FRIENDS OF THE BOX-IRONBARK FORESTS (MountAlexander Region) Inc

PO Box 322, Castlemaine, 3450, Vic.

**TARRANVALLEY REZONING ADVISORY COMMITTEE**

**SUBMISSION – PLANNING SCHEME AMENDMENT C36**

14th September 2015

The Friends of the Box-Ironbark Forests (FOBIF) was formed at a public meeting in Castlemaine in November 1998, to campaign for the declaration of a National Park in the box-ironbark forests of Mount Alexander Region. The Friends Group initially concentrated on encouraging public participation in the Environment Conservation Council’s inquiry into the box-ironbark forests. This inquiry culminated in the declaration of the Castlemaine Diggings National Heritage Park and many conservation reserves in October 2002.

As only 15% of pre-white settlement box-ironbark forests and woodland still exist, FOBIF works to preserve these remnants on both public and private land. Some of the threats to these forests we have been opposing are inappropriate subdivisions in bushland and poor management practices in parks and reserves.

The Group promotes a greater appreciation and understanding in the community of the biodiversity of our native forests, and organizes bushwalks, exhibitions, seminars and more recently has been organising activities for children and youths that promote an appreciation of the forests and woodlands of our region.

**Effects of Development on Native Vegetation**

FOBIF’s concern with this amendment is the direct and indirect effects this large housing development (greater than 40 lots) will have on the box-ironbark forests of the area.

A major part of this 125ha site contains box-ironbark forest of high and very high conservation significance. Whilst the Updated Ecological Assessment of March 2014 classifies some of this vegetation as of medium conservation significance, we believe this is in error, as this same Report records evidence of the endangered Brush-Tailed Phascogale on site. Reference to the Action Statement on the Brush-Tail Phascogale\* indicates that all the forest on site would be foraging habitat for the Phascogale and hence must be at least of high conservation significance. The Action

\*(http://www.depi.vic.gov.au/\_\_data/assets/pdf\_file/0005/246479/Brush-tailed\_Phascogale\_Phascogale\_tapoatafa.pdf)

2

Statement refers to the animals need for foraging areas of more than 100ha and for their favouring of rough barked trees – both of these requirements are satisfied on this site and hence our conclusion that the forested areas on site are of at least high conservation significance.

A significant part of the box-ironbark forest will have to be cleared to make possible the greater than 40 lots proposed. A much larger area of vegetation will have to be cleared or modified to provide defendable space for the new housing. In addition there are the fringe effects that follow from any new housing estate being established in a forested area:

* When the new residents realize the dangerous situation they have been put in, from bushfires – they will exert pressure to have vegetation cleared in the forests in the hope that it will lessen their danger. This effect will become more pronounced as the bushfire seasons become worse due to climate change\*.
* Whenever there is a new housing estate established next to forested areas, there is consequent deterioration of the biodiversity of the forest due to increased feral pets, escaped garden plants, trail bike riding, dumping of rubbish, etc.

These fringe effects will impact on the biodiversity values, in the already classified high and very high conservation significant vegetation and into the adjoining Maldon Historical and Cultural Reserve.

**The Strategic Basis for this Amendment**

The strategic base for this development was set long ago – *The Rural Living Strategy*, 2006 and the C24 Panel Report of 2005\*\*. There have been dramatic changes in Government policy and its interpretation since then. The strategic basis for this Amendment needs to be re-assessed because of the following:

New Bushfire Protection Planning Provisions

Although the community raised the issue of the bushfire threat to residential development at TarranValley, the original Panel did not list bushfire safety as an issue.

*\* Bushfire Weather in Southeast Australia: Trends and Projected Climate Change Impacts;* Lucas, Hennessy, Mills, Bathols, 2007,([www.climateinstitute.org](http://www.climateinstitute.org))

\*\*http://dsewebapps.dse.vic.gov.au/Shared/ats.nsf/%28attachmentopen%29/2F224E1B00897CE3CA2570D900071DBA/$File/Mt+Alexander+C24+Panel+Report.pdf?OpenElement

3

Following the horror of the Black Saturday bushfires there have been major changes in the State Planning Policy Framework (SPPF). A new Clause 13.05 on bushfire safety follows the recommendations of the Royal Commission and now gives priority in planning to protecting human life over other policy considerations and to applying the precautionary principle to planning in areas at risk from bushfire.

**13.05 Bushfires**

**The strategic basis for this rezoning to a rural living zone needs to be re-looked at purely on the basis of this new priority to protecting human life.** This need for a re-appraisal is amplified by the effects of VC109 introduced in July 2014.

The New Bushfire Planning Provisions, VC109 (July 2014):

With VC109 the statutory bushfire provisions in Clause 52.47 have been severely downgraded:

* Large subdivisions (greater than 10 lots) no longer have to have greater defendable space provided than smaller subdivisions.
* The CFA is no longer a Determining Authority; it is only a Referencing Authority.
* The defendable space requirements have been severely reduced.

The effect on defendable space requirements has been dramatic, for example, with woodland on a 0 to 5 degree downslope and a BAL19 building construction standard, the defendable space required is 29m.

Prior to VC109 the defendable space required was 45m.

Similar downgrading of defendable space requirements occur for all slope and vegetation groups in Clause 52.47.

The technical basis for the defendable space requirements used prior to VC109 is in *Advisory Note 44 Defendable space in the Bushfire Management Overlay (Feb 2012).* Here the CFA note that the bushfire situation in Victoria is amongst the worst in the world and hence the worst case scenario has to be used. The CFA have used in their analysis the conditions present on Ash Wednesday i.e. a Fire Danger Index (FDI) of 120 and a Flame Temperature of 1200K. The fire weather on Black Saturday was far worse than on Ash Wednesday. Future Black Saturdays could be worse again due to climate change.

