayor and Councillors as follows:

Councillors:-

Part A - effective from the 1st of December 2008, the maximum allowance as allowed for a Category 1 Council of \$16,200.

Part B - pursuant to Section 74 (sub – section 2) for any Council that may in the future make the unanimous resolution under Commonwealth Taxation Legislation to cease tax withholding arrangements, the part A allowance will be subject to the addition of the equivalent Superannuation Guarantee which is currently at 9%.

Mayor:-

Part A - effective from the 1st of December 2008, the maximum allowance as allowed for a Category 1 Council of \$48,400.

Part B - pursuant to Section 74 (sub – section 2) for any Council that may in the future make the unanimous resolution under Commonwealth Taxation Legislation to cease tax withholding arrangements, the part A allowance will be subject to the addition of the equivalent Superannuation Guarantee which is currently at 9%.

**Moved Cr Ali Pockley
Seconded Cr Barb Murdoch**

That Council;

- 1. thank the two submitters who have made comment on the Councillor and Mayoral allowances proposal pursuant to Section 74 of the Local Government Act and advise them that their submission have been duly considered; and**

- 2. increase the allowances to be paid to the Mayor and Councillors as follows:
Councillors:-**

Part A - effective from the 1st of December 2008, the maximum allowance as allowed for a Category 1 Council of \$16,200.

Part B - pursuant to Section 74 (sub – section 2) for any Council that may in the future make the unanimous resolution under Commonwealth Taxation Legislation to cease tax withholding arrangements, the part A allowance will be subject to the addition of the equivalent Superannuation Guarantee which is currently at 9%.

Mayor:-

Part A - effective from the 1st of December 2008, the maximum allowance as allowed for a Category 1 Council of \$48,400.

Part B - pursuant to Section 74 (sub – section 2) for any Council that may in the future make the unanimous resolution under Commonwealth Taxation Legislation to cease tax withholding arrangements, the part A allowance will be subject to the addition of the equivalent Superannuation Guarantee which is currently at 9%.

CARRIED

DIVISION

For: Crs, Graham, Pockley, Issell, Murdoch, Gaffney and Croucher

Against: Cr Goldsworthy

CARRIED

12.6 CORPORATE SERVICES PROGRESS REPORT

PROJECT	ACTION / PROGRESS
Civic Mutual Plus (CMP) Public Liability & Professional Liability Audit Report	The final audit result has been received and the overall score is 77% last years result was 71%

ORDINARY COUNCIL MEETING MINUTES

<p>Beechworth Shire Offices, Beechworth Memorial Hall and RSL ownership status</p>	<p>At Council's May meeting it was resolved that legal advice be sought on the possibility of having the land on crown allotments 7, 8, 18 and 19 and the Town Hall placed solely in the name of the Indigo Shire and that the best mechanism of ensuring the Beechworth Branch of the RSL has security of tenure in their present location.</p> <p>Subsequent to this decision a meeting was held with the Beechworth Branch of the RSL. Beechworth RSL is seeking legal advice from their own solicitors and also from the Victorian Branch of the RSL. They have advised that they will provide this advice to Council.</p> <p>Council will seek legal advice with a report to come before Council when information is to hand.</p>
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12.7 ADOPTION OF A REVISED INDIGO SHIRE COUNCIL PURCHASING POLICY.

(File No.: M663 - Mark Crouch - General Manager Corporate Services)

For Decision

INTRODUCTION

This report seeks to consider the composition of a revised Council Purchasing or Procurement policy.

The revised policy will replace any existing purchasing policy.

BACKGROUND

At the February 2009 Council meeting, Council resolved as follows:

That:

Due to both public and staff concerns on Council's employment of consultants and the method that they are currently chosen, a policy be drawn up to set out clearly and unequivocally, how Council will equitably employ consultants and take into consideration by:

- *Seeking initial expressions of interest from consultants by advertising in local and regional press;*
- *Creating a register of consultants;*
- *Applying Council policy of using local consultants where possible;*
- *Setting the policy of not employing ex-staff members for a period of time, say 3 years, after their leaving Council employ to mitigate any conflicts of interest;*
- *Any conflict of interest/personal interest by an employing Manager be declared to*

- *the CEO/Council prior to engagement*".

