



# **AGENDA**

## **Development Assessment Committee Meeting**

**Wednesday, 19 October 2022**

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

**Date: Wednesday, 19 October 2022**

**Time: 6.00pm**

**Location: Council Chambers, 15 Stead Street, Ballan & Online**

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



**Order Of Business**

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

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

**4 CONFIRMATION OF MINUTES**

Development Assessment Committee Meeting Minutes, Wednesday 21 September 2022.

**5 MATTERS ARISING FROM PREVIOUS MINUTES****6 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.

## 7 COMMUNITY PLANNING REPORTS

### 7.1 PA2022007 - USE AND DEVELOPMENT OF A CHILD CARE CENTRE AND MEDICAL CENTRE AT 80 STEIGLITZ STREET, BALLAN

**Author:** Jyoti Makan, Senior Statutory Planner

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

**Attachments:** 1. PA2022007 - 80 Steiglitz Street Ballan - Proposed Plans (under separate cover)

#### APPLICATION SUMMARY

**Permit No:** PA2022007

**Lodgement Date:** 24 November 2022

**Planning Officer:** Jyoti Makan

**Address of the land:** 80 Stieglitz Street, Ballan

**Proposal:** Use and Development of a Child Care Centre and Medical Centre

**Lot size:** 2,571sqm

**Why is a permit required?** Clause 34.01-1 - Section 2, Use of land for a Child Care Centre (C1Z); Clause 34.01-4 - Buildings and works (C1Z); Clause 42.01-2 - Buildings and works (ESO1)

#### 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 PA2022007 for Use and Development of a Child Care Centre and Medical Centre at 80 Steiglitz Street, Ballan or otherwise known as Lot 2 on Plan of Subdivision 735543L, subject to the following conditions:

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and submitted for approval to the Responsible Authority. The plans must be generally in accordance with the plans submitted with the application but modified to show:
  - (a) Landscape plans in accordance with Condition 2 and detailing tree protection areas for all trees on the northern boundary within the neighbouring property.
  - (b) Details of the acoustic fencing on the western boundary to meet the required standards.
  - (c) Pedestrian access from each entry point of the Medical Centre and Child Care Centre to the street footpath and car park.
  - (d) Provision of least one bicycle parking space as recommended in the Traffic Engineering Report, drafted by Traffic Group, dated June 2022 and in accordance

**with the minimum requirements of Clause 52.34.**

**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.**

**Landscape Plans:**

- 2. Before commencement of the use landscape plans to the satisfaction of the Responsible Authority must be submitted and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and electronic copies must be provided and include:**
  - (a) Landscaping and planting within all open outdoor play areas of the site.**
  - (b) Canopy trees (minimum 2m tall when planted) in all outdoor play areas. All species selected must be to the satisfaction of the Responsible Authority.**
  - (c) Surface finishes of the outdoor play areas and pathways.**
  - (d) Fixed play equipment.**
- 3. 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.**
- 4. 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.**

**Operational:**

- 5. The amenity of the area must not be detrimentally affected by the use or development, through the:**
  - (a) transport of materials, goods or commodities to or from the land;**
  - (b) appearance of any building, works or materials;**
  - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;**
  - (d) presence of vermin; and**
  - (e) any other way.**
- 6. The acoustic fence detailed in the endorsed plans must be maintained to the satisfaction of the Responsible Authority at all times.**
- 7. No more than 80 children may be in care at the facility at any one time.**
- 8. The use of the Child Care Centre must operate only between the hours of 6:30am to 6:30pm Monday to Friday except with the written consent of the Responsible Authority.**
- 9. The use of the Medical Centre must operate only between the hours of Monday to Friday 8.00am to 8.00pm, Saturday 8.00am to 5.00pm, except with the written consent of the Responsible Authority.**
- 10. No more than three medical practitioners permitted to practice at any one point in time.**

**Infrastructure:**

- 11. A standard urban industrial vehicle crossing must be provided on Steiglitz Street to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.**
- 12. Prior to the development and use commencing, engineering drainage plans and computations must be submitted to the Responsible Authority for approval and shall incorporate the following:**
  - (a) The development as a whole must be self draining and must be connected to an approved point of discharge in an approved manner to the satisfaction of the Responsible Authority.**
  - (b) Underground piped drainage for the whole development shall cater for 10% AEP storm.**
  - (c) Overland 1% AEP flow path(s) for the development must be shown on layout plans and shall ensure that no property is subject to inundation by such a storm to the satisfaction of the Responsible Authority.**
- 13. Storm water drainage from the proposed buildings and impervious surfaces must be directed to the legal point of discharge to the satisfaction of the Responsible Authority. A Stormwater Point of Discharge permit must be obtained from the responsible authority prior to the commencement of the works associated with the permit.**
- 14. 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).**
- 15. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.**
- 16. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset 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.**
- 17. Prior to the use commencing, the car park areas must be constructed with a sealed surface, line-marking and drainage to the satisfaction of the Responsible Authority, and shall incorporate the following:**
  - (a) Parking bays and aisle widths of the car park shall comply with Australian Standard AS 2890.1:2004 Off-Street car parking. Disabled Parking bays shall comply with Australian Standard AS2890.1:2009 Off-Street Parking for People with Disabilities.**
  - (b) Designated loading areas shall be shown on layout plans.**
  - (c) The parking areas shall be provided with an asphalt or concrete surface and associated drainage. Moorabool Shire Council Engineering Services.**
  - (d) Concrete kerb of a minimum height of 150mm must be provided between landscaped areas and areas provided for parking and the passage of vehicles.**
  - (e) The car park must provide sufficient space for a service truck to enter and exit the site in a forward direction. The service truck shall comply with the medium rigid**



vehicle detailed in AS2890.2 section 2.2. Turning templates shall be submitted for approval.

- (f) A minimum of 28 onsite car parking spaces must be available at all times for vehicle parking only.
- 18. Prior to the use commencing, one bicycle parking spaces must be provided to the medical centre.
- 19. The building shall be provided with disabled access in accordance with the provisions of AS1428 – Design for Access and Mobility.

**Permit Expiry:**

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

**Permit Note:**

Unless exempt from planning approval under Clause 52.05, any proposed signage for either land use may require separate planning permit approval.

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<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Nil.
Number of objections:	Six objections were received.
Consultation meeting:	A consultation meeting took place with objectors and applicant on 28 July 2022.

## **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

**Strategic Objective 2: Liveable and thriving environments**

**Priority 2.4: Grow local employment and business investment**

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 – Jyoti Makan*

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

## **EXECUTIVE SUMMARY**

Application referred?	The application was referred to Greater Western Water, Southern Rural Water, and Council's Economic Development, Infrastructure, Strategic Planning, Active Ageing and Diversity, Connected Communities, and Heritage Advisor.
Any issues raised in referral responses?	Stormwater Management and Car parking.

Preliminary concerns?	The applicant was required to address concerns related to the use, building and urban design, landscaping, open spaces, location of car parking, pedestrian access, car parking movements and integration the whole site.
Any discussions with applicant regarding concerns?	Several discussions and meetings took place.
Any changes made to the application since being lodged?	The applicant resulted in changes to the proposal to integrate the whole of the site to allow for adequate landscaping along the street and accessible car parking. The applicant also justified the reasons behind the proposed design and use of the land.
Brief history.	PA2016194 approved a two lot subdivision on 12 September 2017 which subdivided the site from the Commercial Hotel to the north. The Commercial Hotel site including the rear carpark became Lot 1 with an area of 1,387sqm. The subject site became Lot 2 which was vacant land with an area of 2,571sqm.
Previous applications for the site?	See History section of this report.
General summary.	The application is proposed to use and development the site as a Child Care Centre and medical centre. Six objections were received mainly on car parking, existing hotel using the subject land, pedestrian walking through the land, sealing and widening of the roads. The applicant submitted a traffic and car parking assessment, design response and planning report. It satisfies the planning scheme provisions and is recommended for approval subject to conditions.
<b>Summary of Officer's Recommendation</b>	
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 Planning Permit PA2022007 for the Use and Development of a Child Care Centre and Medical Centre at 80 Stieglitz Street, Ballan subject to the conditions contained within this report.	