4

With VC109 the milder bushfire conditions of a FDI of 100 and a Flame Temperature of 1090K are used with the Australian Standard AS3959 to give the greatly reduced defendable space requirements. This is in no way a precautionary approach to bushfire protection and giving priority to protecting human life. VC109 was presumably done to give priority to economic development in areas already zoned residential.

**If priority is to be given to the protection of human life over other policy considerations in planning then there must be a thorough strategic planning effort to find areas of low bushfire risk for rezoning to residential use.**

Development in Open Potable Water Catchments

This development is positioned on a major waterway to the Cairn Curran Reservoir and is in the Special Water Supply (SWS) Catchment for the Cairn Curran and Laanecoorie Reservoirs.

Recent Supreme Court rulings and VCAT decisions\* have re-inforced the need for the precautionary principle to be applied to developments in SWS Catchments and that the *Guidelines for Planning Permit Applications in Open Potable Water Supply Catchment Areas,* November 2012 need to be applied. In this Amendment, Guideline 1 is relevant and needs to be complied with:

*“each lot created in the subdivision should be at least 40 hectares in area.”*

The exemptions to this guideline don’t apply in Mount Alexander Shire as there is no Domestic Wastewater Management Plan that has been accepted, implemented and audited, refer Mount Alexander Shire Council Meeting Minutes 25 August 2015 , page 42 .

**To comply with the Supreme Court and VCAT decisions, this development would need to be a 3 lot subdivision (for the lots to be 40ha), not a greater than 40 lot development.**

## \*Western Water v Rozen& Anor [2008] VSC 382 (29 September 2008)

## Rozen v Macedon Ranges SC (includes Summary) (Red Dot) [2009] VCAT 2746 (23 December 2009)

## Bakes v Mount Alexander SC & Ors [2010] VCAT 1416 (24 August 2010)

## Simpson v Ballarat CC [2011] VCAT 1859 (26 September 2011)

## White v Hepburn SC [2015] VCAT 6 (7 January 2015)

5

Population Projections used in Strategic Assessment

The strategic basis for this development was made in the C24 Amendment process. The C24 Panel in 2005 found that the Council was using an incorrect methodology for population projections and housing demand. The Panel said (p28):

*The Panel strongly disagrees with the adopted method of population projection using an historical average of lots created in subdivisions and projected household size as the indicator of future housing demand and population levels.*

And the Panel recommendations were (p 122):

And the Panel recommendation on the population estimates on Plan 2, Clause 21.03 was (p116):

The Council never removed the faulty figures from Plan 2.

The flawed population estimates and housing demand projections have been used by the Council since 2005 for its strategic planning, including for this development. The flawed projections used a 1.54% growth rate over 20 years (2001-2021).

The attached graph shows the actual population of Mount Alexander Shire as estimated by the ABS up to June 2013, followed by the population projections published in *Victoria In Future, 2015* up to June 2031. Also graphed are the population projections from the *Mount Alexander Urban Living Strategy*, October 2004 (MAULS) and the *Residential Land Demand and Supply Analysis*, September 2010 (RLD&SA).

The graphs show that the above two strategic documents used unrealistically high growth rates for population projections. For example, the MAULS document has a population projection for 2021 of 21,930, compared with the more realistic population projection of 19,291 from the VIF study. The MAULS analysis thus over estimates the population, in comparison to VIF, by 2,639 which translates to an over estimation in housing lots needed at this date of over 1,000 lots.

6

Similarly the RLD&SA document has a population projection of 22,806 by June 2026, whereas VIF projects a population of 20,255. This translates to an over estimation of 2,551 compared to the VIF projections and an over supply of over 1,000 housing lots at this date compared to the VIF projections.

**The graph shows that the Council has been using exaggerated population projections compared to the actual population growth in its strategic planning for the last 10 years, so the justification for this development is questionable.**

*Mount Alexander Rural Land Study*, 2014\*

Since the strategic work for this rural living zone proposal was done the *Mount Alexander Rural Land Study*, 2014 has been completed and adopted by Council. This Study was also a major import of information into the Amendment C61 Panel Report that has been accepted by Council and is waiting for Ministerial approval.

On the question of the Tarran Valley rural living development, the Study (page 80) says:

*However, recommendations for the nominated sites* (which include Tarran Valley) *are now considered out-dated and inappropriate given the chain of events and changes to policy that have occurred since 2006, and particularly relating to water supply protection, bushfire safety, and biodiversity management. The strategy’s encouragement for rural living development in areas with extensive vegetation cover (which generally couples with poor agricultural land quality), or directly adjoining such areas, is now problematic. This direction is now complicated by the apparent conflict between this and heightened concern relating to fire hazard and water quality risk.*

The Rural Land Study also made the recommendation:

*Further detailed work occur to develop additional sites for future investigation for rezoning to the Rural Living Zone in recognition that emergent government policy since the preparation of the 2006 Rural Living Strategy and pertaining particularly to bushfire hazard and water quality in potable water supply catchments has ‘changed the goal posts’ for rural living development, including the rezoning of land.*

\*<https://www.mountalexander.vic.gov.au/Files/Planning/final_Rural_Land_Study_-_Jan_2014.pdf>

7

**Conclusion**

Whilst we recognise there is some already cleared land on this site which is sufficiently clear of forested areas, the number of lots that could be found (perhaps 3) to conform to the restrictions detailed above, is severely limited. It would be better to adopt the recommendation offered by the 2014 Rural Land Study and look for more appropriate Rural Living Zone areas.

Yours faithfully,

Secretary