



AGENDA

Development Assessment Committee Meeting

Wednesday, 21 May 2025

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

Date: Wednesday, 21 May 2025

Time: 6.00pm

Location: Council Chamber, 15 Stead Street, Ballan & Online

**Henry Bezuidenhout
Executive Manager Community Planning & Development**

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1 OPENING**2 RECORDING OF MEETING**

In accordance with Moorabool Shire Council's Governance Rules, the meeting will be livestreamed.

3 PRESENT**4 APOLOGIES****5 CONFIRMATION OF MINUTES****6 MATTERS ARISING FROM PREVIOUS MINUTES****7 PRESENTATIONS/DEPUTATIONS****8 DISCLOSURE OF CONFLICTS OF INTERESTS**

Conflict of interest laws are prescribed under the *Local Government Act 2020* (the Act) and in the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations). Managing conflicts of interest is about ensuring the integrity and transparency of decision-making.

The conflict of interest provisions under the Act have been simplified so that they are more easily understood and more easily applied. The new conflict of interest provisions are designed to ensure relevant persons proactively consider a broader range of interests and consider those interests from the viewpoint of an impartial, fair-minded person.

Section 126 of the Act states that a Councillor has a conflict of interest if they have a general conflict of interest or a material conflict of interest. These are explained below:

- A Councillor has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the member's private interests could result in them acting in a manner that is contrary to their public duty as a Councillor.
- A Councillor has a material conflict of interest in a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

A relevant person with a conflict of interest must disclose the interest in accordance with Council's Governance Rules and not participate in the decision-making process on the matter. This means the relevant person must exclude themselves from any discussion or vote on the matter at any Council meeting, delegated committee meeting, community asset committee meeting or, if a Councillor, any other meeting conducted under the auspices of the Council. The relevant person must also exclude themselves from any action in relation to the matter, including an action taken to implement a Council decision, for example, issuing a planning permit.

9 COMMUNITY PLANNING REPORTS

9.1 PA2021168-1 PLANNING PERMIT AMENDMENTS TO THE REMOVAL OF VEGETATION, DEVELOPMENT AND USE OF A CHILDCARE CENTRE AND REDUCTION OF FIVE CAR SPACES AT 14 STEAD STREET BALLAN

Author: Mark Lovell, Coordinator Planning Services
Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development
Attachments: 1. Amended Landscape Plan and Play Areas (under separate cover)

APPLICATION SUMMARY

Permit No: PA2021168-1
Lodgement Date: 24 September 2024
Planning Officer: Fatima Goreishi
Address of the land: 14 Stead Street Ballan
Proposal: Amended plans and permit conditions to an approved use and development of a Childcare Centre
Lot size: 2035sqm
Why is a permit required? Clause 32.10 - General Residential Zone Schedule 4 – Building and Works to a Section 2 land use

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Notice of Decision to Grant an Amended Planning Permit PA2021168-1 for removal of vegetation, development and use of a childcare centre and reduction of five car spaces at 14 Stead Street, Ballan based on the following amendments:

1. Replace condition 1(a) to (d) with new condition 1 (a).
 - (a) 1(a) No raised decking adjacent to the northern property boundary.
2. New Condition 4 under the subheading landscaping plans:
 - (a) 4. Within six months of the issue of the amended permit, the landscaping and decking areas must be undertaken and completed as shown on the endorsed plans and to the satisfaction of the Responsible Authority.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	No.
Notice in Moorabool Newspaper:	No.
Number of objections:	One.
Consultation meeting:	Discussions with the applicant and objector but no compromise achieved.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

Priority 2.1: Develop planning mechanisms to enhance liveability in the Shire

The proposal is not provided for in the Council Plan 2021 – 2025 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 130 of the *Local Government Act 2020*, officers providing advice to Council must disclose any interests, including the type of interest.

Executive Manager – Henry Bezuidenhout

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

Author – Mark Lovell

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

EXECUTIVE SUMMARY

Application referred?	Yes. Council's Development Infrastructure, Urban Design & Landscaping and Building Services.
Any issues raised in referral responses?	Council's Building Services has issued a building notice for works on site.
Preliminary concerns?	Location of the works adjacent to a sensitive residential interface.
Any discussions with applicant regarding concerns?	Yes, several discussions have been undertaken with the applicant.

Any changes made to the application since being lodged?	No.
Brief history.	The subject site comprises of an existing childcare centre. The building was completed however landscaping, fencing and an elevated deck area were constructed in breach of the endorsed plans.
Previous applications for the site?	PA2021168 was issued on 31 May 2022 for the removal of vegetation development and use of a childcare centre and reduction of five car spaces.
General summary.	<p>The proposed amendments have resulted in a raised deck area causing overlooking and amenity concerns to an adjacent residential property.</p> <p>The decking area can be relocated where there are no sensitive interfaces or removed completely. The revised play areas and landscaping works need to take into account a non-residential land use in a residential area and some further amendments can provide for an acceptable planning outcome.</p> <p>It is recommended to approve the amendment request for revised landscaping and fencing as constructed and request changes to the raised deck area.</p>
Summary of Officer's Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Notice of Decision to Grant an Amended Planning Permit PA2021168-1 for the removal of vegetation, development and use of a childcare centre and reduction of five car spaces at 14 Stead Street, Ballan subject to the amended conditions contained within this report.	

SITE DESCRIPTION

The site is in the General Residential Zone Schedule 4 (GRZ4). Surrounding land is also in the GRZ4 and comprises lots of similar size, or smaller, generally containing single story single dwellings within spacious garden settings. It is obliquely opposite the Moorabool Shire Council offices located in the south-west corner of the intersection. The site is located approximately 524m north-east of the Ballan railway station and approximately 360m south-east of the Ballan town centre.

The subject land is located at the north-east corner of the intersection of Stead Street with Steiglitz Street. The site is flat in topography and rectangular in shape. It has an area of approximately 2,057sqm.



Figure 1: Aerial photo of the subject site.

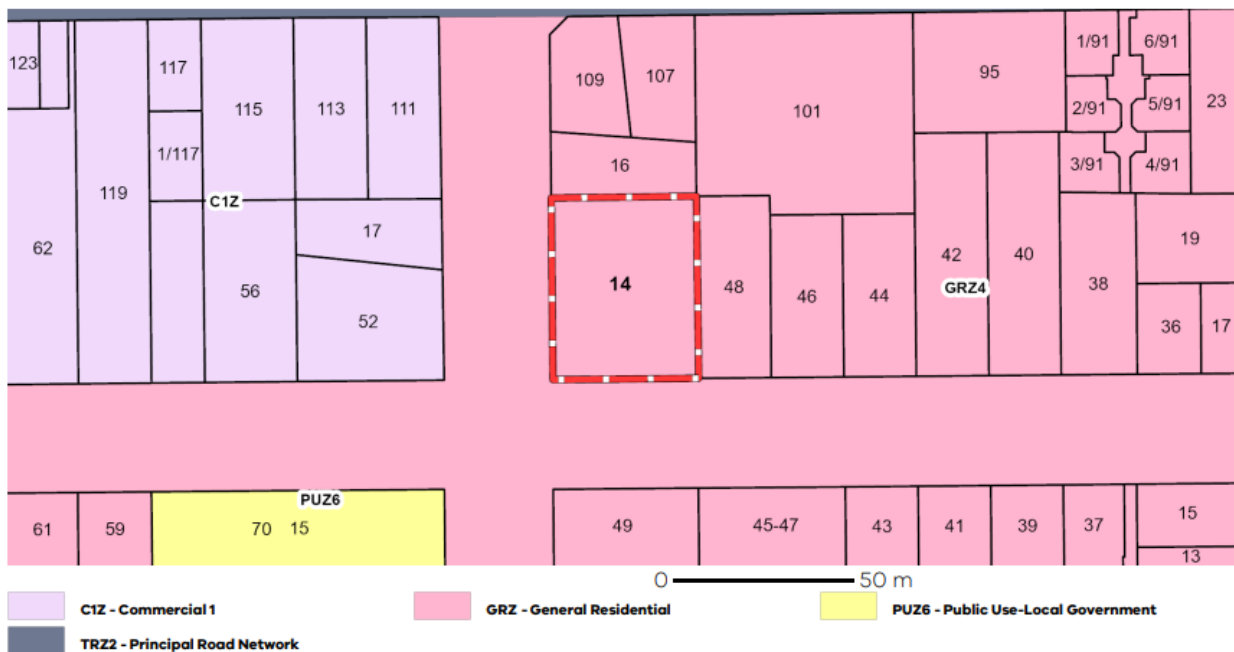


Figure 2: Zone Map.

PROPOSAL

It is proposed to amend Planning Permit PA2021168 as follows:

- Change the approved landscaping consisting of six canopy trees, two shade sails and one sand pit with surrounding grassed areas to;
 - Mixture of trees, shrubs and groundcovers including five Queensland Bottle Trees up to 18m in height and five Crepe Myrtle Trees.
 - Mixed surface treatments including artificial turf, concrete, rubber and pavers.
 - Raised timber decking 450mm above natural surface area with play slides.
 - Timber Arbors along walkways.
 - Timber pergola adjacent to the western property boundary.
- Change the western side fence (Stead Street frontage) consisting of 2.0m high timber fencing with steel pickets inserts to;
 - Colorbond clad fence 1.8m in height.

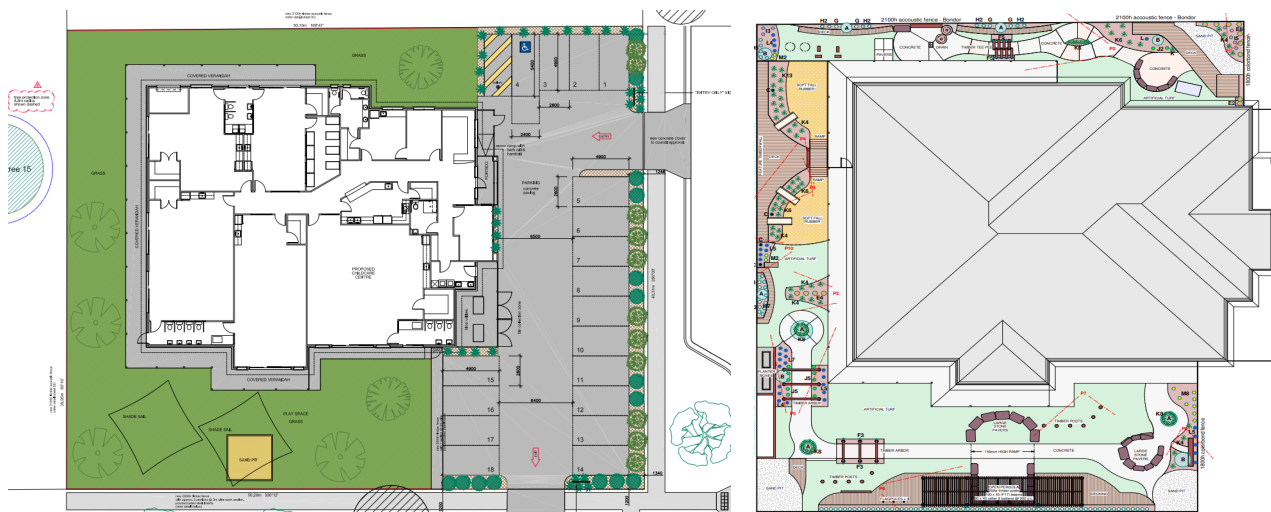


Figure 3: Original approved landscape plan (left) and the as constructed landscaping (right)

BACKGROUND TO CURRENT PROPOSAL

PA2021168 was approved in 2022 for the use and development of a childcare centre and was assessed in accordance with the Moorabool Planning Scheme provisions and the decision guidelines under the General Residential Zone Schedule 4.

The childcare centre on the site accommodates up to 102 children and the operating hours are from 6.00am to 6.00pm Monday to Friday.

EA2024058 was an enforcement file into non compliances with the endorsed plans and permit conditions. The applicant was required to seek permission for the works already undertaken on site without planning approval.

PUBLIC NOTICE

The amendment application was notified to adjoining and surrounding landowners.

One objection was received.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
<p>The landscaping plans clearly show a grassed area on the northern/shared boundary with no fixed play equipment or decking. The northern shared boundary is now the location of a 25 square metre x 13 metre deck which was never on the plans. The landscaping plans submitted and endorsed by the Authority show no play equipment or deck on the northern boundary. The endorsed plans states that "Prior to commencement of the use of the Childcare Centre all internal landscaping relating to the Childcare Centre operation areas to include: iii. Surface finishes of the outdoor play areas and pathways. iv. Fixed play equipment". Given the access of 102 children at any given time this means they can throw things over the fence, including clothing, food, toys, rubbish</p>	
<p>Officer's Response:</p> <p>The landscaping and play areas were not in accordance with the endorsed plans attached to Planning Permit PA2021168 and the applicant has now sought retrospective planning approval. The raised deck area is located next to an adjacent residential property and can cause overlooking and amenity impacts.</p>	
<p>The fence height is authorized to be 1.9m – this is mitigated by the fact that when the location was developed the childcare centres ground level was raised by an 800mm retaining wall, on top of which a raised deck has been built. This means the height of the fence is reduced to 1.5 meters. Consequently, staff can see into my property along the 13 meter length of the deck, and this also allows 102 children to throw things over the fence into my property. This impacts on my family's privacy and quality of life on a daily basis.</p>	

Officer's Response:

The maximum height of the northern boundary fence was limited to 2.1m within the original planning permit. The fence height adjacent to the raised deck finished surface level is 1.65m allowing overlooking into the adjacent property. Non-residential uses pursuant to Clause 32.08-14 must consider the design, height, setback and appearance of the proposed buildings and works. The proposed amendment to the deck area is not compatible to the surrounding residential properties and is situated in the wrong location.

PLANNING SCHEME PROVISIONS

Council is required to consider the Victoria Planning Provisions and give particular attention to the Municipal Planning Strategy (MPS) and the Planning Policy Framework (PPF).

