



# **AGENDA**

## **S86 Development Assessment Committee Meeting**

**Wednesday, 19 February 2020**

**I hereby give notice that a s.86 Development Assessment Committee Meeting will be held on:**

**Date: Wednesday, 19 February 2020**

**Time: 6.00pm**

**Location: The Pavilion Room, Darley Civic Hub**

**Derek Madden  
Chief Executive Officer**

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**1 OPENING****2 PRESENT AND APOLOGIES****3 RECORDING OF MEETING**

As well as the Council for its minute taking purposes, the following organisations have been granted permission to make an audio recording of this meeting:

- The Moorabool News; and
- The Star Weekly.

**4 CONFIRMATION OF MINUTES**

S86 Development Assessment Committee Meeting - Wednesday 18 December 2019

**5 MATTERS ARISING FROM PREVIOUS MINUTES****6 DISCLOSURE OF CONFLICTS OF INTERESTS**

Under the Local Government Act (1989), the classification of the type of interest giving rise to a conflict is; a direct interest; or an indirect interest (section 77A and 77B). The type of indirect interest specified under Section 78, 78A, 78B, 78C or 78D of the Local Government Act 1989 set out the requirements of a Councillor or member of a Special Committee to disclose any conflicts of interest that the Councillor or member of a Special Committee may have in a matter being or likely to be considered at a meeting of the Council or Committee.

Definitions of the class of the interest are:

- A direct interest (section 77A, 77B)
- An indirect interest (see below)
  - indirect interest by close association (section 78)
  - indirect financial interest (section 78A)
  - indirect interest because of conflicting duty (section 78B)
  - indirect interest because of receipt of gift(s) (section 78C)
  - indirect interest through civil proceedings (section 78D)
  - indirect interest because of impact on residential amenity (section 78E)

**Time for Disclosure of Conflicts of Interest**

In addition to the Council protocol relating to disclosure at the beginning of the meeting, section 79 of the Local Government Act 1989 (the Act) requires a Councillor to disclose the details, classification and the nature of the conflict of interest immediately at the beginning of the meeting and/or before consideration or discussion of the Item.

Section 79(6) of the Act states:

While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must:

- (a) Leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
- (b) Remain outside the room and any gallery or other area in view of hearing of the room.

The Councillor is to be notified by the Mayor or Chairperson of the special committee that he or she may return to the room after consideration of the matter and all votes on the matter.

There are important reasons for requiring this disclosure immediately before the relevant matter is considered.

- Firstly, members of the public might only be in attendance for part of a meeting and should be able to see that all matters are considered in an appropriately transparent manner.
- Secondly, if conflicts of interest are not disclosed immediately before an item there is a risk that a Councillor who arrives late to a meeting may fail to disclose their conflict of interest and be in breach of the Act.

## 7 COMMUNITY PLANNING REPORTS

### 7.1 PA2019136 - THREE LOT SUBDIVISION AT 14 SPENCER ROAD, BALLAN

**Author:** Thomas Tonkin, Statutory Planner

**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development

**Attachments:** 1. Subdivision layout

#### APPLICATION SUMMARY

**Permit No:** PA2019136

**Lodgement Date:** 20 June 2019

**Planning Officer:** Tom Tonkin

**Address of the land:** 14 Spencer Road Ballan

**Proposal:** Three lot subdivision

**Lot size:** 4098sq m

**Why is a permit required?** Clause 32.08 General Residential Zone - Subdivision  
Clause 42.01 Environmental Significance Overlay, Schedule 1 - Subdivision

#### RECOMMENDATION

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2019136 for Three (3) Lot Subdivision at Lot 2 on PS 145934Y known as 14 Spencer Road, Ballan 3342, on the following grounds:

1. The proposed subdivision is inconsistent with the relevant Planning Policy Framework and Local Planning Policy Framework;
2. The proposal is inconsistent with the purpose of the General Residential Zone
3. The proposal does not respect the surrounding neighbourhood character; and
4. The proposal is inconsistent with Council's adopted Moorabool Planning Scheme Amendment C88.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	3.
Consultation meeting:	No. The applicant made a written reply to the objections but did not wish to have a consultation meeting.

**POLICY IMPLICATIONS**

The Council Plan 2017-2021 provides as follows:

**Strategic Objective 2: Minimising Environmental Impact****Context 2A: Built Environment**

The proposal is consistent with the Council Plan 2017 – 2021.

**VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

**OFFICER'S DECLARATION OF CONFLICT OF INTERESTS**

Under section 80C of the *Local Government Act 1989* (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*Executive Manager – Henry Bezuidenhout*

In providing this advice to Council as the Executive Manager, I have no interests to disclose in this report.

*Author – Tom Tonkin*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

**EXECUTIVE SUMMARY**

Application referred?	Yes, to Council's Infrastructure and Strategic Planning units and the relevant utility providers and water boards.
Any issues raised in referral responses?	Yes, Strategic Planning objected to the proposal due to its inconsistency with the Ballan Strategic Directions and Planning Scheme Amendment C88, which recommends minimum lot sizes of 1400sq m for this site, and because the proposed frontage widths of Lots 1 and 3 are too narrow to conserve the neighbourhood character.
Preliminary concerns?	Officer concerns were consistent with the Strategic Planning objection.
Any discussions with applicant regarding concerns?	Yes, the officer wrote to the applicant regarding these concerns and subsequently met with the applicant and landowner to discuss which included how the proposal could be amended to mitigate the concerns raised.



Any changes made to the application since being lodged?	Yes, the applicant amended the plan of subdivision to include building exclusion zones on Lots 1 & 3 which would limit the location of future development to the rear sections of these lots.  It is noted that whilst this is considered to benefit the streetscape it does not resolve the fundamental concerns regarding the lot sizes and overall lot layout.
Brief history.	None applicable.
Previous applications for the site?	No.
General summary.	It is proposed to subdivide the site into three lots of 1366sq m each. The existing dwelling would be contained on Lot 2, and Lots 1 and 3 would be vacant. Each lot would have direct access to Spencer Road and there would be no common property.  Two objections were received, citing concerns including stormwater runoff, neighbourhood character and inconsistency with Council's adopted strategy for Ballan.  Overall, the proposal is inconsistent with existing planning policy in the Moorabool Planning Scheme and incompatible with Council's adopted Amendment C88 which recommends minimum lot sizes of 1400sq m.
<b>Summary Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , on the grounds included in this report.	

## SITE DESCRIPTION

The site is identified as Lot 2 on PS 145934Y and known as 14 Spencer Road, Ballan and is located on the east side of Spencer Road approximately 85m north of Berry Street. The site is roughly square shaped with a 63.76m frontage, depth of 64.3m and an area of 4098sq m and occupied by a single storey dwelling positioned towards the centre of the site and an ancillary outbuilding positioned towards the northeast corner of the site. The site is sparsely vegetated and is relatively flat with a fall generally to the south of less than 1.0m. Vehicle access is via two single crossovers leading to a semi-circular driveway in the dwelling's front setback.

The site and surrounding land is in the General Residential Zone, Schedule 1 and comprises a range of lot sizes, including smaller and larger than the subject site. Land to the west of Spencer Road has been substantially developed over the past 10-15 years for dwellings on lots generally less than 800sq m in size. This is in comparison to land east of Spencer Road, including the subject site, which generally comprises lots 4000-6000sq m in size containing single dwellings in spacious surroundings. To the east of the site is a dwelling on a lot of 4050sq m, to the north a dwelling on a lot of 4048sq m, to the south two lots of 2174sq m and 1933sq m each containing a single dwelling. To the west, across Spencer Road, is a single dwelling on a lot of approximately 1.97ha.

## PROPOSAL

It is proposed to subdivide the site into three lots each with a frontage to Spencer Road. Each lot would be 1366sq m in size. Lots 1 and 3 would be vacant and irregularly shaped, with respective frontage widths of 14m and 16m and building exclusion zones imposed for the front setbacks extending for 35m as measured from the street frontages. Lot 2 would contain the existing dwelling on a roughly square shaped lot with a 33.76m frontage.

No common property is proposed. There is existing vehicle access proposed to Lots 1 and 2 whilst Lot 3 would require a new crossover.

## BACKGROUND TO CURRENT PROPOSAL

The subject site is proposed to be rezoned to Neighbourhood Residential Zone, Schedule 6 (NRZ6), as part of Planning Scheme Amendment C88 to the Moorabool Planning Scheme in implement Ballan Strategic Directions (June 2018). The NRZ6 would impose a minimum lot size of 1400sq m for subdivision. Council resolved at its Ordinary Meeting of Council on 2 October 2019 to accept the Panel's recommendations, adopt the Amendment and submit the Amendment to the Minister for Planning for approval. Under Section 60(1A)(h) of the *Planning and Environment Act 1987*, before deciding on an application Council may consider any amendment to the planning scheme which has been adopted by Council but not yet approved by the Minister for Planning.

## HISTORY

On 20 November 2019 at its Development Assessment Committee meeting, Council resolved to defer consideration of this application to the next available Committee meeting at the applicant's request due to their unavailability to attend.

## PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners by mail and a sign erected on site from 30 July until 15 August 2019. Two objections were received.

## SUMMARY OF OBJECTIONS

The objections received are detailed below with officer's comments accompanying them:

Objection	Any Relevant Requirement
The lack of stormwater infrastructure in the immediate area means stormwater runoff from the subject site currently affects adjoining properties which would continue unless an appropriate drainage system is installed for the proposed development.	Clause 56.07-4.
<b>Officer's Response:</b> Approval of the application would be conditional on a drainage system being designed to Council requirements.	
The zoning for the site is for minimum 1400sq m lot sizes so a permit should not be granted.	Clause 32.08 and Amendment C88.

<b>Officer's Response:</b> <p>The current zoning does not impose any minimum lot size but Council adopted Planning Scheme Amendment C88 on 2 October 2019 which would rezone the land and impose a minimum lot size requirement of 1400sq m. Relevant legislation enables Council to consider the Amendment in determining this application.</p>	
Like unit developments in Ballan, the proposal would drastically lower the amenity and building standards in Ballan which is unwarranted, undesirable to most residents and should not be allowed.	Clause 65.
<b>Officer's Response:</b> <p>The amenity of the area is considered in the assessment of this application.</p>	
The proposal would result in two future dwellings on our fence line drastically changing the view and aesthetics of our yard for the worse and impacting on our privacy and living conditions.	Clause 65.
<b>Officer's Response:</b> <p>The amenity of the area is considered in the assessment of this application.</p>	
Concerns about the impact of two additional dwellings on the subject site's septic system.	Clauses 42.01 & 56.07-3.
<b>Officer's Response:</b> <p>Approval of the application would be conditional on all lots being connected to sewer, to Central Highlands Water requirements.</p>	
The proposal conflicts with Council's adopted Amendment C88 which protects the area from inappropriate development and retains the valued neighbourhood character in this part of Ballan.	Amendment C88.
<b>Officer's Response:</b> <p>The current zoning does not impose any minimum lot size but Council adopted Planning Scheme Amendment C88 on 2 October 2019 which would rezone the land and impose a minimum lot size requirement of 1400sq m. Relevant legislation enables Council to consider the Planning Scheme Amendment in determining this application. At the time of lodgement of the subdivision application, Amendment C88 was far advanced (seriously entertained document) and the applicant was made aware of this and that the outcome sought by this application would be inconsistent.</p>	

**LOCALITY MAP**

The map below indicates the location of the subject site and the zoning of the surrounding area.

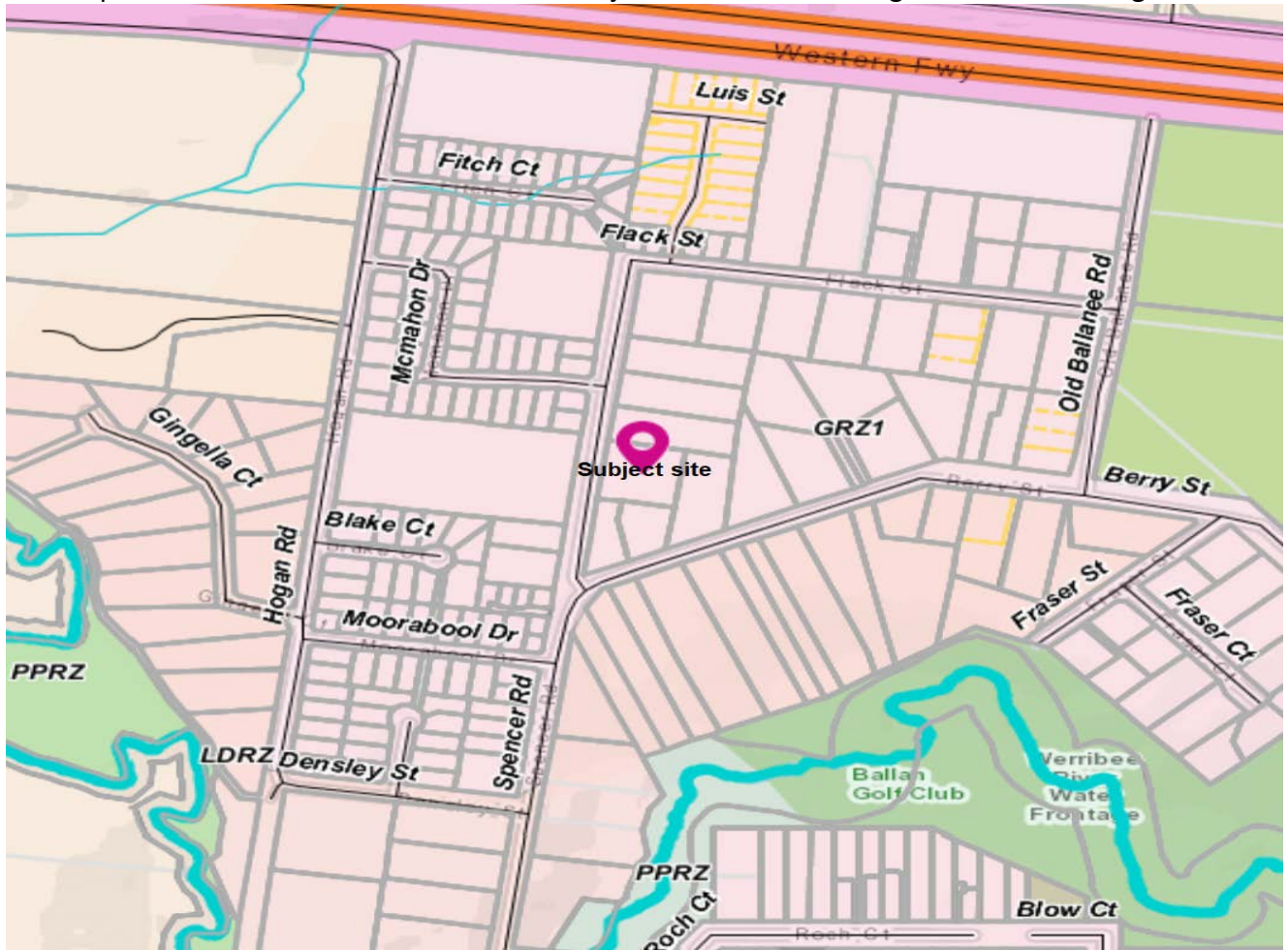


Figure 1: Site Context



Figure 2: Aerial Photograph

## PLANNING SCHEME PROVISIONS

Council is required to consider the Victoria Planning Provisions and give particular attention to the Planning Policy Framework (PPF), the Local Planning Policy Framework (LPPF) and the Municipal Strategic Statement (MSS).