## SITE DESCRIPTION

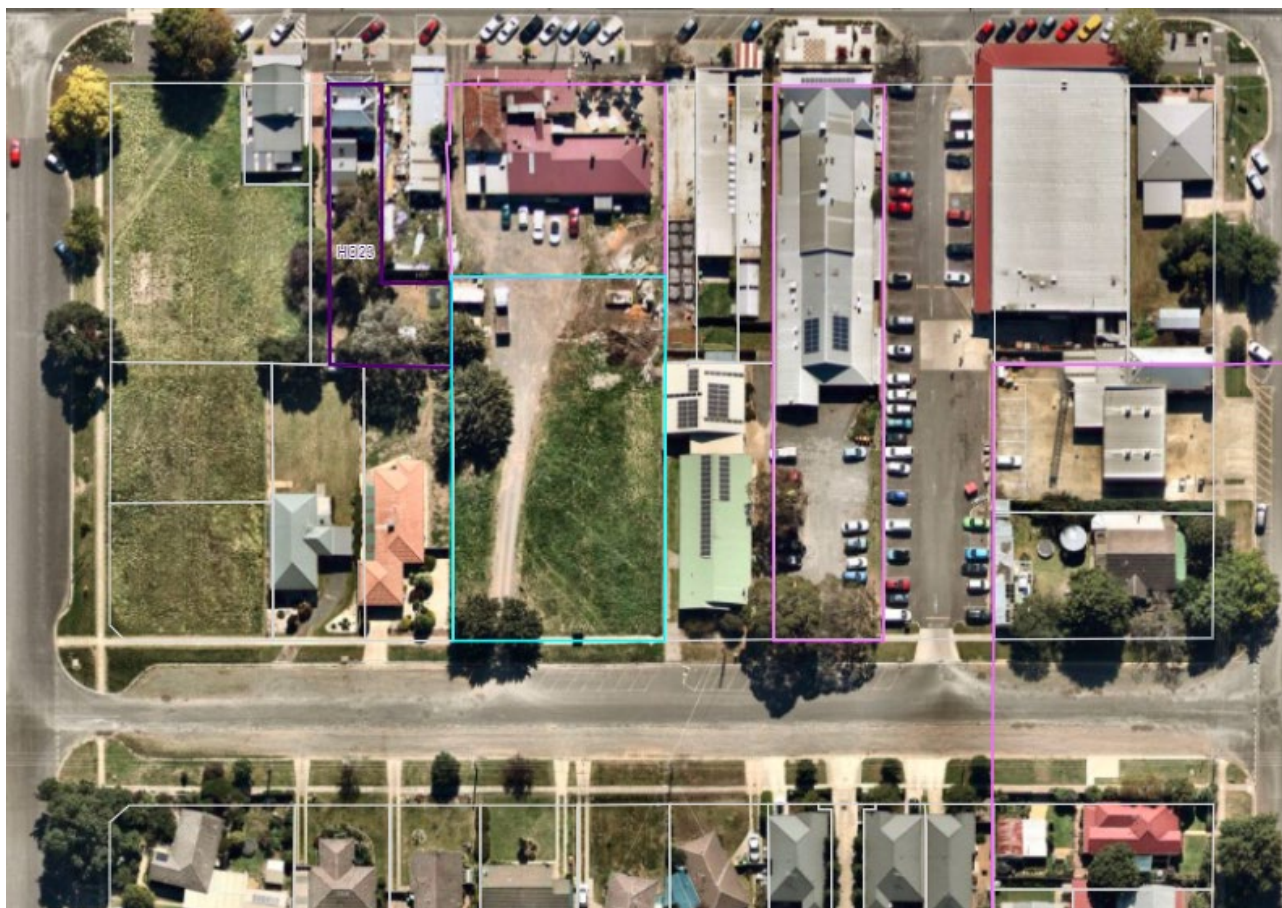
The site is 2,571sqm in area and is in the Commercial 1 Zone under the Moorabool Planning Scheme. It is rectangular in shape and generally flat. Access to the land is from Steiglitz Street. The Commercial Hotel which faces Inglis Street is located on the north side boundary. Between the Commercial Hotel and the north boundary of the subject site is the hotel car parking area.

Land on the east side boundary contains community buildings including Ballan and District Community House, Mechanics Institute Hall and Ballan Library, Ballan Neighbourhood House and

Men's Shed, the Senior Citizens Centre, the Country Fire Authority Depot and car parking areas to service these facilities. Further to the east is the Ballan Supermarket.

To the west of the site are two dwellings also in the Commercial 1 Zone. To the north-west of the site is the rear yard of the former Commercial Bank which has a Heritage Overlay HO23 and is now used as a dwelling.

South of the site across Steiglitz Street are single dwellings in lots with areas ranging from 700-800sqm in the General Residential Zone, Schedule 4. To the south-east is a completed medium density consisting of a 6-dwelling development.



**Figure 1:** Aerial photograph

## PROPOSAL

The land will be developed and used for a mixed-use development comprised of a Child Care Centre and a Medical Centre in two separate buildings.

### Child Care Centre:

- The proposed child Care Centre will have places offered for up to 80 children.
- Hours of operation – Monday to Friday 6.30am to 6.30pm
- It will offer a long day care program for children from six weeks of age to pre-school age.

It is proposed to construct a single storey building in the south-west portion of the site. The building will be divided into five child rooms and associated rooms including administration, kitchen, reception lobby as depicted in the accompanying architectural plans. Outdoor play areas are provided at ground level within the front, side and rear setbacks of the building.

**Medical Centre:**

- The proposed medical centre will have up to three medical practitioners
- Hours of operation – Monday to Friday 8.00am to 8.00pm, Saturday 8.00am to 5.00pm

It is proposed to construct a single storey building in the northern (rear) portion of the site. The building will be divided into a series of consulting rooms and associated rooms including administration, reception and waiting lobby, nurse station, pathology and treatment rooms, kitchen, and staff room.

The overall design provides safe escape routes, fall prevention barriers, area per person (in sqm), window safety and sill height, natural light, fencing and barriers, kitchen and laundry facilities, toilet and washbasin numbers in accordance with the Guide to the National Quality Framework (NQF), Australian Children's Education and Care Quality Authority for early childhood centres.

A total of 28 car spaces are provided on site of which 2 are designed as accessible spaces.

**BACKGROUND TO CURRENT PROPOSAL**

The application was amended on 8 June 2022 to meet the concerns raised in the request for further information. It was further advised that the applicant design the buildings and overall site to allow for landscaped interfaces and car parking and internal arrangements to cater for future alternative use of the land.

The applicant submitted a Stormwater Water Sensitive Urban Design report on 8 September 2022.

**HISTORY**

The site was originally 3,958sqm. It was subdivided into two lots in 2017 consisting of Lot 1 containing the Commercial Hotel and rear car parking area with an area of 1,387sqm and Lot 2, the subject site, which is vacant land with an area of 2,571sqm.

The whole of Lot 1 and part of Lot 2 is now covered by the interim West Moorabool Heritage Overlay (WMHO) in accordance with Planning Scheme Amendment C85. The interim overlay covers part of the subject site, Lot 2, for a distance of approximately 16m inside the north side boundary.

The Commercial Hotel has been operating from this site since at least 1871.

Previous planning applications are as follows:

- PA2018277 – 4 lot subdivision. Application withdrawn.
- PA2016194 – 2 lot subdivision. Permit issued.
- PA2010055 - Development of Additions Ancillary to an Existing Hotel and Waiver of Car Parking.
- PA2004348 - Buildings and Works Associated with Alterations and Additions to an Existing Building (New Amenity Facilities).

**PUBLIC NOTICE**

Advertising was required and was undertaken for this application in accordance with Section 52 of the *Planning and Environment Act 1987*. The application was notified to adjoining and surrounding landowners. A sign was placed on the site by the applicant and a statutory declaration was submitted on 13 July 2022.

Six objections were received.

## SUMMARY OF OBJECTIONS

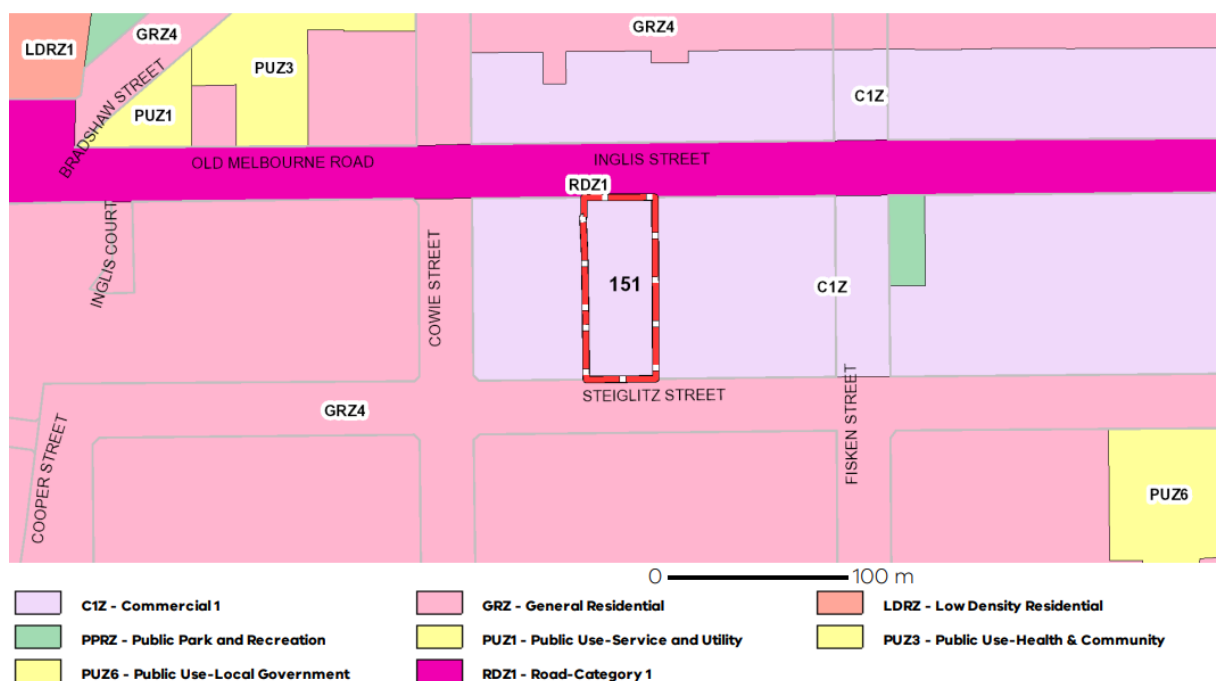
The objections received are summarised below with officer's comments accompanying them:

