

# AGENDA

## ORDINARY MEETING OF COUNCIL

Tuesday, 18 February 2014

To be held at  
Swan Hill Town Hall,  
Council Chambers,  
McCallum Street, Swan Hill  
Commencing at 7:00 PM

**COUNCIL:**

Cr LT McPhee – Mayor

Cr JN Katis

Cr GW Norton

Cr GI Cruickshank

Cr JA Kiley

Cr CM Adamson

Cr JB Crowe

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**SECTION A – PROCEDURAL MATTERS**

- **Open**
  
- **Acknowledgement to Country**
  
- **Prayer**
  
- **Apologies**
  
- **Confirmation of Minutes**
  - 1) Ordinary Meeting held on 10 December 2013
  
- **Declarations of Conflict of Interest**

**RECEPTIONS AND READING OF PETITIONS, MEMORIALS, JOINT LETTERS  
AND DEPUTATIONS**

**PE.14.1      REQUEST TO INSTALL TURF ON NATURE STRIPS, VILLAGE WAY  
SWAN HILL**

A petition was received from the residents of Village Way (Tower Hill), Swan Hill requesting that turf be installed in some nature strips of their street, with all costs to be borne by Council.

**Attachments**

- 1** Petition

	12 NOV 2013	748236
ES		
DCS	DI	

Dean Houlihan,

11<sup>TH</sup> November, 2013.

Mr. Dean Miller,  
CEO - Swan Hill Rural City Council,

Mr. Miller,

I am writing this letter on behalf of myself and other petitioners of our street, Village Way, Tower Hill, Swan Hill. Please find attached a petition signed by all residents of Village Way. We believe that we have the most unaesthetically pleasing street in Tower Hill, particularly on the south side. Of the fourteen houses on the south side only three of us have grassed nature strips. The others are either bark chips or scrub/dirt. I am aware that in the two previous stages all the nature strips have been turfed. We are requesting that the appropriate nature strips of Village Way be turfed also. Obvious exceptions are those five houses and one vacant block that back up to Box Lane. I have expressed my concerns through developers, Vic Urban, through two phone calls and a letter. They have since replied and referred me to my local council. Please take our petition into consideration.

I can be contacted on  
Thank You for your time.

Yours Sincerely,

*Dean Houlihan*  
DEAN HOULIHAN

- **Public Question Time**

## **SECTION B – REPORTS**

### **B.14.1 REQUEST TO INSTALL TURF ON NATURE STRIPS VILLAGE WAY SWAN HILL**

**Source:** Procedural  
**Department:** Infrastructure  
**File Number:** 79-22-46

#### **Summary**

The following report provides Council with information on actions taken as a result of a petition from the residents of Village Way, Swan Hill (Tower Hill) requesting that turf be installed in some nature strips of their street, with all costs to be borne by Council.

#### **Council Plan Strategy Addressed**

*Regulation and management of the built environment* - We will ensure appropriate control and oversight of areas where we have a regulatory responsibility and provide services to ensure impacts of people in our municipality on the environment and are managed appropriately.

#### **Recommendations**

**That Council instal turf on the nature strips of the nine properties at Council's cost.**

#### **Policy Implications**

Nil

#### **Financial and Resource Implications**

Estimated cost to supply and install turf on one nature strip has been quoted as follows:

14x3mtr = 42sqm

Nature strip to be excavated, rotary hoed, new turf laid.

\$550 incl GST

\$550 per nature strip for nine nature strips = \$4950 approximate total project cost.

## **Triple Bottom Line Impact**

### Social

The proposal would improve the amenity of Village Way for residents and visitors alike. It may also serve as an act of good relations between Council and the ratepayers.

### Environmental

The proposal would improve the visual environment of this street and any vegetation is more favourable than none. However, alternative treatments are preferred, as a method of conserving water.

### Economic

The proposal requires Council to bear the cost of reinstalling turf to these properties.

## **Background**

Village Way was constructed in 2004 as part of Stage 1 of the Tower Hill development. At this time, Vic Urban installed turf landscaping to all properties in accordance with the planning conditions of the development.

In the succeeding years, drought conditions in Swan Hill made it necessary for water restrictions to be put in place and many gardens suffered as a result. Also at this time, Council introduced the Alternative Water Wise Nature Strip Treatments Policy that encouraged residents to consider alternatives to the traditional turf nature strip. As a result, many streets no longer have uniform nature strip landscapes.

Subsequent stages of Tower Hill have had turf installed on nature strips as part of the landscaping design. The residents of Village Way believe that their street does not fit in with the aesthetic of the Tower Hill development as a result of imposed water restrictions, leading to dead grassed areas. Consequently a petition was submitted to Council in December 2012 expressing their concern.

## **Issues**

Nil



## **Consultation**

Council sent a letter to all residents of Village Way asking that they stipulate whether or not they wanted turf to be installed on their nature strips. Summary results are listed below.

Residents who do not require turf include those that are satisfied with their current treatment, own vacant blocks or their property faces parkland, making turf inappropriate.

Request turf	9
Do not require turf	11
Unable to contact	1

## **Options**

1. Council installs turf on the nature strips of the nine properties as requested; or
2. Council do not support the request to turf the nine properties.

## **Conclusion**

It is necessary for Council to decide whether or not it will support the reinstallation of turf in Village Way, in order to improve the aesthetics of this street and to achieve uniform landscaping design throughout the Tower Hill development.

## **Attachments**

Nil.

## **B.14.2 KEY STRATEGIC INITIATIVES - FIRST QUARTER REVIEW**

**Source:** Procedural  
**Department:** Corporate Services  
**File Number:** 22-23-08

### **Summary**

This is the first quarterly report identifying the status of Key Strategic Initiatives from the Council Plan for 2013/14 to 2016/17 financial years.

### **Council Plan Strategy Addressed**

*Responsible management of resources* - We will continually improve the management of our finances, assets, systems and technology to achieve and maintain Best Value in our operations.

### **Recommendation**

**That Council adopt the Key Strategic Initiatives first quarter review report.**

### **Policy Implications**

Nil

### **Financial and Resource Implications**

The implementation of the 2013/14 Key Strategic Initiatives was included in the budget.

### **Triple Bottom Line Impact**

The Key Strategic Initiatives affect the social, economic and environmental aspects of the municipality. In addition, some of the targets seek to make the organisation more efficient and increase the transparency of Council.

### **Background**

The Council Plan 2013-17 includes over 77 initiatives and 235 actions, through which the achievement of the Council Plan may be measured over its four-year term.

There are 73 actions in total identified for the 2013/14 period and each action has a nominated responsible officer. In each case the responsible officer is a member of the Executive Management Team, reflecting the importance placed on achieving targets.

## **Issues**

For the first quarter of 2013/14:

- 5 actions were completed during the first quarter of the 2013/14 year.
- The progress of all 73 actions is outlined in the comment section of the attachment to this report.
- Of the 23 initiatives that were listed as 'carried over' or 'ongoing' from the 2009/13 Council Plan, 10 have been carried over to form part of a new initiative within the 2013/17 Council Plan, 3 are now an ongoing process, 6 will continue to be reported on and 4 were completed by 30 September 2013. Please see attached documents titled 'Progress of Initiatives carried over from Council Plan 2009/13.

## **Consultation**

Council consulted the community in the development of the Council Plan Initiatives during the development of the Council Plan 2013/17. The Council Plan was adopted at the June Council Meeting in 2013.

## **Options**

Not applicable for this report.

## **Conclusion**

Actions from the Key Strategic Initiatives for 2013/14 financial year continue to progress, with further reporting to occur on a quarterly basis to Council to ensure that actions are on target to be completed.

## **Attachments**

- 1 Final Quality and Costs Report 2012/13
- 2 Progress of 2009-13 initiatives

File No. 42-49-00

BEST VALUE  
 QUALITY AND COST STANDARDS REPORT  
 TARGET AND ACTUAL PERFORMANCE  
 2012/13



## Achievements Summary

Service Group	Number of Quality and Costs Standards				Total
	Exceeded ✓	Achieved =	Not Achieved x	Not Applicable for 2012/13	
Transport Services	12	2	4	0	18
Family and Children's Services	3	3	2	0	8
Economic Prosperity	3	7	4	0	14
Community Care	5	6	3	0	14
Community Wellbeing	6	4	6	3	19
Waste Management	5	7	4	1	17
Community Amenity	5	5	8	0	18
Recreation, Culture & Leisure Services	17	11	23	0	51
Organisational Support	19	32	12	1	64
Leadership and Governance	8	7	1	0	16
<b>Total</b>	<b>83</b>	<b>84</b>	<b>67</b>	<b>5</b>	<b>239</b>
<b>Achieved in 2012/13</b>	<b>35%</b>	<b>35%</b>	<b>28%</b>	<b>2%</b>	<b>100%</b>
<b>Achieved in 2011/12</b>	<b>33%</b>	<b>34%</b>	<b>30.5%</b>	<b>2.5%</b>	<b>100%</b>

**Exceeded:**

The actual quality and/or cost standard surpassed the target

**Achieved:**

The actual quality and/or cost standard was met

**Not Achieved:**

The actual quality and/or cost standard was below the target

**Not Applicable:**

The target is unable to be calculated as the measurement no longer exists.

File No. 42-49-00

### Transport Services

(report adopted by Council December 2002)

*Programs included within this service group:*

Footpaths and Bicycle Paths  
 Roads sealed and unsealed  
 Road furniture, line marking and car parks  
 Aerodromes

Footpaths	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Grinding metres/year	721(1)	900	700	✘
Replacement square metres/year	<del>1300</del>	1200	1200	✓
Average response time to address service requests (weeks)	<del>2</del>	4	2	✓
Number of service requests received that address issues on footpaths	57(2)	45	50	✘
<i>Cost Standards</i>				
Average maintenance expenditure per square metre of footpath				
<u>Total cost to maintain footpaths</u>	<del>\$2.02</del>	\$2.10	\$2.20	✓
Total square metres of footpath				

Variances from quality and cost standards:

- (1) A full inspection of Council's footpath network resulted in extra footpath replacement and a reduction in grinding.
- (2) Ageing footpaths has resulted in a higher number of service requests.

File No. 42-49-00

Roads	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Number of complaints of residents unable to access their home	0	1	1	✓
Completion of asset inspection as per the Road Management Plan	100%	100%	100%	=
Average response time to address safety standards (days)	8	7	5	✓
Average response time to address service requests (weeks)	4	5	4	✓
Number of service requests received that address issues on roads:				
Sealed roads	78	80	80	✓
Unsealed roads	113(1)	90	100	✗
Percentage of sealed road network renewed per annum	1.65%	1.30%	1.7%	✓
Percentage of unsealed road network renewed per annum	3.1%(2)	4.5%	3.5%	✗
<i>Cost Standards</i>				
Average expenditure per square metre of sealed road	\$0.17	\$0.20	\$0.20	✓
<u>\$ expended on sealed road maintenance</u>				
Total square metre of sealed road				
Average cost per square metre of sealed road constructed				
<u>cost to construct sealed roads</u>				
Total square metres of sealed road constructed	\$25.52	\$26.50	\$26.50	✓
Average cost to resheet a square metre of unsealed road				
<u>Total cost of resheeting</u>				
Sqm resheeted	\$4.24	\$5.00	\$4.50	✓

Variances from quality and cost standards:

- (1) The increase in unsealed roads service requests is a result of below average rainfall for 2012/13.
- (2) The decrease in percentage of unsealed road network renewed per annum was due to several major sealed road reconstructions being programmed to be completed.

File No. 42-49-00

Aerodromes	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Maintain Swan Hill and Robinvale aerodrome in accordance with Civil Aviation Regulations	100%	100%	100%	=
<i>Cost Standards</i>				
Cost increase in maintenance of Aerodrome	3.1%	Cost increase in Net Operating Result does not ascend 6% to previous year	6%	✓

Variations from quality and cost standards:

- (1) Increase in cropping lease income resulted in net operating costs reducing.

File No. 42-49-00

**Family and Children’s Services**

(report adopted by Council September 2002)

*Programs within this service:*

Out of School Hours Child Care consisting of:

- Before and After School Child Care
- Vacation Child Care
- Mobile Vacation Child Care

Preschools

Family Day Care

Maternal Child and Health

Out of School Hours Child Care	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Meet the outcomes of the funding and service agreements (this includes licensing, children’s regs and accreditation)	100%	100%	100%	=
<i>Cost Standards</i>				
Net cost per hour of care delivered	\$2.50(1)	\$3.50	\$2.50	✓

Variances from quality and cost standards:

- (1) Utilisation increased hours of care assisted the difference in cost from last year to this year.

Please note: Program co-ordinator is using a more accurate way of determining staff salaries by using a modified salary performer calculation of salaries and costs.

Family Day Care	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Meet the outcomes of the funding and service agreements (this includes licensing, children’s regs and accreditation)	100%	100%	100%	=
<i>Cost Standards</i>				
Average cost to families per hour of care	\$3.38	\$3.33	\$3.60	x



File No. 42-49-00

Maternal and Child Health	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Percentage of children enrolled from birth notifications received	97%(1)	98%	98%	✘
Meet and exceed DHS targets for Maternal and Child Health Services (includes Enhanced Home Visits, additional family support, parent education and screening processes).	Yes	Yes	Yes	=
Percentage of children attending for 3.5-4 yr old developmental assessment	74%(2)	70%	70%	✓
<i>Cost Standards</i>				
Net Cost to Council per Consultation	\$51.00	\$63.00	\$66.00	✓

Variances from quality and cost standards:

- (1) Percentages of enrolled children from birth notifications will vary slightly every year due to a number of factors such as families enrolling out of the municipality or families choosing not to use the service.
- (2) Numbers of families attending for the 3.5-4 year old developmental assessment have possibly surpassed the target due to this check being linked to Centrelink payments.

File No. 42-49-00

### Economic Prosperity Services

(report adopted by Council February 2003)

*Programs within this service:*

Economic Development Unit  
 Stock Selling Complex  
 Caravan Parks  
 Acquisition and Disposal of Council Properties

Economic Development Unit	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Achieve population growth for the municipality	0.51%	0.5%	0.6%	✓
Achieve employment growth greater than the average for Rural and Regional Victoria	SHRC -6% RRV 0.2%(1)	4.5%	2.0%	✗
Achieve an unemployment rate lower than the average for Rural and Regional Victoria	SHRC 5.8% RRV 5.7%	5.3%	5.5%	✓
Maintain national accreditation for Visitor Information Service	Yes	Yes	Yes	=
Increase in assistance provided to visitors/potential visitors	5.0%(2)	5.5%	6.0%	✗
<i>Cost Standards</i>				
Average net cost of responding to enquiries/fulfilling requests for information per enquiry/request	\$8.00	\$7.00	\$6.50	✗

Tower Hill Estate Development

Variations from quality and cost standards:

- (1) This year the municipality did not achieve employment growth greater than the average for rural and regional Victoria. Reasons that may have contributed to this decline include the conclusion of State Government funded Skilled Migration Program. The program ceased to continue after June 30 2012 and this, coupled with the changes in 457 visa requirements (basically making it harder for migrates to get approved) have contributed to a decrease in our workforce.
- (2) After a number of years of decline, due to floods etc, visitor numbers and enquiries received by the Swan Hill Regional Information Centre showed good growth over the past 12 months. While the increase was modest, for example visitor numbers to the Information Centre itself increased by over 6,000, the Swan Hill region as a whole experienced an increase in visitor numbers of over 25%, one of the only regions along the Murray to receive such outstanding results.

File No. 42-49-00

Livestock Exchange	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Maintain National Saleyards Quality Assurance (NSQA) and Meat Standards Australia (MSA) accreditation	100%	100%	100%	=
<i>Cost Standards</i>				
Cost of operating the complex as a % of total sale value				
(Net operating expenditure as a percentage of gross livestock sales (recorded in Livestock Exchange System) plus truck wash sales and agistment, less water stand pipe sales.)	1.00%(1)	0.95%	1.12%(2)	×

Variances from quality and costs standards:

- (1) While throughput has increased, decreasing livestock sale prices have resulted in a reduction to gross turnover (estimated \$41m, actual \$37.5m).
- (2) Additional operating expenditure incorporated for increased infrastructure maintenance and upgrades.

Acquisition and Disposal of Council Properties	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Meet legal requirements for acquisition and disposal of Council properties	Yes	Yes	Yes	=
<i>Cost Standards</i>				
Undertake acquisition and disposal of Council properties within budget targets	Yes	Yes	Yes	=

Caravan Parks	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Number of substantiated complaints received on quality of service provided by caravan park lessee	1	< 3	< 3	=
<i>Cost Standards</i>				
All caravan parks operate at a net return to Council	Yes	Yes	Yes	=

File No. 42-49-00

Tower Hill Estate	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Subdivide and sell lots	16(1)	12	14	✓
<i>Cost Standards</i>				
Subdivision and sale costs of properties within budget targets	Yes	Yes	Yes	=

Variances from quality and cost standards:

- (1) Market down turn and changes to first homebuyers grant affected sales.

File No. 42-49-00

**Community Care Services**

(report adopted by Council February 2003)

*Programs within this service:*

Domestic Assistance  
 Home and Property Maintenance  
 Personal Care  
 Respite Care  
 Food services  
 Aged Accommodation  
 Flexible Service Response  
 Service Management  
 Brokered works  
 Social support- Volunteer Coordination  
 Senior Citizens Centres  
 Social Support- Planned activities  
 Community Aged Care Packages- Internal  
 Community Aged Care Packages- External

Community Care Services	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
<b>Client needs</b>				
Review of existing clients to assess appropriateness of service levels, whether service standards are being achieved and to reassess the needs of the client:				
High Needs	100%	100%	100%	=
Medium Needs	80%	80%	80%	=
Low Needs	85%	70%	80%	✓
<b>Physical Safety</b>				
Undertake a physical safety assessment of the home environment, and ensure that it is at the required level:				
Initial for new clients	100%	100%	100%	=
Review of existing clients	At each visit	At each visit	At each visit	=
<b>Government Requirements</b>				
Compliance with grant conditions and service requirements	100%	100%	100%	=
<b>Brokered Works</b>				
Services delivered in accordance with brokerage agreement	100%	100%	100%	=

File No. 42-49-00

Community Care Services	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Cost Standards</i>				
<b>Average cost per service hour</b>				
General Home Care	\$47.35	\$47.22	\$49.21	✘
Personal Care	<del>\$54.46</del>	\$56.61	\$53.79	✓
Respite Care	<del>\$45.61</del>	\$47.04	\$47.15	✓
<b>Average cost per meal</b>				
This is measured as the total cost of the food services program divided by the number of meals delivered to clients	<del>\$10.93</del>	\$11.18	\$11.83	✓
<b>Average cost to maintain Aged Accommodation</b>				
This is measured as the total cost to maintain Aged Accommodation at Nyah West facility divided by the number of properties maintained*	(\$1,912)	(\$865.00)	(\$1,945)	✘
<b>Senior Citizen Centres</b>				
Total cost to operate Senior Citizen Centres and related activities	<del>\$7,657</del>	\$6,875	\$9,500	✓
<b>Brokered Works</b>				
Services delivered at \$nil cost to Council	(\$22,309)(1)	(\$51,370)	(\$83,640)	✘

\*these figures exclude additional maintenance/structural works deemed necessary by Council's building department.

Variances from quality and cost standards:

- (1) Business provision is totally reliant on services purchased by external agencies. Target was based on known figures at the time of preparation.

File No. 42-49-00

**Community Wellbeing Services**

(report adopted by Council June 2003)

*Programs within this service:*

Statutory Planning  
 Building Department  
 Strategic Planning  
 Arbovirus Disease Control program  
 Regulatory Services  
 Parking Control & School Crossings  
 Public Health

Statutory Planning	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Average number of days required to issue Planning Permits	61(1)	60	60	×
<i>Cost Standard</i>				
Net cost to Council per Planning Permit	\$1,307(2)	\$1,700	\$1,700	✓

Variations from quality and cost standards:

- (1) Actual number of days to issue Planning Permits slightly exceeded target due to impacts on staff resourcing during 2011/12, for example- retirement of Planning Manager and Senior Planning Officer having left the organisation.
- (2) Net cost to Council per Planning Permit is less than estimated due to improved efficiencies in application processing.

File No. 42-49-00

Building Department	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Average number of days* required to issue Building Permits	7.81	16	16	✓
<i>Cost Standards</i>				
Net cost to Council per Building Permit (Profit)	\$311.25(1)	\$472.00	\$274.00	✓

\*Days include: weekends, Public Holidays, and all clock stopped periods, e.g awaiting further information, notifications etc.

Variances from quality and cost standards:

- (1) Net cost to Council per permit in 2012/13 was \$311.25 per permit. This was less than the estimate (\$472 per permit) as a result of the actual salary costs being down on budget due to the MBS vacancy for the period July 2012 to February 2013 being approx (\$42k).

Please note:

- Building activity experienced a moderate down turn in 2012/13 when compared to 2011/12. This was reflected in the number of building permits issued (325) and hence the building permit fee income received(\$16k).
- It should also be noted that as at 2011/12 a portion of the Development Manager's salary is set as an 'internal charge' (approx.\$32K) against the Building Department budget. This will therefore influence/impact on the \$cost per permit.
- Enforcement & Advice component is set to 50% of operations in line with Council Plan objectives and Building Department Business Plan. This includes initiatives such as the follow-up of lapsed building permits, pro-active Essential Safety Measures and Swimming Pool and Spa Safety Barrier Audit Programs.

Arbovirus Disease Control Program	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Meets the outcomes of the funding and service agreement with the Department of Human Services	100%	100%	100%	=
<i>Cost Standards</i>				
Cost per annum to Council to conduct the program	\$51,107	\$34,065	\$14,095	✗

- (1) It has been identified that Council has not yet received the full subsidy payment from the Department of Health. It is anticipated that payment will be received in the 2013/14 financial year.



File No. 42-49-00

Regulatory Services	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Local Government Community Satisfaction rating for Council's enforcement of local laws	N/A(3)	67	N/A	
To reduce the rate of euthanized animals by rehousing impounded animals	14%(1)	10%	10%	✓
<i>Cost Standards</i>				
Average cost to Council to enforce Local Laws per registered animal	\$78.69(2)	\$54.54	\$81.38	✗

\*this includes found dead in pound facility and found on roadside

Variances from quality and cost standards:

- (1) There has been greater emphasis to relocate animals through animal welfare groups which has had a significant decrease in euthanasia rates.
- (2) The number of registered animals was 3,216 inclusive of unpaid registrations. This is a decrease of 641 from last year. This is reflective based on the shortfall in actual revenue received from registrations. There are a few factors impacting on the decline in animal registration these include: residents not renewing their registration, animals passing away and a lack of new registrations.
- (3) The State Government Community Satisfaction Survey format was redesigned to meet the varying needs of all Council's across the state so the previous target set is no longer an accurate measure.

Parking Control and School Crossings	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Local Government Community Satisfaction rating of traffic management	N/A(1)	65%		N/A
School days the crossing is supervised	100%	100%	100%	=
<i>Cost Standards</i>				
Net cost to Council per 'restricted' car park space per annum*	\$36.86 (3,4,5,6)	(\$119.50)(2)	(\$56.81)	
Cost to Council per school crossing per annum (excludes the costs of new uniforms and stop signs)	\$5,127	\$3,984	\$4,395	✗

\*Restricted car parks consist of all parks excluding those privately owned.

Variances from quality and cost standards:

- (1) The State Government Community Satisfaction Survey format was redesigned to meet the varying needs of all Council's across the state so the previous target set is no longer an accurate measure.
- (2) An incorrect assessment of the number of parking bays was made in 2012/13 Target year.
- (3) The Car Parking Management Plan identifies 814 restricted spaces.
- (4) Additional \$87,481 was spent on ticket machines in 2012/13 (Budget \$72,515 Actual \$159,996).

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- (5) Second School crossing subsidy claim money not received in 2012/13 (Received 2013/14)  
 (6) Parking Fines (\$11,672) was written off as Provision for Bad Debts in 2012/13.

Public Health	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Meet the legislative and inspection requirements for registrable premises	100%(1)	100%	100%	=
Maintain the compliance of food premises with their food safety program	84%(2)	80%	80%	✓
Maintain compliance of food samples with the Food Standards Code	94%(3)	80%	90%	✓
Maintain the rate of vaccinations above the national average	Yes	Yes	Yes	=
Local Government Community Satisfaction Survey rating on Health and Human Services	N/A	N/A	N/A	
<i>Cost Standards</i>				
Average cost per head of population to safeguard public health	\$14.19	\$14.00	\$14.50	×

Variances from quality and cost standards:

- (1) All premises were inspected prior to registration being issued late October/November 2012.
- (2) This figure is only applicable for Class 2 food premises (174 class 2 of total 233 at 30 June 2013). Not all food premises have a food safety program assessed by Council and where the premises have minor non-compliances they are still deemed compliant. This item needs to be reviewed and perhaps reworded to reflect a more accurate measurement of overall compliance with food premises.
- (3) Of the 53 statutory routine samples only 3 were unsatisfactory (2 microbiological and 1 labelling).
- (4) The State Government Community Satisfaction Survey format was redesigned to meet the varying needs of all Council's across the state so the previous target set of no longer an accurate measure.

File No. 42-49-00

**Waste Management Services**

(report adopted by Council June 2003)

*Programs within this service:*

Garbage Service  
Swan Hill Landfill  
Landfill-Other  
Recycling Service

Domestic Garbage and Recyclable Collection Services	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Collection bins within 4 hours of the scheduled collection day and time	Yes	Yes	Yes	=
Empty bins put out for collection. (less than 1 in 1,000 bins missed)	Yes	Yes	Yes	=
Delivery of new bins and replacement of damaged bin within 2 working days of request being received	Yes	Yes	Yes	=
Local Government Community Satisfaction survey rating on waste management	N/A	N/A	N/A	
<i>Cost Standards</i>				
Cost per bin collection per household per annum calculated as follows:				
Target= <u>Budgeted cost of the kerbside collection service</u> Anticipated services	\$84.10	\$83.44	\$89.20	*
Actual= <u>Cost of the actual kerbside collection service</u> Average services number (from December payment)				

Variances from quality and cost standards:

- (1) The State Government Community Satisfaction Survey format was recognised to meet the varying needs of all Councils across the state so the previous target set is no longer an accurate measure.

