



AGENDA

S86 Development Assessment Committee Meeting

Wednesday, 18 December 2019

I hereby give notice that a S86 Development Assessment Committee Meeting will be held on:

Date: Wednesday, 18 December 2019

Time: 4.30pm

Location: The Pavilion Room, Darley Civic and Community Hub, Darley

**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 20 November 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 PA2015249 - AMENDED PERMIT FOR STAGED SUBDIVISION AND REMOVAL OF NATIVE VEGETATION. 233 WERRIBEE VALE ROAD MADDINGLEY

Author: Mark Lovell, Senior Statutory Planner

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

Attachments: 1. Subdivision Masterplan [↓](#) 

APPLICATION SUMMARY

Permit No: PA2015249

Lodgement Date: 25 June, 2019

Planning Officer: Mark Lovell

Address of the land: Lot 2 on PS642482W, 233 Werribee Vale Road, Maddingley

Proposal: Amended permit for a staged subdivision and removal of native vegetation

Lot size: 12.08 hectares

Why is a permit required? Amended permit to increase lot numbers and have an altered subdivision pattern

RECOMMENDATION

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, grants the issue of a permit for staged subdivision and removal of vegetation at 233 Werribee Vale Road, Maddingley based on the following amendments

New condition 1a - Lot 156 deleted and vested in Reserve No. 1

New condition 1b - The two retained trees within Lot 150 require a vegetation protection envelope which is a minimum of 2 metres outside the drip line of the trees. The protection envelope must be nominated as a restriction on Title to the satisfaction of the Responsible Authority.

New condition 1c - Fencing of the side and rear lot boundaries that adjoin Reserve No.1 must be designed to the satisfaction of the Responsible Authority. Fencing must be sympathetic to the adjacent escarpment reserve. The northern and eastern boundary of Lot 159 and the eastern boundary of Lot 158 must also be design to the satisfaction of the Responsible Authority.

Alter condition 11 to include – Offset requirements must match any amended NVIM report to the satisfaction of the Responsible Authority

Remove Melbourne Water condition 44

New Melbourne Water condition 46 - Prior to the issue of a Statement of Compliance, the Owner shall enter into and comply with an agreement with Melbourne Water Corporation for the acceptance of surface and storm water from the subject land directly or indirectly into Melbourne Water's drainage systems and waterways, the provision of drainage works and other matters in accordance with the statutory powers of Melbourne Water Corporation.

New Melbourne Water condition 47 - Prior to Certification, the Developer must ensure adequate outfall from the site. A copy of written approval from the relevant affected parties to the satisfaction of Council for the arrangement of appropriate drainage outfall for the subdivision must be provided to Melbourne Water. Copy of Council's acceptance of the SWMS for any assets under Council's maintenance shall be provided to Melbourne Water for our records.

New Melbourne Water condition 48 - Prior to the commencement of works, the proposed Wetland treatment works to be constructed for treatment of stormwater runoff is to be designed and built to Council's requirements. Council's approval to the design and acceptance of ownership and all future maintenance responsibilities of the Wetland shall be submitted to Melbourne Water prior to the commencement of works.

New Melbourne Water condition 49- Prior to Certification, a stormwater management and drainage strategy must be submitted and approved by Melbourne Water. This strategy must provide details of the outfall/s for the development and calculate the appropriate flow volumes and flood levels for the 100-year ARI storm event and demonstrates how stormwater runoff from the subdivision will achieve State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater.

New Melbourne Water condition 50 - Prior to the issue of a Statement of Compliance for the subdivision, engineering plans of the subdivision (in electronic format) must be submitted to Melbourne Water for our records. These plans must show road and drainage details and any overland flow paths for the 100 year ARI storm event.

New Melbourne Water condition 51 - Prior to the issue of a Statement of Compliance for the subdivision, a certified survey plan prepared by or under the supervision of a licensed land surveyor, showing finished lot levels reduced to the Australian Height Datum, must be submitted to Melbourne Water for our records.

New Melbourne Water condition 52 - Prior to the issue of a Statement of Compliance for the subdivision, a Site Management Plan detailing pollution and sediment control measures must be submitted to Melbourne Water.

New Melbourne Water condition 53 - Alignment of roads and reserves with any adjoining estates must ensure continuity and provide uninterrupted conveyance of overland flows.

New Melbourne Water condition 54 - The subdivision is to make provision for overland flows from the upstream catchment utilising roads and/or reserves.

New Melbourne Water condition 55 - Any road or access way intended to act as a stormwater overland flow path must be designed and constructed to comply with the floodway safety criteria outlined within Melbourne Water's Land Development Manual.

New Melbourne Water condition 56 - Easements or reserves shall be created over existing and proposed Melbourne Water assets on the Plan of Subdivision to the satisfaction of Melbourne Water.

New Melbourne Water condition 57- Any temporary outfall is to be arranged to the satisfaction of Melbourne Water, Council and the affected downstream property owner(s).

New Melbourne Water condition 58 - Prior to the issue of a Statement of Compliance for the subdivision, a separate application direct to Melbourne Water must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses.

New Melbourne Water condition 59 - Prior to the issue of a Statement of Compliance, the drainage outfall must be to the satisfaction of Council. Written confirmation of the acceptance of the drainage outfall by Council must be sent to Melbourne Water for our records

Southern Rural Water conditions 46-49 renumbered to 60-62

Replace Western Water condition 54 with - Any existing water service which crosses any of the proposed allotment boundaries within the proposed development must be disconnected and relocated at the developer's expense, to be wholly within one allotment only and to the satisfaction of Western Water.

New Western Water condition 71 - The owner shall reach an agreement with Western Water regarding the construction of any Shared Assets (potable water mains that are greater than 150mm diameter and gravity sewerage mains that are greater than 225mm diameter), required to service the subdivision/development. The construction of Shared Assets reimbursable by Western Water shall comply with Western Water's Procurement Procedure and Guide to New Customer Contributions

New Western Water condition 72 - The developer must produce for approval by Western Water an Integrated Water Management Plan (IWMP) that incorporates water efficiency measures and water sensitive urban design techniques that reduce reliance on potable water by increasing utilisation of fit-for-purpose alternative water supplies.

New Western Water condition 73 - The IWMP must set out subdivision outcomes that appropriately respond to the site and its context for integrated water management to the satisfaction of Western Water. When approved by Western Water, the IWMP must then form part of the permit.

Replace Powercor condition 58 with new condition 74- This letter shall be supplied to the applicant in its entirety.

New Powercor condition 75 - The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards. Notes: Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make

such supplies available, with the cost of such works generally borne by the applicant

New Powercor condition 76 - The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR). Notes: Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.

New Powercor condition 77 - The applicant shall, when required by the Distributor, set aside areas with the subdivision for the purposes of establishing a substation or substations. Notes: Areas set aside for substations will be formalised to the Distributor's requirements under one of the following arrangements:

- RESERVES established by the applicant in favour of the Distributor.
- SUBSTATION LEASE at nominal rental for a period of 30 years with rights to extend the lease for a further 30 years. The Distributor will register such leases on title by way of a caveat prior to the registration of the plan of subdivision.

New Power condition 78 - The applicant shall establish easements on the subdivision, for all existing Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements. Notes: Existing easements may need to be amended to meet the Distributor's requirements. Easements required by the Distributor shall be specified on the subdivision and show the Purpose, Origin and the In Favour of party as follows

Purpose: Powerline. Origin: Section 88 Electricity Industry Act 2000 Land benefit/In favour of: PowerCor Australia Ltd

Downer Utilities condition 59 renumbered condition 79.

Permit Expiry condition 60 renumbered to 85.

New CFA condition 80 - The subdivision as shown on the endorsed plans must not be altered without the consent of CFA

New CFA condition 81 - Prior to the issue of a Statement of Compliance under the Subdivision Act 1988 the following requirements must be met to the satisfaction of the CFA:

- (a) Above or below ground operable hydrants must be provided. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of building envelopes, the rear of the lots) must be 120 metres and the hydrants must be no more than 200 metres apart. These distances must be measured around lot boundaries.
- (b) The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the Country Fire Authority. Note –CFA's requirements for identification of hydrants are specified in 'Identification of Street Hydrants for Firefighting Purposes' available under publications on the CFA web site (www.cfa.vic.gov.au).

New CFA condition 82 - Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.

- (a) The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 meters. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
- (b) 3.2 Curves must have a minimum inner radius of 10 metres.
- (c) Have a minimum trafficable width of 3.5 metres and be clear of encroachments for at least 0.5 metres on each side and 4 metres above the access way.
- (d) Roads more than 60m in length from the nearest intersection must have a turning circle with a minimum radius of 8m (including roll-over kerbs if they are provided) T or Y heads of dimensions specified by the CFA may be used as alternatives.

New condition 83 - The subdivision must be completed in their numerical sequence unless with the written consent of the Responsible Authority.

New Condition 84 – Prior to the issue of Statement of Compliance for each stage the fence referred to in Condition 1c must be fully constructed to the satisfaction of the Responsible Authority.

PUBLIC CONSULTATION	
Was the application advertised?	No, the application is exempt from advertising.
Notices on site:	Nil.
Notice in Moorabool Newspaper:	Nil.
Number of objections:	None.
Consultation meeting:	Not applicable.

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.

Executive Manager – Henry Bezuidenhout

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

Author – Mark Lovell

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

EXECUTIVE SUMMARY

Application referred?	Yes, Powercor Australia, Melbourne Water, Downer Utilities, Western Water, CFA, DELWP, Council's Infrastructure and Council's Strategic Planning teams
Any issues raised in referral responses?	Council's Strategic Planning
Preliminary concerns?	Intensification of the number of lots from the previous application within a reduced developable area.
Any discussions with applicant regarding concerns?	Yes, advised the lots sizes were not consistent with endorsed development plan under the Development Plan Overlay.
Any changes made to the application since being lodged?	Yes. The applicant lodged an application to amend in process on 19 November 2019 to address Council's concerns.
Brief history.	This lot is independent of Stonehill Estate undertaken by the Devine Group, however makes part of the DP03 and would be developed with connecting roads that access adjoining estates in consistency with the DP03.
Previous applications for the site?	There have been several permits issued with the DP03 area.
General summary.	The applicant has revisited the existing approval and identified that road gradients and that location of open spaces were not appropriate. The applicant has reduced the developed area with Reserve No. 3 to be more consistent with the Development Plan Overlay. The applicant has decided to increase the number of lots into a smaller developable area resulting in reduction of lot sizes. The applicant has taken several attempts for the amended proposal to be consistent with the intent of the Development Plan Overlay. The amendment can be supported with new or revised permit conditions.

Summary Recommendation

That, having considered all relevant matters as required by the *Planning and Environment Act 1987*, Council issue approval to grant an amended permit for a staged subdivision and removal of vegetation at 233 Werribee Vale Road, Maddingley.

SITE DESCRIPTION

The subject site is known as Lot 2 on PS642482W. The lot is irregular in shape with a maximum width of 320.07 metres and maximum length of 540.27 metres for a total area of 12.08 hectares.

The site has significant slope with some flatter sections near the southern boundary with an overall slope of 40 metres. The site is vacant land with some scattered trees. The site abuts Stonehill residential estate which will consist of 1400 lots and requires completion of stages to gain vehicle access to the subject site. The western side boundary is adjacent to an unmade Government Road that will be partly constructed to allow development of Stages 24 and 25 of Stonehill Estate. To the north, are agricultural fields that are located within a Farming Zone under the Moorabool Planning Scheme.

PROPOSAL

Amendments to the plans are as follows:

- Increase in number of lots in stage 1 and 2 from 51 lots to 59 lots. Note: Council officers recommend to remove one lot to be incorporated into open space (refer condition 1b) which will result a further increase in open space and limiting the increase in lots.
- Reduction in the lot size from an average of 778m² to 700.31m².
- Increase in total public open space from 29,297m² to 35,991m².
- Removal of Reserve No. 2 adjacent to Ladhams Way
- Introducing a new court bowl at the end of the perimeter road, Ladhams Way.
- Altering the alignment of Harkness Road.
- Removal of two lots adjacent to the roadway called Basin Road.
- The overall amendment is a reduction in the developable area by increasing public open spaces with a greater number of lots within the developable area by reducing lot sizes.

