

Comments addressed to Macedon Ranges Shire Council
1st March, 2019

*Response To Informal Consultation During February 2019 On
Gisborne 'Business Park' Rezoning And Development Plan (Proposed Amendment C129)*

1 OVERVIEW OF PROPOSAL FOR A "BUSINESS PARK" AT NEW GISBORNE

Changes proposed in Amendment C129, and their implementation, are an example of embarrassingly poor planning that fails on a multitude of fronts:

- No community consultation.
- Use of aged 2009 land supply assessments – and a proponent's submission – as justification for rezoning, and reliance on five consultants' reports, none of which assessments or reports have been made publicly assessable.
- Changes are inconsistent with the Macedon Ranges planning scheme. The nature and timing of proposed changes also find no support in the 2009 land supply assessments, or Macedon Ranges Settlement Strategy, leaving the amendment without an identified or sustainable strategic basis.
- Creation of an over-supply of (undeveloped) business/industrial zoned land, and potentially planning "blight", at Gisborne, with potential to also adversely impact related activities elsewhere in the Shire (particularly Kyneton).
- No regard at all is paid to the strategic context of Macedon Ranges Shire as a declared area under the Planning and Environment Act.
- There is no evidence that the amendment complies with other State policy and legislative requirements, or has even been measured against them.
- Changes are proposed to existing Industrial and Commercial Design Guidelines to *reduce* development standards for industrial and commercial over those that currently exist.
- The Development Plan Overlay (DPO25) leaves work and outcomes - which should have been resolved before any rezoning – up to an applicant or developer.
- Inconsistencies throughout the documentation include confused terminology which send mixed messages and make what is being said and/or requirements difficult to clearly understand.
- Failure to accurately or fully depict sensitive interfaces, including those abutting residential development.
- Failure to produce a Development Contributions Plan addressing identified works and costs for either the existing or expanded areas. Instead Section 173 arrangements are proposed for development contributions, which provides no accountability and transparency, and is potentially unenforceable and legally unsound.

The proposals in Amendment C129 exhibit many of the same tired themes, arguments and priorities, haste, incompleteness and lack of quality control that have previously characterised the Kyneton airfield expansion 'master plan', the Hanging Rock and East paddock and the Equine Centre development proposals. It is deeply disappointing to see these types of low-quality proposals are still being put forward, if not progressed.

Comments here are provided in advance of a formal objection to the C129 amendment, if it is exhibited, in the hope that councillors will be able to gain a better understanding of the very poor standard of planning to which they are being asked to put their names. The following comments expand on some of these issues.

2 SUBSTANDARD CONSULTATION AND INFORMATION

- a) There has been no community consultation on the concept of a 'business park' at New Gisborne, or on the consultants' reports for the Development Plan. Instead, at some time apparently advice has been sought from various existing landowners, real estate agents and some service authorities. A working group is said to have existed, but no information about it – members, terms of reference, output – is provided.
- b) Dated Land Supply and Demand Assessments:
- The C129 Development Plan is based on Tim Nott (commercial) and Urban Enterprise (industrial) land supply assessments from 2009 (the commercial assessment relies in part on 2002 statistics). Both pre-date the Macedon Ranges Settlement Strategy, Amendment C67 Gisborne ODP, structure planning amendments in other towns, and the Distinctive Areas and Landscapes legislation.
 - The Development Plan also relies on a 2012 assessment of industrial land supply privately produced by Urban Enterprise for the proponent of Amendment C90/C104 (approved 2015), to support rezoning of 230 Hamilton Road, New Gisborne, from Rural Living 1 to Industrial 1.

None of these assessments were provided in the C129 documentation (attachments) for the December 2018 council meeting agenda. There may also be a probity issue in using a proponent's documentation.

- c) Unpublished Consultants' Reports (Development Plan, page 5):
- The Development Plan says it has been prepared with assistance of State Government funding from the Victorian Planning Authority, but fails to say when, how much, or what triggered the funding.
 - Five (5) undated consultant reports are named as providing the input from which the Plan has been prepared, and as forming the technical basis of the C129 Development Plan.

None of the consultants' reports were provided in the C129 documentation (attachments) for the December 2018 council meeting agenda.

- d) An Explanatory Report (a mandatory component of a planning scheme amendment) was not included in the C129 documentation (attachments) for the December 2018 council meeting agenda.

