

Our Ref: 12/3797
Telephone: (03) 9262 8846
Fax: (03) 9262 8322



3 April 2013

The Principal Registrar
Planning List - VCAT
Level 1, 55 King Street
Melbourne VIC 3000

To the Principal Registrar,

**CFA STATEMENT OF GROUNDS - VCAT REFERENCE P2249/2012
RESPONSE TO AMENDED PLANS 8 MARCH 2013**

Application: PA122/2012 (Application)
Address: 55, 61A & Part 65 Diamond Gully Road, Castlemaine (Subject site)

In regards to the amended plans as provided by Mr Gary McClure (Applicant) on 8 March 2013, CFA provides the following comments and advice.

1. HISTORY OF CFA'S INVOLVEMENT WITH THE APPLICATION AND RELATED REZONING REQUEST

- 1.1. The Application was referred to CFA by the RA on **12 July 2012**, pursuant to section 55 of the *Planning and Environment Act 1987 (Act)*.
- 1.2. The Subject site is within land that is also subject to a concurrent planning scheme amendment that was referred to CFA pursuant to Ministerial Direction No. 11.
- 1.3. On **13 August 2012**, CFA was notified that the matter was proceeding to VCAT pursuant to section 79 of the Act – Failure to grant a permit within the prescribed timeframe.
- 1.4. On **21 August 2012** a meeting was held with Council, DPCD and CFA to discuss the proposed amendment. At this meeting, CFA expressed its concern with the proposal on a strategic planning level.
- 1.5. On **29 August 2012** CFA conducted a detailed inspection of the Subject site and surrounding area.

- 1.6. On 6 September 2012 a response to the proposed planning scheme amendment was sent to council and the proponent. This response advised all parties that the proposed amendment was not supported.
- 1.7. On 1 October 2012, CFA in its capacity as a referral authority under section 55 of the Act sought further information in regards to the Application as follows:
1. In accordance with Clause 52.47-2 of the Mount Alexander Planning Scheme; any lot created on which a single dwelling may be developed must be provided with defensible space and construction for BAL-19 or less (with reference to Table 1 to Clause 52.47). While the application states that this can be achieved, **an accurate (scaled or dimensioned) detailed plan of the proposal must be provided.** This plan must identify building and defensible space envelopes that give effect to the required BAL(s).

In the preparation of these plans, the following should be noted:

- CFA's assessment of the vegetation to the North of the Subject land is Woodland. This differs from the assessment within the application. Any additional required setbacks to achieve an appropriate level of defensible space should be incorporated into the proposal.
 - Reasonable assurance that the land to the West will be managed in a manner consistent with the purpose of providing defensible space has not been provided. Setbacks that allow for Grassland defensible space should therefore be incorporated into the proposal.
2. In accordance with Clause 52.47-5 of the Mount Alexander Planning Scheme; landscaping (including in the proposed public open space and potential community hub) must not increase the fire risk to the development or adjacent area. **Details of how the proposed public open space within the North portion of the subject land must be provided.**

2. VCAT HEARING – 26 FEBRUARY 2013

2.1. On 26 February 2013 the Tribunal ordered that:

1. *This application is adjourned until Thursday 27 June 2013 and Friday 28 June 2013 if required.*
2. *The permit applicant is to serve amended plans on all parties listed on the Mount Alexander Shire list by the 8 March 2013.*

3. *All referral authorities will have the standard 28 days within which to respond to the amended plans.*
4. *All parties who previously lodged a statement of grounds with regard to the original proposal, if they still object to the amended proposal are to lodge that statement of grounds with the Tribunal by the close of business March 29, 2013 if they wish to take part in the future hearing.*
5. *This matter is listed for an Administrative Mention on the close of business on 20th May 2013.*

3. AMENDED APPLICATION

3.1. On 8 March 2013 the Applicant, and in accordance with the orders of the Tribunal, served CFA with:

- Notice of an Amendment of an Application (Form A);
- Statement of Grounds (Form B);
- An A3 copy of the amended Subdivision Plan prepared by Spiire an dated 29 January 2013;
- Amended Application for Planning Permit form dated 20 February 2013; and
- A statement of the changes