The relevant clauses are:

- Clause 13.05-1S Noise Management
- Clause 13.07-1S Land Use Compatibility
- Clause 13.07-1L Land Use Compatibility in Moorabool
- Clause 15.01-1S Urban Design
- Clause 15.01-1L Urban Design
- Clause 15.01-2S Building Design
- Clause 15.01-2L-01 Building Design
- Clause 15.01-4S Healthy Neighbourhoods
- Clause 15.01-5S Neighbourhood Character
- Clause 15.01-5L Landscape and Neighbourhood Character
- Clause 19.02-2S Education Facilities

The proposed amendment does not comply with the relevant section of the MPS and PPF clauses outlined in the table below:

PPF	Title	Response
Clause 13.05-1S	Noise Management	Noise impacts have increased as an outcome of the constructed deck. The acoustic fence no longer serves its purpose to mitigate noise levels due to its height above the deck surface level.
Clause 13.07-1S	Land Use Compatibility	The proposed amendments to the landscaping areas are causing adverse amenity impacts to surrounding residents.
Clause 13.07-1L	Land Use Compatibility in Moorabool	The proposed amendments to the landscaping areas are causing adverse amenity impacts to surrounding residents.

ZONE**General Residential Zone – Schedule 4 (GRZ4)**

Pursuant to Clause 32.08-10 of the Moorabool Planning Scheme a permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.08-2.

The proposed amendments require planning approval.

OVERLAYS**Environmental Significance Overlay - Schedule 1 (ESO1)**

Pursuant to Clause 42.01-2 of the Moorabool Planning Scheme a permit is not required to building and works to site connected to reticulated sewerage system and stormwater is approved to legal point of discharge. The proposed amendments do not require planning approval under this overlay.

PARTICULAR PROVISIONS

No particular provisions apply for this application.

DISCUSSION

The proposed amendment for the works completed on site requires an assessment against the provisions outlined under the General Residential Zone Schedule 4 for a non-residential use and development including:

- The design, height, setback and appearance of the proposed buildings and works.
- The proposed landscaping.

The purpose of the zone encourages non-residential uses within sensitive areas to provide a reasonable scale and setback to residential properties.

The works completed on site are not compliant with the decision guidelines of the zone. The outdoor area has ample space to construct a raised deck area where it does not have an impact on the adjoining properties to the north and east.

The deck is constructed above ground level, leaving a 1.65m height of the constructed acoustic fence within the subject land that is adjacent to the deck surface level. This allows for overlooking to the secluded private open space to the northern adjacent dwelling. A design solution could be to raise the height of the boundary fence however, due to a change in topography, the common boundary fence with retaining wall has height of 3m when viewed from this property and is still subject to overlooking from the childcare centre. Increasing the fence height is not a viable amenity solution.

After several discussions were carried out with the applicant, they do not want to make changes to the deck area. The play area does not require raised deck, instead an alternative surface treatment at ground level and relocating the play slides in a different location can still provide adequate recreational needs to the childcare centre. The childcare centre is a non-residential land use and any changes to the approved plans or permit conditions should not increase amenity impacts. On this basis, there will be a requirement for amended plans to remove or relocate the decks area from the northern property boundary and for these additional works to be completed within 6 months of the issue of the amended planning permit.

The other changes to plant species and tree locations does not affect any adjacent properties and the lower boundary fence height adjacent to Stead Street road frontage still provides adequate privacy and security to the childcare centre. These components of the amendment request are considered acceptable on planning grounds.

The proposed amendments to the original plans have in part had an adverse impact on the adjoining residential properties. Council officers have conducted a site visit to review the impacts as outlined by the submission. The raised deck area should not be supported as part of the amendment request due to the adverse amenity impacts it has caused. Further revised plans can rectify this concern rather than outright refusal of the amendment request or enforcement proceedings for the works completed without planning approval.

The proposed amendments requires new permit conditions and endorsement of amended plans which can be done in accordance with Section 74 of the *Planning & Environment Act 1987*.

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
Council's Infrastructure	Consent.
Council's Building Services	No comment.
Council's Urban Design and Landscape	Consent.

FINANCIAL IMPLICATIONS

The recommendation of approval of this amendment application has no financial implications to Council.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation of approval of this amendment 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 the Development Assessment Committee if required.

OPTIONS

That the Development Assessment Committee could consider the following options:

- Issue a Notice of Decision to Amend a Planning Permit with the amended conditions as listed in the recommendation of this report; or

- Issue a Refusal to Grant an Amended Planning Permit. The Development Assessment Committee would need to consider what reasonable grounds there would be to refuse the application under the Moorabool Planning Scheme. This option may result in the applicant appealing the Committee's decision to VCAT.

CONCLUSION

The proposed amendments to the landscaping and fencing have in part caused amenity impacts on the adjoining residential properties. Due to the properties being located within a residential zone, the amenity of surrounding residents must be protected and not diminished through works undertaken without planning approval. It is recommended the amendment request be supported subject to revised plans which removes or relocates the elevated deck area.

9.2 PA2024175 - DEVELOPMENT AND USE OF A DWELLING AT 88 TIERNEYS ROAD, DUNNSTOWN

Author: Victoria Mack, Senior Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Farm Management Plan (under separate cover)
2. Dwelling Plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2024175

Lodgement Date: 8 November 2024

Planning Officer: Victoria Mack

Address of the land: 88 Tierneys Road, Dunnstown
Lot 2 on Plan of Subdivision PS 828029J

Proposal: Development and Use of a Dwelling

Lot size: 8.557ha

Why is a permit required? Clause 35.07 Farming Zone - Development and Use of a dwelling on a lot less than 40ha.
Clause 35.07 Farming Zone - Buildings and works within 100m of a waterway.
Clause 42.01 - Environmental Significance Overlay and Schedule 1 – Buildings and works.

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2024175 for the development and use of a dwelling, at 88 Tierneys Road, Dunnstown, based on the following grounds:

1. The proposed development and use of a dwelling does not comply with the objectives of the Farming Zone, Clause 35.07 of the Moorabool Planning Scheme.
2. The proposed development and use of a dwelling on a lot with an area of 8.557ha is not justified by the proposed agricultural use.
3. The proposed development and use of a dwelling does not comply with the Municipal Planning Strategy and Planning Policy Framework seeking protection of land for productive agricultural purposes from dwellings.
4. The proposed development and use of a dwelling does not represent the orderly planning of the area.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Not applicable.
Number of objections:	One.
Consultation meeting:	The applicant did not wish to participate in a consultation meeting.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

Priority 1.4: Develop a vision and provide opportunities for rural communities

The proposal is not provided for in the Council Plan 2021-2025 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 130 of the *Local Government Act 2020*, 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?	Yes. Council's Public Health and Development Infrastructure and Central Highlands Water.
Any issues raised in referral responses?	Central Highlands Water requested further information in relation to the proposed onsite wastewater management system.
Preliminary concerns?	Dwelling on an 8.557ha lot in the Farming Zone and in Policy Area 1 of the Rural Land Use Strategy, which includes most productive agricultural land in the Shire.

Any discussions with applicant regarding concerns?	The applicant has been informed of Council's concerns.
Any changes made to the application since being lodged?	The Farm Management Plan was amended slightly to include wider wind break plantations.
Brief history.	The site has been used for intensive agriculture. It has productive soil and access to a reliable water supply.
Previous applications for the site?	PA2003-308 being for the development and use of a dwelling which was refused by Central Highlands Water. PA2018308 being for a two-lot subdivision (boundary realignment issued on 21 January 2019 with Statement of Compliance issued on 13 August 2021. The subject site is Lot 2 of this subdivision.
General summary.	The subject site is located in Policy Area 1 of Council's Rural Land Use Strategy (highly productive soils). The application is for a dwelling in association with a calf rearing enterprise as part of the Inglenook Dairy's quality improvement program. The owners have a dwelling at 265 Ti Tree Road, next to the processing factory which is at 273 Ti Tree Road. The subject site is 1.6km east of the processing factory. A new dwelling on the site for calf rearing for periods of the year has not been adequately justified. The proposal fragments farming zone land and does not comply with the provisions of the planning scheme. The use and development are recommended for refusal.
Summary of Officer's Recommendation	
That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i> , issue a Refusal to Grant Planning Permit PA2024175 for the development and use of a dwelling at 88 Tierneys Road, Dunnstown, based on the grounds contained in this report.	

SITE DESCRIPTION

The site is located approximately 1km west of the Dunnstown village, and approximately 5.4kms south of the Western Freeway at Warrenheip. Immediate surrounding land includes lots of similar size but generally larger lots with a strong focus on agricultural uses including cropping and grazing.

The site is vacant land. It is irregular in shape and gently sloping to the west. There is no vegetation or any buildings on the site. There is a large waterbody located on the west boundary of the site that is shared with the neighbour to the southwest of the site, now Lot 1.

The site is productive agricultural land. It has been used for grazing, hay production and some cropping.



Figure 1: Aerial photograph of the site (blue outline)

FARMING ZONE (FZ)

SCHEDULE TO THE FARMING ZONE (FZ)

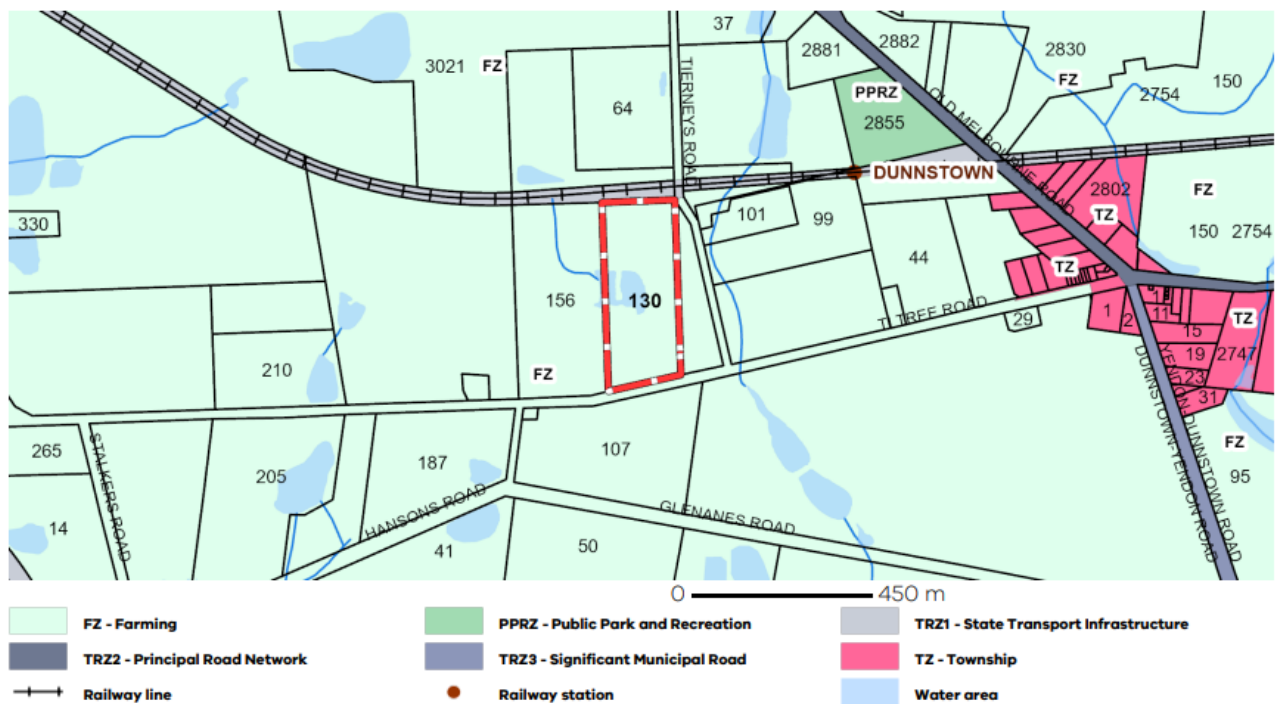


Figure 2: Zone map of both Lots 1 and 2.

PROPOSAL

It is proposed to construct a single storey dwelling on the site to support dairy cow calving and calf raising, which is an intensive agricultural activity.

The land is in the same ownership as the Inglenook Dairy milk processing factory that is located approximately 1.6kms to the west of the site on Ti Tree Road.

The dwelling would have four bedrooms, the master bedroom with ensuite and WIR, a hallway leading to an open plan kitchen, dining and family space, a media room, a family bathroom, separate laundry and a small study. There would be an attached two car space garage. The walls consist of brickwork with Colorbond roofing. The dwelling would be setback 20m from Tierneys Road.

The Farm Management Plan shows a farm shed however this is not part of the current application.

Farm Management Plan proposed is a calf rearing enterprise. Inglenook Dairy milks 250 cows twice daily at their 144ha Scotts Creek dairy farm which is approximately 60kms west of Colac. The justification provided is that the calf rearing enterprise would contribute to building a herd of part Friesian, Jersey and Australian Red dairy cows to improve the quality of their milk product. The scale of the operation on this site is detailed below.

The Tierneys Road calf rearing enterprise will operate as follows:

- Run two x 15 cow calving cycles per annum, i.e. one in February and one in August,
- This program will provide Inglenook with up to 30 replacement stock per year.