The relevant clauses are:

- Clause 11.03-3S Peri-urban areas
- Clause 14.02 Water
- Clause 15.01-3S Subdivision design
- Clause 15.01-5S Neighbourhood character
- Clause 16.01-2S Location of residential development
- Clause 21.02-3 Water and catchment management
- Clause 21.03-2 Urban Growth Management
- Clause 21.03-3 Residential Development
- Clause 21.03-4 Landscape and Neighbourhood Character
- Clause 21.08 Ballan
- Clause 22.02 Special Water Supply Catchments.

In assessing it against the relevant sections of the PPF and LPPF, the following significant non-compliances were identified:

Table 1: PPF and LPPF Assessment

PPF	Title	Response
Clause 15.01-5S	Neighbourhood character	The proposal does not respond positively to the key features of the existing or preferred neighbourhood character.
Clause 16.01-2S	Location of residential development	The proposal would facilitate residential growth in an area of Ballan where Council seeks to limit growth and encourages growth in other areas of the town with better infrastructure provision and proximity to services.
LPPF		
Clause 21.03-2	Urban Growth Management	The proposal would facilitate residential growth in an area of Ballan where Council seeks to limit growth and encourages growth in other areas of the town with better infrastructure provision and proximity to services.
Clause 21.03-4	Landscape and Neighbourhood Character	The proposal does not respond appropriately to the key features of the existing or preferred neighbourhood character.



**ZONE**

The subject site is in the General Residential Zone, Schedule 2 (GRZ1). The purpose of the General Residential Zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To encourage development that respects the neighbourhood character of the area.*
- *To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.*
- *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

Under Clause 32.08-3 a permit is required to subdivide land. An application must meet the requirements of Clause 56.

Overall, the proposal is inconsistent with the purpose of the Zone.

**OVERLAYS**

The site is affected by Environmental Significance Overlay, Schedule 1. Under Clause 42.01-2 a permit is required to subdivide land. There are no relevant exemptions under Schedule 1.

Subject to conditions, the subdivision would be generally consistent with the overlay provisions.

**Relevant Policies**Ballan Strategic Directions

Ballan Strategic Directions sets out objectives, strategies and actions for the long-term planning of Ballan relating to:

- Urban form and character
- Residential development
- Movement network and connectivity
- Open space and recreation
- Community facilities
- Non-residential uses and local employment

Drainage and servicing. The subject site is in Precinct D in the Ballan Settlement Framework Plan, with Design Objectives specified for each of the town's established residential precincts. The design objectives for Precinct D are:

- Maintain the open and spacious character through large lots that are occupied by single dwellings, wide frontages and substantial setbacks around the dwellings.
- Built form will continue to occupy a low proportion of the site and dwellings will stand in expansive grounds where openness, landscaping and vegetation will dominate.
- Development will complement and preserve the natural characteristics, including the use of muted colours and tones that blend with the existing landscape.
- Built form will generally be of a scale similar to existing development, noting that conventional residential lots in this Precinct are atypical and discouraged.
- No front fencing or otherwise low scale timber post and rail or rural wire fencing is encouraged.

To assist in achieving the above objectives, it was proposed to rezone the Precinct to the Neighbourhood Residential Zone and apply a minimum lot size of 1400sq m.

Amendment C88 to the Moorabool Planning Scheme, adopted by Council on 2 October 2019, would implement many of the Ballan Strategic Directions recommendations, in particular the rezoning of the subject site.

### Particular Provisions

#### Clause 53.01 Public Open Space Contribution and Subdivision

A person who proposes to subdivide land must make a contribution to the Council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under section 18 of the *Subdivision Act 1988*.

It is recommended that, if a permit is issued, a contribution equivalent to 5% of the site value be imposed as a condition of approval.

#### Clause 56 Residential Subdivision

The proposal complies with ResCode (Clause 56), with the exception of the following:

Clause ResCode	Title	Response
56.03-5	Neighbourhood character	The proposal does not respond positively to the key features of the existing or preferred neighbourhood character.

### DISCUSSION

Overall, the proposal is considered to be inconsistent with relevant State and Local planning policy and its intent, the General Residential Zone and Clause 56 in the Moorabool Planning Scheme, and Council's adopted Planning Scheme Amendment C88.

The Central Highlands Regional Growth Plan (Victorian Government 2014) identifies Ballan as one of several towns which will support an increased population to absorb growth pressures in the region. However, growth must be balanced with the need for new development to respect the existing or preferred neighbourhood character and integrate with the surrounding environment.

The subject site and surrounding land is in the General Residential Zone, Schedule 1 (GRZ1). Existing nearby development reflects the growth of Ballan over the past few decades, typified by the incremental subdivision of most land west of Spencer Road into smaller residential lots of generally 600-800sq m. Land east of Spencer Road, including the subject site, is largely unchanged since the 1980's, reflected by single dwellings on lots typically larger than 4000sq m. There is a clear distinction between the east and west sides of Spencer Road in terms of neighbourhood character, based on the variation in lot sizes.

Relevant planning policy at the State and local level requires consideration of a range of policy directions which generally seek to support the valued character of Melbourne's peri-urban settlements whilst ensuring the consolidation of growth in suitable locations to ensure no detrimental impacts to the environment or rural land uses. Local policy at Clause 21.08 of the Moorabool Planning Scheme recognizes Ballan's role in supporting residential growth as the Shire's second largest town balanced with policies which support growth in areas readily accessible to services and infrastructure and recognition of neighbourhood character. Council's

adopted Amendment C88 to the Moorabool Planning Scheme strengthens existing policy by giving much clearer guidance to how growth should be managed by being directed to particular locations and discouraged in other locations.

This is reflected by rezoning some land and imposing minimum lot sizes in parts of the town, including the subject site and all surrounding land. The proposed subdivision, creating lot sizes of 1366sq m, is neither consistent with the existing neighbourhood character or the preferred neighbourhood character, as expressed in Amendment C88 which recommends rezoning and minimum lot sizes of 1400sq m. Adjoining properties on the east of Spencer Road are typified by spacious backyards enabled by the large lot sizes, providing for substantial setbacks between dwellings and space for open yards and trees. Whilst the streetscape presentation would be largely undisrupted, the proposal would create two vacant lots occupying the rear of the site, resulting in a development density inconsistent with the surrounding character. Furthermore, the property's shape and the existing dwelling's central position obstructs further subdivision of the site in a manner which would respect the neighbourhood character in terms of lot configuration and retention of the spacious backyard character of the area.

### GENERAL PROVISIONS

Clause 65 – Decision Guidelines have been considered by officers in evaluating this application.

Clause 66 – Stipulates all the relevant referral authorities to which the application must be referred.

### REFERRALS

Authority	Response
Western Water	Consent
Southern Rural Water	Consent with conditions
Melbourne Water	Consent
Central Highlands Water	Consent with conditions
Powercor	Consent with conditions
Downer Utilities	Consent with conditions
Infrastructure	Consent with conditions
Strategic Planning	Refusal

### FINANCIAL IMPLICATIONS

There are no financial implications for Council in refusing the application.

### RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation to refuse this application does not have any risk or OH&S implications for Council.



**COMMUNICATIONS STRATEGY**

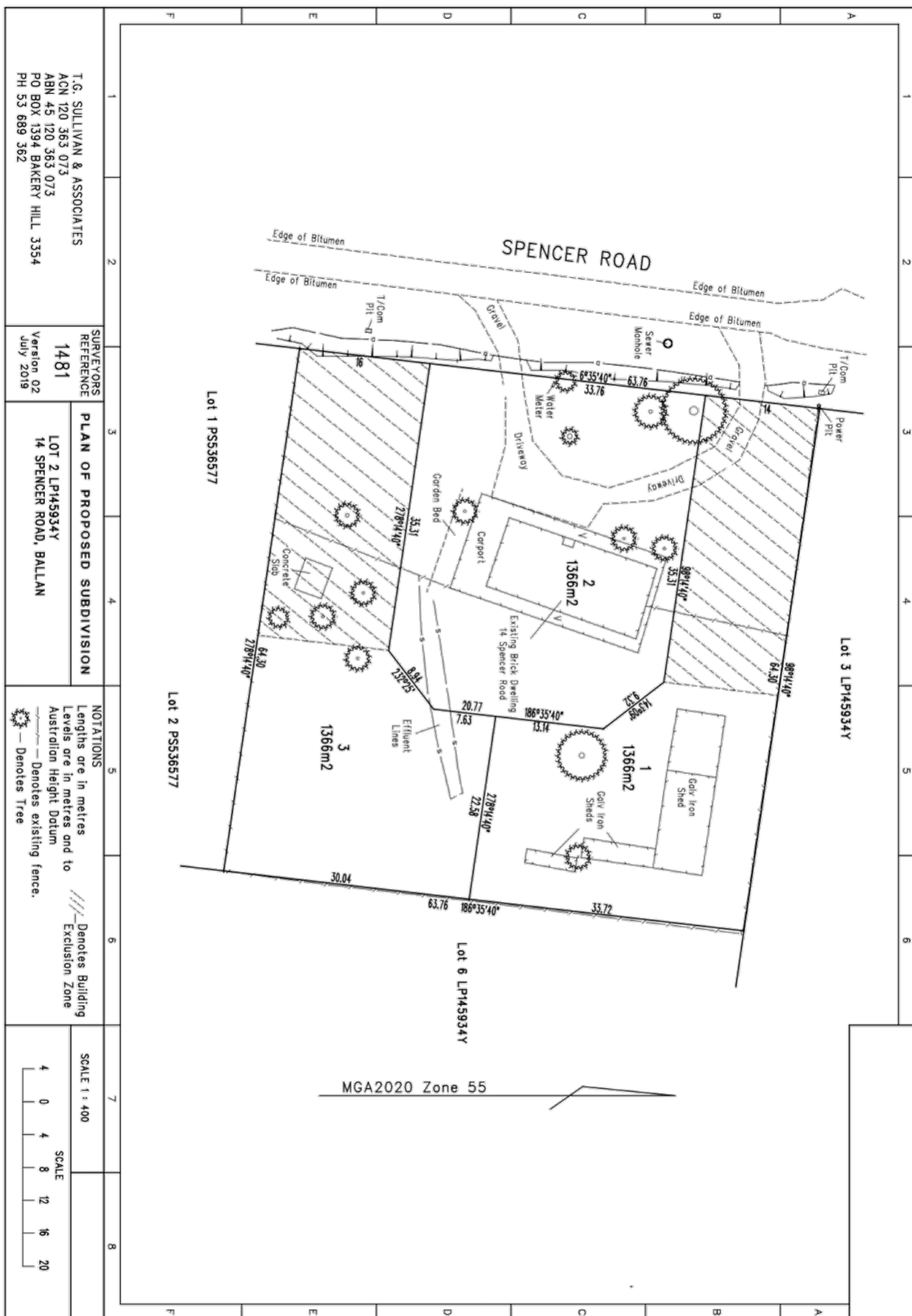
Notice was undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*, and further correspondence is required to all interested parties to the application as a result of a decision in this matter. All submitters and the applicant were invited to attend this meeting and invited to address Council if required.

**OPTIONS**

- Issue a Refusal to Grant a Permit in accordance with the grounds in the recommendation of this report;
- Issue a Refusal to Grant a Permit with amendments to the grounds in the recommendation of this report; or
- Should Council wish to support the application, issue a Notice of Decision to Grant a Permit with conditions. This option may result in the objectors appealing Council's decision at VCAT.

**CONCLUSION**

The proposal to subdivide the subject site into three lots of 1366sq m each is, overall, inconsistent with the existing provisions in the Moorabool Planning Scheme, particularly regarding respect for existing neighbourhood character in terms of lot layout. Furthermore, Council's adopted Planning Scheme Amendment C88 proposes rezoning the site and imposing a minimum 1400sq m lot size requirement for new subdivision. The proposal does not comply with Council's strategic intent for the site and should be refused.



**7.2 PA2014041 - FOURTH EXTENSION OF TIME AT BLAKEVILLE ROAD, COLBROOK****Author:** Robert Asquith, Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development**Attachments:** Nil**APPLICATION SUMMARY****Permit No:** PA2014041**Lodgement Date:** 23 September 2019**Planning Officer:** Robert Asquith**Address of the land:** CA 22, CA 28 Blakeville Road, Colbrook VIC 3342**Proposal:** Extension of time (4) for the Use and Development of a Dwelling**Lot size:** 23.16 hectares**Why is a permit required?** Permit PA2014041 expired on 23 September 2019 as per condition 27 (a) amended 11 October 2018**RECOMMENDATION**

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issues a refusal to extend the expiry dates to permit PA2014041 for the following reasons:

1. The application does not meet the *Kantor tests* including that no substantial commencement of the development has been undertaken.
2. There is no evidence that any work, including meeting permit conditions, has occurred since the permit was issued.
3. The circumstances upon which the justification of the permit was issued can no longer be substantiated.

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PUBLIC CONSULTATION	
Was the application advertised?	No.
Notices on site:	No.
Notice in Moorabool Newspaper:	No.
Number of objections:	0
Consultation meeting:	No.

**POLICY IMPLICATIONS**

The Council Plan 2017-2021 provides as follows:

**Strategic Objective 3: Stimulating Economic Development****Context 3A: Land Use Planning**

The proposal is consistent with the Council Plan 2017 – 2021.

**VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

**OFFICER'S DECLARATION OF CONFLICT OF INTERESTS**

Under section 80C of the Local Government Act 1989 (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager – Henry Bezuidenhout*

In providing this advice to Council as the Executive Manager Community Planning and Economic Development, I have no interests to disclose in this report.

*Author – Robert Asquith*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

**EXECUTIVE SUMMARY**

Application referred?	No.
Any issues raised in referral responses?	N/A
Preliminary concerns?	That strong evidence should justify a fourth extension of time, especially as there is no indication of any work or necessary pre-work steps being undertaken.
Any discussions with applicant regarding concerns?	Discussed prior to lodgement.
Any changes made to the application since being lodged?	No.
Brief history.	Permit approved for development of a dwelling on 23 September 2014. The expiry dates have been extended on three occasions by 12 months each in 2016, 2017, and 2018.
Previous applications for the site?	PA2013043 Development and Use of a Dwelling and Associated Works PA2013116 Development and Use of a Dwelling and Ancillary Outbuildings (Sheds)

General summary.	The permit applicant has applied for a fourth extension of time to the planning permit PA2014041. No works have yet started with regards to the permit and there is reason to believe the merits and assessment of the original permit are no longer substantiated.
<b>Summary Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a refusal to grant an extension of time to PA2014041.	

## SITE DESCRIPTION

The site is located on Blakeville Road, Colbrook, approximately 6 kilometres north of Ballan. The site comprises two parcels of roughly similar size totalling 23.1 hectares. The site is predominately flat and mostly cleared of trees and native vegetation. Developments to the land include a small shed in the north-west corner, and a dam in the south-east.

Surrounding land is similar in appearance, comprising mostly cleared land for grazing. It is noted that surrounding parcels and properties are typically larger than the subject site, including adjoining properties north, west and east each far in excess of 40 hectares, and therefore allowing as-of-right use of the land for a dwelling. Other dwellings have been constructed on properties north (~600 and ~1100 metres away) and south (~700 metres away).