The breakup of the lot sizes for the first two stages are as follows:

Lot Size	Number of lots	Total lots in the endorsed plans	Difference compared to the original approval
Less than 300m ²	0	0 lots in the original approval,	No change
300m ² -400m ²	0	0 lots in the original approval	No change
400m ² -500m ²	0	0 lots in the original approval	No change
500m ² -600m ²	20	0 lots in the original approval	+ 20 lots
600m ² 700m ²	15	9 lots in the original approval	+ 6 lots
700m ² -800m ²	10	19 lots in the original approval	- 9 lots
800m ² -900m ²	9	11 lots in the original approval	- 2 lots
900m ² -1000m ²	2	10 lots in the original approval	- 8 lots
1000m ² +	3	2 lots in the original approval	+1 lot
TOTAL	59	51 lots in the original approval	

NOTE: The applicant has not provided plans for Stage 3 as it dependent upon the final make up of Stages 24 and 25 of Stonehill Estate located to the immediate west of the subject land.

Table 1: Lot breakup

Existing Permit Overlayed on Development Plan



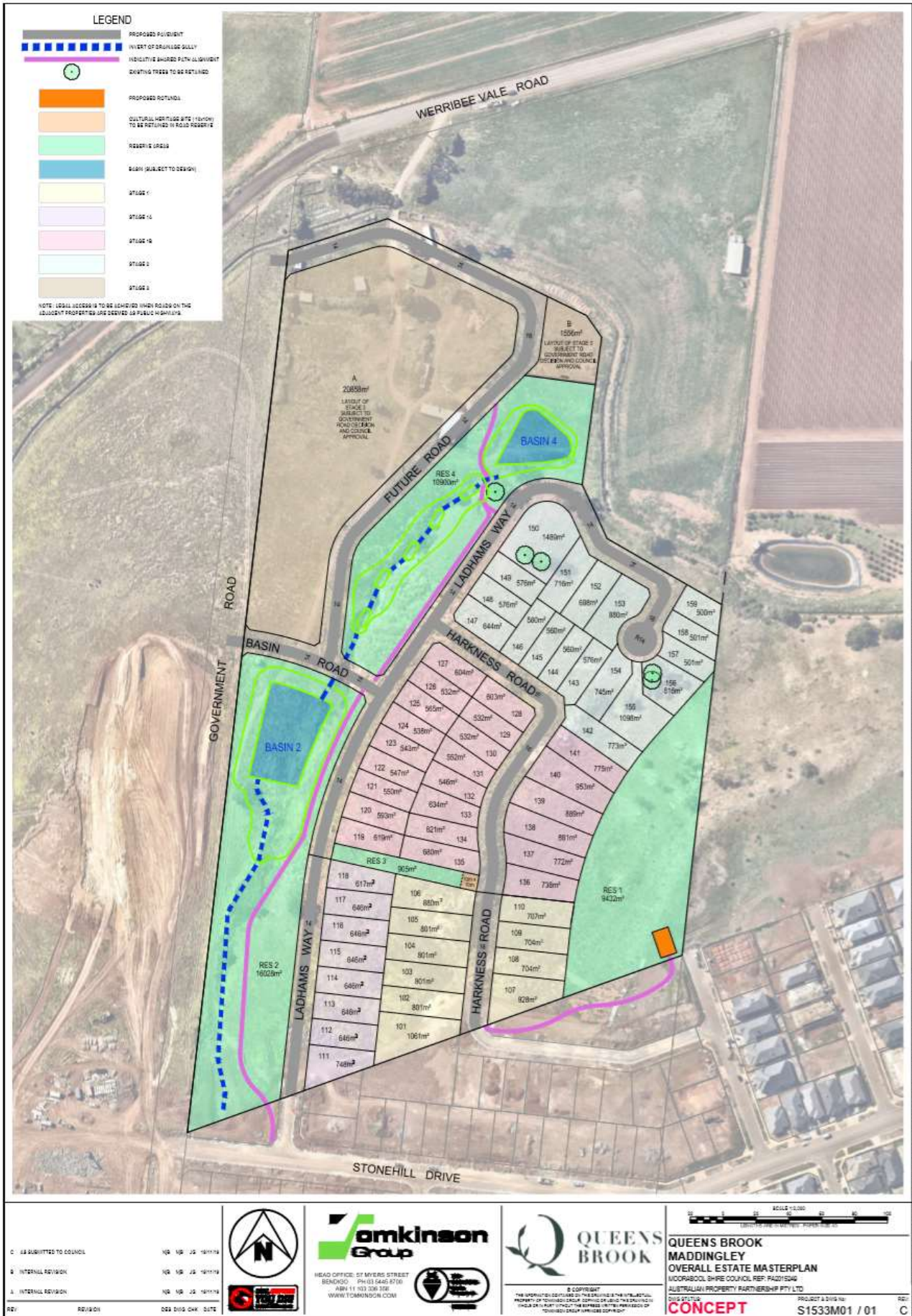
Proposed MasterPlan Overlayed on Development Plan



Existing permit developable area shaded red

Amended permit developable area
(prior to the application in process)

Table 2: Comparison of developable areas



BACKGROUND TO CURRENT PROPOSAL

PA2015249 was issued on 5 July 2016 authorising a staged subdivision and removal of native vegetation. A total of 81 lots were approved. An extension of time approval was issued on 9 May 2018 with the certification expiry extended to 5 July 2020. Plans in accordance with condition 1 of the permit were approved on 20 August 2019.

Officer assessed the initial amendment and recommended the application be refused based on the following grounds:

- The proposed subdivision is not generally in accordance with the development plan approved under Development Plan Overlay Schedule 3 of the Moorabool Planning Scheme.
- The proposed subdivision lot sizes and lot widths are too small and narrow and will result in a poor design outcome.
- The reduction in the size of the Cultural Heritage Significant site, Reserve No. 1, does not have the approval of the Registered Aboriginal Party (RAP).
- The subdivision does not comply with the objectives and strategies of Clause 15.01-3S, Subdivision Design.

The S86 Development Assessment Committee at its meeting of 16 October 2019 determined to defer making a decision to allow the applicant and officers to undertake further discussions.

The applicant submitted a proposed concept plan on 15 October 2019 which showed the following amendments:

- Reinstating the CHMP linear reserve and only remove with Wathaurong and Council support.
- Remove lots backing on the reserve near Basin 1, lost of six lots.
- Altered roadway to remove lots backing onto the reserve near Basin 3, lost of at least two lots.
- Added a wider opening to a shared path link that would connect to the end of a court bowl roadway.
- Stage 1 and 2 lots range from 500m² to 1200m² in area.

Council officers still expressed concerns with the concept plan and advised it was still not in accordance with the development plan overlay. To achieve Council's requirements, the applicant would need to maintain most of the perimeter road and lose further lots around Court 1.

After further meetings and discussions, the application lodged an application to amend in process on 19 November 2019 which showed the following amendments

- Extending the perimeter roadway, Ladham Way completely to the northern edge of the lot.
- Removing a proposed super lot, a potential medium density housing site.
- Retaining the CHMP Reserve.
- Reconfiguring the drainage reserve near Basin 4 resulting in two retained trees become part of a lot that is protected by a vegetation envelope.

- Stage 1 and 2 lots range from 500m² to 1489m².
- Reorganising the boundaries and creating lots within the former super lot,
- An overall gain of 8 lots compared to the endorsed plans.

HISTORY

There have several permits issued within DPO3 with the majority contained in Stonehill Estate resulting in the following outcomes:

- Development stages approved: 20 Stages
- Residential lots approved: 788 lots
- Other (associated approvals)
 - Neighbourhood Activity Centre
 - Removal of native vegetation
 - Creation of reserves and easements
 - Display homes

Please refer the list below for the individual Planning Permit approvals.

- PA2010216 - Staged Subdivision of West Maddingley Part 2. A total of 146 lots approved.
- PA2011054 - Stage 1 and 2 of West Maddingley Part 1. A total of 121 lots approved.
- PA2011313 - Stage 3 of West Maddingley Part 1. A total of 45 lots approved.
- PA2011352 - Stage 5, 6 and 7 West Maddingley Part 1. A total of 108 lots approved.
- PA2011345 - Use of the Land for a Display Village, Associated Car parking, Landscaping and Buildings & Works, West Maddingley Part 1
- PA2013044 - Development of Six Dwellings
- PA2013135 - Staged subdivision Stage 4. A total of 38 lots approved.
- PA2013301 - Development of Eight Dwellings.
- PA2014170 - Stage 8 and 9 West Maddingley Part 1. A total of 43 lots approved.
- PA2014256 - Two lot re-subdivision.
- PA2014279 - Two lot subdivision.
- PA2015048 - Two lot subdivision.
- PA2015086 - Subdivision (Stage 10) of land, creation of reserve and development of 11 dwellings, West Maddingley Part 1. A total of 163 lots approved.
- PA2015091 - Staged Subdivision (Stages 11-16) creation of reserve, removal of native vegetation and development of 17 dwellings. West Maddingley Part 1. A total of 169 lots approved.
- PA2015142 - Removal of native vegetation
- PA2015166 - Two lot subdivision and creation and removal of easements at 165 Werribee Vale Road, Maddingley.
- PA2016136 - Three lot subdivision, West Maddingley Part 1.

- PA2017063 - Staged 65 subdivision (Stages 17 and 18) West Maddingley Part 1. A total of 65 lots approved.
- PA2018121 - 44 lot subdivision and development of dwellings on lots less than 300m2. Stage19, West Maddingley Part 1. A total of 44 lots approved.
- PA2018242 – Issued at the direction of VCAT for fifty seven (57) lot subdivision and construction of three dwellings on lots less than 300m2 in area. Stage 20A, West Maddingley Part 1. A total of 57 lots approved
- PA2018274 – 92 lot staged subdivision (Stage 20B and 21), Development of a Dwelling on lots less than 300m2 and removal of native vegetation. A total of 92 lots approved.
- PA2019002 – 21 lot staged subdivision and removal of vegetation (Not part of Stonehill Estate). A total of 21 lots approved.

PUBLIC NOTICE

The application is considered exempt from the notice provisions as the Stonehill project was subject of extensive public advertisement process through the West Maddingley Development Plan pursuant to the Development Plan Overlay, Schedule 3. The development plan showed road layout and lot layout orientations. The initial approval and this current amended permit proposal were not advertised.

LOCALITY MAP

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



Table 5: Zone Map



Table 6 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 11.01-1R Settlement Central Highlands.
- Clause 11.02-1S Supply of urban land
- Clause 11.03-3S Peri-urban areas.
- Clause 12.01-2S Native Vegetation Management
- Clause 12.05-2R Landscapes Central Highlands.
- Clause 15.01-3S Subdivision Design.
- Clause 15.01-5S Neighbourhood Character.
- Clause 18.02-2S Public Transport
- Clause 19.03-3S Water supply, Sewerage and Drainage
- Clause 21.03-2 Urban Growth Management.
- Clause 21.03-3 Residential Development.

- Clause 21.02-3 Biodiversity
- Clause 21.03-4 Landscape and Neighbourhood Character.
- Clause 21.07-2 Bacchus Marsh

ZONE

The subject site is in the General Residential Zone, Schedule 2 (GRZ2).

The purpose of the 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 to subdivide land must meet the relevant requirements of Clause 56 for a residential subdivision.

Clause 32.08-3 states an application to subdivide land that would create a lots less than 400 square metres capable of a development for a dwelling must ensure the vacant lot contains at least 25 percent as garden space. This does not apply to a lot created in accordance with an approved development plan. With an approved development plan under the Development Plan Overlay Schedule 3, the garden space provisions does not apply.

Decision guidelines are listed under Clause 32.08-12. Under the subdivision section has the following decision guidelines:

- The pattern of subdivision and its effect on the spacing of buildings.
- For subdivision of land for residential development, the objectives and standards of Clause 56.

Part 1 of the Schedule 2 has the following neighbourhood character objectives.

- To encourage new development, including innovative and unique development that enhances and responds positively to the existing neighbourhood character.
- To encourage an increase in landscaping within the public and private realm.
- To encourage new development to respect existing setbacks within the streetscape. To encourage new development to have minimal or low scale front fencing.
- To ensure garages, carports, and second storey development do not visually dominate dwellings or streetscapes.

Future dwellings will be able to achieve these neighbourhood character objectives.

OVERLAYSDevelopment Plan Overlay Schedule 3

Pursuant to Clause 43.04-1 of the Moorabool Planning Scheme a permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority. This does not apply if a schedule to this overlay specifically states that a permit may be granted before a development plan has been prepared to the satisfaction of the responsible authority.

A permit granted must:

- Be generally in accordance with the development plan.
- Include any conditions or requirements specified in a schedule to this overlay in accordance with the Development Plan.

The objectives of Schedule 3 of the Development Plan Overlay are:

- Release of land for residential development in a logical, cost effective and sequential manner;
- Efficient use of infrastructure, and land, whilst managing any impacts on the environment and amenity;
- Co-ordinated provision of community infrastructure and public open space that enhances the amenity, safety and liveability of the precinct and surrounds; and
- Preparation of an integrated Development Plan generally in accordance with the West Maddingley Concept Plan shown in Clause 5.0 of this schedule.

