

From: [REDACTED]
To: [planninginquiry](#)
Subject: Submission - Inquiry into the protections within the Victorian Planning Framework
Date: Monday, 31 January 2022 2:04:39 PM
Attachments: [P2000 2020 St Leonards Property Holdings Pty Ltd v Macedon Ranges SC and Ors \(TB MT CB 12012022\).pdf](#)

MRRA *Established 1995. Included in the National Library of Australia and State Library of Victoria archives in 2009*
Macedon Ranges Residents' Association Inc. *Regn. No. A0034439T*

Macedon Ranges Residents' Association Inc notes the inquiry's terms of reference and makes the following submission in response to part 2, environmental sustainability and vegetation protection.

Submission

Background

Macedon Ranges Shire was the first Distinctive Area and Landscape to be declared in Victoria, following passage of the Planning and Environment Amendment (Distinctive Areas and Landscapes) legislation (2018) and its subsequent integration as Part 3AAB of the Planning and Environment Act. As required by that Part, the declaration of Macedon Ranges Shire as a distinctive area and landscape was gazetted in August 2018, and a Statement of Planning Policy was prepared and endorsed in 2019.

The Association has two related issues it wishes to put before the Committee, both of which are relevant to Macedon Ranges Shire and other areas now declared as Distinctive Areas and Landscapes.

Issue 1

Section 46AZK of the Planning and Environment Act 1987 addresses "*Responsible public entities not to act inconsistently with a Statement of Planning Policy*". As we see it, the problem is – what ramifications are there if a responsible public entity DOES act inconsistently with a Statement of Planning Policy? Is the decision void? How are those responsible for the decision held to account?

Example:

The gazetted declaration of Macedon Ranges Shire (1806 G33 16 August 2018, Victoria Government Gazette) lists, at Table 1 *Attributes qualifying declared area as a distinctive area and landscape*, at 4. *Natural resources or productive land*, "(a) *High quality soils between Lancefield, Hesket and Romsey.*"

In the Macedon Ranges Statement of Planning Policy, at policy domain *Agriculture and Natural Resources*, Objective 6 is "*To support and encourage agricultural land uses that strengthen the declared area's economy and contribute to the rural landscape*" with a related strategy to "*Encourage the use of rural-zoned land for agricultural purposes and encourage the use of high-quality soils for soil-based agriculture.*" (Page 26).

On 22 September 2021 Macedon Ranges Shire Council (on a 5 to 3 split vote) approved planning permit PLN/2020/331 for a Residential Aged Care Facility at Lot 2 Melbourne Road Romsey on land outside the town boundary between Romsey and Lancefield. In 2004 the land had been the subject of Amendment C14 which confirmed the land's high-quality soils and rezoned the land to RLZ1 (40ha minimum subdivision size) to recognise and protect these high-quality soils.

The applicant had earlier taken the matter to VCAT on a failure to determine but prior

to the VCAT hearing, all objections were withdrawn and the VCAT hearing did not go ahead. As a result, high-quality agricultural soil has been lost from agricultural production, with no ramifications for this inconsistency with the Statement of Planning Policy.

The matter we ask the Committee to consider is the failure of the Planning and Environment Act to provide processes to deal with responsible public entities acting inconsistently with a Statement of Planning Policy.

Issue 2

In a recent VCAT decision (VCAT Reference No. P2000/2020, Permit Application No. PLN/2020/291, *St. Leonards Property Holdings Pty Ltd v Macedon Ranges Shire Council* - attached), VCAT was requested to make a determination on the applicability of the Macedon Ranges Statement of Planning Policy to this matter, and on the status of VCAT in that regard. Paragraphs 80 through 86, and 92 through 95 of the VCAT decision are relevant.

At paragraph 95, VCAT Deputy President Teresa Bisucci observes, among other things, that:

“Section 3 of the PE Act does not include the Tribunal as a RPE [responsible public entity];” and

“Part 3AAB of the PE Act provides a process for the Minister and /or the RPE. The Tribunal does not have any role to play in decisions under Part 3AAB of the PE Act.”

The matter we ask the Committee to consider is the need to review and if necessary, amend the Planning and Environment Act to bring VCAT into line as a responsible public entity in relation to Part 3AAB.

Christine Pruneau,
Secretary,
Macedon Ranges Residents' Association Inc.

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