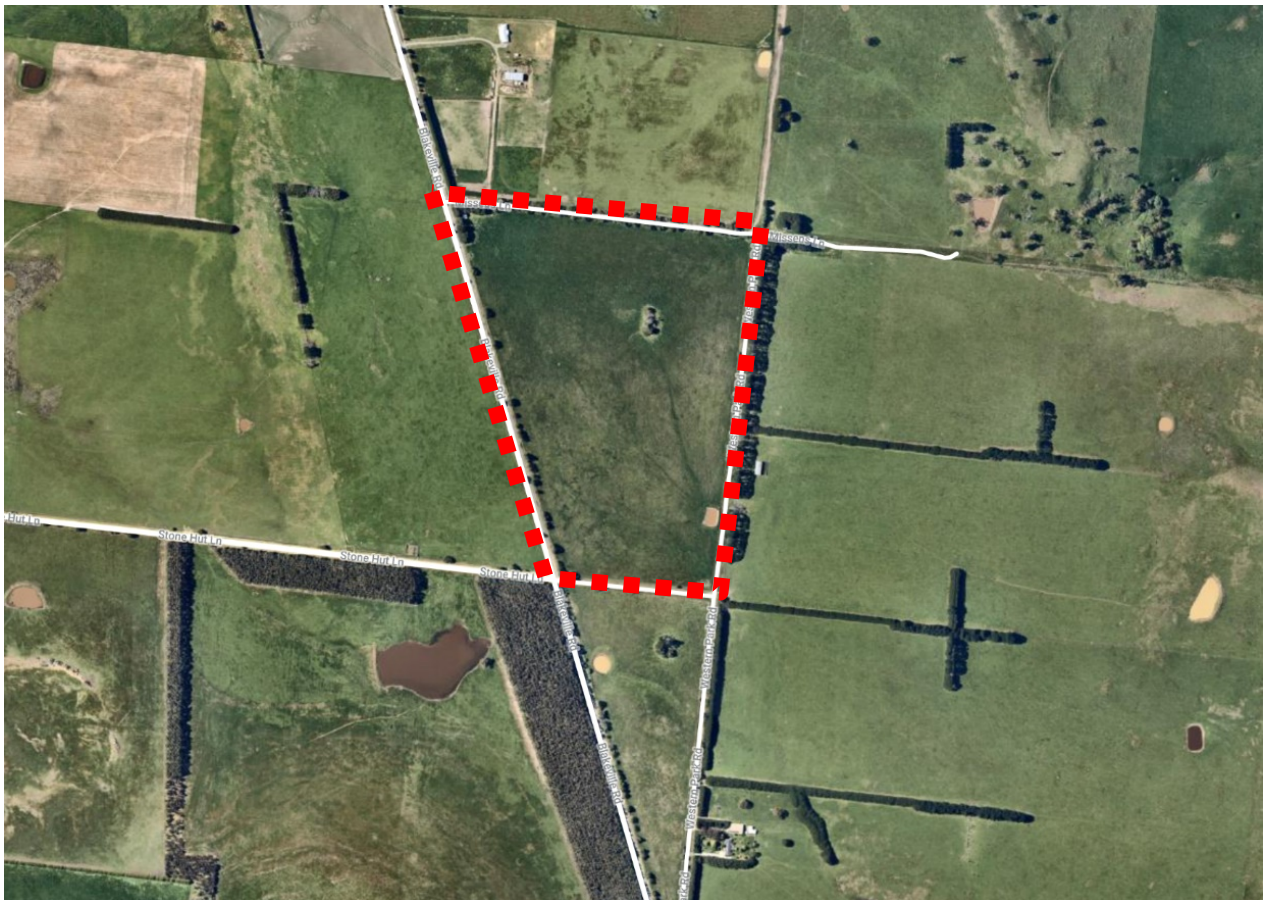


Figure 1 Subject site in detail, outlined in dashed

## PROPOSAL

The landowner submitted an application seeking an extension of time to the existing permit PA2014041 on 23 September 2019. The permit expired on 23 September 2019 before any work had been started. The applicant lodged their request for an extension of time within the six months grace period after the permit has expired in accordance with Planning and Environment Act 1989. Additional supporting evidence was requested at the time of lodgement and again on three subsequent occasions until it was provided 2 December 2019.

In summary, the applicant provided the following reasons for seeking an extension of time:

- Shortly after the permit was first granted, a third party engaged in Supreme Court estate claims which implicated the permit applicant and the subject site.
- The proceedings prevented access to the site, works or development of the site, and restructuring of the existing business of which the subject site would form a component.
- This action, as well as the circumstances which caused it, have resulted in lost time and money, associated land sales, and necessary business plan changes.
- The applicant seeks extra time to restructure the original business and prepare necessary work to commence action on the permit.

*“This again presents us with a necessary business restructure as we no longer have the acreage we once had. We are now 5 years older and our son has had to seek alternative employment and move off farm ... we request an extension of our Planning Permit as we are currently sorting out our cattle operation and ongoing property usage.”*

## BACKGROUND TO CURRENT PROPOSAL

The permit conditions require the following tasks to be undertaken prior to the commencement of use and development of the land for a dwelling:

- The completion of a new land management plan to incorporate a five-year business and fiscal timeline.
- Section 173 Agreement be entered into which recognises and enshrines that the primary use of the land is agricultural and shall remain as such.
- Consolidation of Crown Allotments 22 and 28 being two lots in the subject site property.

None of the permit conditions have been completed and no work has started.

It is also noted that the referenced Supreme Court proceeding was completed by 10 October 2016, after the first extension of time was issued and before the application for a second extension of time.

## HISTORY

Previous extensions of time for this permit are summarised below:

Extension of Time	Lodged	Completed	Reason cited
1	28 June 2016	13 July 2016	<i>“Due to personal reasons, including the unexpected death of our father, we are unable to commence development by the required date”</i>

2	20 June 2017	13 July 2017	<i>"After the unexpected death of our father we have been dealing with a section 4 claim against his estate which has restricted our ability to fund this project by the required date"</i>
3	14 September 2018	11 October 2018	<i>"After the unexpected death of our father we have been dealing with a section 4 claim against his estate. This court, and associated costs, have restricted our ability to fund this build by the required date"</i>

## PUBLIC NOTICE

This extension of time application was not notified to adjoining and surrounding landowners.

There is no requirement or provision for the public notice of an application for the extension of time.

## SUMMARY OF OBJECTIONS

Nil.

## LOCALITY MAP

The map below indicates the location of the subject site and the zoning of the surrounding area.



Figure 2 Zoning of site (outlined in dash) and surrounding land

## ZONE

**Farming Zone** applies to the site. Pursuant to Clause 35.07-1 a permit is required for the use of the land less than 40 hectares for a dwelling. The purpose of the zone is as follows:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

The requirements and decision guidelines of the Farming Zone were considered and assessed by the Council officer at the time of the permit application in 2014.

It was determined that there was *“sufficient justification to support the [dwelling] proposal, subject to conditions”* but that further detail in the form of a new land management plan would be required. This further detail has not been provided to Council.

## OVERLAYS

**Environmental Significance Overlay Schedule 1** applies to the site. A permit is required for buildings and works. The environmental significance and objectives to be achieved are:

- The Shire of Moorabool contains several proclaimed water catchments, which provide water to urban and rural development throughout the Shire. The protection of water catchments is essential to the health of all communities that rely on water for domestic and stock supply.
- To protect the quality and quantity of water produced within proclaimed water catchments.
- To provide for appropriate development of land within proclaimed water catchments.

The requirements and decision guidelines of the Overlay were considered and assessed by the Council officer at the time of the permit application in 2014. The application was referred to Western Water and Southern Rural Water as the responsible water authorities in the area. Both authorities provided consent to the application subject to conditions being applied to the permit. These are conditions 12 to 26 on the permit.

**Design and Development Overlay Schedule 2** applies to the site. A permit is required for buildings and works. The design objectives to be achieved are:

- To enhance visual amenity in rural, township and vegetated areas of the Moorabool Shire.
- To encourage the use of external cladding, such as non-reflective materials for building construction.
- To discourage the use of materials, such as reflective cladding for building construction, which could have a detrimental effect on amenity.



During the initial application assessment, it was stated by the applicant and deemed by the Council officer that no reflective surfaces would be used and a permit therefore not required under this overlay. Nonetheless, permit condition 5 was included to enforce the objective of the overlay.

### **EXTENSION OF TIME PRINCIPLES – KANTOR TEST**

There are no specific controls in the Planning Scheme relating to the assessment of an extension of time of a permit. However, there are some general guidelines or ‘tests’ that can be applied to guide an assessment of an extension of time application, specifically for starting date extension applications as is the case here.

Such guidance was provided by Justice Ashley in the Supreme Court in considering a number of Tribunal decisions in *Kantor v. Murrindindi Shire Council* 18 AATR 285 where it was stated that a Responsible Authority “may rightly consider” the following:

- Whether there had been change in planning policy;
- Whether the landowner is seeking to “warehouse” the permit;
- Intervening circumstances as bearing upon grant or refusal;
- The total elapse of time;
- Whether the time limit originally imposed was adequate;
- The economic burden imposed on the landowner by the permit; and
- The probability of a permit issuing should a fresh application be made.

It is important to note that most of the above tests do not provide direction on the weighting that should be applied to the various criteria and it is important that each proposal be assessed on the merits of the individual circumstances. Nor is it necessarily the case that all or only the above principles should be considered in an application.

The *Kantor test* is generally used by the Councils throughout Victoria to assess extension of time applications, and an assessment against the *Kantor test* questions is detailed later in this report.

### **DISCUSSION**

In assessing the application, the principles of the *Kantor test* have been considered.

#### **1. Whether there had been change in planning policy**

Since the application was first considered, three extension of time applications have since been approved. Each assessment identified that no changes to planning policy have any impact on the permit.

Since the last assessment of this permit in 2018, the following relevant changes have been made:

Amendment	Gazetted	Change and impact
VC142	16/01/2018	Introduced additional and unrelated Section 1 land uses to Farming Zone. No effect to this application.
VC148	23/11/2018	Structural changes to ESO1. No effect to this application.

There are not considered to be any changes to policy which would impact the planning permit since it was first granted or since last being assessed.

2. *Whether the landowner is seeking to “warehouse” the permit*

The circumstances surrounding this permit’s delay are certainly not intentional and do not constitute warehousing. However, the lack of any action being evidently undertaken to commence the permit, even after considerable time since property access has been legally re-obtained, does call into question the applicant’s commitment or ability to complete the permit as originally approved.

3. *Intervening circumstances as bearing upon grant or refusal*

The intervening circumstances are perhaps most crucial to the assessment of this application. The death of a family member integral to land and the original business structure according to the original permit application certainly and legitimately negatively impacted the ability of the applicant to commence the permit. Indeed, the Supreme Court action legally restricted such action for a period of time up to 2016.

It is noted that the completion of the permit requires an amended farm management plan to include an updated 5-year business and income/expenditure timeline. Furthermore, the application as originally proposed relied upon the applicant’s son (now living and working remotely) working the land for the existing business with the applicant’s father (now deceased).

Now, as indicated by the applicant, the changed personal circumstances have significantly impacted the nature of the original proposal upon which the permit was granted. Given these changes, the applicant suggesting they are still attempting to organise a business restructure, and no amended farm management plan having yet been prepared, it is not clear that the nature of the permitted proposal is and can be fundamentally in accordance with what was originally assessed.

The granting of a permit for the development of a dwelling in the Farming Zone on lots less than 40 hectares hinges upon the necessity of a residence to carry out agricultural activity. The significant intervening circumstances surrounding this permit indicate a likelihood that such a necessity can no longer be established, at least not under the assessment and proposal as it currently stands.

4. *The total elapse of time*

Over five years have elapsed since the permit was first granted without any evidential work having been undertaken to commence the permit; three 12-month extensions of time have already been granted.

Despite the period of time between 2014 and 2016 preventing site access or improvement works, it is noted that there does not appear to be any reason why at least some of the necessary works could not have been commenced after 10 October 2016 when the court proceeding concluded. The reasons for requiring an extension of time being delays to the death and court actions are reiterated verbatim between extension applications in 2017 and 2018, and are wholly similar in 2019.

Nearly 3 years and two permit extensions have therefore elapsed between 10 October 2016 when work could have started and the final permit expiry on 23 September 2019. Considering the usual time allowance of 2 years to start work, it is considered that the applicant has had more than sufficient time to show evidence of commencing work, without any new and meaningful changes to circumstances which would justify another extension.

It is also noted that there was a significant delay of more than three months between the application being lodged on 23 September 2019 and requested supporting documentation being provided on 2 December 2019.

5. *Whether the time limit originally imposed was adequate*

The time limit originally proposed was adequate. The intervening circumstances did contribute to a significant delay, however the time allowed since has been similarly adequate to at least commence work.

6. *The economic burden imposed on the landowner by the permit*

The permit did not impose any undue, unforeseen, or unreasonable additional economic burden upon the landowner. The permit did require amended plans to be prepared and land to be consolidated, but these are both expected and normal conditions to this type of application.

7. *The probability of a permit issuing should a fresh application be made*

A new permit could be issued if a fresh application were made. However, as suggested at points 4 and 5, a new demonstrated need for a residence would need to be established. The case for a dwelling under the current permit's proposal has not been fully elaborated—noting the initial assessment's caution and need for additional plans—and the original circumstances have changed significantly enough that it cannot be directly transplanted into a new planning permit application. Indeed, the applicant has indicated that they spent considerable time attempting to resolve this issue already, without any evidence of success.

## **GENERAL PROVISIONS**

Clause 65 – Decision Guidelines have been considered by officers in evaluating this application.

Clause 66 – Stipulates all the relevant referral authorities to which the application must be referred.

## **FINANCIAL IMPLICATIONS**

There are no financial implications associated with the refusal to extend the permit expiry dates.

## **RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

The recommendation of refusal of this extension of time application does not implicate any risk or OH&S issues to Council.

## **COMMUNICATIONS STRATEGY**

Notice was not undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*. The applicant was invited to attend this meeting and invited to address Council if required.

## **OPTIONS**

Council could consider the following options:

- Issue an extension of time to the permit for 12 months to start the use and development, and 12 months to complete development, expiring on 23 September 2020 and 23 September 2022 respectively.

**CONCLUSION**

The requested extension of time to the planning permit PA2014041 does not sufficiently justify key elements of the *Kantor test* and should not be approved.

Although it is accepted that significant circumstances prevented work from starting for some time, there has not been any evidential work in commencing the permit either across the whole 5-year period or even the last 3 years clear of intervening circumstances.

It is considered that, for the reasons the permit was first granted and circumstances having since changed, the necessity of a dwelling in the Farming Zone can no longer be substantiated. Because work has not yet commenced and no meaningful indication that it is likely to, another extension should not be granted. Rather, a new assessment under a different permit would be required should the applicant truly intend to pursue the proposed development.

The request for a forth extension of time is not recommended for the reasons above.

### 7.3 PA2019156 - TWO LOT SUBDIVISION (HOUSE LOT EXCISION) AT 70 DUNBAR ROAD, PENTLAND HILLS

**Author:** Victoria Mack, Statutory Planner

**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development

**Attachments:** 1. Proposed plan of subdivision (house lot excision)

#### APPLICATION SUMMARY

**Permit No:** PA2019156

**Lodgement Date:** 9 July 2019

**Planning Officer:** Victoria Mack

**Address of the land:** 70 Dunbar Road, Pentland Hills 3341

**Proposal:** Two lot subdivision (House lot excision)

**Lot size:** 18.20 hectares

**Why is a permit required?** Clause 35.07-3 Subdivide land (House lot excision)

#### RECOMMENDATION

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a refusal to grant a permit for a two-lot subdivision (house lot excision) on Lot 7 on TP 000918E otherwise known as 70 Dunbar Road, Pentland Hills, on the following grounds:

1. The proposed subdivision results in the fragmentation of agricultural land;
2. The proposed subdivision does not comply with the policies contained in Clause 22.03, House and House Lot Excisions in Rural Areas, of the Moorabool Planning Scheme;
3. The proposed subdivision is not directly related to the agricultural use of the land; and
4. The proposed subdivision does not comply with the objectives of the Farming Zone at Clause 35.07 of the Moorabool Planning Scheme.