The development plan was endorsed on 9 August 2011 in accordance with Clause 43.04, as shown below:



Table 7: Endorsed Development Plan under DP03.

Relevant Policies

Council has prepared a housing strategy, titled Housing Bacchus Marsh to 2041, to address how it will manage growth pressures and preserve important neighbourhood character into the future. Bacchus Marsh has been specifically identified in Plan Melbourne 2017-2050 and the Central Highlands Regional Growth Plan 2014 as a suitable location to accommodate growth. Key reasons for this strategic direction relate to Bacchus Marsh’s regional service centre role, its relative accessibility to Melbourne, Geelong and Ballarat, its well established town centre and the availability of greenfield and infill development opportunities. Housing Bacchus Marsh 2041 is one of several key projects that will be inputs into the preparation of Moorabool 2041.

Stonehill Estate/West Maddingley is a greenfield estate that will support a master planned residential development as approved under the Development Plan Overlay, Schedule 3. The proposed subdivision supports the broad objectives of Moorabool 2041.

Particular Provisions

Clause 52.17 – Native Vegetation

The initial approval was designed to retain 18 scattered trees by positioning the super lot and drainage reserve to cover these tree locations. The initial approval allowed the removal of one scattered tree and 0.074 hectares Plains Grassy Woodland. The amended proposal results two additional scattered tree removal adjacent to the western side of Ladhams Way which requires changing the offset condition (refer condition 11).

Clause 53.01 Public Open Space Contribution and Subdivision

A person who proposes to subdivide land must make a contribution to 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 requirement exceeding 5% of the total area was done in accordance with Development Plan Overlay, Schedule 3. No further requirement can be made. The amended proposal increases public open space over the entire lot.

Clause 56 Rescode

The subdivision is considered to accord with most of the Rescode requirements regarding providing infrastructure services and each lot is capable of accommodating one dwelling. The exception is discussed in Table 8 below.

Clause ResCode	Title	Response
Clause 56.03-5	Neighbourhood Character	<p>The standard of this clause is to respect the existing neighbourhood character or achieve a preferred neighbourhood character consistent with any relevant neighbourhood character objective, policy or statement set out in this scheme.</p> <p>There are still some lots backing on the escarpments and will lack full activation of this space.</p>

Table 8: Clause 56 assessment

DISCUSSIONDevelopment Plan Overlay Schedule 3

The development plan correctly acknowledged that the northern parts of West Maddingley are covered by a river escarpment and sloping land which requires a different design response compared to the flatter or less constraint sections of land. The development plan showed larger open spaces including spaces encumbered by sloping land along this northern side with smaller developable areas. The northern section is where almost a majority land will be used as open space rather than set aside for residential lots unlike other parts of what is known as Stonehill Estate.

The applicant in the initial approval stated that lots are larger than normal due to the constraints of existing vegetation and the steepness of the land. The large lot sizes would assist future owners in working with the topography or undertaking site cuts that could reduce the extent of useable secluded private open spaces. In the initial approval, 81 lots were granted which exceeded the developable area compared to the development plan.

The previous applicant designed their open spaces for a linear drainage reserve, to retain nearly all scattered trees on site, and have a suitable sized cultural heritage management site with surrounding open space. The developable area was increased in comparison to the endorsed plans under the Development Plan Overlay to allow for larger lots. Only 5 lots out of the 81 approved were less than 600m² in area with the average size been 778m².

The applicant in the amended proposal has identified some problems with the original approval including road gradients and sections of sloping land creating design problems. The applicant wants to depart from the concept of larger lots and wants more diversity of lot sizes to cater for diverse households.

The subdivision in the amended proposal still addresses the drainage reserve and most of the existing vegetation to be retained. An issue with the subdivision design is with less developable area they are not reducing the number of lots instead increasing the number of lots. This has been achieved by reducing lots sizes. In comparison to the endorsed plans, only 9 of original 51 lots were less than 700m² in area whereas in the amended proposal has 35 of 59 lots less than 700m². This has been partially offset by some larger sizes with the amended proposal having 14 of 59 lots greater than 800m². The amended proposal has an average lot size of 700m² and no lots less than 500m² in area which is the minimum subdivision design standard expected for this locality. The applicant has concentrated the smaller sized lots to face Basin 2 that is contained within the drainage reserve. The large lots are concentrated near the escapement/Reserve 1 and the entry area from Harkness Road.

The subject site is difficult in terms of terrain and providing infrastructure services. A large component of the subdivision is the drainage reserve which covers this lot rather than existing stages within Stonehill Estate which do not have large drainage reserves. The site has a smaller dwelling yield compared to existing stages of Stonehill Estate which are located in the flatter sections of land and some stages having all residential lots reliant on other stages for their public open space. The applicant had initially not properly considered the amenity of future residents or the activation of public open spaces. There have been numerous meetings and discussions with the applicant during the course of this amended planning permit application. The applicant has now taken on board Council concerns and altered the subdivision design to retain most the perimeter road with the exception being where road gradients would be too steep. The applicant has also removed lots adjacent to the drainage reserve, increased lot sizes to an average of 700m², retained the CHMP reserve with its associated public open space that links to the west. The current plan improves the original plans by providing more public open space and providing a rotunda/viewing platform that faces towards the river valley below.

A concern with the latest plan is the two retained trees near Basin 4 move from the drainage reserve into a new lot, Lot 150. A future owner may not retain these trees. The two retained trees within Lot 150 should be protected by a vegetation protection envelope and the large lot size still leaves adequate space for a future dwelling. Lot 156 should be removed and become part of Reserve No.1. This would ensure protection of the two trees and allow for a link between Reserve No.1 and the court bowl roadway which further activates the public open space area. Both of these subdivision design changes can be resolved by a new condition 1 requirement rather than outright refusal of the amendment request.

The amended proposal has been sufficiently revised to now allow for support of the application. The amended permit needs to reflect the revised conditions of each of the referral authorities.

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 revised conditions
Melbourne Water	Consent with revised conditions
Powercor	Consent with revised conditions
Downer	Consent with same condition
CFA	Consent with three new conditions
Infrastructure	Consent, no change to existing conditions.
Strategic Planning	Initial Objection. Current design has addressed the grounds of objection.

FINANCIAL IMPLICATIONS

The recommendation of approval to amended proposal to an existing approved staged subdivision would not represent any financial implications for Council.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation of approval of the amendment request does not implicate any risk or OH&S issues to Council.

COMMUNICATIONS STRATEGY

Notice was not undertaken for the application as proposal was exempt from the notice provisions. The applicant was invited to attend this meeting and invited to address Council if required.

OPTIONS

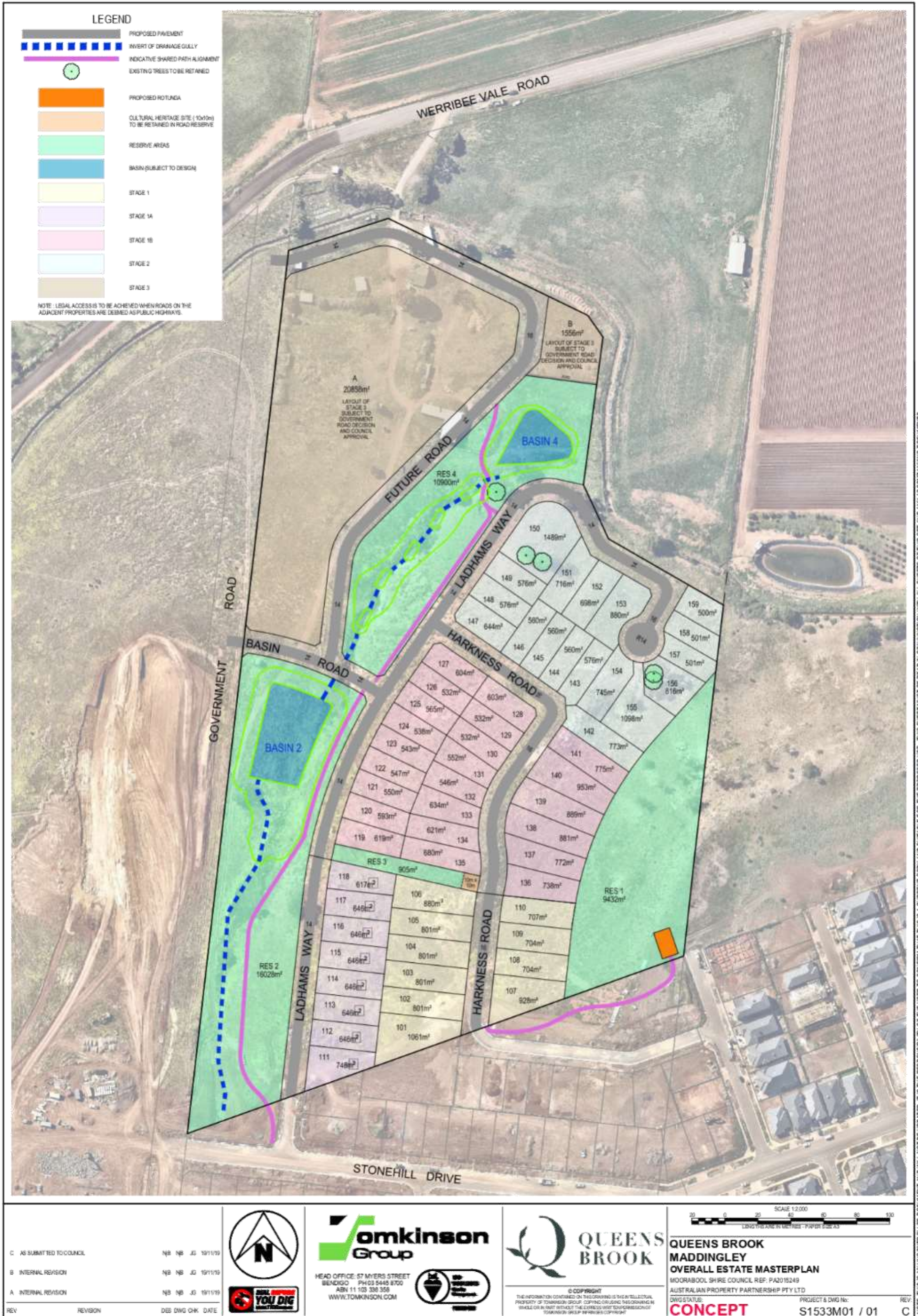
Council could consider the following options:

- Issue an approval to amend a permit in accordance with the recommendations of this report;
- Issue an approval to amend a permit with further changes to the plans.
- Should Council wish to consider refusal the amendment, Councillors need to explore reasons based on the proposal not complying with the Moorabool Planning Scheme.

CONCLUSION

The site has a current valid planning permit to subdivide the land into 81 lots and removal of vegetation. The amended proposal seeks to alter the developable area to provide more open spaces whilst acknowledging some parts of the site have steep topography.

The applicant wants to increase lot numbers and it has taken to the current plan for this to be now achieved with sufficient lot areas to prevent future amenity impacts, retaining most of the perimeter road to allow activation of surrounding open spaces and retaining the adjacent open space to the CHMP site to ensure cultural heritage protection is a focal point of the estate. The applicant has now addressed Council's concerns from their plans lodged on 19 November 2019. A further change to remove the lot with retained trees adjacent to Reserve No. 1 can be addressed through a new condition 1 requirement. Overall, the amended permit application should be approved.



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<p>C AS SUBMITTED TO COUNCIL NB NB JG 19/11/19</p> <p>B INTERNAL REVISION NB NB JG 19/11/19</p> <p>A INTERNAL REVISION NB NB JG 19/11/19</p> <p>REV REVISION DES DWG CHK DATE</p>		<p>HEAD OFFICE: 57 MYERS STREET BENDIGO PH03 9445 8700 ABN 11 103 338 358 WWW.TOMKINSON.COM</p>	<p>QUEENS BROOK</p> <p>THE INFORMATION CONTAINED ON THIS DRAWING IS THE INTELLECTUAL PROPERTY OF TOMKINSON GROUP. COPYING OR USING THIS DRAWING IN WHOLE OR IN PART WITHOUT THE EXPRESS WRITTEN PERMISSION OF TOMKINSON GROUP IS PROHIBITED.</p>	<p>SCALE 1:2,000</p> <p>LONG THIS AXIS IN METRES - PAPER SIZE A3</p> <p>QUEENS BROOK MADDINGLEY OVERALL ESTATE MASTERPLAN MOORABOOL SHIRE COUNCIL REF: PA2015249 AUSTRALIAN PROPERTY PARTNERSHIP PTY LTD</p> <p>DWG STATUS: CONCEPT</p> <p>PROJECT & DWG No: S1533M01 / 01</p>
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7.2 PA2015155 - AMENDED PERMIT FOR A MEDICAL CLINIC AND ANCILLARY DISPENSARY, 4 O'LEARY WAY, MADDINGLEY

Author: Mark Lovell, Senior Statutory Planner

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

Attachments: Nil

APPLICATION SUMMARY

Permit No: PA2015155

Lodgement Date: 4 October, 2019

Planning Officer: Mark Lovell

Address of the land: 4 O'Leary Way Maddingley, formerly known as 110 Griffith Street, Maddingley

Proposal: Amend the permit to include an additional medical practitioner, reduce the standard car parking rate and alter the ancillary dispensary.

