



AGENDA

S86 Development Assessment Committee Meeting Wednesday, 20 May 2020

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

Date: Wednesday, 20 May 2020

Time: 6.00pm

Location: The Pavilion, Darley Civic Hub

**Derek Madden
Chief Executive Officer**

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

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

- The Moorabool News; and
- The Star Weekly.

4 CONFIRMATION OF MINUTES

S86 Development Assessment Committee Meeting - Wednesday 18 March 2020

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

Author: Victoria Mack, Statutory Planner

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

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

APPLICATION SUMMARY

Permit No: PA2019156

Lodgement Date: 9 July 2019

Planning Officer: Victoria Mack

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

Proposal: Two lot subdivision (House lot excision)

Lot size: 18.20 hectares

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

RECOMMENDATION

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

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

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

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

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

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

General Manager – Henry Bezuidenhout

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

Author – Victoria Mack

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

EXECUTIVE SUMMARY

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

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

SITE DESCRIPTION

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

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

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

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

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

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

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

An aerial photograph of the site is shown below.

Figure 1: Aerial map



PROPOSAL

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

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

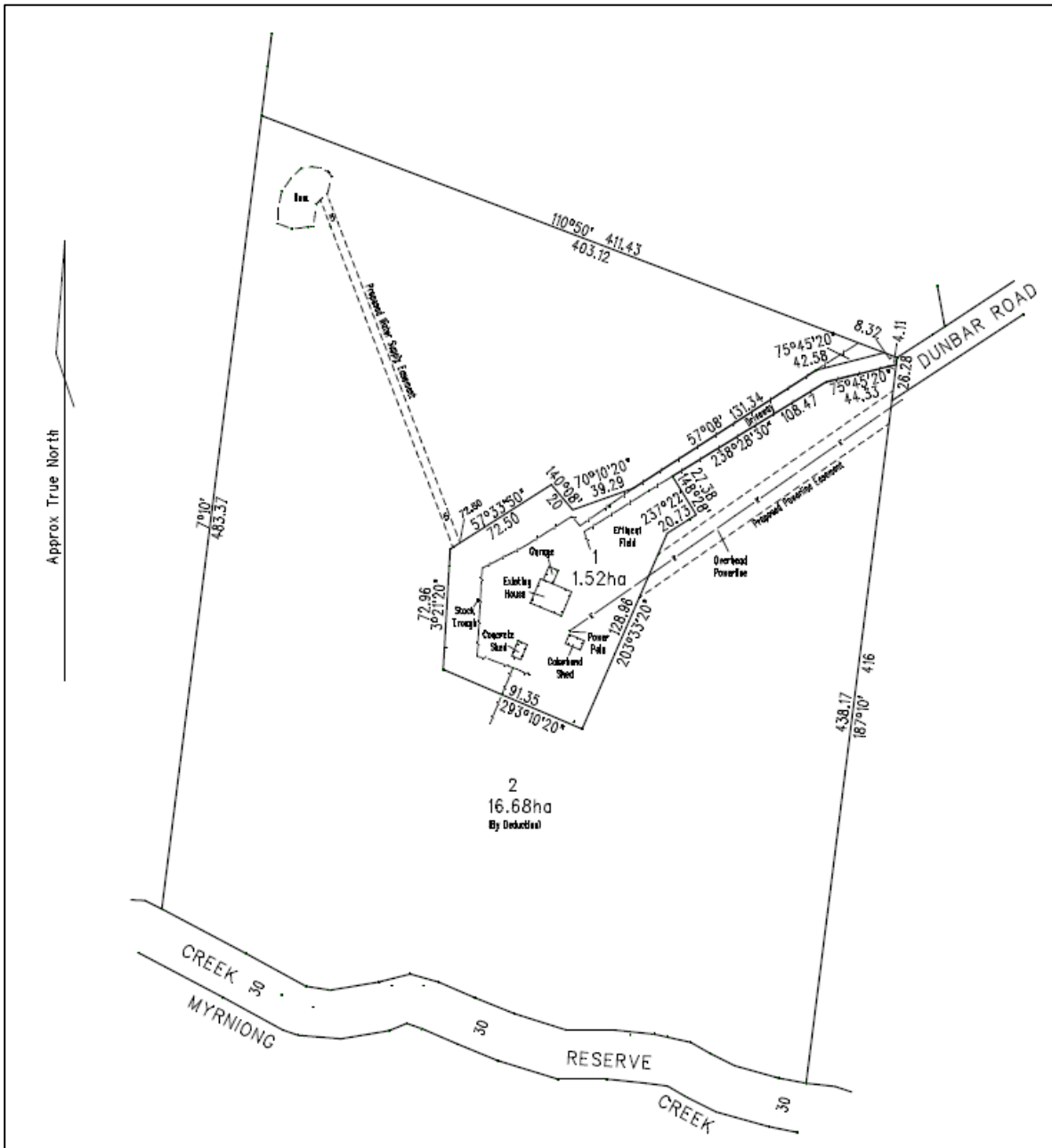
Lot 2 would be approximately 16.68ha (by deduction) and would contain two dams and the cattle yards. The yards are located close to the entrance of the property at Dunbar Road.

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

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

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

Figure 2: plan of subdivision



BACKGROUND TO CURRENT PROPOSAL

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

HISTORY

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

RESTRICTIVE COVENANT

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

PUBLIC NOTICE

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

SUMMARY OF OBJECTIONS

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

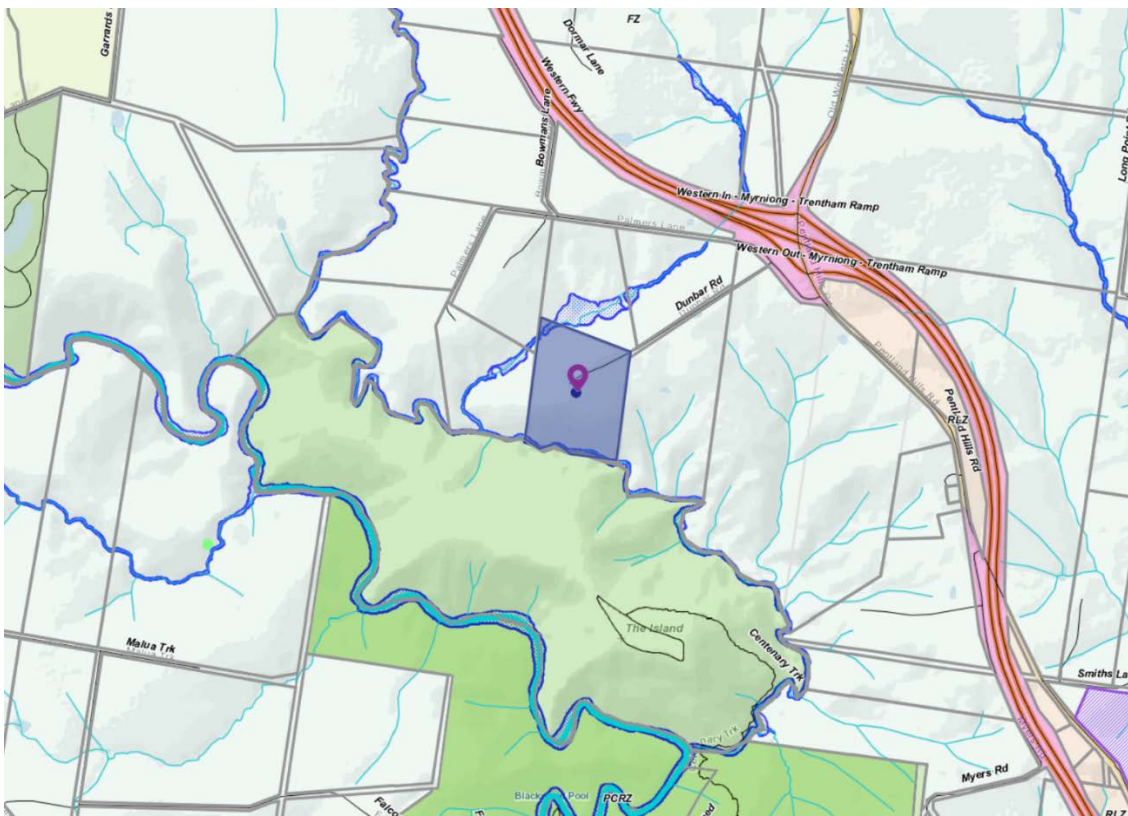
Objection	Any Relevant Requirement
The covenants on these lots prohibit subdivision and various farm industries. Yet dog breeding has been allowed by Council which many locals are not happy with it.	Covenant number Y000705A
Officer's Response: The covenant does not restrict subdivision. It does restrict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

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

LOCALITY MAP

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

Figure 3: Zone map



PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S Peri-urban areas
- Clause 12.03-1S River corridors, waterways, lakes and wetlands
- Clause 14.01-1S Protection of agricultural land
- Clause 15.01-6S Design for rural areas
- Clause 16.01-5S Rural residential development
- Clause 21.03-6 Objective - Rural lifestyle opportunities

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

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

Clause 22.03 House and House Lot Excisions in Rural Areas

The objectives of this clause are:

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

Policy

It is policy to:

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

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

This application is not an orderly planning outcome for the area

ZONE

Farming Zone

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

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

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

The purpose of the zone is to:

- Implement the Municipal Planning Strategy and the Planning Policy Framework.
- Provide for the use of land for agriculture.
- Encourage the retention of productive agricultural land.
- Ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

- Encourage the retention of employment and population to support rural communities.
- Encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provisions.

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

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

OVERLAYS

Environmental Significance Overlay (ESO3)

The purpose of the ESO is to:

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

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

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

Design and Development Overlay and Schedule 2 (DDO2)

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

RELEVANT POLICIES

Council's Rural Housing Policy Statement

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

The policy intent is to:

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

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

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

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

Council's Rural Growth Policy statement - 19 September 2012

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

The principles of the policy relevant to this application include:

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

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

Particular Provisions

Clause 53.10 Public Open Space Contribution and Subdivision

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

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

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

DISCUSSION

Subdivision design

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

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

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

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

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

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

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

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

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

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

Servicing

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

GENERAL PROVISIONS

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

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

REFERRALS

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

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

Council could consider the following options:

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

CONCLUSION

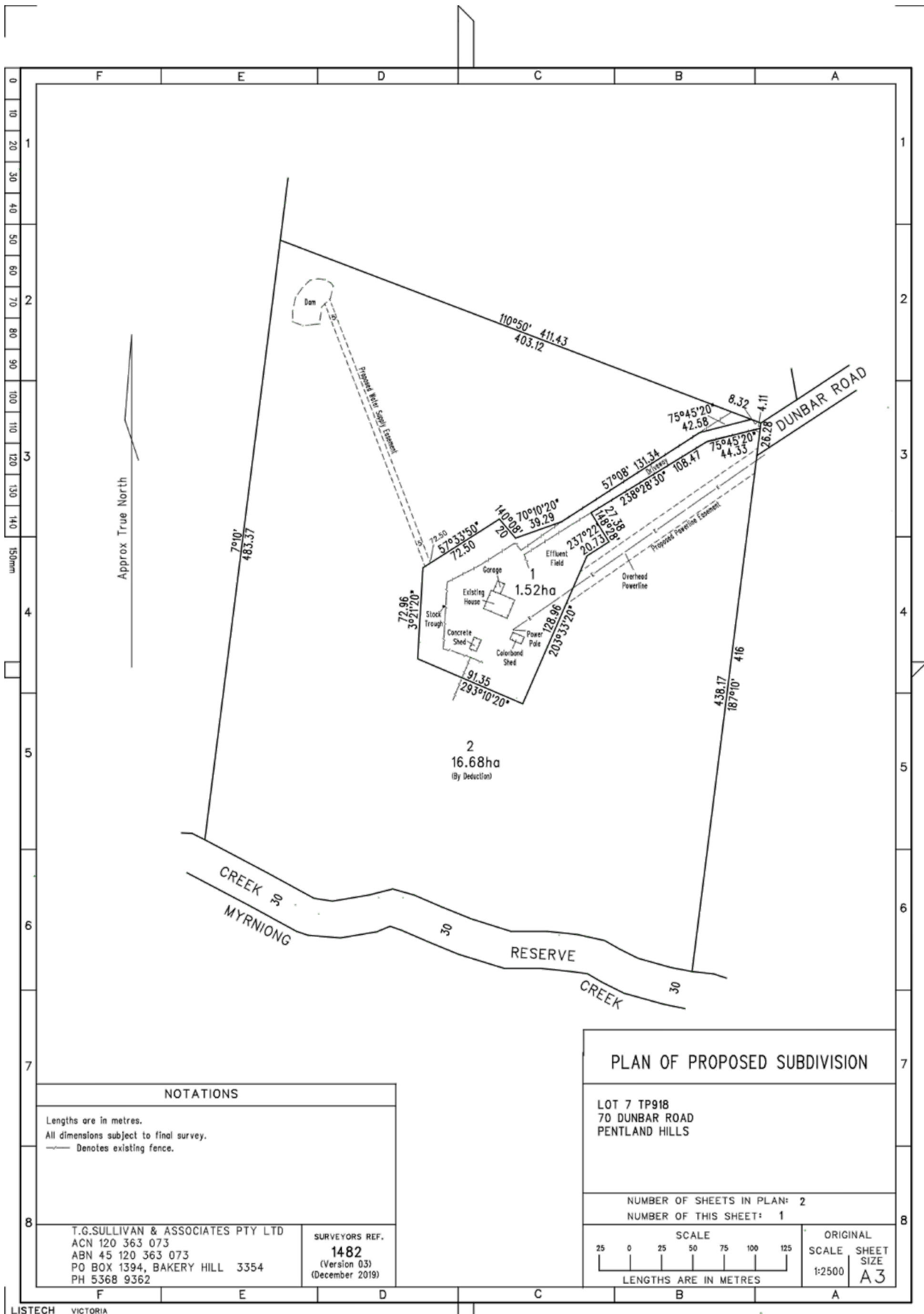
The proposed subdivision of the land into two lots with one containing an existing dwelling and the other to remain vacant is considered inconsistent with the planning provisions and the State and Local Planning Policy Framework.

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

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

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

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



Approx True North

NOTATIONS

Lengths are in metres.
 All dimensions subject to final survey.
 --- Denotes existing fence.

PLAN OF PROPOSED SUBDIVISION

LOT 7 TP918
 70 DUNBAR ROAD
 PENTLAND HILLS

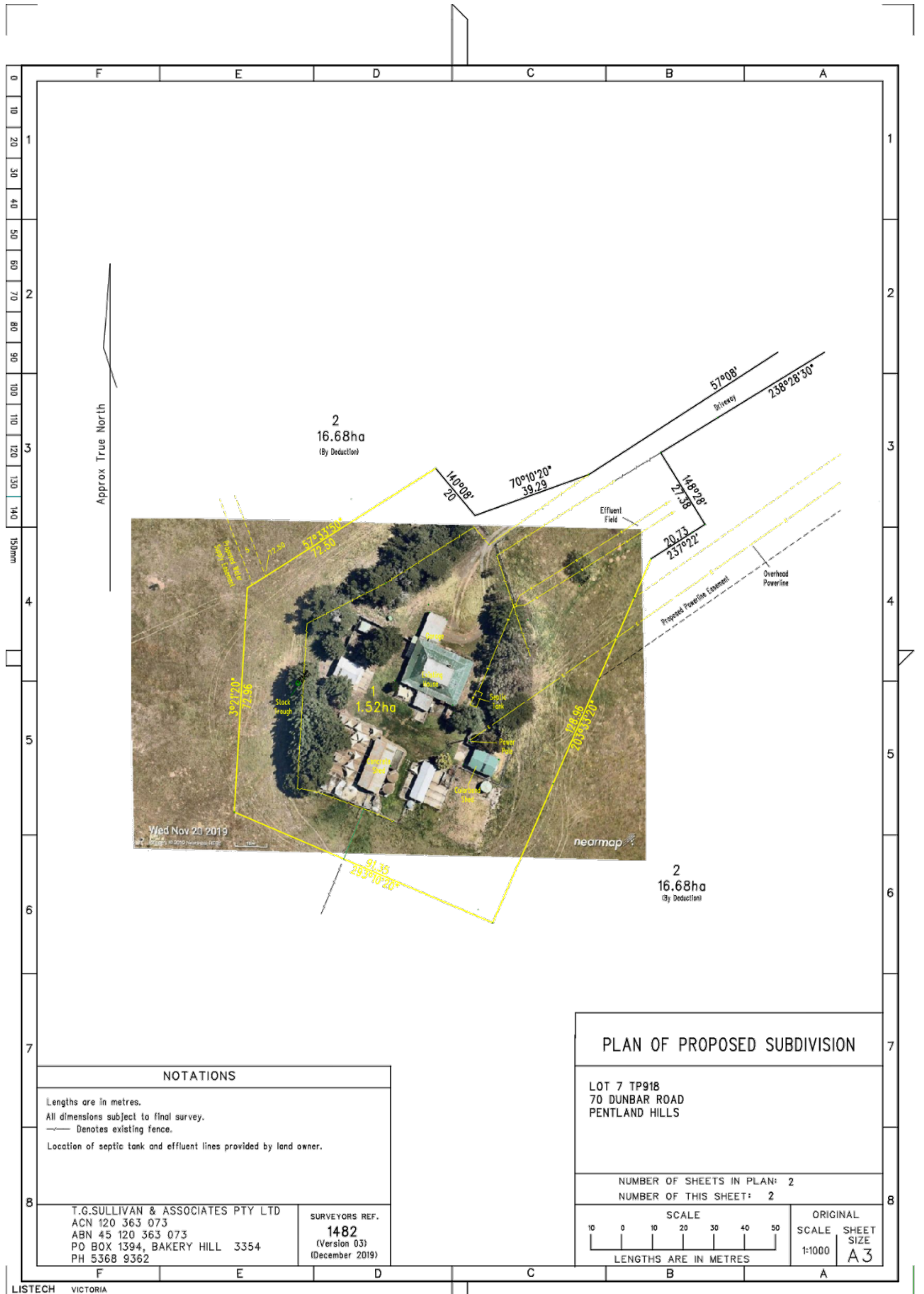
NUMBER OF SHEETS IN PLAN: 2
 NUMBER OF THIS SHEET: 1

SCALE
 25 0 25 50 75 100 125
 LENGTHS ARE IN METRES

ORIGINAL SCALE SHEET SIZE
 1:2500 A3

T.G.SULLIVAN & ASSOCIATES PTY LTD
 ACN 120 363 073
 ABN 45 120 363 073
 PO BOX 1394, BAKERY HILL 3354
 PH 5368 9362

SURVEYORS REF.
1482
 (Version 03)
 (December 2019)



Approx True North

2
16.68ha
(By Deduction)

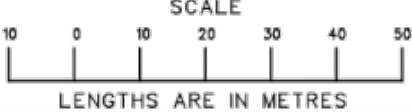
1
1.52ha

2
16.68ha
(By Deduction)

PLAN OF PROPOSED SUBDIVISION

LOT 7 TP918
70 DUNBAR ROAD
PENTLAND HILLS

NUMBER OF SHEETS IN PLAN: 2
NUMBER OF THIS SHEET: 2



ORIGINAL SCALE SHEET SIZE
1:1000 A3

NOTATIONS

Lengths are in metres.
All dimensions subject to final survey.
— Denotes existing fence.
Location of septic tank and effluent lines provided by land owner.

T.G.SULLIVAN & ASSOCIATES PTY LTD
ACN 120 363 073
ABN 45 120 363 073
PO BOX 1394, BAKERY HILL 3354
PH 5368 9362

SURVEYORS REF.
1482
(Version 03)
(December 2019)

7.2 PA2019282 - TWO LOT SUBDIVISION AT 2 ALEXANDER DRIVE, BALLAN**Author:** Thomas Tonkin, Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development**Attachments:** 1. Proposed plan of subdivision**APPLICATION SUMMARY****Permit No:** PA2019282**Lodgement Date:** 6 December 2019**Planning Officer:** Tom Tonkin**Address of the land:** 2 Alexander Drive Ballan**Proposal:** Two Lot Subdivision**Lot size:** 780 sqm**Why is a permit required?** Clause 32.09 Neighbourhood Residential Zone, Schedule 7 - Subdivision
Clause 42.01 Environmental Significance Overlay, Schedule 1 - Subdivision**RECOMMENDATION**

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2019282 for a Two Lot Subdivision at Lot 1 on PS 713325V known as 2 Alexander Drive, Ballan 3342, on the following grounds:

1. The proposed lot sizes do not meet the minimum allowable lot sizes specified in the Neighbourhood Residential Zone, Schedule 7, of the Moorabool Planning Scheme.
2. The proposal is inconsistent with relevant state and local planning policy in the Moorabool Planning Scheme for residential land subdivision in this location.
3. The proposal does not meet all relevant provisions of Clause 56 (Rescode) of the Moorabool Planning Scheme.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	None.
Consultation meeting:	Not applicable.

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

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

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, to Council's Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	Non-compliance with the minimum 800 sqm lot size requirement of NRZ7, which was adopted by Council as part of Amendment C88 before the application was submitted. C88 was gazetted on 6 March 2020.
Any discussions with applicant regarding concerns?	Yes, informally before and after the application was submitted.
Any changes made to the application since being lodged?	No.
Brief history.	The subject site is part of a 12-lot subdivision approved by Council under planning permit PA2011316 issued on 21 August 2012.
Previous applications for the site?	None. This application has been lodged concurrently with four other two lot subdivisions in the same street by the same applicant.

General summary.	The proposed 390 sqm lot sizes do not meet the minimum 800 sqm lot size requirements of the Neighbourhood Residential Zone, Schedule 7 and is therefore in direct contravention of the Moorabool Planning Scheme. Council has no discretion to approve the application due to the minimum lot size requirement of 800 sqm.
Summary Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , on the grounds included in this report.	

SITE DESCRIPTION

The site is identified as Lot 1 on PS 713325V and is known as 2 Alexander Drive, Ballan, and is located on the north-west corner of Crook Court and Alexander Drive. The site is an irregular shaped lot with an area of 780 sqm, vacant with no significant vegetation and minimal fall.

PROPOSAL

It is proposed to subdivide the site into two lots. Both lots would be 390 sqm in size, roughly rectangular in shape. Lot 1 would have a 14.25 metre frontage to Crook Court and Lot 2 would occupy the corner of Crook Court and Alexander Drive. Both lots would be encumbered by a building envelope.

BACKGROUND TO CURRENT PROPOSAL

The subject site was rezoned to the Neighbourhood Residential Zone, Schedule 7 (NRZ7) on 6 March 2020 as part of Planning Scheme Amendment C88 which implemented the Ballan Strategic Directions (June 2018) policy in the Moorabool Planning Scheme. The NRZ7 imposes minimum lots sizes of 800 sqm for a subdivision. There are no applicable transitional provisions in the Moorabool Planning Scheme to enable consideration of smaller lot sizes proposed in applications received prior to the Amendment's gazettal on 6 March 2020.

HISTORY

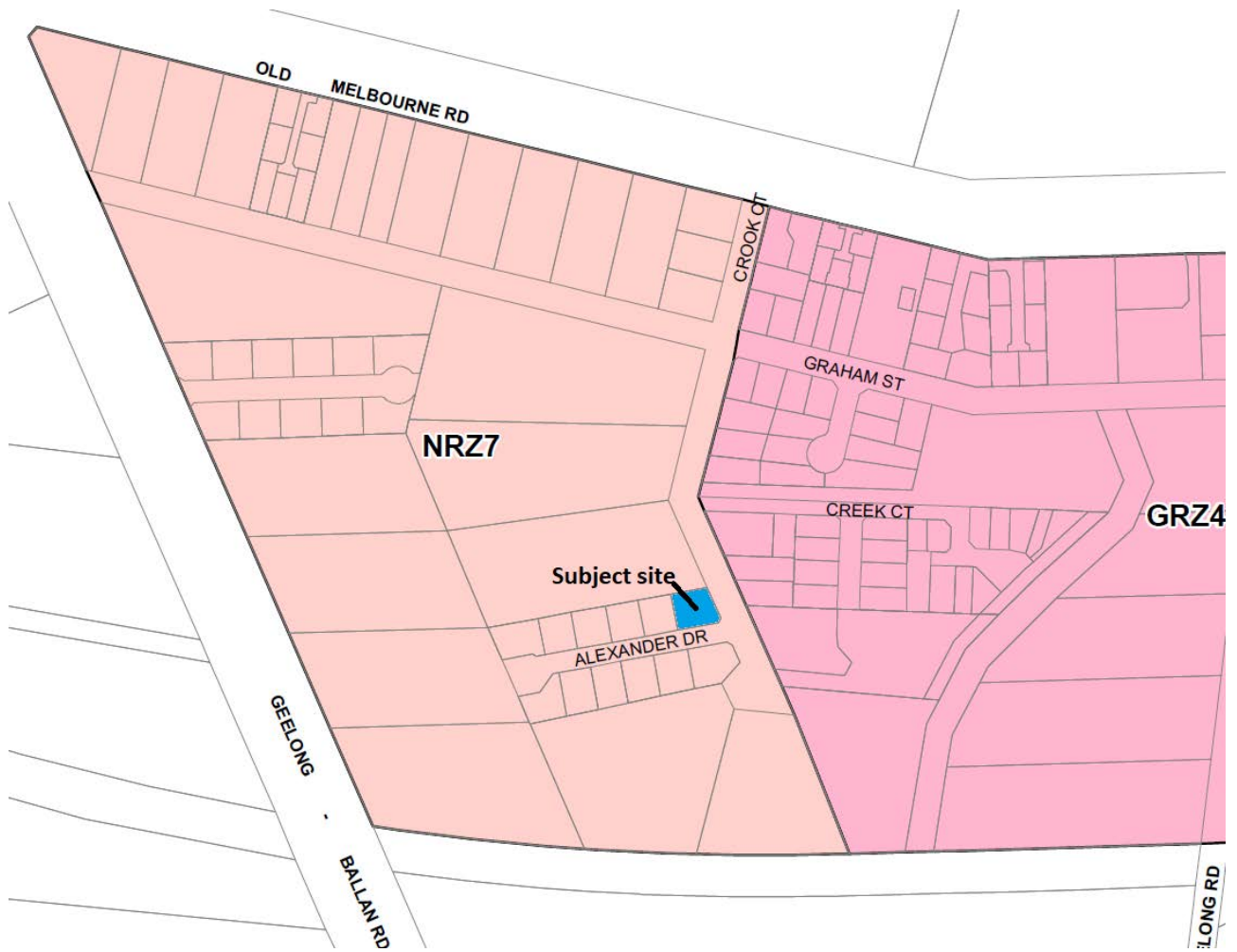
None applicable.

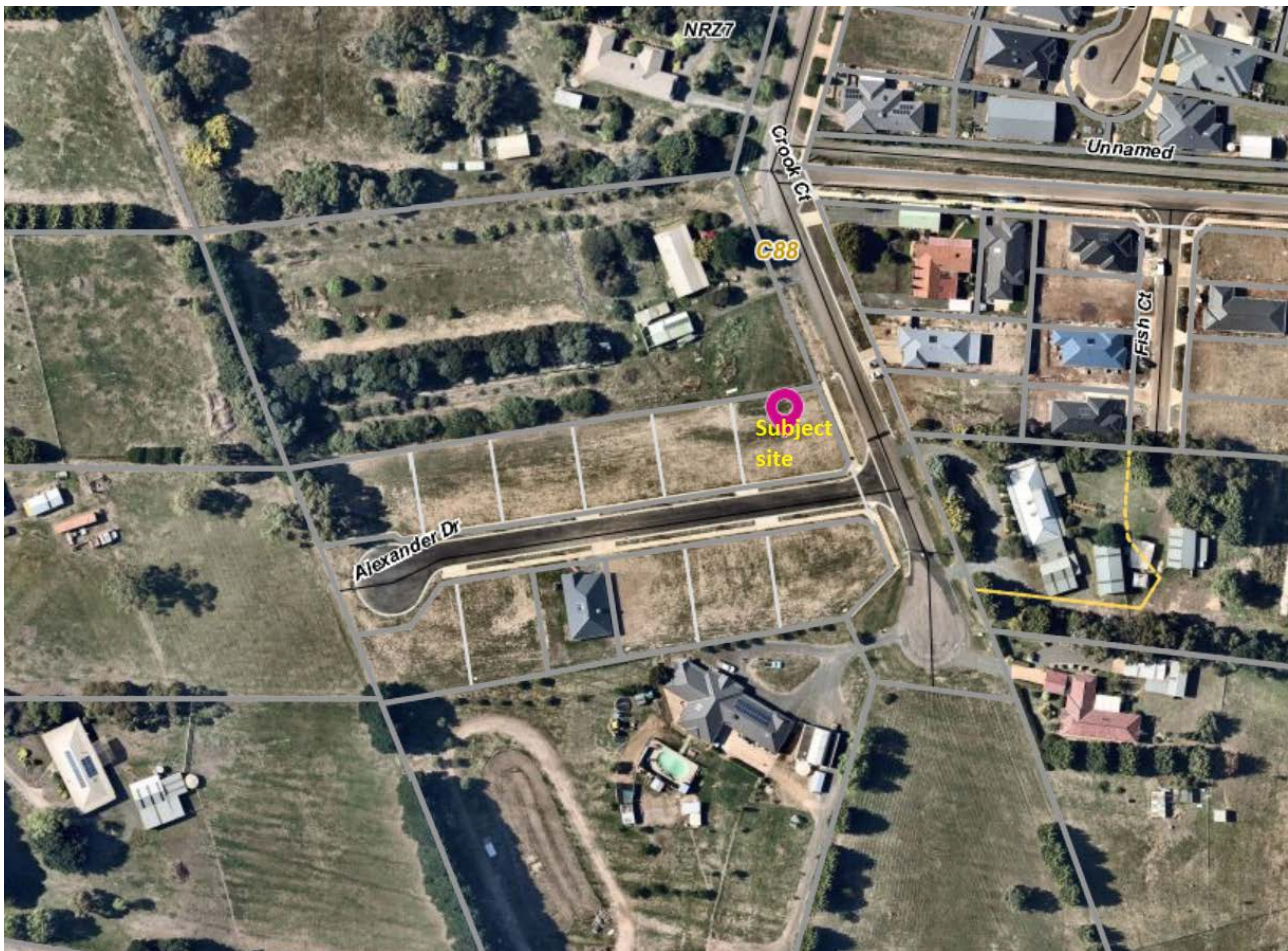
PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners by mail and a sign erected on site from 14-29 January 2020. No objections were received.