PUBLIC CONSULTATION	
Was the application advertised?	Yes
Notices on site:	Yes
Notice in Moorabool Newspaper:	No.
Number of objections:	3 objections
Consultation meeting:	Not held.

**POLICY IMPLICATIONS**

The Council Plan 2017-2021 provides as follows:

**Strategic Objective 2: Minimising Environmental Impact****Context 3A: Land Use Planning****VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

**OFFICER'S DECLARATION OF CONFLICT OF INTERESTS**

Under section 80C of the *Local Government Act 1989* (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*General Manager – Henry Bezuidenhout*

In providing this advice to Council as the Executive Manager, I have no interests to disclose in this report.

*Author – Victoria Mack*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

**EXECUTIVE SUMMARY**

Application referred?	Melbourne Water and Council's Environmental Health and Infrastructure Departments.
Any issues raised in referral responses?	No.
Preliminary concerns?	The location of existing dwelling creates an irregular shaped lot in the centre of the property accessed via a long driveway which bisects the land.
Any discussions with applicant regarding concerns?	No.
Any changes made to the application since being lodged?	The proposed lot with the existing dwelling was increased in area from 1.40ha to 1.52ha.
Brief history.	The owners have lived on the subject property for many years. They currently breed dogs on the property, predominantly Welsh Corgis, and have run cattle on the property. They have advised that remaining in the existing dwelling on a smaller land parcel best meets their retirement needs.
Previous applications for the site?	Nil.

General summary.	<p>The proposed house lot excision creates a vacant lot of 16.68ha and a house lot of 1.52ha. Because the dwelling is in the centre of the site, accessed via a long driveway from the north-east corner, the proposed excision dissects the land into two awkward shaped parcels.</p> <p>The owners also wish to retain access to the dam on the property in the north-west corner of the site and to enable this a water supply easement to the dam has been added to the Plan of Subdivision.</p> <p>It is not considered that this proposal is an orderly planning outcome for this land.</p>
<b>Summary Recommendation</b>	
That Council, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i> , issue a refusal to grant a permit for a two-lot subdivision (house lot excision) on Lot 7 on TP 000918E otherwise known as 70 Dunbar Road, Pentland Hills.	

## SITE DESCRIPTION

The land is undulating with the existing dwelling located in the centre of the property on an elevated part of the site with prominent views of the surrounding area, particularly to the east. The land generally slopes away from the house site to the west, south and east. To the north the land contains the driveway to Dunbar Road and is generally flat. The driveway is currently fenced on both sides. It is assumed that the current fences accord with the proposed subdivision boundaries.

The Myrniong Creek runs along the whole of the south boundary. The land slopes sharply to the creek with the escarpment width being approximately 100m. This sloped area has scattered vegetation. A tributary of the Myrniong Creek also dissects the north-west corner of the site. There is a dam on this waterway with a surface area of approximately 800sq m. The current owner wishes to retain access to this dam for domestic water supply purposes.

Surrounding land to the south is also steeply dissected and includes a floodplain at the bottom of the escarpment. Further to the south is the Werribee River. Land to the west, north and east is generally grazing land. Land on the north side boundary of the site has been significantly revegetated.

There is another small dam on the site located half-way along, and close to, the west side boundary.

There are trees around the dwelling site, but the balance of the land is pastured land without any plantations or paddock trees.

The single storey dwelling is older in style with several sheds and dog runs to the side and rear of the dwelling. The effluent field is located to the north of the dwelling within the proposed lot 1.

The site has historically been used for grazing cattle. There are cattle yards on the property located near the front entrance at Dunbar Road.

An aerial photograph of the site is shown below.

Figure 1: Aerial map



## PROPOSAL

It is proposed to subdivide the land into two lots. Under Clause 35.07-3 of the Farming Zone an application can be made for a two-lot subdivision to create a lot for an existing dwelling.

Lot 1 would be 1.52ha and would contain the dwelling, sundry sheds and the driveway to Dunbar Road. The lot would be irregular in shape with a narrow strip of land containing the driveway and then a roughly circular area around the dwelling and sheds.

Lot 2 would be approximately 16.68ha (by deduction) and would contain two dams and the cattle yards. The yards are located close to the entrance of the property at Dunbar Road.

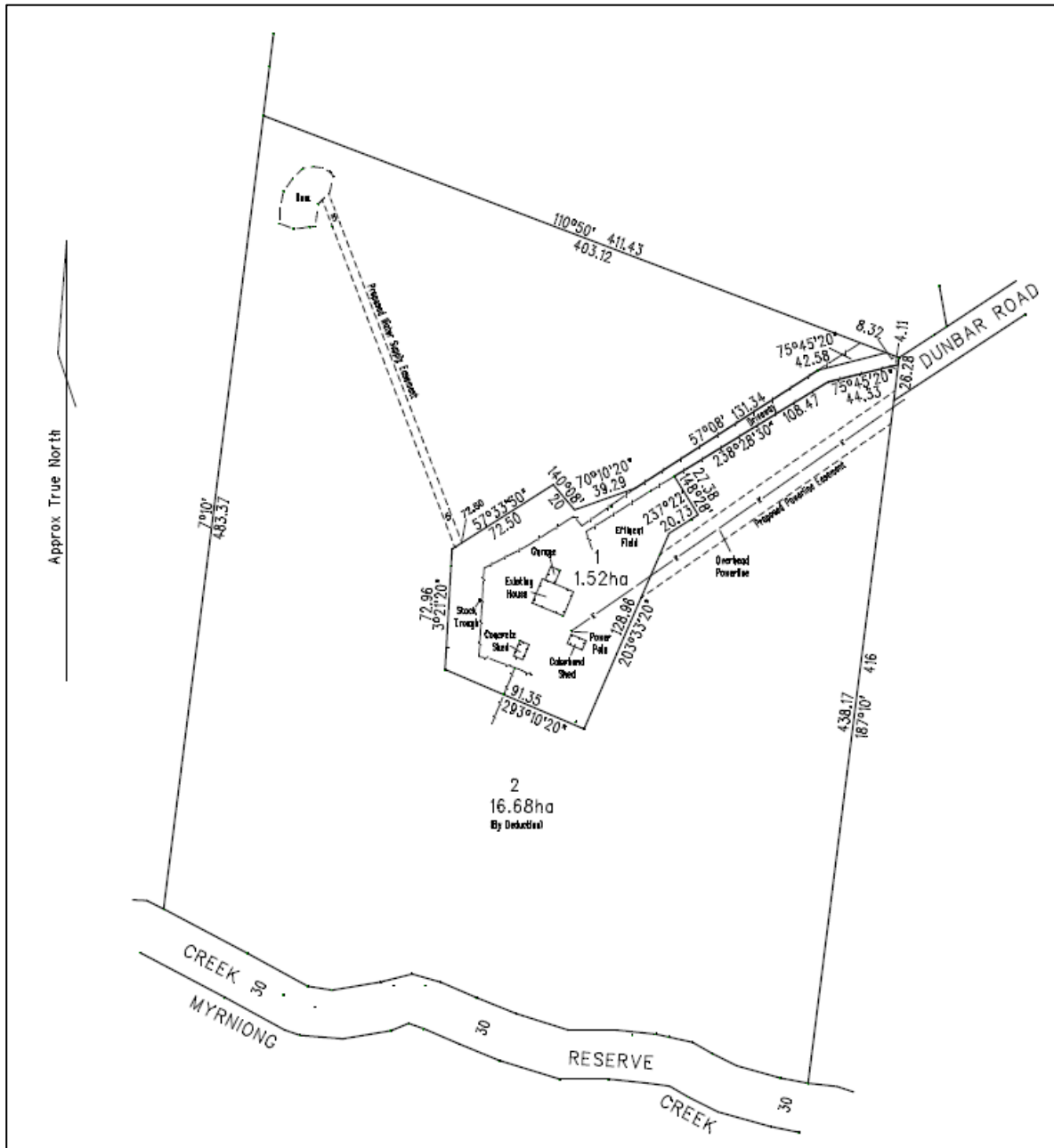
A water supply easement from the dam in the north-east corner of the site is also proposed to supply the dwelling and for domestic purposes.

The proposed Lot 1 is not currently fenced to the proposed new boundary around the dwelling, but the driveway is fenced. It is assumed that the driveway fencing accords with the proposed driveway boundary.

The proposed plan of subdivision is included as an attachment to this report and also below).



Figure 2: plan of subdivision



### BACKGROUND TO CURRENT PROPOSAL

At a meeting with the owner at the Council office he requested that a Section 173 Agreement is not applied to any future permit to restrict a dwelling on Lot 2. He felt that the larger lot would make a very suitable site for another dwelling as a lifestyle choice. He said that the land cannot be cropped and should only be lightly grazed due it being in a low rainfall area (rain shadow), and that the property was not suitable for highly productive agriculture.

### HISTORY

A search of Council records revealed that no permits have been issued on the subject site. There are no compliance issues relevant to the site.

## RESTRICTIVE COVENANT

There is a covenant registered on the title with number Y000705A dated 19 December 1975. It was applied as part of a subdivision of the land in this area at that time. The covenant restricts various development matters relating to the design, siting and materials to be used for dwellings. It also prohibits the use of the land for pig and poultry farming and boarding kennels.

## PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners. Three (3) objections were received.

## SUMMARY OF OBJECTIONS

The objections received are detailed below with officer's comments accompanying them:

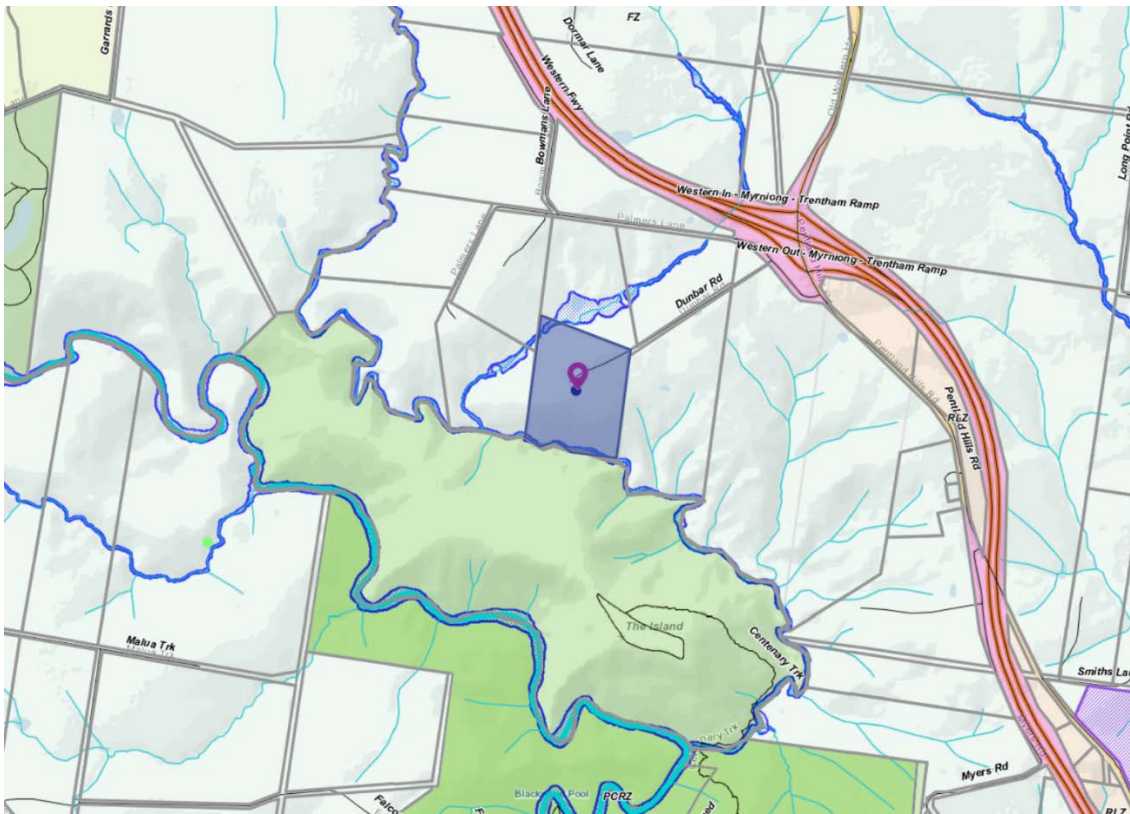
Objection	Any Relevant Requirement
The covenants on these lots prohibit subdivision and various farm industries. Yet dog breeding has been allowed by Council which many locals are not happy with it.	Covenant number Y000705A
<b>Officer's Response:</b> The covenant does not restrict subdivision. It does restrict a boarding kennel; however, dog breeding is not a boarding kennel and is not prevented by the covenant.	
The development of a second dwelling on the land following the subdivision would set a precedent for future subdivision and such development in this area would detrimentally affect the landscape values.	
<b>Officer's Response:</b> The application is for subdivision. No dwellings are being applied for.	
<p>The subdivision meets the "material detriment" definition and is likely to have an adverse impact on the enjoyment of our property. We share a 400m boundary (north) with the site and have planted 18,000 native and indigenous plants which demonstrates that degraded land can be returned to its natural state. This is compared to the broad scale destruction of land in the surrounding area. Council should ensure the exploitation of land ceases and set an example of how land should be managed in a sustainable manner.</p> <p>Reducing the size of landholder allotments can only lead to further degradation of the land and negative environmental impact from excess stock loads, additional buildings and houses and increased demands on water supply.</p>	State and local planning policies
<b>Officer's Response:</b> This concern is addressed further in this report.	
The proposed subdivision will have a negative environmental impact on the flora and fauna that rely on the Myrniong Creek and at least one of its tributaries.	State and local policies

<b>Officer's Response:</b> This concern is addressed further in this report.	
The Palmer's Road area is dominated by 40+ acre properties, most well established. Subdivisions of this nature are inconsistent with the precinct's agricultural landscape.	Farming Zone subdivision
<b>Officer's Response:</b> This concern is addressed further in this report.	
If a new vacant lot is created, it will lead to another dwelling and sheds being constructed increasing dwelling density in this area.	State and local policies; rural growth policy
<b>Officer's Response:</b> This concern is addressed further in this report.	
If this proposal is approved, it will set a precedent and others may use such decision to subdivide in the future.	Farming Zone
<b>Officer's Response:</b> This concern is addressed further in this report.	
I have no objection to the subdivision provided a condition of the permit is that no dwellings/sheds are permitted, and the agricultural use continues.	Section 173 of the <i>Planning and Environment Act 1987</i>
<b>Officer's Response:</b> An option would be to recommend approval subject to a Section 173 Agreement to be registered on title preventing the development of a dwelling on the vacant Lot 2. This is addressed further in this report.	

## LOCALITY MAP

The map below indicates the location of the subject site and the zoning of the surrounding area.

Figure 3: Zone map



## PLANNING SCHEME PROVISIONS

Council is required to consider the Victoria Planning Provisions and give particular attention to the State Planning Policy Framework (SPPF), the Local Planning Policy Framework (LPPF) and the Municipal Strategic Statement (MSS).