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Landfill	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
All landfill sites to be open and manned as per advertised hours	Yes	Yes	Yes	=
All waste to be retained within the landfill site (number of complaints of litter near landfill site)	Nil	Nil	Nil	=
All landfill sites operated in accordance with EPA requirements (number of EPA infringement notices)	Nil	Nil	Nil	=
<i>Cost Standards</i>				
Net cost per capita of waste deposited at Swan Hill landfill sites	\$24.76(1)	\$40.00	\$25.50	✓
Net cost per capita of waste deposited at Robinvale Landfill sites	\$48.76	\$50.20	\$50.82	✓
Net cost per capita to maintain rural landfill sites	\$10.18	\$10.75	\$10.49	✓

Variiances from quality and cost standards:

(1) net cost per capita= budgeted contract cost OR actual contract cost  
Population served

(2) Based on 2006 data census and population distribution across the municipality:

- 13,933 population served by Swan Hill Landfill
- 3,767 population served by Robinvale Landfill
- 2,933 served by Rural Landfills

Recycling Centre	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Participation of households in recycling (proportion of households in declared districts that have recycling bins allocated)	99%	99%	99%	=
Maximise the rates of recycling of materials collected from households (weighbridge data)	45.19%(2)	51%	50%	✗
The average contamination rate (in weight of total recycle) for Swan Hill	23.8%(3)	8%	23%	✗
The average contamination rate (in weight of total recycle) for small townships	16.77%(4)	N/A	16%	✓
The average contamination rate (in weight of total recycle collection) for Robinvale	45%(5)	20%	45%	✗
<i>Cost Standards</i>				
Net cost per capita of waste deposited at Swan Hill Recycling Centre	\$3.39	\$3.49	\$3.49	✓

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**Notes:**

1. Swan Hill and small townships Recycling Audit Report 2013-14
2. Robinvale Recycling Audit Report 2013-14
3. Annual recycling rate=  $\frac{\text{total kerbside collection recyclable tonnage}}{\text{Total kerbside garbage collection tonnage (putrescibles)}}$
4. Cost per capita=  $\frac{\text{Annual budgeted cost OR actual cost for contract}}{20,633 \text{ populations served}}$

Variances from quality and cost standards:

- (1) Cost for running rural landfills and some ongoing operational activities was mistakenly incorporated into the Swan Hill landfill budgeted cost for 2012-13.
- (2) Need to enhance education on waste and apply enforcement to change habits.
- (3) Refer to 2013-14 Recycling Audit. The difference is due to Audit analysis being conducted on the basis of weight rather than volume of contamination.
- (4) Refer to 2013-4 Recycling Audit. This was the first audit for small townships, which proved that residents of those towns are doing better than others in terms of proper recycling.
- (5) Refer to 2013-14 Recycling Audit. The difference is due to Audit analysis being conducted on the basis of weight rather than volume of contamination. The results are proving the need for comprehensive education programs and regime enforcement.

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### Community Amenity

(report adopted by Council June 2004)

*Programs within this service:*

Drainage  
Environmental Services  
Urban Streetscapes  
Street Beautification  
Public Lighting

Drainage	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Average tonnes of gross pollutants removed from gross pollutant traps (per pollutant trap)	6.24T	4.0T	4.0T	✓
<i>Cost Standards</i>				
Cost to clean and maintain drainage pits each year per drainage pit.	\$69,000	\$75.00	\$75.00	✓

Environmental Standards	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Maintain potable water consumption below 2011/12 levels for Parks and Gardens annually	39,336KL(1)	35,000KL	35,000KL	✗
Maintain current kilowatts per usage in Council's 8 highest energy use buildings:	1.12 million/kWh	1.19 million/kWh	1.12 million/KWh	✓
Green house gas emissions	1,366T	2,160T	1,366T	✓
<i>Cost Standards</i>				
Total cost of potable water and associated services	\$282,610	\$217,400	\$217,400	✗
Total cost to Council for stationary energy of Council owned infrastructure (inc street lighting)	\$690,006(2)	\$548,382	\$668,089	✗

Variations from quality and cost standards:

- (1) We have seen a gradual increase in water consumption across many departments since water restrictions have been lifted. These increases will be addressed in the review of our Sustainable Water Use Plan, which is currently underway.
- (2) The increase in cost is due to increased operations, maintenance and replacement charges on the full cost of Mercury Vapour 80w street lights (the majority of our lights are now this type thus the significant jump in costs).

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Urban Streetscapes	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Compliance with powerline clearance requirements on street trees	100%	100%	100%	=
Number of Community street tree theme consultations minimum of 2 annually	2	2	2	=
Number of street tree planting replacements throughout the municipality	158(1)	200	150	x
<i>Cost Standards</i>				
Cost to Council for power line clearance of street trees per street tree cleared from powerlines	\$62.00(2)	\$55.00	\$65.00	x
Cost of tree planting program				
<u>\$9,500</u> 158 trees	<u>\$60.12</u>	\$40.00	\$65.00	x

Variances from quality and cost standards:

- (1) An increase in vandalism on street trees has resulted in Council purchasing mature trees which limits the number of trees purchased making the cost of planting each tree more expensive.
- (2) Changes to the Electric Line Clearance Regulations means Council must maintain a greater clearance space for powerlines increasing costs per tree.

Street Beautification	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Annual achievement of community and agency partnerships to redevelop one urban park annually	1	1	1	=
The numbers of change overs to water wise medians and gardens developed throughout the municipality	4	4	4	=
<i>Cost Standards</i>				
Cost to Council to maintain garden beds and grass in public areas per hectare of grass maintained	<del>\$50,950</del>	\$55,000	\$52,000	✓

File No. 42-49-00

Public Lighting	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
New subdivisions to meet or exceed Council's public lighting standards	100%	100%	100%	=
Net increase in number of streetlights to existing network per year (new light and pole assembly)	0(1)	3	3	×
<i>Cost Standards</i>				
Cost to Council for public lighting per streetlight (electricity costs are increasing and it is expected they will continue to increase over coming years)	\$132(2)	\$120	\$140	×

Variances from quality and cost standards:

- (1) Budget used to maintain the Campbell Street pedestrian crossings lights as emergency works were required.
- (2) Electricity costs are increasing and it is expected they will continue to increase over coming years.



File No. 42-49-00

**Recreation, Culture and Leisure Services**

(report adopted by Council June 2004)

*Programs within this service:*

Parks and Gardens  
 Recreation Reserves and Other Sporting Facilities  
 Indoor Sports Facilities & Swimming Pools  
 Art Gallery  
 Arts (performing)  
 Regional Library  
 Pioneer Settlement Museum  
 Community Centres and Swan Hill Town Hall

<b>Parks and Gardens</b>	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Maintain grass height between 25-60mm	100%	100%	100%	=
Maintain playgrounds in accordance with national playgrounds standard	100%	100%	100%	=
<i>Cost Standards</i>				
Net operating cost per hectare	\$12,600	\$12,800	\$13,000	✓

<b>Recreation Reserves and other sporting facilities</b>	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Maintain grass height between 25-60mm	100%	100%	100%	=
<i>Cost Standards</i>				
Net operating cost per hectare	\$11,000	\$13,650	\$12,000	✓

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Indoor Sports Facilities & Swimming Pools	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Number of visitors/users of the indoor sports facilities/swimming pools	61,164	78,500	75,000	x
<i>Swan Hill Leisure Centre &amp; Indoor Swimming Pool</i>				
<i>Swan Hill Indoor Sport &amp; Recreation Centre</i>	38,353	39,220	38,000	x
<i>Robinvale Leisure Centre &amp; Swimming Pool</i>				
	18,166	23,500	20,500	x
<i>Outdoor Pools</i>				
Conduct annual preseason checks and facility maintenance in accordance with RLSSA standards	Yes	Yes	Yes	=
Maintain and record water quality testing throughout season to minimum health standards	Yes	Yes	Yes	=
Complete all preseason works and prepare pools for hand over by second week of October	Yes	Yes	Yes	=
Proposed annual visitors/users:				
<i>Swan Hill Outdoor Pool</i>	29,770	20,000	23,000	✓
<i>Nyah Pool</i>	9,547	8,000	9,000	✓
<i>Manangatang Pool</i>	6,917	7,000	7,000	x
<i>Cost Standards</i>				
Net cost to Council per visitor to operate the:				
<i>Swan Hill Leisure Centre &amp; Indoor Pool</i>	\$7.35(3)	\$6.47	\$6.20	x
<i>Swan Hill Indoor Sport &amp; Recreation Centre</i>	\$0.52	\$0.50	\$0.55	x
<i>Robinvale Leisure Centre &amp; Swimming Pool</i>	\$10.90(3)	\$8.46	\$9.70	x
Net cost to Council per visitor to operate the:				
<i>Swan Hill Outdoor Pool</i>	\$9.56(1)	\$10.30	\$11.90(2)	✓
<i>Nyah Outdoor Pool</i>	\$4.21(1)	\$5.36	\$5.11	✓
<i>Manangatang</i>	\$6.65	\$6.55	\$6.56	x
(Net operating expenditure divided by number of visitor/user)				

Variations from quality and cost standards:

- (1) Both Swan Hill outdoor and Nyah pools exceeded the patronage numbers anticipated. This was due to stable summer weather patterns.
- (2) Additional operational funds incorporated for increased infrastructure maintenance and upgrades.
- (3) Increase in cost per visitor due to decrease in visitations and the recording of visitations. Belgravia Leisure are confident that this situation will improve in 2013/14.

File No. 42-49-00

Art Gallery	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Number of visitors to the Art Gallery (per annum).	9,150(1)	13,000	11,000	×
Achievement of objectives per MOU with Arts Victoria and Swan Hill Rural City Council	100%	100%	100%	=
No. of Exhibitions	28(2)	20	20	✓
No. of events other than exhibitions (concerts, conferences, functions etc)	27	30	30	×
<i>Cost Standards</i>				
Net cost to Council to operate the Gallery per visitor	\$34(3)	\$20	\$24	×

Variances from quality and cost standards:

- (1) Low school attendances but otherwise difficult to determine the reasons for a drop in numbers.
- (2) Some exhibitions were smaller in lineal metres affording the gallery the opportunity to take advantage of this and curate a number of exhibitions from the permanent collection.
- (3) Increased cost per visitor due to decrease in number of visitors to the Gallery.

Arts (performing)	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Number of people attending performing arts events during the year	3,370	2,900	3,000	✓
Compliance with Arts Victoria touring funding grant requirements	100%	100%	100%	=
<i>Cost Standards</i>				
Net cost to Council to operate the performing arts program per patron	\$50.87	\$50.73	\$56.10	×
Final Net Cost for Year/attendees				

File No. 42-49-00

Regional Library	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Members as % of total population served (number of Swan Hill Council area members/total Swan Hill Council area population x 100) 6937/20,972 x 100 = 33.07	33%	32%	33%	✓
Visits to service points (only includes Swan Hill and Mobile Library stats-does not include Wakool Council library branches)	92,094	91,000	92,000	✓
Number of OPAC (Online Public Access Catalogue)	21,660(1)	45,000	22,000	✗
Number of hours of public computer usage (includes microfilm reader computer- does not include BFS computer tutorial sessions)	4774(2)	6200	4700	✗
Number of special events held in Library (data obtained from daily stats spreadsheet)	22(3)	12	15	✓
<i>Cost Standards</i>				
Net cost to Council per visit Actual net cost (obtained from finalised annual budget costs)/number of visits to service points	\$8.75	\$8.34	\$8.57	✗

Variances from quality and cost standards:

- (1) New analytical tool set up in December 2012 to gain more accurate data about the use of online catalogue. This measures only the number of individual visits to the library online catalogue. It does not include visits to the library website.
- (2) More library users are using their own devices with WiFi connectivity to access the internet in the Library rather than using the library computers. The WiFi service was used for 7349 hours during 2012/13.
- (3) The library hosted several events which were organised by other organisations or groups.

File No. 42-49-00

Pioneer Settlement	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Compliance with Education program grant conditions	100%	100%	100%	=
Number of visitors to the Pioneer Settlement (per year)	84,800(1)	78,000	85,000	✓
Camping accreditation for lodges	Yes	Yes	Yes	=
Comply with marine Safety Standards (Pyap)	100%	100%	100%	=
<i>Cost Standards</i>				
Net cost to Council to operate the Pioneer Settlement per visitor	\$8.79	\$9.54	\$10.52	✓

Variances from quality and cost standards:

- (1) Number of site visits takes into consideration the locals who visit the site free of charge and multiple admissions to the site by visitors who take up the option of the free second day admission, or also partake in a river cruise on the Pyap or attend the Sound & Light show.

File No. 42-49-00

Community Centres	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Number of times the community centre/facility is used by the community each year:				
<i>Manangatang</i>	133(1)	220	130	x
<i>Nyah</i>	153	150	150	✓
<i>Lake Boga</i>	11(1)	200	50	x
<i>Robinvale</i>	105(1)	300	110	x
<i>Swan Hill Town Hall</i>	550(1)	400	450(6)	✓
Number of people attending events/functions/performances at the Swan Hill Town Hall				
	25,160(2)	30,000	27,000	x
<i>Cost Standards</i>				
Operating cost to Council per usage of the facility:				
<i>Manangatang</i>	\$130.49(3)	\$90.00	\$140.00	x
<i>Nyah</i>	\$379.68(4)	\$600.00	\$400.00	✓
<i>Lake Boga</i>	\$917.69(3)	\$70.00	\$210.00	x
<i>Robinvale</i>	\$859.33(3)	\$330.00	\$860.00	x
<i>Swan Hill Town Hall</i>	\$561.42(5)	\$705.84	\$306.00	
Operating cost to Council per person using the Swan Hill Town Hall. (actual net cost/number of people attending)				
	\$12.71(5)	\$9.41	\$5.11	x

Variations from quality and cost standards:

- (1) Each year's target is based on the previous year's bookings. However the number of bookings varies from year to year.
- (2) Numbers of people attending shows has dropped. In addition the number of times that the town hall is used (550) includes when it is booked out for setting up shows impacting on the attendance figure.
- (3) Cost Standard has increased in line with changed use.
- (4) The difference between target and actual is a result of higher than normal cost in previous years.
- (5) The actual usage was much higher than the anticipated usage. The increased income from the extra usage reduced the overall cost per usage.
- (6) The aim is to target larger events bookings for longer as well as the whole facility in the future.

**Note:** All target figures are based on expected occupation that is excepting the Swan Hill Town Hall where total number of people is expected to increase. Reasonable costs are increasing by 5%, on the assumption that the operation and maintenance for these facilities remain the same.

File No. 42-49-00

### Organisational Support

(report adopted by Council May 2005)

*Programs within this service:*

Maintenance of Council Owned Buildings  
 Engineering Services (design and management of projects)  
 Special Charge Schemes (works undertaken at cost to adjoining property owners)  
 Municipal Offices  
 Robinvale Resource Centre and Customer Services and Revenue Control  
 Information Technology Services (Computers and systems)  
 Financial Services (incorporating Financing Activities)  
 Information Management (records)  
 Asset Management (infrastructure assets)  
 Commercial Services & Risk Management  
 Human Resource Management  
 Plant & Fleet Management

Maintenance of Council owned buildings	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Building maintenance service to be administered in accordance with Building Maintenance Services Operations Manual	Yes	Yes	Yes	=
<i>Cost Standards</i>				
<u>Maintenance Expenditure (buildings)</u>	0.40%(1)	0.55%	0.44%	✓
Total replacement cost (annual report)				

Notes: Maintenance costs used include:

- Unscheduled maintenance
- Programmed maintenance
- Vandalism maintenance

Variances to quality and cost standards:

- (1) There are a couple of reasons for the variance on the budgeted figure and include:
- (a) The denominator of this value (Building Replacement Value) has increased by approximately 1% reducing the cost standard.
  - (b) The numerator of this value (Maintenance Expenditure): has reduced by approximately 19% on last year's figure. This is a result of better allocation of cost between Capital, Operational and Maintenance Expenditures.

File No. 42-49-00

<b>Engineering Services</b>	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Undertake design works in accordance with established technical standards and Council policies	Yes	Yes	Yes	=
Comply with statutory timeframes in referral responses to other departments within Council	Yes	Yes	Yes	=
<i>Cost Standards</i>				
Cost of services as a percentage increase from previous financial year program x200	5.8%	6%	6%	✓
<u>Forecast budget 2013/14-Current Budget 2012/13</u> Current budget 2012/13				

<b>Municipal Offices</b>	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Provide a safe environment for work by staff and business by the public	Yes	Yes	Yes	=
<i>Cost Standards</i>				
Cost of providing commercial services as a percentage of Total Council Operating Expenses:	0.5%	0.6%	0.6%	✓
<u>Total cost of program</u> Total Council operating expenditure				



File No. 42-49-00

Robinvale Resource Centre Customer Services Revenue Control	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Rate debtor collections as a percentage of Total Rate Income	96.3%(1)	97.0%	96.5%	✘
Community Satisfaction in the Local Government survey rating for Council's customer service	73	68	70	✓
Average number of non-Council services provided from the Robinvale Resource Centre	6	6	6	=
<i>Cost Standards</i>				
Cost of providing customer service and revenue control services	1.1%(2)	1.4%	1.6%	✓
<u>Net Customer Services &amp; revenue Control Program Cost</u>				
<u>Total Council Operating Expenditure</u>				
Cost of providing customer services from the Robinvale Resource Centre per head of population for Robinvale and surrounding district	\$53.58	\$55.27	\$57.80	✓
<u>Net Robinvale Resource Centre Program Costs</u>				
Population of Robinvale and surrounding districts				

Variance from quality and cost standards:

- (1) Marginal reduction in rate collections due to one particularly large debtor. Account has since been paid in 2013/14 financial year.
- (2) Improved actual cost due to larger than expected Total Overall Expenditure and small reduction in Customer Service and Revenue Control Costs due to delay in receiving valuation data fees from the State Revenue Office.

File No. 42-49-00

Information Technology Services	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Authority System will be available for 98% of the supported hours	98%	98%	98%	=
Network Services will be available 98% of the supported hours	100%	98%	98%	✓
Service Level Agreement Targets are met on 95% of IT Service Requests	95%	95%	95%	=
Internet Services will be available 98% of the supported hours	99%	98%	98%	✓
<i>Cost Standards</i>				
Cost of providing IT services as a percentage of total operating expenses	2.4%	<2.5%	<2.5%	✓
<u>IT program (bottom line 3345)</u>				
Total operating expenditure				
Cost of IT services per connected user	\$3,615 <sup>(1)</sup>	\$3,550	\$3,600	x
<u>IT program (bottom line 3345)</u>				
Number of personal computers supported				

Variance from quality and cost standards:

(1) Numbers are based on PC's only, not other types of desktops, laptops and tablet PC's.

File No. 42-49-00

Finance Services	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Meet all statutory reporting obligations:				
• Annual Report	Yes	Yes	Yes	=
• Business Plan and Annual Budget	Yes	Yes	Yes	=
• Victoria Grants Commission Return	Yes	Yes	Yes	=
• Local Government Sector Borrowings Survey	Yes	Yes	Yes	=
• Taxation (PAYG,GST and FBT)	Yes	Yes	Yes	=
Meet Council's terms of trade:				
• Payment to staff by the 3 <sup>rd</sup> working day following pay-end date	Yes	Yes	Yes	=
• Payment to suppliers and service providers within agreed trading terms, or 30 days following receipt of invoice (invoice must be provided to Accounts Payable Officer)	Yes	Yes	Yes	=
• Monthly Cash Balances reports for Council Agenda	Yes	Yes	N/A*	=
• Management reports completed by 15 <sup>th</sup> working day following month end	Yes	Yes	Yes	=
<i>Cost Standards</i>				
Cost of providing financial services as a percentage of Total Council Operating Expenses	1.63%	<1.77%	<1.75%	✓
<u>Finance program Costs (bottom line P3340)</u>				
Total Operating Expenditure				

\*CEO determination that this report is no longer required on Council Agendas

File No. 42-49-00

Information Management	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Service meets agreed timeframes for incoming correspondence registration:				
• 3:40 pm Monday	Yes	Yes	Yes	=
• 2:20pm Tuesday- Friday				
FOI requests completed within 30 days	No(1)	Yes	Yes	×
Complete departmental Privacy Reviews	2	2	2	=
<i>Cost Standards</i>				
Cost of service as a percentage of total operating expenses	0.81%	<0.89%	<0.89%	✓
<u>Information Management Program</u>				
Total Operating Expenditure				

Variances from quality and cost standards:

- (1) Of the 3 FOI requests received one request was responded to within 41 days which is within the statutory timeframe. On average, FOI requests were responded to within 16 days.

File No. 42-49-00

Asset Management	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
National Asset Management Assessment Framework scorecard that allocated a score depending on the policies and processes in place:				
• Strategic Planning	85	85	90	=
• Annual Budget	100	100	100	=
• Annual Report	95	95	95	=
• Asset Management Policy	85	85	85	=
• Asset Management Strategy	100	100	100	=
• Asset Management Plans	70	70	75	=
• Governance and Management	50(1)	60	60	x
• Levels of Service	44(2)	60	60	x
• Data and Systems	75	75	75	=
• Skills and Processes	58(3)	60	65	x
• Evaluation	42(4)	60	60	x
DPCP survey sustainability index: Budget allocated to maintenance & renewal/expenditure required for maintenance and renewal	0.79(2)(5)	0.90	0.90	x
<i>Cost Standards</i>				
Cost index: Full cost of provision of the service/Total replacement value of assets managed	0.00071(3)(6)	0.00094	0.00074	✓
<u>Total Operating Expenditure (budget)</u>				
Total Replacement Cost all assets (Annual Report)				

Variances from quality and cost standards:

(1)(2)(3) and (4) the NAMA score card is updated each year to reflect the increase in industry skills and knowledge and therefore Council's performance has to improve every year just to maintain the same score. In most cases we have achieved this but in a few cases our score has decreased even though our performance has not changed.

(5) In previous years Council's Major Projects Plan was used to determine the projected expenditure required, but in 2012/13 the output from the Moloney modelling software was used instead so the figures are not comparable to each other.

(6) This figure includes all infrastructural and land assets including 'Land under Roads', but excluding cultural and plant assets.

File No. 42-49-00

Commercial Services and Risk Management	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
All tendering and acquisitions undertaken by Commercial Services is done in accordance with adopted Council Policy	Yes	Yes	Yes	=
Risk Management:				
• Risk mitigation assessment (Public Liability) as assessed by Council's Insurers (Biennial)	N/A(2)	N/A	84%	N/A
• Risk mitigation for Property Hazard Management Assessments as per Council's Insurers (Biennial)	61%(1)	75%	N/A	x
<i>Cost Standards</i>				
Cost of providing commercial services as a percentage of Total Council Operating Expenses	1.1%	<1.3%	<1.3%	✓
<u>Total cost of program (less Insurance Premiums)</u> Total Operating cost of Council				
Risk Management:				
• Risk Management- WorkCover (EFT to Premiums)	\$2,687(3)	\$1,600	\$2,500	x
• Risk Management- Property (Value of Property v Premium)	\$0.0026	\$0.0026	\$0.0026	✓
• Risk Management- registered Motor Vehicles- Unit cost	\$580	\$450	\$600	x

Variances from quality and cost standards:

- (1) Council received a relatively lower than expected assessment as we received zero points in the BCP criteria and was marked down in reactive risk management.
- (2) LMI Public Liability audit is conducted biennially. Next audit is March 2014.
- (3) WorkCover claim premium is high due to a larger than anticipated number of claims.

File No. 42-49-00

Human Resources	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Number of staff issues resolved in the Fair Work Australia Commission	Nil	Nil	Nil	=
Number of organisational training hours provided per EFT > 10 hours per annum	10(1)	11 Hours	10	×
Annual Report delivered according legislative requirement including time frames	Yes	Yes	Yes	=
Reporting on Council plan Initiatives delivered on a quarterly basis to Council	Yes	Yes	Yes	=
Providing a safe work environment is ranked in the top 10 performance wares for Council from staff survey conducted every two years	Ranked top 5(2)	N/A	Rank Top 10	=
Employee Welfare rating from staff survey is ranked in the top 10 performance areas for Council	Ranked top 5	N/A	Rank Top 10	=
<i>Cost Standards</i>				
Cost of providing Human Resource Services as a % of total operating expenses	0.025%	<0.25%	1.35%(3)	✓

Variations from quality and cost standards:

- (1) Organisational Training Budget hours 2012/13 has been cut by \$20,515. Human Resources have revised the number of courses to be offered to staff this year to fit within budget constraints.
- (2) Providing a safe work environment was ranked as the top performing area in the most recent Staff Survey which was conducted in August 2013.
- (3) Change to cost standard to exclude Internal Charge Recovery.

File No. 42-49-00

Plant and Fleet Management	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Percentage of occasions actual service times on all major plant and vehicle items meet manufacturers set standard time	90%	90%	90%	=
Report annually on utilisation levels (defined as hours of plant use) on all major plant items	Yes	Yes	Yes	=
Collective annual hire income of all motor vehicles (defined as passenger sedans and station wagons) to meet or exceed costs as defined in FBT calculations, less GST and imputed interest	Yes	Yes	Yes	=
<i>Cost Standards</i>				
Average cost of scheduled services for passenger and light commercial vehicles (excluding parts and lubricants)	\$92.20(1)	\$95.00	\$95.00	✓
Average cost of scheduled services for major plan items (excluding parts and lubricants)	\$170.20(1)	\$210.00	\$195.00	✓
(Total service costs excluding oils and parts divided by total number of services as recorded in Fleet Management Services)				

Variations from quality and cost standards:

- (1) Variations to the service cost standards is attributed to the increased use of an apprentice mechanic (lower hourly rate) as he becomes more experienced and confident in performing duties with minimal supervision.



File No. 42-49-00

**Leadership & Governance**

(report adopted by Council May 2005)

*Programs within this service:*

Elected Members  
 Corporate Management  
 Community Facilitation Unit (includes Grants and Contributions)  
 Strategic Planning  
 Media and Events Unit

<b>Elected Members</b>	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Community Satisfaction with Council's advocacy role as per Local Government Survey	57	54	55	✓
Community Satisfaction rating for overall performance generally of Council as per Local Government Community Satisfaction Survey	58	58	58	=
<i>Cost Standards</i>				
Program cost as a percentage of operating budget	2.21%	<2.36%	<2.17%	✓
Program cost: Total operating expenditure calculated on a Rates determination basis				

<b>Corporate Management</b>	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Overall community satisfaction with Council's Community Engagement from local Government Satisfaction Survey	58	56	60	✓
<i>Cost Standards</i>				
Program cost as a percentage of operating budget				
Program cost: Total operating expenditure calculated on a Rates determination basis	2.29%	<2.45%	<2.34%	✓

File No. 42-49-00

Community Facilitation Unit	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Number of current user group agreements	30	30	30	=
Government and other funding attracted during the year to supplement community and Council activities	1,559,412(1)	800,000	800,000	✓
Implement 1 action out of each community plan annually	32	30	30	✓
<i>Cost Standards</i>				
Net program cost as a percentage of operating budget				
Net program cost: Total operating expenditure less revenue divided by rates determination statement net operating result	<1%	<1%	<1%	=

Variances from quality and cost standards:

- (1) The Community Facilitation unit has had great success in attaining grants.