KEY IMPLICATIONS

The purchasing policy will have a major impact on Council as staff engage in the procurement of every day goods and services.

Pursuant to the Local Government Act 1989 (LGA89)

186. Restriction on power to enter into contracts

(1) Before a Council enters into a contract for the purchase of goods or services, or for the carrying out of works, to the value of \$100 000 (or such higher amount as may be fixed by Order in Council) or more, it must—

(a) give public notice of the purpose of the contract and invite tenders from any person wishing to undertake the contract; or

(b) give public notice of the purpose of the contract or the project to which the contract relates and invite expressions of interest from any person interested in undertaking the contract or all, or any part of, the project.

(2) If a Council invites expressions of interest—

(a) it must register those expressions of interest; and

(b) when it is ready to enter into the contract, it must invite tenders from some or all of those who registered their interest in undertaking the contract (or the part of the project to which the contract relates).

(3) The public notice, tenders and expressions of interest must be in the prescribed form (if any) and must contain any details that are prescribed.

(4) Nothing in this section requires a Council to accept the lowest tender or to accept any tender.

(5) This section does not apply if—

(a) the Council resolves that the contract must be entered into because of an emergency; or

(b) the contract is entered into with a Council acting as the agent for a group of Councils and the Council has otherwise complied with this Act; or

(c) the contract is entered into in accordance with arrangements approved by the Minister for the purposes of this sub-section; or

(d) the contract is a type of contract that has been exempted from this section by the regulations.

(5A) This section does not apply in respect of a contract if—

(a) the contract is a novated contract; and

- (b) the original contract was entered into in accordance with this section; and*
- (c) the Council has undertaken a due diligence in respect the new party to the contract.*
- (6) Whenever practicable, a Council must give effective and substantial preference to contracts for the purchase of goods, machinery or material manufactured or produced in Australia or New Zealand.*

Section 186A Procurement policy

- (1) A Council must prepare and approve a procurement policy.*
- (2) A Council must within 12 months after the commencement of section 67 of the Local Government Amendment (Councillor Conduct and Other Matters) Act 2008 prepare and approve a procurement policy.*
- (3) A procurement policy must include any matters, practices or procedures which are prescribed for the purposes of this section.*
- (4) A Council must have regard to guidelines made under subsection (5) in preparing a procurement policy.*
- (5) The Minister may make guidelines with respect to the form or content of a procurement policy.*
- (6) Guidelines made under subsection (5) must be published in the Government Gazette.*
- (7) At least once in each financial year, a Council must review the current procurement policy and may, in accordance with this section, amend the procurement policy.*
- (8) A copy of the current procurement policy must be available for inspection by the public—*
 - (a) at the Council office; and*
 - (b) on the Council's Internet website.*
- (9) A Council must comply with its procurement policy.*
- (10) In this section procurement policy means the principles, processes and procedures that will apply to all purchases of goods, services and works by the Council.*

FINANCIAL IMPLICATIONS

Financial limits and parameters are placed on the various responsibility levels being the initiation of purchase orders and invoice approval as detailed in the revised policy. The LGA89 also imposes monetary levels parameters when entering contracts.

POLICY IMPLICATIONS

ORDINARY COUNCIL MEETING MINUTES

This report concerns policy or revision of an existing policy in accordance with the LGA89.

CONCLUSION

Council needs to adopt a policy that complies with the LGA89, provides the required level of scrutiny and internal controls around its procurement activities, and ensures best value to Council.

At the same time, a balance needs to be achieved between structural controls /mechanisms and the need for staff to be able to effectively procure goods and services and advance service provision and projects.