3 THE PROPOSALS IN C129 DO NOT HAVE A STRATEGIC BASIS

3.1 What Provides Strategic Justification For The Rezoning?

1.1.1 Industrial Rezoning

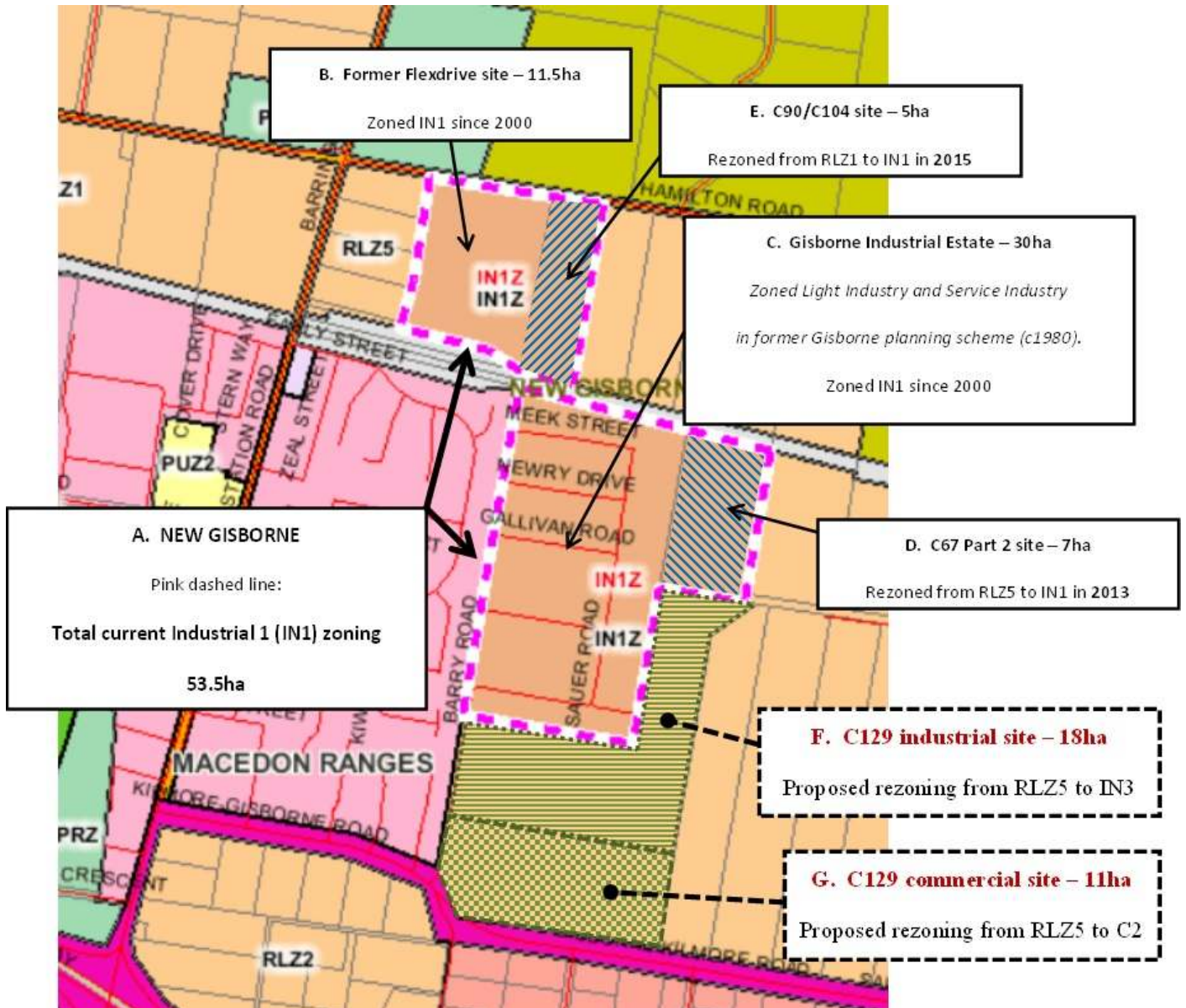
- a) The Macedon Ranges planning scheme at Clause 21.13-1 includes a supporting action for implementing the Gisborne/New Gisborne ODP:

*“Investigate the potential to rezone land identified as **future industrial** Gisborne / New Gisborne Framework Plan.” [emphasis added]*

- b) C129 amendment instead leaps straight to rezoning substantial industrial *and commercial* areas, without any public process for investigating commercial rezoning or even possible industrial rezoning, or rationale for rezoning all of the 29ha of additional land all at once.
- c) Pre-2000, the 30 hectares comprising the existing Industrial 1 zoned industrial estate (Area C on Figure 1) was zoned Service Industry and Light Industrial in the former Gisborne planning scheme, from circa 1980. The C129 Development Plan (page 16, Site coverage) says a third of lots in the existing industrial estate (Area C in Figure 1) are undeveloped. Industrial opportunities have therefore been available on this land for almost 40 years, and still a third of it (approx. 10ha) remains undeveloped.