Strategic Planning	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Ensure currency of the Planning Scheme by undertaking public consultation every 48 months and/or as required by legislation for the review of planning schemes	Yes	Yes	Yes	=
<i>Cost Standards</i>				
Cost per capita to maintain currency and appropriateness of the Planning Scheme	\$12.93(1)	\$15.39	\$15.39	✓

Variances from quality and cost standards:

- (1) The cost per capita for 2012/13 was slightly less than anticipated due to the Rural Land Use and Small Townships Strategy

File No. 42-49-00

Media and Events Unit	2012/13		2013/14	Status
	Actual	Target	Target	
<i>Quality Standards</i>				
Distribution of media releases per year	181(1)	200	200	*
Production and distribution of the Your Community newsletter 3 times per year	3	3	3	=
Media releases uploaded to the Council website within 24 hours of being issued to the media	Yes	Yes	Yes	=
Public notices uploaded to the website within 24 hours of an advertising request being issued	Yes	Yes	Yes	=
<i>Cost Standards</i>				
Cost providing media and events unit services as a percentage of total Council operating expenses	0.71%	<0.85%	<0.83%	✓

Variances from quality and cost standards:

- (1) Number of media releases distributed was below target due to maternity leave position and staff recruitment of PR coordinator for four months. Media releases are also dependent on organisational activity and the suitability of that activity to media releases.

Progress of Initiatives carried over from Council Plan 2009-13

Area	Objective	Strategic Initiatives	Actions	When	Directorate	Officer/s	Comments as at 30 September 2013
<b>Governance and Leadership</b>							
GL	Developing open community relationships	Implementation of new Customer Services Request System	2. System operational at other sites	2010-11	DCS	ITM	Carried over as part of initiative 1.4 in the Council Plan
GL	Developing open community relationships	Implementation of new Customer Services Request System	5. Update IT strategy	2010-11	DCS	ITM	Carried over as part of initiative 1.4 in the Council Plan
<b>Community Health and Wellbeing</b>							
SC	Celebrating our identity	Implementation of the Pioneer Settlement Master Plan including potential development of an MDEF Interpretive centre	3. Begin construction of development stage 1.2 once funding is available.	2009-10 2010-11	DCCS	GM	Carried over as part of the initiative 19.7 in the new Council Plan.
SC	Supporting people who need extra assistance	Develop Municipal Early Years Plan incorporating the early years framework	2. Development of Early Years Programs priority actions/list.	2009-10	DCCS	FVCM	Carried over as part of initiative 9.2 in the new Council Plan
SC	Supporting people who need extra assistance	Develop Municipal Early Years Plan incorporating the early years framework	3. Adoption of recommendations from Early Years Program priority actions/list.	2009-10	DCCS	FVCM	Carried over as part of initiative 9.2 in the new Council Plan
SC	Supporting people who need extra assistance	Review existing services that support new migrants and refugees, identify gaps and new opportunities in service delivery to these groups	3. Source funding to undertake works.	2011-12	DCCS	DCCS	Carried over as part of initiative 12.2 in the new Council Plan
SC	Facilitate and provide for health and wellbeing	Explore possibilities for expanding Library Services	1. Finalise options and ascertain indicative ongoing costs for Robinvale branch library	2010-11	DCCS	MCPL	Is now an ongoing process of reviewing and exploring opportunities
SC	Facilitate and provide for health and wellbeing	Explore possibilities for expanding Library Services	2. Review mobile library service	2009-10 2010-11	DCCS	MCPL	Is now an ongoing process
<b>Economic Growth</b>							
EG	Housing	Facilitate development of the South West Precinct of Swan Hill	2. Determine what amendment to the Planning Scheme is required to support the development of the South West Precinct 3. Complete the Planning Scheme Amendment for the South West Development Precinct.	2009-10	DDP	DM	Draft Development Plan completed and presented to landowners. Further studies such as Traffic Impact Assessment, Drainage Plan and Developer Contribution Plan to be undertaken. Amendment to be requested mid 2014. <b>Complete</b>
EG	Housing	Identify additional areas suitable for development within commuter distance of Swan Hill and Robinvale	Review Rural Zone Living Strategy	2010-11	DDP	DM	Will be addressed in Council Plan review. Carried over as part of initiative 15 in the new Council Plan

Progress of initiatives carried over from Council Plan 2009-13

Area	Objective	Strategic Initiatives	Actions	When	Directorate	Officer/s	Comments as at 30 September 2013
EG	Housing	Encourage Infill developments	2. Continue the process to seek to develop North Park Land	2009-10	DDP	DM	Complete
EG	Attracting new business	Begin implementation of the Central Business District Masterplans for Robinvale and Swan Hill including identifying links to Riverfronts	4. Determine and complete Year 3 of the Swan Hill CBD Masterplan	2010-13	DDP	MES	Works to be completed in 2013/14 financial year. Ongoing and will continue to be reported on
EG	Attracting new business	Development of a strategy to support the attraction of new business based on the regions comparative and competitive advantages as identified in the Economic Development Strategy	Develop and implement an Investment Attraction Strategy to streamline processes for business investment and to promote the regions comparative and competitive advantages	2010-13	DDP	EDM	The Investment Attraction policy is in draft and is due to go to EMT at the start of 2014. Ongoing and will continue to be reported on
EG	Employment	Investigate incentive program to attract people to meet identified skill shortages	Develop and implement workforce development plan	2012-13	DDP	EDM	Carried over as part of initiative 18.4 in the new Council Plan
EG	Employment	Promote cooperation between agencies to encourage external recruitment e.g regional advertising of jobs, online, newspapers, radio and networking	Complete a Workforce Development Plan	2012-13	DDP	EDM	Carried over as part of initiative 18.4 in the new Council Plan
EG	Infrastructure	Complete Riverfront Plans for Swan Hill and Robinvale	2. Tender for works associated with updating the Swan Hill Riverfront Masterplan	2010-11	EMT	EMT	Action deferred to 2013-14 pending the completion of Masterplan. Ongoing and will continue to be reported on
EG	Infrastructure	Complete Riverfront Plans for Swan Hill and Robinvale	2. Commence implementation of Swan Hill Riverfront Masterplan	2010-11	EMT	EMT	Action deferred to 2013-14 pending the completion of Masterplan. Ongoing and will continue to be reported on
EG	Infrastructure	Conduct a review of Council operated aerodromes and implement both CASA requirements and Council recommendations	1. Renewal of current infrastructure	2009-10	DDP	EDM	Committed funds will be spent in 2014. Ongoing and will continue to be reported on
EG	Infrastructure	Conduct a review of Council operated aerodromes and implement both CASA requirements and Council recommendations	4. Call for expressions of interest in potential operation of passenger air services from Swan Hill aerodrome	2010-13	DDP	EDM	Ongoing discussions with potential commercial operators depending on infrastructure improvements.
EG	Infrastructure	Advocate to ensure gas, electricity, broadband, telecommunications, Swan Hill bridge, rail and alternative energy services meet the needs of the growing community	4. Alternative energy development as outlined through the Loddon Mallee Northern Plan	2010-13	DDP	EDM	Carried over as part of initiative 19.3 in the new Council Plan
EG	Infrastructure	Commence Program to identify works required on access roads to enable B Double access	1. Determine suitability of Council roads in accordance with the hierarchy	2011-12	DDP	EDM	National Heavy Vehicle Regulator will determine access as part of national program. Ongoing and will continue to be reported on

Progress of Initiatives carried over from Council Plan 2009-13

Area	Objective	Strategic Initiatives	Actions	When	Directorate	Officer/s	Comments as at 30 September 2013
<b>Environmental Management</b>							
EM	Contributing to good environmental outcomes for the Mallee and bushland reserves	Identify the location and significance and nature of native bushland reserves within the municipality	1. Complete a plan/map/database identifying locations of significance	2011-12	DI	SEO	Complete and ongoing
EM	Promoting and advocating sound environmental practices	Investigate innovative initiatives for reuse and retention of water	2. Develop a strategy to install water efficient irrigation systems suitable for recycled water		DI	SEO	Complete

### **B.14.3 QUALITY & COST REPORT 2012/13**

**Source:** Procedural  
**Department:** Corporate Services  
**File Number:** 42-49-00

#### **Summary**

A requirement of the Best Value sections of the Local Government Act 1989 is the setting of quality and cost standards for all Council services and annual reporting against these standards to the community. This report contains the actual performance for all Council services against the quality and cost targets set for 2012/13.

#### **Council Plan Strategy Addressed**

***Responsible management of resources*** - We will continually improve the management of our finances, assets, systems and technology to achieve and maintain Best Value in our operations.

#### **Recommendations**

**That Council adopt the Quality and Cost report 2012/13.**

#### **Policy Implications**

Nil

#### **Financial and Resource Implications**

Nil

#### **Triple Bottom Line Impact**

The range of Council services has a positive social, environmental and economic impact on the municipality.

#### **Background**

The Local Government Act 1989 requires Council to review all sections of its operations to ensure that the services provided to the community represent 'Best Value'.

Best Value requires that quality and cost standards be developed for each service. The standards assist the community in determining whether a service is effective

(quality) and efficient (cost). Quality and cost standards and targets are prepared for each service and reviewed on an annual basis.

The attached report details the targets set for 2012/13, the actual performances achieved, explanations of any variations and the targets for 2013/14.

There are a total 239 quality and cost standards against which ten service groups report. A summary of achievements for the year is set out in the following table:

Service Group	Number of Quality and Costs Standards				Total
	Exceeded ✓	Achieved =	Not Achieved x	Not Applicable for 2012/13	
Transport Services	12	2	4	0	18
Family and Children's Services	3	3	2	0	8
Economic Prosperity	3	7	4	0	14
Community Care	5	6	3	0	14
Community Wellbeing	6	4	6	3	19
Waste Management	5	7	4	1	17
Community Amenity	5	5	8	0	18
Recreation, Culture and Leisure Services	17	11	23	0	51
Organisational Support	19	32	12	1	64
Leadership and Governance	8	7	1	0	16
<b>Total</b>	83	84	67	5	239
<b>Achieved in 2012/13</b>	35%	35%	28%	2%	100%
<b>Achieved in 2011/12</b>	33%	34%	30.5%	2.5%	100%

- Exceeded:** The actual quality and/or cost standard surpassed the target.
- Achieved:** The actual quality and/or cost standard was met.
- Not Achieved:** The actual quality and/or cost standard was below the target.
- Not Applicable:** The target is unable to be calculated as the measurement no longer exists.

67 quality and costs standards were not achieved in 2012/13. Some level of non-achievement will always be present due to factors beyond Council control, such as unseasonable weather or changes to funding arrangements on the part of State or Federal governments.

## Issues

Nil

## Consultation

Best Value quality and cost standards have been reviewed in consultation with the staff responsible for each service.



**Options**

Not applicable

**Conclusion**

The report is a formal record of the performance of Council's services against the Best Value quality and cost standards targets for 2012/13 and sets new standards for the 2013/14 reporting year.

**Attachments**

Nil.

## **B.14.4 S5 INSTRUMENT OF DELEGATION TO THE CHIEF EXECUTIVE OFFICER**

**Source:** Procedural  
**Department:** Corporate Services  
**File Number:** 74-00-23

### **Summary**

Section 98 of the Local Government Act (1989) enables Council to delegate to a member of Council staff, with specified exemptions, 'any power, duty or function of a Council under this Act or any other Act' and delegate the Chief Executive Officer the power to delegate a power of the Council, other than power of delegation, to another member of Council staff.

Maddocks, in their attached letter, has recommended that Council should refresh the Chief Executive Officer's delegations as a matter of course.

### **Council Plan Strategy Addressed**

***Responsible management of resources*** - We will continually improve the management of our finances, assets, systems and technology to achieve and maintain Best Value in our operations.

### **Recommendations**

#### **That Council:**

- 1. Exercise the powers conferred by section 98(1) of the Local Government Act 1989 and the other legislation referred to in the attached Instrument of Delegation to the Chief Executive Officer as attached.**
- 2. Delegate to the person holding the position of Chief Executive Officer, or Acting Chief Executive Officer, the powers, duties and functions set out in the attached Instrument of Delegation to the Chief Executive Officer as attached to the report, subject to the conditions and limitations specified in that Instrument.**
- 3. Affix the common seal of the Council to the Instrument.**

### **Policy Implications**

The Instrument of Delegation by Council to the Chief Executive Officer will enable the Chief Executive Officer to carry out the day to day management of Council's operations in accordance with policies, strategies and priorities as detailed in the adopted Council Plan, Budget and like Council documents.

## **Financial and Resource Implications**

Nil

## **Triple Bottom Line Impact**

Nil

## **Background**

In order to comply with the various legislative requirements, Council delegates a range of powers to the Chief Executive Officer. These delegations are made in accordance with section 98 of the Local Government Act 1989.

As per letter attached from Maddocks dated 2 December 2013 it has been advised that all Instruments of Delegation should be updated, or refreshed, on a regular basis to ensure that they incorporate all recent legislative developments. This includes the Instrument of Delegation to Council's Chief Executive Officer, even though it is expressed in general terms.

Section 94A of the Act states:

- (1) A Council's Chief Executive Officer is responsible for -
  - (a) Establishing and maintaining an appropriate organisational structure for the Council; and
  - (b) Ensuring that the decisions of the Council are implemented without undue delay; and
  - (c) The day to day management of the Council's operations in accordance with the Council's Corporate Plan; and
  - (d) Providing timely advice to the Council.
- (2) The Chief Executive Officer may appoint as many members of Council staff as are required to enable the functions of the Council under this Act or any other Act to be carried out and to enable the Chief Executive Officer to carry out his or her functions.
- (3) The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff.

The delegation to the Chief Executive Officer is a 'delegation by exception'.

## **Issues**

Nil

### **Consultation**

This is a statutory requirement of Council and as such consultation is not part of the process.

### **Options**

Council can choose to vary the level of delegations however the efficiency of day to day management of Council would be affected.

### **Conclusion**

Delegating these powers to the Chief Executive Officer will continue to ensure smooth and consistent decision-making in the day to day administration of Council.

### **Attachments**

- 1 Placeholder S5 Delegations to CEO
- 2 Maddocks Letter 2 December 2013

# **Attachment**

- S 5 Instrument of Delegation to the Chief Executive Officer



## Maddocks

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### Email Letter

<b>From</b> Erin Tucker	<b>Date</b> 2/12/2013
<b>Direct</b> 03 9258 3712	<b>Email</b> erin.tucker@maddocks.com.au
<b>Partner</b> Melanie Olynyk	

Dear Subscriber

### Delegations and Authorisations Service Update Second update for 2013

We are pleased to provide you with our second update to the Delegations and Authorisations Service for 2013. This update takes into account legislative changes made since our last update in May 2013, which affect councils' powers, functions and duties.

We have set out below a summary of the changes made to the Service in this update.

All of the updates are contained on our Delegations and Authorisations Website, which can be accessed by clicking on the following link: <https://indext.maddocks.com.au>

As always, please carefully review this explanatory letter and refer to the updated instruments to ensure that you are aware of the recent legislative changes that affect your council's delegations and authorisations.

#### CHANGES MADE IN THIS UPDATE

This update amends our S5, S6, S7, S10, S11, S12 and S13 Instruments. We have outlined some of the changes to each instrument below.

#### Changes to the S5 Instrument of Delegation from Council to Chief Executive Officer

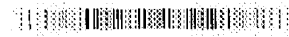
1. We have amended the S5 Instrument to include a limitation on the Chief Executive Officer's (CEO) delegation that they not take an action or do an act or thing which is required by law to be done by council resolution. This change is not the result of legislative amendment, but is added to clarify the position that where something is required to be done by council resolution, the CEO will not be able to exercise that power, duty or function under delegation. We note that in these circumstances, the CEO or other sub-delegates are able to take action to implement a decision made by council resolution.

#### Changes to the S6 Instrument of Delegation from Council to Staff

Amendments to the S6 Instrument include the following:

2. various changes to the provisions included for the *Planning and Environment Act 1987* and the *Planning and Environment Regulations 2005*, some of which are a result of legislative amendment and others are to clarify the operation of a particular power, duty or function; and

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## Maddocks

3. the *Planning and Environment (Fees) Interim Regulations 2013* have now been revoked and replaced with the *Planning and Environment (Fees) Further Interim Regulations 2013*. Councils' powers and duties under these Regulations remain the same. These Regulations will expire on 18 October 2014; and
4. with respect to the *Food Act 1984*, we have moved the reference to some duties and functions under this Act, which were previously in the S6 Instrument of Delegation, to the S7 Instrument of Sub-Delegation. This is because we consider it unnecessary that these duties and functions be delegated directly from council to staff, pursuant to section 58A of this Act.

#### Changes to the S7 Instrument of Sub-Delegation from Council's CEO to Staff

In relation to the S7 Instrument of Sub-Delegation, we note the following in particular:

5. due to a number of provisions being inserted into the *Catchment and Land Protection Act 1994*, we have included all of councils' new powers, duties and functions under the *Catchment and Land Protection Act 1994* in the S7 Instrument of Sub-Delegation. These provisions relate to the duty to prepare a roadside weed and pest animal management plan;
6. we have updated the prior reference to the Department of Natural Resources and Environment to the current Department of Environment and Primary Industries for the *Conservation, Forests and Land Act 1987*;
7. we have included the powers, duties and functions of a council and a relevant road manager in the recently enacted *Heavy Vehicle National Law 2012*. The National Law is made applicable to Victoria by the *Heavy Vehicle National Law Application Act 2013 (Vic)*, which is not yet in force. The *Heavy Vehicle National Law Application Act 2013* does not have a set commencement date, but will come into force on a future date yet to be proclaimed;
8. we have removed reference to the *Landlord and Tenant Act 1958*, as this Act has now been repealed;
9. for the *Local Government Act 1989*, we have included separate entries for the powers conferred by clause 5 of Schedule 10, relating to road names, numbers and signs, to make it easier to delegate these powers to different delegates, if desirable;
10. we have updated the reference to the former Building Commission to the Authority (being the Victorian Building Authority) in the *Building Regulations 2006*;
11. in line with changes to the *Public Health and Wellbeing Regulations 2009*, we have included reference to a new power in regulation 17A(2), to determine a building to be one of cultural heritage or significance, and a new function in regulation 74, to receive notification from the Secretary administering the *Public Health and Wellbeing Regulations 2009*;
12. the *Subdivision (Fees) Interim Regulations 2013* have now been revoked and replaced with the *Subdivision (Fees) Further Interim Regulations 2013*. Councils' powers and duties under these Regulations remain the same. These Regulations will expire on 18 October 2014; and
13. as we have been asked to include the power to issue credit cards to staff in the S7 Instrument of Sub-Delegation, this has now been included in the Miscellaneous and Administrative Powers section, under "Section B – Finance Issues".

#### Changes to the S10 Council Resolution - Appointments and Authorisations

14. We have removed reference in the S10 template resolution to councils applying to the relevant Minister for council officers to be authorised to file charges under the *Prevention of Cruelty to Animals Act 1986*, and instead added a general reference to this in the "Miscellaneous" section of the S7 Instrument of Sub-Delegation. The reason for doing so is because this is not a task which must be done by a council resolution and therefore, may



Maddocks

more appropriately be done by a council officer, on behalf of council. While no express power to apply to the Minister in this way exists under legislation, councils may wish to request the Minister to authorise its officers in respect of section 24ZW of the *Prevention of Cruelty to Animals Act 1986*, as authorisation for filing charge sheets for offences under this Act may only be made by the Minister, not by councils.

#### Changes to the S11 Instrument of Appointment and Authorisation

Amendments to the S11 Instrument include the following:

15. we have added the *Valuation of Land Act 1960* to Part A, as it is already included under Part B of the S11 Instrument;
16. we have added a footnote for appointments under section 87 of the *Road Safety Act 1986* to clarify that councils can only appoint a person under this section if they are competent, of good character and has agreed in writing to exercise the functions conferred on an authorised person. This requirement is found in section 87(1C) of the *Road Safety Act 1986*; and
17. we have added section 45AC of the *Food Act 1984*, relating to the power to commence proceedings for offences under the *Food Act 1984*, to Part C of the S11 Instrument. An authorised officer under the *Food Act 1984* (that is, a person appointed for the purposes of section 20 of the *Food Act 1984* or under section 29 of the *Public Health and Wellbeing Act 2008*) is already able to bring proceedings under the *Food Act 1984*. However, we consider it prudent to include reference to this specific provision, to reinforce the intention to authorise an officer to have the power to commence proceedings on behalf of a council.

#### Changes to the S12 Municipal Building Surveyor Package

In relation to the S12 Municipal Building Surveyor Package:

18. we have incorporated changes to the powers, duties and functions of municipal building surveyors under the *Building Act 1993*, as brought about by the *Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013*; and
19. we have updated the reference to the former Building Commission to the Authority (being the Victorian Building Authority) in the *Building Regulations 2006*.

#### Changes to the S13 List of Chief Executive Officer responsibilities

20. We have amended the S13 Instrument to reflect recent minor changes to the time period for submitting a report to the Minister under section 62A of the *Local Government Act 1989* and have also made minor changes for the purposes of clarification.

#### DELEGATION TO PLANNING APPLICATION COMMITTEE

As mentioned in our previous letter to subscribers, the recent amendments to the *Planning and Environment Act 1987* include conferring a power upon councils to delegate certain powers to a new committee to be established by the Minister for Planning, called the "Planning Application Committee".

As this committee is yet to be established, we have not included a proposed instrument of delegation to this committee. We will do so once it has been established.

Please feel free to contact us if you have any questions regarding the Service or you would like assistance with your council's Instruments of Delegation or Authorisation.

Yours sincerely  
Maddocks





Maddocks

Transmission authorised by:  
Melanie Olynyk  
Partner

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## **B.14.7 S6 INSTRUMENT OF DELEGATION TO MEMBERS OF COUNCIL STAFF**

**Source:** Procedural  
**Department:** Chief Executive  
**File Number:** 74-00-23

### **Summary**

In order to deliver services to the community and discharge obligations placed on Council by legislation in an efficient and effective manner, Council has in place a range of delegations to members of Council staff. Periodically these delegations need to be reviewed and, if appropriate, updated. This report recommends changes to some delegations made by Council to members of Council staff.

The changes are the result of legislative changes to the relevant Acts, changes to position titles and organisational structure.

The vast majority of the delegations have not changed.

Some new Acts have come into force. Delegations of power for these Acts are also included in the attached document.

### **Council Plan Strategy Addressed**

***Responsible management of resources*** - Council will continually improve the management of its finances, assets, systems and technology to achieve and maintain Best Value in its operations

### **Recommendations**

#### **That Council:**

- 1. Amend the schedule of delegated authorities, duties and functions of the various officers as detailed in the attached document.**
- 2a) Delegate to the members of Council staff holding or acting in the officer's position referred to in the *Instrument of Delegation to members of Council staff*, the powers, duties and functions once amended by the attached changes, subject to the conditions and limitations specified in that amended Instrument effective from the date that the Common Seal of Council is affixed to the instrument.**
- b) Revoke all the previous delegations related to the amended instrument on the coming into force of the amended instrument.**

## **Policy Implications**

Delegations enable a more efficient and effective management of the organisation.

## **Financial and Resource Implications**

Nil

## **Triple Bottom Line Impact**

Nil

## **Background**

In order to comply with the various legislative requirements, Council delegates a range of powers and accountabilities to appropriately qualified and experienced members of Council staff. These delegations are made in accordance with section 98 of the Local Government Act 1989. A delegation may be made subject to limitations on these powers, such as the need to inform Council of a determination.

The powers and obligations delegated are mostly procedural in nature, allowing the delivery of services in accordance with Council policy, adopted strategies and plans, the authorised budget, and discharging Council obligations in accordance with legislative requirements.

The delegation of powers and obligations to Council staff by Council is managed by the Maddocks 'delegations and authorisations service'. Maddocks monitors changes to state legislation, and every six months provides a listing of the sections of legislation that a municipality could delegate to enable efficient and effective delivery of services.

The six monthly review of legislative changes has resulted in the recommended amendments in the attached document which are summarised in the attached letter from Maddocks.

Council delegations are made to positions in the organisation rather than to individual members of staff to avoid the need to change the delegation upon the departure of a staff member or the staff member taking up a different position in the Council.

## **Issues**

Nil

### **Consultation**

Community consultation is not appropriate for the subject of this report.

### **Options**

Council can choose to vary the delegations however the efficiency of Council operations would be affected.

### **Conclusion**

The delegations as proposed will assist with the efficient running of Council operations.

### **Attachments**

- 1 Placeholder S6 Delegations Members of Council Staff
- 2 Maddocks Letter 2 December 2013

# **Attachment**

- S 6 Instrument of Delegation to Members of Council Staff



## Maddocks

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### Email Letter

<b>From</b> Erin Tucker	<b>Date</b> 2/12/2013
<b>Direct</b> 03 9258 3712	<b>Email</b> erin.tucker@maddocks.com.au
<b>Partner</b> Melanie Olynyk	

Dear Subscriber

### Delegations and Authorisations Service Update Second update for 2013

We are pleased to provide you with our second update to the Delegations and Authorisations Service for 2013. This update takes into account legislative changes made since our last update in May 2013, which affect councils' powers, functions and duties.

We have set out below a summary of the changes made to the Service in this update.

All of the updates are contained on our Delegations and Authorisations Website, which can be accessed by clicking on the following link: <https://indext.maddocks.com.au>

As always, please carefully review this explanatory letter and refer to the updated instruments to ensure that you are aware of the recent legislative changes that affect your council's delegations and authorisations.

#### CHANGES MADE IN THIS UPDATE

This update amends our S5, S6, S7, S10, S11, S12 and S13 Instruments. We have outlined some of the changes to each instrument below.

#### Changes to the S5 Instrument of Delegation from Council to Chief Executive Officer

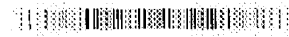
1. We have amended the S5 Instrument to include a limitation on the Chief Executive Officer's (CEO) delegation that they not take an action or do an act or thing which is required by law to be done by council resolution. This change is not the result of legislative amendment, but is added to clarify the position that where something is required to be done by council resolution, the CEO will not be able to exercise that power, duty or function under delegation. We note that in these circumstances, the CEO or other sub-delegates are able to take action to implement a decision made by council resolution.

#### Changes to the S6 Instrument of Delegation from Council to Staff

Amendments to the S6 Instrument include the following:

2. various changes to the provisions included for the *Planning and Environment Act 1987* and the *Planning and Environment Regulations 2005*, some of which are a result of legislative amendment and others are to clarify the operation of a particular power, duty or function; and

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3. the *Planning and Environment (Fees) Interim Regulations 2013* have now been revoked and replaced with the *Planning and Environment (Fees) Further Interim Regulations 2013*. Councils' powers and duties under these Regulations remain the same. These Regulations will expire on 18 October 2014; and
4. with respect to the *Food Act 1984*, we have moved the reference to some duties and functions under this Act, which were previously in the S6 Instrument of Delegation, to the S7 Instrument of Sub-Delegation. This is because we consider it unnecessary that these duties and functions be delegated directly from council to staff, pursuant to section 58A of this Act.