Lot size: 1748m²

Why is a permit required? Clause 32.08-9 - Building and Works to a Section 2 use
Clause 52.06-2 - Reduce the standard car parking rate

RECOMMENDATION

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue refusal to Amend a Planning Permit PA2015155 based on the following grounds:

1. The proposed amendments result in a consequential change in the use of the land to a chemist shop which is a prohibited land use under the General Residential Zone.
2. The proposed amendments are contrary to the proper and orderly planning of the area.

PUBLIC CONSULTATION	
Was the application advertised?	Exempt from advertising under Clause 52.06.
Notices on site:	No.
Notice in Moorabool Newspaper:	No.
Number of objections:	No.
Consultation meeting:	There have been several email correspondences with the applicant regarding the definition and application of an ancillary dispensary to a medical centre.

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.

Executive Manager – Henry Bezuidenhout

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

Author – Mark Lovell

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

EXECUTIVE SUMMARY

Application referred?	No, to the amendment request.
Any issues raised in referral responses?	Nil.
Preliminary concerns?	Yes, regarding changing an ancillary dispensary to a chemist shop.
Any discussions with applicant regarding concerns?	Several email correspondences with the applicant and copies of VCAT rulings were provided to the applicant. The applicant was requested to split the amendment application as officers would be supportive of the additional practitioner but was unable to support the prohibited use (chemist shop). The applicant declined this offer and has requested the application be determined as lodged.
Any changes made to the application since being lodged?	Nil.
Brief history.	Council has issued a permit for a medical centre and ancillary dispensary for 6 medical practitioners without the requirement to reduce the standard car parking rate. The applicant has completed the development

	and has recently begun operation as a medical clinic while the ancillary dispensary is currently unoccupied floor space.
Previous applications for the site?	PA2015155 was issued on 16 October 2015 for use and development of a medical centre and ancillary dispensary. An amended permit increasing the number of practitioners from five to six was approved on 5 September 2019.
General summary.	The proposal to increase the number of practitioners with a consequential reduction of three on site car spaces can be supported given the medical centre will service a local residential catchment and it is likely for people to walk or use other transport means such as public transport. The changes to the dispensary which add an external door that can be accessed by the public externally alters the use to a chemist shop which is a prohibited land use under the planning scheme. The amendment application cannot be approved as it would allow a prohibited land use.
Summary Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a refusal to amend a permit for a medical centre and ancillary dispensary at 4 O'Leary Way, Maddingley.	

SITE DESCRIPTION

The subject site is located on the street corner comprised of the eastern side of O'Leary Way and the northern side of Griffith Street, Maddingley. The lot has a maximum lot frontage width of 48.64 metres and a maximum length of 36 metres for a total land area of 1748m². Adjacent to the eastern boundary is 3 metres in width drainage and sewerage easement. The site is comprised of a recently completed medical centre consisting of six medical practitioner rooms, two pathology collection rooms, a nurse room, a treatment room, reception desk, staff room, amenities, waiting area, playroom, infants change room and a dispensary. There are 20 car spaces provided on site of which 19 spaces are accessed via a one-way internal accessway off O'Leary Way connecting to a car park adjacent to the eastern side of the lot with an exiting connection to the service lane in Griffith Street. The 20th car space is accessed via the front property boundary as shown on the site plan. The building is comprised of contemporary architectural detailing and has a maximum height of 7.97 metres and is generally consistent with the bulk and scale of development within a residential context. There are landscaped areas surrounding the car parking bays and small plantings along the street frontages.



View of the dispensary area. Taken 22 October 2019.

PROPOSAL

The applicant seeks to amendments to an existing planning permit and associated endorsed plans as follows:

- Amend Condition 7
FROM - except with the further written consent of the Responsible Authority, not more than six (6) medical practitioners for shall practice at premises at any one given time.
TO - except with the further written consent of the Responsible Authority, not more than seven (7) medical practitioners for shall practice at premises at any one given time. A net gain of one medical practitioner.
- Inclusion of a condition 'the dispensary shown on the endorsed plans must be accessible by members of the public at large at all times during operating hours of the dispensary. Access to the dispensary must not be limited to patients of the medical centre'.
- Amend the endorsed plans showing Practitioner Room 7 and a new external door located to the western side of the dispensary.

BACKGROUND TO CURRENT PROPOSAL

Council issued PA2015155 on 16 October 2015 for use and development of a medical centre and ancillary dispensary in accordance with the endorsed plans.

Plans in accordance with condition 1 were approved on 19 November 2015. An extension of time was approved on 1 February 2018 extending the commencement and completion dates by twelve months.

An amended permit to increase the number of medical practitioners from five to six without any reduction to the existing car parking rate was approved under delegation on 5 September 2019.

PUBLIC NOTICE

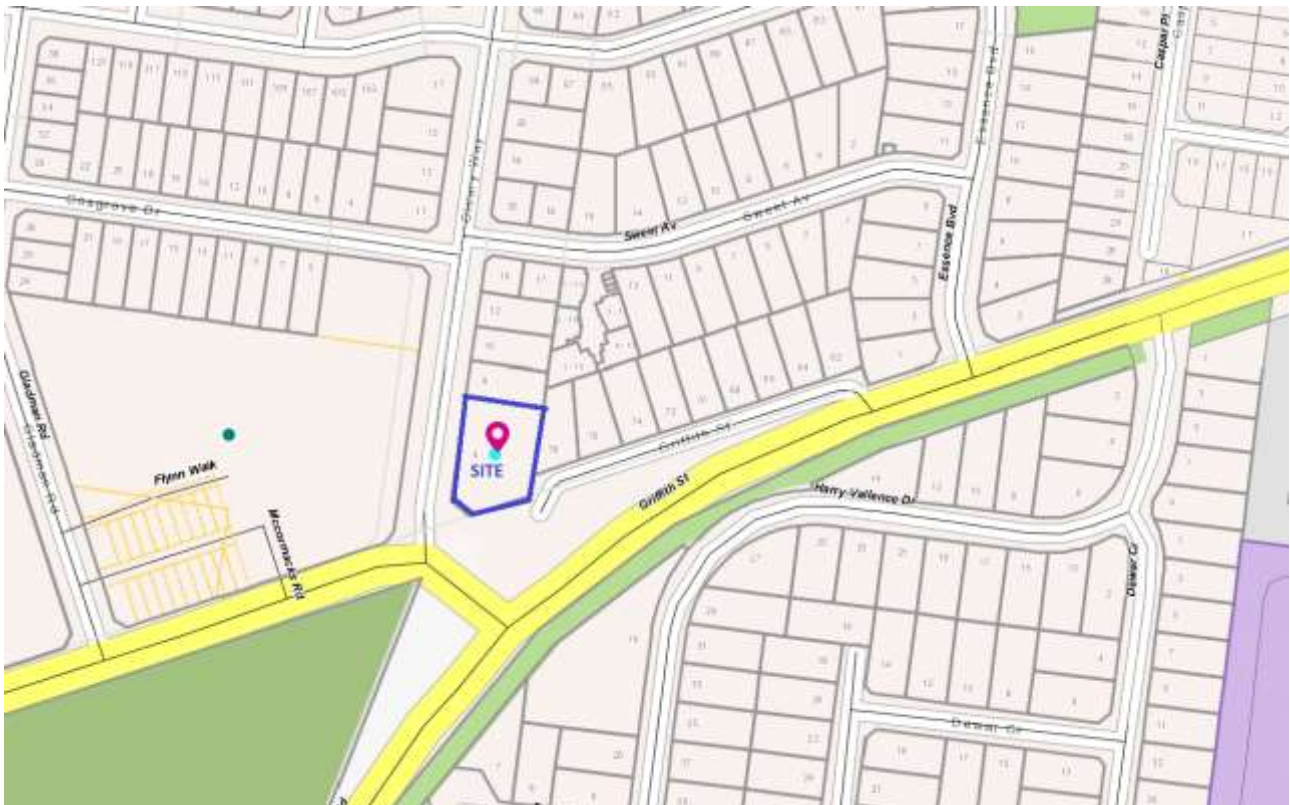
The application was exempt from the notice provisions.

SUMMARY OF OBJECTIONS

No objections to the amendment request.

LOCALITY MAP

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



Zone Map



Aerial photography

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 13.05-1S Noise Abatement
- Clause 13.07-1S Land Use Compatibility
- Clause 17.02-1S Business
- Clause 18.02-4S Car Parking.
- Clause 21.04-3 Objective – Commerce

ZONE

General Residential Zone - Schedule 2

The purpose of the zone

- 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.

Schedule 2 of the General Residential Zone applies to natural and greenfield residential growth areas.

A medical centre is a Section 2 use under Clause 38.02-3.

The applicant seeks to amend the endorsed plans to include an external door to the dispensary. This aspect of the amendment for permit has the effect to change the use of the dispensary (being a subservient and ancillary use) to a chemist shop. A shop is a Section 3, prohibited land use.

OVERLAYS

Development Plan Overlay - Schedule 3

Pursuant to Clause 43.04-1 of the Moorabool Planning Scheme a permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority. This does not apply if a schedule to this overlay specifically states that a permit may be granted before a development plan has been prepared to the satisfaction of the responsible authority.

A permit granted must:

- Be generally in accordance with the development plan.
- Include any conditions or requirements specified in a schedule to this overlay in accordance with the Development Plan.

The objectives of Schedule 3 of the Development Plan Overlay are:

- Release of land for residential development in a logical, cost effective and sequential manner;
- Efficient use of infrastructure, and land, whilst managing any impacts on the environment and amenity
- Co-ordinated provision of community infrastructure and public open space that enhances the amenity, safety and liveability of the precinct and surrounds; and
- Preparation of an integrated Development Plan generally in accordance with the West Maddingley Concept Plan shown in Clause 5.0 of this schedule.

The development plan was endorsed on 9 August, 2011 in accordance with Clause 43.04.

The amendment request does not trigger any requirement under this overlay.

Particular Provisions

Clause 52.06 Car Parking

The proposed use for a medical centre with 7 practitioner requires 23 car spaces (5 spaces to the first practitioner and then 3 spaces to every additional practitioner x 6). The site has 20 on site car spaces. Therefore, the applicant is seeking a reduction of three car spaces under Clause 52.06-4.

Before deciding that a plan prepared under Clause 52.06-7 is satisfactory, the responsible authority must consider, as appropriate:

- The Car Parking Demand Assessment.
- Any relevant local planning policy or incorporated plan.
- The availability of alternative car parking in the locality of the land, including:
 - Efficiencies gained from the consolidation of shared car parking spaces.
 - Public car parks intended to serve the land.
 - On street parking in non-residential zones.
 - Streets in residential zones specifically managed for non-residential parking.
- On street parking in residential zones in the locality of the land that is intended to be for residential use.
- The practicality of providing car parking on the site, particularly for lots of less than 300 square metres.
- Any adverse economic impact a shortfall of parking may have on the economic viability of any nearby activity centre.
- The future growth and development of any nearby activity centre. Any car parking deficiency associated with the existing use of the land.
- Any credit that should be allowed for car parking spaces provided on common land or by a Special Charge Scheme or cash-in-lieu payment.
- Local traffic management in the locality of the land. The impact of fewer car parking spaces on local amenity, including pedestrian amenity and the amenity of nearby residential areas. The need to create safe, functional and attractive parking areas.
- Access to or provision of alternative transport modes to and from the land.
- The equity of reducing the car parking requirement having regard to any historic contributions by existing businesses.
- The character of the surrounding area and whether reducing the car parking provision would result in a quality/positive urban design outcome.
- Any other matter specified in a schedule to the Parking Overlay.
- Any other relevant consideration.

DISCUSSION

Use of the land/VCAT decision

Under the General Residential Zone, a shop including a chemist shop is a prohibited, Section 3 land use. There can be activities that as stand alone uses would be prohibited but can be associated with a primary use of the land provided they are ancillary and conducted in a certain manner.