The relevant clauses are:

Clause 11.03-3S Peri-urban areas

Clause 12.03-1S River corridors, waterways, lakes and wetlands

Clause 14.01-1S Protection of agricultural land

Clause 15.01-6S Design for rural areas

Clause 16.01-5S Rural residential development

Clause 21.03-6 Objective - Rural lifestyle opportunities

The proposal complies with the relevant sections of the PPF and LPPF, with the exception of the clauses outlined in the table below:

PPF	Title	Response
Clause 14.01-1S	Protection of Agricultural Land	A strategy of this clause is to limit new housing development in rural areas by discouraging development of isolated small lots in the rural zone from use for dwellings or other incompatible uses. The proposal is a small lot subdivision on farming zone land with the resultant balance lot further fragmented and further limiting its agricultural productivity.
Clause 12.03-1S 31	River corridors, waterways, lakes and wetlands	The objective of this policy is to protect and enhance river corridors, waterways, lakes and wetlands by ensuring that development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of water bodies and wetlands.  Intensification of development in this area would potential have a detrimental impact on the environmental values of the precinct over time.
Clause 16.01-5S	Rural residential development	This policy aims to discourage development of small lots in rural zones for residential use or other incompatible uses.
LPPF	Title	Response
Clause 21.03-6	Objective—Rural lifestyle opportunities	Strategy: Prevent the fragmentation of farm land through inappropriate subdivisions.
Clause 22.03	House and House Lot Excisions in Rural Areas	See details of this policy below.

**Clause 22.03 House and House Lot Excisions in Rural Areas**

The objectives of this clause are:

- To ensure that subdivision and dwellings in rural areas are required to increase agricultural productivity.
- To minimise the potential for adverse impacts on farm production through land use conflicts.

**Policy**

It is policy to:

- Discourage subdivision and dwellings unless they are directly related to the agricultural use of land.
- Discourage non-agricultural use and development in areas of productive agricultural land. Encourage the consolidation of small lots.
- Ensure that lots created under Clause 35.07-3 have a maximum area of 2ha.
- Maintain the right of existing farms to continue their operations without being adversely affected or constrained by residential concerns.
- Include the following requirements on a permit to excise a lot for a dwelling where it is considered this would facilitate ongoing agricultural use of the remaining land:
  - Consolidate of the remaining land with the title of an existing farm; or
  - If the remainder land is less than 40ha, require the landowner to enter into an agreement under S173 of the *Planning and Environment Act* that no further applications will be made to erect a dwelling on the balance allotment.

Comment: The proposed Lot 1 would contain the existing dwelling on a lot of less than 2ha. However, its shape and location would fragment the balance of the land. The dwelling would become a lifestyle lot. Such fragmentation of agricultural land should not be supported.

This application is not an orderly planning outcome for the area

**ZONE****Farming Zone**

In accordance with Clause 35.07-3 of the Moorabool Planning Scheme a permit is required to subdivide land. Each lot must be at least the area specified for the land in a schedule to this zone which in the Moorabool Planning Scheme specifies in this locality each lot must be 100ha.

However, this clause also states that a permit may be granted to create smaller lots if:

- *The subdivision is to create a lot for an existing dwelling. The subdivision must be a two-lot subdivision.*

The purpose of the zone is to:

- Implement the Municipal Planning Strategy and the Planning Policy Framework.
- Provide for the use of land for agriculture.
- Encourage the retention of productive agricultural land.

- Ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- Encourage the retention of employment and population to support rural communities.
- Encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provisions.

The proposal is a two-lot subdivision with one lot containing an existing dwelling.

The proposal is inconsistent with the purposes of the zone as the proposal is unable to demonstrate an outcome that will result in sustainable farming and land management practices and the proposal potentially would adversely affect the use of the balance of the land for agriculture.

## **OVERLAYS**

### Environmental Significance Overlay (ESO3)

The purpose of the ESO is to:

- Implement the Municipal Planning Strategy and the Planning Policy Framework.
- Identify areas where the development of land may be affected by environmental constraints.
- Ensure that development is compatible with identified environmental values.

### Schedule 3, Environmental Significance Overlay - Long Forest and Werribee Gorge

In accordance with Schedule 3 to the Environmental Significance Overlay a permit is not required under the schedule as no vegetation would be impacted or removed by the proposed subdivision.

### Design and Development Overlay and Schedule 2 (DDO2)

In accordance with Schedule 2 to the Design and Development Overlay a permit is not required to subdivide land under this overlay.

## **RELEVANT POLICIES**

### Council's Rural Housing Policy Statement

Council's Rural Housing Policy Statement was adopted by Council on 19 September 2012. The document applies to all land in Farming Zone under the Moorabool Planning Scheme.

The policy intent is to:

- Encourage dwellings in areas nominated in Map 1 of Council Rural Growth Policy Statement.
- Ensure the siting of any dwellings is designed to have a minimal impact on any existing or future agricultural activities on the site and on surrounding.
- Ensure it is clear whether the dwelling is required for agricultural operation use or to maintain rural communities.
- Ensure sufficient infrastructure is available or that alternative methods are available which do not require normal infrastructure.
- Encourage development of dwellings to support communities on land which is unlikely to support agricultural activity while still considering any other overlays which may impact the

land. This is land which is constrained for use as agriculture by other environment factors such as vegetation, slope, soil quality, etc.

- Ensure any subdivision is undertaken in accordance with the scheme in order to discourage fragmentation of agricultural land.

It is considered that the proposed subdivision would further fragment agricultural land.

#### Council's Rural Growth Policy statement - 19 September 2012

Council's Rural Growth Policy has been developed to provide direction for how limited farming potential rural dwellings should be considered, and more broadly, rural settlement patterns. The policy seeks to articulate support for resilient and integrated rural communities and agricultural enterprises, recognising that 'State Government Planning Policy Framework does not adequately recognise or support agriculture trends and rural settlements in the Moorabool Shire'.

The principles of the policy relevant to this application include:

- support the agriculture sector so that it can be more productive, diverse, resilient and adaptive to changing agricultural trends, including supporting agricultural activities that recognise Moorabool's advantageous proximity to market;
- protect agricultural land use from loss and allow development that increases agricultural productivity;
- focus growth opportunities in settlements along major transport corridors, in particular where there is physical and social infrastructure and services;
- recognise that there are substantial existing lots under 40 hectares capable of supporting the viable operation of agricultural enterprises;
- promote a rural housing market that meets the needs of the Shire's rural communities; and
- land parcels for the proposed on farm living dwellings are to have a minimum lot size of 8 hectares as identified in Map 1.

The proposed subdivision is not generally aligned with the above principles of the policy and is furthermore considered to detract from the agricultural productivity of the land.

#### **Particular Provisions**

##### Clause 53.10 Public Open Space Contribution and Subdivision

A person who proposes to subdivide land must make a contribution to the council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under section 18 of the *Subdivision Act 1988*.

An open space fee can be applied under Section 18(8)(c) of the Subdivision Act for a two-lot subdivision that is likely to be further subdivided.

Comment: As neither lot could be subdivided under the Moorabool Planning Scheme there is no requirement for a public open space contribution.

## DISCUSSION

### Subdivision design

The proposed subdivision results in a highly irregular shaped Lot 1 which would contain the existing dwelling and sheds. The lot does not have the advantage of direct street access, resulting in a long driveway being required to the dwelling. This design effectively cuts the north-eastern end of the land in two as the driveway is fenced. The owners also want to retain access to the waterway and dam in the north-east corner using existing pipe infrastructure. A water supply easement would therefore be required to cross Lot 2.

The subdivision design has been influenced by the existing dwelling location. It represents a poor longer-term planning outcome.

The surrounding areas reflects a subdivision which was registered in 1975. It appears that there were 8-10 lots in the subdivision each with an area of approximately 20ha which includes a covenant relating to dwelling design and siting issues and also the prohibition of three uses being pig and poultry farming or the operation of a boarding kennel.

In considering that the land is zoned for farming, further dwelling intensification on the balance Lot 2 with an area of 16.68ha would be inappropriate in this location. It is considered that the subdivision would adversely fragment the agricultural land, and potentially create future land use conflicts between neighbouring agricultural activities and a rural residential allotment.

The creation of the vacant 16.68ha lot does not comply with the Farming Zone provisions which seeks to encourage the retention of productive agricultural land. The owner has stated that the land is affected by the Pentland Hills rainfall shadow and is therefore not highly productive grazing land. However, State and local planning policies do not support the creation of lots in the Farming Zone for rural residential or lifestyle uses.

It is considered that the subdivision of the land would create a parcel that would be unviable unless sold to a neighbour for expansion of the neighbour's holding. The applicant has not provided a farm management plan associated with this subdivision or justification for the ongoing use of the vacant lot. The subdivision arrangement is considered to adversely fragment the agricultural land to an unsustainable level.

Objectors generally felt that this proposal was inappropriate for the land and the wider area. They were concerned about a precedent being created where others could also apply to excise their dwellings. This raised wider concerns about sustainable land management and environmental impact particularly in relation to the waterways as well as the land itself.

It is understood that land in the Pentlands Hills is relatively fragile due to the lower rainfall and lighter and more erodible soils. Such land needs to be managed carefully and not overstocked. It is noted that no native vegetation planting has occurred on the site.

Objector concerns could be addressed by a Section 173 Agreement to prevent a future dwelling or any further subdivision of the land, however, it is considered that the creation of Lot 1 is a poor planning outcome and should not be supported.

Objectors also expressed concern, if the subdivision was approved, that other landholders within the same subdivision could apply for a similar house lot excision. It is noted that each planning application must be assessed on own its individual merit and if such applications were received then a similar assessment would be made against Council policies and the policies contained in the Moorabool Planning Scheme.



### Servicing

As this is a two-lot subdivision, all servicing authorities would be notified during the certification stage in accordance with Clause 66.01 and the three mandatory conditions can be included if a permit was to issue. The mandatory telecommunication conditions under Clause 66.01-1 do not apply to subdivide land in a rural zone.

### **GENERAL PROVISIONS**

Clause 65 – Decision Guidelines have been considered by officers in evaluating this application.

Clause 66 – Stipulates all the relevant referral authorities to which the application must be referred.

### **REFERRALS**

Authority	Response
Melbourne Water	Consent with conditions.
Infrastructure	Consent with conditions.
Environmental Health	Consent with conditions.

### **FINANCIAL IMPLICATIONS**

There is no financial implication associated with this refusal to grant a permit.

### **RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

The recommendation of refusal of the planning application does present any OH&S issues to Council.

### **COMMUNICATIONS STRATEGY**

Notice was undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*, and further correspondence is required to all interested parties to the application as a result of a decision in this matter. All submitters and the applicant were invited to attend this meeting and invited to address Council if required.

### **OPTIONS**

Council could consider the following options:

- Issue a refusal to grant a permit in accordance with the recommendations of this report; or
- Issue a permit with conditions outside of the recommendations of this report.

### **CONCLUSION**

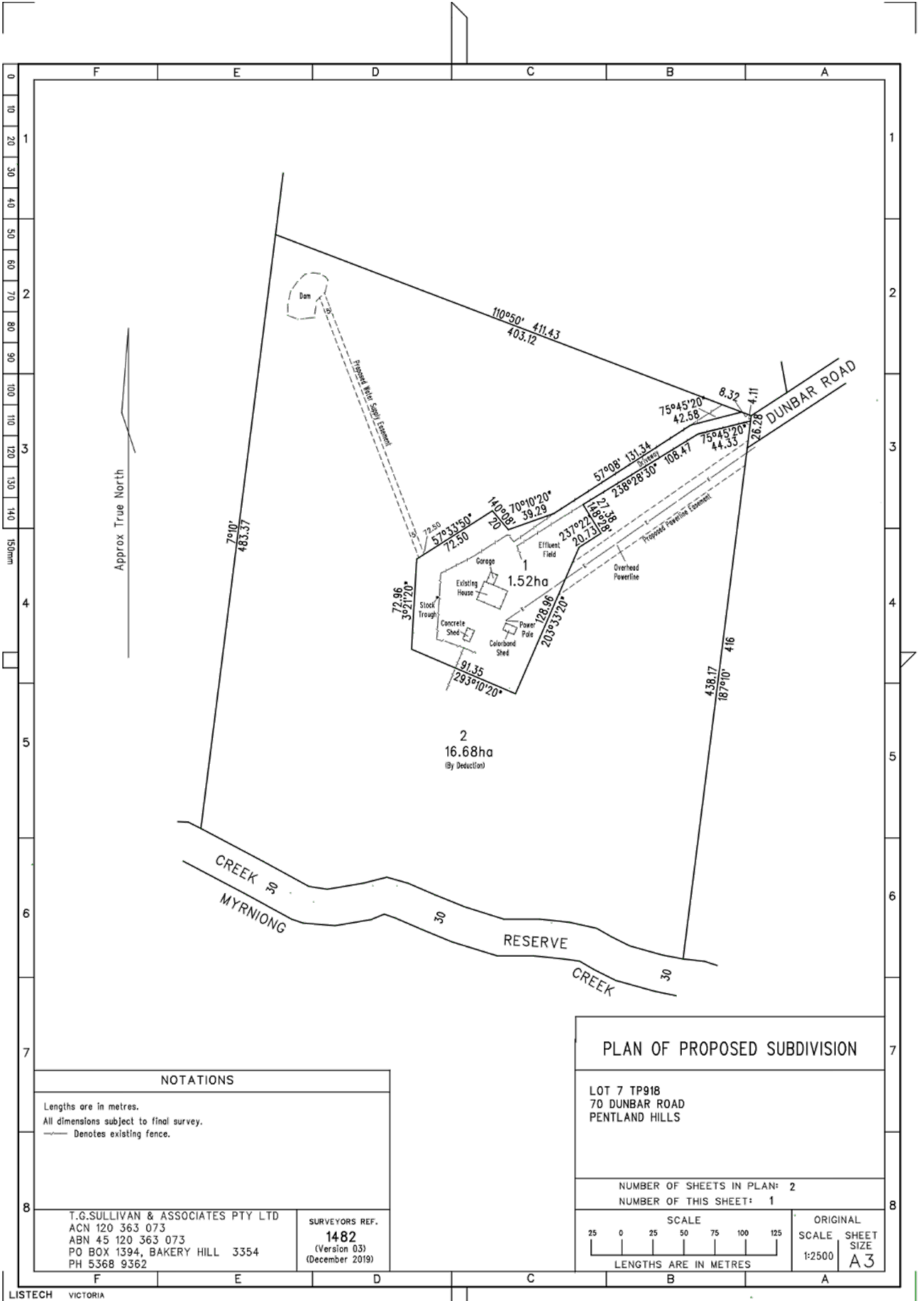
The proposed subdivision of the land into two lots with one containing an existing dwelling and the other to remain vacant is considered inconsistent with the planning provisions and the State and Local Planning Policy Framework.