- d) C129 does not address available development potential already provided by the (former Flexdrive) Industrial 1 zoned land north of the railway line (Area B on Figure 1 – 11.5ha), or recent industrial rezonings:
- 2013 (Area D on Figure 1) 7ha rezoned from Rural Living 5 to Industrial 1, Amendment C67 Part 2 (Gisborne ODP).
 - 2015 (Area E on Figure 1) 5ha rezoned from Rural Living 1 to Industrial 1, Amendment C90/104 (site specific amendment).

Figure 1 Existing And Proposed Industrial/Commercial Land At New Gisborne



Map Source: DELWP website (Industrial 1 zone at New Gisborne). Hatching added by MRRA to areas D, E, F, G to identify relevant land parcels.

- e) Taken together, the undeveloped one third of the existing industrial estate (Area C in Figure 1) (say, 10ha), plus the undeveloped 12ha added by the two recent industrial rezonings, currently provide around 20 – 22ha of land already zoned Industrial that is available for development.

C129 proposes to rezone another 18ha to industrial, plus another 11ha for commercial use and development, resulting in a total of 82.5ha of industrial/business zoned land, 51ha of which is undeveloped. This would require *strenuous* strategic justification, which has not been produced and does not appear to exist. Note that these figures would rise further if the unfulfilled development potential at the former Flexdrive site (Area B in Figure 1) is added.

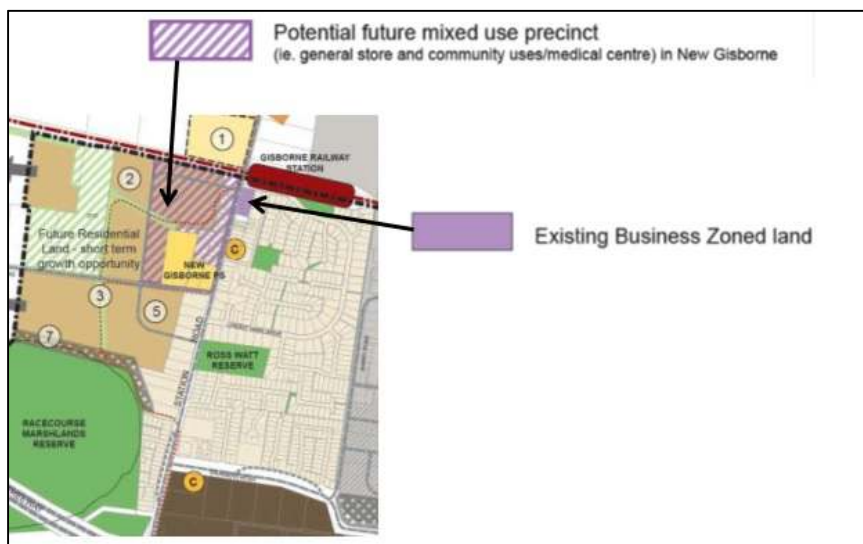
1.1.2 Commercial Rezoning

- a) C129’s proposed commercial rezoning of 11ha adjoining the Saunders Road frontage is a bolt from the blue, and conflicts with the Macedon Ranges planning scheme at Clause 21.13-1, Gisborne New Gisborne Framework Plan, which only shows an area *west of Station Road* for “Potential future mixed use precinct”.
- b) The 2009 Nott commercial land assessment report concluded ¹:

*“... This assessment suggests that, in the period to 2031, **between 4 to 6ha** of additional development land will be required to accommodate commercial development in the Gisborne town centre. **This assessment allows for the development of local activity centres in New Gisborne, West Gisborne and South Gisborne.**” [emphasis added]*

- c) The local activity centres to which Nott refers arise from the Gisborne/New Gisborne ODP. They are shown in the Macedon Ranges planning scheme at Clause 21.13.1 Framework Plan and include locations near Cherry Lane and Swinburne Avenue (West Gisborne) and near Fersfield and Willowbank Roads (South Gisborne), as well as a location to the west of Station Road (New Gisborne) – see Figure 2.

