

VCAT ref: P709/2023
Our ref: DEVPLN/2022/2
Your ref: 99 Bena Road Korumburra

25 September 2023

Glenn Kell
Planning Central
PO Box 2301
OAKLEIGH 3166

Dear Glenn

**MATTERS UNSATISFIED
DEVELOPMENT PLAN APPLICATION – 99 BENA ROAD KORUMBURRA**

Please find below a response to matters unsatisfied in respect of the proposed development plan for 99 Bena Road as specified in paragraph 6 of VCAT Order 19 September 2023:

The responsible authority is directed to provide further and better particulars in respect to the matters it is unsatisfied with in respect of the proposed development plan to the applicant by no later than 4pm on Monday 25 September 2023. The material is to include any correspondence it currently has from any referral or statutory body.

Overview

Many of the application's key supporting documents are missing (e.g. integrated stormwater and flood management plan), lacking (e.g. Clause 56 assessment) or inconsistent (e.g. open space descriptions and access connections). Some of the consultant reports were based off previous layouts (e.g. Slope stability report and Preliminary site investigation report) and some reports have not been finalised (e.g. Giant Gippsland Earthworm Assessment). Many of the issues raised in the pre-application letter have not been addressed.

All reports should be updated to provide a complete set of application information for assessment. Before these documents are revised and submitted, however, the applicant needs to reconsider the application as a whole so that it provides a Development Plan for a broader area.



Broader Development Plan

The Development Plan area's boundaries are not broad enough nor are they strategically justified as per the requirements of the DPO6 which states:

Each development plan stage must represent a logical land development unit bounded by roads, natural features or the boundaries of the Development Plan Overlay map area.

The drainage work provided to date indicates that consideration of the land in the DPO6 and DPO7 areas would be worthwhile. It is recommended that the Development Plan includes at least the GRZ land in the DPO6 between Whitelaw, Bena and Jumbunna Roads. This is needed particularly to address offsite impacts such as traffic.

While realise that it is difficult to prepare a Development Plan and provide technical reports that apply to other landowners' parcels, there is other development interest in the area and Council can continue to facilitate collaboration between interested parties across the area. If funding is available, Council would be happy to provide staff resources to manage the preparation of a broader plan or specific consultant reports such as for traffic including the reviewing of any consultant briefs to ensure all relevant issues are addressed.

Site Layout

As discussed in the pre-application letter and still relevant to the new plans, the general layout of the subdivision is a grid pattern over steep land. This results in some roads exceeding our preferred IDM road slope recommendations. Consideration should be given to a site analysis and design response that seeks to work with the contours of the land and less on a standard grid. This will be a challenge but steep roads and footpaths are an impediment to encouraging pedestrian and cycle use and achieving solar access and have significant related safety concerns which we would like to explore avoiding.

The site layout should have consideration to view lines to features outside and / or distant from the subject land. There is potential for main roads and public spaces to take advantage of expansive views from the site to the surrounding countryside which will improve the visual appeal of the subdivision.

Most of the land at 99 Bena Road is steep (over 10% slope) with many areas very steep (over 20% and 25% slope, not including the waterway which is steeper again – see attached map). The application does not address the following DPO6 requirements:

Where steeply sloping land exists on the site, the development plan shall detail how the proposed design responds to the topography and contours of the land, and whether significant earthworks are likely to be required for



subdivisions to ensure good development design outcomes are achieved. Where land exceeds a slope of 20% a geotechnical report must be prepared by an appropriately qualified person demonstrating the suitability of the land for development.

The report must provide sufficient detail to ensure environmental, access and amenity issues are appropriately addressed. The report should detail whether building envelopes or other controls are likely to be required at the subdivision stage.

Slope Stability Assessment

The slope stability assessment does not address DPO6's requirements quoted above. It does not:

- Demonstrate the land's suitability for development, particularly the steepest areas
- Explain how the layout responds to topography
- Specify whether significant earthworks are likely to be required to ensure good design outcomes
- Appropriately address environment, access and amenity impacts
- Detail whether building envelopes or other controls are likely to be required at subdivision stage (such as the use of stumps rather than cut/fill and slab construction or split level developments).

Further details are needed regarding the amount of earthworks required to achieve the proposed layout, especially on the steep parts of Bena Road.