At the time of the above Council resolution February 2009, Councillors were advised on a number of matters.

- Council's purchasing procedure (which governs the engagement of consultants as well as other procedures) was currently being reviewed.
- Council had recently advertised for expressions of Interest (EOI) for tradespeople and plant operators with a view to updating the current register maintained by Council. Council was soon to undertake the same EOI process for consultants.
- The current staff Code of Conduct already requires staff to formally declare any potential or actual conflict of interest.
- That a restriction of three years relating to engagement of ex staff as consultants was seen as unnecessarily restrictive. Council should engage the most appropriate people at the best value for works or services to be undertaken. The intellectual knowledge, knowledge of communities, processes and policies that ex staff have is often a substantial advantage both financially as well as in terms of timeliness of project delivery.
-
- It may be potentially discriminatory to make decisions regarding future engagement based on a person's past employment with Council or that a person was employed by Council over the past 3 years. Council would be better placed to agree on and establish a proper business process or policy inclusion that reinforces a need to ensure all persons when being considered for employment or engagement to provide services are considered on merit from within the existing market. This process should have nothing to do with past employment relationships. Any process or policy needs to focus on what is best for Council.
-
- On the basis of past concerns and the Council resolution at its February 2009 Council meeting, it is proposed to reinforce a suitable process to ensure that if past employees are engaged, they are engaged on merit in the role they are to perform, to ensure best value for Council.

RECOMMENDATION

That the Draft Indigo Shire Council Purchasing Policy as attached to this report including any amendments made, be referred to the Council Audit Committee for review and for any

ORDINARY COUNCIL MEETING MINUTES

recommendations to Council.

Appendix J
Purchasing Policy

**Moved Cr Larry Goldsworthy
Seconded Cr Ali Pockley**

That this matter be adjourned and deferred to the July meeting of Council.

CARRIED

12.8 LEASE OF 'SUB-TREASURY BUILDING, HISTORIC PRECINCT BEECHWORTH

(File No. A444 - Stuart Perry - Tourism Manager)

For Decision

INTRODUCTION

As per recent reports to council, a draft of the lease for the Sub-Treasury buildings in the Beechworth Historic Precinct has been drawn up.

BACKGROUND

The document is a standard section 17D Crown Land Lease as per Department of Sustainability and Environment (DSE) requirements. The draft lease is based on the existing lease between council and the Chinese Cultural Centre with amendments agreed to between the Beechworth Historical Re-enactment Group (BHRG), DSE and council.

KEY IMPLICATIONS

The implications for council are that the maintenance of the building will now be offset against a revenue stream that will start flowing in January 2010 when the building opens for visitors. The renovations and operation of the building will be at the cost of the lessee (BHRG). The centre is expected to be occupied in July (or as soon as the tenant can take possession) as the BHRG wish to make a start as soon as possible in order to meet their proposed opening deadline of December.

FINANCIAL IMPLICATIONS

There will be a power cost which will come from the revenue and while the 'rising damp' is an existing issue, it is one that will ultimately have to be addressed as it is an existing defect and will remain the responsibility of the landlord. The full financial benefit of the occupancy will not be felt until the 2010/11 financial year when the centre opens 5 days per week.

OTHER CONSIDERATIONS

Legal comment has been sought but is not to hand at the time of writing this report. It is expected to have been received by the time of the council meeting and an update will be given.

RECOMMENDATION

That the draft lease of the building in the Beechworth Historic Precinct (known as the 'Sub-Treasury Building') to the Beechworth Historical Re-enactment Group be approved in principle.

That subject to legal approval being received and final acceptance being approved by the Department of Sustainability and Environment, that the final lease be considered at the July 2009 Council meeting for signing and sealing.