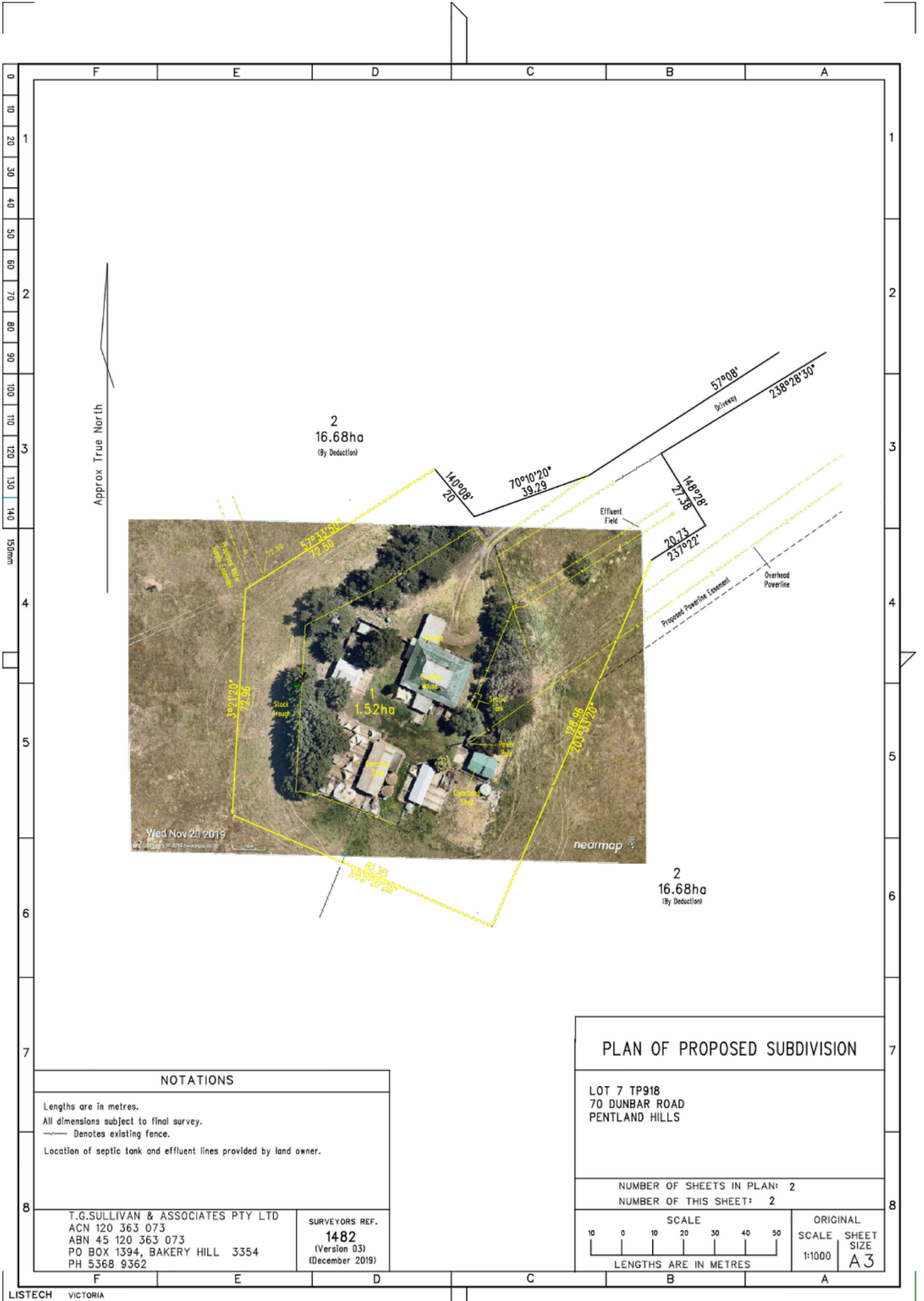
The house lot is awkwardly shaped which would result in permanent fragmentation of the balance of the agricultural land. It provides an unacceptable subdivision layout.

The proposal is also considered inconsistent with the objectives of the Farming Zone.

While objector concerns could be addressed by permit conditions including that a restriction is registered on the title of the vacant lot to prohibit a future dwelling, the proposal does not address the fundamental concern that creating a small lot in the Farming Zone will not encourage the sustainable agricultural use of the land, not protect the areas environmental and landscape values.

The proposed subdivision of land into two lots is not recommended for the reasons outlined in this report.





**7.4 PA2019081 DEVELOPMENT AND USE OF A SERVICE STATION, DISPLAY OF SIGNAGE AND CREATION OF ACCESS TO A ROAD ZONE CATEGORY 1 AT 4348 GEELONG-BACCHUS MARSH ROAD, MADDINGLEY**

**Author:** Thomas Tonkin, Statutory Planner

**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development

**Attachments:**

1. Proposed site plan
2. Proposed floor plan, elevations, signage, car parking and building colours, materials and finishes
3. Proposed vehicle access and circulation

**APPLICATION SUMMARY**

**Permit No:** PA2019081

**Lodgement Date:** 5 April 2019

**Planning Officer:** Tom Tonkin

**Address of the land:** 4348 Geelong-Bacchus Marsh Road, Maddingley

**Proposal:** Development and Use of a Service Station, Display of Signage and Creation of Access to a Road Zone, Category 1

**Lot size:** 3.0ha

**Why is a permit required?** Clause 32.07 Farming Zone – Use and development for a Service Station  
Clause 52.05 Signs – Display of signage  
Clause 52.29 Land Adjacent to a Road Zone, Category 1 – Creation of access

**RECOMMENDATION**

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issues a Notice of Decision to Grant a Planning Permit for this application in accordance with Section 61 of the *Planning and Environment Act 1987*, subject to the following conditions:

**Endorsed Plans:**

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans identified as Job No. 180911, Sheet no.'s TP-01 rev. 4, TP-02 rev. 4 & VA.01 rev. 4 prepared by Bill Jacobs P/L but modified to show:
  - (a) Landscape plans in accordance with Condition no. 3.
  - (b) Changes as per VicRoads' requirements in Condition no. 29.
  - (c) The plant equipment area fully enclosed within a building.
  - (d) Details (area, colours, content) of all proposed signage, including signage affixed to

the proposed buildings, which must not exceed a combined total area of 3sq m. This requirement must result in deletion or substantial modification of the pylon sign.

- (e) The height and materials of all new fencing.
  - (f) Property dimensions labelled for Site B, the development site.
  - (g) All accessways, building areas and boundary setbacks dimensioned.
  - (h) All truck and parking bays numbered and dimensioned.
  - (i) Wheel stops provided for the car parking bays directly in front of the building.
  - (j) A plan detailing the location and area to be occupied by any primary or secondary wastewater system in accordance with Western Water Condition no. 31.
2. The use and development as shown on the endorsed plans must not be altered without the written approval of the Responsible Authority.

**Landscape Plans:**

3. Before the development starts, a landscape plan (the plan) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions. The plan must show:
- (a) details of surface finishes of pathways and driveways;
  - (b) the landscaped strip parallel to the front title boundary maintained with a minimum 3.0m width.;
  - (c) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;
  - (d) landscaping and planting within all open areas of that part of the site identified on the plans as Site B; and
  - (e) a heavily vegetated landscape buffer with a minimum width of 2.0m comprising planting of a minimum 2.5m in height above natural ground level, which may include a bund wall, in the following locations:
    - (i) along the northern boundary of the accessway located parallel to the railway line;
    - (ii) along the northeast boundary of the truck parking bays and accessway; and
    - (iii) along the southeast boundary of the southeasternmost accessway.

Species selection shall be to the satisfaction of the Responsible Authority.

4. Before the occupation of the development starts or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed landscape plan must be carried out and completed to the satisfaction of the Responsible Authority.
5. The landscaping shown on the endorsed landscape plan must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

**Amenity:**

6. The amenity of the area must not be detrimentally affected by the use or development, through the:
  - (a) transport of materials, goods or commodities to or from the land;
  - (b) appearance of any building, works or materials;
  - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
  - (d) presence of vermin; and
  - (e) any other way.
7. Goods, equipment or machinery must not be stored or left exposed in a position that can be seen from outside the site.
8. Provision must be made on the land for the storage and collection of garbage and other solid waste and the area screened from public view to the satisfaction of the Responsible Authority.
9. The loading and unloading of goods must only occur on the subject site.
10. External lighting must be provided with suitable baffles and located so that no direct light is emitted outside the site.
11. Any security alarm or similar device installed must be of a silent type.
12. Except for the delivery of newspapers, and unless otherwise approved in writing by the Responsible Authority, deliveries to and from the site including garbage collection and fuel delivery must only occur between the hours of 7.00AM and 10.00PM, Monday to Saturday and 9.00AM and 10.00PM, Sundays and public holidays.
13. Except with the written consent of the Responsible Authority, no more than four (4) truck parking bays shall be provided on the site.
14. Vacant areas of the site must be maintained to ensure their visual appearance does not compromise the visual amenity of the area, to the satisfaction of the Responsible Authority.

**Signs:**

15. The location, design, content, colours and materials of all advertising signs must not be altered without the written consent of the Responsible Authority.
16. The advertising signs must not contain any moving parts or flashing lights.
17. Sign illumination must be suitably baffled to ensure no direct light is emitted beyond the site.
18. The signs must be constructed and maintained to the satisfaction of the Responsible Authority.
19. The permit for signs hereby approved expires 15 years from the date of issue of the permit in accordance with Clause 52.05-4 of Moorabool Planning Scheme.

**Infrastructure:**

20. Prior to the commencement of the use, the entrance works to the site must be constructed to the requirements of VicRoads as detailed in this permit, to the satisfaction of the Responsible Authority.
21. Prior to the development and use commencing, engineering drainage plans and computations must be submitted to the Responsible Authority for approval and shall incorporate the following:
  - (a) The development as a whole must be self-draining and must be connected to an approved point of discharge in an approved manner to the satisfaction of the Responsible Authority.
  - (b) Underground piped drainage for the whole development shall cater for 10% AEP storm.
  - (c) Stormwater management measures detailed in the Storm Water Management Plan prepared by Sustainable Development Consultants, to the satisfaction of the Responsible Authority.
  - (d) A proposal detailing the method of final disposal of stormwater runoff from the subject land to the receiving waters, to the satisfaction of the Responsible Authority.
  - (e) Overland 1% AEP flow path(s) for the development must be shown on layout plans and shall ensure that no property is subject to inundation by such a storm to the satisfaction of the Responsible Authority.
22. Storm water drainage from the proposed buildings and impervious surfaces must be directed to the legal point of discharge to the satisfaction of the Responsible Authority. A Stormwater Point of Discharge permit must be obtained from the responsible authority prior to the commencement of the works associated with the permit.
23. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991).
24. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
25. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset Services Department identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority.
26. Prior to the use commencing, the car park areas must be constructed with a sealed surface, line-marking and drainage to the satisfaction of the Responsible Authority, and shall incorporate the following:
  - (a) The layout of the internal driveways and parking areas must be designed and constructed in accordance with the recommendations of the Traffic Impact Assessment Report prepared by Traffix Group.
  - (b) Parking bays and aisle widths of the car park shall comply with Australian Standard AS 2890.1:2004 Off-Street car parking. Disabled Parking bays shall comply with



**Australian Standard AS2890.1:2009 Off-Street Parking for People with Disabilities.**

- (c) Designated loading areas shall be shown on layout plans.
- (d) The parking areas shall be provided with an asphalt or concrete surface and associated drainage.
- (e) Concrete kerb of a minimum height of 150mm must be provided between landscaped areas and areas provided for parking and the passage of vehicles.
- (f) The car park must provide sufficient space for a service truck to enter and exit the site in a forward direction. The service truck shall comply with the medium rigid vehicle detailed in AS2890.2 section 2.2. Turning templates shall be submitted for approval.

27. The building shall be provided with disabled access in accordance with the provisions of AS1428 – Design for Access and Mobility.

**Environmental Health:**

28. In the event of any nuisance being caused to the neighbourhood by activities related to the use and development the Responsible Authority may direct, in writing, such actions or works, as deemed appropriate, to eliminate or mitigate such nuisance be undertaken.

**VicRoads:**

29. Before the development starts, amended plans must be submitted to and approved by the Roads Corporation (VicRoads). When approved by VicRoads, the plans may be endorsed by the Responsible Authority and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:
- (a) The service station located entirely within the subject land.
  - (b) The proposed service road included within the subject land.
  - (c) Ensuring legal access is provided to all the properties as shown on the functional layout plan via the updated service road.
  - (d) Design of the exit from the service road precludes right turn movements (see Austroads Guidelines)\* (see Permit Notes).
30. Prior to the works commencing, the applicant must enter into a works agreement with VicRoads, confirming design plans and works approvals processes, including the determination of fees and the level of VicRoads' service obligations.

**Western Water:**

31. The operator under this permit shall be obliged to enter into an Agreement with Western Water relating to the design and construction of any sewerage or water works required. The form of such Agreement shall be to the satisfaction of Western Water. The owner/applicant shall make a written request to Western Water for the terms and conditions of the agreement.

**Environment Protection Authority:**

32. Odours offensive to the senses of human beings must not be discharged, emitted or released beyond the boundaries of the premises.
33. Effective noise levels from the use of the premises must not exceed the recommended

levels as set out in Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011) or as amended.

34. A secondary containment system must be provided for liquids which if spilt are likely to cause pollution or pose an environmental hazard, in accordance with the EPA Publication 1698, Liquid storage and handling guidelines or as amended.
35. Surface water discharge from the premises must not be contaminated with waste.
36. The permit holder must not contaminate land or groundwater.
37. Displaced petrol fumes must be collected with a vapour recovery system.
38. Petroleum storage tanks must be designed, installed and operated in accordance with the Guidelines on the Design, Installation and Management Requirements for Underground Petroleum Storage Systems (UPSSs) (EPA Publication No. 888.4, August 2015).

**Operational:**

39. Sediment discharges must be restricted from any construction activity to within the property boundaries and any truck movements beyond the site that creates sediment discharges must comply with the Environmental Guidelines for Major Construction Sites (EPA 1995) to the satisfaction of the Responsible Authority.
40. The area set aside for car parking must not be used for any other purpose.
41. Internal fencing and boundary fencing must be maintained to the satisfaction of the Responsible Authority and shall not contain any signage.

**Permit Expiry:**

42. This permit will expire if one of the following circumstances applies:
  - (a) the development and the use are not started within two years of the date of this permit; and
  - (b) the development is not completed within four years of the date of this permit.

**Permit Notes:**

**Environmental Health:**

All food premises (as defined by the Victorian Food Act (1984) must register with or notify Council's Environmental Health Unit prior to commencing operation.

An agreement must be made with Western Water for the connection of sewerage to the site.

The operator is advised to contact Western Water to determine the sizing and best location for the Food and Oil Interceptor (grease trap).

**VicRoads:**

\*Note that a roundabout is being constructed at the Geelong-Bacchus Marsh/Parwan-Exford Roads intersection.

Note that a proposed future Bacchus Marsh bypass (the "Eastern Link") may traverse a small portion of the subject site parent lot.

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	One.
Notice in Moorabool Newspaper:	No.
Number of objections:	Six.
Consultation meeting:	No, the applicant did not wish to consult with the objectors.

## **POLICY IMPLICATIONS**

The Council Plan 2017-2021 provides as follows:

### **Strategic Objective 3: Stimulating Economic Development**

#### **Context 2A: Built Environment**

The proposal is consistent with the Council Plan 2017 – 2021.

## **VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006**

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited, restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

## **OFFICER'S DECLARATION OF CONFLICT OF INTERESTS**

Under section 80C of the *Local Government Act 1989* (as amended), officers providing advice to Council must disclose any interests, including the type of interest.

*Executive Manager – Henry Bezuidenhout*

In providing this advice to Council as the Executive Manager, I have no interests to disclose in this report.

*Author – Tom Tonkin*

In providing this advice to Council as the Author, I have no interests to disclose in this report.

## **EXECUTIVE SUMMARY**

Application referred?	Yes, VicRoads, Western Water, Melbourne Water, EPA, CFA and Council's Environmental Health, Strategic Planning, Infrastructure units.
Any issues raised in referral responses?	Yes, VicRoads requested changes to the plans and Western Water and Council's Environmental Health unit requested further information regarding wastewater management.
Preliminary concerns?	The plans included a convenience restaurant with a take away drive through facility which is a prohibited use under the zone. Concern was also raised in relation to extent of signage allowable under the zone.