LOCALITY MAP

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





PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S Peri-urban areas
- Clause 14.02 Water
- Clause 15.01-3S Subdivision design
- Clause 15.01-5S Neighbourhood character
- Clause 16.01-2S Location of residential development
- Clause 21.02-3 Water and catchment management
- Clause 12.03-2 Urban Growth Management
- Clause 21.03-3 Residential Development
- Clause 21.03-4 Landscape and Neighbourhood Character
- Clause 21.08 Ballan
- Clause 22.02 Special Water Supply Catchments

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

PPF	Title	Response
Clause 15.01-5S	Neighbourhood character	The proposal does not respond positively to the preferred neighbourhood character, which encourages detached dwellings with conventional front and side setbacks. The proposed subdivision would prejudice such development.
Clause 16.01-2S	Location of residential development	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
LPPF		
Clause 21.03-2	Urban Growth Management	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
Clause 21.03-4	Landscape and Neighbourhood Character	The proposal does not respond appropriately to the preferred neighbourhood character because the proposal would not facilitate site responsive future development.
Clause 21.08-7	Strategies for Residential Development	The proposed lot sizes would facilitate built form inconsistent with the preferred development outcomes for this area of Ballan, by limiting opportunities for low density housing with boundary setbacks to accommodate landscaping.

ZONE

The subject site is in the Neighbourhood Residential Zone, Schedule 7 (NRZ7). The purpose of the Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- 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 32.09-3 a permit is required to subdivide land. A zone schedule may specify a minimum lot size to subdivide land, and each lot must be at least the area specified for the land. Schedule 7 specifies a minimum 800 sqm lot size for a subdivision.

The proposed lot sizes do not meet the minimum lot size requirement; therefore, the proposal is fundamentally inconsistent with the Zone provisions.

OVERLAYS

The site is affected by Environmental Significance Overlay, Schedule 1 (Proclaimed Water Catchment Areas). Under Clause 42.01-2 a permit is required to subdivide land. There are no relevant exemptions under Schedule 1. The subject site is sewered and drains more than 100 metres from the nearest waterway. Subject to conditions the proposal would not cause detriment to potable water quality or supply.

Relevant Policies

The Ballan Strategic Directions (June 2018) policy underpins Planning Scheme Amendment C88 which was recently approved by the Minister for Planning and gazetted on 6 March 2020. The proposed lot sizes less than 800 sqm are inconsistent with Amendment C88 adopted by Council.

Particular Provisions

Clause 53.01 Public Open Space Contribution and Subdivision

A subdivision is exempt from a public open space requirement specified in this scheme if it subdivides land into two lots and the Council considers it unlikely that each lot will be further subdivided. If the application could be considered for approval by Council, it would be unlikely for either lot to be further subdivided and no public open space contribution would be required.

Clause 56 Residential Subdivision

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

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

DISCUSSION

Overall, the proposal is inconsistent with relevant state and local planning policy, the Neighbourhood Residential Zone and Clause 56 of the Moorabool Planning Scheme.

The proposed 390 sqm lot sizes are less than the minimum allowable 800 sqm lot sizes specified in Schedule 7 to the Neighbourhood Residential Zone, gazetted on 6 March 2020. It is noted that despite the application being lodged with Council prior to the gazettal date there is no transitional provision in the Moorabool Planning Scheme which would enable Council to consider approving the application. Furthermore, it is noted that when the application was submitted on 6 December 2019, Amendment C88 has already progressed through the Panel Hearing process, been adopted by Council and submitted to the Minister for Planning for approval. The applicant was aware of the Amendment C88's status when submitting the application. The proposal explicitly contravenes the Moorabool Planning Scheme and is therefore recommended for refusal.

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 Southern Rural Water	Conditions in accordance with Council's MoU with these authorities.
Infrastructure	Consent with conditions.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY


Notice was undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*.

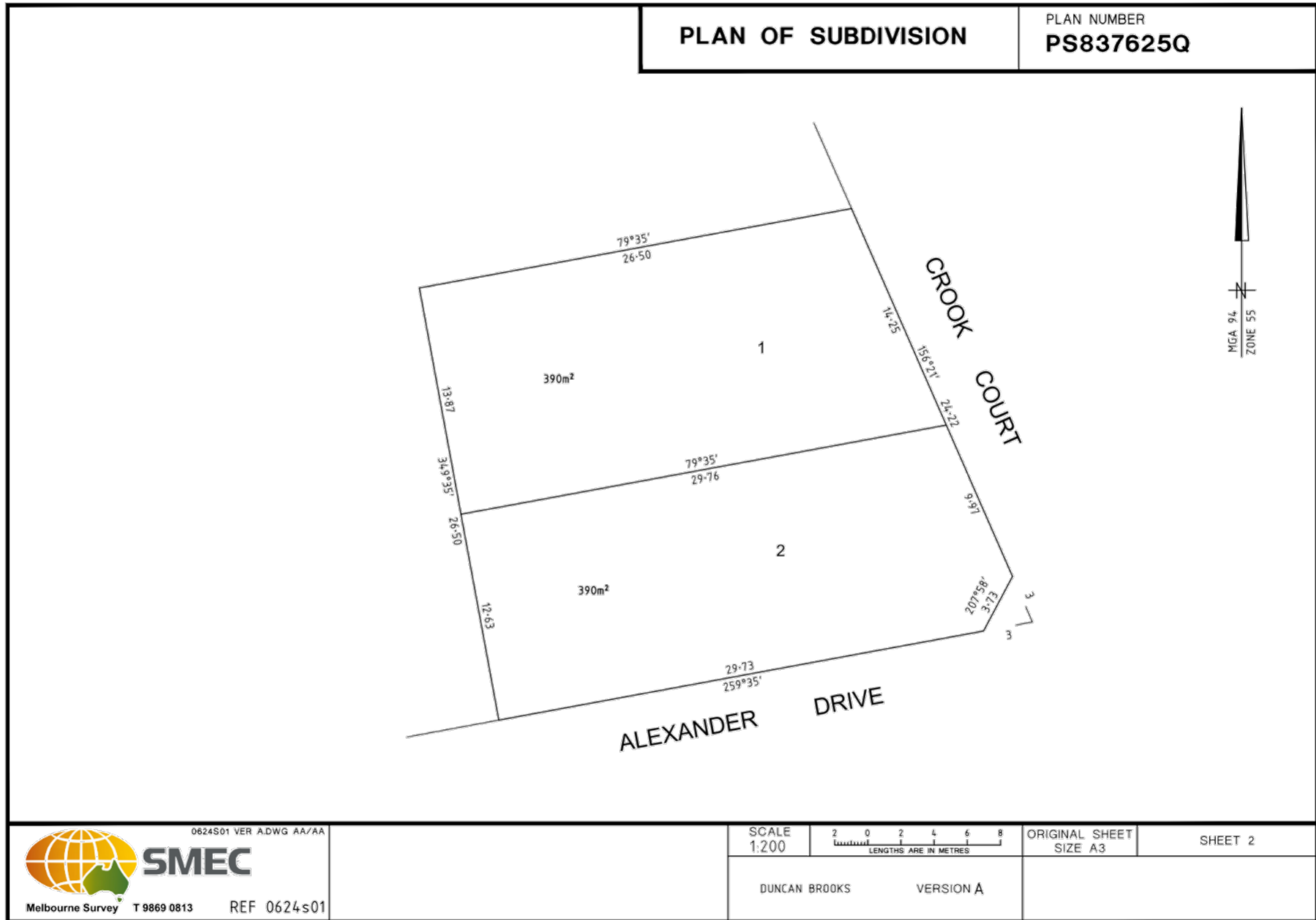
OPTIONS

- Issue a Refusal to Grant a Permit in accordance with the grounds in the recommendation of this report; or
- Issue a Refusal to Grant a Permit with amendments to the grounds in the recommendation of this report.

CONCLUSION

Overall, the proposal is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular the NRZ7 given that the proposed lot sizes do not meet the minimum 800 sqm lot size requirement.

PLAN OF SUBDIVISION		LUV USE ONLY EDITION	PLAN NUMBER PS837625Q	
LOCATION OF LAND		COUNCIL NAME: MOORABOOL SHIRE COUNCIL		
<p>PARISH: GORONG</p> <p>TOWNSHIP: -</p> <p>SECTION: 2</p> <p>CROWN ALLOTMENT: 19 (PART)</p> <p>CROWN PORTION: -</p> <p>TITLE REFERENCES: Vol.12079 Fol.019</p> <p>LAST PLAN REFERENCE/S: PS713325V (LOT 1)</p> <p>POSTAL ADDRESS: 2 ALEXANDER DRIVE (At time of subdivision) BALLAN, 3342</p> <p>MGA94 Co-ordinates E 253 870 (of approx centre of N 5 834 610 land in plan) ZONE 55</p>				
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	FOR CREATION OF RESTRICTION A AFFECTING LOTS 1 & 2 SEE SHEET 3.		
NIL	NIL			
NOTATIONS				
<p>DEPTH LIMITATION DOES NOT APPLY</p> <p>STAGING This is/is not a staged subdivision. Planning permit No.</p> <p>SURVEY. THIS PLAN IS/IS NOT BASED ON SURVEY. THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s):</p> <p>PROCLAIMED SURVEY AREA: 148</p> <p style="text-align: center;">2 LOTS</p>				
EASEMENT INFORMATION				
LEGEND A-Appurtenant Easement E-Encumbering Easement R-Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
 <p>0624S01 VER A.DWG AA/AA SMEC Member of the Urbana Jurong Group</p>		SURVEYOR REF: 0624s01 DUNCAN BROOKS VERSION A		ORIGINAL SHEET SIZE: A3 SHEET 1 OF 3



PLAN OF SUBDIVISION

PLAN NUMBER
PS837625Q

CREATION OF RESTRICTION A

The following restriction is to be created upon registration of Plan of Subdivision PS 837625Q by way of restrictive covenant and as a restriction as defined in the Subdivision Act 1988.

Land to benefit: Lots 1 & 2

Lots to be burdened: Lots 1 & 2

Description of Restriction

The registered proprietor or proprietors for the time of being of any burdened Lot on the Plan of Subdivision shall not:

Building Envelopes

(a) Unless consent has been granted by the Responsible Authority, build or allow to be built on the Lot any building outside the Building Envelope Plan below except for:

(i) the following permitted encroachments into the approved front street setback by up to 1500mm:-

- a porch, portico, balcony or verandah (no more than 3.60m in height)
- a masonry chimney
- a pergola
- an eave, fascia or gutter; and

(ii) the following permitted encroachments into the approved side and rear setbacks by up to 500mm:-

- a porch or verandah
- a masonry chimney
- a pergola
- an eave, fascia or gutter
- a sunblind
- a screen (to the extent needed to protect a neighbouring property from direct view)
- Flues and pipes
- Domestic fuel tanks and water tanks
- Heating and Cooling equipment and other services

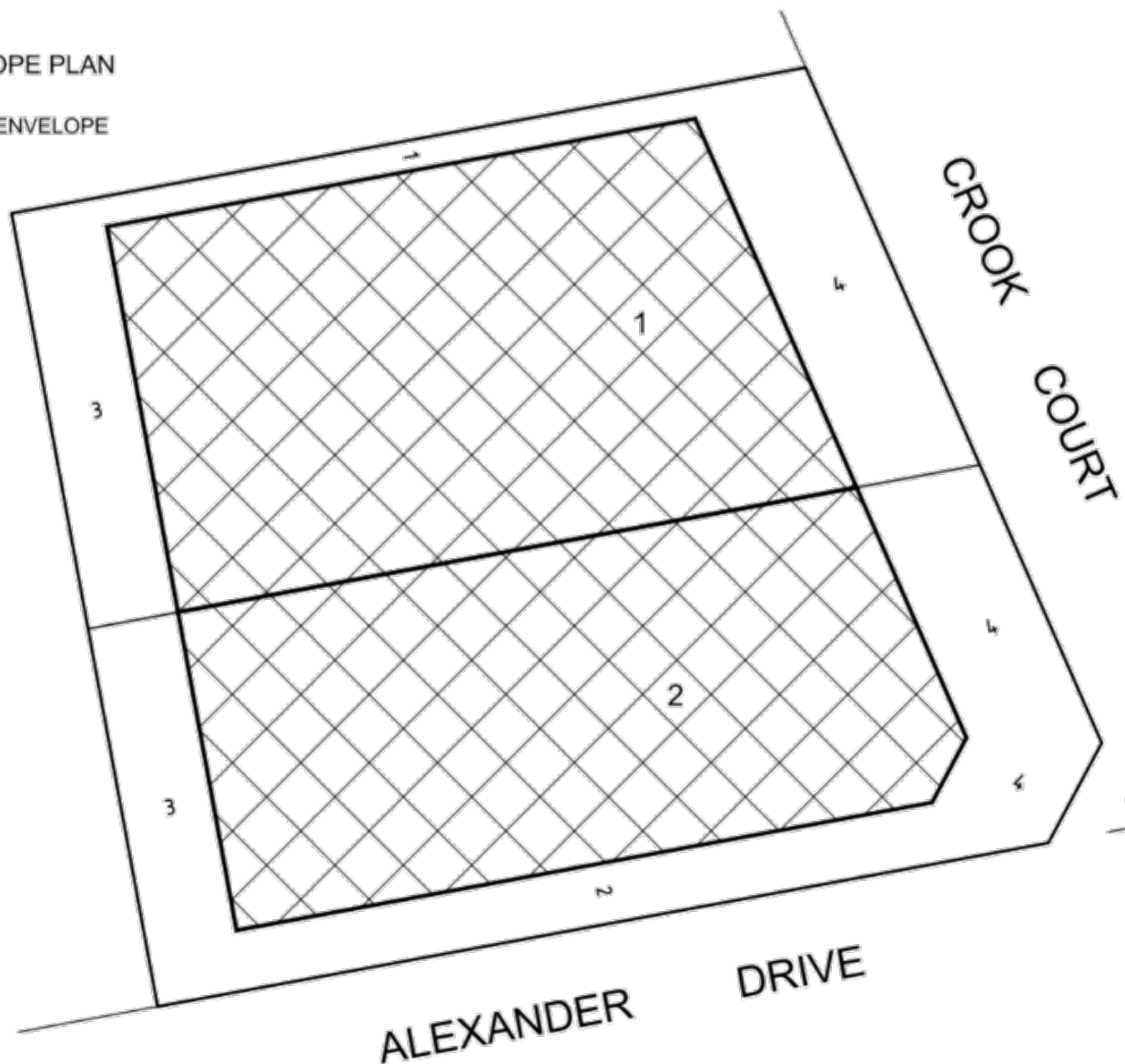
Expiry

The restriction shall cease to burden any Lot on the Plan of Subdivision with effect from 10 years from the date of registration of this Plan of Subdivision.

BUILDING ENVELOPE PLAN



BUILDING ENVELOPE



SMEC

Melbourne Survey T 9869 0813

REF 0624s01

0624S01 VER A.DWG AA/AA

SCALE



DUNCAN BROOKS

VERSION A

ORIGINAL SHEET
SIZE: A3

SHEET 3

7.3 PA2019059 - TWO LOT RE-SUBDIVISION AND USE AND DEVELOPMENT OF A DWELLING AT 139 POUND CREEK ROAD NAVIGATORS

Author: Thomas Tonkin, Statutory Planner

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

Attachments:

1. Existing subdivision layout
2. Proposed subdivision layout
3. Proposed dwelling
4. Farm Management Plan

APPLICATION SUMMARY

Permit No: PA2019059

Lodgement Date: 7 March 2019. Amended in process on 14 August, 2019

Planning Officer: Tom Tonkin

Address of the land: 139 Pound Creek Road Navigators

Proposal: Two Lot Re-Subdivision and Use and Development of a Dwelling

Lot size: 28.02 hectares

Why is a permit required? Clause 35.07 Farming Zone – Subdivision and Use and Development of a Dwelling
Clause 42.01 Environmental Significance Overlay, Schedule 1 – Subdivision and Development of a Dwelling
Clause 44.06 Bushfire Management Overlay - Subdivision

RECOMMENDATION

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2019059 for Two Lot Re-Subdivision and Use and Development for a Dwelling at Lot 1 on PS 633637U and Crown Allotment 4A Section 20A Parish of Warrenheip, known as 139 Pound Creek Road, Navigators 3352, on the following grounds:

1. The proposal breaches Section 173 Agreement AD935687W registered on the title to Lot 1 on Plan of Subdivision 633637U.
2. The proposal is inconsistent with the purpose and objectives of the Farming Zone.
3. The proposal does not comply with the Planning Policy Framework or Local Planning Policy Framework of the Moorabool Planning Scheme relevant to the development and use of rural land.
4. The proposed subdivision will result in a fragmentation of agricultural land.
5. There has been insufficient justification provided to support a further dwelling on the land.
6. The proposed agricultural activity can be undertaken utilising the existing dwelling on the land.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	Two.
Consultation meeting:	The Council officer consulted with one objector. The other objector did not wish to consult because of a fundamental opposition to the proposal. A formal meeting was not conducted as the recommendation is for refusal.

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

Strategic Objective 2: Minimising Environmental Impact

Context 2B: Natural Environment

The proposal does not conflict with the Council Plan 2017 – 2021.

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, to Council's Infrastructure, Council's Environmental Health, Central Highlands Water and CFA.
Any issues raised in referral responses?	The original application submitted on 7 March 2019 proposed a two-lot re-subdivision. Central Highlands Water (CHW) raised concerns with the application due to its potential to create a lot capable of

	accommodating a dwelling in an area where CHW calculate the existing dwelling density per hectare to be 1:19, well in excess of the 1:40 ratio recommended in the catchment authority guidelines.
Preliminary concerns?	No detailed information as to how the proposed subdivision would support and enhance farming the land and concerns that the proposal would fragment agricultural land.
Any discussions with applicant regarding concerns?	Yes, the Council officer wrote to the applicant regarding the abovementioned concerns.
Any changes made to the application since being lodged?	Yes. After notice of the original application (re-subdivision) was given and the CHW referral response was received, the applicant amended the application on 14 August 2019 to include the use and development of a dwelling. The amended application was advertised.
Brief history.	Previous planning approvals relevant to the land are summarised under 'History' below.
Previous applications for the site?	PA2010145 for a Two Lot Subdivision (Boundary Realignment) was approved by Council on 1 October 2010.
General summary.	It is proposed to re-subdivide to create two lots and develop the vacant lot for a dwelling, in addition to the existing dwelling on the landholding. The applicant has provided insufficient justification for why the proposal is required to support an agricultural enterprise and how it would avoid further fragmenting of agricultural land. The current farming enterprise does not require two dwellings over two lots to supports its operation. Two objections were received which raised concerns generally consistent with those of the planning officer. Additionally, Council has obtained legal advice that the proposal is in breach of a Section 173 Agreement registered as a restriction on one of the titles.
Summary Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , on the grounds included in this report.	

SITE DESCRIPTION

The subject site comprises the following lots:

- Crown Allotment 4A, Section 20A, Parish of Warrenheip which is a 3313 sqm parcel of land, with a maximum 11.53 metres width x 372.32 metres length. The lot is undeveloped and contains no vegetation; and

- Lot 1 on PS633637U, which is an irregular shaped lot of 27.69 ha containing a dwelling and ancillary outbuildings. Other than a few scattered trees the site is cleared of vegetation. This lot is encumbered by a 12-metre-wide powerline easement which crosses the site in an east-west direction. Beyond the residential use the land is used predominantly for cattle grazing. Two Section 173 Agreements are registered on the title to this lot.

A small waterway flows northwards through the site which is otherwise relatively flat.

The site and surrounding land is in the Farming Zone and comprises a range of lot sizes. The surrounding area is typified by a mix of small-scale farming and rural residential properties.

PROPOSAL

It is proposed to re-subdivide the existing lots and to use and develop the new vacant lot for a dwelling. Proposed Lot 1 would be 16.94 ha in size, irregular in shape with a 367.35-metre-wide frontage to Pound Creek Road and contain the existing dwelling and outbuildings with the existing access to Pound Creek Road retained. Proposed Lot 2 would be 11.07 ha in size, irregular in shape and vacant and almost entirely cleared of trees. The existing powerline easement would be contained within Lot 1 but parallel to the common boundary with Lot 2. There is no existing formal vehicle access to Lot 2.

The proposed dwelling on Lot 2 would be set back approximately 30 metres from Pound Creek Road and will be single storey in height and traditional in design with a low-pitched hipped roof, and weatherboard and masonry cladding. The dwelling would comprise of four bedrooms, main with ensuite, bathroom, separate toilet, laundry, study, living room, children's room and open plan kitchen, meals and family area leading to a rear alfresco area. An attached double garage would be provided for car parking and the building would have an overall floor area of 303.53 sqm.

The application documents state that the proposed dwelling is required for succession planning purposes and that the current landowner would shift from the existing dwelling to the proposed dwelling, with a nephew moving into the existing dwelling to manage farm operations and ultimately inherit the land. The Farm Management Plan provided by the applicant states that the proposed subdivision will allow an increase in overall stocking capacity and hence a significant increase in productivity. The dwelling is stated as being vital for proper functioning of the proposed enterprise including stock monitoring and security.

BACKGROUND TO CURRENT PROPOSAL

Not applicable.

HISTORY

The existing dwelling was approved under planning permit PA2004140 issued by Council on 27 September 2004. PA2005007 was issued by Council on 1 June 2005 and re-subdivided the land from five lots to two lots creating parcels of 32.73 ha and 3.671 ha respectively. A condition of this permit required the landowner to enter into a Section 173 Agreement (AD935687W) to not further subdivide the lots created by the permit and not allow more than one dwelling to exist on either lot created by the permit at any one time. Council has obtained recent legal advice that the current permit application is in breach of this Agreement.

Lot 1 on PS633637U, part of the subject site, was created as part of a two-lot re-subdivision approved under planning permit PA2010145 issued by Council on 1 October 2010. The re-subdivision created two lots of 27.69 ha and 8.713 ha, both in separate ownership, derived from parent lots created under PA2005007 of 32.73 hectares and 3.671 ha. The re-subdivision resulted in the smaller lot increasing by 5.04 ha at the expense of the larger lot.

PUBLIC NOTICE

Notice of the original application was given to adjoining and nearby landowners by mail and a sign erected on site. One objection was received. Notice of the amended application was given consistent with the original application and a sign erected on site from 20 January 2020 until 11 February 2020. The previous objector made a further objection and a second objection was received from another person.

SUMMARY OF OBJECTIONS

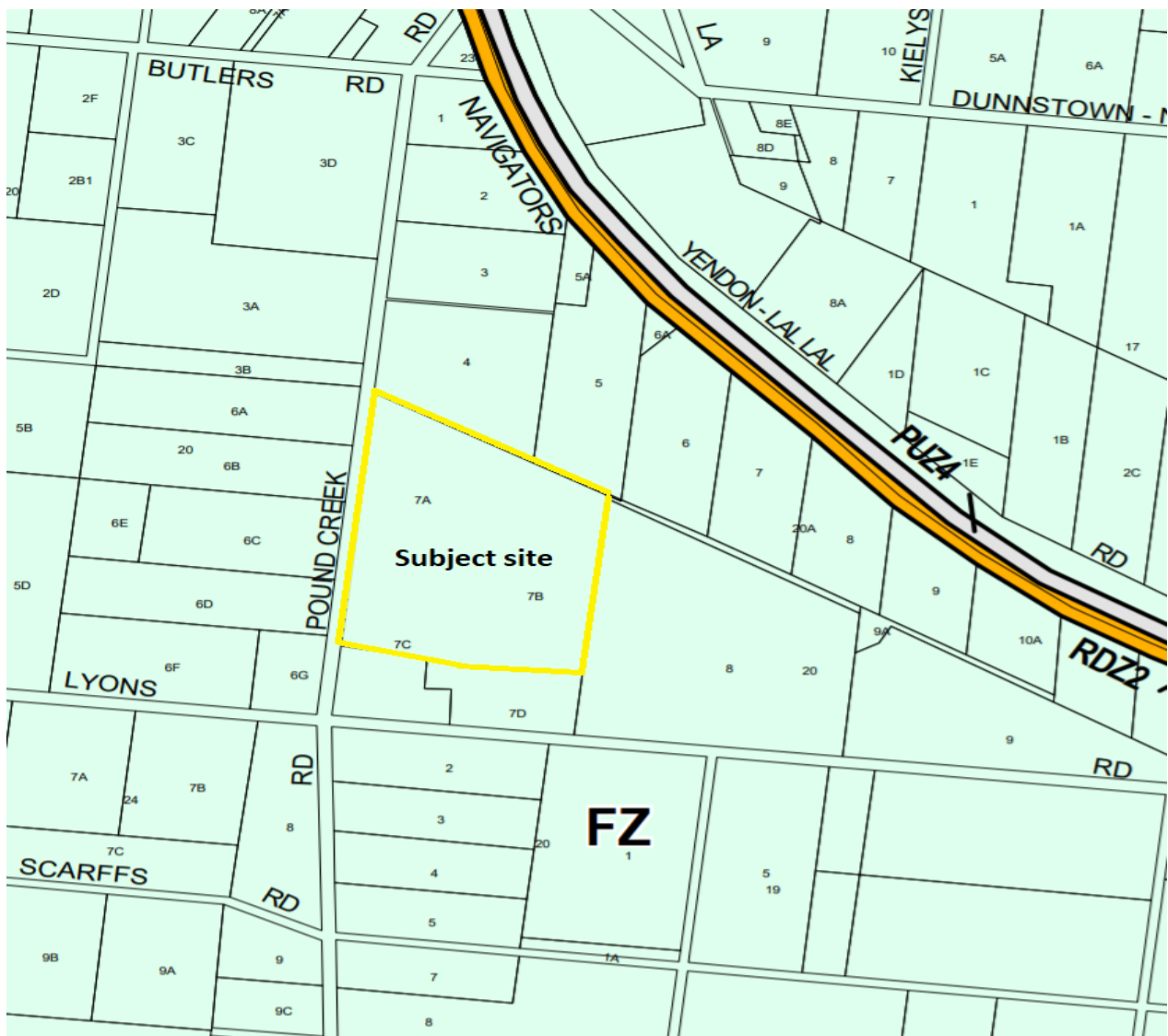
The objections received are detailed below with officer's comments accompanying them:

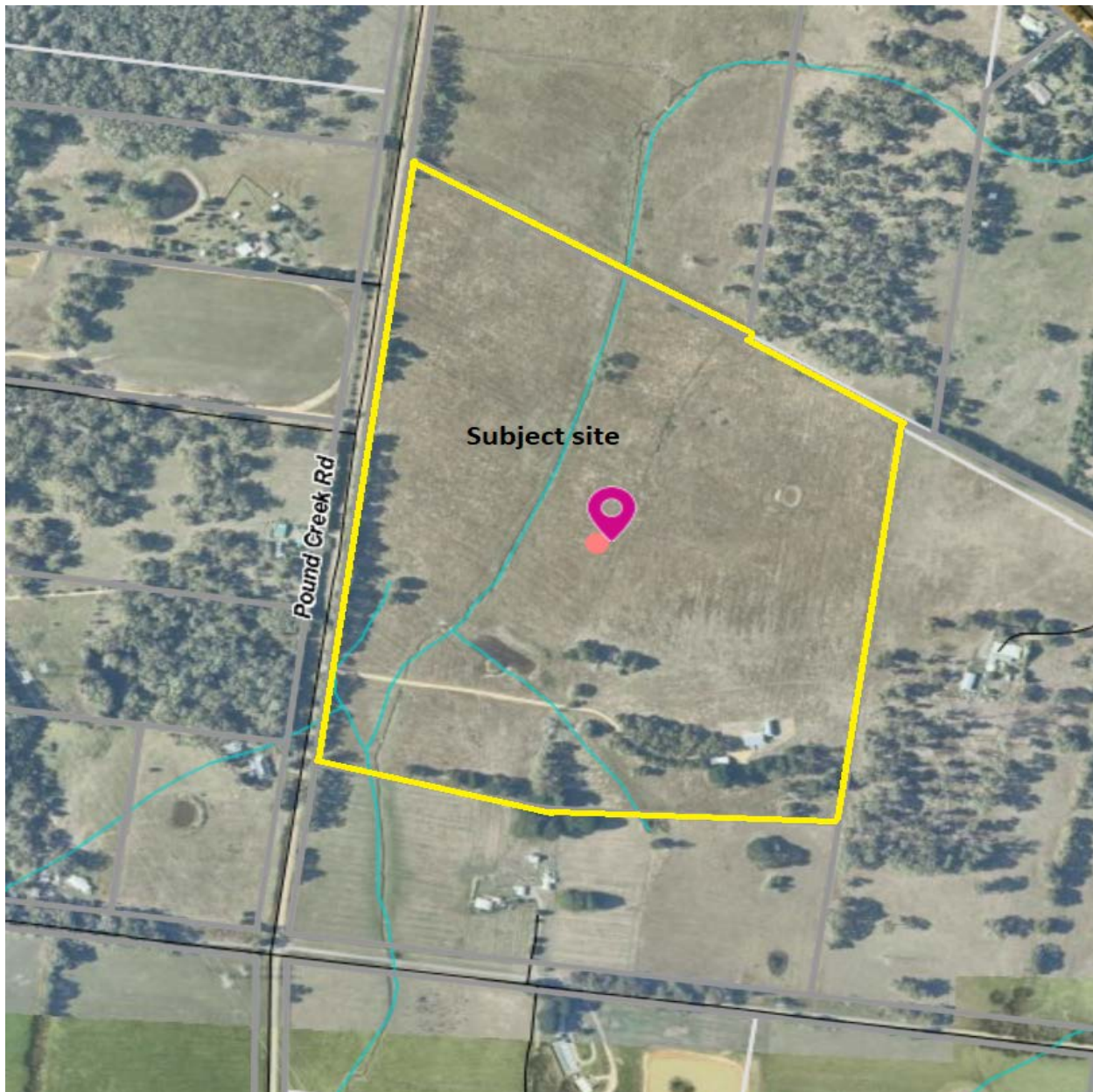
Objection	Any Relevant Requirement
The subdivision is a misguided use of the re-subdivision provision of the Farming Zone.	Clause 35.07.
Officer's Response: See 'Discussion' below.	
The proposal results in the loss and fragmentation of productive farming land and impacts on food security.	Clauses 14.01-1S & 35.07.
Officer's Response: See 'Discussion' below.	
The application documents contain a weak and theoretical agricultural justification which fails to demonstrate a sufficient link between the dwelling and the farming of the land.	Clauses 14.01-1S & 35.07.
Officer's Response: See 'Discussion' below.	
The subdivision is not supported by Council's Small Towns and Settlements Strategy 2016.	Clause 21.09.
Officer's Response: See 'Discussion' below.	
The proposal is inconsistent with the Rural Planning policy and Special Water Supply Catchment policy.	Clauses 14.02-2S & 22.02.
Officer's Response: See 'Relevant Policies' and 'Discussion' below.	