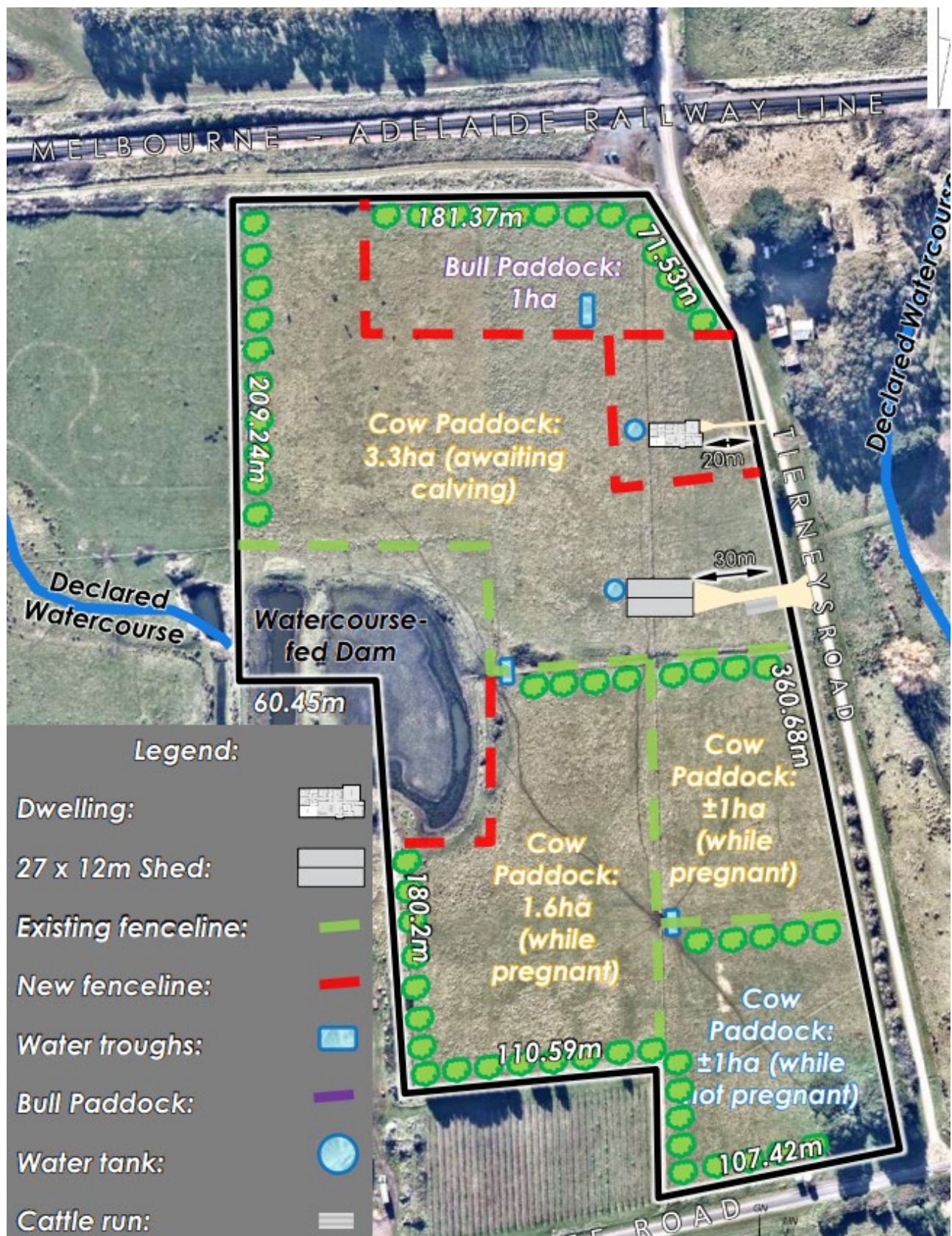


Figure 3: Site plan.

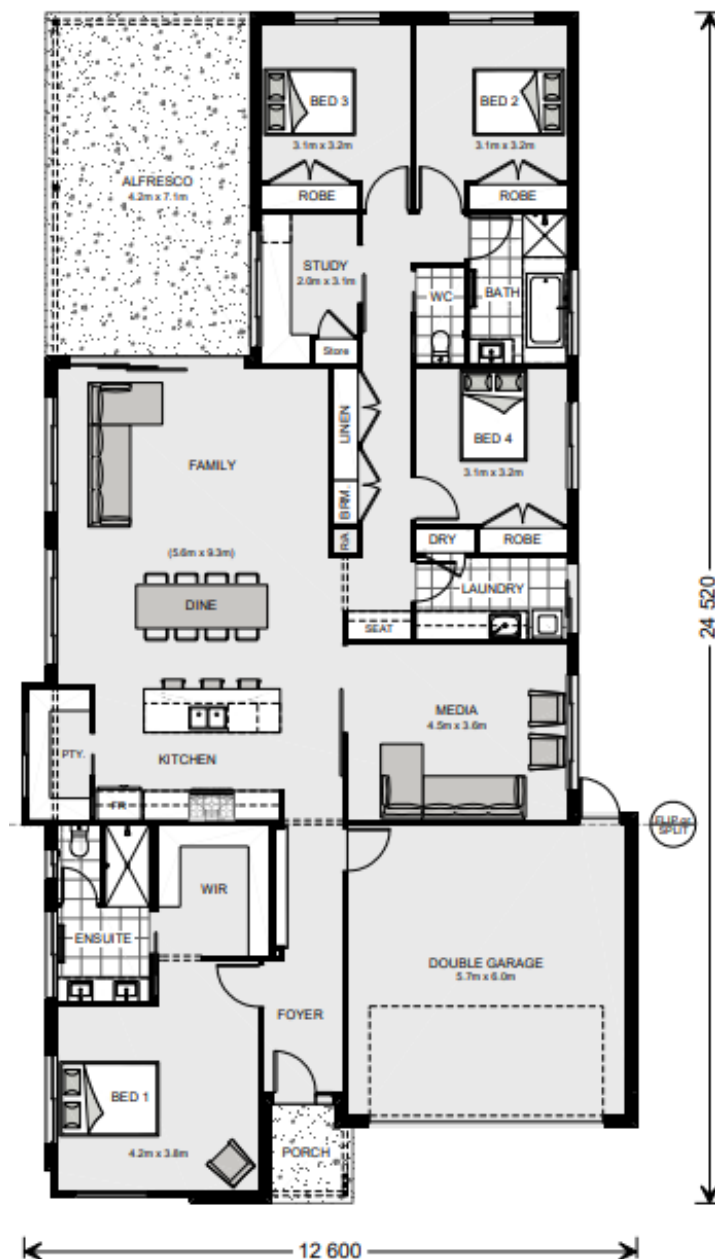


Figure 4: Floor plan of the dwelling

HISTORY

The property was part of re-subdivision (boundary realignment) of two lots under Planning Permit PA2018308 with titles released in 2021. Lot 1 retained the existing dwelling and Lot 2 (the subject site) was vacant land. A dam is located on the west side boundary which is shared by both lot owners.

PUBLIC NOTICE

The application was advertised to adjoining and surrounding landowners.

One objection was received.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
The number of cattle suggested is unsustainable. There is insufficient room to run up to 30 cows.	Clause 35.07 Farming Zone
Officer's Response: The cows will be run on the farm in two rotations, in February and August. There would be 15 cows on the property for two months and then the calves for about 3 months for each rotation. Overstocking could be an issue on 8ha without intensive pasture improvement and grazing management.	
I want the fencing done before a house is built.	
Officer's Response: Fencing is not a planning issue, and it would be up to both parties to organise the internal boundary fencing.	
I would like to know why the land at the milk processing factory is not being used, as this would be better suited than 88 Tierneys Road.	Clause 35.07 Farming Zone
Officer's Response: The location of the new dwelling is not an orderly planning outcome on productive agricultural land in the Farming Zone. The applicant has not provided grounds why the existing dwelling at Inglenook Dairy cannot support this additional calf rearing enterprise.	

PLANNING SCHEME PROVISIONS

Council is required to consider the Victoria Planning Provisions and give particular attention to the Municipal Planning Strategy (MPS) and the Planning Policy Framework (PPF).

The relevant clauses are:

- Clause 02.03-4 – Natural Resource Management
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.03-3S – Peri-Urban Areas
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.01-1L – Agriculture, rural dwellings and subdivision
- Clause 14.02-1L – Declared special water supply catchment area
- Clause 15.01-6S – Design for rural areas
- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural residential development in Moorabool

The proposal does not comply with the relevant section of the MPS and PPF clauses outlined in the table below:

MPS	Title	Response
Clause 02.03-4	Natural Resource Management - Agriculture	The proposed dwelling is not considered justifiable and fragments agricultural land.

PPF	Title	Response
Clause 11.01-1L-01	Settlement in Moorabool	The development and use of a dwelling on prime agricultural land in the Farming Zone does not represent an orderly planning outcome.
Clause 14.01-1S	Protection of agricultural land	The proposal does not accord with this policy as it creates a rural lifestyle lot in the Farming Zone.
Clause 14.01-1L	Agriculture, rural dwellings and subdivision	The proposal does not accord with this policy to protect the state's agricultural base by preserving productive farmland.

ZONE

Farming Zone

A permit is required under Clause 35.07-1, section 2, for the use of land for a dwelling, and Clause 35.07-4 for a building or works associated with a Section 2 use.

A permit is also required in the Farming Zone where the proposed dwelling would be located within 100m of a waterway.

OVERLAYS

Environmental Significance Overlay – Schedule 1

In accordance with Clause 42.01 of the Moorabool Planning Scheme a permit is required for buildings and works.

Design and Development Overlay, Schedule 2.

In accordance with Clause 43.02, and Schedule 2, of the Moorabool Planning Scheme a permit is not required where buildings or works are constructed with non-reflective material.

RELEVANT POLICIES

Rural Land Use Strategy

Council adopted the Rural Land Use Strategy (RLUS) at the Special Meeting of Council on 11 September 2024 after consultation in August. This is now a seriously entertained planning policy.

The subject site is in Precinct Policy Area 1

Policy Area 1 contains the highest productive value land for commercial scale agriculture. The strategy strongly discourages the proliferation of dwellings, subdivision, fragmentation and conversion of Farming Zone land to non-soil-based use and development.

The subject site's location in Policy Area 1 is shown below:

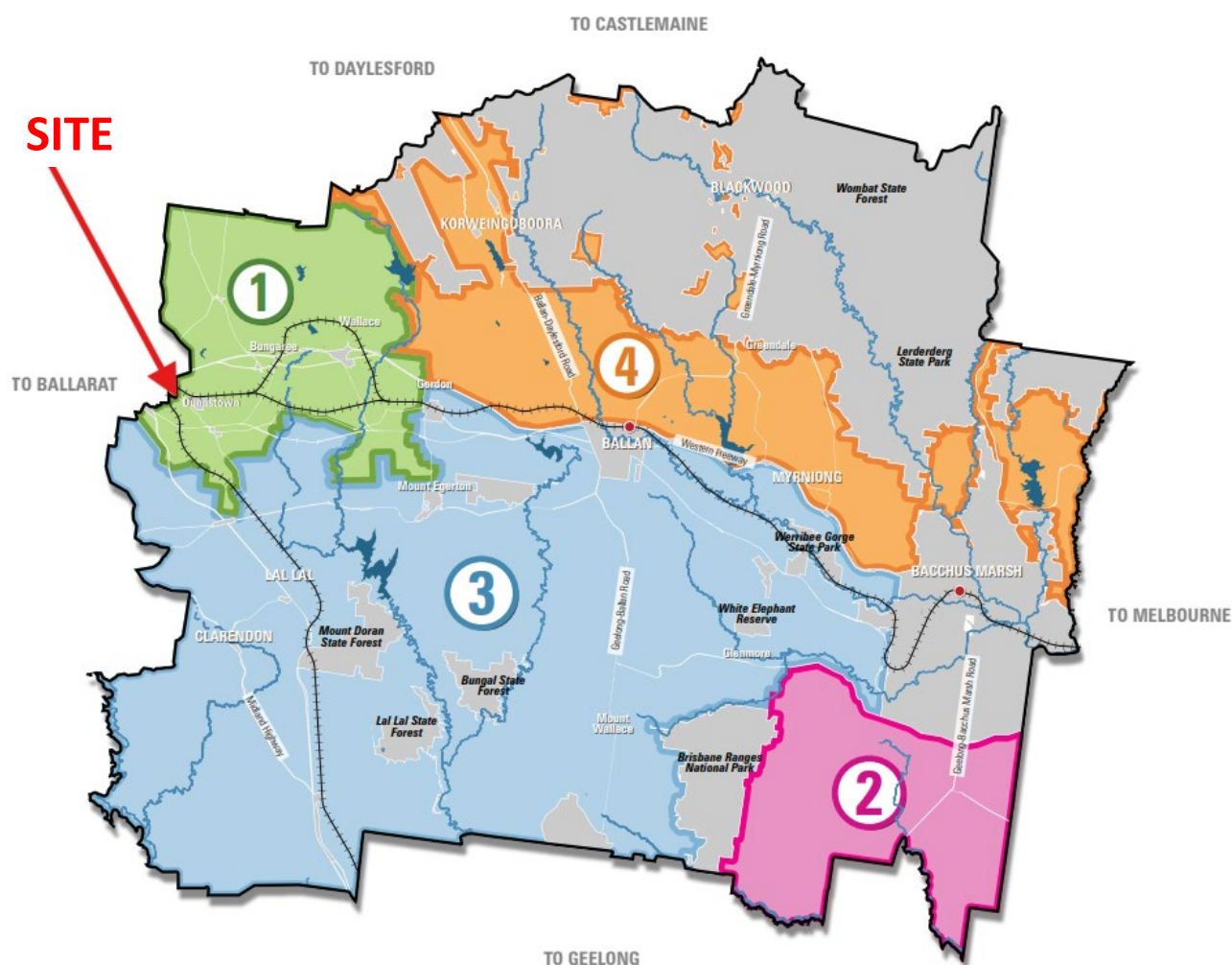


Figure 5: Site in relation to RLUS Policy Area 1.

The priority use of the land in Policy area 1 is for commercial scale agriculture including cropping and intensive agriculture.

Large scale farming will be considered the highest priority with new dwellings in the Farming Zone (FZ) being specifically discouraged to maintain a focus on soil based agricultural activity. Non-agricultural uses, and any conversion of high-quality agricultural land to non-soil-based use or development will be strongly discouraged. Additional rural lifestyle dwellings in Area 1 will be directed to existing Rural Living Zone (RLZ) land.

The statement of intent for Policy Area 1 includes:

- To provide opportunities for intensive agriculture that compliments the soils quality, particularly horticulture.
- To retain large productive lot sizes and avoid the fragmentation of land.
- To actively encourage and support consolidation of land for agricultural use.
- To ensure that proposed agricultural uses are commercially viable and sustainable.
- To prevent proliferation of dwellings and avoid incompatible and sensitive uses in farming areas.

- To only support the construction of a new dwelling where it has a direct relationship with a legitimate agricultural use and would not adversely impact surrounding agricultural land use, in select circumstances.
- To promote and encourage the environmental improvement and management of land through the use of Land Management Plans and permit conditions that seek to promote revegetation.
- To strongly discourage non-agricultural uses that are unrelated to rural activities and direct towards existing urban areas.
- To protect water supply catchments.
- To encourage supplementary uses and tourism opportunities with an established nexus with agriculture, such as farm gate sales.