Any discussions with applicant regarding concerns?	The officer wrote to the applicant regarding the abovementioned concerns.
Any changes made to the application since being lodged?	Amended plans were submitted by the applicant in response to the officer's concerns and VicRoads' requirements and clarification provided in relation to signage.
Brief history.	The site appears to have previously been used for agriculture.
Previous applications for the site?	None.
General summary.	<p>It is proposed to develop the site for a service station with ancillary sale of convenience food and goods, associated car and truck parking, display of signage and construction of a new access to Geelong-Bacchus Marsh Road. The proposal would operate 24 hours a day, seven days a week.</p> <p>Six objections were received which raised concerns including amenity impacts, suitability in the Farming Zone, road safety, stormwater runoff and impacts on an existing broiler farm.</p> <p>Overall, the proposal is consistent with relevant planning policy and, subject to conditions, would not have any unreasonable amenity impacts on existing dwellings and farming operations nearby.</p> <p>Furthermore, the site is located within the Parwan Station precinct and the proposal would generally complement future residential growth in the area.</p>
<b>Summary Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a Notice of Decision to Grant a Planning Permit for the development and use of service station, display of signage and creation of access to Road Zone Category 1 in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , subject to the conditions included in this report for the land at 4348 Geelong-Bacchus Marsh Road, Maddingley.	

## SITE DESCRIPTION

The subject site is identified as Lot 6 on TP829370F and known as 4348 Geelong-Bacchus Marsh Road, Maddingley. The site is a roughly triangular shaped lot located on the north-east side of the road between Woolpack and Parwan-Exford Roads, with a 419.53m frontage width and north abuttal to the Melbourne-Ballarat railway line. Apart from small scattered shrubs, the site contains no other vegetation and falls approximately 6.0m from the south-east to the north-west. Existing access is via an informal vehicle crossover near the north-west corner of the site which currently contains several shipping containers and car bodies.

The site and surrounding land to the east and north of Geelong-Bacchus Marsh Road is in the Farming Zone and used for a mix of uses. To the south-east, on the corner of Geelong-Bacchus Marsh and Parwan-Exford Roads, is a transport depot and dwelling. To the east is a dwelling and

storage for trucks and associated machinery. To the north and north-east, across the Melbourne-Ballarat railway line are, respectively, a property containing farm shed, and a broiler farm and dwelling. To the south-west, across Geelong-Bacchus Marsh Road, is a property in the Special Use Zone, Schedule 1 (Coal Mining) containing farm shedding and infrastructure with the balance of the site used for animal grazing. The Maddingley Brown Coal site is located approximately 670m west of the subject site.

The subject site is located within the Parwan Station precinct in the Bacchus Marsh Urban Growth Framework Plan, and specifically within a buffer zone identified for non-sensitive uses due to its proximity to the Maddingley Waste Resource and Recovery Hub.

Reticulated water and power are available to the site.

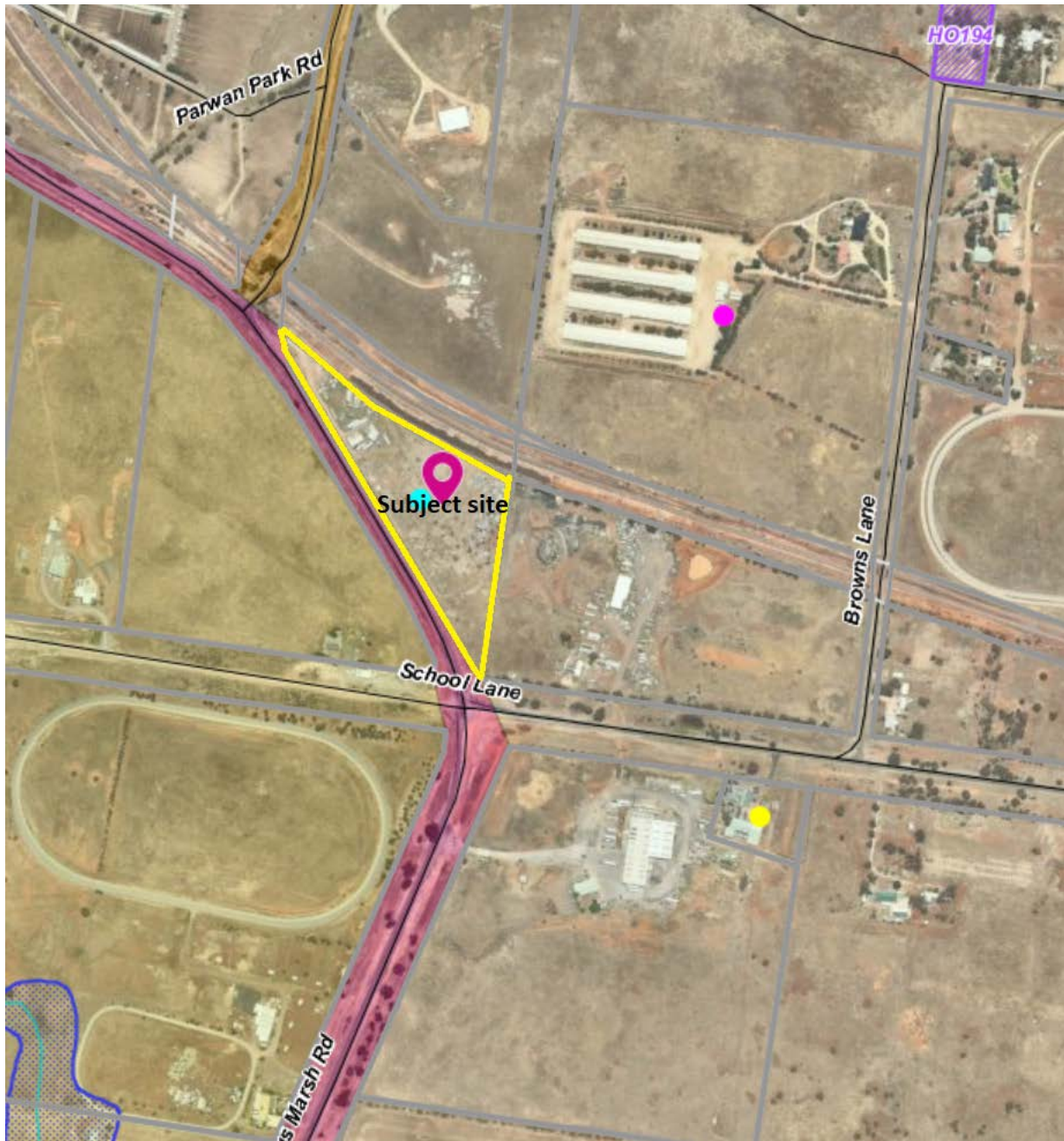


Figure 1: Aerial photograph.

## PROPOSAL

It is proposed to develop the site for a service station, display associated signage and construct access to Geelong-Bacchus Marsh Road. The proposal would include ancillary functions for the sale of convenience goods, food and drink and incorporate a café, open 24 hours per day, 7 days per week. The 5.0m high proposed service station building would be located towards the centre of the site, have a floor area of 435sq m and includes an ancillary convenience shop and café. The refuelling areas would at any time accommodate up to 16 cars under a 6.5m high canopy and four trucks. A total of 41 car parking spaces would be provided, and four truck parking bays would be provided towards the rear of the site.

Signage would comprise an 8.0m high x 2.8m wide floodlit double-sided pylon sign positioned at the front of the site, containing business identification and promotional signage. No further signage details are known, as it is understood that the future occupant of the premises is unconfirmed.

Access to Geelong-Bacchus Marsh Road would be created with an entry located towards the north-west end of the site and an exit located towards the south-east end of the site, with associated works within the road reserve including a slip lane and a right-hand turning lane. The balance of the site would be maintained as vacant land for the foreseeable future.

## HISTORY

None applicable.

## PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners.

## SUMMARY OF OBJECTIONS

The objections received are detailed below with officer's comments accompanying them:

Objection	Any Relevant Requirement
Impacts on amenity due to 24-hour operation, including noise, lights, traffic and litter.	Clauses 35.07 and 65.01.
<b>Officer's Response:</b> Subject to conditions, the proposal is considered to be suitably site responsive, with no unreasonable amenity impacts. See 'Discussion' below.	
Provision of four truck parking spaces would be inadequate during busy periods.	Clause 52.06.
<b>Officer's Response:</b> There is no specified requirement in the Moorabool Planning Scheme for truck parking provision. Recommended conditions would require that parked trucks occupy designated parking bays only. Should additional parking be required in future, the applicant may apply to Council to amend the plans.	
The land is zoned for farming, not retail activity.	Clause 35.07.

<b>Officer's Response:</b>  The Farming Zone allows for a limited range of non-farming related commercial uses, subject to planning approval. A service station is one such use which may be allowed in the Farming Zone. Furthermore, a service station may include the sale of motor vehicle parts and accessories, food, drinks and other convenience goods, hiring of trailers, servicing or washing of motor vehicles and installation of motor vehicle accessories or parts. Furthermore it is noted that whilst the land is currently in the Farming Zone, it is located within the future Parwan Station precinct, and the site and surrounding land will ultimately be developed consistent with a future precinct structure plan.	
How will the vacant sections of the site be developed? Approval of this application would increase the likelihood of the whole site being developed.	Clause 35.07.
<b>Officer's Response:</b>  It is understood that the proposed vacant sections of the site would remain undeveloped for the foreseeable future, although development may occur if associated with a Section 1 use under the Farming Zone in the instance where no permit is required. Otherwise, future use and development would be subject to further planning approval. It is recommended that a condition of approval require the proposed vacant sections of land to be maintained in an orderly manner in consideration of the site's visual amenity.	
Road safety in relation to vehicles entering and exiting the site, including in an area where traffic safety is already compromised, particularly in relation to the design of Geelong-Bacchus Marsh Road's intersections with Woolpack and Parwan-Exford Roads.	Clauses 52.29 and 66.03.
<b>Officer's Response:</b>  Geelong-Bacchus Marsh Road is in a Road Zone, Category 1, and is under the management of VicRoads. The proposal includes road upgrades for vehicles entering the site, including a left turn slip lane and a right turn lane and associated line marking. VicRoads are a determining referral authority and have consented to the proposal, subject to conditions. VicRoads advise that the intersection of Geelong-Bacchus Marsh and Parwan-Exford Roads is planned to be upgraded, including construction of a roundabout as part of the wider safety improvements to Geelong-Bacchus Marsh Road. These construction works commenced in January 2020. Based on VicRoads' assessment there are not considered to be any mitigating concerns regarding road safety.	
The proposal would reduce future options for VicRoads to realign the intersection of Woolpack and Geelong-Bacchus Marsh Roads.	Clause 21.07.
<b>Officer's Response:</b>  There is no confirmed realignment of the Woolpack and Geelong-Bacchus Marsh Roads intersection, including the alignment of a future Eastern Link Road, although land within the vicinity of Woolpack Road is included with the Eastern Link Road study area. Given the early	

stage of investigation and the various factors relevant to a decision on future road alignment it is not considered relevant to the assessment of this application. Furthermore, the application was referred to VicRoads who provided conditional consent to the proposal but noted that the future Eastern Link Road may traverse a small section of the subject site.	
Runoff from the property is already an issue, particularly to the railway line. How would runoff be managed?	Clause 65.01.
<b>Officer's Response:</b> The application includes a Stormwater Management Plan which addresses the management and reuse of stormwater runoff within the site, to satisfy EPA and catchment management authority requirements. Council's Infrastructure unit has assessed the Plan and, subject to conditions for further details on the final disposal of treated stormwater and legal point of discharge, consents to the proposal.	
Potential impact on existing local food and drink premises.	N/A
<b>Officer's Response:</b> Any potential impact on the viability of existing businesses is beyond the scope of the assessment of this application.	
Impact on surrounding property values.	N/A
<b>Officer's Response:</b> Property values are affected by many factors and no evidence has been provided that the proposal would directly affect surrounding property values.	
Vegetation removal.	Clause 52.17.
<b>Officer's Response:</b> Based on a visual inspection of the site by Council's Manager for Environment and Waste Education, the site is deemed to be highly degraded and dominated by exotic weed species. Removal of any vegetation to facilitate the proposal is considered acceptable.	
Fumes, noise and light spill will prevent disturb animals and wildlife.	Clause 35.07.
<b>Officer's Response:</b> The site and surrounding area are not identified as being of habitat significance for wildlife and accordingly it is not considered that the proposal would unreasonably impact on wildlife. Subject to conditions, potential impacts on livestock are considered to be limited to a reasonable extent.	
The area is populated by service stations and the proposal will destroy the amenity and culture of the area.	N/A
<b>Officer's Response:</b> It is beyond the scope of the officer's assessment to consider other service stations in the area in relation to community needs or commercial viability. The meaning of the objector's reference to culture in the context of this application is unclear, however there are a mix of uses	



in the vicinity of the subject site including dwellings. Subject to conditions the proposal would be suitably site responsive. See 'Discussion' below.	
The proposal is located within the buffer zone of an existing broiler farm northeast of the subject site.	Clauses 14.01-15, 21.04-2, 21.07, 35.07 & 65.01.
<b>Officer's Response:</b> Under the Victorian Code for Broiler Farms 2009 (Plus 2018 Amendments) buffer zones are classified in the context of impacts which a broiler farm may have on the amenity of existing uses. The proposed service station is not considered to be a sensitive use, unlike a dwelling or school which are occupied frequently for extended time periods, and therefore the potential amenity impacts on the service station would not be considered unreasonable. Under the Code, the buffer zone does not relate to impacts that a proposed use may have on an existing broiler farm.	
The application does not address or respond appropriately to the relevant provisions of the Moorabool Planning Scheme generally relating to support for existing agricultural production. Without evidence as to how the application has considered and responded to those provisions it cannot be considered to have strategic support.	Clauses 14.01-15, 21.04-2, 21.07, 35.07 & 65.01.
<b>Officer's Response:</b> Officers deem there is sufficient information to assess the application and have considered all relevant provisions of the Scheme in making a recommendation on the application. Further it is noted that whilst the site is located with the Farming Zone, the site is located within the future Parwan Station precinct and will transition away from agricultural land uses as part of the development of this precinct.	
The application includes a copy of a VCAT decision for a site in Greater Geelong in support of the current proposal but does not refer to particular considerations in VCAT's decision which demonstrate the different contexts of that site and the subject site.	N/A
<b>Officer's Response:</b> Noted. The current application has been considered against the relevant provisions of the Moorabool Planning Scheme and case law was not relied upon.	

**LOCALITY MAP**

The map below indicates the location of the subject site and the zoning of the surrounding area.

