

13 April 2023

Planning Unit
Murrindindi Shire council
P.O BOX 138
ALEXANDRA, VIC. 3714

Dear Mr Fraser, Ms Maguire, and other relevant personnel

Application for Planning Permit No.: 2022/104
Creation of a Carriageway Easement
2427 Maroondah Highway, BUXTON 3711

Further to our letter dated 6 March 2023, we provide the following detailed response to the correspondence on this matter received in October 2022 and later. This has been a matter of some concern to us as a family and long-term resident of the shire, and accordingly we have reflected and discussed at some length on the issues. More lately, we have been highly engaged by our grape harvest and wine-making activities. The delay in providing this response does not indicate any lessening of the importance we place on this matter. We will explain below some of the personal and family issues that are involved as well as a response to the regulatory issues, as we feel these are both important in this decision.

Background

Our association with this property dates from 1939 with the original purchase of a much larger extent of farming land by my grandfather, G. G. Foletta. Some of this was sold in the 1960s. Ownership of the remaining land passed to my brother, sister and me in 1971 upon the death of my father. This was managed under a company structure until 2002, when it was determined to divide the remaining land and assets between the siblings. Since that time, our portion has been managed as a partnership, firstly between my husband and me, and since 2007 between my son Adrian and my husband Robert.

My son Adrian is an agronomist qualified at Melbourne University, and has had extensive industry experience in viticulture in major Yarra Valley wineries and for the last 15 years with E.E. Muir and Sons, a nationwide provider of agricultural supplies and services. He is the national viticulture lead for this company which employs over 200 agronomists, and he travels extensively to other states of Australia and Europe. He has served on a number of industry committees.

My husband Robert retired from his senior management position with Intercontinental Exchange in 2017, and has since been engaged full-time at the farm, which is now his official

residence. He and Adrian have worked tirelessly for over 20 years to build a viable agricultural business on this land. They have established vineyards, currently about 1.5 hectares, and have successfully sold out each year's vintage, distributing mainly in the Murrindindi shire, in the Yarra Valley and in Melbourne. They hope to expand production in future, and possibly provide employment opportunities to help manage the expansion. Opening a cellar door (other than the once-per-year basis for the annual Murrindindi Wine Weekend) remains an idea under regular review.

In addition, in 2008 they planted a small plantation of 350 oaks inoculated with *Tuber Melanosporum*, the Perigord Black Truffle. This yielded results after four years, and they currently supply about 20 restaurants in Alexandra, the Yarra Valley and Melbourne, as well as cheese makers, butchers and other product manufacturers. They are currently assessing whether they can offer truffle hunts commercially, which would help to expand the tourism offerings of the shire.

In addition, they run a small herd of 22 Angus breeders for annual weaner production. This grazing activity also helps to manage fire risk. As will be mentioned below, we take annual fire season preparation very seriously, and successfully came through the fires in 2009.

Together these enterprises are now reaching helpful levels of profitability, which has supported our continuing re-investment in the land and infrastructure.

Family succession

My husband Robert and I have three children: Megan, Adrian and James. Adrian has lived on the farm for most of the last 25 years. Megan and James have a life-long association with, and love for, the farm and its environs, but their interests and predilections have taken their careers and lives towards other pursuits.

For several years, my husband and I have wrestled with the complex issues of what can happen to the farm when we pass on. A farm, its activities and the emotional attachments to it are too complex to be boiled down simply to an economic value, without doing violence to some of those emotions and relationships. On the other hand, it is clear that Adrian has had the most significant and intrinsic involvement in the farm and its future, and that he would carry on the enterprises thus far established, build upon them, and reap a reward from the efforts he has put in over all these years.

My husband and I hired an (allegedly) professional facilitator to help us work through the process. After working with us (and being paid) for a year of consultation, he resigned, saying it was beyond his capacity to deal with! That was highly disappointing, but also indicative that it is not an easy situation to resolve.

Our guiding principles are to treat all of our children equally, but with some assets not easily reducible or divisible, we needed to make some decisions. In particular, breaking up the farm into viable units for each child was neither feasible nor desirable. After much consideration, we resolved that we could in effect transfer the two titles to the west side of the Acheron River to Adrian (in effect as early access to his inheritance, at an agreed value),

and pass the title on the east side of the Acheron in our wills to all three children. They can then resolve how they take that arrangement into the future. We have other assets which we hope will enable our three children to receive an “equal” (to the extent possible) inheritance. This would be documented in our wills and in a family agreement to be signed by all members of the family. We cannot complete this process until the current proposed land transfer (and easement) is resolved.