There is no policy support within Policy Area 1 to use the subject land that is 8.557ha for a dwelling on highly productive agricultural land.

PARTICULAR PROVISIONS

No Particular Provisions apply.

DISCUSSION

The proposal seeks to construct a dwelling on a small lot of 8.557ha in the Farming Zone.

There is no policy support for this proposal within the Moorabool Planning Scheme or the Rural Land Use Strategy that instead seeks to protect productive agricultural land from fragmentation and a proliferation of dwellings.

The applicant stated that the dwelling is required to support intensive calf rearing as part of the Inglenook Dairy's quality improvement program. The proposed enterprise does not satisfactorily justify the development and use of a dwelling on the land for a small-scale operation. While calves do require twice daily feeding and husbandry, they do not 24-hour surveillance. It is also noted that the two rotations of calves will be on the site for only six months. The owners also have two lots 1.6km to the west on Ti Tree Road. These lots contain the Inglenook processing factory and an existing dwelling. There is no justification for additional dwellings to support additional calf rearing.

The site is near the Dunnstown township (see Zone Map at Figure 2) where residential activity should not be supported and allowing a dwelling on this site will fragment high quality agricultural land, which is contradictory to the objectives of the Rural Land Use Strategy.

Planning Policies aim to protect the highest quality agricultural land in the Shire from inappropriate land use including dwellings on prime agricultural land. They support the productivity and sustainability of existing and future agricultural and horticultural activities. The application does not accord with these policy objectives.

There is no policy support for this proposal in Council's recently adopted Rural Land Use Strategy where the site is located in some of the most productive farming land in the Shire. The Rural Land Use Strategy aligns with State Government policy directives under Melbourne's Green Wedges and Agricultural Land Action Plan 2024 which seeks to protect agricultural land.

The application is inconsistent with the objectives of the Farming Zone, and it is 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
Central Highlands Water	Consent with conditions.
Council's Development Infrastructure	Consent with conditions.
Council's Public Health	Consent with conditions

FINANCIAL IMPLICATIONS

The recommendation of refusal of this application has no financial implications to Council.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation of refusal 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. The applicant was invited to attend this meeting and invited to address the Development Assessment Committee if required.

OPTIONS

That the Development Assessment Committee could consider the following options:

- Issue a Refusal to Grant a Permit with specified grounds as listed in the recommendation of this report; or
- Issue a Notice of Decision to Grant a Planning Permit. The Development Assessment Committee would need to consider what reasonable grounds there would be to support the application under the Moorabool Planning Scheme.

CONCLUSION

The proposal creates a new dwelling in the Farming Zone. The development and use of a dwelling on farming zoned land does not accord with the objectives of the Clause 35.07 of the Moorabool Planning Scheme. It also undermines planning policies that seeks to support agricultural production and avoid land fragmentation with dwellings. The application is recommended for refusal with specified grounds.

9.3 PA2023160 - DEVELOPMENT OF TEN DWELLINGS AND VEGETATION REMOVAL AT 86 ATKINSON STREET & 83 EDOLS STREET BALLAN

Author: Mark Lovell, Coordinator Planning Services

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: Nil

APPLICATION SUMMARY

Permit No: PA2023160

Lodgement Date: 9 November 2023

Planning Officer: Mark Lovell

Address of the land: 86 Atkinson Street and 83 Edols Street, Ballan

Proposal: Development of Ten Dwellings and Removal of Vegetation

Lot size: 2089sqm

Why is a permit required? Clause 32.08-7 General Residential Zone Schedule 4 Development of two or more dwellings on a lot
Clause 42.01-2 Environmental Significance Overlay Schedule 1
Removal of vegetation

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, to issue a Notice of Decision to Grant Planning Permit PA2023160 for the development of ten dwellings and removal of vegetation at 86 Atkinson Street and 83 Edols Street, Ballan subject to the following conditions:

Endorsed Plans:

1. Before development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application or some other specified plans but modified to show:
 - (a) A fence to be constructed between the common boundary of 83 Edols Street and 85 Edols Street prior to commencement of the development.
 - (b) Amended site plan to show the location of trees proposed to be planted by the applicant on Council's nature strip.
 - (c) Habitable room windows that are overlooking the secluded private open space of the properties towards the east are required to either add fixed screening or obscure glazing in accordance with the ResCode standard.
 - (d) Plan of Consolidation prepared by a licensed land surveyor showing both lots being consolidated unless a 10 lot subdivision application is lodged and approved.

2. 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.

Amenity:

3. External lighting must be provided with suitable baffles and located so that no direct light is emitted outside the site.

Vegetation Removal:

4. No vegetation is to be removed, lopped or destroyed without the written consent of the Responsible Authority and in accordance with the Moorabool Planning Scheme provisions and the endorsed plans of PA2023160.

Tree Protection Zone:

5. Excavation for fence posts is to be undertaken manually with the use of hand tools within the TPZ of trees to be retained (*Trees 2, 3, 4, 5, 7, 8, 9 in Nuleaf Arboricultural Impact Assessment*). Excavating individual holes instead of trenching has a lower impact on surrounding vegetation because soil excavations are kept to a minimum. Flexibility in the placement of the posts is required to ensure that if any significant roots are discovered that posts can be moved to avoid root damage. If large roots are encountered these are to be retained and the location of the component relocated.
6. If excavation is required within Tree Protection Zones, this task should be undertaken with the use of non-destructive methods to minimize impacts on trees to be retained.
7. Excavation for crossover and driveway construction to occur within the TPZ of Tree #2 and 5 (*Nuleaf Arboricultural Impact Assessment*) is to be no greater than 200mm in depth. Excavation is to be supervised by a suitably experienced/qualified arborist. If retention of the street tree (Tree #2) is considered unviable by on-site arborist, the developer will be required to replace the tree with mature tube stock to Council's satisfaction.
8. Footpaths to be constructed in the TPZ of trees 4, 7, 8, 9 (*Nuleaf Arboricultural Impact Assessment*) is to be constructed above grade.
9. At all times during the development of the land, the trees identified for retention and within Tree Protection Zones (TPZs) on the endorsed plans of this permit must be protected by the use of temporary fencing that extends out to the drip line of the trees. The fences will serve to increase contractor awareness, whilst maintaining the safety and integrity of the existing vegetation and preventing the parking of vehicles or stockpiling of soil or materials under the canopy of the trees.
10. All tree protection zones, and fencing must comply with AS 4970-2009 Protection Trees on Development Sites and Moorabool Shire Tree Protection Guidelines to the satisfaction of the Responsible Authority.
11. No excavation, heavy machinery, constructions works or activities, grade changes, surface treatments or storage of materials of any kind are permitted within the Tree Protection Zone unless otherwise approved within this permit or with the written consent of the Responsible Authority.
12. Unless exempt under Clause 52.17 or any other relevant provision of the Moorabool Planning Scheme, native vegetation must not be removed, destroyed or lopped without further planning approval.

Development Infrastructure:

13. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over any drainage pipes and easements on the property.
14. Prior to the construction commencing, engineering drainage plans, and detailed computations must be submitted and approved by the Responsible Authority. The drainage plans are to undertake in accordance with the Infrastructure Design Manual and Australian Rainfall & Runoff 2016 and shall incorporate (but not limited to) the following:
 - (a) The development as a whole must be self-draining to the legal point of discharge.
 - (b) All drainage courses within the development must pass through easements or reserves shown on the plan of subdivision.
 - (c) All outfall drainage passing through other land must be provided at the cost of the developer and be constructed within easements shown on the plan of subdivision.
 - (d) Volume of water discharging from the development in a 10% AEP storm shall not exceed the 20% AEP storm prior to development. Peak flow must be controlled by the use of a detention system located and constructed to the satisfaction of the Responsible Authority.
 - (e) Each lot must be provided with a stormwater legal point of discharge at the low point of the lot, to the satisfaction of the Responsible Authority.
 - (f) Stormwater runoff must meet the “Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)”.
 - (g) Flow paths of the 1% AEP storm must be determined and the subdivision designed so that no property is inundated by such a storm. The flow paths must be indicated on the engineering plans.
 - (h) The drainage system must be designed to include provision to intercept litter.
 - (i) All lots must be provided with a stormwater legal point of discharge at the low point of the lot, to the satisfaction of the Responsible Authority. The drainage design must take into account any applicable drainage or flood management strategy.
15. Prior to the works commencing on the development, notification including photographic evidence must be sent to Council’s Infrastructure Services identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority. If photographic evidence cannot be provided, then the damage must be fully reinstated at no cost to and to the satisfaction of the Responsibility Authority.
16. Stormwater drainage from the development must be directed to a legal point of discharge to the satisfaction of the Responsible Authority. A Stormwater Point of Discharge permit must be obtained from the Responsible Authority prior to the commencement of the works associated with the permit.
17. Prior to the commencement of the development, plans and specifications of all road and drainage works must be prepared, submitted and approved by the Responsible Authority, detailing but not limited to the following:
 - (a) location of vehicle crossings.

- (b) details of the underground drainage.
 - (c) location of drainage legal points of discharge.
 - (d) standard details for vehicle crossings and legal points of discharge.
 - (e) civil notes as required to ensure the proper construction of the works to Council standard.
18. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991).
19. Standard concrete vehicle crossings must be provided on Atkinson Street and Edols Street to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossings with any redundant crossings being removed and restored to the satisfaction of the Responsible Authority.
20. Prior to the issue of a Statement of Compliance for the subdivision, the common property driveway must be constructed in reinforced concrete to a minimum depth of 125 mm. The layout of the driveway must be designed and constructed in accordance with Clause 52.06-8 of the Moorabool Planning Scheme.
21. Prior to the issue of an occupancy permit for any of the proposed dwellings, a 1.5m wide footpath must be provided on Edols Street from the western boundary of the properties up to the intersection of Fiskin Street and Edols Street.

Waste Management:

22. Each resident will bring their bin from their private residence to the general waste collection point located within the property the night before collection.
23. The vehicle operator will ferry the bins to and from this collection area to dispose of the waste.
24. Each resident will return their bin to the private residence promptly after the waste is emptied.
25. Bins are not to be placed on area outside of the collection area.

Gas Services:

26. Any new dwelling allowed by this permit must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after the development authorised by this permit has been completed.

Landscaping:

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

Permit Expiry:

29. The permit will expire if:

- (a) The development is not started within two years of the date of this permit; or**
 - (b) The development is not completed within four years of the date of this permit.**
-

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	Six objections.
Consultation meeting:	No, a consultation meeting was suggested to be held between the applicant and objectors. The applicant declined the offer and declined to mediate as a result of the April DAC meeting where the item was deferred to allow mediation between the parties.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 1: Healthy, inclusive and connected neighbourhoods

Priority 1.1: Improve the health and wellbeing of our community

The proposal is consistent with the Council Plan 2021 – 2025.

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 130 of the *Local Government Act 2020*, officers providing advice to Council must disclose any interests, including the type of interest.

Executive Manager – Henry Bezuidenhout

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

Author – Mark Lovell

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

EXECUTIVE SUMMARY

Application referred?	Yes, Council's Development Infrastructure, Environment, Emergency & Waste and Building Services.
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Any issues raised in referral responses?	Yes, Preliminary Stormwater Plan, Traffic Impact Assessment, a service plan in relation to the Landscape Plan, details of Tree Protection Zones and a Waste Management Plan.
Preliminary concerns?	Protection of a street tree.
Any discussions with applicant regarding concerns?	Yes, the applicant addressed the concerns by taking measures to prevent the tree from being impacted by the development.
Any changes made to the application since being lodged?	No.
Brief history.	The subject properties are separate lots with each consisting of a detached single storey dwelling.
Previous applications for the site?	PA2022097 (86 Atkinson Street) was issued on 13 January 2023 for a two-lot subdivision and the development of a second dwelling. Plans were not endorsed, and the permit has expired. PA2021149 (86 Atkinson Street) was issued on 18 August 2021 for the removal of five trees.
General summary.	The development is for the construction of ten dwellings and removal of vegetation. The proposal meets the objectives of the General Residential Zone Schedule 4 and complies with the ResCode standards. The application has been advertised, and five objections were received. Revised plans can provide for amenity improvements and additional vegetation to allow for an acceptable design response. The applicant has advised that do not want to participate in a mediation process with objectors and will be lodging an appeal to VCAT for a failure to determine the application in prescribed time. The application is recommended for approval.
Summary of Officer's Recommendation	
That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i> , to issue a Notice of Decision to Grant Planning Permit PA2023160 for the development of ten dwellings and removal of vegetation at 86 Atkinson Street and 83 Edols Street, Ballan subject to the conditions contained within this report.	

SITE DESCRIPTION

The subject sites are adjacent to each other and are located approximately 450m to the south side of the commercial area of Ballan. The sites are also in close proximity to Ballan Railway Station with convenient public transport access to Ballarat and Melbourne.

The surroundings of the site are mostly properties within the General Residential Zone Schedule 4, varying in size between 4,000sqm to less than 200sqm. The properties to the west are smaller in

size than the properties to the east having these properties developed into a multi-unit lots and subdivided.

The subject site consists of two lots Lot 1/TP238197 located on 86 Atkinson Street and Lot 1/TP539512 located at 83 Edols Street. Both properties are generally flat in topography and contain several exotic trees. The property facing Edols Street contains a single storey dwelling. The property on Atkinson Street, is also single storey dwelling reflective of simple architectural detailing.



Figure 1: Aerial photograph of the subject sites



Figure 2: Zoning map of 86 Atkinson Street (left) and 83 Edols Street (right)

PROPOSAL

The proposed development is for the construction of ten dwellings and removal of vegetation.

Two units (Unit 1 and Unit 10) comprises of a single storey dwelling and consist of two bedrooms having one as a master bedroom with an ensuite, an open plan, one laundry room and one bathroom,

Units 2 – 9 will comprise of double storey dwellings.

Units 2, 5, 6 and 9 will have a floor plan that will comprise of an open living area and one garage space, whilst the first-floor plan in a reverse living arrangement will have one bedroom and

another master bedroom with a walk-in robe and an ensuite. There will be a first floor living area with a balcony facing the western side of the property.

Units 3, 4, 7 and 8 will consist of a single garage and a laundry room and the first-floor level will also be reverse living arrangement contain and one bedroom with an ensuite, these units will have a balcony extending from the living area facing east.