In this instance, a dispensary only accessible from inside a medical centre is an appropriately conducted ancillary activity.

The application initially submitted prior to the issue of a planning permit showed a publicly accessible entrance area from Griffith Street to the pharmacy. This was deemed in the initial officer assessment as changing an ancillary activity to a prohibited land use. The applicant revised their plans. The endorsed plans issued after the grant of permit only showed public access internally from the waiting room of the medical centre.

VCAT has explored the differences between an ancillary dispensary to a medical centre and a chemist shop in extensive detail from the *El-Katatemy v Casey City Council* [2007] appeal review. In this appeal, VCAT refused an application to add a door and change permit conditions to a pharmacy. The senior VCAT member made a number of valid observations in his decision, as follows:

8. The dispensary is internal. Access to it is through the main entry to the medical centre area and through the patient waiting room.

9. The main amendment sought to the plans is to create a new front doorway to provide a separate entrance from the carpark giving access to the dispensary area...Some rearrangement of car parking spaces to give access to the new door would be called for. The modified plans also depict some internal rearrangements and alterations.

11. The proposition is that although it is possible to grant permission for a medical centre on land in the Residential 1 zone, it is illegal to use such land for a shop. That prohibition includes what is commonly known in Australian English as a chemist shop.

23. The responsible authority, in granting the permit, has been conscious of the danger of the dispensary area being in fact a chemist shop. It has endorsed plans depicting a dispensary area that is located well within the greater area of the surrounding medical centre. It has endorsed plans where the only access to the dispensary is through other parts of the medical centre, in particular, the main front door, the airlock and at the front entrance and the waiting room.

40. In other words the location of the dispensary within part of the medical centre and its other facilities such as the waiting room are indicative of ancillary status. If a new and separate entry for the public unconnected to the medical centre leading directly to the medicine sales area is permitted it might be hard to distinguish that arrangement from a separate chemist shop.

VCAT subsequently refused the amendment request.

More recently, a medical centre was approved with an ancillary dispensary at 102-104 Halletts Way Darley as determined by VCAT in *Mahwendepi Pty Ltd vs Moorabool Shire Council* [2017]. The member noted the ancillary nature of the pharmacy in his decision, as follows:

18. I am satisfied on the basis of the application material and the parties' submissions that the proposed pharmacy in this instance is ancillary to the medical centre.

It is contained within the medical centre building, is only accessible from the lobby of the reception area, has no separate entry or external door, and will principally operate to dispense medications and sell other products in accordance with prescriptions prepared by, and on the advice of, practitioners within the medical centre. Further reinforcing the ancillary nature of the pharmacy is the absence of any advertising signs identifying the presence of the pharmacy on the review site.

These VCAT decisions highlighted that some minor changes can alter an ancillary use to a prohibited land use. The current amendment is seeking an external door which would provide accessibility from the public realm and dispensary can operate as a shop without the need of the medical centre. Based on these VCAT rulings, the proposed amendment cannot be supported as it is introducing a prohibited land use.

Car Parking Reduction

The site currently has the required number of car spaces which 20 car spaces for six medical practitioners. The proposed amendment request seeks to increase the number of practitioners by one which results in a reduction of three on site car spaces under Clause 52.06.

The medical centre has recently commenced operation and officers have undertaken two separate site inspections during business hours. On both occasions it was observed that although the car parking area was not at full capacity, vehicles were parking on street directly adjacent to the medical centre. This may be due to the internal accessway inside the medical centre been one way only with entry via O'Leary Way and exit only via the service lane in Griffith Street which then intersects with the Griffith Street roadway. This can be inefficient for staff and patients going to and from the subject site.

The one additional practitioner should not cause any adverse impacts to adjacent properties. It is expected with the adjacent Stonehill and Essence Estates, that the medical centre can capture these new residents who able to walk to the site or use public transport. The medical centre will not generate long term stays and there will be a constant flow of vehicles entering and exiting the site. The location of the site and the current provision of 20 on site car spaces should be sufficient to accommodate one additional medical practitioner. There is no increase in floor area with the one additional practitioner to be accommodated, based on the building plans, in the current children's play area that will be converted to a new medical room. This aspect of the amendment request can be supported.

It must be noted the applicant did not want to split the amendment into two separate amendment requests, instead wanted a one decision based on all amendments together.

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

No new referrals are required as part of the amendment request.

FINANCIAL IMPLICATIONS

There are no financial implications with refusing the amendment request.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation of refusal of the amendment request does not implicate any risk or OH&S issues to Council.

COMMUNICATIONS STRATEGY

The amendment request was not advertised. The applicant was invited to attend this meeting and invited to address Council if required.

OPTIONS

- Issue a refusal to amend a permit in accordance with the recommendations of this report;
- Should Council wish to consider approving the amendment, Councillor's need to explore reasons based on the proposal complying with the Moorabool Planning Scheme and approving a prohibited land use.

CONCLUSION



The amendment which involves a minor external building change and minor internal rearrangements. This has a significant impact by altering an ancillary dispensary to an existing medical centre to a chemist shop which is a prohibited land use under the General Residential Zone Schedule 2. Making an ancillary dispensary accessible to the public with a new entrance and not reliant on the existing medical centre is inappropriate for zoning of the land where a chemist shop is prohibited land use. This site is opposite a large commercial development site within a Commercial 1 Zone which is suitable for a chemist shop. The reduction of the three car spaces for the one additional medical practitioner is considered reasonable based on the existing car park provision on site and the location near new residential estates that support other modes of transport. Overall, with the amendment request that in part seeks permission of a prohibited land use cannot be supported. The amendment must be refused.

7.3 PA2019168 - USE OF THE LAND FOR LANDSCAPE GARDENING SUPPLIES (PLANT NURSERY) AND ASSOCIATED WORKS

Author: Samuel Duff, Statutory Planner

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

Attachments:

1. Site Plan [↓](#) 
2. Whole of Site Plans [↓](#) 

APPLICATION SUMMARY

Permit No: PA2019-168

Lodgement Date: 22/07/2019

Planning Officer: Samuel Duff

Address of the land: Lot 1 on PS 210130G, located at Lot 410 Navigators Road, Navigators

Proposal: Use of the Land for Landscape Gardening Supplies (Plant Nursery)

Lot size: 5.01 Hectare

Why is a permit required? Clause 35.07-1 Use of the Land for a Section 2 Use in the Farming Zone.

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:

Endorsed Plans:

1. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. Any buildings and works must be constructed and or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority. Any buildings and works must be located clear of any easements or water and sewer mains or septic tank and effluent lines unless written approval is provided by the relevant authority.

General Conditions:

2. No advertising signage is to be erected unless otherwise exempt under the Moorabool Planning Scheme or with further approval from the Responsible Authority
3. Native vegetation, including dead standing native vegetation, is not to be removed from the land without the written consent of the responsible authority.
4. At least 10% of the site used for the purpose of the Plant Nursery is to be allocated for carparking spaces and is to be provided and maintained to the satisfaction of the responsible authority.

Operational:

5. The Hours of Operation, unless otherwise altered with the permission of the responsible authority, are limited as follows:
Wednesday - Sunday: 9AM-5PM
6. Provision must be made on the land for the storage and collection of garbage and other solid waste. The area for storing of waste and rubbish must be screened from public view to the satisfaction of the Responsible Authority.
7. All stockpiling of materials, including plants, potting mix, fertilisers and other materials is to be contained within the area specified on the plans.
8. Storage, use and/or handling of any chemicals is to be in accordance with the recommendations of the Manufacturer or other best practice response and is not to have a detrimental effect on the environment to the satisfaction of the Responsible Authority.
9. 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; or
 - (e) Any other way.
10. External lighting must be provided with suitable baffles and located so that no direct light is emitted outside the site.
11. The owner, the occupier and the manager of the premises must make reasonable endeavours to ensure that people associated with the site do not create a nuisance and annoyance to neighbours or otherwise disturb the amenity of the area.
12. Any security alarm or similar device installed must be of a silent type.
13. No additional staff other than those that live on site are to work on the site.
14. After a period of 24 months of continuous use of the site as Landscape Gardening Supplies (Plant Nursery), a report must be provided to Council in relation to the use of the site. This report must have details on the average numbers of patrons and vehicle movements and other relevant details. Council will assess then this report, where it may be determined that toilet facilities are required, and that additional staffing may be permissible. If so, an application may have to be made for the inclusion of these alterations to amendments.
15. All loading and unloading of deliveries must be undertaken in the areas specified on endorsed plans. All vehicles must exit in a forward direction.
16. The carparking and loading areas are to be appropriately signed to prevent customers using the loading area and trucks using customer parking. These signs are to be erected and maintained to the satisfaction of the Responsible Authority.

Infrastructure:

17. A double width rural vehicle crossing with culvert must be provided to the carpark entrance on Navigators Road to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.
18. Prior to the use commencing, the car park areas must be constructed with an all-weather surface, line-marking and drainage to the satisfaction of the responsible authority, and shall incorporate the following:
 - (a) 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.
 - (b) Designated loading areas shall be shown on layout plans.
 - (c) The parking areas shall be provided with an all-weather surface and associated drainage.
 - (d) Kerbing of a minimum height of 150mm must be provided between landscaped areas and areas provided for parking and the passage of vehicles.
 - (e) 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.
19. The building shall be provided with disabled access in accordance with the provisions of AS1428 – Design for Access and Mobility.
20. 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).
21. 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.
22. 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.

Central Highlands Water:

23. Any stormwater generated from the development of the nursery must be diverted clear of the effluent disposal field on the lot.

Permit Expiry:

24. 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;
 - (b) The development is not completed within four years of the date of this permit.

PUBLIC CONSULTATION	
Was the application advertised?	Yes
Notices on site:	Yes, one notice
Notice in Moorabool Newspaper:	No
Number of objections:	1
Consultation meeting:	Consultation meeting was offered but not held

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

Strategic Objective 3: Stimulating Economic Development

Context 3A: Land Use Planning

The proposal for the use and development of the Land for Landscape Garden Supplies (Plant Nursery) 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 – Samuel Duff

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

EXECUTIVE SUMMARY

Application referred?	Yes
Any issues raised in referral responses?	There were concerns that the existing wastewater treatment system of the site and if it would be able to cope with the increased load if the applicant was intending to allow customers use bathroom facilities, Councils Environmental Health Department also wished to know about the location of the septic lines and septic tank.

	<p>The applicant will not be supplying toilets for customers as the land is in close proximity to the public bathrooms at the nearby Navigators. These issues have been resolved as no additional staffing is proposed initially and a condition stating that no staffing beyond those who live on site can work at the plant nursery as a staging mechanism. Council officers also concluded that toilet facilities may need to be included onsite for both staff and visitors with the recommended conditions to have a requirement for a report to be provided in the future which allows Council to reassess the necessity of bathroom facilities to be included once the use has commenced.</p>
Preliminary concerns?	<p>Aside from the issues raised in the referral responses, there are no other concerns that cannot be managed by the conditioning of the permit.</p>
Any discussions with applicant regarding concerns?	<p>Council officers have been had several discussions with the applicant, via phone calls, emails and an onsite meeting during the planning process</p>
Any changes made to the application since being lodged?	<p>No</p>
Brief history.	<p>An application was received for an application to use part of the land for the purposes of a Plant Nursery of July 2019 to sell a range of plant species to the public from the land known as 410 Navigators Road, Navigators. It is proposed develop a car park on the northern most portion of the site and have a small scale nursery to the south of the car parking area. The application received one objection, from a neighbour to the south of the subject site.</p>
Previous applications for the site?	<p>A search of Council Records shows that there are no other planning permits associated with the subject site.</p>
General summary.	<p>The proposed use and development of the land is generally consistent with the provisions of the Victorian Planning Provisions (VPPs) and Local Planning Policy Frameworks and the provisions of the Zones and applicable Overlays of the Moorabool Planning Scheme.</p>
Summary Recommendation	
<p>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 Use and Development of Land for Landscape Garden Supplies (Plant Nursery).</p>	

SITE DESCRIPTION

The subject site is approximately 5 hectares of land in the Farming Zone of Navigators. The site is irregularly shaped, with a previously excised dwelling lot to the south of the site. The land has been previously developed with a dwelling and ancillary outbuilding (1 larger shed and two smaller sheds), some of which would be used in association with the proposed use of the land.

The wider area is used for rural purposes, including cropping and grazing and other farming uses, with some of the surrounding farming zoned land being more used for residential rather than agricultural production. The land is gently undulating and the

The Navigators Public Hall and Gerald Mullane Reserve is approximately 650m meters to the west of the subject site. The subject site is in close proximity to the Ballarat and Moorabool municipal border.