Objection	Any Relevant Requirement
Road maintenance and increased traffic Timing of Traffic Report Waste Collection Traffic Noise	Moorabool Planning Scheme Clause 18.01 – Land use and Transport Clause 18.02 – Movement Networks Clause 19.02 – Community Infrastructure Clause 21.05 – Development and Community Infrastructure Clause 21.08 – Ballan
<b>Officer's Response:</b> <p>The site is commercially zoned and is expected to generate traffic. The Ballan Strategic Directions and zoning of the land is based on guiding growth in Ballan, with growth comes changes in traffic.</p> <p>The traffic report submitted shows minimal impacts on the ongoing street traffic at peak levels:</p> <ul style="list-style-type: none"> <li>• The level of peak hour traffic generated as a result of this proposal will be dispersed over the road network, limited to daytime business hours and can readily accommodated,</li> <li>• Loading activities associated with the child care centre and medical centre will be modest and undertaken by smaller type vehicles which can be accommodated within the on-site carpark,</li> <li>• Waste collection will occur within the on-site carpark outside of operating hours via a privately run waste service</li> </ul> <p>Council's Infrastructure stated that the road upgrade is part of Council's budget and action plans for the near future. Part of this upgrade will include upgrading of car parking on the street. The street is defined as an 'access street' and is as capable of the traffic flows even without upgrades.</p>	
Objection	Any Relevant Requirement
Loss of On-street Car Parking. Impacts on car parking on the street based on the IGA, narrow street, Senior Citizens Building, Men's Shed, Community Hall, nearby residents.	Moorabool Planning Scheme Clause 52.06
<b>Officer's Response:</b> The applicant proposes to provide the required 28 spaces on-site in accordance with the planning scheme. No overflow street car parking is proposed to facilitate this development. Any matters relating to street car parking impacts on other land uses sit outside this permit application.	

Objection	Any Relevant Requirement
Alternative use of the site – other child cares nearby, could be unviable	Moorabool Planning Scheme Clause 21.04 – Economic Development and Employment Clause 19.02 – Community Infrastructure Clause 21.05 – Development and Community Infrastructure Clause 21.08 – Ballan Ballan Strategic Directions and Framework Plan
<b>Officer's Response:</b> The land is zoned for commercial use and the Ballan Strategic Directions and Framework Plan specify growth, intensification of commercial zones and community facilities to be prioritised. The proposed building design can easily be retrofitted to other uses in the future. The planning scheme does not determine the number of land uses permitted on the one site. The economic viability of the site is dependent on the use of the business over time.	
Objection	Any Relevant Requirement
Noise to residents	Moorabool Planning Scheme Clause 13.05 – Noise Clause 13.07 – Amenity, Human health and Safety
<b>Officer's Response:</b> Appropriate acoustic fencing to mitigate noise will be made a condition of the permit. Additionally, the site is zoned for commercial purposes and non-residential noise is expected on this site.	

## LOCALITY MAP

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



**Figure 2:** Locality and Zoning Map

**PLANNING SCHEME PROVISIONS**

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

The relevant clauses are:

Clause 11.02 – Managing Growth

Clause 11.03 – Planning for Places

Clause 13.05 – Noise

Clause 13.07 – Amenity, Human health and Safety

Clause 15.01 – Built Environment

Clause 17.02 – Commercial

Clause 18.01 – Land use and Transport

Clause 18.02 – Movement Networks

Clause 19.02 – Community Infrastructure

Clause 21.02 – Natural Environment (Environmentally Sustainable Development)

Clause 21.03 – Settlement and Housing (Urban Growth Management)

Clause 21.04 – Economic Development and Employment

Clause 21.05 – Development and Community Infrastructure

**ZONE****Commercial 1 Zone (C1Z)**

This zone has the purpose (in part) to *“create vibrant mixed-use commercial centres for retail, office, business, entertainment and community uses”*.

In accordance with Clause 34.01-1 a permit is required to use the land for a child care centre (Section 2) as the ground floor frontage exceeds 2m (Section 1).

Pursuant to Clause 34.01-1 of the zone, a medical centre is not a separately listed land use but falls within the broader land use category of ‘Office’. An office is a Section 1 - as of right - use provided that the leasable floor area for all offices does not exceed any amount specified in the schedule to this zone. The Schedule to the Zone does not list a leasable floor area for office that applies to the subject site. The medical centre does not need a permit for the use.

Pursuant to Clause 34.01-4 a permit is required for buildings and works.

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

The proposal is not exempt from permit requirements under the ESO1 therefore a planning permit is required for the construction or carrying out of works.

The application was referred to Greater Western Water and Southern Rural Water who had no objections to the application subject to conditions.



**Relevant Policies****Ballan Strategic Directions (Clause 21.11)**

The Amendment was based on implementation of the Strategy called 'Ballan Strategic Directions' (adopted by Council in November 2017, and updated June 2018).

In Ballan Strategic Directions at 4.6.2 Non-Residential Uses and Local Employment it states that:

- Ballan will continue to have a centralised commercial/retail Precinct and it is important that this approach is retained to ensure the long-term jeopardy of the town centre core including creating and enhancing the town centre as the 'heart' to the town. To ensure the town centre core remains attractive, convenient and economically viable it is important that uses that complement and enhance the town centre are encouraged.

The proposal to utilise the commercial land for development meets the objectives and strategies of the Ballan Strategic Direction including the subsequent Amendment C88 which sought to provide a sense of place, growth and infill development, and enhance the town centre.

**Particular Provisions****Clause 52.06 – Car Parking**

This clause specifies car parking requirements as follows:

- Child Care Centre - 0.22 car spaces to each child.
- Medical Centre – five spaces for first practitioner plus three spaces per additional practitioner.

As the proposed child care centre is for 80 children, the required parking under the scheme equates to 17 parking spaces which has been provided on the site.

The proposed medical centre is for a maximum of three practitioners at any time and requires 11 parking spaces which have been provided on the site

The proposal overall satisfies the minimum requirements of the scheme in regard to the provision of 28 on-site spaces and the car spaces meet the minimum dimensions under Design Standard 2.

**Clause 52.34 – Bicycle Parking**

One bicycle parking space is required to facilitate the medical centre

It is recommended as a condition on the planning permit that this space be provided on site.

**DISCUSSION**

It is clear that the proposed uses fit the purposes of the zone to create a liveable and accessible environment within the growing Ballan township.

**Building Design**

The proposed building design provides varied setbacks between 1m-3m, with largest setback being away from the western residential property. The car park and kids outdoor play area including the front setback landscaping achieves activation of the streetscape. The children play area includes fencing. The fencing to the street will be comprised of a 1.5m high permeable aluminium slats.

After the several meetings with the applicant, the result of the building design is due to the following:

- Use of 1 access point without impacting on street car parking
- Integration of the development of the whole site rather than the balance of the land.
- Providing an active interface to the street with closer pedestrian entry of the child care centre.
- Allowing of the overall proposal and design of internal arrangements to be easily retrofitted to alternative uses for alternative tenants if necessary or if demands of the proposed land uses change.
- Designing the car park to meet the provisions of the planning scheme and allow adequate space on site for safe turning movements.
- Provision of landscaping opportunities and outdoor play areas wrapping around the child care building to be accessible from the rooms.
- The single storey development, materials and colours proposed encourages the form, scale and appearance of the development that enhances the function and amenity of the public realm and allows for internal amenity.
- Separation by the medical centre from the child care centre to the existing hotel, IGA and fruit and vegetable shop.

#### Traffic Impacts

A Traffic Engineering Assessment drafted by Traffix Group Pty Ltd dated June 2022 was provided with an assessment against the planning scheme with consideration for the site, surrounding area, traffic impacts and car parking.

The overall traffic generation is expected in a commercial zone and is relatively dispersed based on the of nature of the two proposed land uses. Council's Infrastructure is satisfied with the standard used to determine the traffic impacts and assessment. Infrastructure stated that the road is classified as an access street and will be able to carry the proposed load without upgrades.