#### Changes to the S7 Instrument of Sub-Delegation from Council's CEO to Staff

In relation to the S7 Instrument of Sub-Delegation, we note the following in particular:

5. due to a number of provisions being inserted into the *Catchment and Land Protection Act 1994*, we have included all of councils' new powers, duties and functions under the *Catchment and Land Protection Act 1994* in the S7 Instrument of Sub-Delegation. These provisions relate to the duty to prepare a roadside weed and pest animal management plan;
6. we have updated the prior reference to the Department of Natural Resources and Environment to the current Department of Environment and Primary Industries for the *Conservation, Forests and Land Act 1987*;
7. we have included the powers, duties and functions of a council and a relevant road manager in the recently enacted *Heavy Vehicle National Law 2012*. The National Law is made applicable to Victoria by the *Heavy Vehicle National Law Application Act 2013 (Vic)*, which is not yet in force. The *Heavy Vehicle National Law Application Act 2013* does not have a set commencement date, but will come into force on a future date yet to be proclaimed;
8. we have removed reference to the *Landlord and Tenant Act 1958*, as this Act has now been repealed;
9. for the *Local Government Act 1989*, we have included separate entries for the powers conferred by clause 5 of Schedule 10, relating to road names, numbers and signs, to make it easier to delegate these powers to different delegates, if desirable;
10. we have updated the reference to the former Building Commission to the Authority (being the Victorian Building Authority) in the *Building Regulations 2006*;
11. in line with changes to the *Public Health and Wellbeing Regulations 2009*, we have included reference to a new power in regulation 17A(2), to determine a building to be one of cultural heritage or significance, and a new function in regulation 74, to receive notification from the Secretary administering the *Public Health and Wellbeing Regulations 2009*;
12. the *Subdivision (Fees) Interim Regulations 2013* have now been revoked and replaced with the *Subdivision (Fees) Further Interim Regulations 2013*. Councils' powers and duties under these Regulations remain the same. These Regulations will expire on 18 October 2014; and
13. as we have been asked to include the power to issue credit cards to staff in the S7 Instrument of Sub-Delegation, this has now been included in the Miscellaneous and Administrative Powers section, under "Section B – Finance Issues".

#### Changes to the S10 Council Resolution - Appointments and Authorisations

14. We have removed reference in the S10 template resolution to councils applying to the relevant Minister for council officers to be authorised to file charges under the *Prevention of Cruelty to Animals Act 1986*, and instead added a general reference to this in the "Miscellaneous" section of the S7 Instrument of Sub-Delegation. The reason for doing so is because this is not a task which must be done by a council resolution and therefore, may



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more appropriately be done by a council officer, on behalf of council. While no express power to apply to the Minister in this way exists under legislation, councils may wish to request the Minister to authorise its officers in respect of section 24ZW of the *Prevention of Cruelty to Animals Act 1986*, as authorisation for filing charge sheets for offences under this Act may only be made by the Minister, not by councils.

#### Changes to the S11 Instrument of Appointment and Authorisation

Amendments to the S11 Instrument include the following:

15. we have added the *Valuation of Land Act 1960* to Part A, as it is already included under Part B of the S11 Instrument;
16. we have added a footnote for appointments under section 87 of the *Road Safety Act 1986* to clarify that councils can only appoint a person under this section if they are competent, of good character and has agreed in writing to exercise the functions conferred on an authorised person. This requirement is found in section 87(1C) of the *Road Safety Act 1986*; and
17. we have added section 45AC of the *Food Act 1984*, relating to the power to commence proceedings for offences under the *Food Act 1984*, to Part C of the S11 Instrument. An authorised officer under the *Food Act 1984* (that is, a person appointed for the purposes of section 20 of the *Food Act 1984* or under section 29 of the *Public Health and Wellbeing Act 2008*) is already able to bring proceedings under the *Food Act 1984*. However, we consider it prudent to include reference to this specific provision, to reinforce the intention to authorise an officer to have the power to commence proceedings on behalf of a council.

#### Changes to the S12 Municipal Building Surveyor Package

In relation to the S12 Municipal Building Surveyor Package:

18. we have incorporated changes to the powers, duties and functions of municipal building surveyors under the *Building Act 1993*, as brought about by the *Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013*; and
19. we have updated the reference to the former Building Commission to the Authority (being the Victorian Building Authority) in the *Building Regulations 2006*.

#### Changes to the S13 List of Chief Executive Officer responsibilities

20. We have amended the S13 Instrument to reflect recent minor changes to the time period for submitting a report to the Minister under section 62A of the *Local Government Act 1989* and have also made minor changes for the purposes of clarification.

#### DELEGATION TO PLANNING APPLICATION COMMITTEE

As mentioned in our previous letter to subscribers, the recent amendments to the *Planning and Environment Act 1987* include conferring a power upon councils to delegate certain powers to a new committee to be established by the Minister for Planning, called the "Planning Application Committee".

As this committee is yet to be established, we have not included a proposed instrument of delegation to this committee. We will do so once it has been established.

Please feel free to contact us if you have any questions regarding the Service or you would like assistance with your council's Instruments of Delegation or Authorisation.

Yours sincerely  
Maddocks





Maddocks

Transmission authorised by:  
Melanie Olynyk  
Partner

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## **B.14.5      AUDIT COMMITTEE REPORT**

**Source:**                              **Procedural**  
**Department:**                      **Corporate Services**  
**File Number:**                      **42-02-03**

### **Summary**

Council's Audit Committee met on 12 December 2013 and this report summarises the items that were discussed at the meeting.

### **Council Plan Strategy Addressed**

***Councillor and Staff accountability*** - Council will represent the interests of our community and will conduct its affairs openly and with integrity, reflecting high levels of good governance

### **Recommendation**

**That Council note the contents of this report.**

### **Policy Implications**

Nil

### **Financial and Resource Implications**

The recommendation in the report will not affect existing resource allocations.

### **Triple Bottom Line Impact**

No direct impact.

### **Background**

The Audit Committee met on 12 December 2013. As well as the usual procedural items, the meeting discussed the following topics:

1. Internal Audit Plan.
2. Update on Business Continuity Plan.
3. Risk Register update.
4. Update on Internal Audit of National Competition Policy.
5. Financial Report 3 months to 30 September 2013
6. Final Management Letter – Financial Audit 2012-13

Points to note from the discussion on these topics are:

- The Internal Audit Plan was presented. The first three areas to be examined will be Environmental Health, IT Data Security and Work Cover.
- The Business Continuity Plan has now been finalised and approved by the Executive Management Team.
- Testing of the Business Continuity Plan will begin next year.
- Upgrades to IT system to cater for Business Continuity in the event of a disaster will be complete by June 2014.
- The Risk Management Committee has now completed a review of the Risk Register.
- A review of risk consequence descriptions has been completed.
- A review of the Risk Management Policy will now commence.
- Internal Audit National Competition Policy – the only outstanding item is to conduct training in re requirements of the Trade Practices Act.
- The issues identified in the Management Letter from the Auditor-General have been responded to.

The December Audit Committee Meeting was the first meeting for our new Internal Auditor Jayesh Kapitan who was welcomed to Audit Committee meeting and introduced to all members and staff in attendance.

### **Issues**

Nil

### **Consultation**

Not required for this item.

### **Options**

Nil

### **Conclusion**

The contents of the report are for noting.

### **Attachments**

1 Audit Committee Minutes 12 December 2013

# **Confidential Attachment**

- Minutes Audit Committee 12 December 2013

## **B.14.6 QUARTERLY REVIEW OF FINANCIAL PERFORMANCE AND FINANCIAL POSITION TO 31 DECEMBER 2013**

**Source:** Procedural  
**Department:** Corporate Services  
**File Number:** 42-20-00

### **Summary**

A review of Council's Financial Performance (income and expenditure) and Financial Position (balance sheet) to the adopted Budget for the six months to 31 December 2013 has been conducted and the results are summarised in this report.

### **Council Plan Strategy Addressed**

***Responsible management of resources*** - We will continually improve the management of our finances, assets, systems and technology to achieve and maintain Best Value in our operations.

### **Recommendations**

**That Council note the contents of this report.**

### **Policy Implications**

Nil

### **Financial and Resource Implications**

The report shows a predicted Rates Determination Surplus of \$52,100 better than budget for the 2013/14 financial year at this stage.

### **Triple Bottom Line Impact**

Not relevant to this item.

### **Background**

A summarised statement of Income and Expenditure and a summarised Balance Sheet for the six months ended 31 December 2013 are included with this report.

Major Variations to budget as at 31 December 2013 are explained by way of notes on the attached report.

The forecast result is expected to be better than budget at this stage. The predicted surplus assumes completion of Major Projects and Capital Works during the last nine months of the financial year within budget.

Significant forecast variations to budget include:

	Current Forecast Variances		Forecast Variances	
Rates Early Payment Discount	\$92,600	Unfavourable	\$92,400	Unfavourable
Grants Commission	\$23,900	Favourable	\$23,900	Favourable
Income Grants/Charges received13/14– expected 12/13	\$2,211,000	Favourable	\$2,200,500	Favourable
Workcover costs	\$113,400	Unfavourable	\$59,300	Unfavourable
Rates	\$42,400	Favourable	\$42,400	Favourable
Employee Costs	\$196,600	Favourable	\$34,500	Favourable
Interest on Investments & Rates	\$62,000	Favourable	\$62,000	Favourable
Loan Repayments and Loan Interest	\$130,000	Favourable	\$130,000	Favourable
Parking Enforcement	\$30,000	Unfavourable	\$20,000	Unfavourable
Regional Livestock Exchange (net)	\$20,000	Favourable	\$10,000	Favourable
Insurance and Fire Services Levy	\$33,000	Unfavourable	\$33,300	Unfavourable
Town Hall Usage Fees	\$30,000	Unfavourable	\$10,000	Unfavourable
Building Permit Income	\$30,000	Favourable	\$20,000	Favourable
Additional Costs Depot Office Building (net)	\$22,900	Unfavourable	\$22,900	Unfavourable
Land Sales (net)	\$69,000	Unfavourable	-	-
Insurance	\$10,300	Unfavourable	-	-
Electricity	\$15,000	Favourable	-	-
Legal Costs	\$17,000	Unfavourable	-	-
Library Grants & Contributors	\$14,200	Favourable	-	-
Other Variances (net)	\$7,100	Unfavourable	\$11,900	Unfavourable
<b>Variations to 2013/14 Budget</b>	<b>\$2,319,800</b>	<b>Favourable</b>	<b>\$2,273,500</b>	<b>Favourable</b>
Less: Grants owing from Previous Year	\$2,267,700	Unfavourable	\$2,267,700	Unfavourable
<b>Net Variation to 2013/14 Budget</b>	<b>\$52,100</b>	<b>Favourable</b>	<b>\$5,800</b>	<b>Favourable</b>

### Issues

The anticipated surplus is subject to income and costs trending as expected over the final six months of the year.

### Consultation

Consultation occurred as part of the Budget preparation process.

### Options

Nil at this stage of the financial year.

### Conclusion

The forecast result remains positive at this early stage in the financial year.

**Attachments**

- 1 Balance Sheet as at 31-12-13
- 2 Income Statement as at 31-12-13

**SWAN HILL RURAL CITY COUNCIL  
SUMMARISED BALANCE SHEET  
AS AT 31/12/2013**

	This Year Actual As At 31/12/2013 \$000	Last Year Actual As At 31/12/2012 \$000	\$ Movement Y.T.D. \$000	% Movement Y.T.D.	Budget As At End 2013/14 \$000	Notes
<b>CURRENT ASSETS:-</b>						
Cash and Cash Equivalents	14,372	11,430	2,942	25.7%	10,822	1
Trade & Other Receivables	9,345	15,059	(5,714)	-37.9%	1,638	2
Inventories	91	83	8	9.6%	48	
Non Current Assets Classified as held for sale	102	133	(31)	-23.3%	158	3
Other Assets	201	277	(76)	-27.4%	356	4
<b>TOTAL CURRENT ASSETS</b>	<b>24,111</b>	<b>26,982</b>	<b>(2,871)</b>	<b>-10.6%</b>	<b>13,022</b>	
<b>CURRENT LIABILITIES:-</b>						
Trade & Other Payables	559	529	30	5.7%	4,037	
Trust Funds & Deposits	391	388	3	0.8%	230	
Provisions	4,657	4,165	492	11.8%	3,721	5
Interest Bearing Loans & Borrowings	2,415	1,179	1,236	104.8%	1,438	6
<b>TOTAL CURRENT LIABILITIES</b>	<b>8,022</b>	<b>6,261</b>	<b>1,761</b>	<b>28.1%</b>	<b>9,426</b>	
<b>NET CURRENT ASSETS</b>	<b>16,089</b>	<b>20,721</b>	<b>(4,632)</b>	<b>-22.4%</b>	<b>3,596</b>	
<b>NON-CURRENT ASSETS:-</b>						
Trade & Other Receivables	118	174	(56)	-32.2%	179	7
Property, Plant, Equipment & Infrastructure	406,544	350,242	56,302	16.1%	392,144	8
Intangible Assets	768	973	(205)	-21.1%	973	9
<b>TOTAL NON-CURRENT ASSETS</b>	<b>407,430</b>	<b>351,389</b>	<b>56,041</b>	<b>15.9%</b>	<b>393,296</b>	
<b>NON-CURRENT LIABILITIES:-</b>						
Interest Bearing Loans & Borrowings	2,841	5,309	(2,468)	-46.5%	8,913	10
Provisions	1,735	1,695	40	2.4%	1,792	
<b>TOTAL NON-CURRENT LIABILITIES</b>	<b>4,576</b>	<b>7,004</b>	<b>(2,428)</b>	<b>-34.7%</b>	<b>10,705</b>	
<b>TOTAL NET ASSETS</b>	<b>418,943</b>	<b>365,106</b>	<b>53,837</b>	<b>14.7%</b>	<b>386,187</b>	
<b>EQUITY:-</b>						
Accumulated Surplus & Reserves	281,362	206,611	74,751	36.2%	210,365	11
Asset Revaluation Reserve	137,581	158,495	(20,914)	-13.2%	175,822	11
<b>TOTAL EQUITY</b>	<b>418,943</b>	<b>365,106</b>	<b>53,837</b>	<b>14.7%</b>	<b>386,187</b>	

- 1 Rate Collections are \$3.8M greater than this time last year.
- 2 Rates debtors are lower than this time last year. Refer note 1.
- 3 The continued sales of Tower Hill land has reduced the value of land held for sale.
- 4 Other Assets represents GST due to Council.
- 5 The provisions for employee leave has increased from 2012 due to the ongoing accrual of staff leave and the EBA increase. The December leave balance is usually higher than at other times of the year as many staff take leave over January.
- 6 Council has two loans that are due for renegotiation during 2013/14. One loan for \$700K is to be renegotiated for a further 6 years and the other loan of \$831K is to be renegotiated for a further 5 years. These loans will then show as non current liabilities.
- 7 Repayment of private scheme debtors has been reducing this balance.
- 8 Revaluations and condition based assessments conducted in 2012/13 resulted in an increase in asset values of sealed roads (\$12.1M), Kerb and Channel (\$1.4M) and Drainage (\$3.7M). Land under roads was also recognised for the first time in 2012/13 which resulted in a \$35.9M increase in Fixed Asset values.
- 9 The value of permanent water rights has decreased.
- 10 Refer note 6.
- 11 During 2012/13, Audit determined that part of the 2011/12 asset valuation changes should have been adjusted through Accumulated Surplus rather than Revaluation Reserves.



**SWAN HILL RURAL CITY COUNCIL  
STATEMENT OF INCOME & EXPENDITURE  
FOR THE 6 MONTHS ENDING 31/12/2013**

	Actual Year To Date 31/12/2013 \$000	Budget Year To Date 31/12/2013 \$000	\$ Variance To Budget \$000	-% Variance To Budget	Original Annual Budget 2013/14 \$000	Notes
<b>OPERATING INCOME :-</b>						
Rates, Garbage Charges and Marketing Levy	23,109	23,260	(151)	-0.6%	23,260	
Statutory Fees & Fines	537	519	18	3.5%	1,038	
User Fees	2,143	2,470	(327)	-13.2%	4,939	1
Grants - Recurrent	4,845	5,176	(331)	-6.4%	10,351	
Grants - Non-recurrent	3,170	6,731	(3,561)	-52.9%	13,461	2
Contributions - Cash Non Recurrent	529	295	234	79.3%	590	3
Reimbursements	175	99	76	76.8%	198	4
Interest Income	168	435	(267)	-61.4%	870	5
Proceeds From Disposal of Assets	91	327	(236)	-72.2%	654	6
Other Revenue	920	688	232	33.7%	1,376	7
<b>TOTAL INCOME</b>	<b>35,687</b>	<b>40,000</b>	<b>(4,313)</b>	<b>-10.8%</b>	<b>56,737</b>	
<b>OPERATING EXPENSES (Excluding Depreciation) :-</b>						
Employee Benefits	10,176	9,526	650	6.8%	19,052	
Contract Payments Materials & Services	6,918	7,167	(249)	-3.5%	14,333	
Contributions Paid	2,219	2,877	(658)	-22.9%	5,754	8
Bad & Doubtful Debts	1	3	(2)	-66.7%	6	
Finance Costs	175	210	(35)	-16.7%	420	9
Other Expenses	588	463	125	27.0%	925	10
<b>TOTAL OPERATING EXPENSES (Excl. Deprn.)</b>	<b>20,077</b>	<b>20,246</b>	<b>(169)</b>	<b>-0.8%</b>	<b>40,490</b>	
<b>OPERATING RESULT ( Excl. Deprn. )</b>	<b>15,610</b>	<b>19,754</b>	<b>(4,144)</b>	<b>-21.0%</b>	<b>16,247</b>	
<b>CAPITAL ITEMS :-</b>						
Capital Works/Asset Purchases - Funding Sourced	2,632	5,193	(2,561)	-49%	10,386	11
Capital Works/Asset Purchases - Funding Not Sourced	31	-	31	0.0%	13,025	
	2,663	5,193	(2,530)	-49%	23,411	
<b>SURPLUS (DEFICIT) AFTER CAPITAL ITEMS</b>	<b>12,947</b>	<b>14,561</b>	<b>(1,614)</b>	<b>-11.1%</b>	<b>(7,164)</b>	
<b>ADD FINANCING TRANSACTIONS</b>						
Loan Principal Redemption	(573)	(599)	26	-4.3%	(1,197)	
Transfers to/from Reserves	2,831	-	2,831	0.0%	7,045	
Proceeds from Loans	-	-	-	0.0%	4,655	
<b>TOTAL FINANCING TRANSACTIONS</b>	<b>2,258</b>	<b>(599)</b>	<b>2,857</b>	<b>-477.3%</b>	<b>10,503</b>	
<b>BUDGET RESULT SURPLUS</b>	<b>15,205</b>	<b>13,963</b>	<b>1,242</b>	<b>8.9%</b>	<b>3,339</b>	

- User charges are below forecast in Family Day Care (\$30K), Brokered Works (\$45K), Packaged Care (\$46K), Marketing and Information Services (\$53K), Pioneer Settlement (\$89K), Private Works (\$24K), and Swan Hill Town Hall (\$24K). The below forecast income is matched with a reduction in expenditure in these programs.
- Non-Recurrent Grants includes funding for the Swan Hill Aerodrome (\$6.425M), Heartbeat of the Murray (\$1.125M) and Chisholm Reserve Upgrade (\$2.0M). The forecast allows for these to be received throughout the year, but these grants are yet to be secured.
- Contributions - Cash Non-recurrent is currently above forecast due to the contribution for the Swan Hill Community Hub (\$341K) being received. The forecast had allowed for this to be received throughout the year. Contributions for the Heartbeat of the Murray and Chisholm Reserve are only expected to be received once the funding has been secured.
- Reimbursement of insurance costs from sporting/community groups that occupy Council buildings have been charged for 2013/14. The forecast allowed for the collection of this income over the financial year. Reimbursements for Paid Parental leave are above forecast.
- As at 31 December 2013 Council had accrued \$97K of interest income in addition to the \$168K already received. Due to historically low interest rates, the income received on investments is currently lower than forecast.
- There has been very little trade in of plant and machinery to date. This is expected to increase in the second half of the year.
- Tower Hill land sales are above forecast.
- The payments to the CACP and EACH consortium members for November and December were yet to be paid due to payment issues from the funding body (Medicare).
- The loan budgeted to be borrowed in June 2013 was not required.
- This variance can be attributed to software licence fees that had been forecast over the financial year, however the licence fees are paid upfront at the beginning of the year.
- A number of significant capital works projects such as road reconstructions and reseals, and plant acquisitions were yet to be started. These projects are expected to be completed as the year progresses.

**B.14.8 INTENTION TO DECLARE A SPECIAL RATE FOR THE SWAN HILL REGION**

**Source:** Procedural  
**Department:** Development and Planning  
**File Number:** 26-34-00

**Summary**

Swan Hill Incorporated has requested the re-introduction of a Special Rate for the marketing and development of the Swan Hill region on rateable commercial, industrial and tourism properties for a further period of seven years commencing 1 July 2014. Council is requested to give notice of its intention to declare the new Special Rate within the same defined areas as the current scheme on Tuesday 15 April 2014.

**Council Plan Strategy Addressed**

*Existing business support* - We will support existing businesses and encourage expansion through building business capacity.

**Recommendations**

**That Council:**

- 1. Under Section 163 (1A) of the Local Government Act (1989) give notice of its intention to declare a Special Rate on 15 April 2014 (in accordance with the notice in Annexure 'A' to this report) for the purposes of defraying expenses in undertaking marketing and business development programs associated with the encouragement of commerce in the Swan Hill region.**
- 2. Under Section 163 (1B) of the Act, place a public notice in The Guardian of the proposed declaration and the right of a person to make a submission under Section 163A of the Act (to be considered by Council in accordance with Section 223) and to make an objection under Section 163B of the Act.**
- 3. Under Section 163 (1C) of the Act, send a notice of the proposed declaration to each person who will be liable for the proposed Special Rate within three days of the publication of the public notice in The Guardian.**

**Policy Implications**

Nil

## **Financial and Resource Implications**

As detailed below.

## **Triple Bottom Line Impact**

Nil

## **Background**

Swan Hill Incorporated has written to Council asking that Council declare a new Special Rate for the Swan Hill region, effective from 1 July 2014.

Since 1 July 2002, the Swan Hill region has had a Special Rate scheme in place for marketing and development of the region.

The Special Rate currently covers 755 properties and will raise a total of approximately \$339,130 in 2013-2014.

Swan Hill Incorporated spends the funds as specified in the Special Rate Declaration and in accordance with an Agreement with Council that calls for the submission of Annual Marketing Plans and Budgets, regular financial reporting and audited annual financial statements. Council adopted Swan Hill Incorporated's 2013-14 Annual Marketing Plan and Budget at its meeting on 20 August 2013.

A key component of economic development is regional marketing activities to attract increased investment, employees, residents, shoppers, buyers and visitors. The proposed Special Rate is an excellent method to provide funding for these marketing activities.

Over the last seven years Swan Hill Incorporated (representing businesses in the Swan Hill region) has made a concerted effort in its marketing program. In partnership with Council's Economic Development Unit, Swan Hill Incorporated has successfully undertaken the following marketing and development activities:

- Development and distribution of regional brochures to attract people to live, work and invest in the Swan Hill region;
- Development and distribution of a visitor's guide to attract people to visit and shop in the Swan Hill region;
- Development of an internet site ([www.swanhillonline.com](http://www.swanhillonline.com)) to promote the Swan Hill region for investing, living, working, shopping and visiting;
- Production of regular newsletters to members to make them aware of promotional activities and other initiatives;
- Participation in trade and consumer shows to promote the Swan Hill region;
- Organisation of successful seminars for businesses on topics such as the fair trading act and retail theft;
- Development of high level marketing campaigns executed across a number of mediums in both metropolitan Melbourne and regional Australia including television, newspaper, radio and outdoor billboards.

Swan Hill Incorporated considers that continued marketing and development of the Swan Hill region is a key priority if the region is to remain competitive. The Board and its committees feel strongly that the region is one of the key service centres on the Murray River.

The legislative requirements under the Local Government Act 1989 relating to the renewal of a Special Rate are the same as those applying when the Special Rate was last renewed in 2007. The key requirements are:

- The need to specify in a declaration:
  - The type of properties and geographical areas to be covered by the Special Rate,
  - The function to be performed or the power to be exercised by the Special Rate;
  - The total cost of the performance of the function;
  - The total amount of the Special Rate to be levied; and
  - The period of time in which the Special Rate will be in force.
- Council can only levy a Special Rate to recover an amount that exceeds two-thirds of the total cost of Special Rate.
- Council cannot make a final declaration of the Special Rate unless it has given public notice of its intention to make the declaration at least 28 days prior. Copies of the proposed declaration must be available for at least 28 days after the publication of the notice, and any submissions or objections must be lodged in writing within that same 28 day period.
- Council must, in the public notice, set out the date on which it is proposed to make the declaration.
- Council must send a copy of the public notice to each person who will be liable to pay within three working days of the day on which the public notice is published in The Guardian. This includes both property owners and business operators.

In considering these matters, Council must specify the total cost of the Special Rate. The total cost includes:

- The annual amount which Swan Hill Incorporated has budgeted to spend on various marketing, promotional and development activities; and
- Council's own administrative costs in relation to the scheme.

Council's administrative costs consist primarily of levying the Special Rate, collecting the contributions from property owners or businesses, and forwarding the relevant amounts to Swan Hill Incorporated. It is estimated that these costs will total \$5,200 in the first year of the Special Rate and increase by approximately 5% per annum for the remaining years of the rate.

Swan Hill Rural City Council assists Swan Hill Incorporated by employing on their behalf a full time Project Officer who undertakes all tasks associated with the administration, marketing and development of the region. The role is fully funded through an annual contribution Swan Hill Incorporated pays to Council of \$67,500. This figure totally covers the annual salary paid to the officer.

In addition to the total cost of the scheme, Council must decide the amount that is to be rated on liable property owners. Once this amount is set, Council cannot rate any amount greater than this figure.

Applying the formula in the Act, the total maximum amount that can be rated on liable property owners is 100% of the total cost of the scheme. The total cost of the scheme covers Council's administrative costs as discussed above. However, it has been the practice in the current scheme for Council not to recover its administrative costs from liable properties, and to only rate those costs proposed to be incurred by Swan Hill Incorporated. It is recommended that this practice continue for the new scheme.

Council also needs to specify the methodology it will use in determining how the payment of the Special Rate is to be apportioned amongst the benefiting properties. The proposed methodology is exactly the same as the methodology used in the last renewal in 2007.