PROPOSAL

It is proposed to develop a portion (approximately 3000 square meters) of the site for to use for a plant nursery, selling a range of native, perennial, annuals, grasses, hedging plants, deciduous and evergreen shrubs and trees to the public. The operation is proposed to be a 5 day a week operation, operating from Wednesday through to Sunday from 9-5PM. The operation is initially proposed to be conducted by the landowners, although some additional staff may be employed if the Plant Nursery is a successful business.

A shade house is also proposed to be constructed, utilising a white fabric that is favoured by horticulturists as it "...provides protection from frost and wind whilst supporting a photosynthetic environment by maximising the use of sunlight".

The operation would be contained to the north western area of the site, close to the existing dwelling that exists on site.

The applicant has highlighted an area to be used for the purposes of a car park, which exceeds the minimum requirements of Clause 52.06 of the Planning Scheme.

BACKGROUND TO CURRENT PROPOSAL

In April 2019, the economic development team completed a letter drop to all properties listed in a farm zone. The letter included information on the teams' activities and encouraged the property owner to make contact if they would like assistance in the development of a business initiative. The applicants made contact with the economic development team to discuss the proposal of establishing a nursery on the subject site.

HISTORY

A search of Council Records has revealed that there is no planning permit history associated with the site. In addition to this, no VCAT cases or compliance issues have been raised.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners. As a result of the advertising process, one objection was received by Council, the objection has two grounds of objection.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
<p>The first part of the objection relates to the potential environmental impacts that the application may have, including the impact on the septic system, the use and storage of chemicals such as herbicides and pesticides and the possible effects that it may have on the water supply catchment areas</p>	<p>The Victorian Government is responsible for regulating chemical use if the chemical is an Agricultural and Veterinary Chemical.</p> <p>Environmental Protection Act, Central Highlands Water</p>
<p>Officer's Response:</p> <p>There would be no impact upon the septic system as there would not be any members of the public to use the onsite facilities. Instead customers would be directed to the public bathrooms at the nearby Gerald Mullane Reserve, near the Navigators Public Hall.</p> <p>Storing of chemicals is to be conducted in accordance with the label direction, otherwise to best practice standard.</p>	
<p>The second part of the objection relates to rural outlook, noise and amenity considerations.</p> <p>This includes the view lines to Mt Warrenheip being compromised by the proposed shade house, rubbish/waste build up and noise from customers, mowing and pumping of water from the dam that is on the subject site.</p>	<p>Clause 21.03</p>
<p>Officer's Response:</p> <p>The rural views of the objector's land that is raised is using 'borrowed amenity'. It is understood that Clause 21.03-4 and 21.03-7 generally encourages the reduction and impacts of view lines, the use and proposed development are considered appropriate in the area, especially as there is land that has had plantings on it on the northern side of Navigators Road.</p> <p>The noise of mowing of the subject site is typical maintenance of rural land and is to be expected if part of the rural lifestyle, however noise nuisances are managed through the EPA guideline Noise from Industry in Rural Victoria (NIRV EPA publication 1411).</p> <p>Upon a site inspection, the rubbish build up that is highlighted within the submission is actually materials to be used for the use of the land for the nursery, it is considered that this would be resolved upon the determination of this application. A permit condition has been included for the provision of waste storage that is adequately screened from view.</p>	

LOCALITY MAP

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



Figure 1 Map of subject site.

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 | Planning for Places |
| Clause 12.05 | Landscapes |
| Clause 14.01 | Agriculture |
| Clause 14.02 | Water |
| Clause 17.02 | Commercial |
| Clause 21.02 | Natural Environment |
| Clause 21.03 | Settlement and Housing |
| Clause 21.04 | Economic Development and Employment |
| Clause 21.09 | Small Towns and Settlements |

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

PPF	Title	Response
Clause 12.05-2S	Landscapes	The objective to protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments may impacted by the development of the shade house, however additional planting of vegetation will help to mitigate the impacts.
LPPF	Title	Response
Clause	Settlement	The objective is to ensure new development in all zones respects the existing character, landscape setting and amenity of the local area. There would be a minimal impact, however the applicant is proposing planting in areas to help reduce the visual impact of the shade house.

ZONE

Clause 35.07 Farming Zone

The land is in the Farming Zone, the purpose of the Farming 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.

There is a planning permit trigger within the Zone as the use of the land for Landscape Gardening Supply (Plant Nursery) is a Section 2 Use.

OVERLAYS

Clause 42.01 Environmental Significance Overlay, Schedule 1

The site is affected by the Environmental Significance Overlay – Schedule 1 – Proclaimed Water Catchment Areas. Under Clause 42.01-2, a permit is required to construct buildings and works. There are no relevant exemptions under Schedule 1.

The objectives for Schedule 1 are:

To protect the quality and quantity of water produced within proclaimed water catchments.

To provide for appropriate development of land within proclaimed water catchments.

Clause 43.01 Heritage Overlay, Schedule 44

Part of the site is within a Heritage Overlay. The purpose of the Heritage Overlay is:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To conserve and enhance heritage places of natural or cultural significance.

To conserve and enhance those elements which contribute to the significance of heritage places.

To ensure that development does not adversely affect the significance of heritage places.

To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

Schedule 44 relates to the Navigators Railway Bridge, which is a bluestone arching structure over the North Geelong – Warrenheip Railway Line. The proposed land use would not have any implications on the heritage values that is specified in the Heritage Citation Report.

Clause 43.02 Design and Development Overlay, Schedule 2

The site is affected by the Design and Development Overlay – Schedule 2 – Visual amenity and building design. Under Clause 43.02-2, a permit is required to undertake buildings and works. Schedule 2 provides an exemption from this requirement if the external walls and roof are clad with non-reflective materials. In this instance a permit is not required. It is recommended that a permit condition be imposed to ensure that no reflective materials are used.

PARTICULAR PROVISIONS

Clause 52.06 Car Parking

The purpose of this particular provision:

To ensure that car parking is provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework.

To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.

To support sustainable transport alternatives to the motor car.

To promote the efficient use of car parking spaces through the consolidation of car parking facilities. To ensure that car parking does not adversely affect the amenity of the locality.

To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

Pursuant to Clause 52.06-5, the car parking rate is 10% of the subject site

The area that is proposed to be used for the Plant Nursery is approximately 3000 square metres and the car parking area is proposed to be approximately 750 metres.

This complies with the provisions of Clause 52.06-5, with a total of 13 car parking bays and 1 disabled car parking to be required as per the site plan that was submitted.

DISCUSSION

The proposed Use of the land for Landscape Garden Supplies and associated buildings and works is considered appropriate in context of the rural area of Navigators.

The zoning decision guidelines states the Responsible Authority must consider if the use or development would impact agricultural production and if the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses. It is concluded that while the proposed use would be pivoting away from agricultural production in the traditional sense into more of a retail aspect, the use requires land to assist in the propagation, growth and storage of stock. The use of the land for a plant nursery is not considered to permanently reduce the agricultural capacity of the site and would have an aspect of primary production and onsite sales. There will be a degree of propagation (horticulture) and growing of vegetation that would be ancillary to the use of the land for Landscape Garden Supplies. Horticulture, including the growth of plants for sale is a Section 1 Use under the Farming Zone.

As the subject site is part of gently undulating country, with a ridge and view line from the south, the local planning provisions seeks to protect views to ridgelines, as per the objection received rightfully points out. However, the area on which the nursery is proposed to be located is the least constraint part of the site and most suitable to facilitate this activity. The area to be used is the flattest, has safe and convenient access to the road way, is set back adequately from the neighbouring dwellings and has close proximity to the dwelling on site, allowing the owners to have the ability to supervise the operation and the supply of plant nurseries. The applicants have also planted vegetation to help screen the use from the adjoining property owners to minimise impacts on visual amenity. There is a relevant decision guideline under the zone is the following:

“The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.”

The applicants are proposing to plant embankments to help vegetate the area. This would help to manage the impacts on the rural views. There is also significant vegetation on the objector’s land to help further mitigate any impacts on the land.

The use of a white shade cloth, while not the best design outcome from an amenity consideration given the slightly exposed nature of the site, it is a better outcome from a rural productivity point of view. The use of a white shade cloth reduces the quantity of solar radiation rather than reducing the quality of the light spectrum, this encourages rapid growth – preferable for a nursery which wants to encourage growth of plants.

The Moorabool Planning Scheme is generally supportive of commercial activities, with Clause 17.02-2S highlighting that out of centre development for retail, should be beneficial to the community of the region or provide small scale retail opportunities that meets the needs of local populations. It is thought that this nursery would have access to the market bases of Ballarat City and Moorabool Shire Councils.

The applicant is not proposing to have bathroom facilities on the subject land. As this would be a financial impost on the permit holder, Council officers have elected to approve the application, subject to further information to be provided after a period of 24 months to reassess if a bathroom and additional staff would be required in order to grow the business. The proposed conditions have been included for the purpose of managing the toilet facilities on the site.

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
Central Highlands Water	
Infrastructure	Consent, subject to conditions
Environmental Health	Consent
Environmental Planning	Consent

FINANCIAL IMPLICATIONS

It is not thought that there are any financial implications for Council approving the application.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation of approval of this development does not implicate any risk or 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.

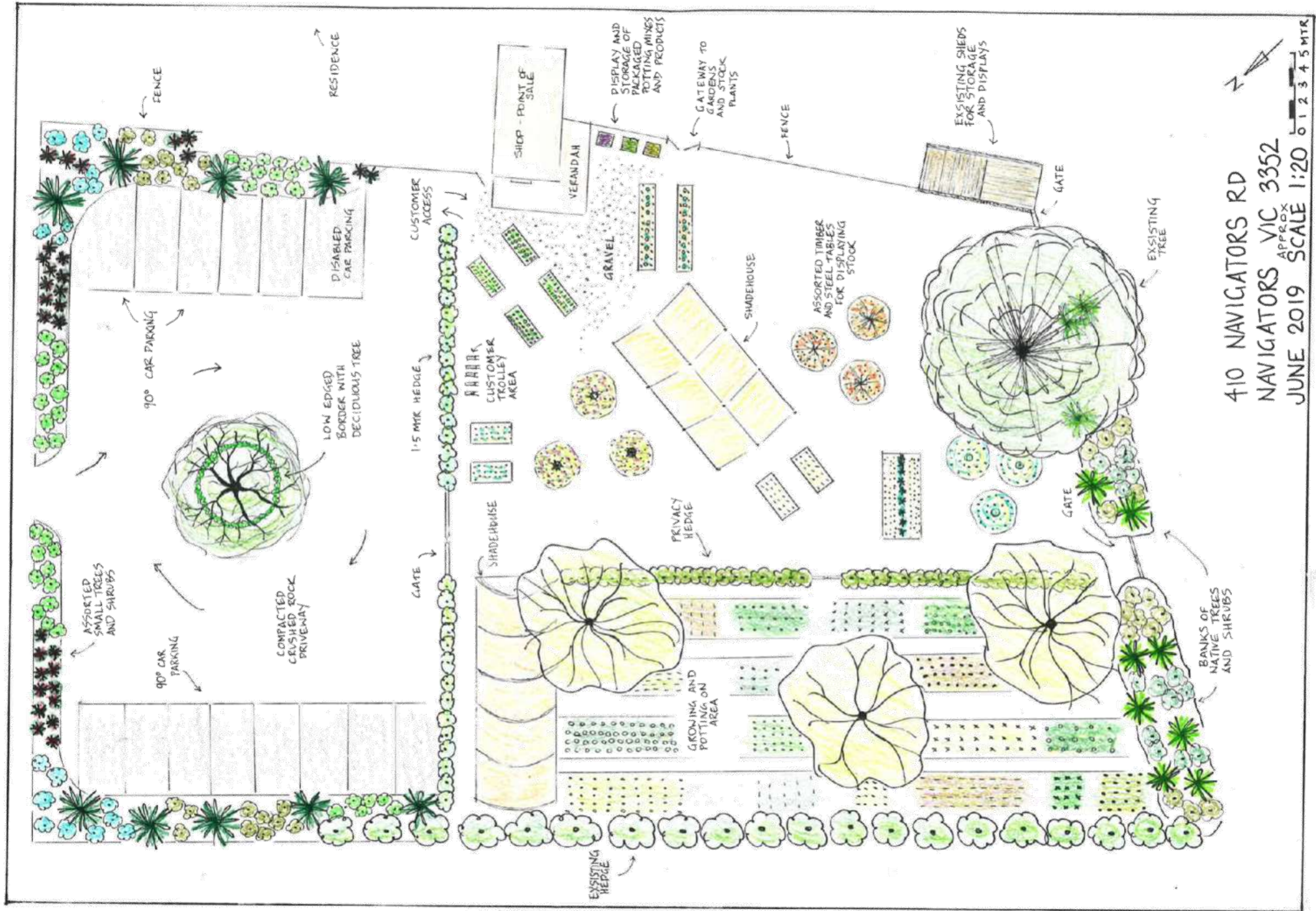
OPTIONS

Council could consider the following options

- Issue a Notice of Decision to grant a Planning Permit in accordance with the grounds specified within this report;
- Issue a Notice of Decision to grant a Planning Permit with amendments to the recommendation of this report; or
- Issue a Notice of Refusal to Grant a Permit outside the recommendations of this report.