The risk levels that the assessment provides tend to align with what can be observed on-site (no unstable slopes) and the site's current undeveloped form. It is expected that development could drastically change the risk matrix since stormwater will be concentrated rather than dispersed and most sites are likely to have significant cut and or fill. It should consider, for example, where retaining walls are expected to be needed for roads.

Solar Access

It also is not clear how solar access will be achieved and ensured. This may require additional analysis and controls like building envelopes, particularly for sites on very steep southern slopes like lot 66 and steep east-west aligned lots like lot 97.

Lot Sizes

While lots are generally a reasonable size and width to accommodate slope, it is not clear that lot sizes correspond with the degree of slope. For example, lots



with the greatest degree of slope do not appear to be the largest like lots 18 and 44 which both have an 8 metre drop across the site. No analysis has been made of the amount of cut and fill likely to achieve development of these lots and the amenity and environmental impacts as per DPO6. Further information is needed to show how this will be addressed (e.g. via building envelopes or other controls). This has not been addressed in the slope stability report.

There may also be scope to provide smaller lots in some flatter areas, especially closer to the town centre. It is common to have smaller lots like 700sqm in the area.

Other Site Layout Issues

Other site layout issues which are referred to below include:

- Lack of information regarding the superlot
- Long street blocks
- Open space location and design lack of detail
- Lack of detail addressing interface issues

Stage 1 Superlot & Carinya Lodge

Details for the large lot in the north-east corner of the site should be included in the Development Plan including its potential use for aged care. If the site is to be used for aged care, the plan needs to show how it will be integrated into the existing facility and access will be provided.

The Development Plan also needs to demonstrate a sensitive interface with the existing aged care facility.

Road Layout & Traffic Impacts

The Traffic Report needs to be updated for the following reasons:

- It makes the incorrect assumption that Bena Road will retain its current classification. As Bena Rd is the only constructed and sealed road capable of being used as access for the proposed subdivision, it should therefore be considered as a future Collector Road to service the future developments in the area and sight line implications will need to be considered. And be constructed generally in accordance with plans developed for SGSC by BW, i.e. plan number 1601473-00-001-500_Rev P2 (Sheets 1 to 26).
- It does not account for future developments other than the Botanica site and the subject site. Consideration should be given to other possible subdivisions (including other subdivisions in the DPO6 area



that will have connection through the subject land to Bena Road) that will require Bena Rd as access.

- Not enough thought has been given to what is required to make Whitelaw Rd safe as it is currently only a single lane winding gravel road in poor condition and its intersection with the South Gippsland Highway is poorly suited to manage additional movements – discussed in more detail below.
- The SISD for the eastern access road does not account for future widening of Bena Rd and should be reviewed as it is considered that this access location is potentially unsafe due to the earthworks required through the deep embankment. The response should consider relocating or eliminating this access point. Should this access be retained a full Safe Systems Assessment and a Safety Audit of the proposed intersection should be undertaken to ensure it is appropriate. Pedestrian and cyclist access should be retained for permeability.
- No consideration has been given to what improvements should be applied to make the intersection of Bena, George and Jumbunna roads safe and future proof it for the projected traffic increases, including pedestrian refuges and cyclist features as appropriate.
- Speed management (LATM) devices should be located more consistently to ensure traffic speed is controlled to 40 kph or less for the entire network with selection of devices to have consideration of the expected longitudinal slopes on the road where guidance describes maximum desirable grades. While it is acknowledged that the urban speed limit is currently 50 kph, consideration should be given to allowing for this to be reduced to 40 kph at some time in the future.
- While a 2.5m shared path on both sides of the internal collector road is attractive it is considered that a better option is to provide a circuit through the estate of a continuous 2.5m shared path that can be used safely by pedestrians and cyclists. Such a circuit should be shown on the Development Plan. The design should allow for the potential to connect the shared path to the southern adjoining land in a logical manner when required.
- No consideration has been given to what may be developed on the super lot. As a minimum some consideration should be shown for a future development of this lot, in terms of traffic impact. If the super lot is to be used in relation to the adjoining aged care facility, this will have impacts on how this land addresses the adjoining land (including how it addresses Bena Road) and movement networks.
- A 2.5m shared path should be provided on Bena Road connecting to the existing shared path on Jumbunna Road, and an appropriate location for a crossing on Jumbunna Road. Probably best to show



this on the south side of Bena Road as it would be easier to construct and provide better amenity.