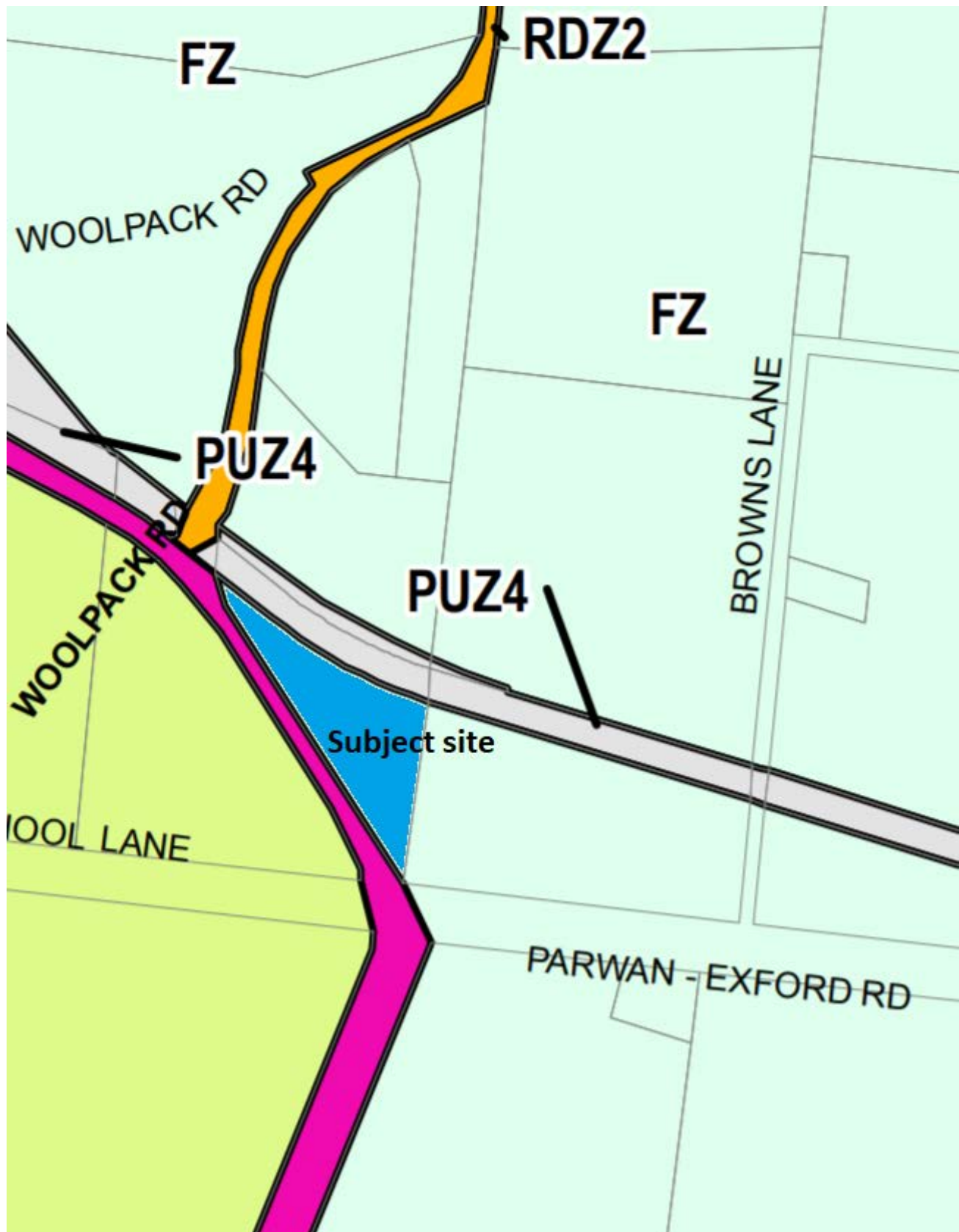


Figure 2: Zone Map of site and surrounds.

**PLANNING SCHEME PROVISIONS**

Council is required to consider the Victoria Planning Provisions and give particular attention to the Planning Policy Framework (PPF), the Local Planning Policy Framework (LPPF) and the Municipal Strategic Statement (MSS).

The relevant clauses are:

- Clause 11.01-1S Settlement
- Clause 11.01-1R Settlement – Central Highlands
- Clause 11.03-2S Growth areas
- Clause 11.03-3S Peri-urban areas
- Clause 13.07-1S Land use compatibility
- Clause 14.01-1S Protection of agricultural land
- Clause 15.01-6S Design for rural areas
- Clause 17.01-1S Diversified economy
- Clause 17.01-1R Diversified economy – Central Highlands
- Clause 17.02-2S Out-of-centre development
- Clause 21.03-4 Landscape and neighbourhood character
- Clause 21.04-2 Agriculture
- Clause 21.04-3 Commercial
- Clause 21.07 Bacchus Marsh

Overall, the proposal complies with the relevant sections of the SPPF and LPPF.

**ZONE**

The subject site is in the Farming Zone (FZ). The purpose of the Zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

Pursuant to Clause 35.07-1 a service station is an innominate land use and by default classified as a Section 2 use, thus a permit is required. Under Clause 35.07-4 a permit is required to construct any associated buildings and works.

Overall, the proposal is consistent with the purpose of the Zone.

## OVERLAYS

The subject site is affected by Design and Development Overlay, Schedule 2 (DDO2). Under Clause 43.02-2 a permit is required to construct buildings and works unless a schedule to the overlay specifies otherwise. Under Schedule 2, at Clause 2.0, a permit is not required where all external walls and roof areas are clad with non-reflective materials. Accordingly, in this instance a permit is not required.

### Particular Provisions

#### Clause 52.05 Signs

Pursuant to Clause 35.07-7, under Clause 52.05-14 a permit is required to display business identification signage, but no more than 3.0sq m to each premises is permissible. Floodlighting also requires a permit. The proposed pylon sign exceeds the maximum allowable area and is therefore prohibited based on its current design.

Subject to conditions to reduce the size of signage to within the allowable limits, the proposal would comply with the provisions of this clause. Proposed floodlighting to the extent required for the permitted size of signage would not have any adverse amenity impacts, subject to conditions and given its separation distances from existing dwellings and the broiler farm. Subject to conditions, driver safety would not be compromised due the setback of signage from the Geelong-Bacchus Marsh road carriageway, sign contents and prominence for approaching traffic.

#### Clause 52.06 Car parking

Under Clause 52.06 there are no specified car parking requirements for a service station. Under Clause 52.06-6, parking provision must be to Council's satisfaction. The provision of 41 car spaces would be sufficient to meet potential demand. Parking space and accessway dimensions would meet the relevant requirements.

#### Clause 52.29 Land Adjacent to a Road Zone, Category 1

Under Clause 52.29-2 a permit is required to create access to a Road Zone, Category 1. The application was referred to VicRoads as the relevant Roads Corporation, who consent to the proposal, subject to conditions. Subject to those conditions, the proposal complies with the provisions of this clause.

## DISCUSSION

Overall, the proposal is considered to be generally consistent with relevant State and local planning policy, the Farming Zone and applicable Particular and General Provisions of the Moorabool Planning Scheme.

The subject site is located in the Farming Zone, approximately 4.0km by road south-east of the Bacchus Marsh commercial centre and surrounded by a mix of farming and non-farming related uses. The site is located at the western periphery of the Parwan Station precinct identified in the Moorabool Planning Scheme as a growth area for residential and commercial focussed development. The existing zoning and surrounding land uses, in particular nearby farming activity, and Council's strategic intent for the area present competing policy demands and are considered to be the critical factors in determining this permit application.

State and local planning policy identify the importance of Melbourne's peri-urban areas in terms of protecting and enhancing their rural and township landscape character, environmental values, economic viability and productive agricultural land. Plan Melbourne and the Central Highlands Regional Growth Plan identify Bacchus Marsh as regionally significant in terms of its role as a key

service centre and location for increased population growth. The proposal would contribute to local commercial infrastructure and economic growth through creation of additional job opportunities. However, growth must be balanced with the need for new development to respond positively to its local context, in particular ensuring that the amenity of the area and viability of existing farming activities is not unreasonably compromised.

Local planning policy identifies the Parwan Station precinct as one of four future growth areas close to Bacchus Marsh subject to more detailed investigation. The development of these future growth areas is heavily contingent on provision of an Eastern Link Road to provide the necessary integration with local and regional transport networks. The western portion of the Parwan Station precinct is identified as a likely buffer zone for non-sensitive land uses due its proximity to existing land uses with likely amenity impacts.

The purpose of the Farming Zone includes the provision of agricultural land, retention of productive agricultural land, avoidance of adverse impacts on agriculture from non-agricultural uses and retention of employment and population to support rural communities. Productive agricultural uses are supported as are non-agricultural uses provided their effects on agricultural activities are mitigated to avoid adverse impacts. In the context of existing land uses in the immediate vicinity of the subject site, and its location on a regional arterial road, the proposed service station contributes to a mix of uses in the immediate vicinity, with the broiler farm north-east of the subject site perhaps the most prominent of agricultural uses immediately nearby. The subject site, being a 3ha triangular shaped lot with limited existing agricultural viability, is not considered to be particularly worthy of retention for agriculture, and directly adjoins only one property to the east which is used in part for truck storage and a dwelling, limiting the desirability for potential consolidation to improve productivity. The key issue in relation to agriculture is whether the proposed service station's potential impacts on the aforementioned broiler farm can be mitigated to an acceptable extent to avoid adversely impacting on the farm's productivity.

The key potential amenity impacts of the proposal would generally be confined to night time hours, when the impacts of light spill and noise are more likely to be an issue. The proposed use is expected to rely on passing traffic for its customers, rather than generating vehicle trips in its own right, particularly given the nature of the use, location on an existing arterial road and relative isolation from other trip generators such as shops, schools and employment. Vehicular movements and associated noise are not expected to increase significantly, and the truck parking bay to be located towards the rear of the site would accommodate only four trucks. It is also noted that the nearest dwelling to the proposed development is approximately 190m to the south-east and the broiler farm approximately 190m to the north-east. Nonetheless, it is recommended that a condition of approval require that most site deliveries and all refuelling be confined to the hours of 7.00AM-10.00PM, Monday to Saturday, and 9.00AM-10.00PM, Sundays and public holidays. Furthermore, it is recommended that the proposed plant equipment area be completely enclosed within a building to minimise noise. Light spill from the proposed buildings and floodlit signage would be controlled by permit conditions but also mitigated by the abovementioned separation distances. However, it is recommended that a condition of approval require a thickly landscaped buffer strip to be planted along the outer borders of the north, northeast and southeast accessways, which may include bunding if desired by the applicant, to provide screening from vehicle headlights when trucks and cars are circulating through the site. Twenty-four hours operation in this location, in consideration of the abovementioned separation distances and recommended conditions, is considered to be acceptable.

## GENERAL PROVISIONS

Clause 65 – Decision Guidelines have been considered by officers in evaluating this application.

Clause 66 – Stipulates all the relevant referral authorities to which the application must be referred.

## REFERRALS

Authority	Response
Western Water	Consent with conditions
Melbourne Water	Consent
VicRoads	Consent with conditions
EPA	Consent with conditions
CFA	Consent
Infrastructure	Consent with conditions
Environmental Health	Consent with conditions
Strategic Planning	Consent

## FINANCIAL IMPLICATIONS

The recommendation to approve this application does not have any financial implications for Council.

## RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation to approve this application does not have any risk or OH&S implications for Council.

## COMMUNICATIONS STRATEGY

Notice was undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*, and further correspondence is required to all interested parties to the application as a result of a decision in this matter. All submitters and the applicant were invited to attend this meeting and address Council if required.

## OPTIONS

- Issue a Notice of Decision to Grant a Permit in accordance with the recommendation of this report;
- Issue a Notice of Decision to Grant a Permit with amendments to the recommendation of this report. Either this or the previous option may result in objectors appealing the decision to VCAT; or
- Should Council wish to refuse the application, issue a Refusal to Grant a Permit on grounds, having determined what it considers to be valid grounds for refusal. This option may result in the applicant appealing the decision to VCAT.

**CONCLUSION**

Overall, the proposed use and development for a service station is considered to be generally responsive to applicable planning policy. The subject site is in the Farming Zone but is a relatively small parcel of land with limited viability for agriculture, positioned on an arterial road in a location where any potential amenity impacts on existing dwellings or farming activities can be acceptably managed by way of permit conditions. Furthermore, it is considered that the proposal would complement future development in the area, considering the site's location within the Parwan Station precinct which is identified for significant future residential growth.



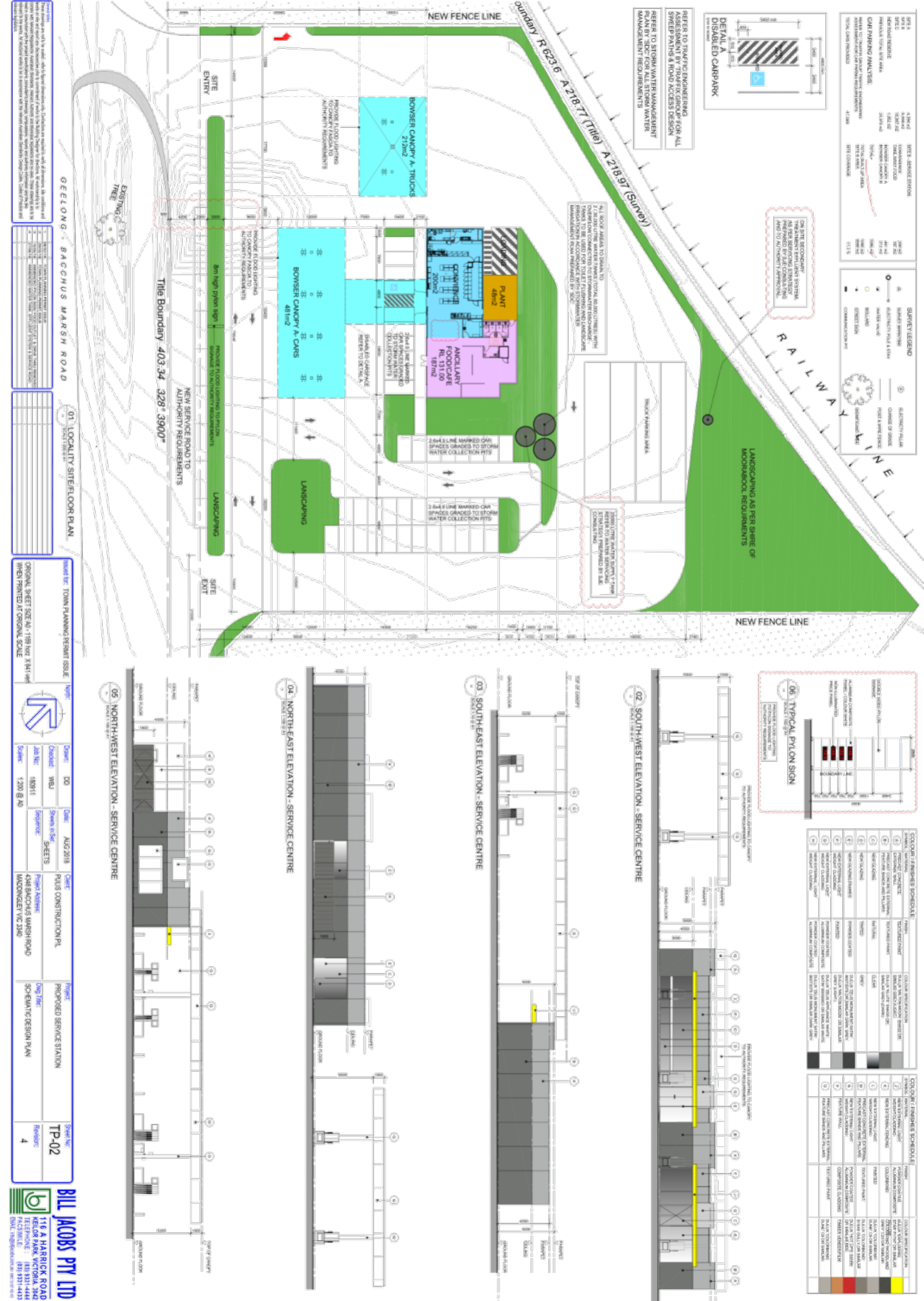
**BILL JACOBS PTY LTD**

**116 A HARRICK ROAD**  
**KELIDOR PARK, VICTORIA, 3104**

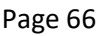
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- 8      UPDATE ON TRENDS, ISSUES AND OTHER MATTERS**
- 9      PROCESS FORWARD AND WORK PROGRAM**
- 10     UPDATE ON VCAT DECISIONS**
- 11     OTHER BUSINESS**
- 12     DATE OF NEXT MEETING**
- 13     MEETING CLOSE**