Appendix K
Sub Treasury Building Lease

**Moved Cr Vic Issell
Seconded Cr Peter Croucher**

That the draft lease of the building in the Beechworth Historic Precinct (known as the 'Sub-Treasury Building') to the Beechworth Historical Re-enactment Group be approved in principle.

That subject to legal approval being received and final acceptance being approved by the Department of Sustainability and Environment, that the final lease be considered at the July 2009 Council meeting for signing and sealing.

CARRIED

Cr Pockley left the meeting at 4.51pm and did not vote. She returned at 4.55pm.

12.9 FINANCE REPORT FOR MARCH 2009

(File No. M064-MF – Frank Bonacci – Finance Manager)

For Information

With significant focus by the Finance team and departmental managers on preparation and finalisation of the 2009/10 Budget, a minor financial review as at the end of April 2009 has been performed.

This review looked at the April actual income and expense, compared it to the latest April forecasts and all significant variances we reviewed and investigated. The results of that investigation showed that while there was a sizable underspend in April (versus the latest forecast for April), with the exception of the following identified savings, the majority of these variances were reported by departmental managers to be timing related.

The following savings totalling \$88.3k have reduced the reported March Year End Underlying Deficit of \$1.219M to an April Year End forecast Underlying Deficit of \$1.131M.

- Credits received from Electricity supplier for previous overpayments - \$13k
- Additional, unplanned sales of quarry crushed rock material - \$60k
- Savings in Local Roads activities - \$20k
- Savings in Parks and Gardens activities - \$5k
- The above savings were offset by additional, recruitment costs - approximately \$10k
- In the coming weeks, Finance and departmental managers will prepare a detailed review of expected income and expenditure for the remainder of this financial year (effectively for the month of June) and will provide a more accurate view of our expect 2008/09 year end position at the next council meeting.
- We have recently received preliminary estimates from the Victorian Grants commission of the 2009/10 grant funding level. This notification also included forewarning that the Victorian Grants commission plan to remit 25% of their 2009/10 grant funding in June 2009. We are currently having discussions with our auditors to confirm whether the receipt of this 2009/10 grant funding in June must be taken up as income in the current financial year or whether it can be classified as a pre-payment on the Balance Sheet at year end. If this 25% advance payment must be recognised as income in the current financial year, we will effectively achieve close to break even as our underlying position for the current financial year.

- Appendix L
- Capital Works Progress Monitor
- Profit and Loss for April 2009
- Business Unit Details for April 2009

13.0 GOVERNANCE

13.1 COMMUNICATIONS COMMITTEE REPORT

(M450.7 - Roberta Baker - Communications Adviser)

For Decision

INTRODUCTION

Council resolved in January to create a Communications Committee under Section 86 of the Local Government Act. The inaugural meeting of this committee took place on Friday, May 14, 2009, with Crs Larry Goldsworthy, Vic Issell, and Ali Pockley present, with the Media and Communications Officer Nell Showers and Communications Adviser Roberta Baker.

POLICY IMPLICATIONS

The group discussed the role of Council as a provider of services to residents, that this is the context for a Communications Policy. Discussion also took place on the underpinning philosophy of a Communications Policy, which should include the need for all communications to be respectful. Distinction was made between 'getting information out' and the ways that is done, and consultation, which involves different processes. Internal

ORDINARY COUNCIL MEETING MINUTES

communication between staff should be part of the policy and the policy should at least address the questions : What ? Who ? Why ? How? Methods of communication to be considered included the website, media, mailing and email lists, letters, Indigo Informer, Indigo Connection, publications, noticeboards, SMS, word of mouth, public forums.

CONCLUSION

The meeting decided that the committee's work would be better achieved if it was a Working Group rather than a formal Section 86 committee of Council. The group will meet on a monthly basis and will run for a limited time, with its key priority the drafting of a new Communications Policy. The meeting also decided that the Communications Adviser would prepare a draft Communications Policy for the next meeting on June 12, 2009.

RECOMMENDATION

That the Communications Committee as currently formulated be a Working Group rather than a Section 86 committee of Council.