CONCLUSION

The proposed Use and Development of the Land for Landscape Gardening Supplies (Plant Nursery) is largely consistent with the Moorabool Planning Scheme. While there would be a slight amenity impact, there would be benefits to the shire in terms of Economic Development. The Council Plan highlights that the Council will need to support local businesses to increase local economic resilience. The challenge defined in the Council plan is that land use planning needs to understand, consider and deliver on improved economic, social environmental outcomes, and an improved ability to access to employment opportunities.



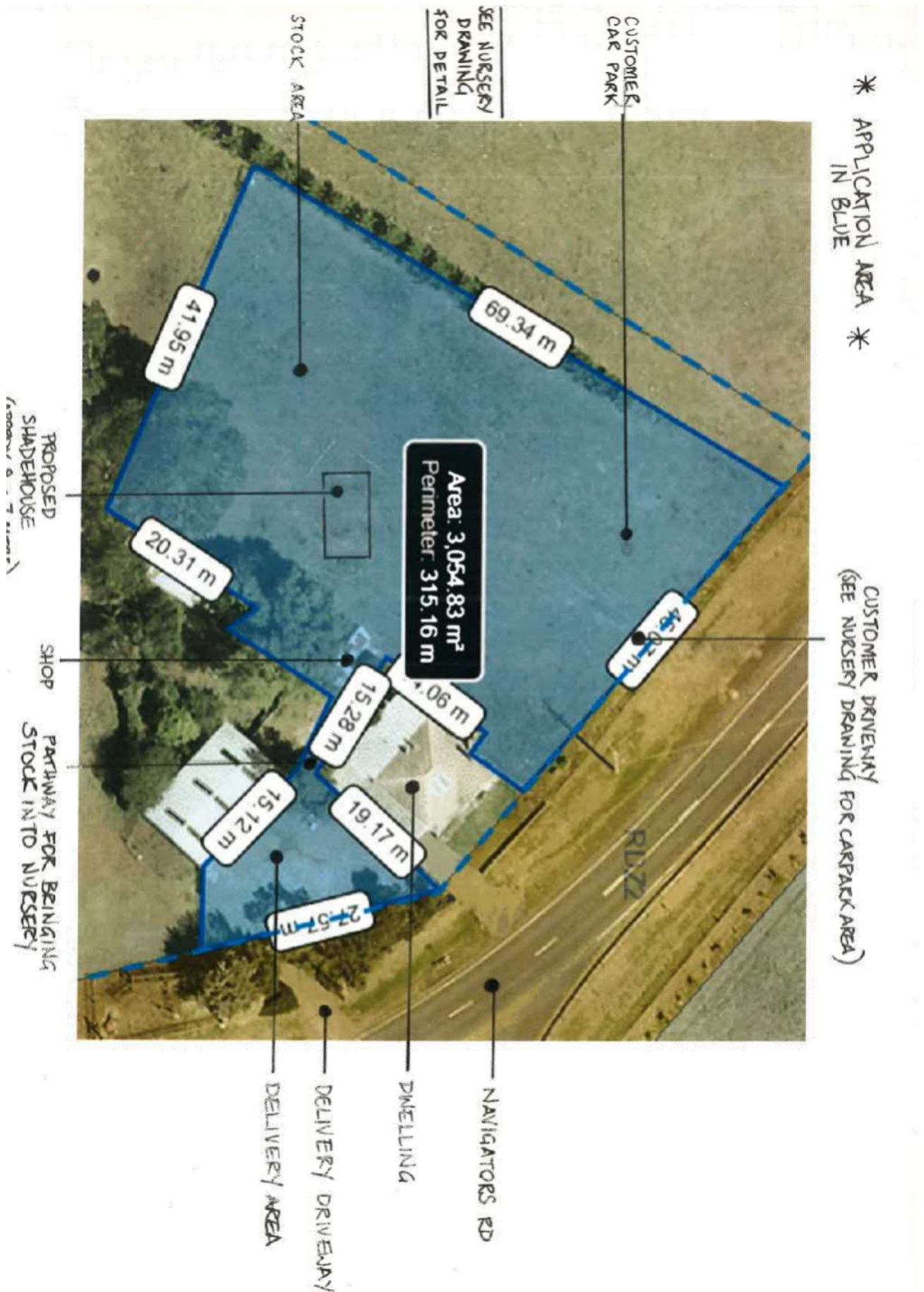
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APPLICATION AREA



APPLICATION AREA





7.4 PA2019166 - 2 LOT SUBDIVISION, 3 OCOCK STREET, BALLAN**Author:** Robert Asquith, Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development**Attachments:** 1. Proposed subdivision plan [↓](#) **APPLICATION SUMMARY****Permit No:** PA2019166**Lodgement Date:** 09 July 2019**Planning Officer:** Robert Asquith**Address of the land:** Lot 1 on Plan of Subdivision PS545404 - 3 Ocock Street, Ballan**Proposal:** 2 lot subdivision**Lot size:** 5286 square metres**Why is a permit required?** 32.03-3 Subdivision in Low Density Residential Zone**RECOMMENDATION**

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issues a refusal to grant a planning permit for a two lot subdivision based on the following grounds:

1. The proposed subdivision will be in breach of proposed minimum lot size requirements of the Low Density Residential Zone Schedule 1 changes as per Moorabool Planning Scheme Amendment C88 (Ballan Strategic Directions).
2. The proposed subdivision is not consistent with the existing and preferred neighbourhood character.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	1
Consultation meeting:	Yes. Applicant only.

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

Strategic Objective 2: Minimising Environmental Impact

Context 2A: Built Environment

The proposal of a 2 lot subdivision 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 – Robert Asquith

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

EXECUTIVE SUMMARY

Application referred?	Internally to Council's Strategic Planning (SSD), Infrastructure; Externally to Southern Rural Water (SRW), Western Water (WW), Melbourne Water (MW).
Any issues raised in referral responses?	Objection from SSD.
Preliminary concerns?	Yes, concerns with meeting the requirements of planning scheme amendment C88
Any discussions with applicant regarding concerns?	Yes.
Any changes made to the application since being lodged?	No. Slight building envelope modification offered during consultation.
Brief history.	The site was previously resubdivided to create the current Lots 1 (3 Ocock Street) and 2 (1 Ocock Street). Lot 1 contains one dwelling.
Previous applications for the site?	<ul style="list-style-type: none"> • PA2002-382. Development of a carport and private workshop. Approved. • PA2004-128. Two lot resubdivision. Approved. • PA2013189. Development of a dwelling. Approved.
General summary.	It is proposed to subdivide 3 Ocock Street, Ballan into two lots such that Lot 1 (2796m ²) will contain the existing dwelling, and Lot 2 (2491m ²) will be vacant.

Summary Recommendation

That, having considered all relevant matters as required by the *Planning and Environment Act 1987*, Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the Act, on the grounds included in this report.

SITE DESCRIPTION

The subject site, addressed as 3 Ocock Street, Ballan, is located towards the end of its street in northern Ballan as it terminates near the Werribee River, comprising 5286 square metres (refer Figure 1). Although not directly adjoining the Werribee River reserve, the site is less than 50 metres from the river bed at its closest point. The land slopes moderately south-east towards the river, with the southern boundary beginning to slope more steeply into the river gully. The subject site, and existing dwelling, therefore have a significant height advantage to the southern adjoining property. Approximately 12% of the site has been levelled by cut. The site is mostly cleared of vegetation and only limited amounts of modified plantings exist.

The site is presently used for dwelling, with development comprising the house located centrally to the lot and two outbuildings. Site coverage is approximately 8%. Service connections to reticulated water, sewerage, and electricity are available. Road access is presently made to Ocock Street via its extension beyond the Ocock/Hall Streets intersection with an extended driveway. Commercial and community services are located nearby in central Ballan south of the Werribee River, approximately 3 minutes by car and 18 minutes by foot.

Surrounding land similarly accommodates dwellings on large lots, expected of the Low Density Residential Zone. Neighbouring dwellings are located north (17 metres separation) and south (34 metres separation) of the existing dwelling. The rear adjoining lot fronts extensive rear garden only. See Figure 2 below.



Figure 1 Subject site identified in blue



Figure 2 Subject site identified with blue outline

PROPOSAL

The proposed subdivision plan is included in Attachment 1. It is proposed to subdivide the subject lot into two new lots as below:

Lot 1

- 2796 square metres
- Irregular shape, reduced area at front to accommodate Lot 2 splay
- 28.65 metres street frontage
- Contains existing dwelling

Lot 2

- 2491 square metres
- Irregular shape, additional splay area at front to access Ocock Street
- 35.85 metres total frontage, 11.63 metres to Ocock Street
- Contains two existing sheds proposed to be demolished
- Proposed to contain building envelope 615 square metres located 21 metres from street boundary and 5 metres from each north (proposed) and south (existing) boundary.

Following a consultation meeting with a representative of the applicant, an amended proposed plan was prepared which made slight adjustments to the lot boundaries allowing for a more equal distribution of area and increased setback to the building envelope. The changes are summarised below:

- Lot 1 area decreased from 3175 to 2796 square metres
- Lot 2 area increased from 2111 to 2491 square metres
- Building envelope setback to southern boundary increased by 3 metres, and to road boundary by 1 metre

BACKGROUND TO CURRENT PROPOSAL

The subject site is located within an area subject to proposed changes under the Moorabool Planning Scheme Amendment C88. In the context of the Ballan Strategic Directions (BSD) which informed C88, the subject site is located in precinct C and a minimal growth area. In accordance with the amendment and the BSD the subject site's Low Density Residential Zone is proposed to gain Schedule 1, limiting lot size to 4000 square metres increased from the present 2000 square metres.

It is acknowledged that this permit application was lodged on 6 July 2019, shortly after the panel report for Amendment C88 was published on 4 July 2019, and before the Amendment was adopted by Council on 2 October 2019. At the time of writing of this report to Council, the amendment has not been gazetted.

HISTORY

Planning Permit No.	Permit Description	Determination	Date
PA2002-382	Development and Use of a Carport and Private Workshop	Permit by delegated authority	06 January 2003
PA2004-128	Two (2) Lot Resubdivision	Permit by delegated authority	26 October 2004
PA2013189	Development of a Dwelling	Permit by delegated authority	29 October 2013

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners in accordance with Section 52 of the Act. Letters were sent to five adjoining and surrounding landowners on 23 September 2019, and a sign placed on site between 29 September and 14 October 2019.

One submission of objection was received in this period. Attendance to a mediation meeting with the applicant was offered. No response was received.

Notice was also provided to Council's former Strategic & Sustainable Development (SSD) and Infrastructure departments.

SSD objected to the application. Infrastructure provided conditional consent.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
The application proposes a violation of the new 4000m ² lot size limit; unfair to other landowners.	Amendment C88, Clause 32.03 Low Density Residential Zone
<p>Officer's Response:</p> <p>The size limit in question relates to the proposed Amendment C88 and the addition of Schedule 1 to all areas of Low Density Residential Zone. Although C88 was adopted by Council on 2 October 2019, it has not yet (at the time of writing) been gazetted.</p> <p>Pursuant to Section 60 (h) of the Act, matters which must be considered in the assessment of planning permit applications include <i>"any amendment to the planning scheme which has been adopted by a planning authority but not, as at the date on which the application is considered, approved by the Minister or a planning authority."</i></p> <p>The merit of the objection is valid because the proposal contravenes policy which must be considered.</p>	

<p>Increased number of smaller blocks conflicting with “feeling of country living” and Ballan as a “small country town”.</p>	<p>Amendment C88, Clause 15.01-5S neighbourhood character, Clause 21.08 Ballan</p>
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Officer’s Response:

Ballan comprises both areas recognised for increased growth and development as well as maintenance of country and rural settings. This is recognised in existing policy, but with greater strength in the proposed Amendment C88. In both current and proposed policy, increased density and growth is not encouraged in the area of the subject site. The identified neighbourhood character contributes to the country and rural setting.