Loading activities associated with the child care centre and medical centre will be modest and undertaken by smaller type vehicles which can be accommodated within the on-site carpark. Waste collection will occur within the on-site carpark outside of operating hours via a privately run waste service.

Although the facility has five practitioner rooms, this is common practise as it allows for multiple practitioners their own room and work stagnated hours/days. The practise will only operate with a maximum of three practitioners onsite at any given time.

#### Ballan Strategic Directions/Planning Policy:

Several community facilities are identified in the Strategic Directions. The local policy re-enforces this strategic vision by seeking the growth of community facilities in proximity to existing services and facilities. It further notes the requirements for a review of opportunities to improve the community facilities in the cluster.

As part of this strategic vision, the applicant was required to design the buildings to be able to cater for alternative land uses to encourage the sustainability of the design and to promote opportunities towards an ever-changing economic climate.

Council's Strategic and Sustainable Development noted in their referral response that:

*The subject site is well located for a child care centre, being within the commercial core of Ballan and in close proximity to other community facilities including the senior citizens centre, mechanics institute hall and men's shed.*

There is policy support for a medical centre and child care centre within commercially zoned land.

### 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, no conditions
Southern Rural Water	No comment.
Internal Council Departments	
Council's Heritage Advisor	Consent.
Strategic Planning	Consent.
Infrastructure	Consent with conditions.
Active Aging and Diversity	Comments on hotel nearby, wooden fencing, landscaping and shading areas.
Connected Communities	No comment.
Economic Development	Consent - The provision of services delivering early years education is important in rural areas of low population to allow parents to place their child in care locally (as opposed to travelling out of the area) whilst they undertake employment. The centre will potentially create employment outcomes and source goods and services locally.

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

**CONCLUSION**

Overall, the proposal meets the requirements of the planning scheme and the objectives within the Ballan Strategic Directions that provides community facility within the commercial precinct, as well as providing a building design that could be used in any economic climate and be retrofitted to accommodate alternative land uses. The proposal meets the requirements of car parking provisions and has satisfied all planning concerns with their lodgement of amendment plans. The interfaces have been designed with respect to the neighbouring properties whilst also making the best use of commercial land with opportunities for landscaping throughout the site.

The impact of traffic is considered minimal and is based on the nature of the two proposed land uses, is accepted by Council's Infrastructure. The amenity of nearby residents can be protected by standard amenity conditions including limiting the hours of operation and the number of children in the child care centre.

The proposal is in keeping with the Commercial 1 Zone by providing a net community benefit to Ballan and promotes the mixed use of land whilst retaining the objectives of the town centre's core. It is recommended that the application is approved subject to conditions.

**7.2 PA2020071 - NINE LOT SUBDIVISION AND VEGETATION REMOVAL AT 5486 GEELONG-BALLAN ROAD, BALLAN**

**Author:** Thomas Tonkin, Statutory Planner

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

**Attachments:**

1. Proposed plan of subdivision and native vegetation removal/retention (under separate cover)
2. Proposed services functional layout plan (under separate cover)

**APPLICATION SUMMARY**

**Permit No:** PA2020071

**Lodgement Date:** 14 April 2020

**Planning Officer:** Tom Tonkin

**Address of the land:** 5486 Geelong-Ballan Road, Ballan

**Proposal:** Nine Lot Subdivision and Vegetation Removal

**Lot size:** 1.0ha

**Why is a permit required?** Clause 32.09 Neighbourhood Residential Zone, Schedule 7 – Subdivision; Clause 42.01 Environmental Significance Overlay Schedule 1 - Subdivision and vegetation removal; Clause 52.17 Native Vegetation – Removal of native vegetation; Clause 52.29 Land Adjacent to the Principal Road Network - Subdivision

**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 PA2020071 for a Nine Lot Subdivision and Vegetation Removal at Lot 5 on PS203803U known as 5486 Geelong-Ballan Road, Ballan, 3342, subject to the following conditions:

**Endorsed Plans:**

1. Before the removal of vegetation or certification of the plan of subdivision, whichever occurs first, 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 Proposed Plan of Subdivision rev. 5 dated 23 February 2021 prepared by Swanson Surveying P/L but modified to show:
  - (a) Lots 5 and 6 with Tree Protection Zones consistent with the recommendations of a suitably qualified arborist for the protection of the *Eucalyptus ovata* trees on the subject site and adjoining land to the north, to the satisfaction of the Responsible Authority. The arborist report must be submitted in support of the amended plan/s.
  - (b) Details of the Tree Protection measures for the retained trees to the satisfaction of the Responsible Authority. All tree protection zones must comply with AS 4970-2009

**Protection of Trees on Development Sites.**

- (c) A plan of all vegetation proposed for removal or retention.
- 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.

**Subdivision:**

- 3. 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.
- 4. Prior to the issue of Statement of Compliance, the existing dwelling and outbuildings must be demolished to the satisfaction of the Responsible Authority.
- 5. The plan of subdivision submitted for certification must include a creation of restriction. The wording of the creation of restriction shall be as follows:

**Restriction 1**

- (a) Land to be Burdened: All lots on this plan.
- (b) Land to Benefit: All lots on this plan.
- (c) Description of Restriction 1:
  - i) No fencing within 4m of the primary street frontage shall be any higher than 1.2m, and no dwelling or ancillary outbuildings shall be constructed within 4m of the primary street frontage.
- d) Variation: The restriction can only be varied with the written consent of Moorabool Shire Council.

**Restriction 2**

- (a) Land to be Burdened: Lots 5 and 6 on this plan.
- (b) Land to Benefit: All lots on this plan.
- (c) Description of Restriction 2:
  - i) No buildings, not including fences, shall be constructed within the tree protection zones.
- (d) Variation: The restriction can only be varied with the written consent of Moorabool Shire Council.

**Restriction 3**

- (a) Land to be Burdened: Lots 1, 2 and 3 on this plan.
- (b) Land to Benefit: All lots on this plan.
- (c) Description of Restriction 3:
  - (i) No dwellings shall be constructed with a frontage to Geelong-Ballan Road.
  - (ii) No fencing on or within 3m of the Geelong-Ballan Road title boundary shall be constructed to a height greater than 2m.
  - (iii) No access to Geelong-Ballan Road is permitted.
- (d) Variation: The restriction can only be varied with the written consent of Moorabool

**Shire Council.****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.

**Infrastructure:**

7. 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.
8. 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 be undertaken in accordance with the Infrastructure Design Manual and Australian Rainfall and 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) The drainage design must take into account any applicable drainage or flood management strategy.
9. 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.
- 10. Prior to the issue of the Detailed Design, the internal road network layout (including all associated infrastructure) must be designed and constructed to the standards detailed in the Infrastructure Design Manual, to the satisfaction of the Responsible Authority. A justification to the satisfaction of the Responsible Authority is to be provided to any variation/discrepancy to the Infrastructure Design Manual.
- 11. Design computations for all road pavement construction, based on a geotechnical investigation of the site, must be prepared, and submitted to the Responsible Authority for approval prior to the detailed design being issued.
- 12. Plans and specifications of all roads, traffic and drainage works must be prepared and submitted to the responsible authority for approval prior to the commencement of such works and all such works must be carried out in accordance with the approved plans to the satisfaction of the Responsible Authority prior to the issue of Statement of Compliance.
- 13. Traffic management treatments must be provided in the form of line marking, signage and pavement markers at intersections and vehicle turning areas, to the satisfaction of the Responsible Authority and approved prior to construction commencing.
- 14. Prior to the submission of the detailed design, Functional Layout plans are to be submitted and approved by the Responsible Authority. Following the approval of the Functional Layout plan(s) by the Responsible authority, a submission can be made to Council for the Detailed Design. The submission is to include but not limited to all construction issued plans in line with the Infrastructure Design Manual, all appropriate reports and investigations, a completed checklist from the infrastructure design manual and any other documents/information to support the Detailed Drainage design.
- 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. 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).
- 17. The Environmental/Construction Management Plan shall include (but not limited to the following items):
  - (a) Details of Site security.
  - (b) Off Street parking for employees and site access for construction vehicles and equipment.
  - (c) Public safety in the event that the construction site is adjacent to public active areas.