Appendix M
Communications Committee Minutes – Friday 14th May 2009
Media Report – May 2009

**Moved Cr Larry Goldsworthy
Seconded Cr Barb Murdoch**

That the Communications Committee as currently formulated be a Working Group rather than a Section 86 committee of Council.

CARRIED

14.0 NOTICES OF MOTION

Nil.

15.0 COMMITTEE AND DELEGATES REPORTS

15.1 MAY DIARY – CR PETER GRAHAM OAM

For Information

Date	Time	Function / Meeting details
1 May	9.30 am	Admin, Beechworth Office
	12 noon	Regional Waste Management Review, Yackandandah
3	10.00 am	Drive Back in Time Official Welcome, Beechworth
4	9.00 am	Meeting with CEO, Beechworth
	4.00 pm	Budget Workshop, Yackandandah
	10.30 am	Meet with North East Water
	2.30 pm	Meet with ratepayer, Rutherglen

ORDINARY COUNCIL MEETING MINUTES

5	4.00 pm	Budget Workshop, Yackandandah
	6.00 pm	Future Food & Farming Forum Official Welcome, Beechworth
7	1.00 pm	Sustainability Victoria Forum, Melbourne
	5.00 pm	North East Local Government Network Meeting, Wangaratta
8	9.30 am	Murray Darling Association Region 1 Meeting, Culcairn
11	9.30 am	Weekly Meeting with CEO, Beechworth
	10.00 am	Meeting with Bill Tilley, Member for Benambra
	11.00 am	Meeting with CEO and Ken Jasper at RWE
	11.30 am	Meet with Tidy Towns Judge, RWE
	1.00 pm	Kerferd Committee Meeting, Beechworth
	6.30 pm	Legacy Annual Corowa Dinner, Corowa
12	2.00 pm	Council Briefing Meeting, Chiltern
	3.00 pm	Ordinary Meeting of Council, Chiltern
	7.00 pm	Community Forum, Chiltern
13	2.00 pm	National Volunteers Week Afternoon Tea, Tangambalanga
	6.00 pm	ACSUM Meeting, Chiltern
14	9.00–11.15 am	NevRWaste AGM, Wangaratta
	12 noon	Rail Trail Sod Turning Ceremony, Rutherglen
	2.00 pm	National Volunteers Week Afternoon Tea, Rutherglen
15	2.00 pm	National Volunteers Week Afternoon Tea, Wahgunyah
	5.15 pm	Yackandandah Historical Society AGM and Dinner, Yackandandah
16	1.00 pm	Civic Reception at City of Wangaratta
17	11.00 am	Attend Harvest Festival, Beechworth
18 - 20	Full days	Association Victorian Regional Waste Management Group Review, Melbourne
21	9.30 am	Admin, Beechworth and Wangaratta
22	6.00 pm	Heritage Awards, Beechworth
25	9.30 am	Weekly meeting with CEO, Beechworth
	1.30 pm	Kerferd Committee Meeting, Beechworth
26	3.00 pm	Council Briefing Meetings, Yackandandah
27	7.00 pm	Maximising the Mayoralty Networking Dinner, Melbourne
28	9.00 am	Maximising the Mayoralty Training, MAV, Melbourne
	6.30 pm	Alp Valleys 2009 Graduation Dinner, Wangaratta

Cr Peter Graham OAM
9 June 2009

Cr Vic Issell left the meeting at 5.01pm and returned at 5.02pm.