The merit of the objection is valid because the proposal does not contribute to the existing neighbourhood character, nor is it consistent with current and future local policy for Ballan.

LOCALITY MAP

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



Figure 3 Zoning of the subject site (outlined blue) and surrounds

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:

- 11.01-1R Settlement – Central Highlands
- 12.03-1S River corridors, waterways, lakes and wetlands
- 15.01-3S Subdivision design
- 15.01-5S Neighbourhood character
- 16.01-2S Location of residential development
- 21.03 Settlement and housing
- 21.08 Ballan

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

Policy		Officer comments
12.03-1S River corridors, waterways, lakes and wetlands		
Objective To protect and enhance river corridors, waterways, lakes and wetlands.	Strategy Protect the environmental, cultural and landscape values of all water bodies and wetlands. Ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of water bodies and wetlands. Ensure development is sensitively designed and sited to maintain and enhance environmental assets, significant views and landscapes along river corridors and waterways and adjacent to lakes and wetlands. Ensure development does not compromise bank stability, increase erosion or impact on a water body or wetland's natural capacity to manage flood flow.	The proposal would allow increased physical development within 100 metres of the Werribee River in a location where a protective buffer of Public Park and Recreation Zone does not exist.
15.01-5S Neighbourhood character		
Objective To recognise, support and protect neighbourhood character, cultural	Strategy Ensure development responds to cultural identity and contributes to existing or preferred neighbourhood	The subject site is in an established area of Ballan, recognised for its low density development, large lots, and river frontages. This is recognised as both the existing and preferred

identity, and sense of place.	<p>character.</p> <p>Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by emphasising the:</p> <ul style="list-style-type: none"> • Pattern of local urban structure and subdivision. • Underlying natural landscape character and significant vegetation. • Heritage values and built form that reflect community identity. 	<p>neighbourhood character, evidenced by the reinforcement and strengthening of lot size controls under Amendment C88. These factors contribute to the area's country and rural setting.</p> <p>The proposal does not respond adequately to this setting, by proposing a subdivision which would encourage residential development nearly twice as dense as the average – particularly other LDRZ lots on Ocock/Hall Street and the wider precinct C as defined in the BSD.</p>
21.03 Settlement and housing		
<p><i>21.03-4 Objective—Landscape and neighbourhood character</i></p> <p>To ensure new development in all zones respects the existing character, landscape setting and amenity of the local area.</p>	<p>Strategy</p> <p>Ensure development protects and enhances the existing character, built form, natural environment, country town scale and rural atmosphere of each town.</p> <hr/> <p>Strategy</p> <p>Ensure housing and subdivision design complements the existing environment and has regard to the town's landform.</p>	<p>Refer to the response to 15.01-5S (Neighbourhood character)</p> <p>The subject site is located within close proximity to the Werribee River and the southern portion of the lot is located within the river gully area.</p> <p>The proposal would allow for the development of additional housing within this river gully area where an existing dwelling already exists to the south at 1 Ocock Street itself only 70 m from the river.</p>
21.08 Ballan (current 14 November 2019)		
<p><i>21.08-3 Objective—Housing</i></p> <p>To provide diversity in housing that is in character with the township and provides for continued growth of the town as a regional centre.</p>	<p>Strategy</p> <p>Encourage re-subdivision of large lots including limited well-designed medium-density development within 500 metres of the town centre and railway station.</p>	<p>The subject site is not within either of these areas encouraged for re-subdivision.</p>

21.08 Ballan (Amendment C88)		
<p><i>21.08-2 Objective— Character and Sense of Place</i></p> <p>To protect and enhance Ballan’s character and sense of place as a country town, with historic built form and streetscapes, surrounded by scenic rural and natural areas.</p>	<p><i>Strategy</i></p> <p>Ensure new development responds to environmental assets, landscape features, and views, including the Werribee River and its tributaries.</p>	<p>Refer to the response to 21.03-4 (Landscape and Neighbourhood Character).</p> <p>Importantly, this supports the related country and rural neighbourhood character.</p>
<p><i>21.08-6 Objective— Residential Development</i></p>	<p><i>Strategy</i></p> <p>Ensure residential rezoning proposals, master/development plans, and subdivision have regard for Ballan’s character and sense of place by:</p> <p>Ensuring growth precincts provide a diverse range of lot sizes which protect the country lifestyle character of Ballan;</p> <p>Retaining the landscape character of the Werribee River by protecting a corridor along the river and its tributaries.</p> <p>The width of corridors should take into account the recommendations of Melbourne Water where relevant.</p>	<p>Because the subject site is identified in an area of minimal growth and low density, the proposed subdivision does not allow the protection of Ballan’s country lifestyle character.</p>
	<p><i>Strategy</i></p> <p>Ensure new development Minimal Growth Areas of the Ballan Framework Plan:</p> <p>Conserves and enhances attributes that contribute to the environmental significance, heritage values and the preferred neighbourhood character of the precinct.</p>	<p>The proposed development does not respect identified environmental and neighbourhood character values.</p>

ZONE

32.03 Low Density Residential Zone applies to the subject site. Pursuant to Clause 32.03-3 Subdivision, a permit is required to subdivide the land. No change of use from Dwelling is proposed with this application. No development is proposed with this application. The purposes of the Zone are listed below with officer comments:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
 - Not consistent. See previous section Planning Scheme Provisions.
- To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.
 - Consistent.

Although Amendment C88 has not yet been gazetted at the time of writing (14 November 2019), Schedule 1 to the LDRZ would apply as follows:

- Minimum subdivision area applicable to all land is 0.4 hectares.
 - At 0.28 and 0.25 hectares each, the proposed subdivision would not meet the minimum required area and would not be allowed.

OVERLAYS

42.01 Environmental Significance Overlay Schedule 1 applies to the entire subject site. The schedule is designed to protect proclaimed water catchment areas, in this instance the Pykes Creek Reservoir catchment. It is noted that the subject site is serviced by reticulated water and sewerage. The environmental objectives to be achieved are:

- To protect the quality and quantity of water produced within proclaimed water catchments.
 - Connection to the existing sewerage will mitigate impacts.
- To provide for appropriate development of land within proclaimed water catchments.
 - In the context of the proposal within the established township of Ballan, it is appropriate to the catchment.

Pursuant to Clause 4.0 of the Schedule, the application was referred to the relevant water authorities being Southern Rural Water and Western Water.

- Southern Rural Water provided a response of no objection on 22 August 2019.
- Western Water provided a response of no objection on 17 September 2019.

42.01 Environmental Significance Overlay Schedule 2 applies to approximately one quarter the subject site, mostly in the southern quadrant and along the south-eastern boundary. The schedule is designed to protect waterways, in this instance the Werribee River. The environmental objectives to be achieved are:

- To protect the habitat significance of vegetation.
 - No significant riparian vegetation exists in the ESO2 in the subject site.
- To provide for appropriate development of land within 100 metres of either side of a waterway.
 - The proposed building envelope is approximately 71 metres from the Werribee River at its nearest point, and at least one half is within 100 metres.

- To prevent pollution and increased turbidity of water in natural waterways.
 - Connection to the existing sewerage will mitigate pollution impacts.
- To prevent increased surface runoff or concentration of surface water runoff leading to erosion or siltation of waterways.
 - Connection to the existing sewerage will mitigate runoff impacts.
- To conserve existing flora and fauna habitats close to waterways and to encourage generation and regeneration of habitats.
 - Existing habitats in the subject site have been modified. No specific generation and regeneration are proposed.

The application was referred to Melbourne Water as the catchment management authority of the Port Philip & Westernport Catchment into which the Werribee River drains.

- Melbourne Water provided a response of no objection on 21 August 2019.

RELEVANT POLICIES

Amendment C88 to the Moorabool Planning Scheme was formally adopted by Council in 2 October 2019. It includes various updates and additions regarding Ballan, its relevant local policies, and zoning in the town. Although the amendment has not been gazetted at the time of writing of this report (14 November 2019), pursuant to section 60 (h) of the Act this amendment must be considered.

Relevant to this application are the addition of Schedule 1 to the Low Density Residential Zone and additional and updated local policies for Ballan.

PARTICULAR PROVISIONS

Pursuant to Clause 32.03-6, the relevant standards of Clause 56 are 56.07-1 (C22), 56.07-2 (C23), 56.07-3 (C24), 56.07-4 (C25). The proposal meets the Standards C22 through C25 of Clause 56.

DISCUSSION

The proposal is inconsistent with current neighbourhood character, as well as components which are proposed and expected to be gazetted, and the minimum lot area requirements of the zone schedule. For these reasons, the application is recommended to be refused.

The proposed subdivision is not consistent with neighbourhood character. The subject site is in an area which is recognised through local policy and the Ballan Strategic Directions—providing foundation to Amendment C88 and proposed to be included as a local policy reference document—as established with large, open lots, in a rural and country setting. Furthermore, it has been identified to be most suitable for minimal growth and that protection of and separation from the Werribee River frontage is a key element of the neighbourhood character.

The applicant proposes a subdivision which would allow the additional development of a dwelling and a relatively high development density for this LDRZ and neighbourhood character. Indeed, a dwelling on the proposed subdivision would create three dwellings within 36 metres of each other in a LDRZ. There is only one other example of such density in this LDRZ. This level of development is therefore highly uncharacteristic of the area and not in keeping with the neighbourhood character.

Furthermore, the proposed subdivision would allow the addition of a second dwelling within 100 metres of the Werribee River where protective Public Park and Recreation Zone buffering does not already exist. Similarly, although Melbourne Water did not object to the proposed subdivision, there is a clear risk of allowing increased encroachment into the sensitive Werribee River riparian zone. The proposal locates a significant portion of the lot and building envelope within the ESO2, which suggests a general lack of suitability of the lot to be subdivided at all. Any future residential development may be highly constrained by this ESO2 and would certainly limit future potential for environmental regeneration, bank protection, and riparian rehabilitation.

Amendment C88 was formally adopted by Council on 2 October 2019 and pursuant to Section 60 (h) of the *Planning and Environment Act 1987* is therefore a matter which must be considered in the assessment and determination of this proposal. Amendment C88 would impose a lot size requirement of 4000 square metres to the subject site, increased from the current 2000 square metres. The proposed lots are 2796 square metres and 2491 square metres, each in breach of this minimum requirement.

Amendment C88 was exhibited from August to October 2018 when the public was given the opportunity to make submission to be heard before the panel hearing in March 2019. It is noted that some landowners within the LDRZ proposed to gain Schedule 1 made submissions regarding the increased lot size requirement as it applies to their property. Neither the applicant or landowner of this subject site made such a submission. Yet, it is understood that the applicant had intended to subdivide the property since before the exhibition period. Therefore, it is considered that it would be inconsistent to permit a subdivision at this stage of the amendment process that would be in breach of future controls when sufficient previous opportunity was provided for the landowner to make submissions before the panel report.

A consultation meeting with the representatives of the applicant and landowner was held on 7 November 2019. The objector was invited to attend but did not respond. Council officer concerns were reiterated and a slightly modified plan offered to the proposal.

Referral

Council's internal Strategic and Sustainable Development (SSD) department objected to the proposed subdivision on the following grounds:

- *The minimum lot size for the area should be 4000m² as per the exhibited Amendment C88 and panel recommendations.*
- *The existing neighbourhood character with open and large lots should be maintained.*
- *The corridor of the Werribee River should be protected.*

These concerns are consistent with those of the Council officer and are supported.

Objection

One objection was received. The merits of the objection are considered valid and generally consistent with those of the Council officer.

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	No objection. 17 September 2019.
Southern Rural Water	No objection. 22 August 2019.
Melbourne Water	No objection. 21 August 2019.
Strategic & Sustainable Development	Objection. 20 August 2019.
Infrastructure	Consent with conditions. 26 August 2019.

FINANCIAL IMPLICATIONS

There are no financial implications.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation of refusal of this subdivision does not implicate any risk or 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 Lot 1 on Plan of Subdivision PS545404, being located at 3 Ocock Street Ballan, is inconsistent with incoming zone schedule changes of amendment C88. The proposal is in clear breach of the planning controls of this amendment which is statutorily required to be considered in this planning permit application.

The proposal would not contribute to the existing and future neighbourhood character of large lots in a rural and country landscape because it will allow for greater density of development and residences than is common to the area and Low Density Residential Zone in this area.

Importantly, the proposed lot sizes of 0.28 and 0.25 hectares are substantially smaller than the 0.4 hectare minimum lot size to be required under amendment C88.

Regardless of the proposed lot size changes under amendment C88, the proposed subdivision is still strategically not well positioned for the reasons of neighbourhood character, encroachment the ESO2.

A permit is not recommended for the reasons outlined above.



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