The proposal will result in a risk to adjoining and nearby agricultural operations.	Clause 35.07.
Officer’s Response: See ‘Discussion’ below.	
The capacity of the site to sustain an agricultural use is not demonstrated.	Clause 35.07.
Officer’s Response: See ‘Discussion’ below.	

LOCALITY MAP

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





PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S Peri-urban areas
- Clause 14.01-1S Protection of agricultural land
- Clause 14.02 Water
- Clause 15.01-6S Design for rural areas
- Clause 21.02-2 Non-Urban Landscapes
- Clause 21.02-3 Water and Catchment Management

- Clause 21.03-3 Residential Development
- Clause 21.03-4 Landscape and Neighbourhood Character
- Clause 22.02 Special Water Supply Catchments
- Clause 22.03 Houses and House Lot Excisions in Rural Areas

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

PPF	Title	Response
Clause 11.03-3S	Peri-urban areas	The proposal would intensify residential use of the site, resulting in loss of farm land.
Clause 14.01-1S	Protection of agricultural land	The proposal increases residential use of farm land and diminishes the capacity of the site to support agriculture.
LPPF		
Clause 21.02-2	Non-Urban Landscapes	The proposal would increase residential development in a rural location which erodes the rural character of the area.
Clause 21.03-4	Landscape and Neighbourhood Character	The proposed dwelling's benefit to agriculture is not sufficiently justified.
Clause 21.03-6	Rural Lifestyle Opportunities	The proposal would fragment farm land.
Clause 21.04-2	Agriculture	The proposal would not support productive, sustainable farming in both the short and longer term.
Clause 22.03	Houses and House Lot Excisions in Rural Areas	The proposed agricultural activity is not considered sufficient justification for the proposed subdivision and dwelling.

ZONE

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

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

Under Clause 35.07, a permit is required to subdivide land and to use and develop a lot of less than 40 ha for a dwelling. The default minimum lot size for subdivision is 100 ha, however there is an exemption for the re-subdivision of existing lots where the number of lots is not increased.

Overall, the proposal is inconsistent with the purpose of the zone – see ‘Discussion’ below.

OVERLAYS

The site is affected by Environmental Significance Overlay, Schedule 1, Design and Development Overlay, Schedule 2, and partially by the Bushfire Management Overlay.

Environmental Significance Overlay Schedule 1 (ES01)

Under Clause 42.01 of the Environmental Significance Overlay, a permit is required to subdivide land and construct buildings and works. There are no relevant exemptions under Schedule 1.

Design & Development Overlay Schedule 2 (DD02)

Under Clause 43.02 of the Design and Development Overlay, a permit is required to subdivide land and construct buildings and works. Under Schedule 2 there is an exemption for subdivision and for buildings and works where non-reflective external building cladding is proposed. In this instance a permit is not required.

Bushfire Management Overlay (BMO)

Under Clause 44.06 of the Bushfire Management Overlay, a permit is required to subdivide land and construct buildings and works. As only a portion of the land is affected the BMO a permit is only required for subdivision.

Subject to conditions, the proposal is generally consistent with the applicable overlay provisions.

Relevant Policies

Council’s Rural Growth Policy Statement

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

The policy states:

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

- Encourage development of dwellings to support communities of land which is unlikely to support agricultural land which still considering any other overlays which may impact the land. This is land which is constrained for use as agriculture by other environment factors such as vegetation, slope, soil quality etc.
- Ensure any subdivision is undertaken in accordance with the scheme in order to discourage fragmentation of agricultural land.

It is noted, that the site is located in an area where dwelling development on lots greater than 8 ha is encouraged, as per the Policy's Map 1 – Rural Development Areas. However, the proposal only responds to part of this policy for sites of 8-20 ha, noting that the proposed agricultural enterprise gives insufficient justification for the additional dwelling. The proposed re-subdivision would further fragment agricultural land and in this instance, they have not demonstrated that two dwellings are required to support one farming activity.

Council's Rural Housing Policy

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

The principles of the policy relevant to this application include:

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

The proposed subdivision is not aligned with the above principles of the policy and is furthermore considered to undermine the agricultural potential of the land. The existing single dwelling in support of one farm enterprise should be maintained rather than two dwellings on two re-subdivided lots in support of a single farm enterprise.

Particular Provisions

Clause 53.02 Bushfire Planning

The application was assessed by CFA who consent to the application. The proposed dwelling would be sited outside of the area of BMO coverage.

DISCUSSION

Overall, the proposed subdivision and use and development for a dwelling is considered to be inconsistent with relevant Victorian and local planning policy, the Farming Zone and relevant decision guidelines at Clause 65 of the Moorabool Planning Scheme. Furthermore, the proposal breaches Section 173 Agreement AD935687W registered on the title to one of the existing lots. The intent of the Agreement was to prevent further subdivision of the land and was created to allow the previous planning permit approval.

The Moorabool Planning Scheme provides discretion for a permit to be granted to use and develop land for a dwelling on a lot less than 40 ha. Where a permit is required, the decision guidelines of the Farming Zone require a range of matters be considered.

In relation to dwellings in the Farming Zone the decision guidelines require that the responsible authority consider whether a dwelling:

- Will result in the loss or fragmentation of productive agricultural land.
- Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.
- Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
- The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

In relation to agricultural issues in the Farming Zone the decision guidelines require that the responsible authority also consider:

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- The capacity of the site to sustain the agricultural use.
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.
- Any integrated land management plan prepared for the site.

The proposed dwelling is stated to be in support of a small cow-calf breeding enterprise. The proposed subdivision would re-subdivide the existing landholding to provide two lots of 11.07 ha and 16.94 ha, with the proposed dwelling to be sited on the smaller lot and the larger lot to accommodate an existing dwelling and sheds.

The application includes a detailed farm management plan in support of the proposal. However, whilst the proposed dwelling is purported to benefit the proposed farming enterprise, there is an existing dwelling on the property which could readily serve the function of the proposed dwelling, positioned to visually survey most of the property. The applicant claims that the proposed subdivision would improve the current land fragmentation, but the justification given is insufficient. It is acknowledged that the existing 3313 sqm lot is a particularly small 'fragment' of land. However, it is contiguous with the proponent's adjoining 27.69 ha lot and being in common

ownership the fact of being separate titles does not prevent a farming enterprise being carried out on two or more titles. The landholding comprises two titles rather than one is irrelevant to the property's productivity. The proposition that re-subdividing the property in the manner proposed and constructing an additional dwelling improves the current land fragmentation is refuted. Rather, it is considered that the proposed subdivision and dwelling development will not only fragment the property further without any tangible benefit to agricultural output or sustainable land practices but also result in an additional dwelling in a rural zone, which contributes to inflated land values ultimately hindering the site's viability for bona fide agricultural uses in the longer term. Victorian and local planning policy seeks to protect viable agricultural land for that purpose, and prevent incompatible land uses from encroaching and permanently removing that land from agricultural use. The proposal represents the incremental loss of land from productive agricultural. Limiting land fragmentation would be best achieved by consolidating the existing titles.

By allowing the proposed dwelling on the land, when the existing dwelling would readily serve the same function in support of the one farming activity, the site's use for residential purposes is intensified, and its agricultural viability eroded. This is characteristic of incremental fragmentation of farming land. Such an outcome is not supported by either Victorian or local planning policy which includes the following objectives:

- To manage growth in peri-urban areas to protect and enhance their identified valued attributes. (Clause 11.03-3S).
- To protect the state's agricultural base by preserving productive farmland. (Clause 14.01-1S.)
- To maintain and enhance the natural environment and the Shire's rural identity and character. (Clause 21.02-2).

Further to these objectives, Victorian and local planning policy includes the following relevant strategies:

- Prevent dispersed settlement and provide for non-urban breaks between urban areas. (Clause 11.03-3S).
- Protect productive agricultural land from unplanned loss due to permanent changes in land use. (Clause 14.01-1S).
- Prevent inappropriately dispersed urban activities in rural areas. (Clause 14.01-1S).
- Limit new housing development in rural areas by directing housing growth into existing settlements. (Clause 14.01-1S).
- In considering a proposal to use, subdivide or develop agricultural land, consider the desirability and impacts of removing the land from primary production, given its agricultural productivity. (Clause 14.01-1S).
- Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land. (Clause 14.01-1S).
- Focus rural living development in areas close to urban centres with good access to services and facilities where there is minimal impact on productive agriculture and horticulture or areas with environmental values. (Clause 21.03-5).

The site is evidently productive for grazing, in terms of the climate, soil conditions and water supply, and forms part of a larger rural area in the wider Melbourne and Ballarat rural hinterland. The proposal undermines these attributes for the reasons outlined above.

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	Consent with conditions
Country Fire Authority	Consent
Infrastructure	Consent with conditions
Environmental Health	Consent with conditions

FINANCIAL IMPLICATIONS

There are no financial implications for Council in deciding to refuse the application.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

- Issue a Refusal to Grant a Permit in accordance with the grounds in the recommendation of this report. This option may result in the applicant appealing Council's decision at VCAT; or
- issue a Refusal to Grant a Permit with amendments to the grounds in the recommendation of this report.

Support for the proposal would breach the Section 173 Agreement registered on the title to Lot 1 on PS 633637U, therefore approval is not considered to be an option. In any case, issuing a Notice of Decision to Grant a Permit may result in the objectors appealing Council's decision at VCAT.

CONCLUSION

Overall, the proposed re-subdivision and use and development for a dwelling is inconsistent with relevant Victorian and local planning policy and the Farming Zone in respect of agricultural land use and rural housing development. The proposal is inconsistent with the orderly planning of rural land, resulting in the loss of agricultural land to rural residential use, detrimental impacts on sustainable agricultural land use and is an example of inappropriate development of rural land to the longer-term detriment of the Shire's agricultural base. Furthermore, the proposal is in breach of Section 173 Agreement AD935687W registered on the title to Lot 1 on PS 633637U.



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Rev.	Date	Amendments
01	04/02/2019	EXISTING CONDITIONS

Drawn	Drawn	PF
Checked	Checked	AG
Scale	Scale	1:3000
Sheet Size	Sheet Size	A3
File Ref.	File Ref.	18837-01-PP02-01.dwg
Sheet No.	Sheet No.	1 of 1

Client: ANDREW LEWIS
Municipality: CITY OF BALLARAT

Scale in Metres

EXISTING CONDITIONS
139 POUND CREEK ROAD,
NAVIGATORS, 3352.



THE DIMENSIONS SHOWN ON THIS PLAN ARE BASED ON TITLE.
FINAL LOT DIMENSIONS ARE SUBJECT TO AMENDMENT BY SURVEY AND LAND REGISTRY.

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Rev.	Date	Amendments
05	01/03/2019	AMEND LOT LAYOUT
04	04/02/2019	AMEND BODY DIMENSIONS
03	18/12/2018	AMEND EASEMENT NOTATION
02	23/11/2018	UPDATE EXTERNAL BOUNDARY
01	01/11/2018	PROPOSED LOT LAYOUT

Drawn	Checked	Scale	Sheet Size	File Ref.	Sheet No.
PF	AG	1:3000	A3	18837-01-PP01-05.dwg	1 of 1

Client: **ANDREW LEWIS**
Municipality: **CITY OF BALLARAT**

Scale in Metres

**PLAN OF PROPOSED
SUBDIVISION LAYOUT
139 POUND CREEK ROAD,
NAVIGATORS, 3352.**

LANSDOWNE 304



The **LANSDOWNE 304**



Living	235.72m ²
Garage	40.90m ²
Alfresco	25.89m ²
Porch	1.02m ²
Total	303.53m² (32.67sqs.)
Width	29.98m
Length	16.09m



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* The floor plans shown are provided for illustrative purposes only. They are not drawn to scale. The dimensions provided of "width" and "length" are the actual dimensions of the completed house including Alfresco areas. No allowance has been made for any council regulations or estate requirements. It is the home owner's responsibility to ensure that the house will fit on their land and that all applicable council regulations and estate requirements are met. The image of each facade is for illustrative purposes only and may contain items that are examples of upgrade options which may be included at an additional cost, for example: Panel lift garage door, front entry door, outdoor light, all external paving and tile and floor coverings. Images may also contain items not supplied by Hotondo Homes including all landscaping, furniture, wall hangings.



Farm Management Plan

139 Pound Creek Road, Navigators VIC 3352

Date: 04/12/19

Author: Mike Stephens

Version: Final

Recipient/s: Andrew Lewis



DISCLAIMER

The following report and forecasts have been based on a number of assumptions that have been supplied by the client to the writer. Due care and attention has been given to the projections; however, projections by their very nature are subject to significant uncertainties and contingencies. There can be no guarantee that the projections will be achieved or that the proposed action steps will achieve the required outcomes.

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1. EXECUTIVE SUMMARY

Andrew Lewis (the Proponent) purchased the property at 139 Pound Creek Road in Navigators in 2005 with the intention of improving its agricultural productivity and developing a small cow-calf breeding enterprise. The property, which is made up of two parcels, is approximately 28 ha or 69 ac in total. When purchased the property was in poor condition, having been used previously as a dairy farm. With improvements, to date, the property is running 21 beef cows plus followers. There is potential to further increase the stocking rate and the proponent wants to maintain the number of cattle under his management by increasing the stocking rate on a smaller parcel of land. The proponent also intends to complete some strategic tree planting.

The proposed boundary realignment by the proponent will allow an increase in the overall stocking capacity. The proponent will be able to increase the stocking rate on the northern block which he will retain. The southern block, which has the capacity to run 25 cows, will be managed by the proponents nephew. The overall result will be a significant increase in the productivity on the 28 ha.

This Farm Management Plan should be read in conjunction with a Planning Permit Application prepared by the TGM Group for the Re-Subdivision of Two lots (CA 4A, Sec 20A Parish of Warrenheip -139 Pound Creek Road, Navigators) - Boundary Re-Alignment and the Use and Construction of a Dwelling (Reference: 18837-01).

In order to maximize the utilization of the feed grown during the two annual growth periods (autumn and spring), the proponent intends to purchase two lots of point of calving heifers each year. One lot will be purchased in the autumn, calved down and sold as cows with calves at foot. The process will be repeated in the spring. The proponent has chosen this path because there is a market opportunity where many beef cattle managers avoid calving down first calvers due to the need for constant supervision. Following this strategy the farm will be able to run a useful number of breeding cows, however the herd will require close attention and it will be necessary for the proponent to construct a dwelling and live on the property. In addition, the enterprise will require valuable equipment which will need to be stored on site. A dwelling is vital for the provision of security.

For the continual development, monitoring and management of the property as stated above, it is now important for a permanent residence to be established. The major factors contributing to this requirement are:

- Increased risk of theft given a high traffic location;
- Animal welfare;
- Bushfire and grassfire danger;
- Noxious weed management; and,
- Responsible and consistent management of pasture growth.

The proponent will underpin the development of the property through off-farm income.

139 Pound Creek Road, Navigators is located in the Farming Zone (FZ) of the Moorabool Shire Council and is affected by the following overlays:

- Bushfire Management Overlay (BMO) (in part)

FARM MANAGEMENT PLAN

Lewis, Andrew, 139 Pound Creek Road Navigators VIC 3352

- Design and Development Overlay (DDO) – Schedule 2 (DDO2)
- Environmental Significance Overlay (ESO) – Schedule 1 (ESO1)

The development and improvement of the property will be undertaken within the constraints of these overlays.

2. PURPOSE OF THE FARM MANAGEMENT PLAN

This Farm Management Plan has been prepared based upon the information provided by the proponent. All income estimates and establishment costs are derived from the information provided.

In broad terms the purpose of this plan is to:

- Assess the suitability of the property for agricultural use;
- Identify a potential agricultural enterprise that the proponent has the capacity to develop, manage and operate effectively on the property;
- Identify key aspects of farm management in relation to this particular property; and,
- Identify any environmental constraints or considerations in relation to the operation of agricultural pursuits on the property.

3. PROPERTY DESCRIPTION

The property is made up of two titles, which can be identified as part of 139 Pound Creek Road, Navigators VIC 3352 (Lot 1 PS633637) and CA 4A Section 20A Parish of Warrenheip, and are situated on Pound Creek Road. The directory reference for Melways is 76 G3. The property is situated in an area administered by the Moorooloolah Shire Council and the Council property number is: 235720.

The total area of the property (including both titles in full) is approximately 28 ha or 69 ac. Figure 1 below shows the property boundary and the proposed subdivision - is adjacent to other farms with grazing enterprises and public roads. The northern part of the property including the re-aligned CA 4A Section 20A Parish of Warrenheip and part of Lot 1 PS 633637U would be approximately 11 ha or 27 ac and the southern part would be 17 ha or 42 ac.

Figure 1: 139 Pound Creek Road, Navigators



FARM MANAGEMENT PLAN
Lewis, Andrew, 139 Pound Creek Road Navigators VIC 3352

4. PHYSICAL DESCRIPTION

139 Pound Creek Road Navigators is a largely flat block which has historically been used for grazing beef cattle. Figure 2 below shows cattle grazing on the property.

Figure 2: Cattle grazing at 139 Pound Creek Road, Navigators



4.1. TOPOGRAPHY

The topography and tree distribution across the property lends it to be a very suitable block for the chosen enterprise of a first calving heifers. It also offers the opportunity for an efficient and relevant fencing layout for the enterprise, pasture renovation program and cattle handling facility improvements.

The variances in topographic level, as shown in figure 3, indicate a largely flat block of land with a slight slope on the southern boundary of the property.

Figure 3: 139 Pound Creek Road, Navigators



4.2. SOIL TYPE

The soil at 139 Pound Creek Road, Navigators is predominately grey clay loam.

4.3. PASTURE AND VEGETATION SPECIES

The pasture across the property currently consists of annual grass species (soft broom and Yorkshire fog) with evidence of some improved species (clover, ryegrass).

Figure 4 below shows the mix of the pasture and plant species present on the property.

Figure 4: Pasture at 139 Pound Creek Road, Navigators



5. AGRICULTURAL ACTIVITY

The proponent proposes to purchase two lots of point of calving heifers each year. One lot purchased in the autumn, calved down and sold as cows with calves at foot, with the process being repeated in the spring.

The development of this enterprise will require significant investment in livestock, pasture improvement and yards. Additional fencing is also required.

The Victorian Department of Agriculture is responsible for the establishment and maintenance of the Code of Accepted Farming Practice for the welfare of Cattle. The cattle will be run at the rate of up to 10 DSE/Ha and will be managed on pasture. They will need intensive supervision. The code states that intensive cattle operations require daily supervision that:

- In any situation, supervision should be by competent stock persons;
- Frequency in the level of inspection should be related to the potential risk to the welfare of cattle and may vary from daily to much longer periods;
- Cattle kept under intensive management in sheds, lots or yards, should be inspected and fed at least daily and have ready access to water. Individual attention should be given to shy feeders.

6. PROPERTY SUITABILITY

6.1. SUITABILITY FOR AGRICULTURAL ACTIVITIES

The property was a dairy farm but in recent years has been used for breeding beef cattle. The proponent's decision to purchase two lots of point of calving heifers is commercially sound. With improvements, the property is suited to the proponent's intended agricultural activity. A first calving heifer enterprise will ensure that the land can be grazed according to land type and accessibility. Following a pasture improvement program and implementing a basic rotational grazing management system, will also allow for opportunistic silage and/or hay fodder conservation.

The property in its current form is limited for other agricultural use. Due to its size any broad-acre cropping activity would be considerably limited.

The highest and best use of the land will be a livestock cow-calf enterprise where the stock produced are of high quality. Therefore, the block should be used for breeding high value animals. By developing the land for livestock operation at a high stocking rate the property will be used for its highest and most efficient agricultural value.

6.2. SUITABILITY OF THE PROPOSED ENTERPRISE

There are a number of criteria which this property meets in considering its suitability for an agricultural pursuit. These are:

- Within close proximity to Ballarat and to properties whose owners are running beef cattle enterprises. This will provide easy access to markets, transportation and sourcing of feed supplies and freight depots;
- Suitable climate with adequate rainfall and growing season to allow pasture growth and to supply the stock water required for the enterprise;
- Suitability to be fenced into smaller paddocks;
- Access to veterinarians;
- Ability to strategically position a dwelling within close proximity of the facilities so that close monitoring of stock can be undertaken.

6.3. STOCKING RATE

The proponent is well aware of the limitations of stocking rate on a property, and the implications and risks this can have on the environment and enterprise productivity.

The table below describes the calculation of DSE's.

Figure 5: DSE per Ha

Class of Stock	DSE at Specified LWT's	
	200kg	250kg
Beef Cattle (British Breed)		
Weaned Calves		
gaining 0.25kg/day	5.5	6.5
gaining 0.75kg/day	8	9

FARM MANAGEMENT PLAN

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10

Yearling	300kg	350kg
gaining 0.25kg/day	7	8
gaining 0.75kg/day	10	11
Mature Cattle	400kg	500kg
Dry cows, steers (store)	7	8
gaining 0.25kg/day	8	9
Bullocks (store)	8	9
gaining 0.75kg/day	12	14
Pregnant cows last 3 mths	9	11
Cows with 0-3 mth calf	14	18
Cows with 4-6 mth calf	18	22
Cows with 7-10 mth calf	22	25

The cattle will be primarily run on pasture. Supplementary feed required at certain times of the year which will be either conserved on the property or purchased. The proposed internal fencing sub-division will ensure that neither over-grazing nor under-grazing of pastures is likely to occur, as animals will be rotated through the paddocks.

It is assumed that with supplementary feed, a stocking rate of 12 Dry Sheep Equivalents (DSE's) per ha can be achieved however for budgeting purposes 10 DSE/ha will be used. A DSE (a merino wether at 50 kg's body weight, bare shorn and in condition score 3) is the standard measure of stocking rate in southern Australia.

After allowing for roads, buildings and yards, there will be approximately 9 ha across the intended five paddocks. This will allow the proponents to run 90 DSE's. A good rule of thumb is that a heifer from late joining until early lactation is 12 DSE. This means that the property has a potential carrying capacity of between 7 and 8 heifers and the lower figure (7) has been used. One lot will be purchased for spring and one for autumn calving. A total of 14 calving heifers per year with calves at foot.

This can be estimated based on sown improved perennial grass pastures and based on the following (from Saul and Kearney 2002):

- a) High rainfall (average annual rainfall AAR ~700 mm) which influences the length of growing season (estimated to be 9 months) for the region;
- b) The adequate phosphorus nutrient (Olsen P > 20) levels of the soils
- c) Paddock size is less than 20 ha

6.4. MANAGEMENT OF SOIL TYPE

The dominant soil type of on the property lends itself to a range of pasture varieties and grazing techniques that will ensure the sustainable management and improvement of the soil. A rotational grazing plan can be implemented on the property once it is adequately

fenced and improved. This will ensure that no individual paddock will be overgrazed and that groundcover will be maintained, thus reducing any risk of erosion and the subsequent threat of soil loss for the property and a consequent water quality degradation which would affect neighboring properties and waterways.

6.5. PASTURE DEVELOPMENT

The presence of broadleaf weeds (i.e. common flat weed and capeweed) will require immediate control through use of a knock-down herbicide (i.e. glyphosate). The proponent wishes to develop the pasture base to have a dominant mix of perennial grass and clover species, which will include perennial ryegrass (*Lolium perenne*), subterranean clover (*Trifolium subterraneum*) and annual grass weeds winter grass (*Poa annua*).

However, given the rainfall and favorable soil type for growing highly productive forage, there is considerable opportunity to improve the pasture base with a pasture renovation program. This will primarily be achieved through increasing the nutrient availability and re-sowing. Soil tests will need to be conducted for each of the proposed paddock subdivisions, and a tailored liming and fertiliser program will be integrated into the farm system activities.

There will be some limited requirement for strategic herbicide application (i.e. through spray topping and broadleaf selective spray) to control both the broadleaf and annual grass weeds, which will also promote more growth of the perennial grass and annual clover base as well as keep potential broadleaf weeds under control as the nutrient levels increase.

The sub-division of the paddocks will also allow the proponents to implement an intensive rotational grazing program to allow greater pasture productivity and utilization, maximize stocking rate potential as well as promotion of highly desired perennial grass and clover species

6.6. PROPOSED INFRASTRUCTURE

The proponent proposes a significant infrastructure investment program to improve the property's standard and capacity to run beef cattle. In addition to pasture improvement as outlined in the previous section, the proponent intends to develop the following infrastructure:

- Internal fencing program to ensure a rotational grazing system can occur;
- Troughs and piping laid to each paddock;
- Cattle yards;

7. ENVIRONMENTAL CONSIDERATIONS

7.1. OVERLAYS

There are two significant zoning overlays over this property which demands that the agricultural enterprise be closely monitored by the FMP sections 7.1.1 to 7.1.3 below.

7.1.1. FARMING ZONE (FZ) – SCHEDULE TO FARMING ZONE

The northern part of property at 139 Pound Creek Road Navigators is in a farming zone (FZ). The Farming Zone overlay is in place to provide for the use of land for agriculture and encourage the retention of productive agricultural land. The property will be 11 ha and therefore falls under the minimum requirement for the development of a dwelling (40 ha) on this property (and is not varied by the local schedule - Schedule to the FZ under the Moorabool planning Scheme). A permit will be required to construct a dwelling, however the relevant clauses in the following Bushfire Management, Design and Development and Environmental Significance overlays have all been addressed and the requirements of the overlays will be met.

7.1.2. BUSHFIRE MANAGEMENT OVERLAY (BMO)

The property is affected (in part) by the Bushfire Management Overlay (BMO). The BMO applies to land that may be significantly affected by a bushfire and aims to ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire. The BMO triggers the need for a planning permit for certain developments and requires new developments to include appropriate bushfire protection measures.

Figure 6 below details that only part of the property is affected by the BMO. Given the building envelope is outside the BMO, a permit will not be required to build a dwelling on the property. The proponents are aware of their obligations under the zoning and the property will be managed under the requirements of the Bushfire Management Overlay. The management of livestock will be sensitive to the risk of bushfire and the proponents will have plans in place to move stock to protect them in the event of a bushfire.

Figure 6: Land affected by BMO Overlay



7.1.3. DESIGN AND DEVELOPMENT OVERLAY SCHEDULE 2 (DDO2)

The design and development overlay identifies areas which are affected by specific requirements relating to the design and built form of a new development. The design and

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development overlay Schedule 2 (DDO2), under which the property falls, relates to the visual amenity and building design. The design and development overlay Schedule 2 provides the exemption that 'a permit is not required to construct a building or to carry out works where all external walls and roof areas are clad with non-reflective materials'. To comply with this overlay the proposed dwelling will not have external walls or roof areas clad with reflective materials.

7.1.4. ENVIRONMENTAL SIGNIFICANCE OVERLAY SCHEDULE 1(ESO1)

The environmental significance overlay identifies areas where the development of land may be affected by environmental constraints and to ensure that development is compatible with identified environmental values. The environmental significance overlay Schedule 1 (ESO1), under which the property falls, relates to the Proclaimed Water Catchment Areas, where the protection of water catchments is essential to the health of all communities that rely on water for domestic and stock supply. The cattle enterprise proposed for the property will not contravene this Environmental Significance Overlay as the proponent will ensure that all requirements are met with regards to this overlay. The proponent proposes environmental upgrades to the property which run alongside and creek area and has planned a 30 metre vegetation buffer alongside the creek which will be fenced off and trees planted. The proposed creek crossing and fencing around the dam will ensure that livestock are unable to damage and creek bed and dam bank and affect the quality of water.

7.2. PESTS

On inspection of the property there are no major pests impacting or threatening the cattle enterprise on the property.

7.3. NATIVE ANIMALS

Given the extent to which the surrounding properties have been developed the presence of native animals is limited. However the proponent will make provisions to ensure the environment for the native animals is maintained and, where possible, improved.

7.4. WEEDS

Weed control will be important for the productive capacity of the property, for neighboring properties, the environment and the general aesthetics of the property. There are no major existing weeds (other than edible weeds in the pasture) on the property with the exception of the occasional isolated gorse bush (*Ulex europaeus*), blackberries (*Rubus fruticosus* aggregate) and African boxthorn (*Lycium ferocissimum*). These weeds can be controlled through selective herbicide and suitable grazing management.

The monitoring and management of weeds is an important factor in the development of a residence on the property. Weeds can significantly impact and limit pasture production and

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reduce the stocking rates on grazing properties – if this is not able to be managed appropriately it will reduce the number of cattle that are able to be grazed on the property.

Figure 7: Weeds present at 139 Pound Creek Road, Navigators

Left to right (gorse, African Boxthorn & Blackberry)



7.5. WATER

The main water source on the property is a small dam located near the south-eastern boundary. This dam is fed by surface run-off rainfall and may require enlarging in the future to provide an adequate water supply to maintain cattle year-round. In addition, the dam will be fenced out to prevent direct access by stock so the natural environment of the dam is protected.

Figure 8: Dam at 139 Pound Creek Road, Navigators



7.6. ENVIRONMENTAL OUTCOMES

The property will benefit from more consistent management and monitoring of environmental factors for productivity as well as biodiversity maintenance.

The environmental outcomes to be delivered through effective management include:

- Improved soil health;
- Improved grass diversity, ground cover and erosion mitigation;
- Associated improvements in water quality;
- Integrated pest management.

The management practices that will be put in place for achievement of these biodiversity values include:

- Construction of internal fencing and laneway system;
- Livestock grazing rotation;
- Weed management;
- Trough reticulation system for stock water supply so they do not impact the natural environment of the existing dam which will be fenced out to prevent direct access by stock;
- Environmental upgrades along the creek, including a 30 metre vegetation buffer zone;
- A nutrient budget will be need to be developed and implemented through the fertilizing program to ensure that all soil nutrients and maintained, replaced and any leaching is completely eliminated as a sustainable land management practice.

8. ENTERPRISE RISK FACTORS

The following risk factors have been identified for the proposed business:

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8.1. FINANCIAL RISK

The business will be reliant on off farm income in order to maintain financial security. While the business will be expected to perform in a profitable manner, the size of the operation and the environmental/production constraints of the property will be limiting. For this reason, it will be important for the proponent to maintain their off farm employment, especially during the development phase.