15.2 MAY DIARY – CR PETER CROUCHER

For Information

Date	Time	Function / Meeting details
4 May	4.00 pm	Council Budget Workshop, Yackandandah
5	9.30 am	MAV Communications Workshop, Wangaratta
	4.00 pm	Council Budget Workshop, Yackandandah
6	10.30 pm	Visit from Member for Indi, Sophie Mirabella,

ORDINARY COUNCIL MEETING MINUTES

		Tangambalanga
7	9.30 am	Lake Hume Management Committee Meeting, Wodonga
8	11.00 am	Opening Exhibition Art Space, Wodonga
11	11.00 am	Meeting with constituent, Beechworth
	Pm	Visit Wildlife Sanctuary, Beechworth
12	10.00 am	Volunteers Morning Tea Thank You, Yackandandah
	2.00 pm	Council Briefing Meeting, Chiltern
	3.00 pm	Ordinary Meeting of Council, Chiltern
	7.00 pm	Community Forum, Chiltern
13	2.00 pm	Volunteers Afternoon Tea Thank You, Tangambalanga
14	12 noon	Rail Trail Sod Turning Ceremony, Rutherglen
19	4.00 pm	Briefing Meeting Council Plan, Yackandandah
21	9.00 am	Junior Council Meeting, Wahgunyah
22	1.00 pm	UMRL Briefing, Wodonga
	6.00 pm	Heritage Awards, Beechworth
26	10.00 am	UMRL Meeting, Wodonga
	3.30 pm	Council Briefing Meeting, Yackandandah
27	9.30 am	Indigo Tourism Advisory Committee, Chiltern
28	6.30 pm	Alp Valleys 2009 Graduation Dinner, Wangaratta

Cr Peter Croucher
9 June 2009

15.3 JUNIOR COUNCIL MEETING 21 MAY 2009: FILE NO 220-04 – CR P CROUCHER

For Information

11 Junior Councillors, Crs Larry Goldsworthy and Peter Croucher attended the meeting on 21 May at the Wahgunyah Primary School.

The Junior Councillors were taken to Valhalla Wines, where owner Anton Thirkildsen, showed us around the environmentally constructed property and spoke on the various grape varieties grown and wines made there.

Returning to the school the group discussed their attendance at the Young Leaders Day in Melbourne on 16 March and who their favourite speakers were. They also spoke about their various activities for this year to raise funds for sick and injured wildlife, in particular the construction of a wombat enclosure at the Beechworth Wildlife Sanctuary.

The junior councillors will next meet on Thursday 18 June at the Chiltern Primary School where former councillor Frances Walsh will be the guest speaker.

15.4 MAY DIARY – CR BERNARD GAFFNEY

For Information

3 May	2.00 pm	Presentation "Drive Back in Time" competitors, Beechworth
4	9.00 am	Attend Mayor/CEO Weekly Meeting, Beechworth

ORDINARY COUNCIL MEETING MINUTES

5	9.30 am	MAV Fundamentals Communications Workshop, Wangaratta
	4.00 pm	Council Briefing Meeting, Yackandandah
8	7.00 pm	Attend Victorian Rural Doctors' Awards Presentation, Melbourne
11	9.00 am	Rutherglen Wine Centre Board Meeting, Rutherglen
12	2.00 pm	Council Briefing Meeting, Chiltern
	3.00 pm	Ordinary Meeting of Council, Chiltern
	7.00 pm	Community Forum, Chiltern
14	10.00 am	Meet with Tidy Towns Judge in Beechworth
16	2.00 pm	Attend Harvest Festival, Beechworth
17	2.00 pm	Attend Harvest Festival, Beechworth
19	2.00 pm	Council Briefing Meeting, Yackandandah
20	11.00 am	Meet with constituent, Yackandandah
	4.00 pm	Meet with CEO, Beechworth
21	6.00 pm	Trading Places Meeting, Beechworth
26	3.40 pm	Council Briefing Meeting, Yackandandah
27	7.00 pm	Maximising the Mayoralty Networking Dinner, Melbourne
28	10.00 am	Maximising the Mayoralty Workshop, MAV, Melbourne
30	9.30 am	Meet with constituent, Chiltern