Figure 2 Commercial Development Area at New Gisborne (planning scheme Clause 21.13-1, ODP Framework Plan)



- d) These locations do not include the Barry/Saunders Road site, which the Clause 21.13-1 Framework Plan identifies only as “industrial”. The 11ha rezoned in C129 would therefore be additional to the 4 – 6ha identified by Nott.
- e) The 2009 Nott assessment did not support commercial development at the corner of Barry Road and Saunders Road, where C129 proposes 11ha of commercial rezoning, saying in response to submissions on the potential for a commercial activity centre at this location ²:

“The site is rather poorly located to provide a neighbourhood or local activity centre since it is on the edge of urban development and the great majority of residents would need to drive to the centre.

The centre may be a potential location for peripheral commercial activities. However, these activities (car yards, bulky goods outlets, builder’s supplies, etc) generally require highly visible sites on busy main roads. The Barry

¹ Gisborne Commercial Assessment, For Macedon Ranges Shire Council, Tim Nott, economic analysis and strategy, February 2009, page 22, Conclusions

² Page 20

Road site is not visible from the freeway and is not on a key route for most local people. As a result it could struggle to attract investment.”

- f) Of the 2009 Nott commercial land assessment, the Macedon Ranges Settlement Strategy concluded:³

“On the basis of this analysis, which is quite optimistic in that it relies on Gisborne retaining a much higher share of spending in household goods, it is reasonable to assume the assessment of between 4 and 6 ha [of additional commercial land in the Gisborne town centre] is sufficient to accommodate commercial land demand out to 2036 even under the highest population growth forecast (VIF population forecast).”

Proposed changes and the timing of them in C129 are not supported by the 2009 land supply and demand assessments, or the Macedon Ranges Settlement Strategy, and also find no support in the Macedon Ranges planning scheme.

Where and what is the demonstrated need and strategic justification for rezoning any new industrial or commercial land at New Gisborne, in this way, at this time?

In addition, the amendment is premature, not least because it is being run in isolation of and pre-empts any outcomes of the current Gisborne review. It also fails to take a Shire-wide perspective and address potentially adversely affects it may have on the potential development of around 80ha of existing vacant industrial zoned land at Kyneton.

3.2 Failure to Recognise The Shire’s Declared Area Strategic Context

In attempting to provide some strategic rationale, the Development Plan references Plan Melbourne, and the Loddon Mallee South Regional Growth Plan, but only those parts of those Plans relating to economic development.

No reference at all is made to Clause 22.01 (Statement of Planning Policy No. 8), to the Minister’s declaration of Macedon Ranges as a distinctive area and landscape under the Distinctive Areas and Landscapes legislation (Planning and Environment Act), or even to the flawed 2018 draft Statement of Planning Policy. There are also questions relating the amendment’s compliance with the intent of the Distinctive Areas and Landscapes legislation, and Ministerial Direction 17, in relation to amendments in the Shire.

Lack of recognition of the special circumstances applying in Macedon Ranges Shire sees C129 take the contrary step of *reducing* existing design and development standards for industrial and commercial development.

4 WEAKENING OF EXISTING MR INDUSTRIAL & COMMERCIAL DESIGN GUIDELINES

- a) The Development Plan says changes are made to subdivision and development guidelines but fails to clearly identify which. The changes only make sense if applied to Part C, development guidelines.
- b) Inconsistencies exist.
 - Reduced standards are said to respond to comments from existing landowners/businesses but C129 proposes to make changes to existing Guidelines to weaken, reduce and increase interpretation of development standards for both the existing industrial estate, and the expansion area.
 - The Development Plan (opening paragraph, page 16, 2.3 Urban Design) lauds the improvement in urban design outcomes since introduction of the Guidelines, saying they have resulted in *“newer, higher quality buildings standing in stark contrast to older buildings developed prior to the incorporation of the guidelines”*. Concurrently, at page 17 *Summary of Findings*, the Development Plan gives its endorsement for the *“guidelines to be amended to ensure they can be interpreted more flexibly.”*
- c) Proposed changes are intended to reduce current requirements in order to provide more flexibility (and reduce building costs) with regard to existing loading, car parking, setbacks, building design and detail, colours materials and finishes, and landscape design. The appearance, and function, of the area is adversely affected.