Essentially, the proposal is that the total amount in the first year (2014-2015) be the same as the total amount raised in the current year (2013-2014) – i.e., \$ 339,130 - with a 5% per annum increase of the total amount for each the following six years. It is anticipated that there will be a minor variation each year of the maximum amounts to be paid however there is no increase proposed for the current minimum amounts.

It is also proposed that properties continue to pay different amounts depending on the type of property (tourism, commercial or industrial) and their CIV valuation. Different rates in the dollar of CIV are to be specified for each of the tourism, commercial and industrial properties, as is the current practice. Tourism properties will continue to pay a higher rate in the dollar than commercial properties that in turn will continue to pay a higher rate than industrial properties. These different rates reflect the respective benefits expected to be obtained from the program.

It is envisaged that the current reporting and accountability in place continue and that Swan Hill Incorporated submit Strategic Plans and Annual Marketing Plans and Budgets for the approval of Council.

## **Issues**

Satisfying the diverse needs of local businesses would be difficult for Swan Hill Incorporated to achieve without the funds raised by the Special Rate.

## **Consultation**

Swan Hill Incorporated has been very conscious of gaining strong property owner and business support for the proposal. To this extent it has developed a proposal that it considers would be reasonable and would offer a “special benefit” to all businesses and property owners.

Swan Hill Incorporated has engaged the professional services of Peter McNabb and Associates to assist and advise with this process. Peter McNabb was the advisor when the original Special Rate scheme was developed and introduced over 11 years ago and assisted the program with the last renewal in 2007.

Consultation with business operators and property owners has been extensive. The information brochure was distributed to all affected businesses and property owners in late August 2013 and again in early September 2013. Swan Hill Incorporated have promoted and discussed the proposal with over 300 individual businesses at larger business forums and directly through visits to businesses and property owners.

### Level of Support

As detailed in Swan Hill Incorporated’s letter, the level of support for the proposal has been very encouraging. Over 245 signed support forms have been obtained, representing over 30% of all occupied rateable properties within the scheme. In addition, there has been verbal or corporate support from a further 40 businesses representing the banks, major retail companies, and Government organisations. Opposition to the scheme has been very limited and indications are a high level of committed support for the Special Rate to continue exists.

## **Options**

Council can choose to give notice of its intention to declare a Special Rate for the Swan Hill region or not.

## **Conclusion**

The proposed criteria to be used as the basis for declaring the Special Rate will ensure that the proportions to be levied to each industry sector are in line with the current Special Rate scheme and the request for the establishment of the new Special Rate by Swan Hill Incorporated. To ensure appropriate consultation processes are met it is now proposed that Council give notice of its intention to declare the Special Rate at its meeting on 15 April 2014.

As a result of the achievements to date and the high level of support for the new proposal Swan Hill Incorporated is requesting that Council support the establishment of the proposed Special Rate for the Swan Hill region and commence the statutory processes.

**Attachments**

- 1 Declaration at 12 Feb 2014

## Declaration of a Special Rate for the Swan Hill Region

Under Section 163 of the Local Government Act 1989 (the “Act”) Swan Hill Rural City Council (the “Council”) hereby declares a Special Rate for marketing and business development of the Swan Hill region (“region”).

Council specifies:

(a) The purpose of the Special Rate is to defray the expenses in relation to the performance of functions within the Swan Hill region, which Council considers are necessary and appropriate for the encouragement of business development and commerce through the promotion and development of the region as a place to live, work, invest, shop and visit.

(b) The area for which the Special Rate is declared is all the rateable properties used for commercial, industrial and tourism and hospitality purposes within the following parishes and localities within the Swan Hill Rural City (as detailed on Map in Attachment One):

Benjeroop Settlement	Boga	Boga-Tresco
Castle Donnington	Chillingollah	Chinangin
Kooem	Koro-Ganeit	Kunat Kunat
Kunat-Tresco Settlement	Lake Boga	Meatian
Mumbel	Murnungin	Nowie
Nyah Township	Nyah West Township	Nyrraby
Piangil Township	Pental Island	Piangil Parish
Piangil West	Pira	Polisbet
Prooinga	Swan Hill	Turoar
Towan	Tyntynder	Tyntynder North
Tyntynder West	Ultima	Ultima Township
Waitchie Township	Wewin	Wood Wood
Woorinen	Woorinen South Township	

(c) Council considers that the performance of the functions, as outlined in paragraph (a), will assist it in fulfilling the following facilitating objectives of Council which are set out in Section 3C(2) of the Local Government Act:

- to promote the social, economic and environmental viability and sustainability of the municipal district.
- to promote appropriate business and employment opportunities.

(d) The total cost of the performance of the functions is:

- for the first year of the Special Rate - \$339,130 (including Council’s contributing administrative costs of \$5,200);
- for each of the subsequent six years the Special Rate remains in force - the previous year’s total amount of the Special Rate plus 5% of that amount.



- (e) The total amount of the Special Rate to be levied is:
- (i) for the first year of the Special Rate - \$339,130;
  - (ii) for each of the subsequent six years the Special Rate remains in force - the previous year's total amount to be levied plus 5% of that amount.
- (f) The land in relation to which the Special Rate is declared is all the rateable properties used for commercial, industrial and tourism and hospitality purposes in the parishes and localities within the Swan Hill Rural City listed in (b) above.
- (g) The manner in which the Special Rate is assessed (that is, the criteria to be used as the basis for levying the Special Rate) is:

For the first year of the Special Rate:

- for tourism and hospitality properties (based on Australian Valuation Property Classification Codes [AVPCC] as detailed in Attachment Two) a rate in the dollar of each property's Capital Improved Value (CIV), in order to raise a total of \$82,360 with a minimum rate per rateable property of \$50 and a maximum rate per rateable property of \$6,000.
- for commercial properties (based on AVPCC as detailed in attachment two) a rate in the dollar of each property's CIV, in order to raise \$218,380, after inclusion of providing a 50% write-off for properties in common occupancy with a residence, with a minimum rate per rateable property of \$50 and a maximum rate per rateable property of \$6,000.
- for industrial properties (based on AVPCC as detailed in attachment two) a rate in the dollar of each property's CIV, in order to raise a total of \$38,390 with a minimum rate per rateable property of \$50 and a maximum rate per rateable property of \$300.

For each of the subsequent six years the Special Rate remains in force, the rates in the dollar will be adjusted to be in accordance with the previous year's total amount of the Special Rate plus 5% of that amount apportioned over the sectors as follows:

- for tourism and hospitality properties (based on assigned AVPCC) a rate in the dollar of each property's CIV, in order to raise the proportion of the Special Rate raised from the sector in the previous year adjusted for the relative movements in the proportion of the sector's CIV of the total CIV within the Special Rate area. A minimum rate per rateable property of \$50 p.a. and a maximum rate per rateable property to increase each year by 3% from the maximum set for the first year.

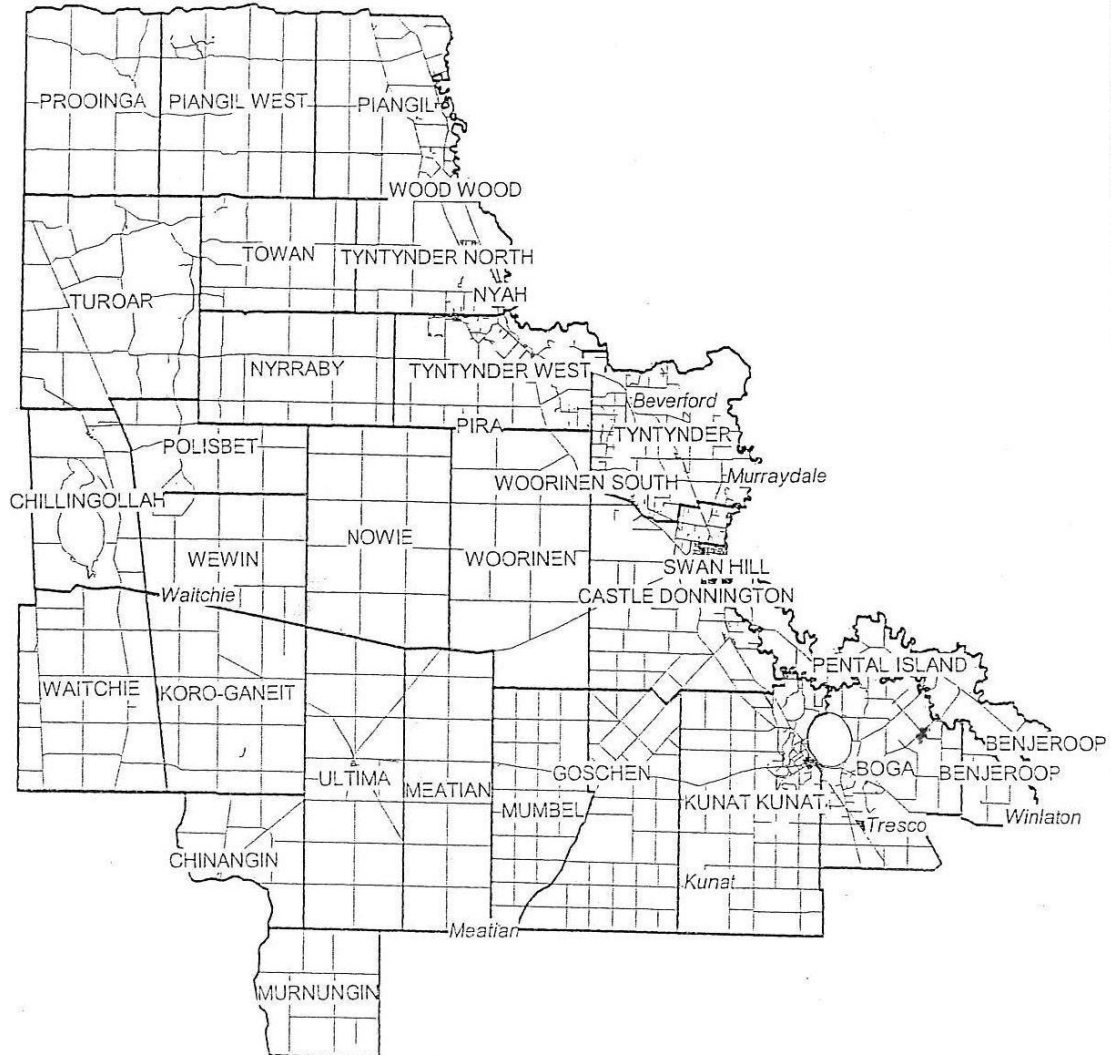
- for commercial properties (based on assigned AVPCC) a rate in the dollar of each property's CIV, in order to raise the proportion of the Special Rate raised from the sector in the previous year adjusted for the relative movements in the proportion of the sector's CIV of the total CIV within the Special Rate area. A minimum rate per rateable property of \$50 p.a. and a maximum rate per rateable property to increase each year by 3% from the maximum set for the first year. A 50% write-off will apply to properties in common occupancy with a residence.
  - for industrial properties (based on assigned AVPCC) a rate in the dollar of each property's CIV, in order to raise the proportion of the Special Rate raised from the sector in the previous year adjusted for the relative movements in the proportion of the sector's CIV of the total CIV within the Special Rate area. A minimum rate per rateable property of \$50 p.a. and a maximum rate per rateable property to increase each year by 3% from the maximum set for the first year.
- (h) The Special Rate is levied by sending a notice in each year the Special Rate remains in force, to the persons liable to pay it, requiring that the Special Rate for that year be paid in four instalments or by lump sum, by the dates which are specified in each respective notice.
- (i) The Special Rate commences on 1 July 2014 and remains in force for a period of seven years from that date, until 30 June 2021.
- (j) Should a property included in the Special Rate receive a supplementary valuation that changes its AVPCC to residential land or primary production that property will cease to be included in the Special Rate from the date the supplementary valuation for that property is returned to Council.
- (k) Should a property in the area covered by the Special Rate receive a supplementary or other valuation which includes it as a new or amended rateable property in the Special Rate, that property will be included in the appropriate AVPCC category of the Special Rate from the beginning of the financial year following the date the supplementary or other valuation for that property is returned to Council.
- (l) The Council considers that there will be a special benefit to persons required to pay the Special Rate in that there will be a special benefit over and above that available to persons not the subject of the Special Rate and directly and indirectly, the viability of the Swan Hill region as a commercial, industrial and tourism region will be enhanced through increased commerce and economic activity. Further, the value of the properties included in the scheme, their desirability as letting propositions (where applicable) and their general image and stature, both separately and severally in the context of the area generally, will be maintained or enhanced.

- (m)** Council further considers, and formally determines for the purposes of sections 163(2)(a), (2A) and (2B) of the Act, that the estimated proportion of the total benefits of the Scheme to which the performance of the function and the exercise of the power relates (including all special benefits and community benefits) that will accrue as special benefits to all of the persons who are liable to pay the Special Rate is in a ratio of 1:1 (or 100%). This is on the basis that, in the opinion of Council, all of the services and activities to be provided from the expenditure of the proposed Special Rate are marketing, promotion and business development related and will accordingly only benefit the owners and occupiers of those properties and businesses included in the scheme.

Dean Miller  
Chief Executive Officer  
Swan Hill Rural City Council

Attachment One

Area of land covered by the Special Rate



## Attachment Two

### Australian Valuation Property Classification Codes

#### Tourism & Hospitality

<u>AVPCC</u>	<u>Description</u>
202	Commercial Land (with buildings that add no value)
210	Retail Premises (single occupancy)
230	Resident Hotel/Motel/Apartment Hotel
232	Serviced Apartments/Holiday Units
234	Tourist Park/Caravan Park/Camping Ground
240	Pub/Tavern/Licenced Club/Restaurant
241	Hotel-Gaming
243	Member Club Facility
245	National Company Restaurant
813	Outdoor Sports-Extended Area/Cross Country

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#### Commercial

<u>AVPCC</u>	<u>Description</u>
100	Vacant Residential Home Site/Surveyed Lot
102	Vacant Englobo Residential Subdivisional Land
110	Detached Home
200	Commercial Development Site
202	Commercial Land (buildings add no value)
210	Retail Premises (single occupancy)
211	Retail Premises (multiple occupancies)
212	Mixed Use Occupation
214	National Company Retail
215	Fuel outlet/Garage/Service Station
217	Bottleshop/Liquor Licence Outlet
218	Licenced Retail Premises
220	Office Premises (single Occupancy)
221	Low Rise Office Building
222	Multi Level Office Building
235	Guest Lodge/Backpackers/Bunkhouse/Hostel
240	Pub/Tavern/Licenced Club/Restaurant
245	National Company Restaurant
246	Kiosk
270	Health Surgery
271	Health Clinic
273	Crematorium/Funeral Services
275	Veterinary Clinic

- 282 Individual Car Park Site
  - 283 Car Wash
  - 284 Vehicle Sales Centre
  - 300 Industrial Development Site
  - 303 Industrial Land (buildings add no value)
  - 310 General Purpose Factory
  - 320 General Purpose Warehouse
  - 561 Vineyard
  - 562 Plant/Tree Nursery
  - 572 Native Hardwood (standing timber)
  - 690 Post Offices
  - 696 Television/Radio Station -Purpose Built
  - 698 Telephone Exchange - Purpose Built
  - 715 Day Care Centre For Children
  - 813 Outdoor Sports-Extended Area/Cross Country
  - 820 Indoor Sports Centre
  - 830 Library/Archives
- 

**Industrial**

<b><u>AVPCC</u></b>	<b><u>Description</u></b>
200	Commercial Development Site
202	Commercial Land (buildings add no value)
210	Retail Premises (single occupancy)
230	Residential Hotel/Motel/Apartment Hotel
284	Vehicle Sales Centre
300	Industrial Development Site
303	Industrial Land (buildings add no value)
310	General Purpose Factory
311	Food Processing Factory
320	General Purpose Warehouse
321	Open Storage Area
322	Bulk Grain Storage (Structures)
325	Coolstore/Coldstore
333	Rendering Plant
334	Oil Refinery
530	Mixed Farming & Grazing
562	Plant/Tree Nursery
623	Electricity Substation/Terminal
673	Airport Hanger Building
694	Telecommunication Towers & Aerials
698	Telephone Exchange - Purpose Built

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**B.14.9 PLANNING PERMIT APPLICATION FOR A DWELLING WITHIN A FARMING ZONE AT 236 BISH ROAD, MURRAWEE**

**Source:** Procedural  
**Department:** Development and Planning  
**File Number:** 2013/100

**Summary**

This application seeks planning approval for the use and development of land for a dwelling in the Farming Zone (FZ) and development within the Land Subject to Inundation Overlay (LSIO) and Environmental Significance Overlay 2 (ESO2), on land known as Lots 1, 2 and 3 on Title Plan 611848R (236 Bish Road, Murrawee). The applicant is proposing to build a dwelling, workshop and hayshed/undercover sheep yards on the land.

**Council Plan Strategy Addressed**

*Developing open community relationships* - We seek to achieve greater community inclusiveness and understanding of Council's operations and decisions.

**Recommendations**

**That Council:**

**Refuse to Grant a Permit because:**

- 1. The proposal is contrary to Clause 14.01-1 of the Swan Hill Planning Scheme**
- 2. The proposal is contrary to Clause 21.06 of the Swan Hill Planning Scheme**
- 3. The proposal is contrary to Clause 35.07 (Farming Zone) of the Swan Hill Planning Scheme.**

**Policy Implications**

Nil

**Financial and Resource Implications**

Nil

## **Triple Bottom Line Impact**

Environment – Nil

Economic – Agriculture is an important part of the municipality's economy. By allowing this type of use and development, it increases the market value of the farming land which may result in the land not being viable for a future farming use and significantly limits the ability for consolidation of farming land.

Social – Nil

## **Background**

### Location and existing conditions

The subject land is located to the east of Bish Road, Murrawee and is approximately 5.0km from the Swan Hill CBD. The land has an area of approximately 5.2 hectares and contains a dilapidated house that is uninhabitable. The No.9 Main Channel runs north-south along the west of the land. The surrounding area is predominantly used for irrigated pastures and stock grazing.

The land is entirely covered by the Land Subject to Inundation Overlay (LSIO) as well as the Environmental Significance Overlay 2 (ESO2).

Access to the site exists to the north of the channel bridge along Bish Road. The existing access is not all weather quality and requires upgrading to be suitable for frequent use by the landowner.

### History

A planning permit was previously issued in 2002 for a second dwelling on the site (a relocated house). The permit was acted upon but the dwelling was subsequently removed from the land in 2004. Existing use rights for the use of the land for a dwelling are not applicable on the land and have expired.

There have not been any further applications for planning permit on the land since 2002. In 2013 the property was sold to its current owner. The applicant wishes to purchase the property pending planning approval for a dwelling in this application.

### Proposal

This application seeks planning approval for the use and development of the land for a dwelling in the Farming Zone and development within the Land Subject to Inundation Overlay and Environmental Significance Overlay 2, on land known as Lots 1, 2 and 3 on Title Plan 611848R (236 Bish Road, Murrawee).



The proposed dwelling is to be set back 45m from the channel that runs along the west of the land. The dwelling will be sited close to the existing unused dwelling on the land. A workshop is proposed to be constructed to the south of the proposed dwelling and requires a planning permit as it is over 200m<sup>2</sup> in the LSIO. A hayshed/undercover yards are also proposed to the north of the house, however they are exempt and do not require planning permission.

The applicant submitted a brief explanation of the proposal. The applicant proposes to do a "site cleanup" as the site is currently overgrown with weeds. At the completion of this cleanup the applicant then wishes to divide the land into 5 stock-proof paddocks to enable them to undertake paddock rotation for their flock of 20 sheep. According to the submission, the 20 dorper ewes require "constant care and supervision (especially during lambing time)" and as a result they require a dwelling on the land.

### Zone and Zone Purpose

The subject land is located within the Farming Zone (FZ). The purpose of the Farming Zone is as follows:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To protect and enhance natural resources and the biodiversity of the area.*

The use and development of the land for a 'Dwelling' within the Farming Zone is a Section 2 – Permit Required Use as the subject land is under the minimum lot size in accordance with the Schedule to the zone (which is 20ha in an irrigated area). The buildings and works associated with the development of the dwelling also require a permit under Clause 35.07-4 of the Farming Zone.

**Decision Guidelines of the Farming Zone:**

<b>Farming Zone – Decision Guidelines</b>	<b>Comments</b>
<b>General issues</b>	
The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.	The application is not supported by the Natural Resource Management objectives and strategies and Clauses 14.01-1 (Protection of agricultural land) and 21.06 (Natural Resource Management) –and will be further discussed in this report.
Any Regional Catchment Strategy and associated plan applying to the land.	Not applicable to this application.
The capability of the land to accommodate the proposed use or development, including the disposal of effluent.	The application was referred to all relevant external agencies and no objections were received subject to conditions
How the use or development relates to sustainable land management.	There is no evidence the proposed dwelling relates to sustainable land management.
Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.	The development is proposed to be located on existing farming land and the applicant has not submitted a ‘whole farm plan’ to support the proposal. A brief explanation of why the dwelling will support an agricultural use was submitted but does not provide adequate evidence of why a dwelling should be supported on the land.
<b>Agricultural issues</b>	
Whether the use or development will support and enhance agricultural production.	It is not considered that the dwelling will support or enhance agricultural activity on the land as there is no existing agricultural use on the land.
Whether the use or development will permanently remove land from agricultural production.	Yes. The area of the proposed dwelling will be lost to any future potential agricultural production. The land’s potential for consolidation with adjoining land owners may also be lost due to the inclusion of a dwelling on the land. The dwelling may increase the value of the farming land making it unaffordable.

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<p>The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.</p>	<p>The use of the land for a dwelling will limit any adjoining landowners' ability to expand as the dwelling on the land will add significant value to the property which may make farming expansion unviable. The operations adjoining the property could possibly be affected by the use of the land for a dwelling but given the proposed setbacks this is unlikely.</p>
<p>The capacity of the site to sustain the agricultural use.</p>	<p>There is no existing agricultural use.</p>
<p>The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.</p>	<p>The subject land has access to irrigation water as stated in the application (1 Megalitre). It also has access to good rural infrastructure in a sealed road to the crossover of the land. At present there is no agricultural use on the land and soil quality is unknown.</p>
<p>Any integrated land management plan prepared for the site.</p>	<p>A 'Whole Farm Plan' endorsed by DEPI to their guidelines was not submitted to support the application.</p>
<p><b>Dwelling issues</b></p>	
<p>Whether the dwelling will result in the loss or fragmentation of productive agricultural land.</p>	<p>The dwelling may result in the farming land being unviable for expansion by adjoining landowners but will remain as viable agricultural land except for the area developed by driveways, the proposed dwelling and proposed workshop.</p>
<p>Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.</p>	<p>It is considered that the proposed dwelling is not reasonably required for the operation of the proposed agricultural operation conducted on the land as there is no existing agricultural use on the land and the proposed agricultural use does not provide significant justification for a dwelling.</p>
<p>Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.</p>	<p>Given the proposed setback, it is considered that the dwelling would not be adversely affected by the adjoining agricultural activities or general amenity issues.</p>

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<p>Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.</p>	<p>It is not considered the dwelling will adversely affect the operation of adjoining and nearby agricultural uses. A dwelling may limit the expansion of adjoining land uses to acquire the subject land for consolidation as the value of the subject land with a dwelling would increase and may reduce the viability to consolidate the land with adjoining farming land for agricultural use.</p>
<p>The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.</p>	<p>There are a number of small farming zoned allotments in the area and if dwellings were approved on each allotment, it would lead to a concentration of dwellings within the zone and create a rural residential area reducing the ability of the land to be used for agricultural purposes.</p>
<p><b>Environmental issues</b></p>	
<p>The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.</p>	<p>There is no expected negative impact on the physical features and resources of the area.</p>
<p>The impact of the use or development on the flora and fauna on the site and its surrounds.</p>	<p>There is no expected negative impact on the physical features and resources of the area.</p>
<p>The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to re-vegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.</p>	<p>There is no expected negative impact on the physical features and resources of the area.</p>
<p>The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.</p>	<p>The subject land is not connected to reticulated sewerage but the applicant has outlined the waste water system they intend to install and this has been approved by Council's Environment Health Department.</p>
<p><b>Design and siting issues</b></p>	
<p>The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.</p>	<p>The siting of the proposed dwelling is suitably sited as it is near an existing uninhabitable dwelling and is appropriately set back from adjoining agricultural uses.</p>

**SECTION B - REPORTS**

18 February 2014

<p>The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.</p>	<p>Minimal impact would be expected to the Murray River environs. North Central Catchment Management Authority did not provide a response to the application within the specified timeframe in accordance with Section 55 of the Act, therefore, it is considered that it consents with no conditions. GWM Water has provided consent to the proposed dwelling subject to conditions.</p>
<p>The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.</p>	<p>No impact is expected.</p>
<p>The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.</p>	<p>The land can be adequately serviced.</p>
<p>Whether the use and development will require traffic management measures.</p>	<p>No.</p>

Overlays

Land Subject to Inundation Overlay:

The land is located within the Land Subject to Inundation Overlay (LSIO), the purpose of which includes:

- *To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority.*
- *To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity*

In accordance with Clause 44.04-1 of the LSIO a planning permit is required for buildings and works associated with the dwelling and machinery shed.

The subject land was referred to the North Central Catchment Management Authority (NCCMA) for comment in accordance with Section 55 of the Act. North Central Catchment Management Authority did not provide a response to the

application referral process in accordance with Section 55 of the Act, therefore, it is considered that it consents with no conditions.

Environmental Significance Overlay 2:

The land is also located within the Environmental Significance Overlay 2 (ESO2). This overlay refers specifically to flooding in the municipality and aims to identify land susceptible to inundation.

Decision Guidelines for ESO2:

<b>ESO2 – Decision Guidelines</b>	
The potential for flooding to occur and the effect that flooding may have on the development.	There is significant potential for flooding to affect the land although North Central Catchment Management Authority did not respond to the referral of the application as previously mentioned.
The effect of the development on the capacity of the land to store and absorb stormwater and flood water.	The development will not have a significant impact on the land to store and absorb stormwater and flood water.
The possible effect of the development on the quality and quantity of stormwater and floodwater.	The development will not affect the quality or quantity of stormwater and flood water.
The effect of any development on flood control and stormwater disposal measures and the flow of floodwater and stormwater.	It is unlikely that the development will affect any flood control or stormwater disposal measures. The development will not significantly impact on the flow of floodwater or stormwater.

*Any comments of the relevant Catchment Management Authority, Water Authority and the Department of Sustainability and Environment.*

- The application was referred to GMW and NCCMA.
- GMW provided consent to a permit being granted subject to conditions regarding the septic system having prescribed buffer distances from dams, channels and waterways.
- NCCMA did not provide a response.

