



20 May 2024

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Dear Mr Wilkinson

Mernda Precinct 2A Development Plan

We act for the Bridge-Cookes Landowners Group Incorporated (**BCLGI**) in relation to the application to approve the Mernda Precinct 2A Development Plan (**Development Plan**).

The purpose of this letter is to set out BCLGI's position in respect of the final changes sought by Council to the Development Plan in its email dated 6 May 2024 in order to assist Council to prepare for the upcoming Council meeting.

The application for approval of the Development Plan was first lodged in February 2021. Since that time, the Development Plan has been through a number of iterations before, and after, informal exhibition.

Based on Council's email dated 6 May 2024 there are four remaining matters to be resolved. We understand from that email that, subject to the resolution of those matters, planning officers will be in a position to write a report supporting the approval of the Development Plan for presentation to the Council at its meeting scheduled for 20 August 2024.

BCLGI is eager to work with Council to resolve these outstanding matters so that the lengthy Development Plan process can be concluded, and a critical source of housing can be unlocked within Mernda.

1 Outstanding matters to be resolved

- 1.1 We are instructed that at the meeting between Council and our client on 6 May 2024, and in a subsequent email, our client advised Council that it agrees to:
- (a) include the tree reserve in parcel 10 and adjust the land budget;
 - (b) include the tree reserve in parcel 27 and adjust the land budget; and
 - (c) reinstate the designation for the electricity easement as encumbered open space on parcels 22 and 23, subject to the inclusion of a notation that *'future uses are subject to a planning permit application and SP AusNet approval'*.
- 1.2 The purpose of the notation for the electricity easement is to recognise that future uses of the land *could* be subject to a future planning permit application even if the land is designated as encumbered

open space within the Development Plan. In our view, this designation would not fetter Council's future discretion in relation to any such application, it would simply recognise Council's current position (expressed in its email of 6 May 2024) that the land *could* be used for something other than encumbered open space, subject to a planning permit application and the consent of SP AusNet.

- 1.3 The final matter to be resolved is the tree reserve which Council would like located on parcel 45 at 811 Bridge Inn Road. This is discussed further below.

2 Provision of tree reserve/ open space on Parcel 45

- 2.1 We are instructed that the landowner removed the trees on Parcel 45 following receipt of arboricultural advice that a planning permit was not required under the Vegetation Protection Overlay or clause 52.17 of the Planning Scheme. We are also instructed that Council has not taken any enforcement or other action which would indicate that it considers that the trees were removed unlawfully.
- 2.2 Council now seeks the inclusion of a tree reserve to the rear of that parcel which is a location identified by Yarra Valley Water (**YVW**) and infrastructure engineers being required for future infrastructure necessary to connect and service the greater precinct within the Development Plan. The existing YVW infrastructure on the western boundary has been specifically designed and installed to service the future development of the northern and western section of the precinct.
- 2.3 Our client does not support the location of a tree reserve or open space in this location because:
- (a) The Mernda Strategy Plan (**Strategy Plan**) requires the preservation of native vegetation through the use of tree-reservations, pocket parks, widened nature strips, or larger residential lots with appropriate building envelopes (section 3.3.1 of the Strategy Plan). There are no trees on that parcel requiring protection through the provision of any of these treatments.
 - (b) The trees previously located on that parcel would have been required to be removed to provide servicing to the land within the Development Plan.
 - (c) The Strategy Plan is clear in distinguishing between credited open space and provision of tree reservations for the protection and enhancement of environmental values. Council has confirmed its position in its email dated 15 November 2023 that the only open space which is to be credited is that identified in the Open Space Network Plan within the Strategy Plan and, as a result, there is no basis for land within that parcel to be set aside for open space.
- 2.4 We are instructed that our client has expanded tree reserves within the Development Plan in order to address Council's concerns in relation to this matter. This includes an increase in the size of the tree reserve for trees 452, 420 and 425.
- 2.5 The Development Plan proposes opportunity for further new and expanded tree reserves that are not in conflict with infrastructure requirements across the thirteen properties within the precinct subject to arboricultural assessments.
- 2.6 In our view, Council's obligations in respect of a request for approval of a development plan is to assess the Development Plan against the requirements of the Development Plan Overlay (**DPO**), Schedule 5 to the DPO and the Strategy Plan. This process is not an opportunity to seek redress for removal of vegetation in circumstances where the lawfulness of that removal has not been the subject of any other action by Council.
- 2.7 Our client requests that Council officers recommend the approval of the Development Plan including the provision of the larger sized reserve around trees 452, 420 and 425 as a reasonable compromise to resolve the remaining outstanding matter in this process.

3 Next steps

- 3.1 We have advised our client that, should Council refuse to approve the Development Plan, it has 28 days from the date of that decision to lodge an appeal under section 149(1)(a) in respect of that decision.
- 3.2 We have similarly advised our client that, if Council makes *no decision* in respect of the request to approve the Development Plan, our client will need to resubmit the Development Plan to Council in order to restart the time to enable our client to lodge an appeal to the Tribunal.
- 3.3 Given the time, effort and expense associated with this request, if Council is not in agreement with the matters set out in this letter, it may be most efficient for it to refuse the request for approval of the Development Plan such that our client may appeal that decision in an efficient manner.
- 3.4 Our clients emphasise that they wish to avoid the need for any review proceedings. They are hopeful that, following consideration of the matters set out in this letter and the amended Development Plan proposal provided to Council, Council officers will recommend its approval.

Please contact Jess Kaczmarek on 0428 456 131 with any queries.

Yours sincerely



Jessica Kaczmarek
Principal
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