³ Macedon Ranges Settlement Strategy, July 2011, CPG: Appendix 3, page 5

5 DRAFT DEVELOPMENT PLAN & DEVELOPMENT PLAN OVERLAY SCHEDULE

Some of the issues being picked up in the C129 Development Plan and DPO25 schedule include:

5.1 Bushfire

The Development Plan does not discuss bushfire or fire risk, and consideration of the following is not apparent:

- a) State Clause 13.05 Bushfire,
- b) All of the C129 'expansion' area, the 7ha rezoned by C67 in 2013, and the periphery of the existing Industrial 1 estate area are designated "Bushfire Prone Areas", which triggers a starting point of at least 12.5 BAL for all buildings. BAL levels are not discussed.
- c) Risks to existing residential areas from both existing and future industrial uses.
- d) Potential fire risk, on a landscape scale.

5.2 Compliance with Ministerial Direction 19 - EPA

Ministerial Direction 19 (October 2018) – this triggers a requirement that the written views of the Environment Protection Authority [EPA] must be sought before requesting authorisation for a planning scheme amendment. There is no evidence in the C129 amendment documentation/Development Plan) that this has been either considered, or complied with.

5.3 Stormwater & Drainage

- a) VC154 (approved October 2018) sets new requirements for stormwater management. There is no evidence these have been considered (see Planning Advisory Note 75, October 2018).
- b) Despite a history of drainage problems with the existing industrial estate, stormwater and drainage issues are not resolved in the Development Plan, which while requiring a central retention system to be provided at some time in the future, opts for requiring individual retarding basins on each lot in the interim. The proposed Development Plan Overlay Schedule 25 requires an applicant/developer to resolve this issue.
- c) The "overland flow" identified in Figure 4 *Existing Conditions* and Figure 5 *Masterplan* is currently identified as a "waterway" in the Gisborne ODP, and in the Industrial and Commercial Design Guidelines. The Guidelines also require the interface with this waterway to be addressed (7, Interfaces, Part C). C129 doesn't recognise or address the waterway, or its interface, or the drainage issues it may trigger.

5.4 Ecology (Page 18) and Cultural Heritage

- a) Only 3 of the five properties 5 properties in the C129 expansion area were inspected, apparently in a single day walkover inspection. The DPO25 schedule requires the developer/applicant to fill in the gaps.
- b) Cultural heritage – even though greenfields development is proposed, there is no evidence cultural heritage issues, and statutory requirements for them, have been considered.

5.5 Sensitive Interfaces

- a) Interfaces with existing residential, low density residential and rural living areas are at times called "Key Sensitive Interfaces" and at other times only 'sensitive interfaces', providing no clarity about the areas being addressed.
- b) The Masterplan at Figure 5 of the Development Plan fails to identify all of the interface between the C129 rezonings and existing residential development west of Barry Road, or the residential interface with the existing industrial estate, as "sensitive".
- c) The Masterplan's extent of 'sensitive interface' at Saunders Road is inconsistent with the interface requirement shown on the planning scheme's Clause 21.13-1 Framework Plan, and with the Industrial and Commercial Design Guidelines at Part D, 3.1, page 58.
- d) Proposals for sensitive interfaces do not appear to have had regard to the Industrial and Commercial Design Guidelines' requirements for interfaces at Part C, 7, page 42.

- e) The interface treatment proposed along the eastern (rural living) boundary of the expansion area has been eroded from the Guidelines' "substantial" landscaping, to street trees in a road with various names but apparently a boulevard, which is intended to provide the only landscaping along that interface.

5.6 Expectations For The Eventual Approved Development Plan

The DPO25 schedule says:

"4 Requirements for Development Plan: Must be consistent with the 'Development Plan Concept' shown in Map 1 of this schedule."

The 'Development Concept Plan' is the Masterplan at Figure 5 (page 21) in the C129 Development Plan, which, among other matters, doesn't identify road works required, or show the relocation of Magnet Lane, or even all sensitive interfaces. The drainage solutions it shows (4 new retarding basins) don't match expectations in the Development Plan's text, which are that retarding basins will need to be provided on each development lot until such time as a central solution is provided.

The C129 Development Plan (Page 37) also states that this simplistic and incomplete concept plan will form the *approved* Development Plan, subject to meeting all requirements of the DPO25 schedule.

5.7 Development Plan Overlay and DPO Schedule 25 Page 37

The DPO25 schedule:

- a) Hands responsibility for most of the work to the applicant/developer, who then determines outcomes.
- b) Focuses on design outcomes only if in the public realm, or those visible from the public realm.
- c) Sets a requirement for *"Limiting signage to façade identification signs that do not exceed 8 square metres in size"*, which appears to be inconsistent with both the Industrial and Commercial Design Guidelines' signage requirements (page 35), and with State Clause 52.05 *Signs* in the planning scheme.
- d) Requires provision of siting and design guidelines additional to the *Design Guidelines for Industrial and Commercial Development, Macedon Ranges Shire Council, 2012*.