## State Planning Policy Framework

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

*Objective: To protect productive farmland which is of strategic significance in the local or regional context.*

- The proposal does not protect the state's economic base as the proposed dwelling will permanently change the farmland's productive capacity by placing a dwelling on the land. This limits the ability of others to consolidate and also limits the amount of land for farming by using the land for a dwelling.

A key strategy of the above clause is that in considering a proposal to subdivide or develop agricultural land, the following factors must be considered:

- *The desirability and impacts of removing the land from primary production, given its agricultural productivity.*
- *The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to the viability of infrastructure for such production.*
- *The compatibility between the proposed or likely development and the existing uses of the surrounding land.*
- *Assessment of the land capability*

In response to the above factors it is noted that:

- Agriculture is an important part of the municipality's economy and dwellings on small lots are discouraged because of the possible restrictions they place on consolidation and future use of the land as a productive agricultural use for the municipality. By allowing a new dwelling to be built on the land, the value of the land increases dramatically making consolidation less viable compared to lots without dwellings on them. This can result in fragmentation of productive agricultural land.
- Any proposed dwelling may give rise to land use conflicts between agricultural uses and a residential use, but given the proposed setbacks from neighbouring properties in this case, it is unlikely.

In assessing rural development proposals, planning and responsible authorities must balance the potential off-site effects of rural land use proposals (such as degradation of soil or water quality and land salinisation) which might affect productive agricultural land against the benefits of the proposals.

- The proposed dwelling has the potential to create negative off-site effects upon productive agricultural land as the development is proposing a use that does not require a dwelling. The expansion of agricultural businesses is

encouraged and a good outcome economically. This dwelling may limit possible consolidation in the future.

**Clause 14.02-1 Catchment planning and management**

*Objective: To assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.*

*Relevant strategies:*

*Ensure that works at or near waterways provide for the protection and enhancement of the environmental qualities of waterways and their instream uses.*

- The application was referred to the North Central Catchment Management Authority and GMW Water. GWM Water provided consent to the application provided that conditions for approval are imposed. North Central Catchment Management Authority did not provide a response to the application referral process.

*Ensure land use and development proposals minimise nutrient contributions to waterways and water bodies and the potential for the development of algal blooms.*

- The 'Bio-Cycle' septic system proposed to be installed is adequate to Council's Environmental Health Department requirements for onsite effluent disposal and a Land Capability Assessment is not required.

**Clause 14.02-2 Water quality**

*Objective: To protect water quality.*

*Relevant Strategies:*

*Discourage incompatible land use activities in areas subject to flooding, severe soil degradation, groundwater salinity or geotechnical hazards where the land cannot be sustainably managed to ensure minimum impact on downstream water quality or flow volumes.*

- The land is subject to flooding and was referred to North Central Catchment Management Authority under Section 55 of the Act. North Central Catchment Management Authority did not provide a response in the statutory timeframe, therefore it is considered that it consents to the application and does not impose any conditions.
- The application was also referred to GMW Water who did not object to a permit being granted, subject to conditions being imposed relating to waste water and sediment control during construction.



### **Clause 16.02-1 Rural residential development**

*Objective: To identify land suitable for rural living and rural residential development.*

*Relevant Strategies:*

*Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.*

- The subject land has not been identified as land suitable for rural living or rural residential development. The land is zoned for farming purposes.

Local Planning Policy Framework (including the Municipal Strategic Statement)

### **Clause 21.02 – Key issues**

#### **Natural resource management:**

*The continued growth of the horticulture industry.*

*The protection of horticultural land for agriculture.*

- Any proposal for a dwelling within the Farming Zone must consider this Clause. The Clause details the importance of the agricultural sector within the municipality and provides a framework for decision making regarding development.

### **Clause 21.06-1 Rural areas**

*The agricultural sector is a significant source of economic activity in the municipality. Subdivision and rural housing in rural areas that is not associated with dedicated rural and agricultural activities can potentially undermine the viability of the rural sector through land use conflict, loss of productive agricultural land, use of infrastructure and water that could be used for agricultural production, and land values exceeding agricultural value.*

- Housing for lifestyle purposes in rural areas has the potential to create demand for community and physical infrastructure that may be more appropriately located in dedicated rural living areas.

### **Strategy 2.1**

*Ensure any new dwelling has a relationship with and is required to directly support the continuing operation of an existing rural use conducted on the land.*

- The proposed dwelling does not have a direct relationship with an existing rural use on the land. The applicant has submitted the following as justification for requiring a dwelling in the Farming Zone: “*We have a current flock of 20 stud white dorper ewes which we believe the property will be able to sustain...As stock requires constant care and supervision (especially during lambing time)*”. While it is possible the land may be used for agricultural purposes in this case, it is unlikely that 20 sheep that need care when lambing reasonably justifies the construction of a dwelling on the same land in the Farming Zone.

### **Strategy 2.2**

*Ensure any new dwelling is compatible with and will not have an adverse impact on agricultural land and other rural land uses on the land, adjoining land and the general area.*

- There are reasonable setbacks proposed from other properties that will greatly reduce the risk of potential adverse amenity impacts. Rural residential development is not appropriate in the Farming Zone unless a dwelling is reasonably required to assist in the everyday operation of an agricultural use.

### **Strategy 2.3**

*Ensure new dwellings:*

*Are set back from neighbouring farm land and do not reduce the potential for agricultural production or other rural uses on surrounding farm land.*

- The proposed dwelling is reasonably set back from adjoining farm land.

*Do not have an adverse effect on existing rural and irrigation infrastructure, and will not reduce the continuing use of this infrastructure for agricultural production.*

- The land has access to existing irrigation infrastructure and it is considered that a dwelling would not reduce the use of this infrastructure for agricultural production.

### **Strategy 2.4**

*Encourage the consolidation of land in the same ownership to support applications for new dwellings.*

- The owner of the land does not own any adjoining land.

### **Objective 3**

*To avoid land use conflicts between agricultural and non agricultural land uses.*

- Land use conflicts are always a possibility with dwellings in a rural area. However, given the proposed setbacks from adjoining agricultural operations, it is unlikely to occur.

### **Strategy 3.2**

*Ensure that use and development in the municipality is not prejudicial to agricultural industries or the productive capacity of the land.*

- By approving a dwelling on the land, it is considered that the capacity of the land to be farmed will be reduced and also its ability to be consolidated with adjoining farming land is reduced. The addition of a dwelling that is not directly associated with an existing rural use will effectively increase the value of the land, thereby limiting the ability for a neighbouring land owner to acquire the land for farming purposes.

### **Strategy 3.3**

*Discourage use and development of land that is incompatible with the use of land for agriculture.*

### **Implementation**

*When deciding on applications for a rural dwelling the following matters will be considered, as appropriate:*

*The relationship between the dwelling and rural activities and agricultural production and whether the proposal meets an ongoing need for a dwelling to support these uses.*

- It is considered that the proposal does not meet an ongoing need for a dwelling to support a rural land use. The applicant has submitted that the land will be used for agricultural use but given there is no existing agricultural use, there is no guarantee that an agricultural use will ever be established on the land.
- The proposed agricultural use of land as described in the application does not provide adequate justification for a dwelling to be constructed on the land.
- For a dwelling to be constructed in the Farming Zone it must be reasonably required for the day to day operation of the agricultural use. As the sheep will not be constantly lambing, they will not require constant care and supervision all year round.

- The applicant stated they believe the property will be able to sustain the sheep after improvements are made to the land and through the use of paddock rotation and irrigation. From this explanation it is likely that the land would be able to support the sheep without the majority of feed being transported in from offsite. This is in line with 'extensive animal husbandry' and further reduces the need for a dwelling on the site as the sheep will be grazing rather than requiring the feed to be brought in.
- The applicant has not submitted adequate information regarding the sheep flock operation and whether the proposal associated with the proposed use of the land for 'extensive animal husbandry' would constitute a viable agricultural use that would require a dwelling for the day to day operation of the agricultural use.
- It is considered that the application does not provide adequate justification for the requirement of a dwelling to support an existing agricultural use.

*Protection of existing and future productive potential and use of rural and agricultural land.*

- The application for a dwelling does not provide protection for existing and future productive potential of the land as the dwelling will take agricultural land away from agricultural use by adding value to the land and hindering any potential expansion by adjoining owners.

*Whether a proposal for a dwelling in irrigated / horticultural areas can be substantiated by any 'whole farm plan' prepared in accordance with Department of Primary Industries guidelines and approved by the responsible authority.*

- A brief description of the proposed agricultural use was submitted with the application. The application did not include a 'whole farm plan' prepared in accordance with DEPI guidelines. A plan was not requested from the applicant as it was considered that the proposed refusal based on relevant policy did not warrant the request for further information.

*How the proposal can be adequately serviced for water (potable, stock and domestic and fire fighting supply), effluent disposal, power, telecommunications, drainage and all weather road access.*

- The subject land has access to all required services and any dwelling must comply with Clause 35.07-2 of the planning scheme.

## **Options**

Council generally has two options when considering an application. These being,

- **Issue a refusal to grant a planning permit for the reasons outlined in this report**

**Or**

- **Issue a planning permit subject to conditions.**

## **Conclusion**

The application for the use and development of land for a dwelling has not adequately justified why a dwelling is reasonably required to support an agricultural use. The subject land is approximately 5.2ha and does not currently contain any agricultural use. While it is acknowledged that the applicant intends to run an agricultural operation (sheep), the proposed dwelling is not reasonably required for this use.

Should Council decide to grant a planning permit, Council is acknowledging that the land will be used for a viable and sustainable agricultural use and the dwelling is required to assist in the operation of the agricultural use. There is no guarantee that the agricultural use of the land will be established on the land and the proposed agricultural use of 20 dorper ewes does not constitute a viable agricultural holding.

The application has been assessed against the relevant sections of the Swan Hill Planning Scheme, particularly the Farming Zone and Local Natural Resource Management Policy of the Municipal Strategic Statement and it is considered that the application should not be supported as it does not satisfactorily meet these provisions.

## **Attachments**

- 1 Placeholder for Location and Zoning Map (BISH RD)
- 2 Placeholder for 236 Bish Road Murrawee Plans

# **Attachment**

- Location and Zoning Map

# **Attachment**

- 236 Bish Road Murrawee Plans

**B.14.10 PLANNING PERMIT APPLICATION FOR BUILDINGS AND WORKS (EARTHEN PAD AND BUND WALL) ASSOCIATED WITH A MATERIALS RECYCLING DEPOT WITHIN THE INDUSTRIAL 1 ZONE ADDRESS: 53-57 MOORE STREET, ROBINVALE**

**Source:** Procedural  
**Department:** Development and Planning  
**File Number:** 2013/32

**Summary**

The purpose of this report is for Council to determine an application for planning permit for buildings and works (earthen pad and bund wall) associated with a materials recycling depot at 53-57 Moore Street, Robinvale.

**Council Plan Strategy Addressed**

***Regulation and management of the built environment*** - We will ensure appropriate control and oversight of areas where we have a regulatory responsibility and provide services to ensure impacts of people in our municipality on the environment and are managed appropriately.

**Recommendation**

**That Council refuse the application based on insufficient information submitted with the application to make an informed determination on the proposal.**

**Policy Implications**

Refer to background.

**Financial and Resource Implications**

Nil

**Triple Bottom Line Impact**

Not applicable.



## **Background**

The application involves a circular earthen pad roughly 40 metres across and up to 5.5 metres high, that serves as a drop-off and turning circle for vehicles entering the property and depositing materials. This earthen pad has existed on the site for several years and the report accompanying the application states that the material in the pad comprises fill material from excavation and building sites in the Robinvale area.

The application also involves a bund wall running approximately 5 metres inside the western boundary of the property (i.e. approximately 100 metres long), 7 metres wide and 1 metre high. This bund wall is also pre-existing and is reported to be comprised of broken concrete, bricks and rocks. Stormwater at the property is to be channelled towards a shallow point against the bund (see plans at Attachment 4).

The use of the property for materials recycling has previously been approved and although doubts remain about whether materials being deposited at the property are in fact being recycled in accordance with the permit, this is a matter for enforcement in conjunction with the Environment Protection Authority (EPA).

The matter currently for Council's consideration is the application for retrospective approval for an existing earthen pad and bund wall.

The application is accompanied by a planning report, site layout plan, drainage, levels and cross-section plans. After referring the application to the EPA, Council sought additional information from the applicant to address potential land contamination issues, but this has not been supplied after numerous requests.

## Site Description

In 2007, a previous application for planning permit was made by Geoffrey and Linda Finch for the use of the property at 53-57 Moore Street Robinvale for Materials Recycling (Planning permit application 2007/143). The permit was granted on 9 July 2008 subject to conditions (Attachment 2). This permit did not allow for any Buildings and Works associated with the approved use.

After the permit was granted, Council officers considered that various conditions had not been satisfied. Council sought enforcement action through the Victorian Civil and Administrative Tribunal (VCAT) with regard to Conditions 1, 4, 5, 7, 8, 10 and 13.

The matter was heard by VCAT on 25 September 2012, and an Enforcement Order made on 2 November 2012 relating to screening requirements of Condition 4 (see Attachment 3). The respondents have since constructed a fence to provide that screening. The tribunal disagreed with some of the orders that Council had sought, and essentially ruled out taking action in relation to Conditions 5, 7, 8, 10 and 13 but acknowledged that the respondents would need to do something about the earthworks for which no permission has been granted by Council.

Subsequently a planning permit application was submitted on 18 April 2013 by Nicol Projects, acting on behalf of the owners of the land Geoffrey and Linda Finch, for buildings and works associated with the approved use of the site for materials recycling (Application 2013/32).

On 26 April 2013 Council referred the application to the EPA, under section 55 of the Planning and Environment Act 1987, and the EPA responded on 16 May 2013 commenting that Council should seek further information from the applicant aimed at addressing concerns relating to potential contamination of land.

Council correspondence dated 30 May 2013 sought this further information from the applicant as well as stormwater details. The information was to be supplied by 11 July 2013. The applicant sought an extension of time to supply the further information and on 9 July 2013 Councillors were updated on the matter and directed that no further extension of time be granted to provide the further information. By letter dated 15 July 2013 Council advised the applicant that the request had been denied and they had until 2 August 2013 to supply the information sought. The further information was not supplied by this date, and the applicant applied to VCAT against Council's refusal to extend the time.

At the VCAT hearing on 4 October 2013 Council was found to have incorrectly set a lapse date in its request for further information from the applicant. Under Section 54(1B) of the Planning and Environment Act 1987, a lapse date can only be applied when the further information is requested within the prescribed time (i.e. 28 days) in accordance with the Act. In this case, Council sought the further information 42 days after the application was received, therefore a lapse date cannot be applied to the request for further information.

Section 54A of the Act allows an applicant to apply for an extension of time to provide further information if the requirement for further information had been sought within the prescribed time. Council had the ability to request further information after the prescribed time, but could not set a lapse date for the information to be supplied. As a consequence, VCAT struck out the appeal (VCAT Order dated 08 October 2013), and the application is now open to Council to make a determination.

On 18 October 2013 a request from the applicant was submitted to supply the further information by 09 December 2013.

On 24 October 2013 the request for an extension of time to submit the further information was granted to allow Sunraysia Environmental adequate time to complete soil testing and provide a detailed report to Council. The extension of time response also clarified the further information required.

On 02 December 2013, the applicant submitted a letter to Council seeking clarification of the proposed methodology proposed for assessing the pad and bund wall. The letter also advised the soil testing will not be able to be completed before 09 December 2013 and a request for an extension of time was submitted. The

request did not indicate the period of time required to supply the required information.

The request for extension of time was not granted as the applicant and owner had been given adequate time to supply the information and due to the sensitivity of the proposal. The applicant was advised on 06 December 2013 that after 09 December 2013 the following action will be taken:

- If Council receives further information we will refer it to the EPA and will also review the information internally and will assess the application accordingly, or
- If Council does not receive the required information, it will make a decision on the application based on the information submitted with the application.

The applicant was then advised that should the application be refused it would be submitted to the February 2014 Council meeting.

On 10 December 2013 at 1:17am, an email was received from the applicant advising the information to be submitted cannot be submitted by 09 December 2013 and requested an extension to 03 March 2014 to submit the information.

The applicant was advised on 20 December 2013 Council will determine the application on the information supplied to date and no further extension of time was to be granted and the decision will be made at the February 2014 Council meeting.

No further correspondence has been received from the applicant or owner regarding the application.

#### Potential land contamination issues

The reasons set out in *Swan Hill RCC v Finch* (2012 VCAT 1508 - paragraph 90) noted that there is doubt as to what the earthworks contain and that sampling may be necessary or works may need to be removed.

Paragraph 91 notes that the concern may be the proximity of the site to the Murray River and the potential for toxins or other undesirable materials to be admitted to the ground water. Paragraph 92 notes that material which may be asbestos was found at the site.

In accordance with Ministerial Direction No.1, land used for an industry is 'potentially contaminated land'. The approved use of the land as 'Materials Recycling' is classified as an 'Industry', and is therefore 'potentially contaminated land'.

The Department of Sustainability and Environment's General Practice Note 'Potentially Contaminated Land' (June 2005) provides guidance on what assessment should be carried out for potentially contaminated land. The Practice Note states there may be "circumstances where the land is known to be contaminated and it would be appropriate for the level of contamination to be fully assessed as part of the

application process". In reference to the Practice Note, it is considered appropriate that Council should be satisfied that the land is not contaminated before approving any use or development on the site.

Clause 13.03-1 of the State Planning Policy Framework requires 'applicants to provide adequate information on the potential for contamination to have adverse effects on the future land use, where the subject land is known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel'.

Site inspections carried out by Council officers have revealed evidence of materials being deposited at the site that have the potential to contaminate land, such as rusty gas bottles, plastic waste oil and chemical containers. There is a potential for such material to contaminate the land, and the existing works could be contributing to this potential contamination.

To date, the applicant has been reluctant to provide the additional information sought by Council and it is not known if the information will be supplied.

Should Council refuse the application, discussions have been held with the EPA in regards to the course of action to rectify the possible contamination issues of the subject land.

### **Issues**

Covered in background

### **Consultation**

#### Referrals

As discussed above, the application was referred to the Environment Protection Authority (EPA).

### **Options**

1. Council can issue a refusal to grant a planning permit for the reasons outlined in this report; or
2. Refer the application back to Council officers to continue to try to seek further information from the applicant.

## **Conclusion**

The applicant has failed to submit the required information to Council and it is not known when or if the applicant will submit the required information. The information supplied to date does not provide sufficient information to satisfy concerns about the potential for contamination of the land. Based on the information provided to date, the application should not be supported in its current form.

If the application is refused, the applicant will have the opportunity to appeal to VCAT against Council's refusal of the application.

Council will also need to request the owner of the land to return the land to its original condition prior to the pad and bund wall being formed. This will require the assistance of the EPA to ensure the transportation of material to a landfill that is authorised to accept potentially contaminated soil. Should the owner not comply with Council's direction, Council will have to initiate enforcement proceedings with VCAT.

The applicant has been given every opportunity to provide Council with advice that the land is not contaminated. Given that the further information is the relevant concern regarding the application, Council should not approve an application of this nature without the necessary information.

## **Attachments**

- 1 Planning Permit 2007/143
- 2 Zoning and Location Map
- 3 Swan Hill RCC v Finch (2012 VCAT 1508)
- 4 Placeholder for plans submitted with application 2013/32

# PLANNING PERMIT



APPLICATION NO: 07/143  
 PLANNING SCHEME: Swan Hill Planning Scheme  
 RESPONSIBLE AUTHORITY: Swan Hill Rural City Council  
 ADDRESS OF THE LAND: Lot 13, LP 53671,  
 53-57 Moore Street  
 SUBURB: ROBINVALE  
 THE PERMIT ALLOWS: Materials Recycling

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT

- x 8. Recycled materials stored on the land are to be removed at regular intervals, but no less than on a bi-annual basis. Stack heights of the recycled materials are not to be greater than 3 metres in height and no more than 50% of the site is to contain recycled materials. All materials which cannot be recycled on-site are to be disposed of to a licensed landfill to the satisfaction of the Responsible Authority. No burial of any waste material is permitted to occur on-site to the satisfaction of the Responsible Authority.
- 9. The hours of operation of the site are:  
Monday to Sunday: 8am to 5pm
- x 10. A stormwater drainage system is to be constructed for the building and site. All stormwater from the development shall be discharged via a properly designed drainage system direct to the underground system at the nearest pit. The practical point is along the drain running across the property to the south. An easement will be required to be created for the drainage connection. Stormwater works shall be designed and constructed in accordance with the "Stormwater Drainage System for Residential, Unit and Industrial Development." A detailed design including a plan is to be submitted and approved by Council's Design Engineer prior to commencement of construction.
- 11. The Moore Street vehicular crossing is to be constructed in accordance with the Industrial Design Standard, to the satisfaction of the Responsible Authority.
- 12. Provision is to be made for the parking of three (3) vehicles on site for the use of employees and customers. All land set aside for car parking and accessways is to be constructed with an all weather gravel surface and drained to the satisfaction of the Responsible Authority.
- x 13. No materials are to be stored within ten (10) metres of any site boundary to the satisfaction of the Responsible Authority.

Date Issued: 09/07/2008  
 Signature for the Responsible Authority  
 Planning and Environment Regulations 1987 Form 4

*copy*

# PLANNING PERMIT



APPLICATION NO: 07/143  
 PLANNING SCHEME: Swan Hill Planning Scheme  
 RESPONSIBLE AUTHORITY: Swan Hill Rural City Council  
 ADDRESS OF THE LAND: Lot 13, LP 53671,  
 53-57 Moore Street  
 SUBURB: ROBINVALE  
 THE PERMIT ALLOWS: Materials Recycling

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT

- x 1. The layout of the site and the size of the buildings and works shall be generally in accordance with the attached endorsed plan/s and shall not be modified without the approval of the Responsible Authority.
2. A Building Permit shall be obtained prior to the construction of the development. All work to comply with the requirements of the Building Code of Australia and Council Local Laws.
3. All works carried out within the road reserve associated with this approval require a "Consent to the Conduct of Proposed Work on a Road" from the Responsible Authority. The developer must obtain this consent prior to the commencement of works. A financial penalty under the Council's Local Laws will be imposed for non-compliance with this condition.
- x 4. A 1.8 metre high paint bonded metal clad fence, or other form of screen fence acceptable to the Responsible Authority, is to be constructed and maintained along the full length of the eastern (Moore Street frontage) side and for a distance of 50 metres along the southern boundary commencing at Moore Street. A fencing plan is to be submitted to the Responsible Authority for approval.
- x 5. No process or activity is to be conducted on the land in such a manner as to cause injury to or prejudicially affect the amenity of the locality whether or not by reason of the appearance of the buildings or works, the appearance of material or equipment stored or held, or the emission of noise, vibration, smell, fumes, soot, ash, dust, waste water, waste products, rubbish, oil or otherwise.
6. The loading and unloading of vehicles and the delivery of goods to and from the site must at all times be carried out within the curtilage of the site. All vehicles must enter and exit the site in a forward direction.
- x 7. The site is to be maintained in a neat and tidy manner at all times.

Date Issued: 09/07/2008

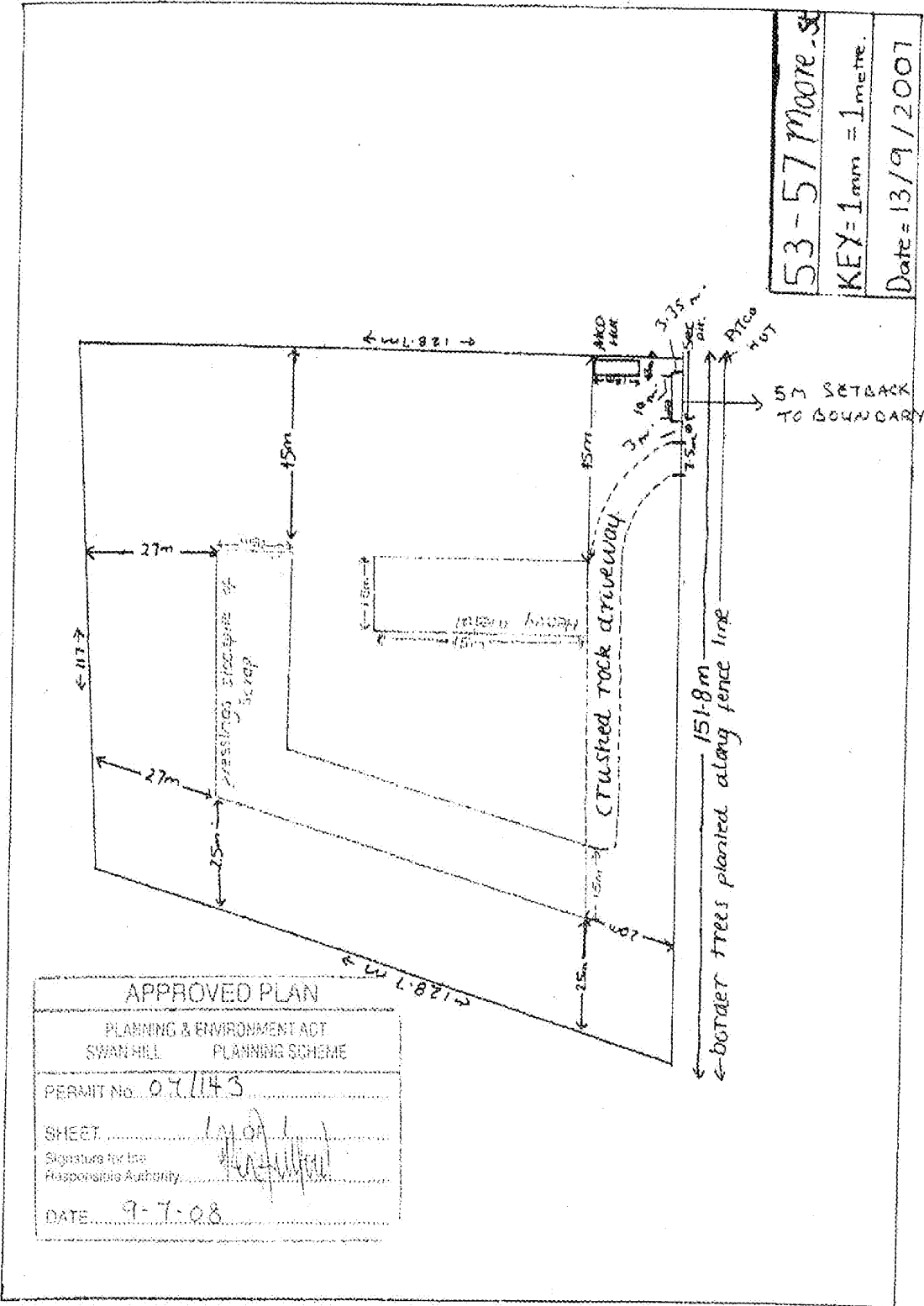
Signature for the Responsible Authority

Planning and Environment Regulations 1987 Form 4

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## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## ADMINISTRATIVE DIVISION

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P619/2012  
PERMIT NO. 07/143

APPLICANT/ RESPONSIBLE AUTHORITY Swan Hill Rural City Council

RESPONDENTS Geoffrey Lawrence Finch and Linda Ann Finch

SUBJECT LAND 53-57 Moore Street  
ROBINVALE 3549

WHERE HELD 55 King Street, Melbourne

BEFORE Russell Byard, Senior Member

HEARING TYPE Full Hearing

DATE OF HEARING 25 September 2012

DATE OF ORDER 2 November 2012

CITATION Swan Hill RCC v Finch [2012 VCAT 1508]

## ORDERS

- 1 This application for an enforcement order pursuant to s 114 of the *Planning and Environment Act 1987* is granted.
- 2 An enforcement order is granted in the form attached to this order.
- 3 The respondents are ordered to pay costs to the responsible authority in connection with its legal expenses of and in relation to this proceeding assessed on the County Court Scale and on the basis of party v party costs, the quantum of such costs be agreed between the parties, or, in default of agreement, to be taxed by the Costs Court.