From our perspective, there are a number of merits in our approach. This would enable Adrian to build his own house (STCA) on the subject land, where the horticultural activities are already established. This would free up room in our existing small farmhouse (which we are also planning to extend), enabling us to accommodate our other children, their families and friends from time to time, which is currently not feasible. This would ensure that the land remains under Adrian’s expert management, and give our other children an on-going stake in the farm to the extent they want to maintain that. The existing titles enable this solution without negotiation required to re-draw boundaries, etc.

The email from DEWLP on 12 October detailing its objection to the carriageway easement states that “the application states that there is a plan to split the property...” This is emphatically not the intention. The intention is to keep it a functional whole. But we do need to think through the implications for the future.

While we would love our family to enjoy the full property into the future as they have done for decades in the past, this is not realistic, as change can come unexpectedly in time and impact. We have experience of the family dynamics that led to the division of “Acheron Park” (the property we inherited) which was a difficult process, leading to lasting wounds. My father’s will was also contested in 1971 by his second wife. While being realistic about what can be pre-determined, my husband and I are trying our best to work out a platform for the future which can help to minimise conflict.

This has led to the need to provide the proposed carriageway easement through the east-side block, to ensure secure access to the land to the west-side of the Acheron River. It appears this is also necessary from a Council point of view to grant a planning permit for a house construction.

A final point on succession. The examples we have encountered in relation to other families who have ignored, avoided, or postponed the difficult topic of farm succession have shown us that such an approach leads almost inevitably to pain, misunderstanding and broken relationships.

Is this a “development”?

Our intentions should be clear from the material above, but it is worth stating explicitly that this is not a plan to create economic gain. We have always thought of this land as a whole, and the purpose of this proposed plan is to be able to maintain the integrity of the current farm to the extent possible. We are fortunate to enjoy its beauty and natural values, and we wish to continue to support and enhance that in future. We rue seeing arable farmland divided into small blocks. While we understand why more people want their country

retreat, there is a self-defeating component to the division of land into small holdings, which end up being managed as large suburban blocks rather than something that enhances, and is in tune with, the wider landscape.

This is not just our recent view. When Council was looking at developing some of the shire's townships through rezoning in 2003, we provided a detailed submission to Council (dated 11 August 2003) on what we thought were beneficial approaches to development (we can provide a copy, if you are interested). The continued subdivision of agricultural land into non-productive units is recognised globally as a retrograde approach both in environmental and food-security terms. When Council re-zoned land around Buxton in the early 2000s, we elected not to take up the opportunity to rezone the block on the east-side of the Acheron River. Continued use of the land as an economic base while maintaining its amenity and natural values was more important to us than some prospect of future dollars. That remains our goal.

History of farm access

The house we currently occupy was built in 1946. Verbal information provided to my sister from Mr Jack Hall (deceased), who was involved with the construction of the nearby bridge across the Acheron River, stated that the bridge was built in the same year. The concrete piers and end abutments are possibly the same concrete used in the construction of our house. The main supports were large tree trunks fixed to the concrete, with hardwood joists and timber decking and railings.

By the time my husband and I occupied our house in February 1973, the timber decking of the bridge was showing signs of wear. Although still useable, we became progressively concerned until the early 1980s we decided no longer to allow vehicular traffic. The timber decking and main bearer structure was removed and completely rebuilt using steel girders and pre-stressed concrete slabs for the road surface in 1988 by Waldren Bridges Pty Ltd of Yackandandah. We retain the files including engineering notes, correspondence, etc. relating to the bridge specification and design. We also have the letter from the State Rivers Irrigation Trust giving us explicit permission to rebuild the bridge as specified. (So, officialdom has been aware of the bridge for decades.)

During our fifty-plus years occupying the house at 2427 Maroondah Highway, we have experienced several significant flood events (1974, 1975, 1996, 2010, 2011, 2022). Due to the original careful siting and strong construction of the bridge, it has weathered all of those events essentially without harm. We recognise that we are the owners and managers of the bridge, and we are and will be responsible for its upkeep and repair.

The bridge has only ever been used by us for private farm access. There is no intention to use it in future for purposes other than to support the farm and its enterprises. Adrian will retain some level of ownership in the entirety of the current farm property.

Options proposed by DEWLP

In its objection to the proposal and rationale for it, DEWLP seems primarily concerned to avoid any liability. On that basis, they are willing to block a usage that has existed benignly for nearly 80 years without detriment to the environment or to the government, and they propose instead other solutions that are hugely expensive (either for Council or for us), and potentially detrimental to their own stated aims, leading to potential environmental harms. Even though they state that “we generally support internal bridges used by individual landholders for the purpose of accessing their own property usually for agricultural purposes”, they still object, despite the fact that this is exactly what we need and propose. It smacks of a position that is taken without bothering to really see how their own principles should apply, and that does not take into account the larger picture.