6 FAILURE TO PROVIDE A DEVELOPMENT CONTRIBUTIONS PLAN

All aspects of C129 relating to development contributions lack accountability and transparency.

- a) Existing Development Contributions Plan Overlay Schedule 2 (DCPO2), which includes a Development Contributions Plan, is currently applied to both the existing industrial estate (Areas C and D, Figure 1) and the expansion areas proposed to be rezoned (Areas F and G, Figure 1).
- b) C129 proposes to apply a new Development Contributions Plan Overlay, Schedule 3 (DCPO3) to the new C129 industrial and commercial zones in the expansion area, but fails to delete DCPO2, leaving the rezoned land with two (2) conflicting DCPO schedules applied.
- c) The C129 Development Plan identifies 3,000m of footpaths, 3,000m of kerb and channel, and 400 trees are needed to improve the *existing* industrial estate, and states preliminary costings have been prepared. However, no adjustment is made to DCPO2 for contributions to recover the costs involved: DCPO2 contribution levies for each 100m² of gross floor area remain at \$6.73, and at \$15.45, for industrial, and commercial, development respectively.
- d) Despite requirements for substantial infrastructure provision to develop the land C129 proposes to rezone, a Development Contributions Plan is NOT proposed for the affected areas. C129 (DCPO3 schedule) instead leaves development contributions to be collected via individual agreements between council and landowners, these being voluntary Section 173 agreements, or planning permit conditions requiring a Section 173 agreement. DCPO3 does not identify either costs, or contributions, involved.
- e) State policy at Clause 19.05 of the planning scheme deals with Development Infrastructure, and requires consideration of a document called *"Development Contributions Guidelines (Dept. of Sustainability and Environment, June 2003 – as amended March 2007."*

f) Of voluntary Section 173 agreements, these Guidelines say (at page 5):

“Entering into an agreement for development contributions requires all parties to voluntarily agree to commit to their obligations, as set out in the agreement. Therefore, the establishment of a voluntary agreement cannot be a requirement of a planning scheme amendment or planning permit.”

and

“A voluntary agreement for the provision of infrastructure is appropriate when the parties agree to a mutually acceptable outcome.”

g) Of Section 173 agreements required as a planning permit condition, these Guidelines say (at page 9):

“A planning permit cannot include a condition that requires:

- *The applicant to enter into a section 173 agreement to provide services or facilities.*
- *The provision of or payment for facilities or services **in the absence of an approved Development Contributions Plan**, no matter whether the facilities or services are located on or off the land subject to the planning permit. [bold emphasis added]*

The ability of the Responsible Authority to impose certain conditions is doubtful, in particular planning permit conditions that require:

- *The provision of or payment for works on land that is not part of or abutting the land subject to the planning permit, **when no Development Contributions Plan** is in place. [bold emphasis added]*
- *The applicant to enter into a section 173 agreement to provide or pay for works on the land that is not part of or abutting the land subject to the planning permit.*

Responsible Authorities seeking to impose such conditions should obtain independent legal advice.”

The Macedon Ranges Settlement Strategy’s Context Report 2010, at page 164, provides some insight into the pitfalls of using the methods proposed in C129:

“9.8.6 Voluntary Agreements

There have been cases in the Macedon Ranges Shire where developer contributions have been sought through voluntary agreements. Entering into an agreement for development contributions requires all parties to voluntarily agree to commit to their obligations, as set out in the agreement.

Section 173 of the Planning and Environment Act 1987 provides a mechanism for formalising a voluntary agreement between the responsible authority, a landowner, and other parties. The authority that administers the planning scheme is called the responsible authority.

The Macedon Ranges Shire Council, in the preparation of Amendment C59 (superseded by Amendment 67) was party to three draft Section 173 Agreements that required developer contributions towards community and physical infrastructure. However, though attempted, these voluntary agreements were not successful as landowners did not sign the agreement.

Other voluntary agreements through conditions on permits have also been challenged at VCAT and Council has not been successful.”

C129’s approach to Development Contributions is, at best, unclear and uncertain, and is not acceptable, particularly for the size of the proposal, and scale of works, anticipated by C129. Failure to obtain relevant contributions will inevitably result in an unreasonable and avoidable cost burden being placed on ratepayers.

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