All dwellings proposed will have a single garage gaining access from the west of the property.

Each unit will have a private secluded open space, and a rainwater tank installed.

External cladding will be a mixture of brickwork, corrugated Colourbond cladding and rendering, driveways are proposed for exposed aggregate.

The existing driveway from Edols Street will be upgraded and utilised as an entry point to the site and the driveway to towards Atkinson Street will be the exit point with a width of 3m with two speed humps installed on the internal common property driveway.

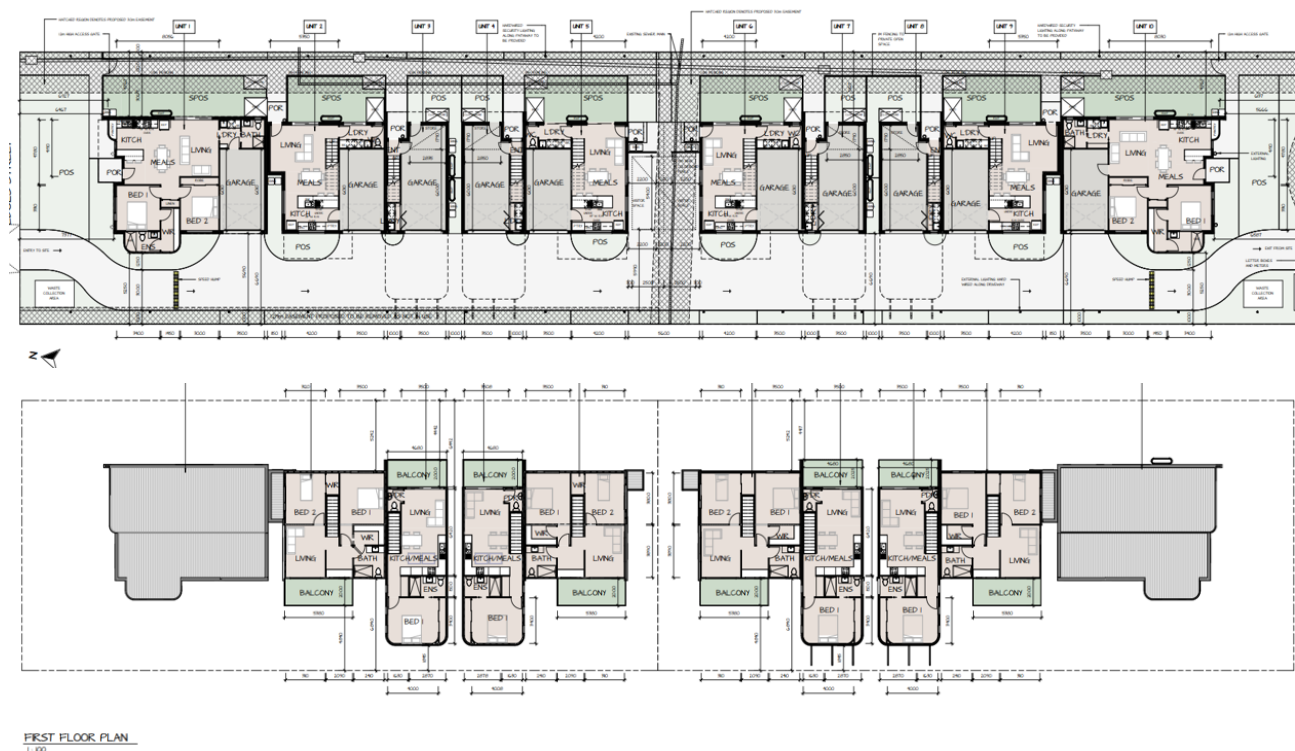


Figure 3: Ground and first floor plans

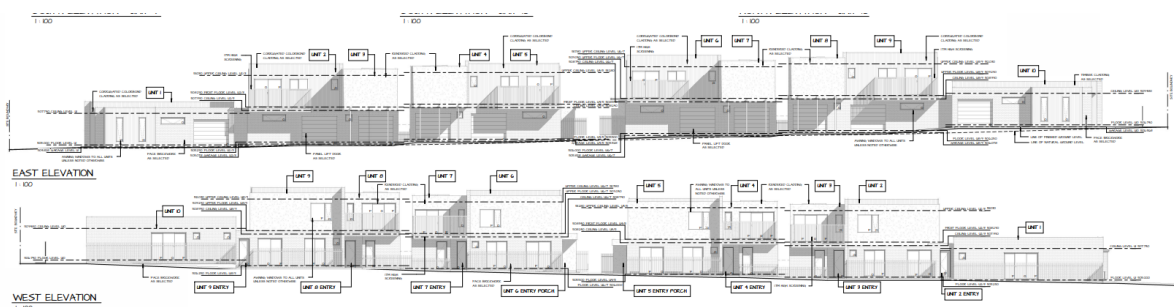


Figure 4: Side elevation plan of all dwellings



ATKINSON STREET SCAPE

Figure 5: Streetscape elevation plan

BACKGROUND TO CURRENT PROPOSAL

Council at its Development Assessment Committee Meeting held on 16 April 2025 determined to defer making a decision in order to allow mediation between the applicant and objectors. The applicant advised on 17 April 2025 that they declined to mediate and would be lodging an appeal to VCAT based on a failure to determine the application within the prescribed time. A decision now needs to be made or if an appeal is lodged any time prior to the meeting of 21 May, 2025 Council must advise of its position and duly notify VCAT.

HISTORY

PA2022097 was issued on 13 January 2023 for a two-lot subdivision and the development of a second dwelling. The permit has expired.

PA2021149 was issued on 18 August 2021 is for the removal of 5 trees.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners and occupiers with two signs placed on site.

Six objections were received.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
This proposal, in its current form, is an overdevelopment that flagrantly disregards the policies designed to protect Ballan's unique rural character. It prioritizes yield over quality, completely failing to integrate with the town's established context. Without significant changes, this development will irreparably harm Ballan's charm and identity. The design must be reworked to reflect the policies' intent rather than being a blatant attempt to urbanize a cherished rural township.	Clausen 32.08 - General Residential Zone

<p>Officer's Response: The General Residential Zone includes several purposes including the encouragement of a diversity of housing types and housing growth particularly in locations offering good access to services and transport. The site presents a good location for a multi-unit housing development near the centre of town and within a proximity to public transport. Ballan is a growth area within the Moorabool Shire representing a township character based on the Ballan Strategy directions.</p>	
<p>B6 Street setback Atkinson Street Average setback of neighbouring dwelling = 7.04m. Proposed setback = 6.58m.</p> <p>B17 Side and rear setbacks Upper storey bedrooms to Units 3, 4, 7 & 8 do not comply. These walls would have a height varying between 6.48 - 6.77m. They require a side setback of 1.86m - 1.95m</p> <p>B28 Private open space SPOS areas vary with the style of dwelling. The 1-bedroom dwellings rely mainly on balconies of over 9.4sqm, and service yards. The 2-bedroom dwellings have SPOS via a combination of ground level courtyards and balconies. Cumulatively, these exceed 39sqm in area</p>	<p>Clause 55 (ResCode)</p>
<p>Officer's Response: The street setback does meet the Standard B6 does not meet the average setback by 0.5m, which is considered minor variation and will not have a detrimental impact on the neighbourhood character of the area.</p> <p>The side setback with the exception for Bedroom 1 for four dwellings requires a setback requirement of 1.84m whereas minimum setback requires is 1.95m, not meeting standard by 0.11m. This is minor variation which does not create adverse amenity impacts.</p> <p>Clause 55.05-4 outlines that adequate private open space is provided for the reasonable recreation and service needs of residents that has been provided by the applicant in accordance with standard B28.</p>	
<p>This development is not low to medium density as planned for this town area of Ballan. Low to medium density is designed to enhance the rural and small-town character with protective policies. The proposed development is a distinctly modern urban design is more suited to new estates not the centre of a town which is committed to retaining its country charm and appeal. This development will overdevelop the block and be a large change to the character of the area Its scale is visually very bulky/boxy even with one story units planned for the units facing Edols St and Atkinson St</p>	<p>Clause 55 (ResCode)</p>

Officer's Response: The development displays contemporary architectural detailing which is encouraged by the neighbourhood character objectives of ResCode.	
Part of the rural character of Ballan is open space dwellings with substantial setbacks from the street. The proposed units are not in keeping with open space and spacious setbacks. The vegetation removal is concerning There is a large mature gum tree that should be retained and accommodated in the driveway Planned Removal of a tree on the Atkinson St nature strip is also not consistent with Council protection policies.	Clause 55 (ResCode)
Officer's Response: The Ballan Strategic Framework is identified to have more of a township characteristic than rural characteristics. Future development near the railway lines encourages medium density housing to be developed. The proposed vegetation removal will be within the subject site's property boundaries, whilst trees located on Council's nature strip have high retention values and will not be removed. The applicant will also be planting additional trees on Council's road reserve.	
Ignoring Heritage Strategy and values and overlooking units which because they are close to the Eastern boundary will spoil my back yard and personal privacy	
Officer's Response: The site is not affected by the Heritage Overlay and is not listed within the C85 Amendment.	
Minimal amount of landscaping has been proposed as there will be limited space for any reasonable amount of landscaping. It is considered that the proposal is contrary to the objective at Clause 55.03-8 Landscaping (Standard B13) which seeks to provide appropriate landscaping. The lack of open space areas and landscaping above single storey height will negatively impact the overall character of the neighbourhood through the built form of the proposed development being the dominant feature, rather than the sense of open yards.	Clause 55 (ResCode)
Officer's Response: The landscape plan proposed shows landscaping features achieving the objectives of Clause 55.03-8 that require developments that respects the landscape character of the neighbourhood and to provide appropriate landscaping.	

The proposal requires the provision of two visitor car parking spaces in accordance with the planning scheme. The development does not include visitor car parking spaces which will result in additional traffic and parking along the street.	Clause 52.06 Car Parking
Officer's Response: The site plan provided shows two visitor car park spaces between dwellings 5 and 6. A traffic impact assessment has been undertaken that demonstrated increased traffic flow is at an acceptable level.	
The proposal therefore does not meet the objective at Clause 55.04-6 Overlooking (Standard B22) as it will result in views into my existing secluded private open space. The decision guidelines under this Clause require the proposal to consider the impact on the amenity of the secluded private open space or habitable room window and the existing extent of overlooking into the secluded private open space and habitable room windows of existing dwellings.	Clause 55 (ResCode)
Officer's Response: The objectives of Clause 55.04-6 have been achieved which is limiting views into existing secluded private open space and habitable room windows. Conditions can be in place to ensure obscured glazed windows are fixed.	

PLANNING SCHEME PROVISIONS

Council is required to consider the Victoria Planning Provisions and give particular attention to the and the Municipal Planning Strategy (MPS) and the Planning Policy Framework (PPF).

The relevant clauses are:

- Clause 11.01-1L-01 Settlement in Moorabool
- Clause 11.01-1L-03 Ballan
- Clause 11.02-1S Supply of Urban Land
- Clause 11.03-1S Activity Centres
- Clause 11.03-2S Growth Areas
- Clause 11.03-2L Growth Areas
- Clause 12.01-1L Biodiversity
- Clause 12.01-2S Native Vegetation Management
- Clause 12.05-2S Landscapes
- Clause 14.02-1S Catchment Planning and Management
- Clause 14.02-1L Declared Special Water Supply Catchments
- Clause 14.02-2S Water Quality
- Clause 15.01-1S Urban Design

- Clause 15.01-1L Urban Design
- Clause 15.01-2S Building Design
- Clause 15.01-2L-01 Building Design
- Clause 15.01-4S Healthy Neighbourhoods
- Clause 15.01-5S Neighbourhood Character
- Clause 15.01-5L Landscape and Neighbourhood Character
- Clause 16.01-1S Housing Supply
- Clause 16.01-1L Housing Supply in Moorabool
- Clause 16.01-2S Housing Affordability

The proposal complies with the relevant sections of the MPS and PPF.

ZONE

General Residential Zone Schedule 4

A planning permit is required pursuant to Clause 32.08-7.

OVERLAYS

Environmental Significance Overlay Schedule 1

The subject site is affected by the Environmental Significance Overlay Schedule 1, a planning permit is required pursuant to Clause 42.01-2 for the removal of vegetation.

PARTICULAR PROVISIONS

Clause 55 Two or More Dwellings on a Lot

The development generally complies with the objectives of the ResCode standards.

Clause 52.06 Car Parking

The development complies with the carparking requirement providing one car park space to each one or two dwelling and one visitor car park to every five dwellings.

DISCUSSION

The proposed development of ten dwellings is consistent with the relevant Planning Scheme provisions and is in accordance with the purpose of the General Residential Zone enhancing a diversity of housing types and housing growth. The site is located in an area offering good access to services and transport by being sited between the centre of the township of Ballan and the Ballan Railway Station.

The applicant is proposing a mixture of 1 bedroom and 2 bedrooms dwellings and mixture of single and double storey dwellings providing for a unique dwelling mix that is not typical for Ballan. Increased housing mix allows for greater housing opportunities.

The dwelling facing each street frontages will be a single storey in height allowing the development to blend with predominate single storey streetscapes.

There is a mixture of ground floor secluded private open spaces while Units 3, 4, 7 and 8 meet the Recode standards by providing balconies to the rear of the property that are over the 8sqm in area requirement. The reverse living arrangement is not typical for a development arrangement in Ballan.

All dwellings are provided with single garages and there are two dedicated visitor car parking spaces that are accessed from the western side of the property.

The layout of the development will be integrating with the streetscape of the area, as there are low height fences or no front fences along Edols Street and Atkinson Street, the subject site will incorporate with the character of the area allowing single storey dwellings facing the main streets and generous front setbacks provided that are compliant with the objectives of Clause 55.03-1. The building height standard has been achieved as the maximum building height for the double storey dwellings are 7.1m.

Permeability and stormwater management objectives have been achieved as the applicant had proposed a 2,000L water tank to each dwelling that will be connected to sanitary flushing systems reducing the impact of stormwater run-off on the existing drainage system, this also assists in retaining stormwater and benefiting from re-use.