- Some consideration needs to be given to safe pedestrian crossing points along Bena Rd by way of pedestrian refuges at appropriate locations.
- The proposed turning lane treatment will need to be updated to reflect changed conditions on-site and current intersection design requirements.
- The plan should identify an appropriate location for a future bus stop and/or school bus pickup area on the Connector road.

The results of the TIAR need to be shown on the Development Plan, including:

- Widening of Bena Road carriageway width adjacent to the site by a minimum of 0.5 metres (excluding k&c) to achieve a 6.5 metre wide carriageway width and kerb and channel including shared path to be constructed on the south side for the length of the site's frontage to connect to the existing network which finishes at 45 Bena Road at the cost of the developer
- 2.5 metre wide shared path recommended in the TIAR to be provided on one side of the Connector Street, with standard 1.5m wide path on the other side.
- 1.5 metre footpaths for both sides of Access Streets

Slope

While the TIAR states that the longitudinal gradient of all streets “do not exceed the maximum grade limits as set out in “Table 4: Limiting Longitudinal Gradients” of the IDM, this does not appear to be the case. The IDM identifies that the desirable maximum grade is 10% and absolute maximum is 20%. In at least one location, the proposed layout appears to provide for a longitudinal gradient above 20% in the road network. Most of the roads have too much transverse grade which is also undesirable. This point relates to the abovementioned concerns that the subdivision layout is not site responsive and is not designed with appropriate consideration to the natural constraints of the land.

Extract from the IDM:

12.3.7 Limiting Longitudinal Gradients

Where kerb and channel is installed, Council will expect the Design Engineer to ensure that all road grades fall within the limits shown in Table 4.

Table 4 Limiting Longitudinal Gradients

Type of Grade	Grade
Desirable minimum grade	0.5 % (1 in 200)
Absolute minimum grade	0.33 % (1 in 300)
Desirable maximum grade	10 % (1 in 10)
Absolute maximum grade	20% (1 in 5) or greater with specific Council agreement.



Appendix E5 with highlights



Bena Road

Related to design response, the current eastern vehicle access across what is currently a steep embankment does not appear to be practical or safe, especially without moving large amounts of earth.

If the eastern entrance to Bena Road cannot be eliminated for vehicle access for emergency access reasons, we require a plan describing the extent of earthworks required to achieve access and sight distance and the impact on the proposed lots adjacent.

Our preference is for dwellings to front Bena Road where possible. The contours make this impractical in the steeper areas of the frontage, but our preference is that consideration be given to a subdivision design that allows dwellings to front Bena Road where practical. One option may be to provide a service road for access to Bena Road lots then another row of lots may be provided behind. With the current plan, it is not clear how the proposed lots along Bena Road will provide active frontages to both Bena Road and the internal road that they back onto.



Connector Road

As previously stated, Council would like to secure a continuous 24m wide Connector Road between Bena Road and Jumbunna Road through the subject land.

Unmade Road Reserve

Greater consideration should be given to using the existing 20m wide road reserve with additional width from the subject site to provide access at the western end of the site.

Street Block Length

As identified in the traffic report, some of the street blocks are very long. This does not respond to Clause 56.06-7 which states street blocks should generally be 120-240m in length. There are three east-west street blocks which could be broken up with additional road connections, facilitating a more pedestrian friendly environment.

Whitelaw Road

The TIAR concluded that there are no serious safety concerns with the existing road network adjacent to the site based on 2014-2019 casualty crash data. Council and DTP are aware that Whitelaw Road and its intersections with Bena Road and the South Gippsland Highway pose serious safety concerns that need to be addressed before further development occurs in the area. The TIAR should consider the development's likely impact on movements onto Whitelaw Road.

These need to be identified on the Development Plan and shown in the staging plan.

Stormwater and Flood Management Plan (SWMP)

An integrated stormwater and flood management plan needs to be provided that addresses Clause 19.03-3S of the planning scheme as well as DPO6. It needs to consider drainage over the entire catchment. Addressing stormwater is important, especially given existing issues with the north eastern drainage catchment within the subject land pushing stormwater into lots on the northern side of Bena Road already.