Russell Byard  
Senior Member

**APPEARANCES:**

For Swan Hill Rural City Council	Mr Mat Sherwell, solicitor of Maddocks, appeared for the responsible authority.
For Geoffrey & Linda Finch	Mr Geoffrey Finch, with the assistance of his brother Al Finch, appeared for himself and for his co-respondent, Linda Finch.

**INFORMATION**

Nature of Proceeding	Application under s 114 of the <i>Planning and Environment Act 1987</i> (PE Act) for an enforcement order.
Alleged Contraventions	<ol style="list-style-type: none"> <li>1 Use of the land as a store for refuse and waste without a planning permit as required by clause 33.01-1 of the Swan Hill Planning Scheme.</li> <li>2 Construction or carrying out of works on the land without a planning permit required by clause 33.01-4.</li> <li>3 Contravention of conditions 1, 4, 5, 7, 8, 10 and 13 of Planning Permit 07/143 issued on 9 July 2008 allowing use of the land for "Materials recycling".</li> </ol>
Zone and Overlays	Industrial 1 Zone
Land Description	A quadrilateral of land, almost rectangular in shape, with a frontage of 151.8 metres to the east side of Moore Street, northern and southern boundaries of 128.7 metres and a rear western boundary of 117metres.
Title Particulars	Lot 13 of Plan of Subdivision 053671 being the land in Certificate of Title, Volume 08308 Folio 250.
Owners of the Land	The above named respondents
Occupier of the Land	The respondent Geoffrey Lawrence Finch

### REASONS

- 1 The responsible authority seeks enforcement orders in relation to the industrial site operated by Mr Geoffrey Finch at 52-57 Moore Street Robinvale.
- 2 The site is a substantial one. It has several times the area of neighbouring industrial sites set in this industrial area. All the land that is relevant, for present purposes, is in an Industrial 1 Zone.
- 3 For some years Mr Finch has been carrying on business upon the site. For the most part the site is open ground although there are one or two sheds located in the vicinity of the north east corner of the land.
- 4 Mr Finch describes his business in terms of providing a service in relation to vineyards that are common in the area. Apparently, many such vineyards have traditionally grown grapes to be dried into raisins or sultanas. Market conditions, he says, have changed so that now there is a much greater demand for so-called "table grapes", that is, grapes for eating as grapes rather than grapes to be processed into dried fruit or wine.
- 5 He described how machinery is used to pull out or push over grape vines with their attendant training wires, straining posts and the like. Such material is pulled into piles and burned. This leaves a residue including metal brackets and wire which is loaded onto trucks and transported to his Moore Street site for sorting and recycling. For example, material is sold from the site by the truckload as scrap metal. Although this was described as a primary activity, it is obvious, and indeed it is admitted, that other materials are also brought to the site for storage, sorting, sale or disposal. This includes the rubble and second-hand building materials from the demolition of buildings and works in other places and other used or second-hand materials of quite some variety but including old tyres, drums, batteries and so on.
- 6 The Moore Street land is in an Industrial 1 Zone and is therefore subject to the zone provisions for that zone found in clause 33.01 of the Swan Hill Planning Scheme. Clause 33.01-1 contains a Table of Uses for the Industrial 1 Zone. This table is divided up into three sections. This table controls the purposes for which land in the zone can be used.
- 7 Some uses, those in section 1, can be carried on without the need to obtain a planning permit for that use, provided any conditions specified in the table in relation to the particular use are satisfied.
- 8 Section 3 of the table contains uses that are prohibited. Subject to any existing use rights that might survive in relation to past use of the land, it is unlawful to use the land for a prohibited use, or to commence such a use, and it is not possible to obtain a planning permit for any section 3 use.
- 9 That leaves section 2. The use of land for a section 2 land use is regulated in that a particular use in that section can only be carried out pursuant to a

valid planning permit. If a use in section 2 is also subject to a condition specified in the table, then that condition must also be complied with, along with any conditions that might be specified in the necessary planning permit.

- 10 A planning permit does exist for the use of this Moore Street land. It is permit number 07/143 issued by the responsible authority on 9 July 2008. It permits the land use "Materials recycling". That is a land use that is defined in clause 74 of the planning scheme. The permit contains 13 conditions.
- 11 The responsible authority alleges contraventions of several of these conditions, namely, conditions 1, 4, 5, 7, 8, 10 and 13.
- 12 "Materials recycling" is the land use that appears in section 2 of the table so that such a permit is necessary. Section 2 of the table does specify condition, but that condition is satisfied.
- 13 Therefore, on the face of it, the permit is needed (provided that the land use is indeed "Materials recycling"), and the 13 conditions are required to be complied with.
- 14 Apart from contravening the permit conditions, the responsible authority alleges another contravention. It complains that works have been carried out without planning permission, although such permission is required by clause 33.01-4 of the planning scheme. That clause provides that a permit is required to construct or carry out works. The requirement is subject to some exceptions, but none of them apply in present circumstances.
- 15 The land has frontage to the western side of Moore Street. That street provides access to this and other industrial land in the vicinity, including allotments on the opposite side of Moore Street. Moore Street is sealed where it passes the Finch land and an adjoining block to its south on the west side of Moore Street, and for a short distance beyond. The crossing into the Finch land is located at or near the northern end of its frontage to Moore Street. In its natural state, the land has a fall, said to be in the order of 6 metres, diagonally from a high point at its north-eastern corner to a low point in the vicinity of its south-western corner. Inside the gate, that slope has been altered by the land having been filled and compacted to provide a substantial open and fairly flat land where vehicles, including trucks, can drive, park and manoeuvre.
- 16 This filling of the land is clearly "works" within the statutory definition of that word in the planning legislation. As such, planning permission for the works was required and none has been obtained. Other works along the western boundary of the land also required planning permission that does not exist. The works here are linear in form and are constituted by a series of truckloads of soil, building rubble and building wastes that have been deposited in a line. They represent a barrier to the flow of water. That appears to be their purpose because Mr Finch repaired erosion of this

barrier where it was washed out so as to no longer serve its drainage purpose. This linear mounding was sometimes referred to during the hearing as the bund.

- 17 I will need to consider the permit conditions in more detail and I note that condition 1 provides the layout of the site and the size of buildings and works are to be generally in accordance with an endorsed plan attached to the permit which plan is not to be modified that the approval of the responsible authority. The filled area and the bund are said to be works that do not accord with the endorsed plan and in relation to which no approval has been given. To that extent condition 1 and the second alleged contravention, namely, that of clause 33.01-4, cover the same matter.
- 18 I have mentioned the second and third alleged contraventions cited by the responsible authority. The other alleged contravention was included, as a precaution. It alleges use of the land as a store for refuse and waste without a permit for use as a store as would be clause 33.01-1.
- 19 A "Store" is a defined land use in clause 74 of the planning scheme. It is not specifically mentioned in the table of uses for the Industrial 1 Zone, but it is included within the last item in section 2. That item reads "Any other use not in Section 1 or 3". Store does not appear in section 1 or section 3 so it is a section 2 use requiring permission.
- 20 Although there can be some overlap between them, the land use definitions of "Materials recycling" and "Store" differ. The definitions are as follows:
- Materials recycling** Land used to collect, dismantle, treat, process, store, recycle or sell, used or surplus materials.
- Store** Land used to store goods, machinery, or vehicles.
- 21 These definitions can involve the storage of goods although, in the case of "store" they can be new or second-hand goods whereas in relation to materials recycling they must be used or surplus materials.
- 22 The responsible authority has included this third allegation, the one in relation to "Store", because Mr Finch, in fact apparently both Messrs Finch, came to the conclusion that the activity of Mr Geoff Finch should be characterised as Store rather than Materials recycling.
- 23 On that basis Mr Geoff Finch attempted to surrender his permit for Material recycling to the responsible authority. That handing over of the permit document does not have the effect of cancelling it. For reasons that follow, he should probably ask for its return as I consider that he still needs it.
- 24 The conclusion that this land is not Material recycling arises from the interpretation of that expression adopted by the Messrs Finch. They claim to have come to their conclusion on the basis of the ordinary English meaning of the words involved in the expression.
- 25 It does not actually matter whether they were correct in that interpretation, based on the ordinary English meanings, because the expression is defined.

as set out above, in clause 74 of the planning scheme. It is the defined definition that applies in these circumstances, not the ordinary English meaning. There can easily be differences between the statutory definition on the one hand and what would otherwise be the ordinary English meaning on the other.

- 26 It can be seen from the above definition of Materials recycling that it concerns land used in relation to used or surplus materials in any one or more of several ways. The definition is satisfied if the used materials or surplus materials are collected, dismantled, treated, processed, stored, recycled, or sold. The conjunction between "recycle" and "sell" is "or", not "and". The land use, to satisfy the statutory definition, does not need to do all those things such as collect, dismantle, etc; the definition is satisfied if but one of them occurs.
- 27 It is easy to imagine that some used materials or surplus materials brought onto land in connection with a Materials recycling operation might ultimately be divided into things that are useful to reuse or sell on, and a residue of material that, because of its nature or quantity, does not have continuing commercial usefulness but is actually rubbish or refuse, fit only for disposal as landfill.
- 28 The expression landfill site is a modern version of what, I suppose, was once called a rubbish tip.
- 29 There is little or no dispute about the facts in this case. Any quibbles or queries raised are not of significance. Mr Finch admits the facts relied on by the responsible authority. The hearing has been recorded so that these admissions should also be recorded.
- 30 In my opinion, having regard to the statutory definition of Materials recycling, the Messrs Finch were mistaken in determining the activity carried out upon this land over some years past is Store rather than Materials recycling. On the contrary, I am satisfied that Materials recycling is the correct categorisation so that the permit remains relevant and necessary in circumstances where there is a continuing obligation to comply with its conditions.
- 31 All this makes little practical difference. If it were a Store, there is no permit as required by the planning scheme for that land use. If such a permit were applied for and granted I think it is highly probable, to say the least, that at least a number of the conditions that appear on the Materials recycling permit would be included in the Store permit.
- 32 From the point of view of the responsible authority, the inclusion of the Store allegation is a precaution in the sense that, if the Messrs Finch were successful in their submission that Store is the actual use, a contravention would still be established because of the absence of a necessary permit to use the land as a Store.

- 33 The holder of a permit for the use of land for a particular purpose is not required to comply with the conditions of the permit unless the land is used for the purpose allowed by the permit. However, in present circumstances, Mr Finch is and has been using the land for Materials recycling. He has the necessary permit but has not been complying with some of the conditions. As such he is contravening the permit and committing offences against the planning laws. The responsible authority has not prosecuted him.
- 34 There have been inspections dating back to 2009 and Mr Geoffrey Finch has been given advice, orally and in written correspondence, that he is committing contraventions that he is required to correct. The responsible authority has sought his cooperation and given him warnings and threats. It is only where those steps have been to no avail that it has determined to commence this enforcement order proceeding pursuant to s 114 of the *Planning and Environment Act 1987* (PE Act). For this purpose it has been engaged in collecting evidence and it has instructed its solicitors to act for it in relation to the proceedings. The responsible authority has a public duty pursuant to s 14 of the PE Act to see to the carrying out and enforcement of the planning scheme, including any relevant planning permit. This is a case of sufficient importance and difficulty to warrant the responsible authority in engaging its solicitors.
- 35 The Messrs Finch complained on quite a number of occasions in the course of the hearing, that these matters were drawn to the attention of the responsible authority by means of complaints made to the authority by a person or persons who are commercial competitors of Mr Geoff Finch.
- 36 While I can imagine that this circumstance, if it is true, is aggravating to the Messrs Finch, it is not a defence to these proceedings, nor is it an excuse for protracted failure, over the years since 2009, to remedy the contraventions.
- 37 Whether the responsible authority becomes aware of the contraventions or possible contraventions by complaint or by its own observations, it is obliged to investigate such questions and, where necessary to take such action to have the law complied with. The responsible authority is obliged to investigate, and, in other than trivial matters, to take steps to see that the law is complied with. The repeated references to possible complaints were beside the point, so far as the responsible authority is concerned, just as they are beside the point, so far as my dealing with this proceeding is concerned.
- 38 Some discussion occurred in the course of the hearing, in relation to the wording of some of the conditions. It is fair to say that wordings would differ, in some instances, if I had drafted the conditions. Nevertheless, they call for interpretation and application.
- 39 The Messrs Finch now express some dissatisfaction with some of the conditions. They say or imply that some of them, or some aspects, are unnecessary or unwarranted. The remedy in relation to unjustified conditions is to apply to this Tribunal under Section 80 PE Act for review

- of the particular conditions complained of within the time specified after the permit is granted. There is no use to ignore a condition for years and then complain of its terms when the responsible authority takes proceedings to enforce.
- 40 The time to apply for a review under s 80 has expired. The remedy now, if the terms of conditions are thought to be unjustified would be to apply for an amendment through the procedures provided for in the PE Act.
- 41 That having been said, it nevertheless remains the situation that the making of enforcement orders is not an automatic process, even if a contravention is proved and the other legal prerequisites to the making of an enforcement order are satisfied. An enforcement order is a discretionary remedy with many characteristics similar to the granting of an injunction by a court. Neither are likely to be granted if they are unnecessary, unreasonable or would be unjust in these circumstances.
- 42 In relation to some of these conditions, or some aspects of these conditions, I asked what the planning reason for the imposition was. Again, when considering the orders being sought by responsible authority I sometimes ask why the making of such an order is warranted or needed in terms of planning merits; or why, from a planning point of view, such an order would be justified. It can well be a situation where a requirement of a condition has not been satisfied or a condition has been contravened, or is being contravened but where I might nevertheless decline to make an order.
- 43 It is a prerequisite to a making of an enforcement order that the Tribunal be satisfied as to the existence; part, present or likely future existence, of a contravention or contraventions of planning laws. In this connection, the responsible authority has referred to the several permit conditions that have been mentioned. It has subsequently sought four enforcement orders, and an order for its costs in relation to these proceedings. Before dealing with the orders being sought I will review the conditions that are said to occasion contraventions.

#### Condition 1

- 44 I have already discussed this condition and noted the degree to which it can equated with the landfill and bund works for which no planning permission has been obtained.

#### Condition 4

- 45 Condition 4 reads:

4. A 1.8 metre high paint bonded metal clad fence, or other form of screen fence acceptable to the Responsible Authority, is to be constructed and maintained along the full length of the eastern (Moore Street frontage) side and for a distance of 50 metres along the southern boundary commencing at Moore Street. A fencing plan is to be submitted to the Responsible Authority for approval.



- 46 This condition is fairly straight forward, although its drafting leaves something to be desired. It is something of an afterthought to add the requirement of a plan for approval at the end with no requirement once approved for, the plan has to be complied with. It is not clear whether the fencing plan is to deal only with the eastern boundary and the eastern 50 metres of the southern boundary, or whether it is to apply to the side as a whole.
- 47 It is apparent that the purpose of the condition and the fence it contemplates is for the screening of the property. Although the condition mentions a "bonded metal fence" 1.8 metres high, it does not insist on that as the only means of screening. It contemplates an alternative screening fence that must, nevertheless, be "acceptable to the Responsible Authority". It is preferable that the expression "to the satisfaction of the Responsible Authority" (rather than "acceptable to") should be employed as that is the phrase appeared in relevant parts of the Act.
- 48 In any event, the condition reserves some discretion to the responsible authority, although both options employ the word "fence". As the purpose is screening, I would have imagined that some form of screening, whether technically a fence or not, ought to be satisfactory.
- 49 The Messrs Finch favour vegetated screening and give evidence that native trees have been planted along the boundary for this purpose. There are said to be alternating mallee gum trees and wattle trees. Wattle, are generally speaking, very fast growing, although they die after a life of only twelve or fifteen years. Mallee, on the other hand, is a hardy if slower growing variety.
- 50 The responsible authority may or may not be ultimately satisfied with such plantings of such screening plants. They are likely to be more attractive than a blank fence. Nevertheless, the fact that they take some years to mature and to become an effective screen (if they are to be effective) has to be taken into consideration. The condition looks for screening, not screening in a number of years time. The interim calls for attention.
- 51 The Messrs Finch claim that there is a length of vertical corrugated iron fencing on the eastern boundary although it does not extend all the way down. I presume that this is not "paint bonded" although it is certainly metal and, if in a suitable state of repair could be painted. If called upon to do so, the responsible authority should consider whether it is satisfied with this fence painted or unpainted.
- 52 It needs to be remembered, in relation to this and other conditions, that this is not a pristine residential area, or even one of those very smart, neat, modern light industrial areas. This is much more a workaday industrial area in an industrial zone where appearances, including things to be screened, call for a utilitarian standard.

- 53 It is also true that this is not a much frequented locality. Access is along Moore Street from the north, and there is only one other industrial property, on either side of the road, south of the southern end of the Finch land. Beyond that the sealed road ceases and, though it may be trafficable, the unmade road beyond is apparently little used. I think Mr Al Finch referred to the southern end of Moore Street, beyond the Finch property as being something of a "semi dead-end".
- 54 I gather that there is a so called security fence around the whole property. Apparently this is metal poles supporting wire mesh with strands of barbed wire above. That might be effective for security purposes, but it hardly screens the property. Property where large quantities of rubbish or second-hand materials are collected may well call for better screening than that.
- 55 Sail cloth might be attached to such a fence to make it a satisfactory screen. Of course, sail cloth may require maintenance or renewal over time, although it could serve for an interim if vegetative screening is considered as a satisfactory ultimate solution.
- 56 It is not apparent at present how readily, satisfactorily or quickly tube stock mallee and wattles could become a satisfactory screen. Apparently the stock planted so far is only several inches high and all of the original planting, save for two specimens, died. The dead seedlings have recently been replaced. I feel unable to accept the explanation these deaths were due to the prolonged drought over the first decade of the current century as, on the evidence given to me, the original planting was after the drought.
- 57 I think that an enforcement order requiring screening on the eastern and southern boundary is warranted. I will order this to be done to the satisfaction of the responsible authority. The enforcement order, at least, will allow the council some flexibility in relation to ways whereby the screening might be achieved.
- 58 I mentioned, in the course of the hearing, that s 149 PE Act provides an opportunity to review a decision of a responsible authority if it is thought that it has unreasonably withheld its approval or consent or where it has unreasonably decided that it will not be satisfied with something that the party concerned considered it should be satisfied with.
- 59 The Messrs Finch say that the return of 50 metres along eastern most portion of the southern boundary is not required because the owner of the land to the south has deposited sufficient soil along its side of the southern boundary as to exceed 1.8 metres, at least for some of the length of the southern boundary. However, the height of such deposits at the eastern end is only 1 metre, and that is the most sensitive part, from a screening point of view.
- 60 This bit of sealed road, beyond the southern extent of the Finch land, appears to be little trafficked and in less need of screening than any of the

other places. No one reviewed the condition under section 80 of the PE Act on this point at the relevant time or has sought an amendment to the permit. I do not know anything about the intentions of the southern neighbour in the legality of the deposit. The deposit may be there only temporarily, indeed it may be there illegally so that the responsible authority may seek its removal.

#### Conditions 5 and 7

61 Condition 5 might be regarded as a condition to constrain nuisances (having regard to the meaning of that word in law). It reads:

5. No process or activity is to be conducted on the land in such a manner as to cause injury to or prejudicially affect the amenity of the locality whether or not by reason of the appearance of the buildings or works, the appearance of material or equipment stored or held or the emission of noise, vibration, smell, fumes, soot, ash, dust, waste water, waste products, rubbish, oil or otherwise.

62 There is no suggestion that most of these things have occurred. Apparently the concern is with appearance of the site. That must be assessed in terms of the locality of the land, including its industrial nature and secluded location. I do not think that the land should be a harbourage for noxious weeds or vermin; but the permitted use, having regard to the fact that there is no restriction on the sort of materials that can be involved, is likely, almost inevitably, to look disorderly within the site. The screening fence is to deal with the situation from beyond the site subject to condition 7. A similar situation arises in relation to condition 7. It reads:

7. The site is to be maintained in a neat and tidy manner at all times.

63 That can only mean neat and tidy to the extent that it is reasonable having regard to the land, its location, its use, zoning, surrounds and the permitted use. It is a work-a-day industrial situation. Amenity, including appearance, from beyond the site, particularly the public realm (the street) is to be significantly attended to by means of the screening.

#### Condition 8

64 Condition 8 reads:

8. Recycled materials stored on the site are to be removed at regular intervals, but no less than on a bi-annual basis. Heights of the recycled materials are not to be greater than 3 metres in height and no more than 50% of the site is to contain recycled materials. All materials which cannot be recycled on-site are to be disposed of to a licensed landfill to the satisfaction of the Responsible Authority. No burial of any waste material is permitted on-site to the satisfaction of the Responsible Authority.

65 Some of the English expression here is a bit garbled. Does the last sentence actually mean that waste cannot be buried to the satisfaction of the

Responsible Authority so that it must be buried in a way that the Authority is not satisfied with?

- 66 It appears that the so-called "regular intervals" are not specified but that they must be not less than every six months. In any event I cannot see the sense in requiring the site to be cleared of recycled materials every six months, or at regular intervals. What if some of the materials are slow moving. It is a big site. What planning reason can there be for saying that some recycled materials cannot be there, well screened, for six months or longer? Stack heights might be reasonable, lest the screening be defeated by height; but what is the reason for saying that no more than 50% of the site should contain recycled materials? I cannot see any reason why half the site area should be wasted for the purpose for which it is permitted to be used (again remembering that there is to be screening). Having posed this question in the hearing no answer has enlightened me to the point of being satisfied that this 50% rule is justified.
- 67 I do recognise that there are likely to be materials that become superfluous and will need to be disposed of to landfill. I take the last sentence of this condition to mean that disposal of waste material is not to be by burial on-site. Burial as a means of disposal is something different to burial as a means of constructing works. The base or foundation of a road might be "buried" in a sense by having layers of other material put on top of it, perhaps with a final seal. I do not interpret condition 8 to be intending to catch "construction burial", to coin a phrase; as opposed to disposal burial.
- 68 Whether there might be concern about the safety of materials used for fill in the course of carrying out such works is another matter. That might be considered if and when an application is made for permission for such works.
- 69 Of course, such permission is normally and appropriately applied for before the works are carried out. Mr Geoffrey Finch may have put himself at something of a disadvantage by his failure to promptly remedy the problems with which these proceedings are concerned. His failure to cooperate may raise suspicions as to whether he might use inappropriate materials as landfill. I do not see that there would be problems with clean waste or inert material including bricks, concrete, building rubble etc in the course of constructing works. Putrescible material such as domestic garbage, and perhaps other vegetable matter like green waste or wood, might give rise to methane gas emissions. The inclusion of chemical contaminants, heavy metals, insecticides or asbestos might also be objectionable, but these are matters to do with the construction of the works. Asbestos has proved to be a very dangerous substance so that its burial for disposal might well be problematic.

**Condition 10**

- 70 Condition 10 is a long and complex condition dealing with drainage. It reads:
10. A stormwater drainage system is to be constructed for the building and site. All stormwater from the development shall be discharged by a properly designed drainage system directed to the underground system at the nearest pit. The practical point is along the drain running across the property to the south. An easement will be required to be created for the drainage connection. Stormwater works shall be designed and constructed in accordance with the "Stormwater Drainage System for Residential Unit and Industrial Development." A detailed design including a plan is to be submitted and approved by the Council's Design Engineer prior to the commencement of construction."
- 71 I think this is a very ill considered and ill drafted condition. Approval, if required, should be required to be obtained first. It should be the approval of the responsible authority rather than the council's design engineer. These are minor matters compared with other problems.
- 72 The first sentence requires a stormwater drainage system to be constructed for the building and site. Which building? One of the existing sheds?
- 73 The condition goes on to talk about stormwater from "the development". Which development? No development is permitted under this permit. It is a land use permit. Indeed any development requires separate planning permission, either as an additional permission in the use permit or in a separate permit document. Which underground system, and which nearest pit is being referred to? The sentence about "practical point" and "drain running across the property" seems to be mere narrative or observation rather than part of a permit condition. Who says that an easement is required and why? Does an easement need to be acquired over adjoining land? If it is intended to dispose of stormwater falling on the site, and not other stormwater from beyond the site, it is not obvious to me why any easement is called for. If it is to deal with stormwater from beyond the site, the easement might be required for other reasons that have nothing to do with this permit.
- 74 It may well be that drainage works are called for and some design and planning of them would be appropriate. There could be sense in catching stormwater from the roof of the sheds and directing it into tanks, although overflow may need to be accounted for. There may need to be other drains, even a pond or retarding basin. There may need to be overflow arrangements. Mr Finch has some drainage arrangements in hand, at least in the form of the bund along the western boundary. I do not know whether his arrangement are satisfactory or not.
- 75 The last sentence of the condition belatedly calls for "A detailed design", presumably of a drainage scheme for the site. It is suggested, on behalf of

the responsible authority, that such a design calls for the engagement of a civil engineer, although the condition does not say so. As far as the condition is concerned a design must be submitted. It is to include "a plan", but the requirement of qualifications of somebody doing a design would normally be included in a condition, although only if that expertise was required to create a satisfactory design.

- 76 This condition is a mess and it does not engender any confidence in me that whoever drafted it understood it, or ascertained whether it was necessary, or what was necessary. I have mentioned previously that there are procedures in the legislation whereby permits, including their conditions, can be amended. Perhaps, if the responsible authority wants to enforce the intention of this condition it might need to first consider whether it needs to be amended. Before doing even that, I should have thought that some competent person should survey the land to ascertain whether current the arrangements are or are not satisfactory and thus, whether there is any point in amending the condition.

### Condition 13

- 77 Condition 13 provides:

13. No materials are to be stored within ten(10) metres of any site boundary to the satisfaction of the Responsible Authority.