3.2. CFA notes that the amended application includes:

- An amended application form to reflect the inclusion of C.A. 25 Section F1 Parish of Castlemaine as part of the application for use as a drainage and recreation reserve as part of the WSUD for the subdivision.
- A revised Plan of Subdivision identifying proposed lots, building envelopes and defendable space envelopes. The revised plan also incorporates a change to the layout of the subdivision including the configuration of the lots and roads.
- Identification of an area north of Diamond Gully Road and west of Sluicers Road as a Drainage and Recreation Reserve.

3.3. The amended application responds to CFA's request to Council for more information dated 1 October 2012¹.

¹ Refer Annexure A

4. CFA'S ASSESSMENT OF THE AMENDED APPLICATION

- 4.1. While the application has been amended to include new information – including building envelopes and defendable space envelopes – CFA remains concerned about the lack of information accompanying the application.
- 4.2. In particular, CFA is concerned with the following aspects of the amended application:
 - 4.2.1. No details have been provided regarding how the proposed drainage and recreation reserve in the northern part of the subdivision will be managed on an ongoing basis. This relates to both the type of management (i.e. the structure and arrangement of vegetation) and the mechanism that will ensure that there is reasonable assurance that this will continue on an ongoing basis.
 - 4.2.2. The proposal relies on off-site defendable space within the road reserves to the north, east and south of the subdivision but does not include any information regarding the alignment and width of the road pavement and any footpaths (if applicable). This is particularly of concern with the portion of 'inner zone' defendable space which falls within the road reserve.
 - 4.2.3. The proposal relies on off-site defendable space on the land identified as 'N.I.S.' to the south-west of Lot 11. Aside from advising that this land is in the same ownership as the Subject site the Applicant has failed to provide details of the mechanism that will ensure that defendable space will be implemented and managed on this land on an ongoing basis.
 - 4.2.4. Despite explicit guidance on this issue from CFA (in CFA's request for more information) the applicant has failed to address the grassland risk to the west of the subject site – including within the road reserves to the west and south-west of the subdivision. Related to the above point the fact that this adjoining land is in the same ownership as the Subject site does not provide certainty that the required level of management on this land will continue on an ongoing basis.
 - 4.2.5. The proposal does not include the implementation of defendable space on Lots 11-17 inclusive. This fails to address the bushfire risk to the west of lots 1-10.
 - 4.2.6. The layout and design of the subdivision results in proposed Lot 1 being provided with inadequate defendable space to the north and Lot 17 being provided with no defendable space in this direction.

4.3. Having regard to the above deficiencies CFA is unable to advise the Tribunal whether:

4.3.1. The defensible space and construction proposed for the residential lots in the subdivision is adequate in terms of addressing the likely bushfire behaviour and reducing the risk to life and property to an acceptable level.

4.3.2. The landscaping of the drainage and recreation reserve will increase the risk to life and property from bushfire for surrounding land.

4.3.3. The requirements of Standard BF2, Mandatory Standard BF5 and Mandatory Standard BF10 of clause 52.47 have been satisfied.

4.4. For these reasons CFA objects to the proposed subdivision.

5. CFA'S CURRENT POSITION

5.1. CFA has identified a number of technical deficiencies with the amended application – which are significant in themselves. Notwithstanding this, CFA has a number of fundamental concerns with the proposal which will not necessarily be resolved through the provision of further information or a redesign of the subdivision. These concerns include:

5.1.1. The Application will result in the creation of a new residential settlement which is disconnected from the current developed residential area of Castlemaine and which has inadequate access and egress.

5.1.2. The subdivision is being justified, in part, on the basis that the Subject site is included in the Draft Diamond Gully Structure Plan (2010) – with the Subject site forms part of the southern portion of the plan area and is identified as 'Southern Residential Greenfield Area' and 'Low Density Residential Area'.