8.2. CATTLE SALE PRICES

The prices achieved for selling yearling steers, heifers and cull cows through the enterprise will essentially be governed by demand and reputation in the market place. Regular monitoring of the Eastern Young Cattle Index (EYCI) will provide the best indication of current market price for cattle livestock. Marketing and cost control will be critical. The proponents will need to ensure that costs are managed and efficiencies gained for a sustainable business.

8.3. SEASONAL RISK

This property faces the same seasonal risk as any other agricultural operation. In different periods the operations will have to be adjusted to suit the pasture quantity and growth rates by reducing cattle numbers, increasing per season and considering opportunity fodder conservation (for management of feed and fire risk).

8.4. FIRE RISK

The property is in a bushfire prone area and the proponent is required to build the dwelling to a minimum bushfire attack level of 12.5. The proposed site for the dwelling provides several access options from the property.

It is also worth noting that fire presents a significant risk to any property. Pasture species can be selected to include summer activity and provide paddocks with low fire fuel. These paddocks can then be used as a fire break to protect buildings and to hold stock on days with a very high fire danger rating, and/or when there is risk from regional fires.

To protect livestock and property the proponent will develop a bushfire strategy plan.

8.5. DISEASE RISK

There is always some risk of disease within any livestock operation. Given that this operation will involve animals coming from other properties there will be an induction process put in place to minimise the risk of any diseases coming onto the property. This will be limited by the size of the property. An understanding of potential diseases and the symptoms will assist the proponent to prevent, diagnose and treat any type of disease threat. If any doubt exists as to the current condition of an animal on the property, advice should be sought from a registered vet.

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9. PADDOCK PLAN

Figure 5 provides a paddock plan of the property showing where proposed fencing, laneways, house and dwelling footprints, vegetation buffer zone and water troughs and cattle yards would be located on the property.

Figure 9: Paddock Plan

Paddock – A: 1.3 ha; B: 2.1 ha; C: 1 ha; D: 2.5 ha; E: 2.4 ha



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10. CAPITAL INVESTMENT

There is significant capital investment required to improve infrastructure and pastures on 139 Pound Creek Road, Navigators. The proponent will invest in internal fencing, improve capacity and security of water supply and install a reticulated water system with troughs.

Table 1: Capital Contribution Estimate in initial 5 year period (note cattle have been purchased)

Item	Number	Unit Cost \$	Total \$
Boundary Fence	1.5km	12,000	\$18,000
Internal fencing	1.2km	10,000	\$14,400
Water Pump		2,400	\$2,400
Pipe	0.8km	1,200km	\$960
Troughs	6 X 600L	1000	\$6,000
Cattle Yard Facilities*			\$40,000
Creek crossing			\$8,000
Total			\$89,760

*See Appendix 1 for Pro Way cattle yard pricing & examples.

11. GROSS MARGIN OUTCOMES FROM THE ENTERPRISE

Table 2: Estimated Annual Operating Budget

Herd assumptions Spring:					
Class	Year 1	Year 2	Year 3	Year 4	Year 5
Heifers	7	7	7	7	7
Calves Marked (90% rounded)	6	6	6	6	6
Herd assumptions Autumn:					
Class	Year 1	Year 2	Year 3	Year 4	Year 5
Cows	7	7	7	7	7
Calves Marked (90% rounded)	6	6	6	6	6
Annual Cattle Sales					
Cow/calf (@\$1850)	\$22,200	\$22,200	\$22,200	\$22,200	\$22,200
Dry Cows (@\$ 850 one dies every second year)	\$850		\$850		\$850
<i>Gross Income</i>	\$23,050	\$22,200	\$23,050	\$22,200	\$23,050
Annual Expenditure					
Purchase 7 Spring Calvers @ \$1050	\$7,350	\$7,350	\$7,350	\$7,350	\$7,350
Purchase 7 Autumn Calvers @ \$1050	\$7,350	\$7,350	\$7,350	\$7,350	\$7,350
Animal Health Costs (\$30/hd/Yr- see Appendix 2)	\$420	\$420	\$420	\$420	\$420
Selling costs (@5%)	\$1,150	\$1,110	\$1,150	\$1,110	\$1,150
Supplements (\$50/pa/yr)	\$700	\$700	\$700	\$700	\$700
Pasture Top Dressing*		\$550	\$550	\$550	\$550
Pasture Establishment (@\$500/ha)	\$5,000				
Fencing maintenance	\$250	\$250	\$250	\$250	\$250
Vet Expenses	\$300	\$500	\$500	\$500	\$500

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<i>Total Expenditure</i>	<i>\$22,520</i>	<i>\$18,230</i>	<i>\$18,270</i>	<i>\$18,230</i>	<i>\$18,270</i>
<i>Gross Margin</i>	<i>\$530</i>	<i>\$3,970</i>	<i>\$4,780</i>	<i>\$3,970</i>	<i>\$4,780</i>

It is worth noting that this is a gross margin budget only. It does not take into account overheads such as fuel, labour, finance costs or capital expenditure.

*Pasture top dressing: \$4.00 / kg P plus \$10/ha spread

12.TIMEFRAMES

The timeframe for the work to be carried out on 139 Pound Creek Road, Navigators is set out in the following Table.

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Table 3: Five Year Action Plan

	Year 1	Year 2	Year 3	Year 4	Year 5
Property Development	<ul style="list-style-type: none"> House Built Phase 1 fencing – 1.5 km boundary fence complete and 0.5 km internal fencing complete Implementation of water reticulation system to developed paddocks Pasture improvement program implemented Soil testing 	<ul style="list-style-type: none"> Phase 2 fencing – 0.7 km internal fencing Further installation of water reticulation to final paddocks Initial development of cattle yards Continue pasture improvement program Creek crossing installed Soil testing 	<ul style="list-style-type: none"> Completion of cattle yards Continue pasture improvement program Completion of cattle yards 	<ul style="list-style-type: none"> Continue pasture improvement program 	<ul style="list-style-type: none"> Soil testing
Pasture Renovation	<ul style="list-style-type: none"> Spray-topping Single Super Phosphate Spreading (SSP) spread 	<ul style="list-style-type: none"> SSP spread Broad-leaf weed control 	<ul style="list-style-type: none"> SSP spread Monitor weeds 	<ul style="list-style-type: none"> SSP spread Monitor weeds 	<ul style="list-style-type: none"> SSP spread

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13. REQUIREMENT FOR A DWELLING

As previously stated, in order to supervise the cow-calf enterprise, the proponent will need to live on the property. The cattle are valuable and require supervision at joining and calving, as well as supplementary feeding when required. In addition, in order to be able to market the cattle they will need to be very quiet. This can be achieved by keeping close contact with them so that they are accustomed to always having human beings around them. This level of contact would be difficult to maintain if the proponent was living away from the property.

The importance of living on the property is highlighted further through the management cycle of cattle in a management system, which can be described as follows:

Figure 10: Lifecycle of Cattle



At each stage of the husbandry cycle attention needs to be given to adequate shelter, nutrition, health, growth rates, condition of animal, stress, bull and cow management in terms of condition and seasonal influences. The investment in high value breeding cattle and the intensive management for grazing management requires constant supervision and daily monitoring. In addition, the Department of Agriculture Code of accepted farming practice for the welfare of cattle recommends that calving cows should be inspected, fed and watered daily.

The annual operations demanded for the proponents cattle breeding enterprise are as follows:

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Table 4: Operations Schedule for a Commercial Cattle Enterprise

Month	Spring Calving Cows	Autumn Calving Cows
January	Supplementary feeding	Supplementary feeding
February	Weaning, Supplementary feeding; sales	Selling
March	Parasite control;	Calving tagging ,weighing and recording
April	Sale preparation commences, pasture re-sowing	Calving tagging ,weighing and recording
May	Grazing management – supplementary feeding	Commence Joining
June	Grazing management – supplementary feeding	Continue Joining
July	Grazing management – supplementary feeding	Grazing management – supplementary feeding
August	Selling steers and heifers commences	Grazing management – supplementary feeding
September	Calving, tagging,	Grazing management – supplementary feeding
October	Calving tagging ,weighing and recording	Weaning,
November	Parasite treatment Commence Joining	
December	Continue Joining	Sale preparation commences

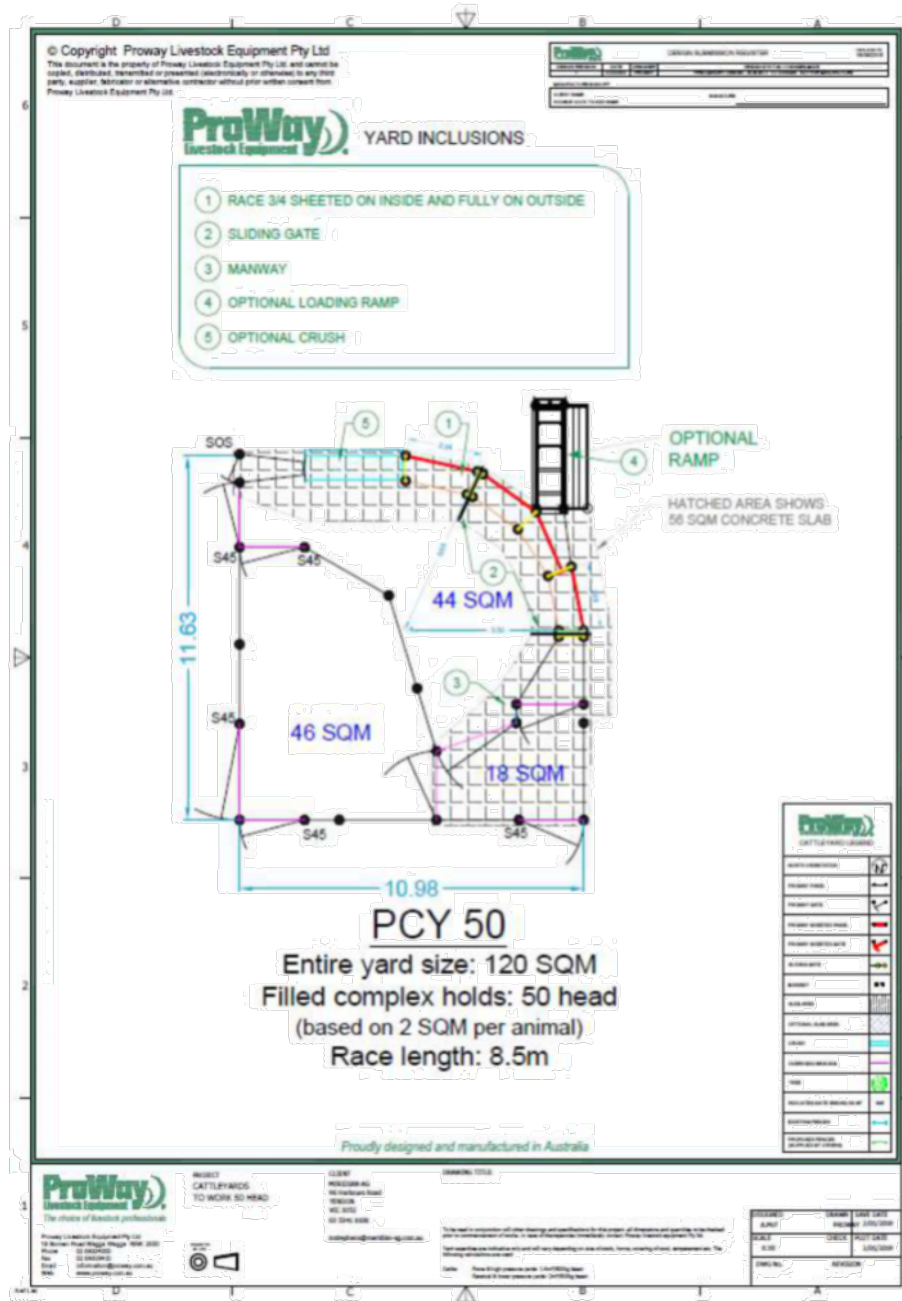
14.CONCLUSION

The proponent has collected and presented various pieces of information to assist in formulating this plan. The proponent has developed a thorough understanding of the property, its potential and its constraints and has carried out research into the local environment and its impact of agricultural activity.

The development of this property including the construction of a dwelling by the proponent would ensure that the land was used for its highest and best agricultural use with sensitivity to the environmental constraints.

15. APPENDICES

Appendix 1: Pro Way Cattle yard Prices and Examples



FARM MANAGEMENT PLAN
 Lewis, Andrew, 139 Pound Creek Road Navigators VIC 3352

Item 1

1 PCY 50

Supply of Fabricated materials too build ProWay PCY 50 Cattleyards as per attached design.

QUOTE IS PRELIMINARY ONLY AND NOT FINAL. FINAL QUOTE IS SITE & LOCATION SPECIFIC AND REQUIRES AN ONSITE SURVEY TO BE VALID.

INCLUDED FEATURES	DESCRIPTION
Endplates for joining	Eliminates gaps between panels and provides a smooth finish.
Cone and pin (welded hinges)	These hinges have neoprene cones that minimises steel on steel contact so the gates swing freely and will do so for years. The hinges are fully welded to the posts therefore will withstand constant abuse and also pose no bruise points like some bolt on hinges do
Gates with chain and chain slot	The gates come with an inverted T slot for overnight use and a quick slot for normal use. The chain also allows gates to be chained back to fences or together if required
Type of bolt latches on gates	Lock open haz catches are a spring loaded catch that is quick and easy to use. The catch is in line so does not pose a bruise point for cattle. The bolt can be locked open eliminating potential hide damage and bruising.
Description	Cattleyards
Height	1750mm
Rail Type	97 x 42mm Gal Cattle rail - is non bruise and provides a good visual barrier
No of Rails	5
Post Type	80NB Galvanised Pipe (88.9mm OD) - for longevity
Race Width	760mm inside
Rec Hole Size/depth	300 x 800mm
Delivery to site. Your yards are delivered to your site. This ensures no double handling	The client needs to supply a suitable tractor with forks or similar and a competent operator to help unload.
Marking out of post holes	ProWay take the responsibility of marking out exactly where the post holes need to be dug
3/4 sheeted panels on inner race	prevents legs and heads getting caught between rails also promotes stock flow
Fully sheeted outer race	encourage stock flow as cattle focus on handlers and not distractions in adjoining pens
Crush	optional, see separate item
Loading ramp & flat extension	optional, see separate item
Quick access manways	These manways provide quick and safe movement through your yards. The manway door is spring loaded and has a spring catch which is quick and simple to use
Proudly designed and manufactured in Australia	
ADDITIONAL OPTIONS AVAILABLE (P.O.A)	DESCRIPTION
V race with release gates	The vee-profile minimises the chance of small stock turning around in the race. Races are fully sheeted on outer arc, 3/4 sheeted on inner arc (prevents legs and heads getting out, and improves stock flow). Outer arc sections are made as safety release gates
Adjustable width race	The adult race is adjustable in width from 610mm to 850mm with a simple lever operation. The race can be adjusted to suit the age / size of cattle that are being handled. Preventing the cattle turning around so making processing quicker and safer.
Unsheeted inner race arc	Reduces radiant heat in yards in warmer climates and can improve stock flow in Bos Indicus bred cattle
Overhanging rail	Gives continuous access to the cattle in the race with no uprights preventing possible injuries
Cap rails above gates	Cap rail 2200mm above ground for added strength.
Rotary Force Yard	Maximises WH & S as it separates handlers from cattle in force yards. The safest and most efficient type of forceyard.
Raised walkways	Elevate the operator above cattle in races and force areas providing safer access to cattle
Pound Yard	This yard is the ideal size and shape to draft cattle in. It is braced overhead for extra strength

All correspondence to ProWay Livestock Equipment Wagga Head Office, PO Box 85, Wagga Wagga NSW 2650
 ABN 64 071 312 804 Phone 1300 655 383 Fax 02 6931 8410 Email information@proway.com.au

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	Price Excl GST	GST	Price Incl GST
	22,517.65	2,251.76	24,769.41
Item 2			
1 19 Degree HD Cattle Ramp			
- Rises up over 3.3m			
- Sheeted cattlerail sides			
- Walkway and handrail			
- Swivel buffer board			
- Designed for a stepped concrete floor (concrete not included- ramp requires approximately 0.80m3)			
- Sliding gate at truck end			
- Proudly designed and manufactured in Australia			
	4,315.00	431.50	4,746.50
Item 3			
1 Leicht's CIA The Ringer Pro-Chute			
CC08			
• MKS Headbail			
• Front and rear open/close headbail operation			
• Full draft gates on both sides, split horizontally on operating side			
• Fully sheeted bottom side door to eliminate leg injury			
• ¼ Sheeted Rear slide door with Auto lock			
• Full veterinary facilities			
• Foot operated vet gate for hands-free operation			
• Weigh bar mounting plates			
• Yellow handles for operators visibility			
• Available in Nearside or Offside operation			
	4,309.09	430.91	4,740.00
Item 4			
1 Construction of cattleyard			
Includes laying of slabs as indicated on design. Excludes hole digging, cleaning out of holes, removal of dirt from pad, cost of readymix concrete and fibremesh. Recommended hole size 300mm x 800mm. It is the client's responsibility to locate and mark any underground services, remove any existing fences, and prepare the site.			
ADDITIONAL OPTIONS AVAILABLE (P.O.A DESCRIPTION)			
Slab area allowed for	56 sqm - labour only		
	4,913.14	491.31	5,404.45
Total	36,054.88	3,605.48	39,660.36
PAYMENT TERMS AMOUNT			
Deposit to start manufacture 10%	3,425.59		
Balance before delivery	30,830.32		
Cost of construction on practical completion	5,404.45		
Total	39,660.36		
ProWay Bank Details:			
BSB: 112-879			
Account No: 429769630			
(All correspondence to ProWay Livestock Equipment Wagga Head Office, PO Box 85, Wagga Wagga NSW 2650) ABN 64 071 312 804 Phone 1300 655 383 Fax 02 6931 8410 Email information@proway.com.au			
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Appendix 2: Animal Cost Appendix

Animal Health	Approximate Cost
Ivomec drench (best)	\$14.70/dose*
Ultravac 7 in 1 vaccine	\$2.03/dose
Pestigard vaccine	\$5.55/dose
Leptosield vaccine	\$1.41/dose
Vibrovax vaccine	\$2.80/dose

Total Animal Health Cost: Allow \$30/hd per year

**Ivomec Drench: the rate is 1ml/10kg LWT and the cost is 0.21c/ml. The dosage given above is based on a 700kg beast.*



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7.4 PA2019286 - TWO LOT SUBDIVISION AT 16 ALEXANDER DRIVE, BALLAN**Author:** Thomas Tonkin, Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development**Attachments:** 1. Proposed plan of subdivision**APPLICATION SUMMARY****Permit No:** PA2019286**Lodgement Date:** 6 December 2019**Planning Officer:** Tom Tonkin**Address of the land:** 16 Alexander Drive Ballan**Proposal:** Two-Lot Subdivision**Lot size:** 844 sqm**Why is a permit required?** Clause 32.09 Neighbourhood Residential Zone, Schedule 7 - Subdivision
Clause 42.01 Environmental Significance Overlay, Schedule 1 - Subdivision**RECOMMENDATION**

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2019286 for a Two-Lot Subdivision at Lot 6 on PS 713325V known as 16 Alexander Drive, Ballan 3342, on the following grounds:

1. The proposed lot sizes do not meet the minimum allowable lot sizes specified in the Neighbourhood Residential Zone, Schedule 7, of the Moorabool Planning Scheme.
2. The proposal is inconsistent with relevant state and local planning policy in the Moorabool Planning Scheme for residential land subdivision in this location.
3. The proposal does not meet all relevant provisions of Clause 56 (Rescode) of the Moorabool Planning Scheme.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	None.
Consultation meeting:	Not applicable.

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

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

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, to Council's Infrastructure unit.
Any issues raised in referral responses?	No.
Preliminary concerns?	Non-compliance with the minimum 800 sqm lot size requirement of NRZ7, which was adopted by Council as part of Amendment C88 before the application was submitted. Amendment C88 was gazetted on 6 March 2020.
Any discussions with applicant regarding concerns?	Yes, informally before and after the application was submitted.
Any changes made to the application since being lodged?	No.
Brief history.	The subject site is part of a 12-lot subdivision approved by Council under planning permit PA2011316 issued on 21 August 2012.
Previous applications for the site?	None. This application has been lodged concurrently with four other two lot subdivisions in the same street by the same applicant.
General summary.	The proposed 420 sqm and 424 sqm lot sizes do not meet the minimum 800 sqm lot size requirements of

	the Neighbourhood Residential Zone, Schedule 7 and are therefore in direct contravention of the Moorabool Planning Scheme. Council has no discretion to approve the application due to the minimum lot size requirement of 800 sqm.
Summary Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , on the grounds included in this report.	

SITE DESCRIPTION

The site is identified as Lot 6 on PS 713325V and is known as 16 Alexander Drive, Ballan, and is located on the north side of Alexander Drive at the end of the cul-de-sac. The site is an irregular shaped lot with an area of 844 sqm, vacant with no significant vegetation and minimal fall.

PROPOSAL

It is proposed to subdivide the site into two lots. Lot 1 would be 424 sqm in size and Lot 2 would be 420 sqm, both directly fronting Alexander Drive. Both lots would be encumbered by building envelopes.

BACKGROUND TO CURRENT PROPOSAL

The subject site was rezoned to the Neighbourhood Residential Zone, Schedule 7 (NRZ7) on 6 March 2020 as part of Planning Scheme Amendment C88 which implemented the Ballan Strategic Directions (June 2018) policy in the Moorabool Planning Scheme. NRZ7 imposes minimum lots sizes of 800 sqm for subdivision. There are no applicable transitional provisions in the Moorabool Planning Scheme to enable consideration of smaller lot sizes proposed in applications received prior to the Amendment's gazettal on 6 March 2020.

HISTORY

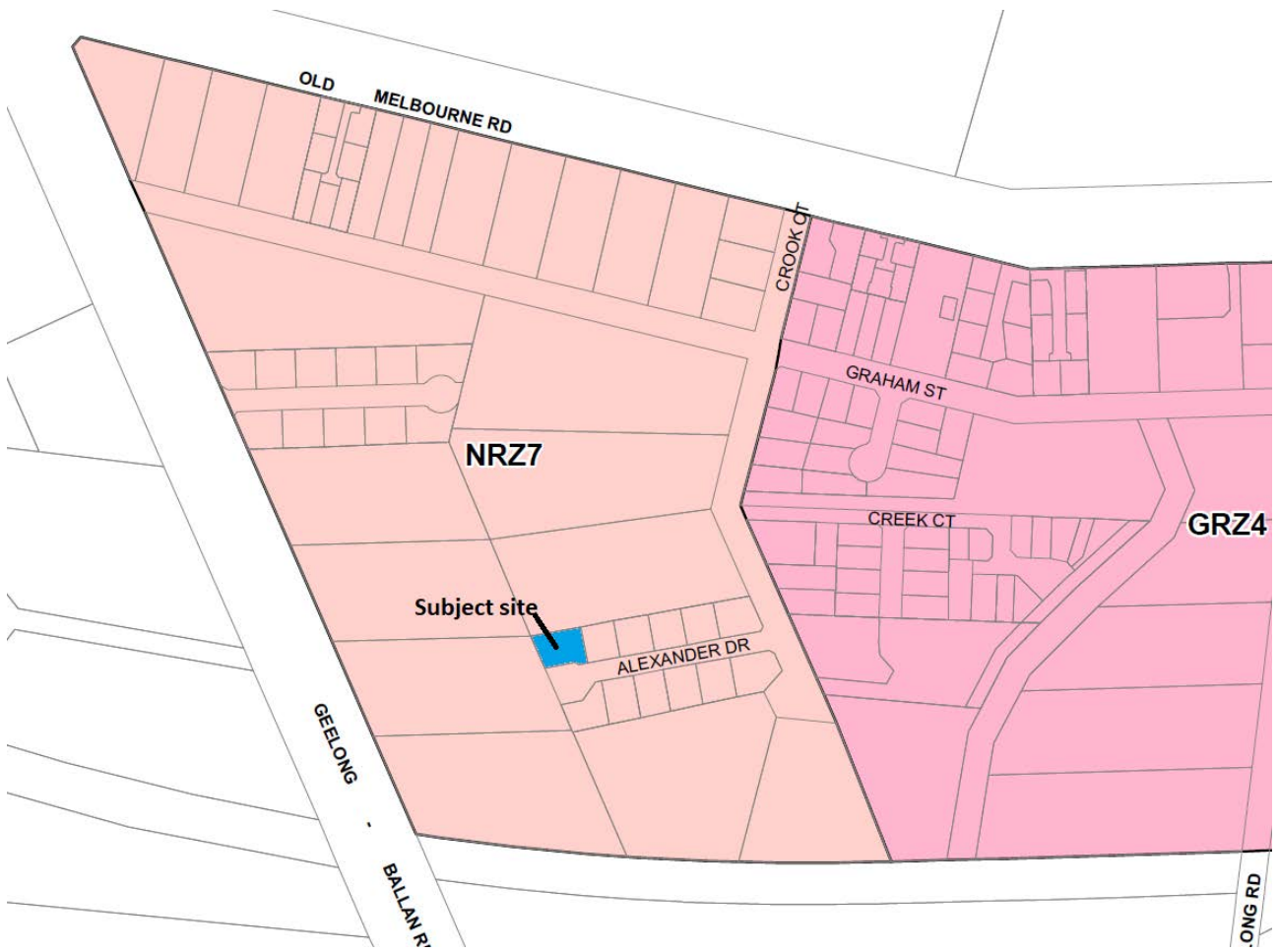
None applicable.

PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners by mail and a sign erected on site from 14-29 January 2020. No objections were received.

LOCALITY MAP

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



PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S Peri-urban areas
- Clause 14.02 Water
- Clause 15.01-3S Subdivision design
- Clause 15.01-5S Neighbourhood character
- Clause 16.01-2S Location of residential development
- Clause 21.02-3 Water and catchment management
- Clause 12.03-2 Urban Growth Management
- Clause 21.03-3 Residential Development
- Clause 21.03-4 Landscape and Neighbourhood Character
- Clause 21.08 Ballan
- Clause 22.02 Special Water Supply Catchments

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

PPF	Title	Response
Clause 15.01-5S	Neighbourhood character	The proposal does not respond positively to the preferred neighbourhood character, which encourages detached dwellings with conventional front and side setbacks in a garden setting. The proposed subdivision would prejudice such development.
Clause 16.01-2S	Location of residential development	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
LPPF		
Clause 21.03-2	Urban Growth Management	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
Clause 21.03-4	Landscape and Neighbourhood Character	The proposal does not respond appropriately to the preferred neighbourhood character because the proposal would not facilitate site responsive future development.

Clause 21.08-7	Strategies for Residential Development	The proposal would not facilitate the built form consistent with the preferred development outcomes for this area of Ballan, by limiting opportunities for low density housing with boundary setbacks to accommodate landscaping.
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ZONE

The subject site is in the Neighbourhood Residential Zone, Schedule 7 (NRZ7). The purpose of the Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- 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 32.09-3 a permit is required to subdivide land. A zone schedule may specify a minimum lot size to subdivide land, and each lot must be at least the area specified for the land. Schedule 7 specifies a minimum 800 sqm lot size for subdivision.

The proposed lot sizes do not meet the minimum lot size requirement; therefore, the proposal is fundamentally inconsistent with the zone provisions.

OVERLAYS

The site is affected by Environmental Significance Overlay, Schedule 1 (Proclaimed Water Catchment Areas). Under Clause 42.01-2 a permit is required to subdivide land. There are no relevant exemptions under Schedule 1. The subject site is sewered and drains more than 100 metres from the nearest waterway. Subject to conditions the proposal would not cause detriment to potable water quality or supply.

Relevant Policies

The Ballan Strategic Directions (June 2018) policy underpins Planning Scheme Amendment C88 which was recently approved by the Minister for Planning and gazetted on 6 March 2020. The proposed lot sizes less than 800 sqm are inconsistent with Amendment C88 adopted by Council.

Particular Provisions

Clause 53.01 Public Open Space Contribution and Subdivision

A subdivision is exempt from a public open space requirement specified in this scheme if it subdivides land into two lots and the council considers it unlikely that each lot will be further subdivided. If the application could be considered for approval by Council, it would be unlikely for either lot to be further subdivided and no public open space contribution would be required.

Clause 56 Residential Subdivision

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

Clause ResCode	Title	Response
56.03-5	Neighbourhood Character	The proposal does not adequately respond to the

		key features of the preferred neighbourhood character.
--	--	--

DISCUSSION

Overall, the proposal is inconsistent with relevant state and local planning policy, the Neighbourhood Residential Zone and Clause 56 of the Moorabool Planning Scheme.

The proposed 420 sqm and 424 sqm lot sizes are less than the minimum allowable 800 sqm lot sizes specified in Schedule 7 to the Neighbourhood Residential Zone, gazetted on 6 March 2020. It is noted that despite the application being lodged with Council prior to the gazettal date there is no transitional provision in the Moorabool Planning Scheme which would enable Council to consider approving the application. Furthermore, it is noted that when the application was submitted on 6 December 2019, Amendment C88 has already progressed through the Panel Hearing process, been adopted by Council and submitted to the Minister for Planning for approval. The applicant was aware of the Amendment C88's status when submitting the application. The proposal explicitly contravenes the Moorabool Planning Scheme and is therefore recommended for refusal.

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 Southern Rural Water	Conditions in accordance with Council's MoU with these authorities.
Infrastructure	Consent with conditions.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY


Notice was undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*. No objections were received.