The submitted Memo, does not satisfy these requirements, as there is insufficient detail to assess. A Memo has been submitted which outlines the "high level stormwater and drainage requirements" only. While this may be appropriate for an initial assessment, DPO6 requires:



An integrated stormwater and flood management plan that incorporates water sensitive urban design techniques which provides for the protection of natural systems, integration of stormwater treatment into the landscape, improved water quality, and reduction and mitigation of run-off and peak flows, including consideration of downstream impacts.

While the submitted Memo suggests that these can be satisfied, it is not presented as a detailed SWMP for assessment, making it impossible to assess appropriately.

A detailed SWMP and Integrated Water Management Plan in accordance with the requirement of Clause 43.04 of the scheme for DPO6 should be submitted which at a minimum:

- Provides options to address the water quality requirements of the proposed development, including possible location and type of WSUD devices with an appropriate auditable MUSIC report.
- Indicates, in concept form, the size, depth and location of the required OSD to address the reduction/mitigation of runoff and peak flows from the development, particularly for the portions of the site draining towards the north-east and north-west.
- Provide location and details of the proposed Gross Pollutant Trap (GPT) including size of materials trapped, accessibility and level of maintenance required, and any proposed reserves to contain them.
- Subdivision layout to show drainage reserves to the north-east and north-west catchments as required.

Infrastructure Provision

DPO6 requires that onsite and offsite infrastructure provision needs to be identified for costing. The Development Plan should include details regarding development contributions and specifically off-site infrastructure required to facilitate the development and any proposed works in lieu as provided for in the Section 173 Agreement on the title.

Waterway

Further detail needs to be provided regarding how the waterway will be developed and managed. The waterway has eroded and steep banks that will present ongoing difficulties for Council to manage. A Waterway Management Plan should be prepared in consultation with the West Gippsland Catchment Management Authority (WGCMA). This should consider how the waterway can be made safe for an urban environment. It may be appropriate to place a pathway along the outer area of the drainage reserve however any area likely to be affected by a 1%AEP event should be excluded from use.



Open Space

Council will be looking to secure its 5% open space requirements in land and not payment. Public Open Space (POS) must be clearly delineated from drainage requirements and separated by road to achieve delineation. Further consultation is required on how the POS is to be used (passive or active with equipment) and developed. The proposed POS does not achieve this, has poor drainage and no details regarding its use and development are provided. It is also located at the furthest point of the development, providing poor access to surrounding residents.

Open space should be on land with a slope less than 5%. At present, part of the open space is on a slope of greater than 20%.

The preferred location for the POS is the southern boundary, providing an opportunity for an expanded POS area with the adjoining land, providing good access from urban areas to the POS. Alternatively open space could be provided at the superlot or on the highest point of the land and opportunity provided for canopy tree planting around main internal roads to soften the appearance of the development when viewed from outside of the site.

Some of the open space should be developed in an earlier stage, preferably as part of the first stage of development. We note that this has the benefit of being a selling point for the development.

Cultural Heritage

The Cultural Heritage report does not address how cultural heritage values will be managed through the proposal. Given the results of the investigation on the property to the north, it would not be unreasonable to expect that there will be heritage within the property and the best risk management strategy would be to prepare a voluntary CHMP. If any Aboriginal cultural heritage is identified during works then works will need to be stopped and appropriate authorisations sought under the Act, and without those in place upfront runs the risk of committing an offence.

Native Vegetation

It is not clear if native vegetation detailed in the Biodiversity Assessment is proposed for removal. This needs to be addressed prior to subdivision as a planning permit is required to remove native vegetation from all lots greater than 0.4ha in size. We note that the report indicated that tree 2 is likely to have provided habitat for a Powerful Owl at some stage and this was not listed in Table A4. The assessment may need to be checked to ensure listings are correct



(i.e. Filmy Maidenhair be listed as “Critically” endangered). Ideally the trees should be retained in the drainage reserve.

Giant Gippsland Earthworm Assessment

This report is marked draft and should be finalised.