- 78 I regard this as a dubious condition. Does the "satisfaction of the Responsible Authority" mean that no goods are to be stored within 10 metres of a boundary unless the responsible authority is satisfied with a lesser distance than 10 metres? If so, it could be better expressed.
- 79 What is the purpose of the restriction on storage within 10 metres of the boundary? Is it a matter of visual amenity? If so, why is it not satisfied by screening even though the screening would be on the side where a very limited number of the public might come and go? Why waste so much land? What planning purpose would be served, particularly if the satisfactory screening is in place?
- 80 The Messrs Finch claim that there is a materials free firebreak 10 metres wide right around the boundary of the land although that proposition is then contradicted by saying it does not apply to the portion of the eastern boundary where the corrugated iron fence is in existence. Again I asked about this during the hearing but received no reply that satisfied me.

### What orders are sought?

- 81 Attachment C of the enforcement application sets out seven paragraphs under the heading "Orders". The first two paragraphs are really recitals of the contraventions the responsible authority seeks to rely upon as the basis for making enforcement orders. The seventh one is an application for costs. Numbers 3-6 inclusive are the actual enforcements orders sought.

- 82 Paragraph 3 seeks an order that the respondent ceases to use the land for the collection and storage of refuse or waste immediately. Insofar as the collection of waste or refuse is within the Materials recycling use permitted, it is not appropriate to make such an order. If this request for an order is directed to the question of whether the land is used as a Store rather than Materials recycling, then it is now redundant. I do not think that an order in that form is appropriate.
- 83 The request for an order in paragraph six however is appropriate provided that it is framed in appropriate terms. The request for an order reads:
6. Within the 28 days of the date of this order the Respondents must to the satisfaction of the responsible authority construct a 1.8 metre high paint bonded metal clad fence along the full length of the eastern (Moore Street frontage) side of the Land and for 50 metres along the southern boundary of the Land commencing at Moore Street.
- 84 I think this request is appropriate and an order should be made. However I will frame it in terms of 1.8 metre high screening to the satisfaction of the responsible authority along those boundaries. The requested order is narrower than the condition to which it relates in that the requested order contemplates only one option, namely the paint bonded metal clad fence. I am deliberately making the enforcement order wider than either the request or the condition as I will be satisfied with any reasonable screening. I will leave it to the responsible authority as to what it will be satisfied with and any dispute as to what it ought to be satisfied with can be dealt with under s 149 PE Act.
- 85 I am prepared to make the time limit 60 days, rather and 28 days. I do not think that there is a special urgency as to this matter, although it should not drift on. I am contemplating that there may need to be some time to clarify whether the responsible authority will be satisfied with screening other than a paint bonded metal clad fence and if so, what; and also to have time to acquire materials and erect them.
- 86 Paragraph 4 of the request for orders reads:
4. Within 60 days of the date of this order, the Respondents must carryout the following work to the satisfaction of the Responsible Authority:
    - (i) remove from the Land all refuse, waste, non recyclable material from the Land to be disposed of at a licensed landfill;
    - (ii) remove all soil, concrete, rubble, bricks and other material constituting the walls and pad to be disposed of at a licensed landfill so that the Land accords with the endorsed plans; and

- (iii) remove all material within 10 meters (sic)<sup>1</sup> of the boundary of the Land;

- 87 For reasons already explained I am not satisfied that I should make an order in terms (i) or (iii).
- 88 So far as (ii) is concerned I understand the expressions "walls" to mean the bund of material deposited by the truck load in a line along the western boundary and the "pad" to mean the fill and hard stand area inside the front gate. I appreciate that these works required planning permission and that no such planning permission has been obtained. As such, it is open to me to make an order requiring the removal of these works and the material constituting them. At present I am not satisfied that there is reason why, from a planning point of view, why permission should not be granted for such works or that it would not be granted by responsible authority (or this Tribunal) if permission was to be sought. I think the Finchs should have an opportunity to make such an application although I cannot allow the matter to drift or time to go by without taking action. I am proposing to not make an order on this point, but to make it clear that it would be legally open to make such an order and that such an order is likely to be made if the respondents do nothing to rectify the situation within 60 days of the date of this determination. By doing something about it I mean applying for permission for those works.
- 89 In the event of nothing being done or things not proceeding in accordance with due diligence I imagine that the responsible authority might make a new application for an enforcement order in respect of this matter or, perhaps more conveniently, to apply under s 121 PE Act for an amendment to deal with this matter. I am making it clear that, if this is not rectified, it is likely that I would consider an order for the removal of these works and the materials used in their construction.
- 90 I have already observed that there may or may not be grounds for concern as to the materials constituting these works. Mr Geoffrey Finch can put it down to his own folly that he did not apply for the relevant permission or find out whether he needed to, in a timely way. In those circumstances conditions could have been imposed as to the constitution of the materials to be used. It becomes more difficult when the works have been constructed prior to permission. This might call forth the need for some sampling, or might result in a decision that the works will have to be removed, for fear of what they might contain. The circumstances are such that there is doubt as to what they contain. Although the bund is constructed partly of truck loads of material deposited by Mr Geoffrey Finch, other parts were deposited by others and he does not really know what was within them.
- 91 I suppose the concern that toxins or other undesirable materials should not be admitted to the ground water. This site is not far from the Murray River.

<sup>1</sup> metres



- 92 I have mentioned asbestos. A small shard of cement sheeting, approximately the size of the hand of an adult, has been found and photographed. Nobody has had it tested or analysed to determine whether it contains asbestos. There is no other evidence that I am aware of that there is or might be asbestos on the land, although the possibility cannot be excluded.
- 93 The concern about asbestos is not that it will get into the ground water, but rather that it might be released into the air so that it might be breathed in by someone who might later suffer from asbestosis or mesothelioma. I regard the practice of burying asbestos to get rid of it as a pernicious one. However, I understand that it is sometimes better to leave asbestos, or to seal it down, rather than disturb it and thereby court its release into the atmosphere.
- 94 The last order sought, (apart from an order for costs) seeks an enforcement order for the preparation of a detailed design, including a plan, for storm water drainage in accordance with condition 10 and an order that such plan, when approved by the responsible authority, be constructed.
- 95 I have been critical of several of the conditions, and perhaps none more so than condition 10. I do not know whether it will be said that I have been overly legalistic. However, contraventions of planning laws, including planning permit conditions, can have serious consequences. There is a need for permit conditions to be valid and properly drafted if they are to be enforced against people acting under a permit or other respondents.
- 96 In any event, my criticism of conditions, or questions about them, do not only relate to drafting or legal questions. I am concerned that the conditions I have considered look to me as if they have been adopted without a great deal of attention as to whether they are required or serve a useful purpose. It is all too easy for someone in preparing draft conditions to include so-called "standard conditions" (that is conditions commonly used by the responsible authority concerned) or other conditions from precedent permits used in other cases or by other municipalities; without much attention to their relevance or appropriateness to the circumstances of the particular case.
- 97 Although I have criticised the drafting I have not found much fault with the concept behind the screening required by condition 4. I have observed that the screening has been required in relation to what appears to be a little trafficked area in the public realm servicing a utilitarian industrial area. I have indicated that I will nevertheless make an order in relation to screening.
- 98 My concern about condition 10 is not only that it appears ill thought out and something of a shambles so far as drafting is concerned, but also as to whether it ever was, or is now, needed.

- 99 This site is a large area and in an industrial zone. There is a diagonal fall across the site. In nature, stormwater falling upon the site would soak in or run off and that, of itself, would not necessarily call for anything to be done about drainage. The construction of buildings or works might alter the drainage situation, and concentrate stormwater, so that it needs to be retarded or disposed of by means of a system of drainage. That might be necessary, or it might not. I would have expected that to be occasioned by the development of the site, that is to say, the construction of buildings or works. This existing permit is only for the use of the land, not for the construction or carrying out of buildings or works. There are only very limited buildings on the land. They were there before the permit and do not arise from it.
- 100 Condition 10, and the set of conditions as a whole, leave me wondering whether the need for some of these conditions, and particular condition 10, were ever properly considered. The use has been carried on now for a period of years, it appears not less than four or five years. I have little or nothing in the way of evidence to persuade of the use of the site for the purpose permitted has caused any problem from a drainage point of view, either on the site or on adjoining land. Similarly I find myself unconvinced that there is any drainage problem now or likely to be a drainage problem in the future.
- 101 All this might be quite wrong but I find myself lacking evidence in relation to this aspect. Was the condition, however drafted, imposed as a matter of form or because it is a "standard condition" or extracted from a precedent; or is it there because there was and is a need for it in the circumstances? I find myself unwilling to make an enforcement order on this aspect on that basis.
- 102 I imagine that it would not take a civil engineer very long to ascertain whether there is or is not occasion for the design and construction of a drainage scheme.
- 103 I think Mr Finch is going to need it to do something about his works for which no permission exists. It might be prudent for him at the same time, to consider the question of drainage and if, as indicated, it is intended to install tanks, to seek permission for them and any other works that might be necessary at the same time.
- 104 I have mentioned that my declining to make an order about an aspect at this stage that does not mean that such an order could not be justified and might not be made on a new enforcement application or on an amendment applied for under s 121 PE Act, if there really is a need to deal with this aspect. In that event there may be warrant for an amendment to redraft this condition, if not indeed a more general review of the conditions and their wording.

### Costs

- 105 The responsible authority seeks and order for its costs of these proceedings. Section 109 of the *Victorian Civil and Administrative Tribunal Act 1998* lays down the general rule that parties bear their own costs, but also empowers the Tribunal to make an order that the party pay all or part of another party's costs where it is just to do so.
- 106 It is rare for the Tribunal to make an order to costs in what might be described as ordinary planning reviews that generally turn on the planning merits of proposals. In this connection I have in mind such reviews as those that are available under ss 77, 79, 80, 82, and others of the PE Act.
- 107 Apart from its review jurisdiction, the Tribunal has power to deal with certain proceedings in relation to which it has original jurisdiction. These are cases that commence before this Tribunal, rather than cases where the Tribunal reviews a decision made a responsible authority or some other decision maker. Although the general rule still applies, in planning the Tribunal has been more ready to make orders as to costs in some original jurisdiction cases such as enforcement proceedings. The responsible authority, as I have mentioned, has a public duty under s 14 PE Act to enforce the planning laws. Rectification of contraventions can frequently be achieved by advice or warnings although in other circumstances a responsible authority may be obliged to take proceedings such as enforcement proceedings. If a respondent well knows that there is a contravention that ought to be rectified but fails to do anything about it over some time, in spite of advice or warnings and threats; the responsible authority may reasonably consider itself obliged, not only to take proceedings, but to engage solicitors to assist it in that task. These cases can be important and some be difficult or complex. It can be wasteful folly to make an amateur attempt upon such proceedings if they really warrant legal assistance. That is the situation that has arisen here.
- 108 It is true that the responsible authority has not succeeded in getting all the orders it has sought, although it has achieved some clarification and indication of possible ways ahead in relation to some of them. Some of the problems stem from the concept or drafting of some of the permit conditions in relation to which it has sought orders. That, of course, is the responsibility of the responsible authority, and not the respondents. Nevertheless, I do not think that scope of the proceedings, the time of the hearing, or the legal costs involved will have been greatly expanded on account of the aspects in relation to which the responsible authority has not been successful. It has committed itself to the proceedings and has incurred costs that would be, or would substantially be, incurred in relation to the successful aspects of its application in any event.
- 109 On the respondents' side they have been aware of the contraventions for some time, including those in relation for which I am not, at present, making orders. The matters have been neglected. Feeling peeved on the

basis of suspicions the actions taken by the responsible authority arise from complaints from commercial rivals does not amount to a justification. The respondents have more or less compelled the responsible authority to take action in circumstances where they have not responded to advice, requests and threats.

- 110 All in all, I consider that an order should be made against the respondents for the costs of the responsible authority in relation to these proceedings on a so-called "party v party" basis.<sup>2</sup> In the event that the parties are unable to agree as the quantum of these costs, I will make an order for them to be taxed by the Costs Court on the County Court scale and on a party v party basis. In these circumstances the respondents may or may not think it prudent to seek some advice.

### Conclusion

- 111 For the above reasons an enforcement order will be made together with an order as to costs.

Russell Byard,  
Senior Member

<sup>2</sup> I explained this concept to the Messrs Finch in the course of the hearing contrasting it with other bases such as solicitor and client costs or indemnity costs which would be less favourable to the respondents.

## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## ADMINISTRATIVE DIVISION

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P619/2012  
PERMIT NO. 07/143

**APPLICANT/ RESPONSIBLE AUTHORITY** Swan Hill Rural City Council

**RESPONDENTS** Geoffrey & Linda Finch

**SUBJECT LAND** 53-57 Moore Street  
ROBINVALE VIC 3549

**WHERE HELD** 55 King Street, Melbourne

**BEFORE** Russell Byard, Senior Member

**HEARING TYPE** Full Hearing

**DATE OF HEARING** 25 September 2012

**DATE OF ORDER** 2 November 2012

**ENFORCEMENT ORDER**

**NATURE OF CONTRAVENTION** The land at 53-57 Moore Street Robinvale has been developed in contravention of condition 1 of planning permit 07/143 issued on 9 July 2008 and Clause 33.01-4 of the Swan Hill Planning Scheme by the construction or the carrying out of works namely the filling, compacting and levelling of land near the main entrance and the construction of a bund or elongated earth mound along the western boundary without planning permission. Furthermore, there has been and is a continuing contravention of condition 4 of the said permit in that screening, in accordance with that condition, has not been erected and maintained along the entire eastern boundary of the land and along 50 metres of the southern boundary bearing west from the southeast corner of the land where the southern and eastern boundaries meet.

- 1 Within 60 days of the date of this order the respondents are to construct (and thereafter maintain) a screening fence or other screening to the satisfaction of the responsible authority along the entire length of the eastern boundary (save for existing gateways and vehicle crossings) and for 50 metres of the southern boundary of the land and commencing at the

south eastern corner of the land and running thereafter in a westerly direction along the southern boundary.

- 2 The applicant must, pursuant to section 140 of the *Victorian Civil and Administrative Tribunal Act 1998*, serve a copy of this order on the owners and occupier of the land, and any other person against whom the order is made.

Russell Byard  
Senior Member

# **Attachment**

- Plans submitted with Application 2013/32

## **SECTION C – DECISIONS WHICH NEED ACTION/RATIFICATION**

### **C.14.1 SIGN AND SEAL REPORT**

**Source:** Procedural  
**Department:** Chief Executive

#### **Summary**

The following documents and agreements have been signed and sealed by the Councillors and the Chief Executive Officer on the respective dates. Those actions require the ratification of the Council.

#### **Recommendation**

**That Council ratify the actions of signing and sealing the documents under delegation as scheduled.**

#### **Policy Implications**

Nil

#### **Financial and Resource Implications**

Nil

#### **Triple Bottom Line Impact**

Not applicable

#### **Background**

During the course of any month Council is required to sign and seal a range of documents arising from decisions made on a previous occasion(s). Examples include sale of land, entering into funding arrangements for Council programs etc.

As the decision to enter into these agreements has already been made, these documents are signed and sealed when received, with Council ratifying the signing and sealing at the next Council meeting.

#### **Issues**

The following documents were signed and sealed since the last Council meeting:



**DECISIONS WHICH NEED ACTION/RATIFICATION**

18 February 2014

No.	Document Type	Document Description	Date signed/sealed
557	User Agreement for Robinswood Homestead and Caretakers residence at 81 McLennan Drive ROBINVALE	Between Swan Hill Rural City Council, Robinswood Homestead Committee and KELLY	09/12/13
558	Tower Hill Stage 5 – Transfer of Lots 159 and 160	Between Swan Hill Rural City Council and Hajzadea and Renda	09/12/13
559	S11A – Instrument of Appointment & Authorisation	Amy Lolicato	11/12/13
560	S11A – Instrument of Appointment & Authorisation	Vijayaranees Satkunarajah	11/12/13
561	Transfer of Land Lot 255 Acacia St Tower Hill	Between Swan Hill Rural City Council and Faraci	13/12/13
562	Transfer of Land Lot 252 Acacia St Tower Hill	Between Swan Hill Rural City Council and Faraci	13/12/13
563	Mortgage of Lease-Reassignment of Robinvale Caravan Park Lease	Between Swan Hill Rural City Council and Millard	18/12/13
564	Contract Documents – Gravel Re-sheeting and Road Reconstruction Contract 14 3614 01	Between Swan Hill Rural City Council and Coburn's Earthmoving P/L	18/12/13
565	Lease of Real Estate	Youth Inc 50-52 Campbell Street Swan Hill	06/01/14
566	Proposed Section 173	Metfold Industries PS705961L	08/01/14
567	Occupancy Lease – Ultima Public Hall	Between Swan Hill Rural City Council and Ultima Lions Club Inc	20/01/14
568	Transfer of Land Vol 11371 Fol 459	Between Swan Hill Rural City Council and Massara	20/01/14

**DECISIONS WHICH NEED ACTION/RATIFICATION**

18 February 2014

569	Transfer of Land Vol 5901 Fol 062	Between Swan Hill Rural City Council and Stagias	20/01/14
570	Lease – Robinvale Rec Reserve	Between Swan Hill Rural City Council and Harness Racing Club	20/01/14
571	Australia Day Citizenship of the Year 2013	Citation	22/01/14
572	Australia Day Young Citizen Award 2013	Citation	22/01/14
573	Australia Day Community Event 2013	Citation	22/01/14
574	Dead of Lease – Swan Hill Municipal Aerodrome	Between Swan Hill Rural City Council and Sun Centre Ultralights	06/02/14
575	Sub Lease – Youth Centre 50-52 Campbell Street Swan Hill	Between Swan Hill Rural City Council and Sunraysia Mallee Group Training	06/02/14
576	Transfer of Land – Stage 6 Tower Hill Lot 230	Between Swan Hill Rural City Council and Hinton	07/02/14
577	Transfer of Land – Stage 7 Tower Hill Lot 266	Between Swan Hill Rural City Council and Hinton	07/02/14
578	Transfer of Land – Stage 7 Tower Hill Lot 268	Between Swan Hill Rural City Council and Hinton	07/02/14
579	Transfer of Land – Stage 7 Tower Hill Lot 2269	Between Swan Hill Rural City Council and Hinton	07/02/14

**Consultation**

Not Applicable

**Options**

Not Applicable

**Conclusion**

Council authorise the signing and sealing of the above documents.

**Attachments**

Nil.

## **C.14.2 COUNCILLOR ASSEMBLIES - RECORD OF ATTENDANCE AND AGENDA ITEMS**

**Source:** Procedural  
**Department:** Chief Executive

### **Summary**

The Local Government Act 1989 requires that the details of Councillor Assemblies be reported to Council meetings on a monthly basis.

### **Council Plan Strategy Addressed**

*Councillor and Staff accountability* - Council will represent the interests of our community and will conduct its affairs openly and with integrity, reflecting high levels of good governance.

### **Recommendation**

**That Council note the contents of the report.**

### **Policy Implications**

Council must comply with the requirements of the Local Government Act 1989.

### **Financial and Resource Implications**

Nil

### **Triple Bottom Line Impact**

Nil

### **Background**

The State Government has amended the Local Government Act 1989 which requires Council to report on Councillor Assemblies.

Whilst Minutes do not have to be recorded, Agenda items and those in attendance must be, and a report presented to Council.

An assembly of Councillors is defined as a meeting that is planned or scheduled at which at least half of the Council and one Officer are in attendance, and where the

matters being considered that are intended or likely to be the subject of a Council decision.

No formal decisions can be made at an assembly but rather direction can be given that is likely to lead to a formal decision of Council.

Details of the most recent assemblies of Council are attached.

**Issues**

Nil

**Consultation**

Nil

**Options**

Council must comply with the legislation.

**Conclusion**

In accordance with the legislation details of the assemblies as required are attached.

**Attachments**

1 Councillor Assemblies- Record of Attendance and Agenda Items

**COUNCILLOR ASSEMBLIES ATTENDANCE AND AGENDA  
17 December 2013 at 1.00pm  
TOWN HALL (COUNCIL CHAMBERS), SWAN HILL**

**AGENDA ITEMS**

- Flexible Learning Options (FLO) 2014 Agenda Presentation
- Swan Hill Incorporated Special Rate
- Youth Inclusion Project
- Development & Planning update

**ADDITIONAL ITEMS DISCUSSED**

- -

**ATTENDANCE**

Councillors

- Councillor Jessie Kiley
- Councillor Jim Crowe
- Councillor Les McPhee
- Councillor Michael Adamson
- Councillor John Katis

Apologies

- Councillor Greg Cruickshank
- Councillor Gary Norton
- Bruce Myers, Director Community & Cultural Services

Officers

- Dean Miller, Chief Executive Officer
- David Lenton, Director Corporate Services
- Brett Luxford, Director of Development and Planning
- Helen Morris, Human Resources Manager
- Vige Satkunarajah, Development Manager
- Janelle Earle, Economic Development Manager
- Tony Heffer, Customer Service & Revenue Manager
- Rebecca Dick, Project Officer

Other

- Inta Blake, Vice Principal Swan Hill College
- Colin McAlpine, Board Member Swan Hill Inc
- Chris Mahon, Board Member Swan Hill Inc
- Greg Roberts, Board Member Swan Hill Inc
- Murray Ray, Board Member Swan Hill Inc

Other

**CONFLICT OF INTEREST**

Nil

**COUNCILLOR ASSEMBLIES ATTENDANCE AND AGENDA**  
**14 January 2014 at 1.00pm**  
**EDU (INFORMATION CENTRE) SWAN HILL**

**AGENDA ITEMS**

- Motorcross Presentation
- Director of Infrastructure update
- Topic Active Transport Strategy
- Policy – Travel by Councillor's
- Vacation Program Visit

**ADDITIONAL ITEMS DISCUSSED**

- -

**ATTENDANCE**

Councillors

- Councillor Greg Cruickshank
- Councillor Jessie Kiley
- Councillor Jim Crowe
- Councillor Les McPhee
- Councillor Michael Adamson
- Councillor John Katis
- Councillor Gary Norton

Apologies

- David Lenton, Director Corporate Services

Officers

- Dean Miller, Chief Executive Officer
- Bruce Myers, Director Community & Cultural Services
- Brett Luxford, Director of Development and Planning
- Helen Morris, Human Resources Manager

Other

**CONFLICT OF INTEREST**

Nil

**COUNCILLOR ASSEMBLIES ATTENDANCE AND AGENDA  
21 January 2014 at 8.30am  
ROBINVALE COMMUNITY CENTRE, ROBINVALE**

**AGENDA ITEMS**

- Capital Works Tour

**ADDITIONAL ITEMS DISCUSSED**

- -

**ATTENDANCE**

Councillors

- Councillor Greg Cruickshank
- Councillor Jessie Kiley
- Councillor Jim Crowe
- Councillor John Katis
- Councillor Gary Norton
- Councillor Les McPhee
- Councillor Michael Adamson

Officers

- Dean Miller, Chief Executive Officer
- David Leahy, Director Infrastructure
- Bruce Myers, Director Community & Cultural Services
- David Lenton, Director Corporate Services
- Brett Luxford, Director of Development and Planning

**CONFLICT OF INTEREST**

Nil



**COUNCILLOR ASSEMBLIES ATTENDANCE AND AGENDA**  
**28 January 2014 at 8.30am**  
**EDU (INFORMATION CENTRE) SWAN HILL**

**AGENDA ITEMS**

- Capital Works Tour

**ADDITIONAL ITEMS DISCUSSED**

- -

**ATTENDANCE**

Councillors

- Councillor Greg Cruickshank
- Councillor Jessie Kiley
- Councillor Jim Crowe
- Councillor John Katis
- Councillor Gary Norton

Apologies

- Councillor Les McPhee
- Councillor Michael Adamson

Officers

- Dean Miller, Chief Executive Officer
- David Leahy, Director Infrastructure
- Bruce Myers, Director Community & Cultural Services
- David Lenton, Director Corporate Services
- Brett Luxford, Director of Development and Planning

**CONFLICT OF INTEREST**

Nil

**COUNCILLOR ASSEMBLIES ATTENDANCE AND AGENDA  
4 February 2014 at 1.00pm  
EDU (INFORMATION CENTRE) SWAN HILL**

**AGENDA ITEMS**

- Powercor Solar Connection Policy
- Bunnings Development Plan
- Travel Policy – Councillors
- Key Strategic Initiatives, first quarter
- Quality & Cost Report 2012/13
- Special Rate Declaration
- Planning Permit Applications (2013-32,100)

**ADDITIONAL ITEMS DISCUSSED**

- -

**ATTENDANCE**

Councillors

- Councillor Greg Cruickshank
- Councillor Jessie Kiley
- Councillor Jim Crowe
- Councillor John Katis
- Councillor Les McPhee
- Councillor Michael Adamson

Apologies

- Councillor Gary Norton

Officers

- Dean Miller, Chief Executive Officer
- David Leahy, Director Infrastructure
- Bruce Myers, Director Community & Cultural Services
- David Lenton, Director Corporate Services
- Brett Luxford, Director of Development and Planning
- Vige Satkunarajah, Development Manager
- Janelle Earle, Economic Development Manager
- Helen Morris, HR Manager
- Tony Heffer, Customer Service & Revenue Manager

Other

- Deborah Donald, Bunnings Representative
- Richard Umbers, Bunnings Representative
- Lucy Rasdell, Bunnings Representative
- John Hardie, Regional Asset Manager Powercor
- Col Jenkins, Customer Connection Policy Manager Powercor

**CONFLICT OF INTEREST**

Nil

**COUNCILLOR ASSEMBLIES ATTENDANCE AND AGENDA  
11 February 2014 at 1.00pm  
PIONEER SETTLEMENT, DUMOSA HALL**

**AGENDA ITEMS**

- S5 & S6 Delegations
- Fairfax Festival 2013 update
- Presentation to Councillors
- Pioneer Settlement Tour

**ADDITIONAL ITEMS DISCUSSED**

- -

**ATTENDANCE**

Councillors

- Councillor Greg Cruickshank
- Councillor Jessie Kiley
- Councillor Jim Crowe
- Councillor John Katis
- Councillor Gary Norton
- Councillor Les McPhee
- Councillor Michael Adamson

Officers

- Dean Miller, Chief Executive Officer
- David Leahy, Director Infrastructure
- Bruce Myers, Director Community & Cultural Services
- David Lenton, Director Corporate Services
- Brett Luxford, Director of Development and Planning
- Tony Jenkins, General Manager Pioneer Settlement
- Grant Jones, Operations Manager Pioneer Settlement

**CONFLICT OF INTEREST**

Nil

**SECTION D – NOTICES OF MOTION**

**SECTION E – IN CAMERA ITEMS**

**SECTION F – URGENT ITEMS NOT INCLUDED IN AGENDA**

**SECTION G – TO CONSIDER & ORDER ON COUNCILLOR REPORTS**