- (d) Provisions for loading and unloading.
  - (e) Ensuring the safety of members of the public and Council staff who may have occasion to enter and be in attendance on the site.
  - (f) Details of management of storm water run-off and the proposed sediment and erosion control measures including the location of any rubble grids.
  - (g) Details of any air and dust management.
  - (h) Details of noise and vibration controls.
  - (i) Provision of Traffic Management Plan (TMP) and Traffic Control Plans (TCP).
  - (j) Proposed start and completion time of construction activities including the delivery of material to site.
18. No work shall commence onsite until all approvals are obtained by the relevant authority. The approvals include, but not limited to:
- (a) detailed Designs in the form of Stamped for Construction Plans;
  - (b) approved Environmental Management Plan;
  - (c) approved Construction Management Plan (which is to include TMP, PMP); and
  - (d) any other approvals forming part of other planning Certificate conditions.
- A copy of all approved documents are to be kept onsite at all times and consent from the relevant authority is required for any departure to the approval.
19. 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.
20. Street names and street signs must be provided to the satisfaction of the Responsible Authority.
21. Permanent survey marks must be provided at a maximum spacing of 200m and registered, to the satisfaction of the Responsible Authority.
22. Prior to the issue of a Statement of compliance for the subdivision, the developer must pay:
- (a) 0.75 % of the total estimated cost of works for the checking of engineering plans associated with that stage of the development.
  - (b) 2.5% of the total estimated cost of works for the supervision of works associated with that stage of the development.
  - (c) The fees are to be determined based on the requirements as specified within the Infrastructure Design Manual and the *Subdivision Act 1988*.
23. Prior to the issue of a Statement of Compliance for the subdivision, after all engineering works pertaining have been completed in accordance with the approved plans, the following “as constructed” details must be submitted in the specified format and approved by the Responsible Authority:
- (a) Drainage construction details in “D-Spec” format.

- (b) Roadworks construction details in “R-Spec” format.
  - (c) Open space details in “O-Spec” format.
  - (d) As built plans clearing detailing any changes from the as approved drawings.
  - (e) CCTV for all stormwater drainage infrastructure.
  - (f) All relevant test results, including but not limited to, compaction test of each road layer, compaction test of earthworks and certificates for the soil used.
  - (g) Upon the completion of all works as approved by the relevant authority, a minimum of seven days’ notice is to be provided to the relevant authority for the purpose of organising an on maintenance inspection.
24. All road, drainage and infrastructure works must be maintained in good condition and repair for a minimum of three months after completion of the works, to the satisfaction of the Responsible Authority.
25. Prior to the issue of a Statement of compliance for each stage of the subdivision, a security deposit of 5% of the total value of engineering works for that stage as approved by the Responsible Authority must be lodged with the Responsible Authority, to cover the maintenance of all works. The deposit will be returned after the final inspection of works, three months after the completion of works, subject to the satisfactory completion of all required maintenance and rectification works.
26. Prior to landscaping works being undertaken and prior to the issue of Statement of Compliance a landscaping plan must be submitted to the satisfaction of the Responsible Authority. Landscaping within the development must be provided in accordance with this approved landscape plan, to the satisfaction of the Responsible Authority. All landscape plans and associated works must comply with Moorabool Shire’s Landscape Design Manual.
27. Street trees must be provided at approved locations in all internal roads of the subdivision at a rate of one tree per lot frontage and one tree per lot sideage, 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.
28. Street trees and 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.
29. A security deposit equal to 150% of the cost of planting street trees and landscaping must be lodged with the Council. The deposit will be returned after the final inspection of street trees, 24 months after the completion of planting of the trees, only if Council requires no further maintenance of the trees to be undertaken.
30. Prior to the issue of a Statement of Compliance for the subdivision, a maintenance bond of \$43,500 must be provided to Council against the maintenance requirement of the proposed temporary basin as detailed in the endorsed Stormwater Management Plan (Prepared by Planit Consulting, 15 June 2022 – Rev F).

#### **Environmental Planning:**

31. Before works start, a native vegetation protection fence must be erected around all scattered trees to be retained on site. This fence will protect the tree by demarcating the tree protection zone and must be erected at a radius from the base of the trunk of the tree

in accordance with the advice of a suitably qualified arborist and to the satisfaction of the Responsible Authority. The fence must be constructed of star pickets, chain mesh, or similar to the satisfaction of the Responsible Authority. The fence must remain in place until all works are completed to the satisfaction of the Responsible Authority. Except with the written consent of the Responsible Authority, within the tree protection zone the following are prohibited:

- (a) vehicular or pedestrian access;
  - (b) trenching or soil excavation;
  - (c) storage or dumping of any soils, materials, equipment, vehicles, machinery or waste products;
  - (d) entry and exit pits for underground services; and
  - (e) any other actions or activities that may result in adverse impacts to retained native vegetation.
32. To offset the removal of 0.209ha of native vegetation the permit holder must secure a native vegetation offset, in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (DELWP 2017) as specified below:
- (a) A general offset of 0.068 general habitat units: - Port Phillip and Westernport Catchment Management Authority (CMA) or Moorabool Shire Council with a minimum strategic biodiversity score of at least 0.296, inclusive of three large trees.
33. Before any native vegetation is removed, evidence that the required offset for the project has been secured must be provided to the satisfaction of the Moorabool Shire Council Environment team. This evidence is 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 by the Responsible Authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.
34. Except where exempt under the Moorabool Planning Scheme or as shown on the plans endorsed under this permit, vegetation must not be removed, destroyed or lopped without further planning approval.

**Downer Utilities:**

35. The plan of subdivision submitted for certification must be referred to AusNet Gas Services in accordance with Section 8 of the *Subdivision Act 1988*.

**Powercor:**

36. 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.
37. 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.

38. 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.

39. 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.
40. 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 Benefited/In Favour Of: Powercor Australia Ltd.

#### Greater Western Water:

41. The drainage system must be designed to ensure that stormwater flows downstream of the site are restricted to pre-development levels.
42. All drainage works must be designed to meet the current best practice performance objectives for stormwater quality.
43. 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.
44. Each lot must be provided with a sewer connection point in accordance with the requirements of Central Highlands Water.
45. The effluent disposal system servicing the existing dwelling must be decommissioned to the satisfaction of Council's Environmental Health.
46. The developer must produce for approval by Western Water and Central Highlands Water an Integrated Water Management Plan (IWMP) that incorporates water efficiency measures and water-sensitive urban design techniques that reduce reliance on potable water by increasing utilisation of fit-for-purpose alternative water supplies.
47. The IWMP must set out outcomes that appropriately respond to the site and its context for integrated water management to the satisfaction of Western Water. When approved

by Western Water, the IWMP must be endorsed and form part of the permit.

**Central Highlands Water:**

48. 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*.
49. 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.
50. 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.
51. 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.
52. If required the owner will provide easements to the satisfaction of Central Highlands Region Water Corporation for pipeline or ancillary purposes through other land in the vicinity, as it is considered by the Authority that such easements may be required for the economical and efficient subdivision or servicing of or access to land covered by the subdivision.
53. If the land is developed in stages, the above conditions will apply to any subsequent stage of the subdivision.

**Melbourne Water:**

54. Prior to Certification of any stage of the estate, Council's Acceptance to the Stormwater Management Strategy is to be forwarded to Melbourne Water for our records.
55. The developer is to negotiate with any downstream landowners to obtain a free draining outfall through their property. Prior to Certification of any stage of the estate, approval is to be forwarded to Melbourne Water for our records.
56. Prior to the Certification of any stage of the estate, the Plan of Subdivision must be referred to Melbourne Water, in accordance with Section 8 of the *Subdivision Act 1988*.
57. Prior to the Certification of any stage of the estate associated with works that is to be constructed in conjunction with Melbourne Water's Development Services Scheme/Strategy, the Plan of Subdivision must show sufficiently sized easements and/or reserves to be created over any proposed Melbourne Water asset to our satisfaction. This may require submission of an appropriate functional design to the satisfaction of the traditional landowner(s), Melbourne Water and Council.
58. Prior to the Certification of any stage of the estate associated with works that is to be constructed in conjunction with Melbourne Water's Development Services Scheme/Strategy; a sequencing arrangement confirming the timing of the delivery of those works is to have been agreed between Melbourne Water and the Owner.
59. 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.

60. Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water's drains or waterways. Prior to the issue of a Statement of Compliance, a Council approved Site Management Plan detailing pollution and sediment control measures is to be submitted to Melbourne Water for our records.
61. Prior to the issue of a Statement of Compliance, Melbourne Water requires evidence demonstrating that appropriate interim drainage solutions (retardation and sediment control) have been implemented to mitigate the risk to downstream landowners. Council acceptance of any temporary drainage infrastructure should be forwarded to Melbourne Water; and for any works proposed around our mains, drains and waterways, a separate application must be made direct to Melbourne Water's Asset Services team.
62. Prior to the issue of a Statement of Compliance, a free draining outfall is to be arranged to the satisfaction of Melbourne Water, Council and the affected downstream property owner(s). Written acceptance from downstream landowner(s) and Council is to be forwarded to Melbourne Water for our records. Any temporary outfall is to be arranged to the satisfaction of Melbourne Water, Council and the affected downstream property owner(s).
63. Prior to the issue of a Statement of Compliance, a separate application direct to Melbourne Water's Asset Services team, must be made for any works around our mains, drains and waterways. Applications shall be made online via the Melbourne Water website. Prior to the issue of a Statement of Compliance, copies of all relevant Asset Services signed practical completion forms must be submitted.
64. Prior to the issue of a Statement of Compliance, Council approved engineering plans of the subdivision (in electronic format) are to be submitted to Melbourne Water for our records. These plans must show road and drainage details and any overland flow paths for the 1% AEP storm event. A Certified Survey Plan (CSP) may be required following our comments on the engineering plans.
65. 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'.
66. Alignment of roads and reserves with any adjoining estates must ensure continuity and provide uninterrupted conveyance of overland flows.
67. Local drainage must be to the satisfaction of Council.
68. All new lots must achieve appropriate freeboard in relation to local overland flow paths to Council's satisfaction.
69. The subdivision is to make provision for overland flows from the upstream catchment utilising roads and/or reserves.
70. Any road or access way intended to act as a stormwater overland flow path must be designed and constructed to comply with the floodway safety criteria outlined in section 8 of the Guidelines for Development in Flood Affected Areas (DELWP 2019).