Cr Bernard Gaffney
9 June 2009

15.5 MAY DIARY – CR L GOLDSWORTHY

For Information

Date	Time	Function / Meeting details
4 May	4:00 PM	Budget Workshop, Yackandandah
05	4:00 PM	Budget Workshop, Yackandandah
06	7:30 PM	Australian Light Horse Heritage Collection, Beechworth
07	11:30 AM	Ned Kelly Festival Official Launch, Beechworth
12	2:00 PM	Council Briefing Meeting, Chiltern
	4.00 PM	Council Ordinary Meeting, Chiltern
	7:00 PM	Community Forum, Chiltern
14	7:00 PM	Lake Sambell Management Committee meeting.
15	11:00 AM	Communications working group meeting, Beechworth
19	4.00 PM	Council Briefing Meeting, Yackandandah
21	9.00 AM	Indigo Junior School Council, Wahgunyah
	4.30 PM	Indigo Heritage Advisory Committee, Yackandandah
	6:25 PM	Trading Places meeting, Beechworth
22	6:00 PM	Indigo Heritage Awards, Beechworth
26	3:00 PM	Council Briefing Meeting, Yackandandah
27	7:45 AM	MAV Local Gov. Careers Campaign, Melbourne
	9:30 AM	MAV State council meeting, Melbourne
28	10:00 AM	Met with Chiltern resident
	11:00 AM	Met with a group of Chiltern residents
	12:00 PM	Met with Chiltern resident

ORDINARY COUNCIL MEETING MINUTES

	12:40 PM	Met with Chiltern resident
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Cr Larry Goldsworthy
9 June 2009

15.6 MAY DIARY - CR V ISSELL

For Information

Date	Time	Function
1 May	8.00 am	All day tour of Rail Trail
2	10.00 am	Murray Arts AGM, Albury
6	9.00 am	Future of Local Government Conference, Melbourne
7- 8	9.00 am - 11.00 am	Future of Local Government Conference, Melbourne Launch, Murray Arts, Wodonga
11	5.00 pm	Indigo Valley
12	3.00 pm	Council Meeting, Chiltern
	7.00 pm	Community Forum, Chiltern
13	6.00 pm	ACSUM, Chiltern
15	9.00 am	Meeting re eco-tourism, Beechworth
	9.30 am	Councillor duty, Beechworth
	11.00 am	Communications Committee meeting, Beechworth
18	12.30 pm	Meeting re eco-tourism, CSU, Thurgoona
19	4.00 pm	Council Briefing meeting, Yackandandah
22	8.00 am	Rail Trail Community Advisory Group, Milawa
	2.00 pm	Beechworth Neighbourhood Centre AGM
	6.00 pm	Council Heritage Awards, Beechworth
26	4.00 pm	Council Briefing, Yackandandah
29	10.30 am	Councillor duty, Yackandandah

Cr V Issell
9 June 2009

15.7 MAY DIARY - CR BARBARA MURDOCH

Date	Time	Function
4 May	4:00 pm	Council Budget Meeting, Yackandandah
5	9:30 am 4:30 pm	MAV Media Fundamentals, Wangaratta Council Budget Meeting, Beechworth
11	2:00 pm 7:00 pm	Volunteers Week Celebration, Chiltern Chiltern Progress Meeting
12	2:00 pm 3:00 pm 7:00 pm	Briefing Meeting, Chiltern Council Meeting, Chiltern Council Forum, Chiltern
13	7:00 pm	ASCUM Meeting, Chiltern
14	12:00 pm	Sod Turning Ceremony for Murray to Mountains Rail Trail.