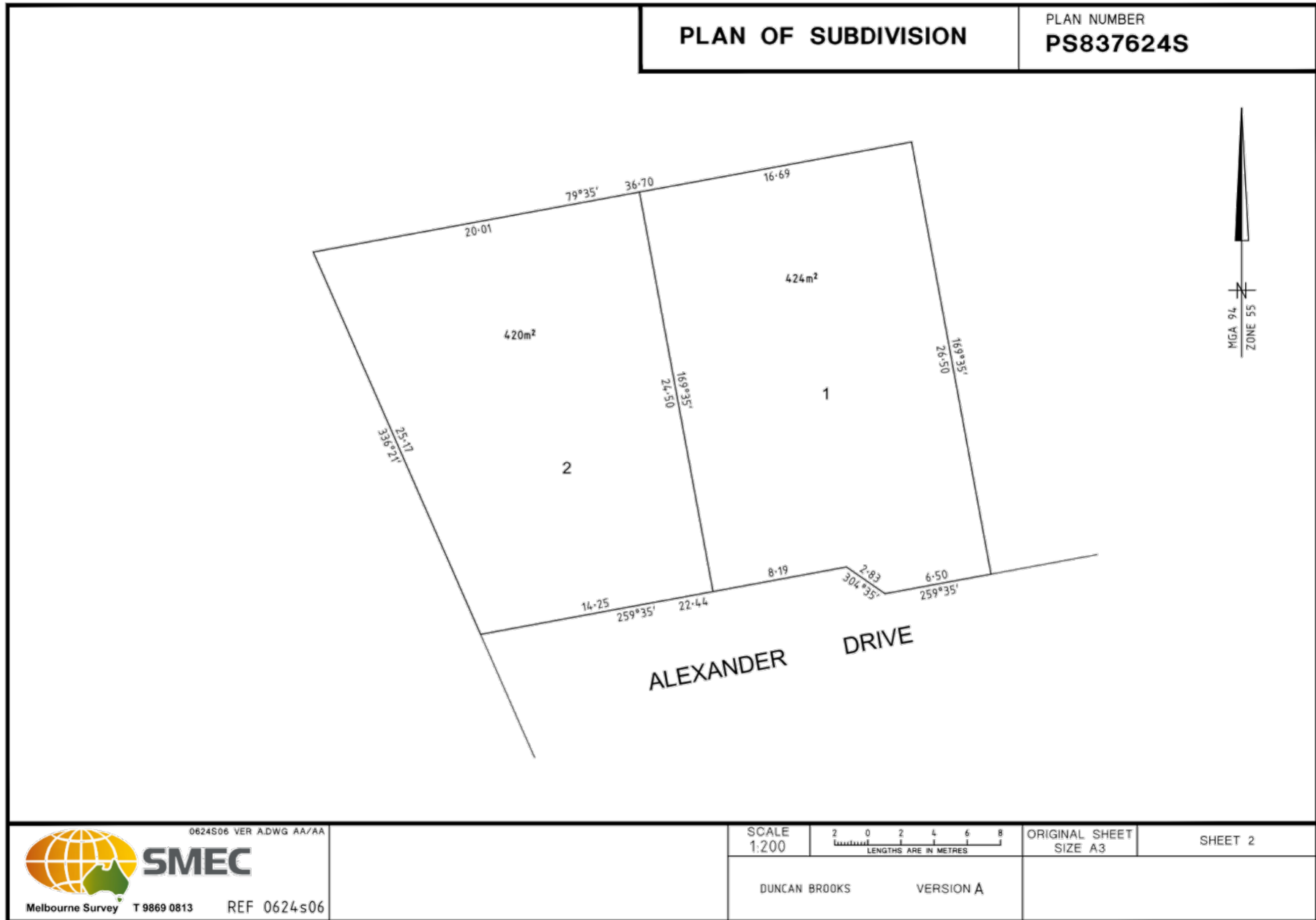
OPTIONS

- Issue a Refusal to Grant a Permit in accordance with the grounds in the recommendation of this report; or
- Issue a Refusal to Grant a Permit with amendments to the grounds in the recommendation of this report.

CONCLUSION

Overall, the proposal is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular the NRZ7 given that the proposed lot sizes do not meet the minimum 800 sqm lot size requirement.

PLAN OF SUBDIVISION		LUV USE ONLY EDITION	PLAN NUMBER PS837624S	
LOCATION OF LAND		COUNCIL NAME: MOORABOOL SHIRE COUNCIL		
PARISH: GORONG TOWNSHIP: - SECTION: 2 CROWN ALLOTMENT: 19 (PART) CROWN PORTION: - TITLE REFERENCES: Vol.12079 Fol.024 LAST PLAN REFERENCE/S: PS713325V (LOT 6) POSTAL ADDRESS: 16 ALEXANDER DRIVE (At time of subdivision) BALLAN, 3342 MGA94 Co-ordinates E 253 870 (of approx centre of N 5 834 610 land in plan) ZONE 55				
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	FOR CREATION OF RESTRICTION A AFFECTING LOTS 1 & 2 SEE SHEET 3. OTHER PURPOSE OF THE PLAN: REMOVAL OF DRAINAGE EASEMENT E-1 ON PS713325V AS AFFECTS LOT 2 ON THIS PLAN. GROUNDS FOR REMOVAL: MOORABOOL SHIRE COUNCIL PLANNING PERMIT No. PA2019126		
NIL	NIL			
NOTATIONS				
DEPTH LIMITATION DOES NOT APPLY STAGING This is is not a staged subdivision. Planning permit No. SURVEY. THIS PLAN IS/ IS NOT BASED ON SURVEY. THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s): PROCLAIMED SURVEY AREA: 148 <p style="text-align: center;">2 LOTS</p>				
EASEMENT INFORMATION				
LEGEND A-Appurtenant Easement E-Encumbering Easement R-Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
 SMEC Member of the Urbana Jurong Group		SURVEYOR REF: 0624s06 DUNCAN BROOKS VERSION A		ORIGINAL SHEET SIZE: A3 SHEET 1 OF 3



PLAN OF SUBDIVISION

PLAN NUMBER
PS837624S

CREATION OF RESTRICTION A

The following restriction is to be created upon registration of Plan of Subdivision PS 837624S by way of restrictive covenant and as a restriction as defined in the Subdivision Act 1988.

Land to benefit: Lots 1 & 2

Lots to be burdened: Lots 1 & 2

Description of Restriction

The registered proprietor or proprietors for the time of being of any burdened Lot on the Plan of Subdivision shall not:

Building Envelopes

(a) Unless consent has been granted by the Responsible Authority, build or allow to be built on the Lot any building outside the Building Envelope Plan below except for:

(i) the following permitted encroachments into the approved front street setback by up to 1500mm:-

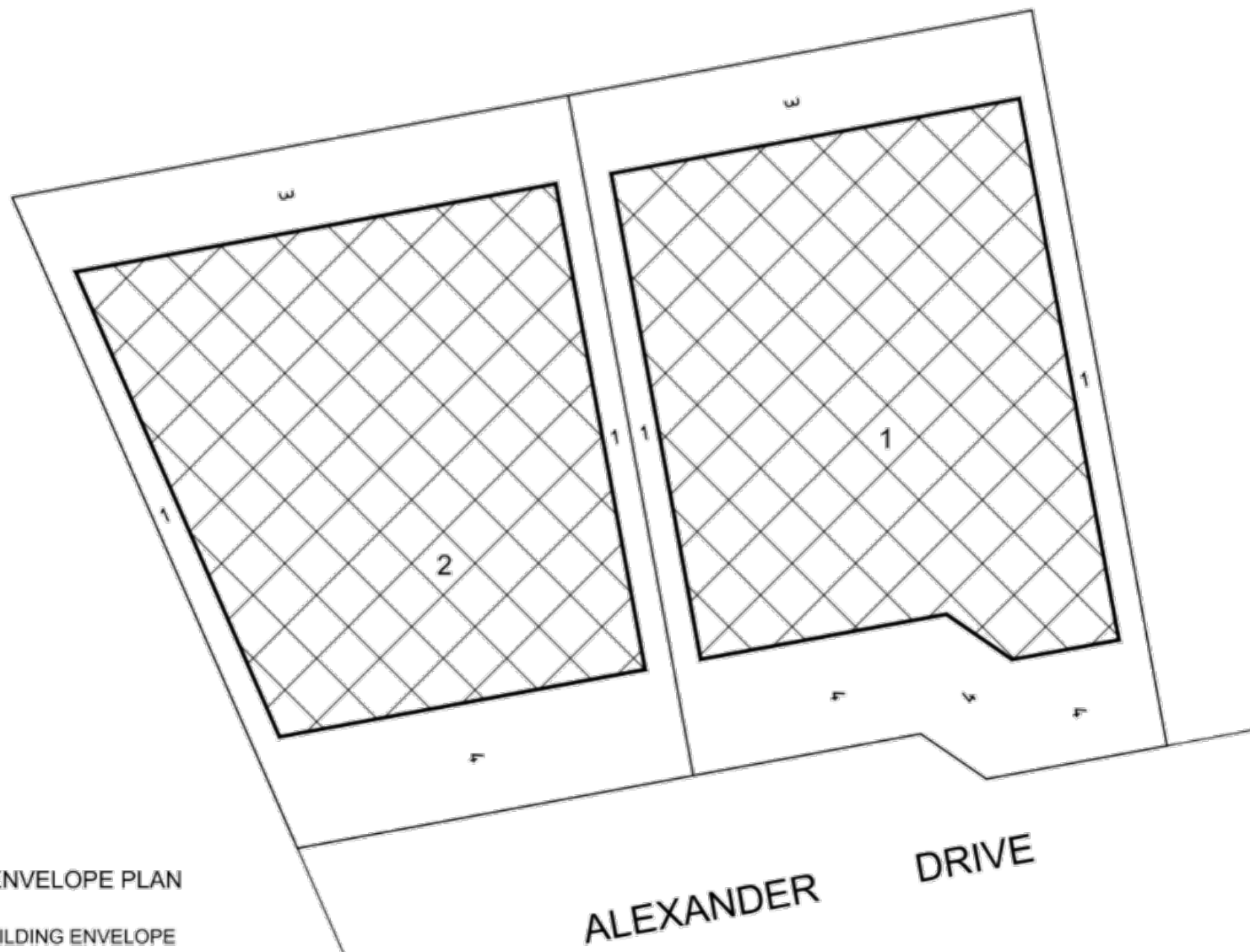
- a porch, portico, balcony or verandah (no more than 3.60m in height)
- a masonry chimney
- a pergola
- an eave, fascia or gutter; and

(ii) the following permitted encroachments into the approved side and rear setbacks by up to 500mm:-

- a porch or verandah
- a masonry chimney
- a pergola
- an eave, fascia or gutter
- a sunblind
- a screen (to the extent needed to protect a neighbouring property from direct view)
- Flues and pipes
- Domestic fuel tanks and water tanks
- Heating and Cooling equipment and other services

Expiry


The restriction shall cease to burden any Lot on the Plan of Subdivision with effect from 10 years from the date of registration of this Plan of Subdivision.



BUILDING ENVELOPE PLAN

 BUILDING ENVELOPE

0624S06 VER A.DWG AA/AA
 **SMEC**
 Melbourne Survey T 9869 0813 REF 0624s06

SCALE  LENGTHS ARE IN METRES

ORIGINAL SHEET SIZE: A3 SHEET 3

DUNCAN BROOKS VERSION A

7.5 PA2019283 - TWO LOT SUBDIVISION AT 1 ALEXANDER DRIVE, BALLAN**Author:** Thomas Tonkin, Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development**Attachments:** 1. Proposed plan of subdivision**APPLICATION SUMMARY****Permit No:** PA2019283**Lodgement Date:** 6 December 2019**Planning Officer:** Tom Tonkin**Address of the land:** 1 Alexander Drive Ballan**Proposal:** Two-Lot Subdivision**Lot size:** 885 sqm**Why is a permit required?** Clause 32.09 Neighbourhood Residential Zone, Schedule 7 - Subdivision
Clause 42.01 Environmental Significance Overlay, Schedule 1 - Subdivision**RECOMMENDATION**

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2019283 for a Two Lot Subdivision at Lot 12 on PS 713325V known as 1 Alexander Drive, Ballan 3342, on the following grounds:

1. The proposed lot sizes do not meet the minimum allowable lot sizes specified in the Neighbourhood Residential Zone, Schedule 7, of the Moorabool Planning Scheme.
2. The proposal is inconsistent with relevant state and local planning policy in the Moorabool Planning Scheme for residential land subdivision in this location.
3. The proposal does not meet all relevant provisions of Clause 56 of the Moorabool Planning Scheme.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	Two.
Consultation meeting:	No consultation as the recommendation is for refusal.

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

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

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, to Council's Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	Non-compliance with the minimum 800 sqm lot size requirement of NRZ7, which was adopted by Council as part of Amendment C88 before the application was submitted. Amendment C88 was gazetted on 6 March 2020.
Any discussions with applicant regarding concerns?	Yes, informally before and after the application was submitted.
Any changes made to the application since being lodged?	No.
Brief history.	The subject site is part of a 12-lot subdivision approved by Council under planning permit PA2011316 issued on 21 August 2012.
Previous applications for the site?	None. This application has been lodged concurrently with four other two-lot subdivisions in the same street by the same applicant.
General summary.	The proposed 440 sqm and 445 sqm lot sizes do not meet the minimum 800 sqm lot size requirements of

	the Neighbourhood Residential Zone, Schedule 7, and are therefore in direct contravention of the Moorabool Planning Scheme. Council has no discretion to approve the application due to the minimum lot size requirement of 800 sqm.
Summary Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , on the grounds included in this report.	

SITE DESCRIPTION

The site is identified as Lot 12 on PS 713325V and is known as 1 Alexander Drive, Ballan, and is located on the south-west corner of Crook Court and Alexander Drive. The site is an irregular shape with an area of 885 sqm encumbered by a 2-metre-wide drainage easement parallel to the southern boundary. The site is vacant with no significant vegetation and minimal fall.

PROPOSAL

It is proposed to subdivide the site into two lots. Lot 1 would be a rectangular shape with an area of 440 sqm with a frontage to Alexander Drive and Lot 2 would be an irregular shape with an area of 445 sqm on the corner of Crook Court and Alexander Drive. Both lots would be encumbered by building envelopes.

BACKGROUND TO CURRENT PROPOSAL

The subject site was rezoned to the Neighbourhood Residential Zone, Schedule 7 (NRZ7) on 6 March 2020 as part of Planning Scheme Amendment C88 which implemented the Ballan Strategic Directions (June 2018) policy in the Moorabool Planning Scheme. The NRZ7 imposes minimum lot sizes of 800 sqm for subdivision. There are no applicable transitional provisions in the Moorabool Planning Scheme to enable consideration of smaller lot sizes proposed in applications received prior to the Amendment's gazettal on 6 March 2020.

HISTORY

None applicable.

PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners by mail and a sign erected on site from 14-29 January 2020. Two objections were received.

SUMMARY OF OBJECTIONS

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

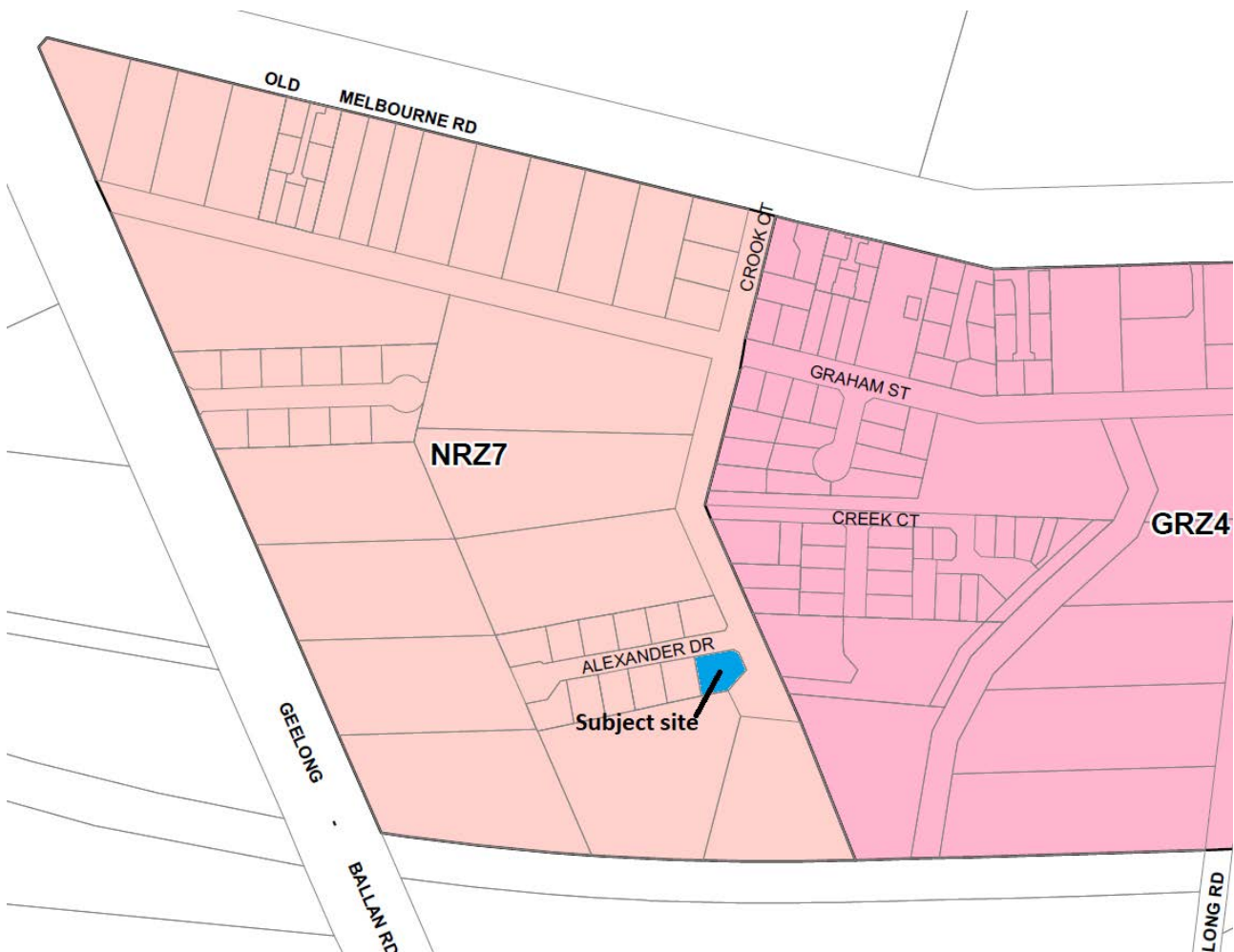
Objection	Any Relevant Requirement
Safety impacts of multiple residents trying to exit properties in a fire event whose only vehicle egress point from Crook Court is to Old Melbourne Road.	Clause 56.

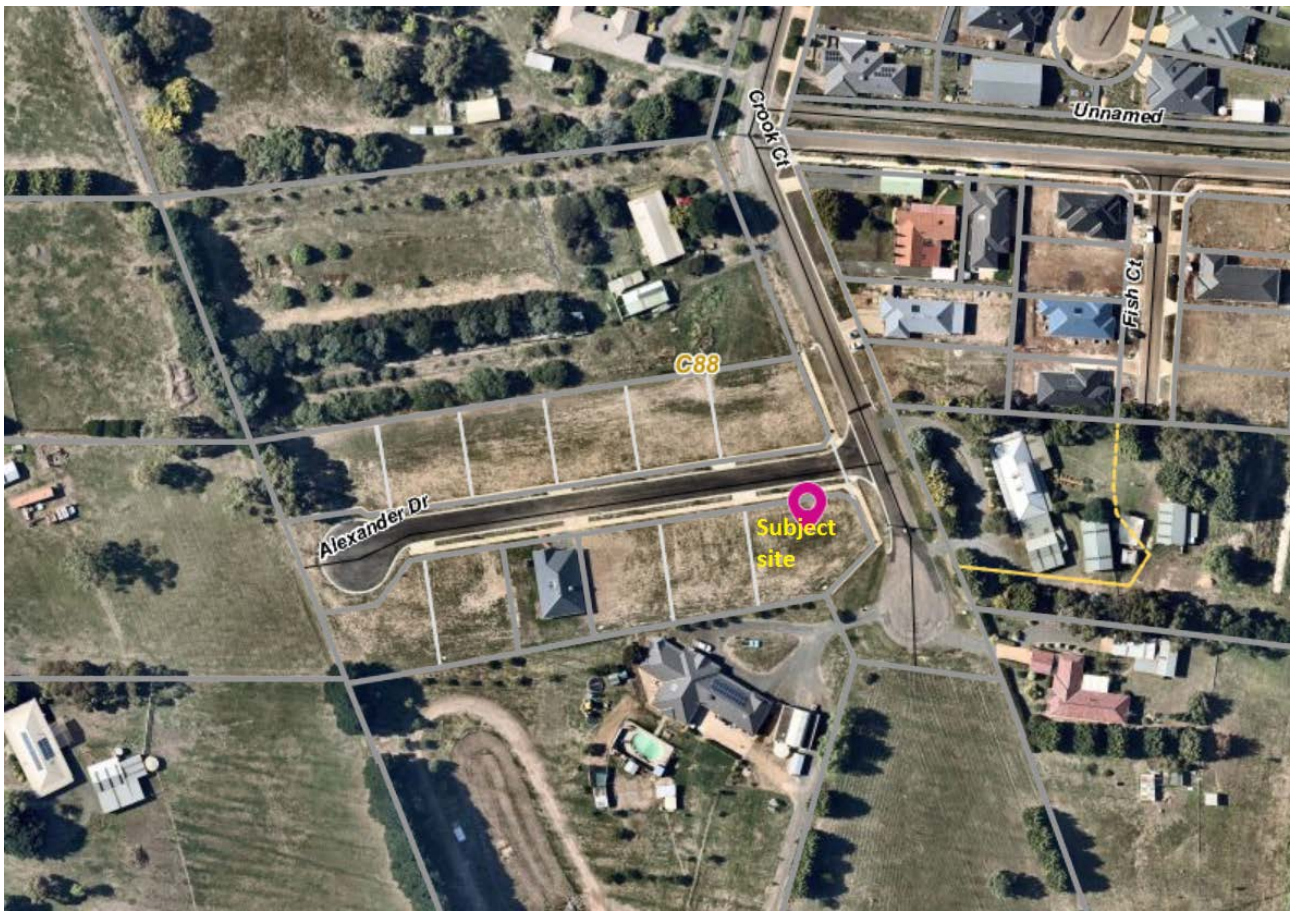
Officer's Response:	
Crook Court's design is sufficient to cope with the traffic demands of existing residents and current proposed subdivisions.	
Existing boundary fences are inadequate to protect privacy and limit noise, contain pets and domestic rubbish.	Clause 65.
Officer's Response:	
The construction of fencing between private properties and the associated costs is ultimately a civil matter between landowners.	
Smaller lot sizes increase the likelihood of double storey development. The subdivider's assurances that such construction would be prevented by covenants imposed on title does not allay our concerns.	Clause 65.
The proposed wording on title (covenant) does not prevent double storey construction. However, any future development (including double storey development) must meet ResCode requirements in terms of minimum boundary setbacks and overlooking. Furthermore, double storey construction may reasonably be expected in a residential zoned area.	
Traffic impacts on noise levels and safety for children going to school.	Clause 65.
Officer's Response:	
The proposal would not be expected to impact on noise and safety to an unacceptable extent given the residential nature of the area. Council's Infrastructure Unit assessed the traffic implications and raised no concern.	
Any traffic safety issues raised at any point in the future due to changed circumstances will be reviewed.	
The existing poor condition of the Crook Court carriageway would be exacerbated by increased traffic which creates a traffic hazard.	Clause 56.
Officer's Response:	
The need for repairs to existing roads are usually addressed through Council's road maintenance program.	
Should the development be approved, conditions relating to damages as a result of the development will be conditioned accordingly and may include reinstatement of the road.	
Limited footpaths in Crook Court is a safety issue for pedestrians.	Clause 56.
Officer's Response:	
The existing footpath network in Crook Court enables pedestrians to walk on at least one side of the road for almost the entire length of the street, with progressive network extensions as land has been gradually subdivided.	

Increased stormwater runoff resulting in flooding, due in part to inadequate kerb and channelling at the south end of Crook Court	Clause 56.
Officer’s Response: Infrastructure conditions requiring a drainage design to Council requirements could address this issue.	
Inadequate parking for visitors.	Clause 65.
Officer’s Response: It is understood that currently there is an adequate supply of visitor car parking both on and off street and that the proposal would not impose an unreasonable burden on parking provision in the immediate area.	

LOCALITY MAP

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





PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S Peri-urban areas
- Clause 14.02 Water
- Clause 15.01-3S Subdivision design
- Clause 15.01-5S Neighbourhood character
- Clause 16.01-2S Location of residential development
- Clause 21.02-3 Water and catchment management
- Clause 12.03-2 Urban Growth Management
- Clause 21.03-3 Residential Development
- Clause 21.03-4 Landscape and Neighbourhood Character
- Clause 21.08 Ballan
- Clause 22.02 Special Water Supply Catchments

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

PPF	Title	Response
Clause 15.01-5S	Neighbourhood character	The proposal does not respond positively to the preferred neighbourhood character, which encourages detached dwellings with conventional front and side setbacks in a garden setting. The proposed subdivision would prejudice such development.
Clause 16.01-2S	Location of residential development	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
LPPF		
Clause 21.03-2	Urban Growth Management	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
Clause 21.03-4	Landscape and Neighbourhood Character	The proposal does not respond appropriately to the preferred neighbourhood character because the proposal would not facilitate site responsive future development.
Clause 21.08-7	Strategies for Residential Development	The proposal would not facilitate the built form consistent with the preferred development outcomes for this area of Ballan, by limiting opportunities for low density housing with boundary setbacks to accommodate landscaping.

ZONE

The subject site is in the Neighbourhood Residential Zone, Schedule 7 (NRZ7). The purpose of the Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- 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 32.09-3 a permit is required to subdivide land. A zone schedule may specify a minimum lot size to subdivide land, and each lot must be at least the area specified for the land. Schedule 7 specifies a minimum 800 sqm lot size for subdivision.

The proposed lot sizes do not meet the minimum lot size requirement; therefore, the proposal is fundamentally inconsistent with the Zone provisions.

OVERLAYS

The site is affected by Environmental Significance Overlay, Schedule 1 (Proclaimed Water Catchment Areas). Under Clause 42.01-2 a permit is required to subdivide land. There are no relevant exemptions under Schedule 1. The subject site is seweraged and drains more than 100 metres from the nearest waterway. Subject to conditions the proposal would not cause detriment to potable water quality or supply.

Relevant Policies

The Ballan Strategic Directions (June 2018) policy underpins Planning Scheme Amendment C88 which was recently approved by the Minister for Planning and gazetted on 6 March 2020. The proposed lot sizes less than 800 sqm are inconsistent with Amendment C88 adopted by Council.

Particular Provisions

Clause 53.01 Public Open Space Contribution and Subdivision

A subdivision is exempt from a public open space requirement specified in this scheme if it subdivides land into two lots and the Council considers it unlikely that each lot will be further subdivided. If the application could be considered for approval by Council, it would be unlikely for either lot to be further subdivided and no public open space contribution would be required.

Clause 56 Residential Subdivision

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

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

DISCUSSION

Overall, the proposal is inconsistent with relevant State and local planning policy, the Neighbourhood Residential Zone and Clause 56 of the Moorabool Planning Scheme.

The proposed 440 sqm and 445 sqm lot sizes are less than the minimum allowable 800 sqm lot sizes specified in Schedule 7 to the Neighbourhood Residential Zone, gazetted on 6 March 2020. It is noted that despite the application being lodged with Council prior to the gazettal date there is no transitional provision in the Moorabool Planning Scheme which would enable Council to consider approving the application. Furthermore, it is noted that when the application was submitted on 6 December 2019, Amendment C88 had already progressed through the Panel Hearing process, been adopted by Council and submitted to the Minister for Planning for approval. The applicant was aware of the Amendment C88's status when submitting the application. The proposal explicitly contravenes the Moorabool Planning Scheme and is therefore recommended for refusal.

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 Southern Rural Water	Consent with conditions in accordance with Council's MoU with these authorities.
Infrastructure	Consent with conditions.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY


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

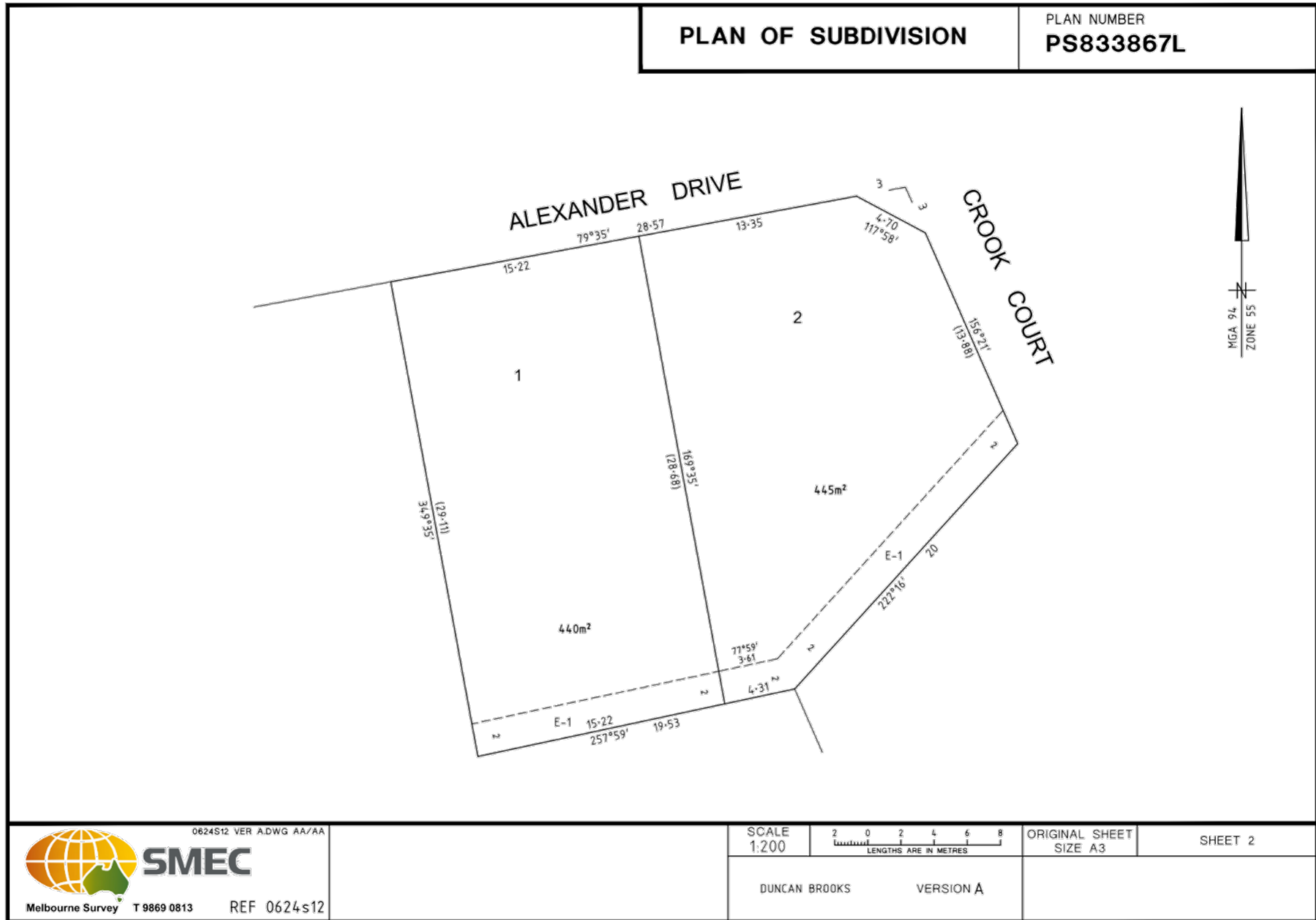
OPTIONS

- Issue a Refusal to Grant a Permit in accordance with the grounds in the recommendation of this report; or
- Issue a Refusal to Grant a Permit with amendments to the grounds in the recommendation of this report.