**Permit Expiry:**

**71. This permit will expire if:**

- (a) The plan of subdivision is not certified within two years of the date of this permit.**
  - (b) Statement of Compliance must be achieved and certified plans registered at Titles office within five years from the date of certification.**
-

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes, two signs.
Notice in Moorabool Newspaper:	No.
Number of objections:	Five.
Consultation meeting:	Yes, held 12 April 2021. There were no subsequent changes made 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**

## **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, Powercor, Downer, Central Highland Water, Southern Rural Water, Greater Western Water, Melbourne Water, Department of Environment, Land, Water and Planning, Department of Transport and Council's Infrastructure, Environmental Planning and Strategic Planning.
Any issues raised in referral responses?	Melbourne Water and Council's Infrastructure requested a stormwater management strategy. In addition, Infrastructure requested details of works required to connect the proposed road to the existing road reserve to the east.



Preliminary concerns?	Concerns related to the proposed layout, in particular the proposed road linking only to Alexander Drive to the east with no links to land to the north and south. Additionally, further information was requested in relation to extent of native vegetation removal.
Any discussions with applicant regarding concerns?	Council wrote to the applicant regarding the abovementioned matters.
Any changes made to the application since being lodged?	Yes. The proposed layout was amended to provide road links to land to the north and south in addition to the east, with a consequential reduction in the number of lots from ten to nine. See 'Background to Current Proposal' below.
Brief history.	Not applicable.
Previous applications for the site?	Not applicable.
General summary.	Overall, the proposal is consistent with relevant planning policy for Ballan by supporting residential growth balanced with respect for the preferred neighbourhood character and retention of native vegetation. Subject to conditions, the proposed lot design meets the relevant standards and objectives for residential subdivision. Five objections were received raising concerns regarding traffic volumes/safety, neighbourhood character, vegetation retention, amenity and disruption during subdivisional works.
<b>Summary of Officer's Recommendation</b>	
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 Planning Permit PA2020071 for a Nine Lot Subdivision and Vegetation Removal at Lot 5 on PS203803U known as 5486 Geelong-Ballan Road, Ballan, subject to the conditions included in this report.	

## SITE DESCRIPTION

The subject site, identified as Lot 5 on PS 203803U and is known as 5486 Geelong-Ballan Road, Ballan. The site is located on the east side of the road approximately 475m south of Old Melbourne Road and 76m north of the Melbourne-Ballarat railway line. A section of the rear title boundary adjoins Alexander Drive but there is no existing pedestrian or vehicular access. The site is rectangular in shape, with a 75.5m width, 142.95m length and overall area of 1ha and falls by up to 3.58m from the north-west to the south-east. The site is encumbered by a 2m wide drainage easement running parallel to the east title boundary. The site contains a single storey brick dwelling and ancillary outbuildings located towards the northern title boundary. Vehicle access is via two single width crossovers leading to a semi-circular driveway in the front setback area. The site is largely cleared of vegetation apart from three large remnant trees located near the centre of the site and towards the north-east corner of the site and planted vegetation in the north-west corner of the site and near the dwelling.



**Figure 1:** Aerial photograph

## PROPOSAL

It is proposed to subdivide the site into nine lots and remove vegetation. The existing dwelling and outbuildings would be demolished, and planted vegetation and one remnant tree removed. Alexander Drive would be extended into the site to create a T-intersection with a proposed road extending to the north and south boundaries to enable potential road connections to adjoining properties and beyond.

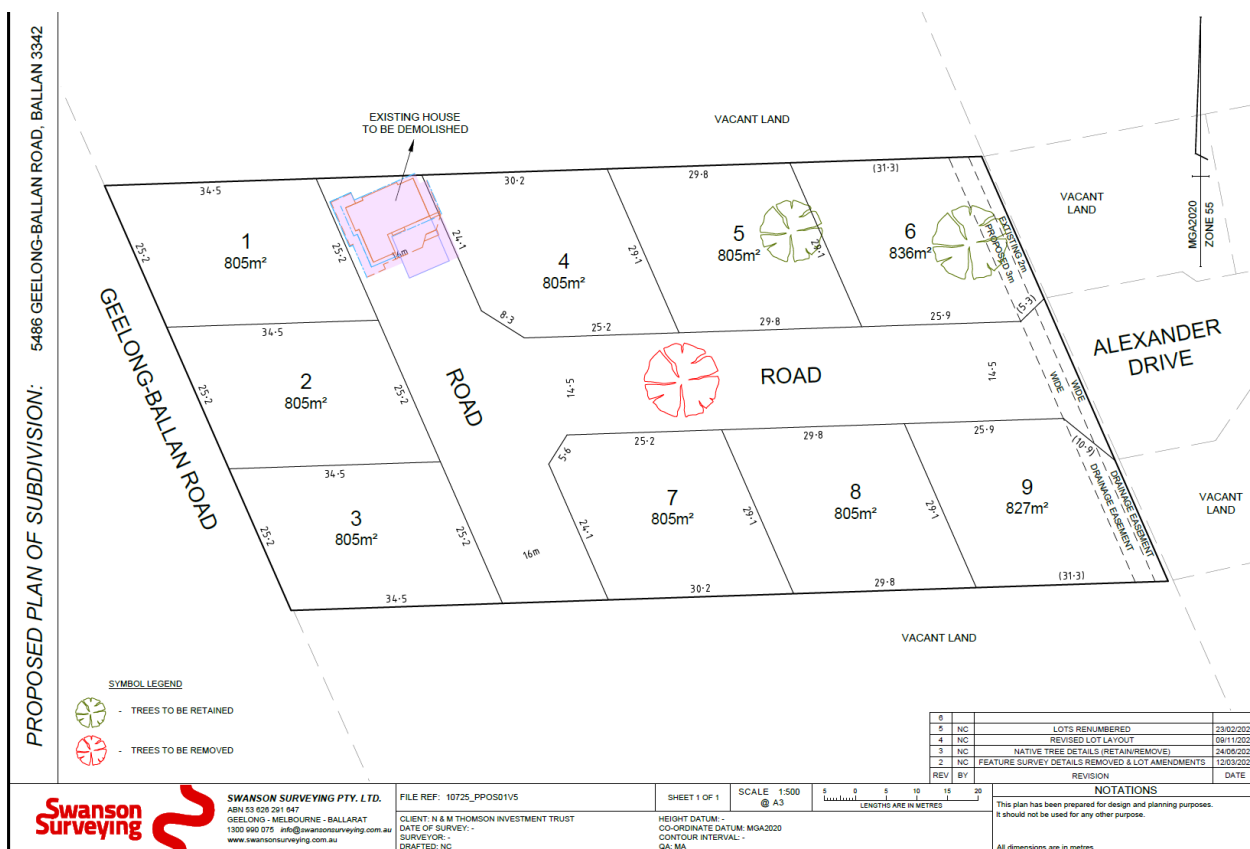
All proposed lots would have conventional frontages to the proposed road network.

Lots 1, 2 and 3 would also adjoin Geelong-Ballan Road, but no secondary vehicle access is proposed. Lots 1, 2 and 3 would be rectangular in shape and each 805sqm in size.

Lots 4, 5 and 6 would adjoin the north boundary. Lots 4 and 5 would be 805sqm each and Lot 6 836sqm. Lots 5 and 6 would each contain remnant trees to be retained and can be protected by a Tree Protection Zone.

Lots 7, 8 and 9 would adjoin the south boundary. Lots 7 and 8 would be 805sqm and Lot 9 827sqm.

A 3m wide drainage easement parallel to the existing easement is proposed.