Due to the shape of the site, it is impractical to design the dwellings facing north. Dwellings 1 and 10 have living areas and private open space that will be orientated towards the east where solar access is maximised during morning times achieving energy efficiency, dwelling 1 is also exposed from the north side having solar access to habitable rooms. Dwellings 3,4,7 and 8 have solar access from the east side as the secluded private open spaces and living areas are designed to the east, therefore the objectives of Clause 55.03-5 have been achieved.

Clause 55.03-7 safety objectives and standards have been met by having entrances to the dwellings and accessways obvious from the street view and no planting proposed in front of the entrances and exits ways of the site. There is a passageway to the east side boundary that is 1.2m wide. After discussions with the applicant a 1.2m gateway has been provided at the entrance and exit of the passageway that is near the secluded private open spaces of the dwellings. In addition to having 16 hardwired security lighting along that pathway these outcomes achieve a high sense of security for residents.

A proper landscape plan has been provided by the applicant showing two canopy trees will be planted towards the frontage of the sites.

The east facing habitable room windows for dwellings 3, 4, 7 and 8 may propose overlooking to the secluded private open spaces to the adjoining properties, there will be a requirement to alter the bedroom windows by either providing fixed screens or obscure glass. Overall, the objectives of Clause 55.04-6 have been achieved limiting views into existing secluded private open spaces and habitable room windows.

Each dwelling has adequate storage facilities that are consistent with the objectives and standards of Clause 55.05-6 where dwellings 3,4,7 and 8 have storage spaces built within the garage whilst dwellings 1,2,5,6,9 and 10 have a storage space in the form of a shed within the secluded private open space areas.

Overall, the development is consistent with Planning Policy Frameworks and achieves the objectives of housing affordability that facilitates a range of residential development options to enhance the diversity of housing choices and promoting urban design to minimise negative environmental impacts that respect the landscape setting and does not detract from the neighbourhood character of the area.

The proposed development should be supported due the large lot size with two titles combined and a site that is close to a range of services including the Ballan Railway Station.

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
Council's Development Infrastructure	Consent with conditions.
Council's Building Services	Consent with conditions.
Council's Environment, Emergency & Waste Management	Consent with conditions.

FINANCIAL IMPLICATIONS

The recommendation of approval of this application has no financial implications to Council.

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 the Development Assessment Committee if required.

OPTIONS

- Issue a Notice of Decision to Grant a Planning Permit in accordance with the conditions and the recommendation contained in this report; or
- issue a Refusal to Grant a Planning Permit on specific grounds. The Development Assessment Committee would need to consider what reasonable grounds there would be to refuse the application based on the provisions of the Moorabool Planning Scheme.

CONCLUSION

The proposed development is consistent with the Municipal Planning Strategy and Planning Policy Framework. The development provides an opportunity for a variety of housing options near several community services within the town centre and having public transport with the Ballan Railway Station in close proximity. The purpose of the zone encourages housing diversity in accordance with the neighbourhood character objective under the GRZ4. Therefore it is recommended that the planning application is to be supported subject to conditions.

9.4 PA2023110 - 18 LOT SUBDIVISION, VEGETATION REMOVAL AND CREATION OF EASEMENT AT 58 INGLISTON STREET, BALLAN

Author: Thomas Tonkin, Senior Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Stormwater Management Strategy (under separate cover)

APPLICATION SUMMARY

Permit No: PA2023110

Lodgement Date: 16 August 2023

Planning Officer: Thomas Tonkin

Address of the land: 58 Ingliston Street, Ballan

Proposal: 18 lot subdivision, vegetation removal and creation of an easement

Lot size: 2.02ha

Why is a permit required? Clause 32.09 Neighbourhood Residential Zone – Subdivide land
Clause 42.01 Environmental Significance Overlay – Subdivide land and vegetation removal
Clause 44.04 Land Subject to Inundation Overlay – Subdivide land
Clause 52.02 Easements, Restrictions and Reserves – Creation of an easement
Clause 52.17 Native Vegetation – Native vegetation removal

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Notice of Decision to Grant Planning Permit PA2023110 for an 18 Lot Subdivision, Vegetation Removal and Creation of an Easement at 58 Ingliston Road, Ballan known as, Portion 10, Section 4, Parish of Gorong, subject to the following conditions:

Endorsed Plans:

1. Before the certification of the plan of subdivision, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans identified as Job No. JF341, Allotment Layout Plan A – Option A, Drawing No. AL100 rev. F dated 22 July 2024 prepared by Planit Consulting but modified to show:
 - (a) The proposed internal road notated as a private access road.
 - (b) All trees within the site to be removed.
 - (c) Amendments in accordance with Melbourne Water requirements herein.

- (d) A Tree Protection Zone (TPZ) for tree no.'s 28-34 and 36-43 as identified and in accordance with the Arbor Express 58 Ingliston Road Ballan VIC 3342 Arboricultural Impact Assessment prepared for Michael Zara, Project No. AIA8/10/2024 v.2 dated 10 January 2025.

- 2. The formal plan of subdivision lodged for certification must be generally in accordance with the endorsed plan and must not be modified except to comply with statutory requirements or with the written consent of the Responsible Authority.

Subdivisions:

- 3. The plan of subdivision submitted for certification must include a creation of restriction.

The wording of the creation of the restriction shall be as follows:

- (a) Land to be Burdened: Lots 1 and 18 on this plan.
- (b) Land to Benefit: All other lots on this plan.

Creation of Restriction: Upon registration of this plan, the following restriction is created.
Description of Restriction: No fencing on or within 1m of the Ingliston Road boundary shall exceed 1.2m in height within 9m of Lot 1's frontage or 12m of Lot 18's frontage.

Variation: The restriction can only be varied with the written consent of Moorabool Shire Council.

- 4. The plan of subdivision submitted for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act
- 5. Before the statement of compliance is issued under the *Subdivision Act 1988*, the applicant or owner must pay to the responsible authority a sum equivalent to 5 per cent of the site value of all the land in the subdivision for public open space purposes. The permit holder/developer must pay the reasonable costs of Council in having the land valued for this purpose.

Telecommunications

- 6. The owner of the land must enter into agreements with:
 - (a) A telecommunications network or service provider for the provision of telecommunication service to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - (b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
- 7. Before the issue of Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
 - (a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and

- (b) A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is an area where the National Broadband Network will not be provided by optical fibre.

Section 173 Agreement

8. Before the issue of a Statement of Compliance, the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the *Planning and Environment Act 1987* to the satisfaction of the Responsible Authority:
 - (a) The collection of all garbage and waste from each lot must be by a private contractor or by other means to the satisfaction of the Responsible Authority.
 - (b) Provision must be made on the land for the storage and collection of garbage and other solid waste. This area must be graded and drained and screened from public view to the satisfaction of the Responsible Authority.
 - (c) Before a Statement of Compliance is issued, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the *Planning and Environment Act 1987* and the owner must provide evidence of that registration of the Agreement to the Responsible Authority.
 - (d) The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.

Residential Gas Service:

9. Any lot shown on the endorsed plan must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after a statement of compliance under the *Subdivision Act 1988* has been issued and the subdivision authorised by this permit has been completed.

General Conditions:

10. Street trees must be provided at approved locations in the internal road/s of the subdivision in accordance with the landscape plan endorsed as part of this permit, with an approved species to the satisfaction of the responsible authority. All street trees must be installed as per the guidelines identified within Moorabool Shire's Landscape Design Manual.
11. Street trees & Landscaping must be maintained for a minimum period of 24 months including watering, mulching, weeding and formative pruning, to the satisfaction of the Responsible Authority.
12. Prior to the issue of Statement of Compliance, street lighting must be provided in accordance with the requirements of AS1158 – Lighting for Roads and Public Places, to the satisfaction of the Responsible Authority. All lighting fittings must be "Standard" fittings maintained by the electricity network provider at no additional cost to Council. All lights must utilise LED type luminaires where available.
13. Prior to the issue of Statement of Compliance, a street name and street sign/s must be provided to the satisfaction of the Responsible Authority.

14. Prior to the issue of Statement of Compliance, each lot must be provided with a standard urban vehicle crossing to the satisfaction of the Responsible Authority.
15. Prior to the issue of Statement of Compliance, footpaths must be constructed within the subdivision to the satisfaction of the Responsible Authority.

Native Vegetation:

16. To offset the removal of 0.019ha of native vegetation the permit holder must secure a native vegetation offset in accordance with Guidelines for the removal, destruction or lopping of native vegetation (DELWP 2017), the permit holder must secure the following offsets:
 - (a) General offset of 0.011 general habitat units:
 - (b) Located within the Melbourne Water Catchment Management Authority boundary or Moorabool Shire Council local government area boundary; and
 - (c) With a minimum strategic biodiversity value of at least 0.48.
17. Before any native vegetation is removed, evidence that the required offset under this permit has been secured must be provided to the satisfaction of the Responsible Authority. This evidence must be one or both of the following:
 - (a) An established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10-year management actions and ongoing management of the site; and/or
 - (b) Credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the Responsible Authority and form part of this permit. Within 30 days of endorsement of the offset evidence, a copy of the endorsed offset evidence must be provided to Planning Approvals at Department of Energy, Environment and Climate Action (DEECA) via email grampians.planning@delwp.vic.gov.au.
18. Except where allowed for under this permit or where exempt under Clause 52.17 or any other relevant provision of the Moorabool Planning Scheme, native vegetation must not be removed, destroyed or lopped without further planning approval.

Tree Protection:

19. Prior to the commencement of the development, protective temporary fencing must be installed on either side of the proposed Ingliston Road site access and around areas of retained roadside vegetation to avoid machinery accidentally damaging or entering protected / retained areas of native vegetation, to the satisfaction of the Responsible Authority.
20. Prior to the commencement of any works onsite, tree no.'s 28-34 and 36-43 as shown on the endorsed plans must be protected using temporary fencing to create Tree Protection Zones (TPZs) in accordance with the Arbor Express 58 Ingliston Road Ballan VIC 3342 Arboricultural Impact Assessment prepared for Michael Zara, Project No. AIA8/10/2024 v.2 dated 10 January 2025. The fences must remain in place for the duration of works, except where temporary access is required to undertake works associated with this permit to the satisfaction of the Responsible Authority.

21. All Tree Protection Zone fencing must comply with AS 4970-2009 Protection of Trees on Development Sites (Incorporating Amendment No. 1) to the satisfaction of the Responsible Authority.
22. No excavation, heavy machinery, construction works or activities, grade changes, surface treatments or storage of materials of any kind are permitted within the Tree Protection Zones unless otherwise approved by a condition of this permit or with the prior written consent of the Responsible Authority.

Development Infrastructure:

23. Unless otherwise approved by the Responsible Authority there must be no buildings, tree structures, or improvements located over any drainage pipes and easements on the property.
24. Prior to the development commencing, engineering drainage plans and detailed computations must be submitted to and approved by the Responsible Authority. The drainage plans must be in accordance with the Infrastructure Design Manual and Australian Rainfall & Runoff 2019 and shall incorporate (but not be limited to) the following:
 - (a) The development as a whole must be self-draining to the legal point of discharge.
 - (b) All drainage courses within the development must pass through easements or reserves shown on the plan of subdivision.
 - (c) All outfall drainage passing through other land must be provided at the cost of the developer and be constructed within easements shown on the plan of subdivision.
 - (d) Volume of water discharging from the development in a 10% AEP storm shall not exceed the 20% AEP storm prior to development. Peak flow must be controlled by the use of a detention system located and constructed to the satisfaction of the Responsible Authority.
 - (e) Each lot must be provided with a stormwater legal point of discharge at the low point of the lot, to the satisfaction of the Responsible Authority.
 - (f) Stormwater runoff must meet the "Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)".
 - (g) Flow paths of the 1% AEP storm must be determined and the subdivision designed so that no property is inundated by such a storm. The flow paths must be indicated on the engineering plans.
 - (h) The drainage system must be designed to include provision to intercept litter.
 - (i) The drainage design must take into account any applicable drainage or flood management strategy.
 - (j) If required, the layout of the subdivision must be modified based on the approved stormwater design.
25. Design computations for drainage of the whole site must be prepared and submitted to the Responsible Authority for approval, and must include analysis of the existing stormwater drainage system in the area to determine:
 - (a) The requirements for drainage of the whole site.

- (b) if the existing drainage network has sufficient capacity to cater for the additional runoff from the ultimate development.
 - (c) If additional outfall drainage or upgrading of the existing drainage network is required.
- 26. Prior to the issue of Statement of Compliance, traffic management treatments must be provided in the form of line marking, signage and pavement markers at intersections and vehicle turning areas. These requirements must be to the satisfaction of the Responsible Authority, to a design approved prior to construction commencing.
- 27. Prior to the works commencing on the development, notification including photographic evidence must be sent to Council's Infrastructure Services identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority. If photographic evidence cannot be provided, then the damage must be fully reinstated at no cost to and to the satisfaction of the Responsibility Authority.
- 28. Sediment discharges must be restricted from any construction activities within the property in accordance with the relevant Guidelines including "Construction Techniques for Sediment Control" (EPA 1991) and "Environmental Guidelines for Major Construction Sites" (EPA 1995)

Central Highlands Water:

- 29. Any plan lodged for certification will be referred to the Central Highlands Region Water Corporation pursuant to Section 8(1)(a) of the *Subdivision Act 1988*.
- 30. Reticulated sewerage facilities must be provided to each lot by the owner of the land (or applicant, in anticipation of becoming the owner) to the satisfaction of the Central Highlands Region Water Corporation. This will include the construction of works and the payment of major works contributions by the applicant.
- 31. A reticulated water supply must be provided to each lot by the owner of the land (or applicant, in anticipation of becoming the owner) to the satisfaction of the Central Highlands Region Water Corporation. This will include the construction of works and the payment of major works contributions by the applicant.
- 32. The owner will provide easements to the satisfaction of the Central Highlands Region Water Corporation, which will include easements for pipelines or ancillary purposes in favour of the Central Highlands Region Water Corporation, over all existing and proposed sewerage facilities within the proposal.
- 33. If the land is developed in stages, the above conditions will apply to any subsequent stage of the subdivision.