CONCLUSION

Overall, the proposal is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular the NRZ7 given that the proposed lot sizes do not meet the minimum 800 sqm lot size requirement.

PLAN OF SUBDIVISION		LUV USE ONLY EDITION	PLAN NUMBER PS833867L	
LOCATION OF LAND		COUNCIL NAME: MOORABOOL SHIRE COUNCIL		
<p>PARISH: GORONG</p> <p>TOWNSHIP: -</p> <p>SECTION: 2</p> <p>CROWN ALLOTMENT: 19 (PART)</p> <p>CROWN PORTION: -</p> <p>TITLE REFERENCES: Vol.12079 Fol.030</p> <p>LAST PLAN REFERENCE/S: PS713325V (LOT 12)</p> <p>POSTAL ADDRESS: 1 ALEXANDER DRIVE (At time of subdivision) BALLAN, 3342</p> <p>MGA94 Co-ordinates (of approx centre of land in plan) E 254 000 N 5 834 600 ZONE 55</p>				
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	FOR CREATION OF RESTRICTION A AFFECTING LOTS 1 & 2 SEE SHEET 3.		
NIL	NIL			
NOTATIONS				
<p>DEPTH LIMITATION DOES NOT APPLY</p> <p>STAGING This is is not a staged subdivision. Planning permit No.</p> <p>SURVEY. THIS PLAN IS/IS NOT BASED ON SURVEY. THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s):</p> <p>PROCLAIMED SURVEY AREA: 148</p> <p style="text-align: center;">2 LOTS</p>				
EASEMENT INFORMATION				
LEGEND A-Appurtenant Easement E-Encumbering Easement R-Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE	SEE PLAN	PS713325V	MOORABOOL SHIRE COUNCIL
 0624S12 VER A.DWG AA/AA SMEC Member of the Surbana Jurong Group		SURVEYOR REF: 0624s12		ORIGINAL SHEET SIZE: A3
		DUNCAN BROOKS	VERSION A	SHEET 1 OF 3



PLAN OF SUBDIVISION

PLAN NUMBER
PS833867L

CREATION OF RESTRICTION A

The following restriction is to be created upon registration of Plan of Subdivision PS 833867L by way of restrictive covenant and as a restriction as defined in the Subdivision Act 1988.

Land to benefit: Lots 1 & 2

Lots to be burdened: Lots 1 & 2

Description of Restriction

The registered proprietor or proprietors for the time of being of any burdened Lot on the Plan of Subdivision shall not:

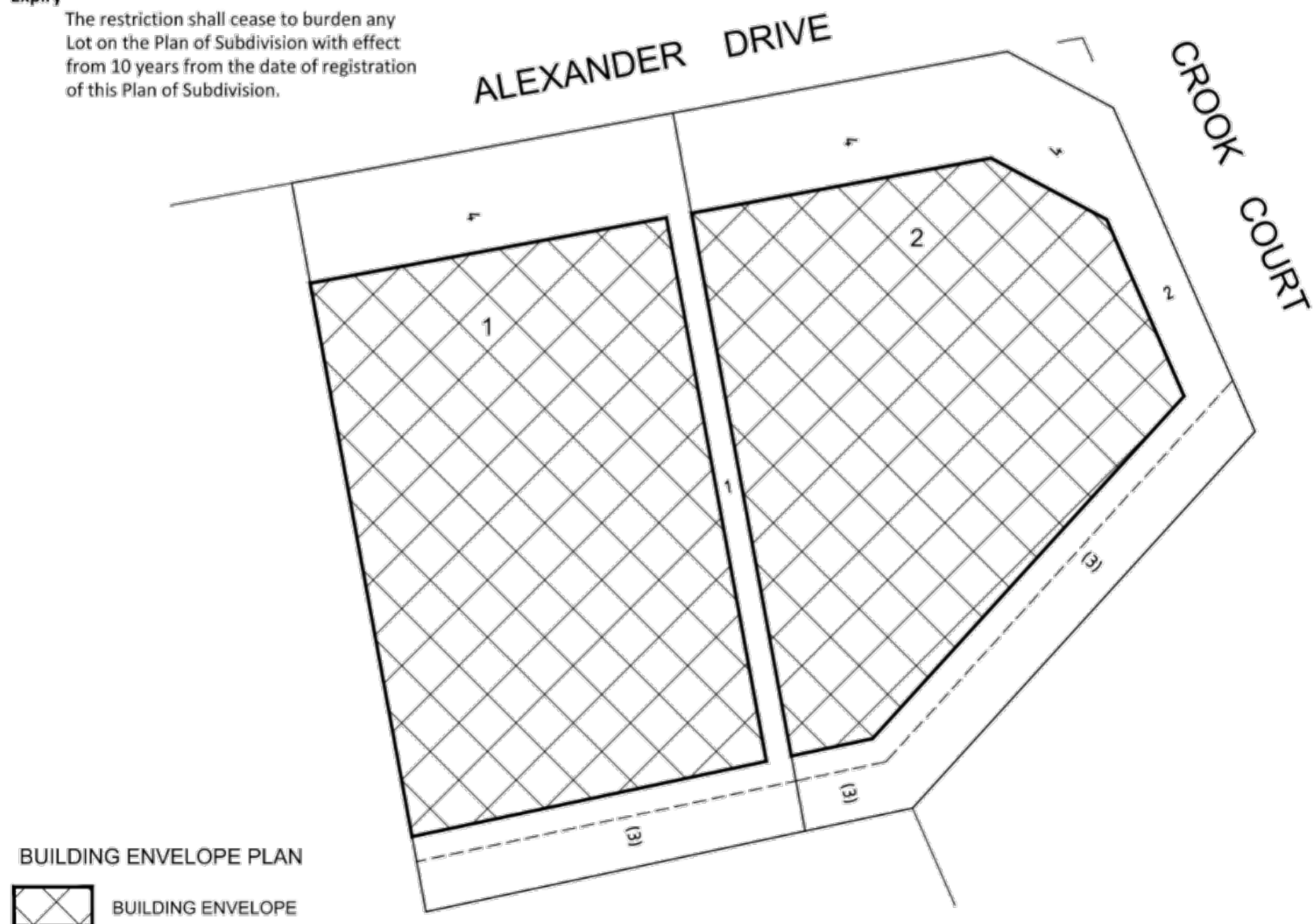
Building Envelopes

(a) Unless consent has been granted by the Responsible Authority, build or allow to be built on the Lot any building outside the Building Envelope Plan below except for:


- (i) the following permitted encroachments into the approved front street setback by up to 1500mm:-
 - a porch, portico, balcony or verandah (no more than 3.60m in height)
 - a masonry chimney
 - a pergola
 - an eave, fascia or gutter; and
- (ii) the following permitted encroachments into the approved side and rear setbacks by up to 500mm:-
 - a porch or verandah
 - a masonry chimney
 - a pergola
 - an eave, fascia or gutter
 - a sunblind
 - a screen (to the extent needed to protect a neighbouring property from direct view)
 - Flues and pipes
 - Domestic fuel tanks and water tanks
 - Heating and Cooling equipment and other services

Expiry

The restriction shall cease to burden any Lot on the Plan of Subdivision with effect from 10 years from the date of registration of this Plan of Subdivision.



0624S12 VER A.DWG AA/AA
 **SMEC**
 Melbourne Survey T 9869 0813 REF 0624s12

SCALE

 LENGTHS ARE IN METRES

DUNCAN BROOKS VERSION A

ORIGINAL SHEET SIZE: A3 SHEET 3

7.6 PA2019284 - TWO LOT SUBDIVISION AT 5 ALEXANDER DRIVE, BALLAN**Author:** Thomas Tonkin, Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development**Attachments:** 1. Proposed plan of subdivision**APPLICATION SUMMARY****Permit No:** PA2019284**Lodgement Date:** 6 December 2019**Planning Officer:** Tom Tonkin**Address of the land:** 5 Alexander Drive Ballan**Proposal:** Two-Lot Subdivision**Lot size:** 736 sqm**Why is a permit required?** Clause 32.09 Neighbourhood Residential Zone, Schedule 7 - Subdivision
Clause 42.01 Environmental Significance Overlay, Schedule 1 - Subdivision**RECOMMENDATION**

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2019284 for a Two-Lot Subdivision at Lot 11 on PS 713325V known as 5 Alexander Drive, Ballan 3342, on the following grounds:

1. The proposed lot sizes do not meet the minimum allowable lot sizes specified in the Neighbourhood Residential Zone, Schedule 7, of the Moorabool Planning Scheme.
2. The proposal is inconsistent with relevant state and local planning policy in the Moorabool Planning Scheme for residential land subdivision in this location.
3. The proposal does not meet all relevant provisions of Clause 56 (Rescode) of the Moorabool Planning Scheme.

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

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

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

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, to Council's Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	Non-compliance with the minimum 800 sqm lot size requirements of NRZ7, which was adopted by Council as part of Amendment C88 before the application was submitted. Amendment C88 was gazetted on 6 March 2020.
Any discussions with applicant regarding concerns?	Yes, informally before and after the application was submitted.
Any changes made to the application since being lodged?	No.
Brief history.	The subject site is part of a 12-lot subdivision approved by Council under planning permit PA2011316 issued on 21 August 2012.
Previous applications for the site?	None. This application has been lodged concurrently with four other two-lot subdivisions in the same street by the same applicant.
General summary.	The proposed 368 sqm lot sizes do not meet the minimum 800 sqm lot size requirements of the

	Neighbourhood Residential Zone, Schedule 7, and are therefore in direct contravention of the Moorabool Planning Scheme. Council has no discretion to approve the application due to the minimum lot size requirement of 800 sqm.
Summary Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , on the grounds included in this report.	

SITE DESCRIPTION

The site is identified as Lot 11 on PS 713325V and is known as 5 Alexander Drive, Ballan, and is located on the southern side of Alexander Drive. The site is a roughly rectangular shape with an area of 736 sqm, encumbered by a 2-metre-wide drainage easement parallel to the southern boundary. The site is vacant with no significant vegetation and a slight fall.

PROPOSAL

It is proposed to subdivide the site into two lots. Both lots would be 368 sqm in size and rectangular in shape and both encumbered by building envelopes.

BACKGROUND TO CURRENT PROPOSAL

The subject site was rezoned to the Neighbourhood Residential Zone, Schedule 7 (NRZ7) on 6 March 2020 as part of Planning Scheme Amendment C88 which implemented the Ballan Strategic Directions (June 2018) policy in the Moorabool Planning Scheme. The NRZ7 imposes minimum lot sizes of 800 sqm for subdivision. There are no applicable transitional provisions in the Moorabool Planning Scheme to enable consideration of smaller lot sizes proposed in applications received prior to the Amendment's gazettal on 6 March 2020.

HISTORY

None applicable.

PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners by mail and a sign erected on site from 14-29 January 2020. One objection was received.

SUMMARY OF OBJECTIONS

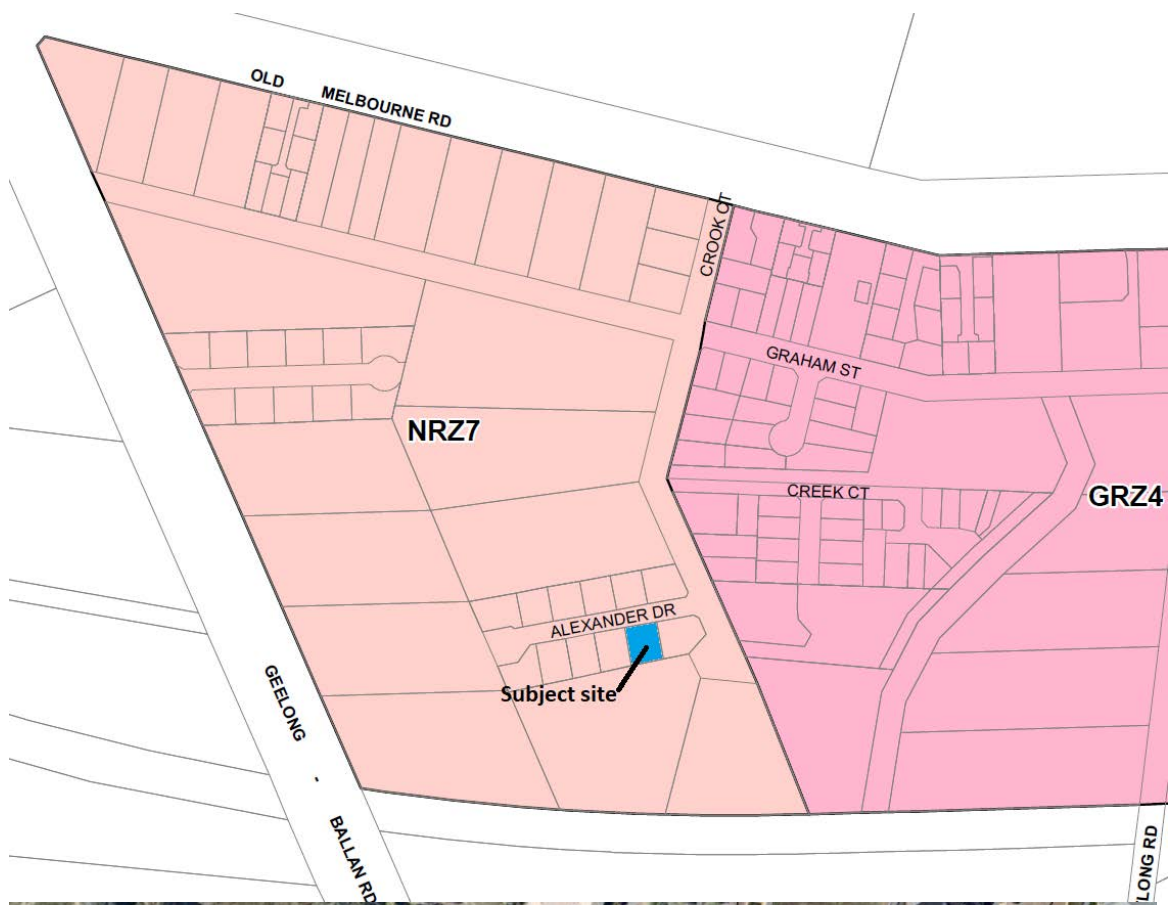
The objections received are detailed below with officer's comments accompanying them:

Objection	Any Relevant Requirement
Safety impacts of multiple residents trying to exit properties in a fire event whose only vehicle egress point from Crook Court is to Old Melbourne Road.	Clause 56.
Officer's Response: Crook Court's design is sufficient to cope with the traffic demands of existing residents and current proposed subdivisions.	

Existing boundary fences are inadequate to protect privacy and limit noise, contain pets and domestic rubbish.	Clause 65.
Officer's Response:	
The construction of fencing between private properties and the associated costs is ultimately a civil matter between landowners.	
Smaller lot sizes increase the likelihood of double storey development. The subdivider's assurances that such construction would be prevented by covenants imposed on title does not allay our concerns.	Clause 56.
Officer's Response:	
The proposed wording on title (covenant) does not prevent double storey construction. However, any future development (including double storey development) must meet ResCode requirements in terms of minimum boundary setbacks and overlooking. Furthermore, double storey construction may reasonably be expected in a residential zoned area.	
Traffic impacts on noise levels and safety for children going to school.	Clause 65.
Officer's Response:	
The proposal would not be expected to impact on noise and safety to an unacceptable extent given the residential nature of the area. Council's Infrastructure Unit assessed the traffic implications and raised no concerns. Any traffic safety issues raised at any point in the future due to changed circumstances will be reviewed.	
The existing poor condition of the Crook Court carriageway would be exacerbated by increased traffic which creates a traffic hazard.	Clause 56.
Officer's Response:	
The need for repairs to existing roads are usually addressed through Council's road maintenance program.	
Should the development be approved, conditions relating to damages as a result of the development will be conditioned accordingly and may include reinstatement of the road.	

LOCALITY MAP

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



PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S Peri-urban areas
- Clause 14.02 Water
- Clause 15.01-3S Subdivision design
- Clause 15.01-5S Neighbourhood character
- Clause 16.01-2S Location of residential development
- Clause 21.02-3 Water and catchment management
- Clause 12.03-2 Urban Growth Management
- Clause 21.03-3 Residential Development
- Clause 21.03-4 Landscape and Neighbourhood Character
- Clause 21.08 Ballan
- Clause 22.02 Special Water Supply Catchments

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

PPF	Title	Response
Clause 15.01-5S	Neighbourhood character	The proposal does not respond positively to the preferred neighbourhood character, which encourages detached dwellings with conventional front and side setbacks in a garden setting. The proposed subdivision would prejudice such development.
Clause 16.01-2S	Location of residential development	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
LPPF		
Clause 21.03-2	Urban Growth Management	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
Clause 21.03-4	Landscape and Neighbourhood Character	The proposal does not respond appropriately to the preferred neighbourhood character because the proposal would not facilitate site responsive future development.

Clause 21.08-7	Strategies for Residential Development	The proposal would not facilitate the built form consistent with the preferred development outcomes for this area of Ballan, by limiting opportunities for low density housing with boundary setbacks to accommodate landscaping.
----------------	--	---

ZONE

The subject site is in the Neighbourhood Residential Zone, Schedule 7 (NRZ7). The purpose of the Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- 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 32.09-3 a permit is required to subdivide land. A zone schedule may specify a minimum lot size to subdivide land, and each lot must be at least the area specified for the land. Schedule 7 specifies a minimum 800 sqm lot size for subdivision.

The proposed lot sizes do not meet the minimum lot size requirement; therefore, the proposal is fundamentally inconsistent with the zone provisions.

OVERLAYS

The site is affected by Environmental Significance Overlay, Schedule 1 (Proclaimed Water Catchment Areas). Under Clause 42.01-2 a permit is required to subdivide land. There are no relevant exemptions under Schedule 1. The subject site is sewered and drains more than 100 metres from the nearest waterway. Subject to conditions the proposal would not cause detriment to potable water quality or supply.

Relevant Policies

The Ballan Strategic Directions (June 2018) policy underpins Planning Scheme Amendment C88 which was recently approved by the Minister for Planning and gazetted on 6 March 2020. The proposed lot sizes less than 800 sqm are inconsistent with Amendment C88 adopted by Council.

Particular Provisions

Clause 53.01 Public Open Space Contribution and Subdivision

A subdivision is exempt from a public open space requirement specified in this scheme if it subdivides land into two lots and the Council considers it unlikely that each lot will be further subdivided. If the application could be considered for approval by Council, it would be unlikely for either lot to be further subdivided and no public open space contribution would be required.

Clause 56 Residential Subdivision

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

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

DISCUSSION

Overall, the proposal is inconsistent with relevant State and local planning policy, the Neighbourhood Residential Zone and Clause 56 of the Moorabool Planning Scheme.

The proposed 368 sqm lot sizes are less than the minimum allowable 800 sqm lot sizes specified in Schedule 7 to the Neighbourhood Residential Zone, gazetted on 6 March 2020. It is noted that despite the application being lodged with Council prior to the gazettal date there is no transitional provision in the Moorabool Planning Scheme which would enable Council to consider approving the application. Furthermore, it is noted that when the application was submitted on 6 December 2019, Amendment C88 has already progressed through the Panel Hearing process, been adopted by Council and submitted to the Minister for Planning for approval. The applicant was aware of the Amendment C88's status when submitting the application. The proposal explicitly contravenes the Moorabool Planning Scheme and is therefore recommended for refusal. Council has no discretion to approve the application.

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 Southern Rural Water	Consent with conditions in accordance with Council's MoU with these authorities.
Infrastructure	Consent with conditions.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY


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

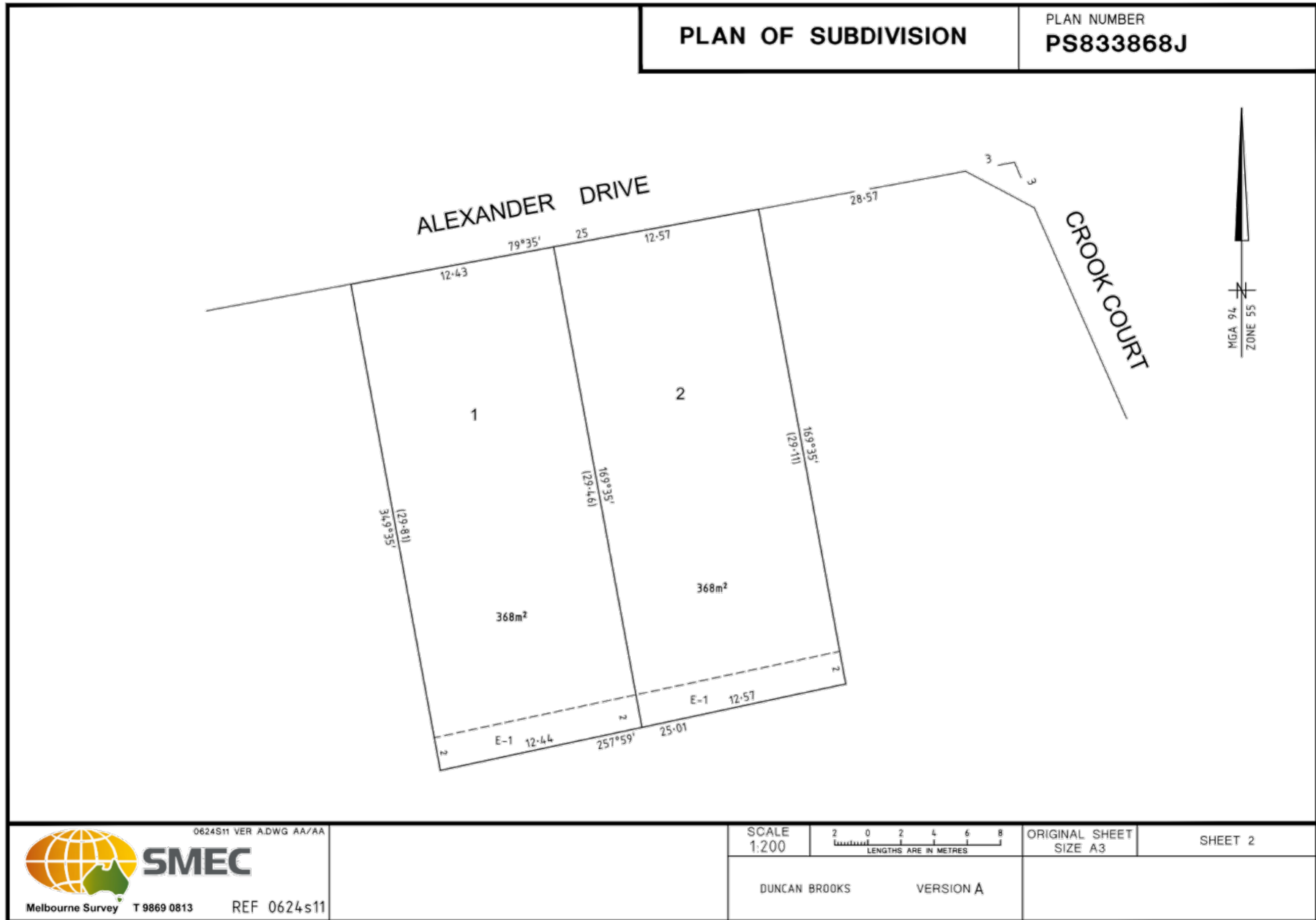
OPTIONS

Issue a Refusal to Grant a Permit in accordance with the grounds in the recommendation of this report; or Issue a Refusal to Grant a Permit with amendments to the grounds in the recommendation of this report.

CONCLUSION

Overall, the proposal is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular the NRZ7 given that the proposed lot sizes do not meet the minimum 800 sqm lot size requirement.

PLAN OF SUBDIVISION		LUV USE ONLY EDITION	PLAN NUMBER PS833868J	
LOCATION OF LAND		COUNCIL NAME: MOORABOOL SHIRE COUNCIL		
<p>PARISH: GORONG</p> <p>TOWNSHIP: -</p> <p>SECTION: 2</p> <p>CROWN ALLOTMENT: 19 (PART)</p> <p>CROWN PORTION: -</p> <p>TITLE REFERENCES: Vol.12079 Fol.029</p> <p>LAST PLAN REFERENCE/S: PS713325V (LOT 11)</p> <p>POSTAL ADDRESS: 5 ALEXANDER DRIVE (At time of subdivision) BALLAN, 3342</p> <p>MGA94 Co-ordinates E 253 980 (of approx centre of N 5 834 590 land in plan) ZONE 55</p>				
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	FOR CREATION OF RESTRICTION A AFFECTING LOTS 1 & 2 SEE SHEET 3.		
NIL	NIL			
NOTATIONS				
<p>DEPTH LIMITATION DOES NOT APPLY</p> <p>STAGING This is is not a staged subdivision. Planning permit No.</p> <p>SURVEY. THIS PLAN IS/IS NOT BASED ON SURVEY. THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s):</p> <p>PROCLAIMED SURVEY AREA: 148</p> <p style="text-align: center;">2 LOTS</p>				
EASEMENT INFORMATION				
LEGEND A-Appurtenant Easement E-Encumbering Easement R-Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE	SEE PLAN	PS713325V	MOORABOOL SHIRE COUNCIL
 0624S11 VER A.DWG AA/AA Member of the Urbana Jurong Group		SURVEYOR REF: 0624s11		ORIGINAL SHEET SIZE: A3
		DUNCAN BROOKS VERSION A		SHEET 1 OF 3



PLAN OF SUBDIVISION

PLAN NUMBER
PS833868J

CREATION OF RESTRICTION A

The following restriction is to be created upon registration of Plan of Subdivision PS 833868J by way of restrictive covenant and as a restriction as defined in the Subdivision Act 1988.

Land to benefit: Lots 1 & 2

Lots to be burdened: Lots 1 & 2

Description of Restriction

The registered proprietor or proprietors for the time of being of any burdened Lot on the Plan of Subdivision shall not:

Building Envelopes

(a) Unless consent has been granted by the Responsible Authority, build or allow to be built on the Lot any building outside the Building Envelope Plan below except for:

(i) the following permitted encroachments into the approved front street setback by up to 1500mm:-

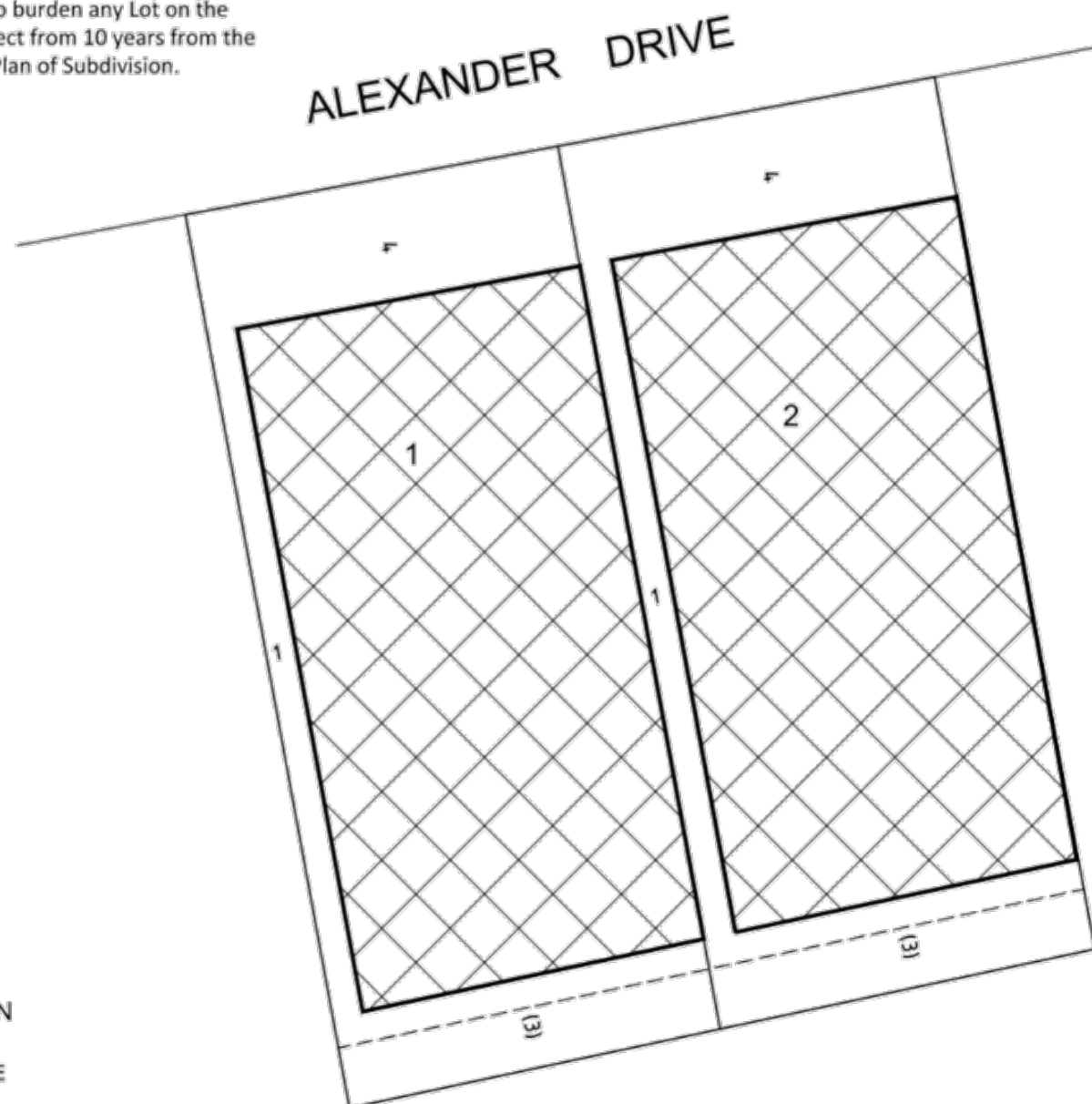
- a porch, portico, balcony or verandah (no more than 3.60m in height)
- a masonry chimney
- a pergola
- an eave, fascia or gutter; and

(ii) the following permitted encroachments into the approved side and rear setbacks by up to 500mm:-

- a porch or verandah
- a masonry chimney
- a pergola
- an eave, fascia or gutter
- a sunblind
- a screen (to the extent needed to protect a neighbouring property from direct view)
- Flues and pipes
- Domestic fuel tanks and water tanks
- Heating and Cooling equipment and other services

Expiry

The restriction shall cease to burden any Lot on the Plan of Subdivision with effect from 10 years from the date of registration of this Plan of Subdivision.