**Figure 2: Proposed plan of subdivision and tree removal**

## BACKGROUND TO CURRENT PROPOSAL

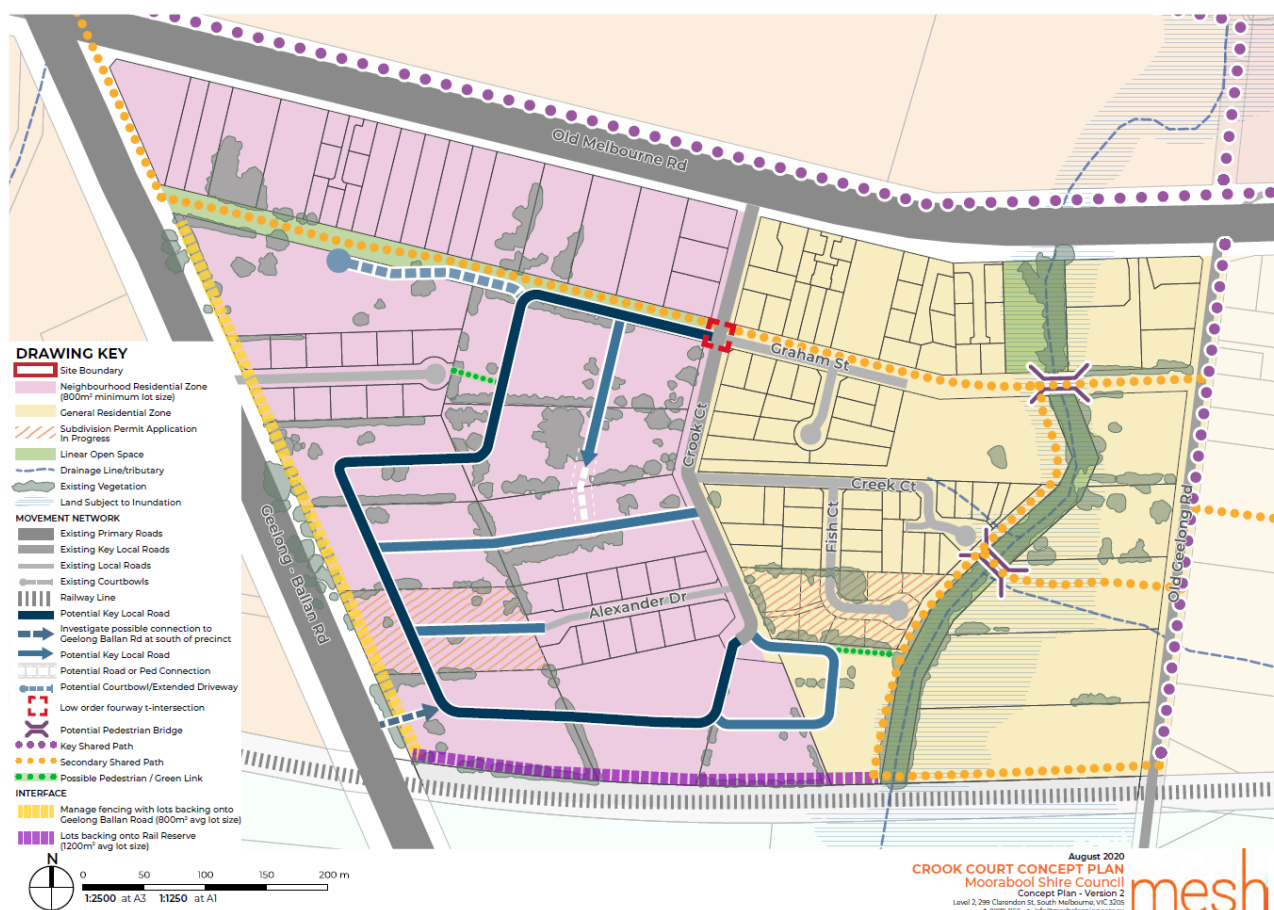
The application originally proposed a 10 lot staged subdivision, including retention of the existing dwelling, with three lots fronting Geelong-Ballan Road and the remaining seven lots fronting an extension of Alexander Drive to the east.

Council officers' initial assessment identified the development potential of adjoining lots to the south and north and beyond, generally being that land bounded by Geelong-Ballan Road, the Melbourne-Ballarat rail corridor, Crook Court and the unmade Graham Street road reserve, noting its existing conditions. The proposed subdivision warranted a re-design to allow future road connectivity through adjoining lots rather than a piecemeal subdivision response.

This area currently comprises lots similar in size and dimensions to the subject site which, given the NRZ7 zoning, Council expects would be subject to future subdivision proposals for lots similar in size to the current application.

Council officers considered that the original proposed 10 lot subdivision did not take advantage of the opportunity to integrate with adjoining land to enable an integrated neighbourhood and improve vehicular and pedestrian connectivity.

At this point Council officers drafted a concept layout for the area described above and engaged Mesh Planning consultancy to refine the plan, resulting in a document referred to as the Crook Court Concept Plan (the "Concept Plan").



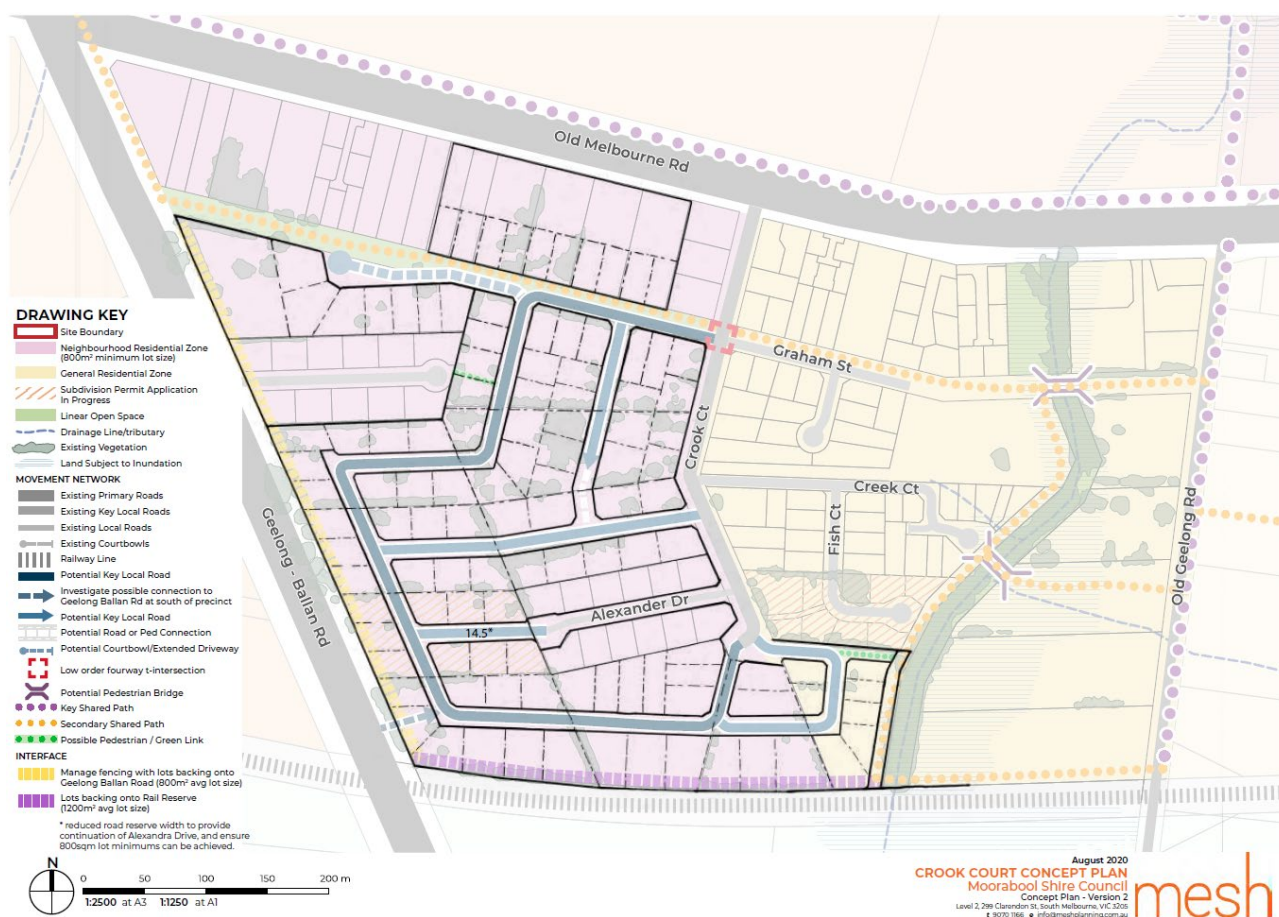
**Figure 3: Crook Court Concept Plan**

Following extensive negotiations with the permit applicant to amend their proposal consistent with the Concept Plan, the application was amended in February 2021 to reduce the proposed lot yield from 10 to 9 and create a lot design consistent with the Concept Plan.

As a result of the amended proposal the retention of the existing dwelling would no longer be possible. As part of this negotiation Council officers agreed to the applicant's request to waive the usual requirement for a public open space contribution as a condition of approval.

At Council's Moorabool Growth Management Committee Meeting on 2 June 2021 the Committee noted both the preparation of the Concept Plan and that Council officers would use the Concept Plan as the basis for discussions with applicants. It is noted that planning permit applications to subdivide four other properties consistent with the Concept Plan are currently being assessed by Council (Planning application references are PA2021006, PA2021256, PA2021271 and PA2022001). All these applications are currently addressing Melbourne Water stormwater management concerns which is taking a considerable length of time to resolve.