The passage across Crown land is approximately 20 metres in length. The existing gravel track has been in place and in use for nearly 80 years. This has not impeded the re-growth of bush along the river, which we have in fact fostered. We hold an agricultural licence to use the riparian zone for occasional grazing. That licence also obligates us to manage weeds and maintain the land in other respects. It grants us a right to access and travel through the land with our vehicles. Not only do we carry out blackberry eradication program each year, including some of the sensitive areas along the river, after the 2009 fires, we worked with catchment management authority to fence off a substantial part of the riparian zone to allow re-growth and to protect a sensitive stretch of the river that is home to platypus and other native flora and fauna. The comment from Sue Kosch of Goulburn-Murray Water was that they had not seen such a diversity and number of species on private land in the area.

Notwithstanding that we have the right to graze the land, we have only used that land for grazing a few times, in appropriate seasons. Furthermore, we have harvested and resown native grasses and fenced off seedling trees in these areas and in other parts of the river bank to promote recovery from the fires. The existing track which is the subject of this issue affects less than one-hundredth of one percent of the total riparian zone

Our family agreement will explicitly allocate responsibility for the maintenance and repair of the bridge between family members so that this is not a basis for future dispute, either within the family or with government. We do not expect Council or any other government department to maintain or repair the bridge. We did not ask for assistance to rebuild the bridge deck in the 1980s and we will not seek this in future (except in a case where major flood relief funding is made available for that purpose and we can demonstrate a genuine need).

DEWLP suggested that a nearby latent government road, which passes between neighbouring properties, could be opened up, a bridge constructed across the river, and the Council could declare it a road (that it would have to maintain), thus giving my son “legal” access to the property. This suggestion is ludicrous. It would be a huge expense (and who is to pay?), it would create another river crossing (which in another moment DEWLP considers to be undesirable), it would likely concern our neighbours who would have a public road on their boundaries, and the road would in effect lead to no other useful destination.

In 2002, when my brother, sister and I were negotiating the division of the former extent of the farm, my brother asked Council whether it would be feasible to open that road so that the land to the west of the Acheron River could be divided into two areas with separate access. The answer given by Ms Girvan at the time was that there would be “no way” Council would agree to that. (Just to be clear, this is not what we are seeking now.)

DEWLP further suggested that the proposed easement could be declared a public road by the Council and incorporate the strip of Crown land on the west side of the river. This is highly undesirable from our point of view. We are fortunate to enjoy the amenity of privacy in our situation. We already have intrusion of occasional people who feel they can just drive into our property, and, in some cases, set up camp! Google Maps even had our driveway mistakenly labelled as the “Maroondah Highway”, which was the source of many an amusing encounter. We have in fact shared our property with hundreds of guests over the years. We have many people who come to fish in the Acheron with our permission, and many who don’t ask permission, though we do not object to that, unless they rudely walk past us while we are having a family dinner in the yard!

Members of the public have caused damage to our fences, led to disruption to our livestock, left rubbish and garbage, and have set campfires at inappropriate times in inappropriate locations. On the whole, these remain minor inconveniences. Opening up public access down our front driveway would amplify this problem significantly.

We also have bio-security concerns, as both our vineyards and our truffiere require strict control of access to prevent the introduction of pests and diseases. My son Adrian visits many vineyards in the course of his work, and he maintains a strict regime of separation, meaning his work vehicle and work clothing are never used when accessing the farm. Work clothing is washed hygienically. While we cannot request such a strict regime of every visitor, we do insist on footbaths before entering sensitive areas, and we ask if they have visited other vineyards during their trip to our farm. If we have no control over people entering our property, we potentially open ourselves to problems of this nature.

Now, we are of the view that Council would not see feasibility or value in declaring the roads as suggested by DEWLP. They are retrograde in just about every aspect, apart from addressing DELWP’s concern that there is something contrary to policy (in an infinitesimally small and very obscure part of the State, let alone the Shire) and their concern to avoid any liability.

Solutions?

We are wondering if Murrindindi Shire is in fact obliged to accept DELWP’s objection and could just go ahead and grant the easement, based on supporting the obvious merits of the proposal and avoiding the downsides of continuing to obstruct this family plan to develop viable enterprises in a sustainable and long-term way. The sheer fact of the historical and continuous use of the land as we have for decades is a strong basis to over-rule any objection to its continuation. Because there are no harms arising from that use, and there is no prospect of future harms. In fact this use is enabling us to continue to promote the natural environment as well as sustainably managed agricultural enterprises.

We hope that Council will give careful consideration to our submission, and look for ways to resolve any issues in order to achieve the benefits described above. We would be willing to discuss this in detail with planning or other Council representatives, and are willing to consider measures that will help to satisfy official concerns. Please advise if you would like to meet on this matter. [REDACTED]

Yours sincerely

LGF

Louise G Utter
[REDACTED]