BUILDING ENVELOPE PLAN



BUILDING ENVELOPE



SMEC

Melbourne Survey T 9869 0813

REF 0624s11

0624S11 VER A.DWG AA/AA

SCALE



DUNCAN BROOKS

VERSION A

ORIGINAL SHEET
SIZE: A3

SHEET 3

7.7 PA2019285 - TWO LOT SUBDIVISION AT 15 ALEXANDER DRIVE, BALLAN**Author:** Thomas Tonkin, Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development**Attachments:** 1. Proposed plan of subdivision**APPLICATION SUMMARY****Permit No:** PA2019285**Lodgement Date:** 6 December 2019**Planning Officer:** Tom Tonkin**Address of the land:** 15 Alexander Drive Ballan**Proposal:** Two-Lot Subdivision**Lot size:** 725 sqm**Why is a permit required?** Clause 32.09 Neighbourhood Residential Zone, Schedule 7 - Subdivision
Clause 42.01 Environmental Significance Overlay, Schedule 1 - Subdivision**RECOMMENDATION**

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2019285 for a Two-Lot Subdivision at Lot 7 on PS 713325V known as 15 Alexander Drive, Ballan 3342, on the following grounds:

1. The proposed lot sizes do not meet the minimum allowable lot sizes specified in the Neighbourhood Residential Zone, Schedule 7, of the Moorabool Planning Scheme.
2. The proposal is inconsistent with relevant state and local planning policy in the Moorabool Planning Scheme for residential land subdivision in this location.
3. The proposal does not meet all relevant provisions of Clause 56 (Rescode) of the Moorabool Planning Scheme.

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

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

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

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, to Council's Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	Non-compliance with the minimum 800 sqm lot size requirements of NRZ7, which was adopted by Council as part Amendment C88 before the application was submitted. Amendment C88 was gazetted on 6 March 2020.
Any discussions with applicant regarding concerns?	Yes, informally before and after the application was submitted.
Any changes made to the application since being lodged?	No.
Brief history.	The subject site is part of a 12-lot subdivision approved by Council under planning permit PA2011316 issued on 21 August 2012.
Previous applications for the site?	None. This application has been lodged concurrently with four other two-lot subdivisions in the same street by the same applicant.

General summary.	The proposed 350 sqm and 375 sqm lot sizes do not meet the minimum 800 sqm lot size requirements of the Neighbourhood Residential Zone, Schedule 7, and are therefore in direct contravention of the Moorabool Planning Scheme. Council has no discretion to approve the application due to the minimum lot size requirement of 800 sqm.
Summary Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue a Refusal to Grant a Permit for this application in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , on the grounds included in this report.	

SITE DESCRIPTION

The site is identified as Lot 7 on PS 713325V and is known as 15 Alexander Drive, Ballan, and is located on the southern side of Alexander Drive at the end of the cul-de-sac. The site is an irregular shape with an area of 725 sqm, encumbered by a 4-metre-wide drainage easement parallel to the western boundary. The site is vacant with no significant vegetation and a slight fall.

PROPOSAL

It is proposed to subdivide the site into two lots. Lot 1 would have an area of 350 sqm and Lot 2 would have an area of 375 sqm. Both lots would be irregular in shape with direct frontages to Alexander Drive and be encumbered by building envelopes.

BACKGROUND TO CURRENT PROPOSAL

The subject site was rezoned to the Neighbourhood Residential Zone, Schedule 7 (NRZ7) on 6 March 2020 as part of Planning Scheme Amendment C88 which implemented the Ballan Strategic Directions (June 2018) policy in the Moorabool Planning Scheme. The NRZ7 imposes minimum lot sizes of 800 sqm for subdivision. There are no applicable transitional provisions in the Moorabool Planning Scheme to enable consideration of smaller lot sizes proposed in applications received prior to the Amendment's gazettal on 6 March 2020.

HISTORY

Not applicable.

PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners by mail and a sign erected on site from 14-29 January 2020. One objection was received.

SUMMARY OF OBJECTIONS

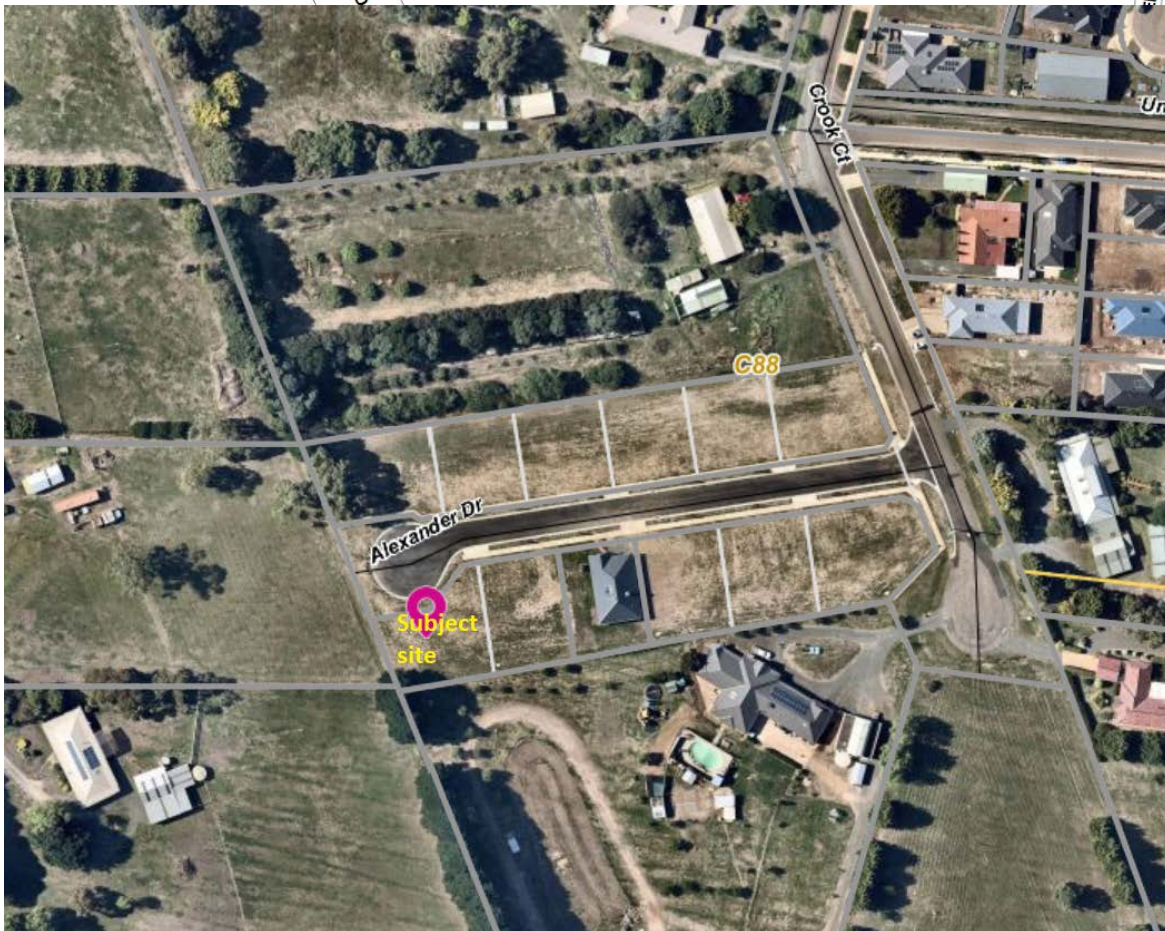
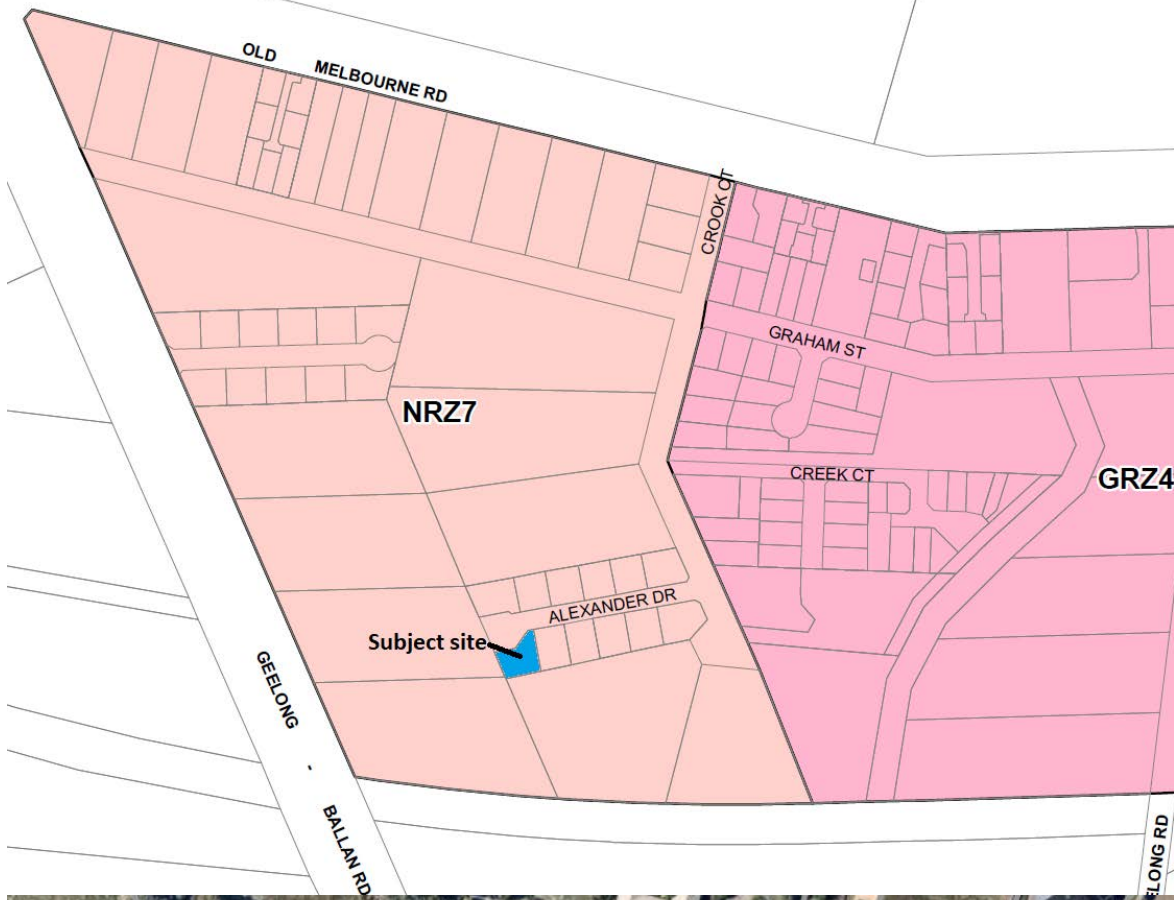
The objections received are detailed below with officer's comments accompanying them:

Objection	Any Relevant Requirement
Safety impacts of multiple residents trying to exit properties in a fire event whose only vehicle egress point from Crook Court is to Old Melbourne Road.	Clause 56.

Officer's Response: Crook Court's design is sufficient to cope with the traffic demands of existing residents and current proposed subdivisions.	
Existing boundary fences are inadequate to protect privacy and limit noise, contain pets and domestic rubbish.	Clause 65.
Officer's Response: If approved, the height and type of fencing can potentially be conditioned, where appropriate.	
Smaller lot sizes increase the likelihood of double storey development. The subdivider's assurances that such construction would be prevented by covenants imposed on title does not allay our concerns.	Clause 56.
Officer's Response: The proposed wording on title (covenant) does not prevent double storey construction. However, any future development (including double storey development) must meet ResCode requirements in terms of minimum boundary setbacks and overlooking. Furthermore, double storey construction may reasonably be expected in a residential zoned area.	
Traffic impacts on noise levels and safety for children going to school.	Clause 65.
Officer's Response: The proposal would not be expected to impact on noise and safety to an unacceptable extent given the residential nature of the area. Council's Infrastructure Unit assessed the traffic implications and raised no concerns. Any traffic safety issues raised at any point in future due to changed circumstances will be reviewed.	
The existing poor condition of the Crook Court carriageway would be exacerbated by increased traffic which creates a traffic hazard.	Clause 56.
Officer's Response: The need for repairs to existing roads are usually addressed through Council's road maintenance program. Should the development be approved, conditions relating to damages as a result of the development will be conditioned accordingly and may include reinstatement of the road.	

LOCALITY MAP

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



PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S Peri-urban areas
- Clause 14.02 Water
- Clause 15.01-3S Subdivision design
- Clause 15.01-5S Neighbourhood character
- Clause 16.01-2S Location of residential development
- Clause 21.02-3 Water and catchment management
- Clause 12.03-2 Urban Growth Management
- Clause 21.03-3 Residential Development
- Clause 21.03-4 Landscape and Neighbourhood Character
- Clause 21.08 Ballan
- Clause 22.02 Special Water Supply Catchments

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

PPF	Title	Response
Clause 15.01-5S	Neighbourhood character	The proposal does not respond positively to the preferred neighbourhood character, which encourages detached dwellings with conventional front and side setbacks in a garden setting. The proposed subdivision would prejudice such development
Clause 16.01-2S	Location of residential development	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
LPPF		
Clause 21.03-2	Urban Growth Management	The proposal would facilitate residential growth in an area of Ballan where limited growth is encouraged.
Clause 21.03-4	Landscape and Neighbourhood Character	The proposal does not respond appropriately to the preferred neighbourhood character because the proposal would not facilitate site responsive future development.

Clause 21.08-7	Strategies for Residential Development	The proposal would not facilitate the built form consistent with the preferred development outcomes for this area of Ballan, by limiting opportunities for low density housing with boundary setbacks to accommodate landscaping.
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ZONE

The subject site is in the Neighbourhood Residential Zone, Schedule 7 (NRZ7). The purpose of the Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- 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 32.09-3 a permit is required to subdivide land. A zone schedule may specify a minimum lot size to subdivide land, and each lot must be at least the area specified for the land. Schedule 7 specifies a minimum 800 sqm lot size for subdivision.

The proposed lot sizes do not meet the minimum lot size requirement; therefore, the proposal is fundamentally inconsistent with the zone provisions.

OVERLAYS

The site is affected by Environmental Significance Overlay, Schedule 1 (Proclaimed Water Catchment Areas). Under Clause 42.01-2 a permit is required to subdivide land. There are no relevant exemptions under Schedule 1. The subject site is sewered and drains more than 100 metres from the nearest waterway. Subject to conditions the proposal would not cause detriment to potable water quality or supply.

Relevant Policies

The Ballan Strategic Directions (June 2018) policy underpins Planning Scheme Amendment C88 which was recently approved by the Minister for Planning and gazetted on 6 March 2020. The proposed lot sizes less than 800 sqm are inconsistent with Amendment C88 adopted by Council.

Particular Provisions

Clause 53.01 Public Open Space Contribution and Subdivision

A subdivision is exempt from a public open space requirement specified in this scheme if it subdivides land into two lots and the Council considers it unlikely that each lot will be further subdivided. If the application could be considered for approval by Council, it would be unlikely for either lot to be further subdivided and no public open space contribution would be required.

Clause 56 Residential Subdivision

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

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

DISCUSSION

Overall, the proposal is inconsistent with relevant state and local planning policy, the Neighbourhood Residential Zone and Clause 56 of the Moorabool Planning Scheme.

The proposed 350 sqm and 375 sqm lot sizes are less than the minimum allowable 800 sqm lot sizes specified in Schedule 7 to the Neighbourhood Residential Zone, gazetted on 6 March 2020. It is noted that despite the application being lodged with Council prior to the gazettal date there is no transitional provision in the Moorabool Planning Scheme which would enable Council to consider approving the application. Furthermore, it is noted that when the application was submitted on 6 December 2019, Amendment C88 has already progressed through the Panel Hearing process, been adopted by Council and submitted to the Minister for Planning for approval. The applicant was aware of the Amendment C88's status when submitting the application. The proposal explicitly contravenes the Moorabool Planning Scheme and is therefore recommended for refusal.

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 Southern Rural Water	Consent with conditions in accordance with Council's MoU with these authorities.
Infrastructure	Consent with conditions.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY


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

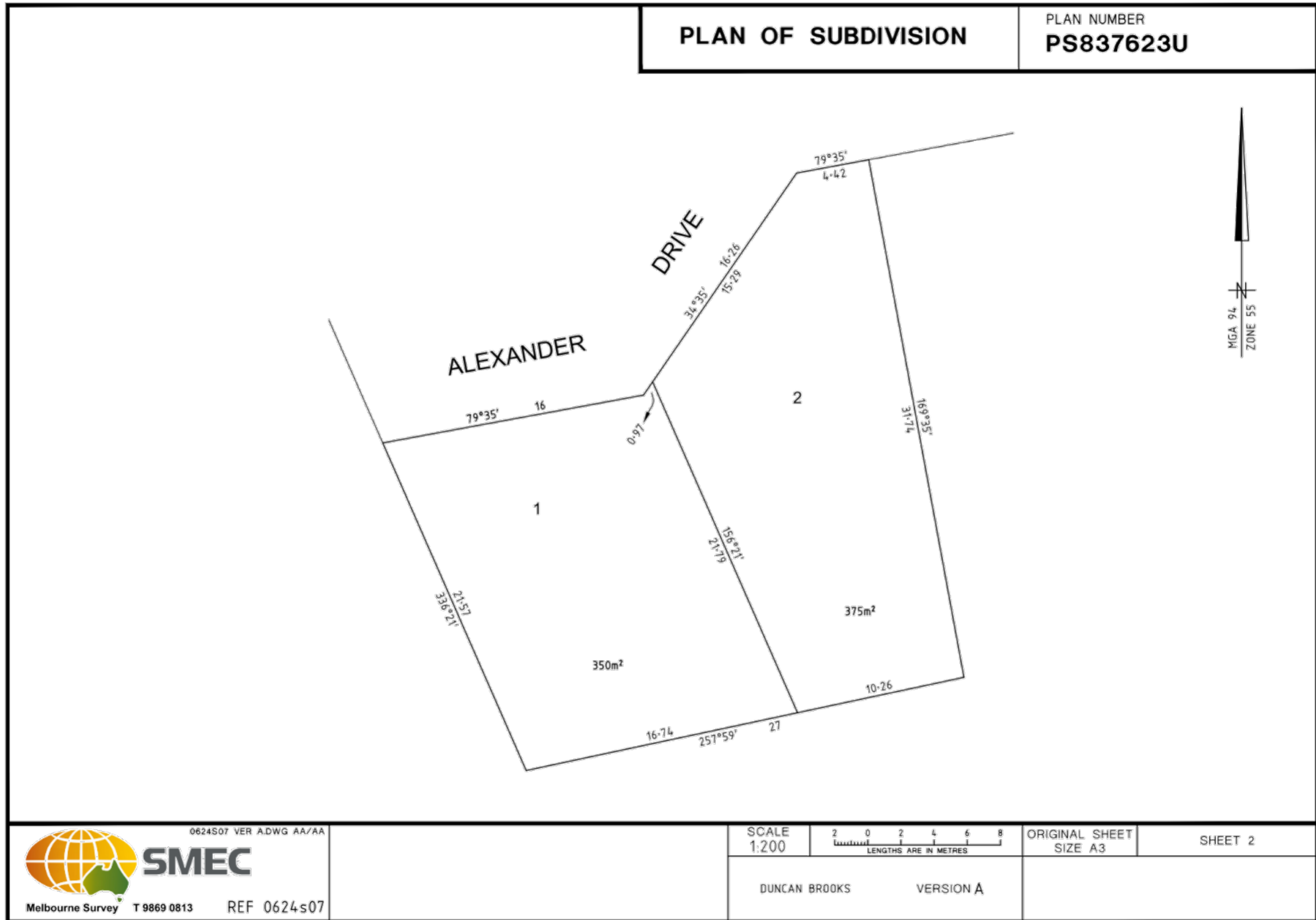
OPTIONS

- Issue a Refusal to Grant a Permit in accordance with the grounds in the recommendation of this report; or
- Issue a Refusal to Grant a Permit with amendments to the grounds in the recommendation of this report.

CONCLUSION

Overall, the proposal is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular the NRZ7 given that the proposed lot sizes do not meet the minimum 800 sqm lot size requirement.

PLAN OF SUBDIVISION		LUV USE ONLY EDITION	PLAN NUMBER PS837623U	
<p style="text-align: center;">LOCATION OF LAND</p> <p>PARISH: GORONG</p> <p>TOWNSHIP: -</p> <p>SECTION: 2</p> <p>CROWN ALLOTMENT: 19 (PART)</p> <p>CROWN PORTION: -</p> <p>TITLE REFERENCES: Vol.12079 Fol.025</p> <p>LAST PLAN REFERENCE/S: PS713325V (LOT 7)</p> <p>POSTAL ADDRESS: 15 ALEXANDER DRIVE (At time of subdivision) BALLAN, 3342</p> <p>MGA94 Co-ordinates (of approx centre of land in plan) E 253 890 N 5 834 560 ZONE 55</p>		<p>COUNCIL NAME: MOORABOOL SHIRE COUNCIL</p>		
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON			
NIL	NIL			
NOTATIONS		<p>FOR CREATION OF RESTRICTION A AFFECTING LOTS 1 & 2 SEE SHEET 3.</p> <p>OTHER PURPOSE OF THE PLAN: REMOVAL OF DRAINAGE EASEMENT E-1 ON PS713325V AS AFFECTS LOT 1 ON THIS PLAN.</p> <p>GROUNDS FOR REMOVAL: MOORABOOL SHIRE COUNCIL PLANNING PERMIT No. PA2019126</p>		
<p>DEPTH LIMITATION DOES NOT APPLY</p> <p>STAGING This is not a staged subdivision. Planning permit No.</p> <p>SURVEY. THIS PLAN IS IS NOT BASED ON SURVEY. THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s): PM12 & PM67 (GORONG) PROCLAIMED SURVEY AREA: 148</p> <p style="text-align: center;">2 LOTS</p>				
EASEMENT INFORMATION				
LEGEND A-Appurtenant Easement E-Encumbering Easement R-Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
 <p style="font-size: small;">0624S07 VER A.DWG AA/AA</p> <p style="font-size: x-large; font-weight: bold;">SMEC</p> <p style="font-size: x-small;">Member of the Urbana Jurong Group</p>		<p>SURVEYOR REF: 0624s07</p> <p>DUNCAN BROOKS VERSION A</p>		<p>ORIGINAL SHEET SIZE: A3</p> <p>SHEET 1 OF 3</p>



PLAN OF SUBDIVISION

PLAN NUMBER
PS837623U

CREATION OF RESTRICTION A

The following restriction is to be created upon registration of Plan of Subdivision PS 837623U by way of restrictive covenant and as a restriction as defined in the Subdivision Act 1988.

Land to benefit: Lots 1 & 2

Lots to be burdened: Lots 1 & 2

Description of Restriction

The registered proprietor or proprietors for the time of being of any burdened Lot on the Plan of Subdivision shall not:

Building Envelopes

(a) Unless consent has been granted by the Responsible Authority, build or allow to be built on the Lot any building outside the Building Envelope Plan below except for:

(i) the following permitted encroachments into the approved front street setback by up to 1500mm:-

- a porch, portico, balcony or verandah (no more than 3.60m in height)
- a masonry chimney
- a pergola
- an eave, fascia or gutter; and

(ii) the following permitted encroachments into the approved side and rear setbacks by up to 500mm:-

- a porch or verandah
- a masonry chimney
- a pergola
- an eave, fascia or gutter
- a sunblind
- a screen (to the extent needed to protect a neighbouring property from direct view)
- Flues and pipes
- Domestic fuel tanks and water tanks
- Heating and Cooling equipment and other services

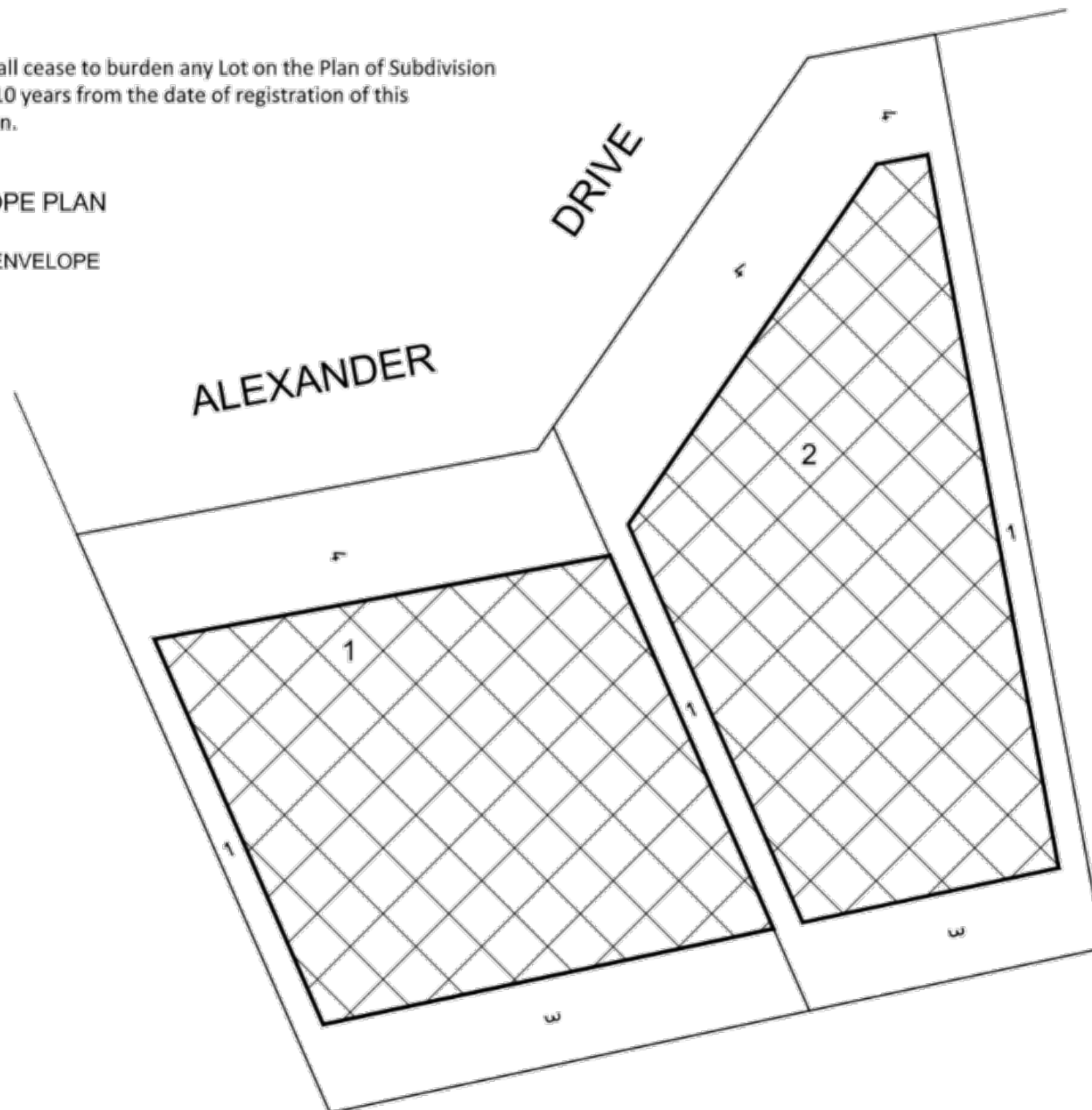
Expiry

The restriction shall cease to burden any Lot on the Plan of Subdivision with effect from 10 years from the date of registration of this Plan of Subdivision.

BUILDING ENVELOPE PLAN



BUILDING ENVELOPE



SMEC

Melbourne Survey T 9869 0813

REF 0624s07

0624S07 VER A.DWG AA/AA

SCALE



ORIGINAL SHEET
SIZE: A3

SHEET 3

DUNCAN BROOKS

VERSION A

7.8 PA2019261 - USE OF AN EXISTING DWELLING AS A RETAIL PREMISES (CAFE) AT 15 MARTIN STREET, BLACKWOOD

Author: Victoria Mack, Statutory Planner

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

Attachments: 1. Sketch plans of cafe proposal

APPLICATION SUMMARY

Permit No: PA2019261

Lodgement Date: 11 November 2019

Planning Officer: Victoria Mack

Address of the land: 15 Martin Street, Blackwood

Proposal: Use of an existing dwelling as a retail premises (café)

Lot size: 2000sqm

Why is a permit required? Clause 32.05-2, Township Zone, Use of retail premises (café)

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 subject to the following conditions:

1. Before the use and/or development starts, plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must show:
 - a) A Bushfire Management Plan in accordance with the Country Fire Authority's condition 18.
 - b) Details of the signage proposed including the number of signs, their dimensions, total area, the wording and colour scheme. Total signage area cannot exceed 3 sqm.
 - c) A detailed floor plan and site plan showing all the operational areas within, and outside the building including car parking, drawn to scale with accurate dimensions. The designated car parking area must show all five car spaces.

Unless otherwise approved in writing by the Responsible Authority, all buildings and works are to be constructed and or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority prior to the commencement of the use.

General Conditions:

2. The approved hours of operation are between 9am and 4pm on Saturday and Sunday and Public Holidays.

3. The maximum number of patrons at any one time is 30.
4. Prior to the commencement of the use, Crown Allotments 10 and 11 Section B Parish of Blackwood must be consolidated in accordance with the *Subdivision Act 1988* and a new title issued by the Registrar of Titles.

Amenity:

5. 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.
 - (e) any other way.
6. The owner, occupier or 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.