Greater Western Water:

- 34. The drainage system must be designed to ensure that stormwater flows downstream of the site are restricted to pre-development levels.
- 35. All drainage works must be designed to meet the current best practice performance objectives for stormwater quality.
- 36. The developer must ensure that the site be developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments or gross pollutants in accordance with currently accepted best practice.

Southern Rural Water:

37. The development must be connected to the reticulated sewage network.

Melbourne Water:

38. Prior to endorsement, an amended plan of subdivision must be submitted to Council and Melbourne Water addressing Melbourne Water's conditions. Plans must be submitted with amendment as follows:
- (a) A minimum 4.5m wide easement must be shown on plan of subdivision with Melbourne Water's underground asset shown centrally located within the easement. The new 4.5m wide drainage easement must be shown to be in favour of Melbourne Water;
 - (b) Underground tanks shown beneath the proposed central road and close to Melbourne Water's assets must be shown out of the future 4.5m wide Melbourne Water's easement. (Melbourne Water future easement as per (a) above);
 - (c) Locations where flood depths are over 300mm within Lots 2 and 18 must be shown fenced off. (This must be notated on plan of subdivision).
39. Prior to Certification of the plan of subdivision, a 4.5m wide easement with the underground asset centrally located within the easement must be shown in favour of Melbourne Water Corporation. This easement must be in accordance with Memorandum of Common Provisions MCP AA1106 for drainage and assets.
40. Underground tanks shown beneath the proposed central road and close to Melbourne Water's assets must be shown out of the future 4.5m wide Melbourne Water's easement.
41. Locations where flood depths are over 300mm within Lot 2 and 18 must be fenced off.
42. Management of storm water of the subdivision development must be as per Melbourne Water approved updated Storm Water Management Plan titled "Stormwater Management Plan – 58 Ingliston Road Ballan" by: Dryside Engineering (Aust) Pty Ltd, Report No.: DSE24012REP01, Version: V03, dated 13 January 2025 with respect to retarding flows back to pre-existing conditions and treating stormwater runoff from the site to Best Practice Management Targets.
43. Stormwater runoff from the subdivision must achieve State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater as set out in the 'Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) 1999'.
44. Prior to the issue of a Statement of Compliance, the Owner shall enter into and comply with an agreement with Melbourne Water Corporation for the acceptance of surface and storm water from the subject land directly or indirectly into Melbourne Water's drainage systems and waterways, the provision of drainage works and other matters in accordance with the statutory powers of Melbourne Water Corporation.
45. Prior to Certification, the Plan of Subdivision must be referred to Melbourne Water in accordance with Section 8 of the *Subdivision Act 1988*.
46. At development stage, a minimum freeboard of 300mm above the applicable 1% AEP flood level must be provided for dwellings on Lots 1, 2, 3, 4, 17 and 18.

47. No fill or raising of surface levels will be permitted within the 1% AEP flood extent (overland flow path). The proposed access road within the flood extent must be set at existing natural surface levels.
48. No earth filling or lowering of the road level over Melbourne Water's underground asset will be permitted.
49. If any, proposed fences within the overland flow path must be open style with at least 50% opening from the natural surface level to the height of 1% AEP flood level. Boundary fencing are permitted to be standard timber paling style of construction. (No solid fencing such as metal/ colorbond are permitted within the flooding extent).
50. Prior to commencement of works on the accessway located over Melbourne Water's asset and easement, any earth works within 5.0m of the asset, a separate 'Build Over Application' must be made to Melbourne Water's Asset Services team for assessment and approval. Note: Fees and special conditions will apply. A Build Over Agreement may be required.
51. Landscaping/Earthworks - Cut and fill earthworks to alter existing levels (or repaving) must include the following:
 - (a) A minimum 850mm vertical cover must be maintained over the pipeline;
 - (b) The maintenance hole/ junction pits located on Melbourne Water's drain must not be covered over by the works; A loading (including construction) and vibration assessment will be required to be undertaken by a qualified structural and geotechnical engineer, where +/-500mm or greater is proposed in existing levels. The assessment must consider current condition of the drain and include any recommendations for limiting loading or vibration caused in the short (during construction) and long term (post construction), where a change in landscape is evident (e.g. nontraffic to trafficable).
 - (c) Where maintenance holes are required to be lowered/raised this must be constructed in accordance with Melbourne Water standard drawing 7251/08/417 to the finished surface level. Note: This standard is only applicable for reinforced concrete pipes, with lowering depths up to 500mm and raise heights up to 300mm only. Manhole material and depths outside of this range is to be designed from first principles by a qualified structural engineer and submitted to Melbourne Water for review.
52. Prior to works commencing, a separate new application must be submitted for approval for new or modified stormwater connection or alteration to Melbourne Water's drainage system as per legal point of discharge shown on the plan of subdivision. Note: Fees and special conditions will apply.
53. Utility Installation - No services are to be installed across Melbourne Water's Asset or within easement that is in favour of Melbourne Water unless approval in writing has been granted by Melbourne Water. Prior to installation, a separate Utility Installation application must be submitted.
54. Prior to the issue of a Statement of Compliance for the subdivision, engineering plans of the subdivision (in electronic format) must be submitted to Melbourne Water for our records. These plans must show road and drainage details and the 100 year ARI flood levels associated with any proposed overland flow paths.

55. Stormwater drainage (internal lots) is to the satisfaction of Council.

Powercor:

- 56. The plan of subdivision submitted for certification under the *Subdivision Act 1988* shall be referred to the Distributor in accordance with Section 8 of that Act.**
- 57. The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards. Notes: Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make such supplies available, with the cost of such works generally borne by the applicant.**
- 58. The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR). Notes: Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.**
- 59. The applicant shall, when required by the Distributor, set aside areas with the subdivision for the purposes of establishing a substation or substations. Notes: Areas set aside for substations will be formalised to the Distributor's requirements under one of the following arrangements: RESERVES established by the applicant in favour of the Distributor. SUBSTATION LEASE at nominal rental for a period of 30 years with rights to extend the lease for a further 30 years. The Distributor will register such leases on title by way of a caveat prior to the registration of the plan of subdivision.**
- 60. The applicant shall establish easements on the subdivision, for all existing Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements. Notes: Existing easements may need to be amended to meet the Distributor's requirements. Easements required by the Distributor shall be specified on the subdivision and show the Purpose, Origin and the In Favour of party as follows: Easement Reference; Purpose: Power Line; Width (Metres); Origin: Section 88 – *Electricity Industry Act 2000*; Land Benefitted/In Favour Of: Powercor Australia Ltd.**

Permit Expiry:

- 61. This permit will expire if the plan of subdivision is not certified within two (2) years of the date of issue of the permit.**

Statement of Compliance must be achieved and certified plans registered at the Titles office within five (5) years from the date of certification.

Permit notes:

Melbourne Water's Gosling Street Drain is at this location. This asset consists of a 600mm diameter pipe constructed of reinforced concrete. Further information will be required when development/ structures are proposed within the subdivision. Offsets from the edge of the asset must be shown on all development plans.

Buildings/structures including footings, eaves etc must be set outside the required 4.5m wide easement or a minimum 1.8m laterally clear of the outside edge of the Melbourne Water pipe, whichever is greater. Note: No overhangs or eaves are permitted within the lateral clearance zone.

Powercor:

It is recommended that applications for electricity supply to each lot be submitted at the earliest opportunity so that the precise requirements of the Distributor can then be determined and accommodated. Applications for electricity supply shall be submitted via the Distributor's web portal, "mySupply" which can be accessed via the following link: <https://customer.portal.powercor.com.au/mysupply/CIWQuickCalculator>

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	One.
Notice in Moorabool Newspaper:	No.
Number of objections:	12.
Consultation meeting:	Yes, held on 8 October 2024 at the Ballan offices. The meeting did not result in any changes to the application.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 1: Healthy, inclusive and connected neighbourhoods

Priority 1.5: Provide access to services to improve community connection in the Shire

The proposal is not provided for in the Council Plan 2021-2025 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 130 of the *Local Government Act 2020*, 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, Council's Development Infrastructure, Environment, Emergency and Waste Management, Central Highlands Water, Powercor, Downer Utilities, Melbourne Water, Greater Western Water, and Southern Rural Water
Any issues raised in referral responses?	Melbourne Water and Council's Development Infrastructure requested further information related to flooding and drainage.

	<p>Council's Development Infrastructure also requested a Traffic Impact Assessment.</p> <p>Council's Environment Emergency and Waste Management team raised concerns with vehicle crossover locations and impacts on vegetation and requested further information about the drainage easement.</p>
Preliminary concerns?	Further information was requested relating to vegetation removal, vehicle crossing locations, drainage, flood impacts, and traffic impacts.
Any discussions with applicant regarding concerns?	Yes.
Any changes made to the application since being lodged?	Yes. The proposal was amended on 31 July 2024 to reduce the number of lots from 19 to 18.
Brief history.	The site contains an existing single storey dwelling with associated outbuildings.
Previous applications for the site?	PA2022105 for a 21 Lot Subdivision and Variation of an Easement was withdrawn on 20 January 2023.
General summary.	<p>The proposal is for 18 lot residential subdivision with internal common property roadway.</p> <p>The proposed subdivision would contribute to residential growth in Ballan in an appropriate location whilst respecting the neighbourhood character. Identified drainage and flooding issues have been addressed with consent from Melbourne Water.</p> <p>Twelve objections were received to the application with concerns principally relating to existing flood issues in Lay Court and Lay Street.</p> <p>Subject to conditions, the proposed stormwater design would not contribute to flooding of other properties.</p> <p>As a result of deferral of the decision from the April DAC meeting, separate discussions between Council, Melbourne Water and surrounding residents will be undertaken to discuss stormwater and flooding issues in Ballan.</p>
Summary of Officer's Recommendation	
<p>That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i>, issue a Notice of Decision to Grant Planning Permit PA2023110 for an 18 Lot Subdivision, Vegetation Removal and Creation of an Easement at 58 Ingliston Road, Ballan known as, Portion 10, Section 4, Parish of Gorong, subject to the conditions contained within this report.</p>	

SITE DESCRIPTION

The subject site and surrounding land to the north and south is in the Neighbourhood Residential Zone, Schedule 7. This area comprises single dwellings on a variety of lot sizes, most of which are substantially smaller than the subject site apart from the immediately adjoining lot to the north which is a similar size to the subject site. To the west of the site is land in the General Residential Zone typified by mainly single dwelling development on lots generally 900-1400sqm in size. To the east of the site, across Ingliston Road, is land in the Farming Zone, developed with single dwellings on 2ha lots used for rural lifestyle or hobby farming purposes.

The subject site, identified as Portion 10, Section 4, Parish of Gorong and known as 58 Ingliston Road, Ballan, is a rectangular shaped 2.02ha lot located on the west side of Ingliston Road, approximately 520m south of Old Melbourne Road and 210m north of the Melbourne-Ballarat railway corridor. The site has a 100.58m width and 201.17m length and is developed with a single dwelling and ancillary outbuildings, accessed via a single width crossing to Ingliston Road. Vegetation comprises mature plantings of exotic trees to the front and rear of the dwelling, with the balance of the site vacant and fenced to create paddocks, currently used to keep horses. The site falls generally to the north by approximately 2m, with a low point located towards the front of the site, which aligns with underground drainage infrastructure flowing into the Werribee River approximately 1km to the north. The site is not encumbered by any easements.



Figure 1: Aerial photograph

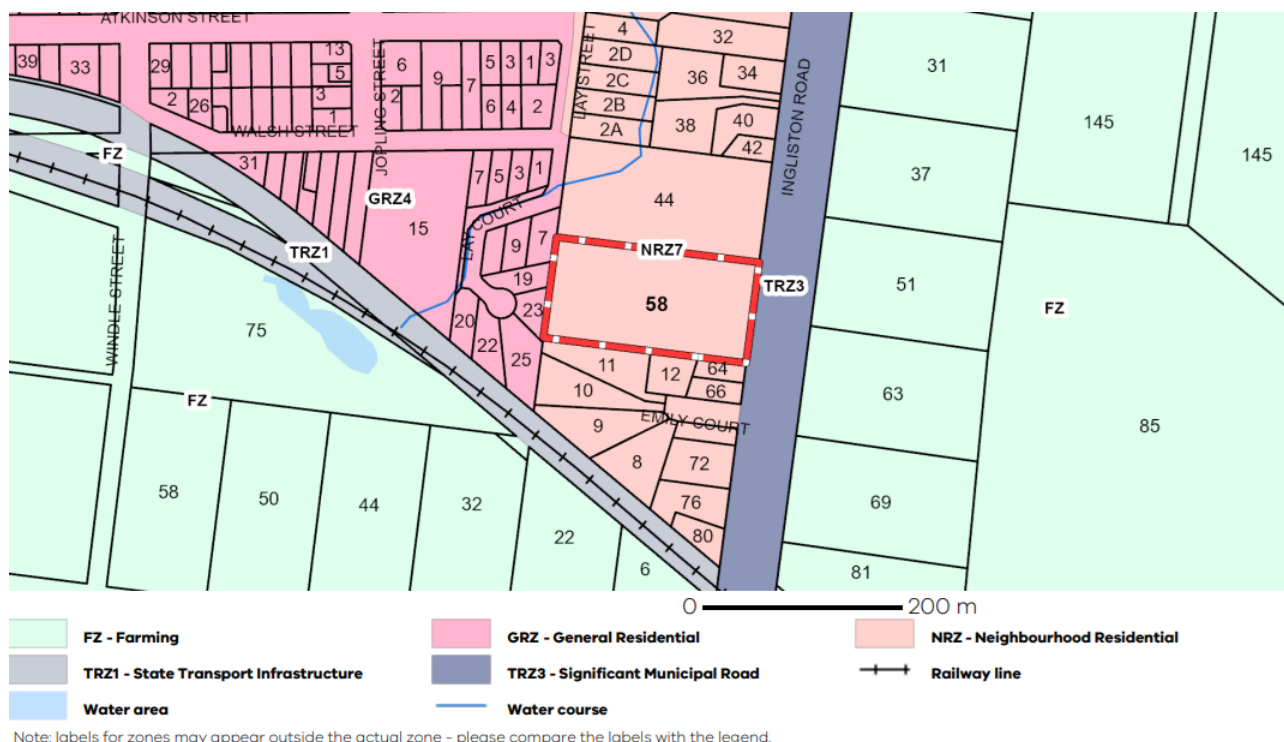


Figure 2: Zone map

PROPOSAL

It is proposed to subdivide the site into 18 lots, remove vegetation and create an easement. The existing dwelling and outbuildings would be demolished and vegetation removed. Site access would generally align with the existing crossover in the form of a private road to be managed as common property, terminating in a court bowl approximately 180m west of Ingliston Road. All proposed lots would be accessed via the proposed private road. Proposed lot sizes would range from 800sqm to 2198sqm, with an average lot size of 959.5sqm. The two largest lots would accommodate overland flow paths in 1% AEP flood events and be encumbered by building envelopes located to mitigate the flood risk to future occupants.