However, this plan was prepared prior to the findings of the Victorian Bushfires Royal Commission (VBRC) and prior to the introduction of the new bushfire planning provisions. In this regard it is noted that the draft structure plan includes as an implementation recommendation "*monitoring the pending recommendations of the VBRC.*"

As Member John Keaney noted in *Robertson v Mornington Peninsula SC* [2011] VCAT 1393 (21 July 2011):

57. In February 2009, extensive areas of Victoria were devastated by bushfires which caused considerable loss of life. A Royal Commission was held into these fires and the outcomes of the commission report help frame my assessment as, like it or not,

land use planning in relation to bushfire risk has changed significantly as a result of those fires. The commission report repeatedly commented on the importance of the protection of human life noting (with my emphasis):

The great loss of life and the widespread destruction of property were what prompted the Premier Brumby to establish the Commission. It is fitting therefore that the **protection of human life is paramount** in all the Commission's recommendations. This notion of protection of human life being paramount has implications for the **balance** that is struck between competing community objectives. In the context of bushfires, ensuring the protection of human life means that sometimes compromises need to be made with people's freedom to choose where they want to live or the existence of pristine environments close to townships. (Final report pg xxviii)

The observations of Member Martin in *Land Management Surveys v Strathbogie SC (includes summary) (Red Dot) [2012] VCAT 77 (19 January 2012)* are also noteworthy:

21. Common sense indicates that it has long been the case that those scrubby areas around the edge of Melbourne and in other rural areas of Victoria involve an inherent level of bushfire risk. However it seems fair to say that the devastating Black Saturday bushfires in February 2009 that burnt about 430,000 hectare of land, destroyed more than 2,000 homes and claimed 173 lives have been a game-changer in terms of the Victorian community's response to bushfire risks...

56. Whilst this type of proposal may raise some awkward and strongly contested bushfire safety issues, all stakeholders need to tackle these issues head on, rather than ducking the fundamental issue. Just because a particular landholding might be capable of having a dwelling built on it or is big enough to potentially be more intensively subdivided should not make these outcomes a fait accompli.

It is CFA's view that there is a need for a review of the Structure Plan to ensure that it provides a robust response to the findings of the VBRC and the new SPPF clause 13.05. For these reasons it is submitted that the inclusion of the Subject site within the structure plan does not, of itself, justify the proposed development of the land.

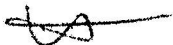
- 5.1.3. There are alternative locations within the township which are better suited to accommodating the current and future growth of Castlemaine whilst reducing the exposure of future residents to the risks of bushfire.
- 5.1.4. Approval of the subdivision would be prejudicial to the consideration of the planning scheme amendment for the Subject site and consequently prejudice the proper and orderly planning of the area. This outcome would arise from the "leap-frogging" of residential development into the Subject site which may then be used as justification for "filling in" of the balance grassland portion of the Subject Site.

6. CONCLUSION

- 6.1. CFA believes that the proposed subdivision of the land will undermine the future strategic directions and settlement planning for the Castlemaine township – particularly in terms of providing the necessary sophisticated response to the significant bushfire risks associated with the Subject site and surrounds.
- 6.2. CFA is also not satisfied that the Application will ensure that the risk to life and property from bushfire will be reduced to an acceptable level or that the protection of human life over all other policy considerations will be prioritised.
- 6.3. For these reasons CFA submits that the proposal fails to comply with the objectives and requirements of clause 13.05 – ***Bushfire***, clause 44.06 – ***Bushfire Management Overlay*** and clause 52.47 – ***Bushfire protection: planning requirements***.
- 6.4. CFA has not provided the Tribunal and the parties with permit conditions as the Application in its current form is so incomplete as to make it impossible for the CFA to determine the required bushfire protection measures for the proposed subdivision.

A copy of this letter has been forwarded to the Applicant for Review and the Responsible Authority.

Yours sincerely,



Kelly TOCOCK
VCAT Appeals Coordinator
CFA Headquarters