Environmental Health:

7. The current onsite wastewater treatment system must be upgraded to an onsite waste water management system with the capacity to treat effluent to a minimum of 20/30/10 (BOD/Suspended Solids and Chlorination).
8. The wastewater management system including all effluent must be wholly contained within the property boundaries at all times.
9. The effluent disposal area must be kept free of buildings, driveways, vehicular traffic and services trenching.
10. All setback distances must be adhered to as dictated by Table 5 of the Code of Practice, Onsite Wastewater Management, EPA Publication Number 891.4.
11. A shallow surface water cut off drain or surface water diversion mound, must be provided on the high side of the disposal areas to divert any surface water flows around the effluent fields.
12. Subsurface Irrigation system must be installed to a depth of 150mm in situ or if the soil is of poor quality, imported good quality topsoil may be required, with a 1m spacing in between lines.
13. The owner must maintain all drainage lines at all times to divert surface water and subsurface water clear of the effluent disposal field.
14. A commercial size grease trap must be installed by a certified plumber.
15. The kitchen must comply with Food Standards Code 3.2.3 Food Premises and Equipment with regards to design and fit-out.
16. Plans are required to be submitted to Environmental Health for assessment against the Food Standards Code. The plans to be submitted must be drawn to a scale not less than 1:100 and clearly show the premises layout, fixtures, fittings and equipment. A description of materials to be used for all surfaces including floors, walls, benches etc must also be provided.

Country Fire Authority:

17. The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible space, water supply and access, must be maintained to the satisfaction of the Responsible Authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.
18. Before the development starts, a bushfire management plan must be submitted to and endorsed by the Responsible Authority. The plan must show the following bushfire mitigation measures, unless otherwise agreed in writing by the CFA and the Responsible Authority:

- a) **Defendable Space**

Show an area of defensible space to the property boundaries where vegetation (and other flammable materials) will be modified and managed in accordance with the following requirements:

- Grass must be short cropped and maintained during the declared fire danger period.
- All leaves and vegetation debris must be removed at regular intervals during the declared fire danger period.
- Within 10m of a building, flammable objects must not be located close to the vulnerable parts of the building.
- Plants greater than 10cm in height must not be placed within 3m of a window or glass feature of the building.
- Shrubs must not be located under the canopy of trees.
- Individual and clumps of shrubs must not exceed 5 sqm in area and must be separated by at least 5m.
- Trees must not overhang or touch any elements of the building.
- The canopy of trees must be separated by at least 5m.
- There must be a clearance of at least 2m between the lowest tree branches and ground level.

- b) **Construction Standard**

Nominate a minimum Bushfire Attack Level of BAL 19 that the building will be designed and constructed.

- c) **Water Supply**

Show 5,000 litres of effective water supply for firefighting purposes which meets the following requirements:

- Be stored in an above ground water tank constructed of concrete or metal.
- Have all fixed above ground water pipes and fittings required for firefighting purposes must be made of corrosive resistant metal. Include a separate outlet for occupant use.

Western Water:

19. A wastewater treatment system that produces wastewater to a minimum standard of 20/30/10 (BOD/suspended solids/E.Coli) must be installed to the satisfaction of the Council's Environmental Health Officer and Western Water to treat all sullage and sewage waste on site.
20. Wastewater is to be dispersed to the satisfaction of Council's Environmental Health Officer and Western Water using methods that will prevent waste and treated waste from discharging from the property at all times.
21. The effluent system must be maintained by a suitably qualified person in accordance with the manufacturer's specifications and EPA requirements.
22. The wastewater effluent being released from the treatment facility must be monitored annually to ensure compliance with the 20/30/10 standard.
23. Reports on water quality and maintenance must be submitted to the Responsible Authority at the completion of each maintenance period. This report must be made available to Western Water on request.
24. The Owner shall meet the costs of the inspections and reports referred to in Condition 23.
25. The owner shall carry out such works including replacing effluent treatment, storage pumping and disposal systems within the time specified to do so by the Council's Environmental Health Officer or Western Water to cease and prevent waste and treated waste from discharging from the property.
26. If the wastewater program proves to be unsustainable, the land holder must immediately rectify the sewerage disposal system.
27. The owner shall have the wastewater treatment system desludged at least once every three years and evidence of this fact shall be provided in the annual written report *referred* to in condition 22.
28. The effluent disposal field must be protected by being isolated from any building, driveway, livestock, vehicles or permanent recreational area that could render it unavailable in the future and should be planted with suitable grasses that will aid in moisture removal.
29. Stormwater is to be managed in a way to minimise risk to erosion of the surrounding land. No stormwater should be allowed to move into the effluent disposal field.

Parking and Access

30. Before the use or occupation of the development starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
 - a) Constructed.
 - b) Properly formed to such levels that they can be used in accordance with the plans.
 - c) Surfaced with an all-weather-seal coat.
 - d) Drained.
 - e) Line marked to indicate each car space and all access lanes.
 - f) Clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the Responsible Authority.

- g) A minimum of 5 on site car spaces must be provided
- h) Car spaces, access lanes and driveways must be kept available for these purposes at all times.

Advertising Sign:

- 31. The location, design, content, colours and materials of all advertising signs must not be altered without the written consent of the Responsible Authority.
- 32. The advertising signs must be not contain any moving parts or flashing lights.
- 33. The permit for signage expires 15 years from the date of issue.

Permit Expiry:

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

Permit Note:

- 35. A permit will be required to register the kitchen under the *Food Act 1984*.
- 36. A separate permit is required from Council's Community Safety for seating placed on the road side outside of the title boundary.
- 37. The Bushfire Management Plan (BMP) referred to CFA is for a proposed shed and is separate to this application. Hence a BMP showing the information above is required to be submitted to the Responsible Authority for endorsement. To assist, a Bushfire Management Plan template (Template 3) can be found on the CFA website: <https://www.cfa.vic.gov.au/plan-prepare/bushfire-management-plan>.

CFA also recommend that an Emergency Management Plan is developed for the Cafe to identify the risks and procedures in an emergency (in particular a bushfire). If you wish to discuss this matter in more detail, please do not hesitate to contact the Fire Safety Team on (03) 5329 5570.

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

POLICY IMPLICATIONS

The Council Plan 2017-2021 provides as follows:

Strategic Objective 3: Stimulating Economic Development**Context 2A: Built Environment**

The proposal is not provided for in the Council Plan 2017-2021 and can be actioned by utilising existing resources.

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 – Victoria Mack

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

EXECUTIVE SUMMARY

Application referred?	Referred to Country Fire Authority, Central Highlands Water, Southern Rural Water, Western Water and to Council's Environmental Health and Infrastructure Departments.
Any issues raised in referral responses?	Water authorities required further information in relation to the waste water treatment system. This was provided and they, as well as Environmental Health, consented to the application with conditions that the existing older style septic on the site was to be replaced. The Country Fire Authority required a Bushfire Management Plan, but they have made this a condition of any permit issued.
Preliminary concerns?	Nil.
Any discussions with applicant regarding concerns?	Range of discussions with applicant about referral authority requirements and related matters including objections.
Any changes made to the application since being lodged?	No.

Brief history.	<p>The current owner has advised that:</p> <p><i>Lerdies</i> Restaurant at 15 Martin Street first opened in 1987 and continued to operate variously as a wine bar, fine dining restaurant, pizza place and casual eating until 2012. The premises had a liquor licence and seated 85 people utilising the house and the garden where live bands would play. Bands and solo performers also played inside the building particularly during its wine bar phase where many international artists played.</p> <p>Between 2012 (after the restaurant closed) the premise was turned into an antique centre operating Friday Saturday and Sunday and also public holidays. This continued until it was sold in 2015 to the current owner for use as a dwelling.</p>
Previous applications for the site?	<p>PA2007039 being for Variation to Existing On-Premises Liquor Licence issued on 27/06/2007;</p> <p>PA2008172 being for the Development of a Verandah Ancillary to an Existing Restaurant issued on 22/10/2008; and</p> <p>PA2019218 being for the Development of Outbuildings Ancillary to Existing Dwelling (Workshop, Tool Shed, Carport & Studio).</p>
General summary.	<p>The applicant, who is the owner and resident of the dwelling on the property, wishes to recommence the operation of a café on the site specifically on weekends to provide food and drink for Blackwood's weekend visitors and tourists.</p> <p>The café would serve breakfast, morning tea, lunch and afternoon tea from a room of the house (sunroom) and with access to the rear deck with pretty views to the west. It is proposed to also have tables on the deck and at the front of the building on the footpath (weather and relevant footpath dining permits permitting).</p> <p>A liquor licence is not proposed.</p> <p>The owner has purchased a portable food van which would be located on the west side of the house where food would be prepared in a dedicated commercial grade "kitchen" for the café.</p> <p>The maximum number of patrons (seating) would be 30, and the hours of operation would be 9am – 4pm on both Saturday and Sunday as well as public holidays.</p> <p>Signs would be erected at the front of the building and on the vacant lot on the north in the same ownership with wording along the lines of "The Happy Café - Open weekends and public holidays 9am – 4pm".</p>

Summary Recommendation

That, having considered all relevant matters as required by the *Planning and Environment Act 1987*, Council issues a Notice of Decision to Grant a Planning permit subject to conditions.

SITE DESCRIPTION

The site is located on the west side of Martin Street, Blackwood, approximately 32m south of the intersection with Golden Point Road, the Blackwood Hotel and the beginning of Blackwood's small shopping strip. The site slopes down from the frontage on Martin Street west towards the Greendale Trentham Road and overlooking at least two vacant lots.

The land to the north of the site is a vacant lot in the same ownership. To the south is a dwelling. To the east across Martin Street is public land, then Byres Road and then further to the east is the Blackwood Hall.

The subject site is currently used for a dwelling but prior to March 2015 the building was variously used as a restaurant known as "Lerdies", and also as a retail premise.

The existing owner furthermore runs a single room bed and breakfast from the dwelling which opened in 2015. In 2017, another room in the dwelling was developed as the Blackwood Hat Shoppe, which is allied with the Gordon Hat Shoppe. This opens on weekends between 11am and 4pm and is considered to be ancillary to the bed and breakfast.

The site has an existing septic system.

An aerial photo of the site is shown below:

**PROPOSAL**

It is proposed to use one room of the existing dwelling, referred to as the sunroom, for a café which would have space for approximately three tables seating a total of 12 patrons. Additionally, the sun room has a doorway to a west facing outside deck which would allow for an additional three tables to seat a further 12 patrons, weather permitting. The application has also included two tables at the front of the dwelling on the footpath which could seat another 6 patrons. This would be subject to a separate Local Laws permit for outdoor dining.

The dwelling has two toilets one of which would meet the requirements of a disabled toilet.

A disabled parking bay would be located on the south side of the dwelling and disabled access would be available through a south side entrance door.

Four on-site car spaces would be provided on the northern side of the dwelling on the separate vacant lot in the same ownership.

The café would serve breakfast, morning tea, lunch and afternoon tea. A liquor licence is not being sought and the use of a licenced premises has not been requested.

The owner has purchased a portable food van which is to be located on the west side of the house where food would be prepared in a dedicated commercial grade “kitchen” for the café.

The maximum number of patrons is proposed to be 30 (24 seats on site and 6 seats on the footpath (road reserve) which would require an additional approval under Council’s Local Laws.

The hours of operation would be 9am – 4pm on both Saturday and Sunday and public holidays.

Signs are proposed including one at the front of the building hanging from the front verandah and one on the vacant lot on the north, on the vacant lot in the same ownership.

The wording suggested was “The Happy Café - Open weekends and public holidays 9am – 4pm”. No specific signage details were provided.

Background to Current Proposal

The site was used as a restaurant over many years (1987 – 2012) and mostly traded as ‘Lerdies’ restaurant.

PERMIT HISTORY

A search of Council records reveals that the following permits have been issued on the site:

- PA2007039 being for Variation to Existing On-Premises Liquor Licence issued on 27/06/2007.
- PA2008172 being for the Development of a Verandah Ancillary to an Existing Restaurant issued on 22/10/2008.
- PA2019218 being for the Development of Outbuildings Ancillary to Existing Dwelling (Workshop, Tool Shed, Carport & Studio).

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners. Two objections were received both of which are the proprietors of 21 Martin Street, who operate the retail premises known as *Martin Street Coffee*. It is understood that this business does not operate on weekends.

Both objectors stated that in-principle they were supportive of the application and acknowledged that it would be good for the township. However, their concerns generally related to the suitability of the dwelling at 15 Martin Street to meet the standards required such that the use of a café does not disrupt the amenity of neighbours. Their comments are summarised below.

It is also noted that a petition of support with 280 signatories was received by Council. This petition requested a planning permit be granted for a cafe.

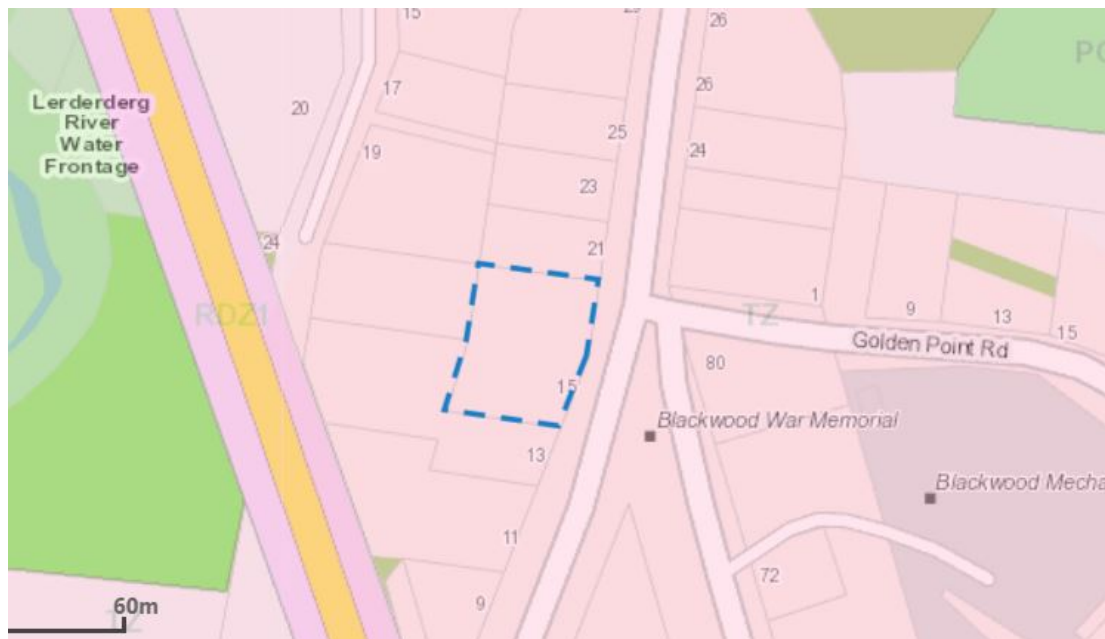
SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
Privacy of neighbours with multiple uses occurring at 15 Martin Street: the residence; the café; bed and breakfast; and Hat Shoppe.	
Officer's Response: Permit conditions can protect the amenity of nearby residents	
Waste water should be retained on one lot only and if this cannot be achieved then the lots should be consolidated. The vacant lot, in the same ownership, could be sold at any time.	EPA Victoria - Code of practice on-site waste water management (publication 891)
Officer's Response: The application was referred to the relevant water authorities. Western Water, Southern Rural Water and Council's Environmental Health all determined that the older style septic on the property needed to be replaced with a Waste Water Treatment System that produces wastewater to a minimum standard of 20/30/10 (BOD/suspended solids/E.Coli). This can be satisfied by a permit condition.	
The application does not mention a grease trap which would be required with the use of the cafe.	
Officer's Response: The requirement for a grease trap would be dealt with by Council's Environmental Health Department under the relevant legislation.	
Loss of privacy particularly due to the use of rear outdoor space. This is not being respectful of the potential impact on neighbour's own rear outdoor space: peace, privacy, comfort and rural lifestyle.	
Officer's Response: The impact of a use or development on local amenity in a small township is a planning consideration. The site for the café is within the township boundaries where there are several commercial businesses operating including the Hotel.	
As there is no application for a Liquor licence	Clause 52.29 Licenced Premises
Officer's Response: No liquor licence or use of a licenced premise has been proposed as part of this application.	
There are no safety plans referenced in the application.	
Officer's Response: Building and Health regulations can control safety issues	
The building does not appear sound for a food premises. There are also chickens in the yard which will attract vermin.	Council's Environmental Health
Officer's Response: These concerns will be addressed by Environmental Health's regulations.	
Can a commercial kitchen in a temporary food van remain as a permanent fixture for the café? Does this meet the requirements for food safety and storage?	Council's Environmental Health
Officer's Response: These concerns will be addressed by Environmental Health's regulations.	

LOCALITY MAP

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



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 17.01-1R Diversified economy - Central Highlands

Clause 17.04-1S Facilitating tourism

Clause 21.09-1 Small Towns and Settlements - Economic Development and Tourism - Blackwood

The proposal generally complies with the relevant sections of the PPF and LPPF

ZONE

Township Zone

In accordance with Clause 32.05-2, Section 2 of the Moorabool Planning Scheme a permit is required for a retail premises (café).

The purpose of the Township Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for residential development and a range of commercial, industrial and other uses in small towns.
- To encourage development that respects the neighbourhood character of the area.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

OVERLAYS

Environmental Significance Overlay, Schedule 1

In accordance with Clause 42.01-2 of the Moorabool Planning Scheme a permit is required under this overlay as buildings or works to construct the car parking spaces.

Design and Development Overlay, Schedule 2

In accordance with Clause 42.01-2 of the Moorabool Planning Scheme a permit is not required under this overlay for buildings or works to construct the car parking spaces.

Vegetation Protection Overlay, Schedule 1

In accordance with Clause 42.01-2 of the Moorabool Planning Scheme a permit is not required under this overlay as no vegetation would be removed.

Bushfire Management Overlay

In accordance with Clause 44.06 of the Moorabool Planning Scheme a permit is required for buildings and works associated with the use of land for a retail premises. However, while no buildings or works are occurring on the site it was considered that a referral to the Country Fire Authority was required.

Relevant Policies

Planning Scheme Amendment C78 - Small Towns and Settlements Strategy

Planning Scheme amendment C78 was gazetted into the Moorabool Planning Scheme on 31 May 2018 with Clause 21.09 added to the Local Planning Policy Framework.

Clause 21.09 highlights some specific directions for Blackwood including:

- Economic Development and Tourism – Blackwood.
- Encourage any future commercial/retail development to establish in the existing central area, especially those uses which draw people in from out of area.

PARTICULAR PROVISIONS

Clause 52.05 Signs

The Township Zone is in Category 3 for signs under this Clause 52.05. Category 3 states that a permit is required to display a Business Identification sign. There is no size limits specified within category 3 for business identification signs.

The application has specified that signs would be required for the café but details were not complete. This can be satisfied through the submission of revised plans. It is recommended that Council limits the total area of all signs on the premises to 3 sqm. This maximum limit is appropriate to provide adequate business identification while not dominating or cluttering the existing commercial streetscape in Blackwood with signage.

Clause 52.06 Car parking

Table 1 of Clause 52.06-5 specifies the number of car spaces required for a range of uses. The use listed as food and drink premise which requires 4 car spaces for each 100 sqm of leasable floor area. The application provides for one disabled space and an additional four car spaces on the vacant lot to the north in the same ownership

It is estimated that the leasable floor area is approximately 75 sqm but the plans did not provide dimensions. The five car spaces would provide adequate car parking on site for this development. It should be noted that these car parks will also be used for the current dwelling and bed and breakfast operation. It is however, not considered that a permit is required for a reduction in car spaces.

DISCUSSION

The application is to use an existing dwelling as a retail premises (café). Between 1987 and 2012 the building was used as variously as a food and drink premises including *Lerdies* restaurant. Between 2012 and 2015 the building was used as a retail premises to sell antiques until the current owner purchased the building to use as a dwelling.

The owner has advised that the building did have a commercial kitchen which was destroyed when a tree fell onto it.

The owner is not planning to redevelop this kitchen and has purchased a portable commercial grade food van which she has located on the south side of the building to prepare meals for the café.

The hours of operation would be between 9am and 4pm on Saturday and Sunday with a maximum of 30 patrons (seats). A licenced premise to allow for the on-site consumption of liquor is not proposed.

The application was referred to Central Highlands Water who consented to the application without conditions.

However, Western Water and Council's Environmental Health both required that the existing older style septic system be completely replaced with a new wastewater treatment system. They maintain that the existing septic system, which they believe is at least 35 years old, has well exceeded its functional life expectancy.

The application was referred to the Country Fire Authority who consented to the application but with a condition that before the development starts, a bushfire management plan must be submitted to and endorsed by the Responsible Authority. The plan must show bushfire mitigation measures listed in the conditions, unless otherwise agreed in writing by the CFA and the Responsible Authority.

The application was referred to Council's Infrastructure Department who consented to the application, also confirming that the car parking requirements were considered to be satisfactory.

The application was advertised with two objections received. The grounds of objection relates to the use of the outdoor area (deck) and its impact of on the amenity of neighbours. They also questioned such matters as the septic system, waste water management and grease traps, the chooks in the back yard attracting vermin, the suitability of the building for the uses being proposed and fire safety plans.

It is considered that a number of the concerns raised by the objectors will be addressed by permit conditions. These would include: that the waste water treatment system is replaced; that noise and other emissions from the site must not affect the amenity of the neighbourhood; that a bushfire safety plan should be provided; and bushfire mitigation measures must be implemented.

A petition with 280 signatories was also received by Council in support of the application to open a weekend café in Blackwood. The petition generally stating that it would be very beneficial to town, both for locals and visitors.

On balance it is considered that the operation of a weekend café to provide food and drink services to locals, visitors and tourists would be beneficial to the small township and meets zone objective of promoting commercial activity.

Clause 21.09 of the Local Planning Policy Framework in relation to Economic development and tourism aims to: *Encourage any future commercial/retail development to establish in the existing central area, especially those uses which draw people in from out of area.*

It is recommended that the application is supported with conditions.

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 Southern Rural Water	Consent with conditions. No response after repeated requests. Referral sent 14 November 2019.
Central Highlands Water CFA	Consent with conditions. Consent with conditions.
Infrastructure Environmental Health	Consent with conditions. Consent with conditions.

FINANCIAL IMPLICATIONS

There is no financial implication associated with an approval to grant a permit.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation of approval of this application 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.

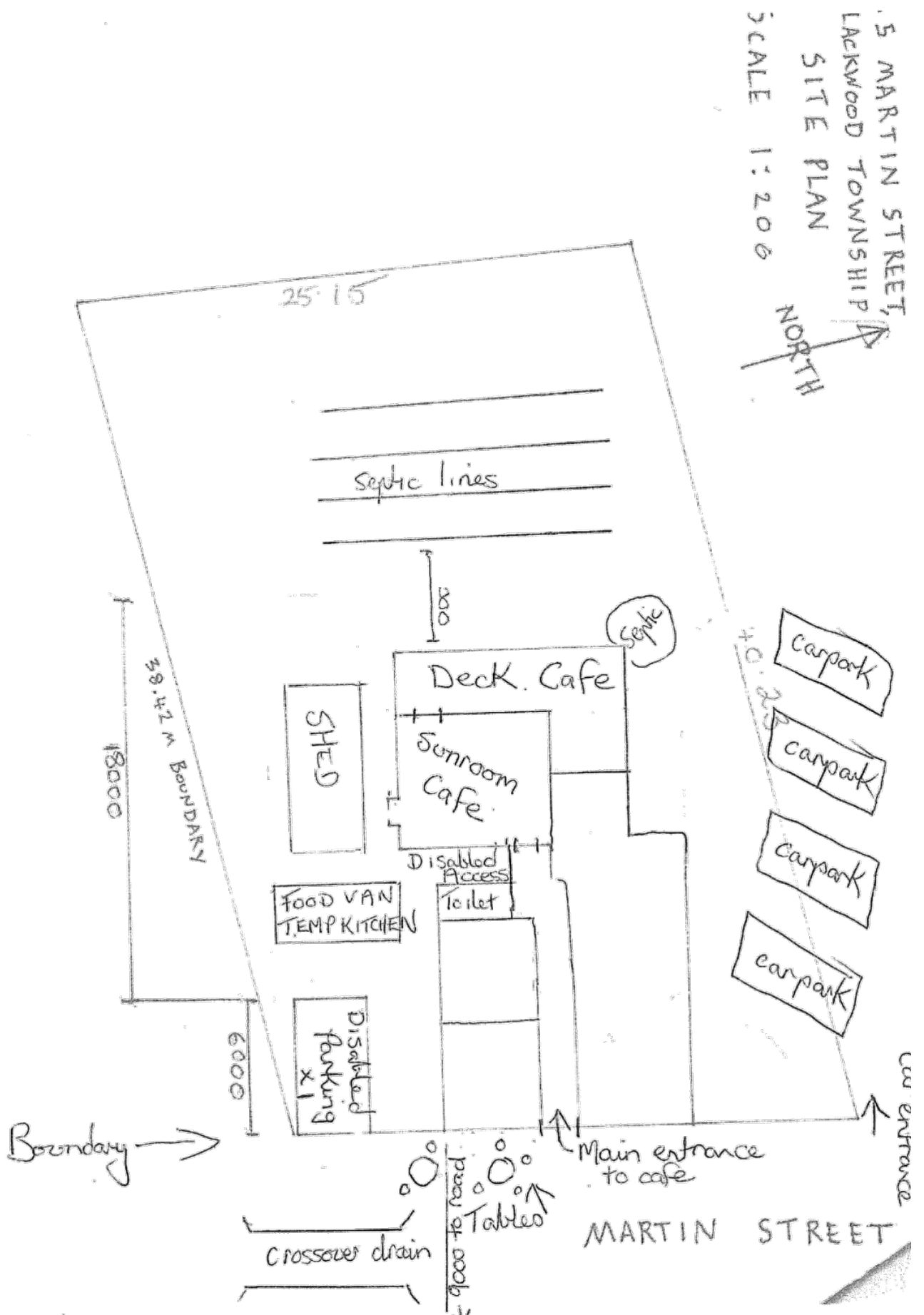
OPTIONS

Council could consider the following options:

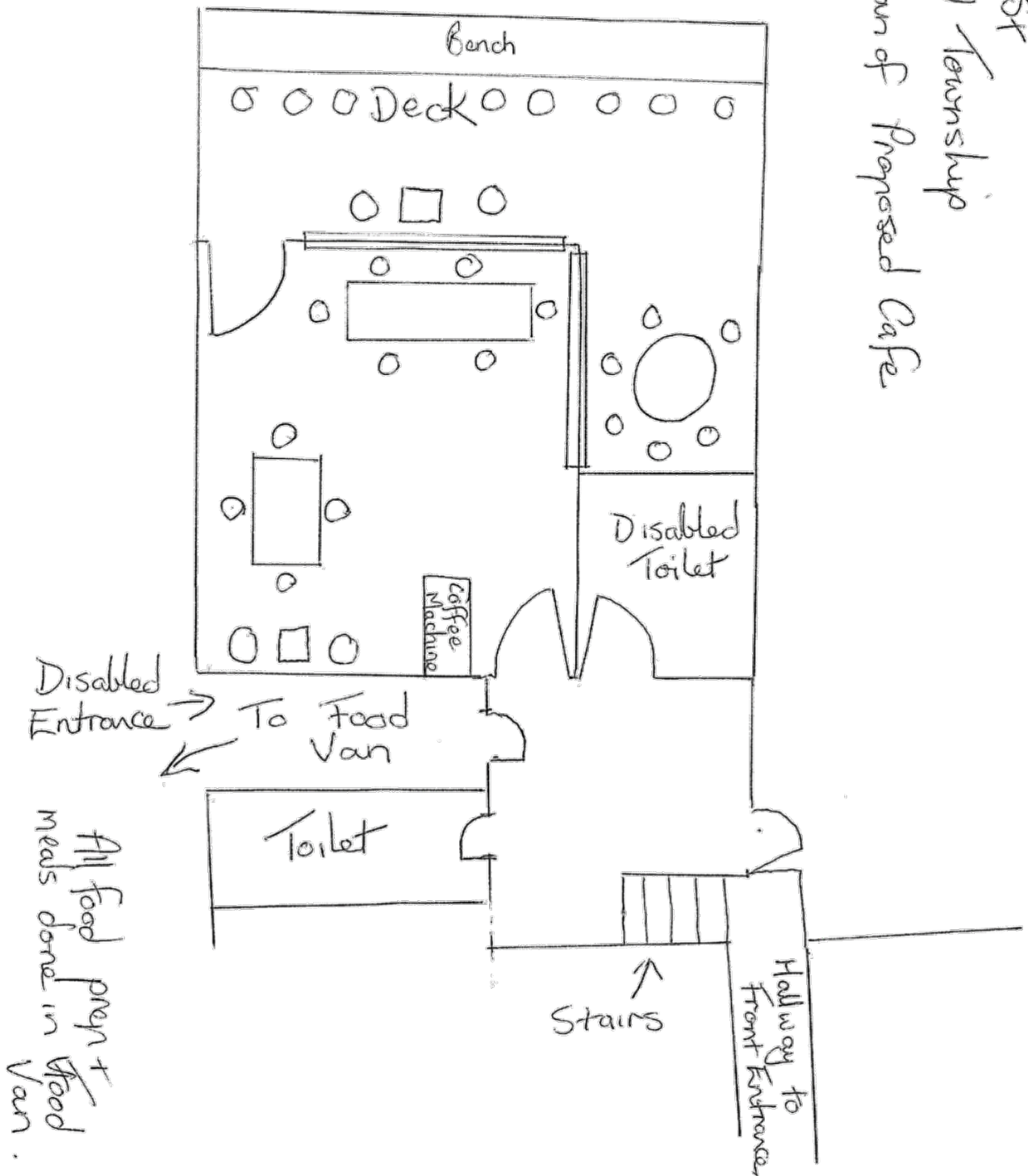
- Issue a Notice of Decision to Grant a permit in accordance with the conditions recommended in this report; or
- Issue a Notice of Decision to Grant a permit with varied conditions in this report; or
- Issue a Refusal to grant a permit.

CONCLUSION

The application is to meet an identified dearth of food and beverage availability at weekends in the small township of Blackwood. While the conditions contained in this report will require the applicant to provide revised plans and undertake adequate bushfire mitigation measures in bushfire prone area, it is considered that the application is worthy of Council support.



15 Martin St
Blackwood Township
Internal Plan of Proposed Cafe



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