A patch of native vegetation would be removed from the Ingliston Road verge to accommodate the proposed access to the site.

The proposed easement to be created would be 4.5m in width, aligned with the existing Melbourne Water drainage asset.

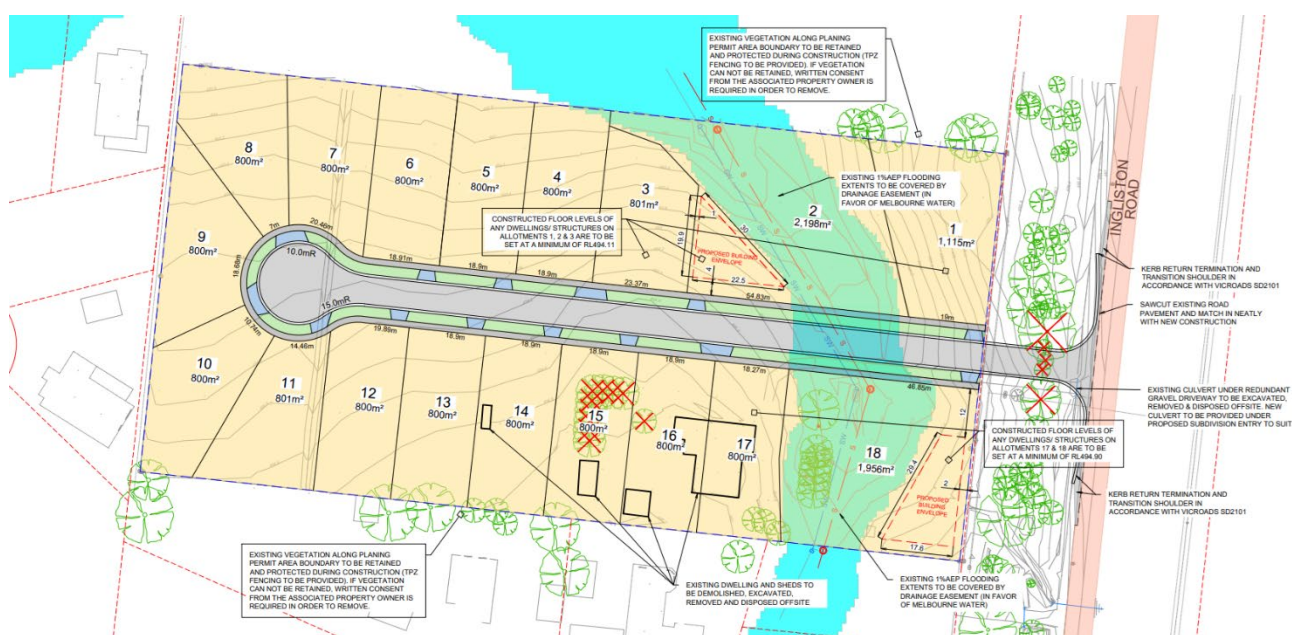


Figure 3: Proposed plan

BACKGROUND TO CURRENT PROPOSAL

Council at its Development Assessment Committee Meeting held on 16 April 2025 determined to defer making a decision in order to allow residents to be involved in a separate meeting with Melbourne Water representatives regarding on going flooding and stormwater issues in the local area. The process for the meeting has commenced in relation to flooding matters directly related to Melbourne Water (MW) and not the proposed subdivision itself. Copies of all submissions to this application were provided to MW to inform the proposed discussions. A decision now needs to be made with the current planning application.

HISTORY

PA2022105 for a 21 lot subdivision proposed a similar lot layout to the current proposal was withdrawn by the applicant on 20 January 2023.

PUBLIC NOTICE

Notice of the application was given to adjoining and nearby landowners and occupiers by way of letters and sign erected on site.

Twelve objections were received.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
18 lots is not in accordance with the infrastructure and rural setting of this road. Additionally, there is high traffic, buses, trucks, agricultural machinery, and the high likelihood of flooding.	Clause 32.09 – Neighbourhood Residential Zone
Officer's Response: The residential zoning specifies minimum lot sizes of 800sqm, which the proposal achieves, with several larger lots to accommodate the flood prone nature of the site. The NRZ7 zoning acknowledges this peripheral location of the township, in part based on the	

<p>minimum lot size requirements whilst recognising identified capacity for population growth in Ballan.</p> <p>The traffic impact assessment submitted by the applicant was assessed by Council's Development Infrastructure. The carrying capacity of Ingliston Road and the surrounding road network is sufficient to accommodate future traffic associated with the proposal.</p>	
<p>Flooding of residential properties in Lay Court and Lay Street from a Melbourne Water managed open channel already occurs and the proposed subdivision will exacerbate this issue. The existing drainage issues affecting Lay Court and Lay Street must be addressed before approval of the current application.</p>	<p>Clauses 44.04 – Land Subject to Inundation Overlay.</p>
<p>Officer's Response: Melbourne Water is a determining referral authority for the application and has consented to the proposal, subject to conditions to mitigate the flood risk associated with the proposal.</p> <p>The stormwater management plan submitted by the applicant is designed to restrict flows from the site to pre-development conditions. This would result in no worsening of existing flood conditions in properties currently affected by flooding.</p>	
<p>Devaluation of property due to worsening flood impacts.</p>	
<p>Officer's Response: VCAT has previously determined that property values are not a relevant planning consideration.</p>	

PLANNING SCHEME PROVISIONS

Council is required to consider the Victoria Planning Provisions and give particular attention to the Municipal Planning Strategy (MPS) and Planning Policy Framework (PPF).

The relevant clauses are:

- Clause 02.03-1 – Settlement, including Ballan
- Clause 02.03-3 – Environmental risks and Amenity
- Clause 02.03-4 – Natural Resource Management
- Clause 02.03-5 – Built environment and heritage
- Clause 11.01-1R Settlement – Central Highlands
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.01-1L-03 – Ballan
- Clause 11.03-3S – Peri-urban areas
- Clause 13.02-1S – Bushfire Planning
- Clause 13.03-1S – Floodplain Management
- Clause 14.02-1S – Catchment Planning and Management
- Clause 14.02-1L – Declared special water supply catchments

- Clause 15.01-3S – Subdivision Design
- Clause 15.01-4S – Healthy Neighbourhoods
- Clause 15.01-5S – Neighbourhood Character
- Clause 15.01-5L – Landscape and Neighbourhood Character

Subject to conditions the proposal complies with the relevant sections of the Municipal Planning Strategy and Planning Policy Framework.

ZONE

The subject site is in the Neighbourhood Residential Zone, Schedule 7.

Under Clause 32.09-3 a permit is required to subdivide land, pursuant to which under Schedule 7 there is a minimum lot size requirement of 800sqm.

OVERLAYS

Clause 42.01 Environmental Significance Overlay, Schedule 1

Under Clause 42.01-2 a permit is required to subdivide land and remove vegetation.

Clause 44.04 Land Subject to Inundation Overlay, Schedule 1

Under Clause 44.04-3, a permit is required to subdivide land.

RELEVANT POLICIES

Not applicable.

PARTICULAR PROVISIONS

Clause 52.02 Easements, Restrictions and Reserves

Under Clause 52.02, a permit is required to create an easement.

Clause 52.17 Native Vegetation

Under Clause 52.17 a permit is required to remove native vegetation.

Clause 53.01 Public Open Space Contribution and Subdivision

A person who proposes to subdivide land must contribute to the Council for public open space provision. Pursuant to Section 18 of the *Subdivision Act 1988*, it is recommended that a condition of approval require payment of a contribution equal to five percent of the value of the land based on increase population from the subdivision and lack of public open space areas.

Clause 53.03 Residential Reticulated Gas Service Connection

This clause relates to prohibition of reticulated gas connection to new residential subdivisions. Subject to a standard condition, the proposal complies with this clause.

Clause 56 Residential Subdivision

A residential subdivision must meet the relevant objectives of Clause 56 and should meet the relevant standards. The proposed subdivision complies with all the standards.

DISCUSSION

Policy Framework

The Central Highlands Regional Growth Plan (Victorian Government 2014) and policies in the Moorabool Planning Scheme recognise Ballan's role in supporting residential growth as the Shire's

second largest town. This must be achieved by directing growth to preferred locations with access to services and infrastructure, respect for neighbourhood character and integration with surrounding development.

The subject site and surrounding land to the north and south are in the Neighbourhood Residential Zone, Schedule 7 (NRZ7). Existing developments nearby reflect the incremental growth of this area of Ballan over several decades, typified by mostly single dwelling developments on a range of lot sizes. The application proposes lot sizes consistent with the NRZ7 requirements for minimum 800sqm lots. The proposed lot sizes reflect the preferred neighbourhood character for development in the NRZ7 and contribute to a diversity of lots in the areas and increased housing choice in Ballan. The proposed subdivision is responsive to the policy context for consolidated township growth and integrates with its surrounding urban context, providing opportunities for housing to take advantage of existing infrastructure and services.

ResCode

The proposal meets the relevant requirements of Clause 56 for the assessment of residential subdivision. The proposed subdivision has at least 85% of the lots oriented to meet the solar access requirements for future development, exceeding the 70% minimum. Each lot would be directly oriented to the proposed private road to enhance social interaction and passive surveillance opportunities. Subject to conditions, the proposed common property road would be capable of efficient management by a future owners corporation. Tree planting is proposed on both sides of the proposed road, contributing to the amenity of the proposed subdivision and surrounding neighbourhood.

Neighbourhood character

The proposal generally responds positively to the preferred neighbourhood character, as set out in NRZ7. This is supported by the proposed lot sizes and lot dimensions including frontage widths. To maintain the preferred spacious character of the area and support passive surveillance opportunities, it is recommended that a restriction be imposed on the plan of subdivision to limit fence heights to 1.2m extending a minimum of 9m and 12m from the respective frontages of Lots 1 and 18 along the Ingliston Road boundary.

Flooding and drainage

Part of the site is affected by the Land Subject to Inundation Overlay, Schedule 1 (LSIO1). The applicant submitted a flood impact assessment as part of the application, which was referred to Melbourne Water, with conditional consent provided after Melbourne Water's requirements were met. The existing drainage asset would be contained within the proposed easement, and the lot design responds to the mapped extent of flooding in a 1% AEP flood event. The drainage design would retard stormwater flows to pre-development conditions. This would be achieved by various measures, including most notably underground detention tanks beneath the proposed road, which would form part of the common property to be managed by a future owners corporation, not Council.

Objections received to the application all raised concerns regarding existing flooding being exacerbated by the proposed subdivision, however the stormwater management plan was designed to avoid any increase in flooding of downstream properties.

Waste Management

Given the proposed road will be maintained as a private road, Council's waste collection services will not be available to the proposed lots. Therefore, a condition of approval will require the need

for future private waste collection to be reinforced by way of a Section 173 Agreement registered on the title to each lot.

Creation of easement

The proposed creation of easement would accommodate the existing drainage asset and formalise protection of the asset on title. The relevant drainage authorities have provided consent to this new easement.

Vegetation removal

The vegetation proposed for removal from the site is established but not a significant landscape feature and is comprised of exotic species.

Native vegetation removal from the adjoining Ingliston Road verge is required to facilitate future access to the subdivision. The proposed access road is aligned with the existing driveway but requires widening which necessitates vegetation removal. No large trees would be removed, and the removal is minimised due to the proposed crossover alignment. Subject to conditions which require offsets, the proposed native vegetation removal would not have any detrimental impacts on native habitat.

Significant trees on adjoining properties close to the common boundary would be protected by tree protection zones during development of the subdivision as a condition of approval.

Traffic and access

A Traffic Impact Assessment was submitted as part of the application and demonstrates that the surrounding road network has sufficient capacity to accommodate the additional traffic to be generated by the proposed subdivision. The design of the internal road is sufficient to accommodate the expected traffic volume, and the cul de sac provides sufficient turning space for service vehicles and fire trucks.

Declared Special Water Supply Catchment

Reticulated sewerage is available to the subject site, and connection to all proposed lots would be required as a condition of approval. Southern Rural Water and Greater Western Water as the relevant catchment authorities both consented to the proposal.

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
Greater Western Water	Consent with conditions.
Southern Rural Water	Consent with conditions.
Melbourne Water	Consent with conditions.
Central Highlands Water	Consent with conditions.
Powercor	Consent with conditions.
Downer Utilities	No response.
Council's Infrastructure	Consent with conditions.

Council's Environment, Emergency & Waste Education	Consent with conditions.
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FINANCIAL IMPLICATIONS

The recommendation to approve this application has no financial implications for Council.

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

That the Development Assessment Committee could consider the following options:

- Issue a Notice of Decision to Grant a Permit in accordance with the conditions in the recommendation of this report; or
- issue a Refusal to Grant a Permit on specified grounds. The Development Assessment Committee would need to consider what reasonable grounds there would be to refuse the application under the Moorabool Planning Scheme. This option may result in the applicant appealing the Committee's decision at VCAT.

CONCLUSION

Overall, the proposed subdivision, creation of easement and vegetation removal is deemed to be generally in accordance with the relevant provisions of the Moorabool Planning Scheme. The proposal would facilitate housing growth in a location proximate to services and infrastructure, responsive to the preferred neighbourhood character and without any unreasonable amenity impacts. Subject to conditions, the flood prone nature of the site and surrounding land has been addressed in the proposed stormwater design which would not contribute to flooding of other properties. The proposed subdivision is recommended for approval.

10 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS

11 UPDATE ON VCAT DECISIONS

12 OTHER BUSINESS

13 DATE OF NEXT MEETING

14 MEETING CLOSE