Landscaping

A detailed landscaping plan needs to be provided to address DPO6 as well as Clause 56 requirements. This should address all proposed on-site and off-site landscaping with particular regard to the interface with surrounding developments, open space and roads. The landscape plan must include canopy tree plantings within both the internal and external road network to soften the visual impact of new development when viewed from within and outside the development area. The landscape plan must provide a high level of detail where new development is adjoining Bena Road. This plan should demonstrate how maintenance costs for areas that Council will take on can be minimised into the future.

Bushfire

The site is located within the Bushfire Prone Area at the edge of Korumburra. The proposed application should include an assessment of Clause 13.02. The *Design Guidelines – Settlement Planning at the Bushfire Interface* (2020) also provides guidance regarding CFA requirements. Until the southern adjoining land is developed, the CFA will likely identify fire risk on the southern boundary as a concern. The CFA are likely to expect not only a perimeter road along the edge of the settlement (as provided) but also a road as a boundary for each subdivision stage. This matter should be addressed in the Development Plan (with supporting / justifying information) to avoid the risk of changes when the permit is assessed.

The guidelines also recommend spacing roads leading away from a hazard to no more than 120 metres on average apart. This is not achieved with the existing layout. Additional roads could also address street block length issues.

Potential Contamination

The Preliminary Site Investigation report recommended that soil sampling should be undertaken to verify the soil condition at the site and screen for potential presence of Contaminants of Potential Concerns in the soil. Further details should be provided as to where soil sampling should occur. This soil sampling should be undertaken and results provided.



Previously a shed was located on site (evident in aerial photographs from 1972 to 1990 and gone in 2010). No details are provided about its use to confirm whether chemicals were stored there. It is expected that this should be included as a site for sampling and any locations where any chemicals may have runoff.

The report also recommended that any soils brought to the site should be tested to assess potential contamination prior to placement. Details about how this is to be achieved need to be provided.

The report recommends “only suitably qualified and experienced contractors and consultants should undertake technical assessment of this document”. As Council does not have such expertise in-house, the report should be updated or alternatively a peer review provided since a PSI should contain sufficient information for Council to determine form a decision in response to the investigation.

We also note that Planning Practice Note 30 now identifies sites being used for a new sensitive use (residential use) as having ‘medium’ potential for contamination and, as such, it would be advisable to have a PRSA or audit. The agricultural history for snow peas (horticulture) of the site could for example have resulted in residual soil contamination.

Staging

Staging should be reconsidered with:

- The open space dealt with earlier on (Stage 1 preferred)
- More information about Stage 1, particularly in regards to access, land use and development for the superlot
- Direction of development preferably reflected from east to west (starting closest to the town centre and moving further away)
- Roads encompassing each stage of development to provide a buffer from bushfire hazards

Other Matters

If agreement can be reached on the key details and layout of the Development Plan, Council is open to assessing the Development Plan alongside a planning permit application as previously discussed.

It is assumed that reticulated sewer and water can be provided to the site however confirmation with SGW may be beneficial as some local infrastructure is known to have capacity issues.



Application Plans

The current set of plans do not include a 'Development Plan' as previous versions of the application did. Council requests an updated Development Plan including the existing Development Plan in DPO6 as Stage 1 as well as identifying the subject site (broader area than 99 Bena Road) as Stage 2, and any balance of the undeveloped Development Plan mapped area identified as 'future approvals'. The Development Plan must include an approval date, version number and a summary of changes from the first approval. It should also show the stages of development of the subject site.

Development Plan Agreement

The agreement received by Council was signed by Robin Ernest Bowman. It is not clear what Robin's relationship to the proposal as this does not accord with the landowner (Hillview Rise) on Council's records.

Social and Affordable Housing

Council's recently adopted [Social and Affordable Housing Strategy \(2022\)](#) seeks to facilitate affordable housing outcomes in South Gippsland Shire. It states that for applications for 30 or more dwellings or residential lots, it is Council policy that the developer will provide 3% of the net developable area for social housing and that the landowner will enter into a Section 173 Agreement to secure that contribution. While this has not been introduced in to the South Gippsland Planning Scheme yet, we would welcome the opportunity to discuss the potential suitability for an agreed portion of the subject land to be identified for social and affordable housing and how this can be achieved. For example, there is potential for smaller lots to be provided closer to town and adjoining open space areas.

Yours sincerely

Chantal Lenthall
Senior Strategic Planning Officer