ORDINARY COUNCIL MEETING MINUTES

	2:00 pm 7:00 pm	Rutherglen Volunteers Week Celebration, Rutherglen Chiltern Streetscape Steering Committee Meeting, Chiltern
15	2:00 pm 5:15 pm	Volunteers Week Celebrations, Wahgunyah Yackandandah Museum AGM Dinner, Yackandandah
16	11:00 pm	Harvest Festival Beechworth
17	11:00 am	CFA Pie Eating Competition, Chiltern
18	6:00 pm	Rutherglen Heavy Vehicle Deviation, Community Reference Group Meeting , Rutherglen
19	4:00 pm 6:30 pm	Briefing Meeting, Yackandandah Chiltern Lion's Club Meeting Re- Men's Shed Establishment. Chiltern
21	6:00 pm	Dean's Address, Latrobe University, Wodonga
22	6:00 pm	Indigo Shire Heritage Awards, Beechworth
26	3:15 pm 4:00 pm	Councillor's Meeting, Yackandandah Briefing Meeting, Yackandandah
28	10:00 am 6:30 pm	ICLEI Cities for Climate Change Forum, Bendigo ALP Valleys Leadership Group Graduation Ceremony, Wangaratta
30	12:30 pm	Arts Rutherglen 'Ripe for a Story', Rutherglen

Cr Barbara Murdoch

9 June 2009

15.8 MAY DIARY – CR A POCKLEY

For Information

Date	Time	Function / Meeting details
4 May	4 pm	Budget workshop, Yackandandah
5	9.30 am	MAV Fundamentals – Media and Communications, Wangaratta
	4 pm	Budget workshop, Yackandandah
	6.00 pm	Future Food and Farming Seminar, Beechworth
6	1.15 pm	Meeting with constituent, Beechworth
7	2.30 pm	Trip around Indigo Valley area with Roberta Baker, Communications Advisor
8	11 am	Launch of Murray Arts dance group, Artspace, Wodonga
	6 pm	Vocal Nosh evening, Middle Indigo Primary School, Indigo Valley
11	2 pm	Volunteers thank you tea party, Chiltern Senior Citizens
	4 pm	Meeting with constituent, Yackandandah
12	2 pm	Council Briefing Meeting, Chiltern
	3 pm	Council Meeting, Chiltern
15	11 am	Communications Meeting, Beechworth
	2 pm	Volunteers thank you tea party, Wahgunyah Senior Citizens

ORDINARY COUNCIL MEETING MINUTES

	6.30 pm	Yackandandah Historical Society AGM and dinner, Yackandandah
19	3 pm	Council Briefing Meeting, Yackandandah. Launch of Memorial Shed, Chiltern.
21	4.30 pm	Heritage Advisory Committee, Yackandandah
	6 pm	Trading Places Policy Review, Beechworth
22	6 pm	Heritage Awards Evening, Beechworth
25	11.30 am	DPI – fruit fly interview, Indigo Valley
26	11 am	Creative Women’s Day, Mudgegonga
	3.30 pm	Council Briefing Meeting, Yackandandah

Cr A Pockley
9 June 2009

16.0 GENERAL BUSINESS

Nil.

17.0 CONFIDENTIAL

**Moved Cr Ali Pockley
Seconded Cr Vic Issell**

That the Ordinary Council Meeting move into Confidential session.

CARRIED

**Moved Cr Peter Croucher
Seconded Cr Larry Goldsworthy**

That the Confidential Session close and Council move back to the open session of the Ordinary Council Meeting.

CARRIED

**Moved Cr Larry Goldsworthy
Seconded Cr Ali Pockley**

That Council:

- 1. Adopt the 12 month CEO Annual Performance Review report**
- 2. Adopt the CEO Performance Plan for 2009/10**
- 3. Determine the CEO’s Total Remuneration Package is increased by 2.5% from the date of the CEO’s 12 month anniversary and approve an additional two (2) weeks annual leave (without pay to be annualised over 12 months)**
- 4. Determine that the review Remuneration Package be placed on Council’s Public Register of Senior Officer Remuneration**

CARRIED

ORDINARY COUNCIL MEETING MINUTES

Moved Cr Larry Goldsworthy
Seconded Cr Ali Pockley

That the Ordinary Council Meeting closed at 5.25pm.

CARRIED