**Figure 4: Crook Court Concept Plan – Potential Lots**

## PUBLIC NOTICE

Notice of the application was given to adjoining and nearby landowners and occupiers by letter and signs erected on site.

Five objections were received.

## SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
Increased traffic in Crook Court will exacerbate the poor road condition and create a danger for young children, noting the young families moving into the area.	N/A.
<b>Officer's Response:</b>  Any need for repair of existing roads or the implementation of specific road safety measures is usually addressed through Council's road maintenance program. Should the development be approved, conditions relating to damage resulting from the development will be imposed accordingly and may include reinstatement of the road or other Council assets.	

The extension of Alexander Drive will result in the street becoming the main thoroughfare to Crook Court and Old Melbourne Road, bypassing the latter road's junction with Geelong-Ballan Road which is better suited to heavy traffic flow.	Clause 56.06-8.
<b>Officer's Response:</b> <p>The 7.5m minimum carriageway width of the existing and proposed sections of Alexander Drive meets the requirements of an 'Access Street – Level 2', capable of carrying 2,000-3,000 vehicles per day (vpd) at a desired speed of 40km/h. Alexander Drive would be capable of accommodating the traffic generated by development of the existing and proposed lots and is not considered unreasonable.</p>	
The proposal would allow traffic from Geelong-Ballan Road to access Alexander Drive.	N/A.
<b>Officer's Response:</b> <p>The proposed subdivision layout does not create any access from Geelong-Ballan Road. The Crook Court Concept Plan indicates that vehicle access from Geelong-Ballan Road to the potential street network may be considered in future, however this would be subject to further investigation and approval including from Department of Transport.</p>	
The extension of Alexander Drive causes safety concerns due to increased traffic and greater potential for speeding traffic, and security concerns given the existing street design prevents through traffic, creating a feeling of security.	Clause 56.06-8.
<b>Officer's Response:</b> <p>As stated above, the 7.5m minimum carriageway width of the existing and proposed sections of Alexander Drive meets the requirements of an 'Access Street – Level 2', capable of carrying 2,000-3,000 vehicles per day (vpd). The road design and level of traffic generated by residential use would not be expected to create unsafe conditions or encourage speeding traffic. Any future need for additional specific road safety measures would be considered by Council as required. Alexander Drive to serve additional lots and potentially form part of a future local street network would not negatively impact on property security; rather, facilitating through traffic and pedestrian flow increasing opportunities for passive surveillance.</p>	
The permit application does not sufficiently address the extent of increased traffic in Alexander Drive given there are still vacant lots in the already developed section of the street.	Clause 56.06-8.
<b>Officer's Response:</b> <p>As stated above, the existing and proposed sections of the Alexander Drive carriageway meet the requirements of an 'Access Street – Level 2', capable of carrying 2,000-3,000 vpd which can readily accommodate traffic associated with existing and future lots in Alexander Drive.</p>	

The proposed layout, being an extension of Alexander Drive, is inconsistent with the pattern of subdivision in the surrounding area, specifically the existing Alexander Drive cul-de-sac and the subdivision currently under construction at 5508 Geelong-Ballan Road.	Clauses 21.03-3, 21.08-6, 56.03-5, 56.06-2, 56.06-4, 56.06-5 and 56.06-7,
<b>Officer's Response:</b>  The existence of the cul-de-sacs referred to by the objector does not mean that all future street formations on surrounding or nearby lots should adhere to the same general street layout. Relevant planning policies support the creation of integrated neighbourhoods which support connectivity, particularly for pedestrians and cyclists, and specifically discourage cul-de-sacs. Furthermore, given Geelong-Ballan Road's status as an arterial road, the creation of additional residential streets using it as the sole access point is considered to be incompatible with its safe and functional operation. It is noted that Alexander Drive has been designed in a manner to allow for its extension to provide a better street and pedestrian network for the Crook Court area as determined in the concept plan.	
It is unclear from the application how many native trees are proposed for removal. The retention of any of these trees would not be in keeping with the pattern of subdivision in the surrounding area and would be a hindrance to potential purchasers of the affected lots.	Clauses 12.01-2S, 21.02-4, 52.17 & 56.03-5.
<b>Officer's Response:</b>  One native tree located in the proposed road reserve is proposed to be removed. Two other native trees are proposed for retention.  Relevant planning policy supports the retention of native vegetation. Noting the location of the trees on proposed Lots 5 and 6 there is an acceptable opportunity to incorporate the trees as part of a future residential development. Furthermore, the retention of these remnant trees is complementary to the surrounding neighbourhood character and, as evidenced by the proposed plan of subdivision, would not disrupt the consistent pattern of subdivision. Subject to conditions, it is proposed that the trees be retained by way of building exclusion zones around these trees, to be registered as a restriction on the titles. Tree Protection Zones will protect the retained trees on site.	

The proposed subdivision should be redesigned to provide all vehicle access from Geelong-Ballan Road to avoid traffic issues in Alexander Drive and Crook Court, the latter already being at high capacity.	Clause 56.06-8.
<p><b>Officer's Response:</b></p> <p>As stated above, the existing and proposed sections of the Alexander Drive carriageway meet the requirements of an 'Access Street – Level 2', capable of carrying 2,000-3,000 vpd which can readily accommodate traffic associated with the development of existing and future lots in Alexander Drive. The Crook Court road reserve width of between 19-20m can accommodate a 'Connector Street – Level 2', capable of carrying 3,000-7,000 vpd on a minimum 7m wide carriageway. The existing Crook Court carriageway varies in width including sections less than 7m wide. Accordingly, any need for upgrading of the existing carriageway to cope with additional traffic would usually be addressed through Council's road maintenance program. It is considered that the Crook Court road reserve is capable of accommodating increased traffic associated with the proposal and the likely modest increase in residential development in the immediate area.</p>	
Disruption to Alexander Drive residents during subdivision works which could be alleviated by providing vehicle access from Geelong-Ballan Road.	Clause 56.08-1
<p><b>Officer's Response:</b></p> <p>Conditions would be included on the planning permit to protect the site and surrounding area from environmental degradation or nuisance prior to and during construction of subdivision works.</p>	

## LOCALITY MAP

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

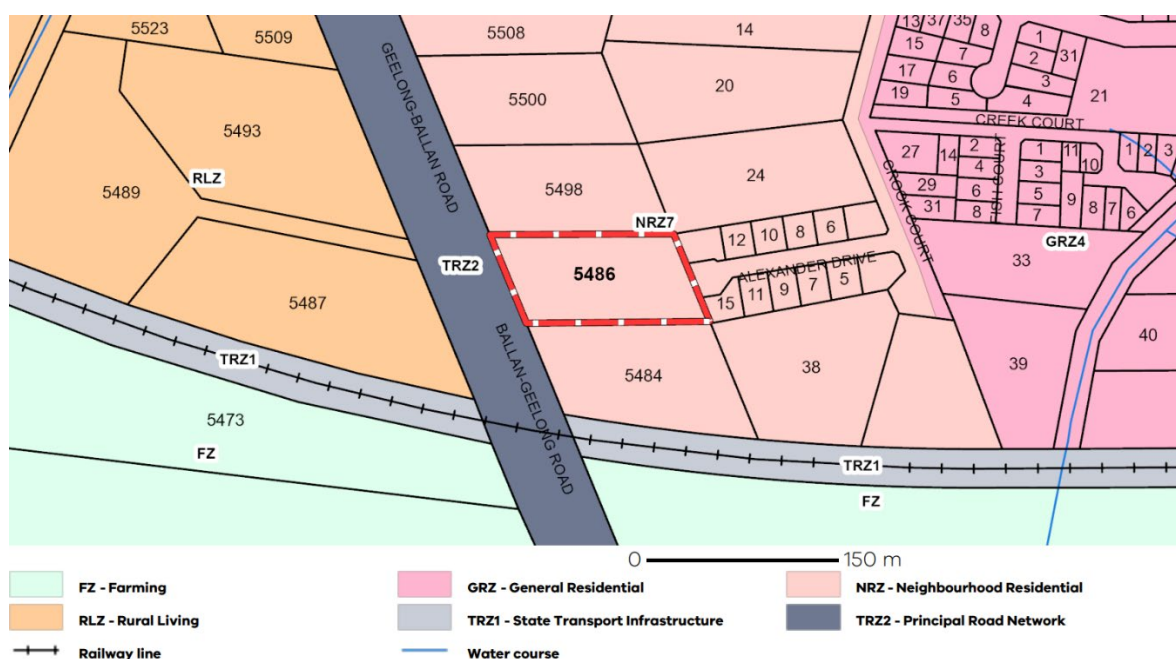


Figure 5: Zone map



**PLANNING SCHEME PROVISIONS**

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

The relevant clauses are:

- Clause 11.03-3S – Peri-urban areas
- Clause 12.01-2S – Native vegetation management
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-2S – Water quality
- Clause 15.01-3S – Subdivision design
- Clause 15.01-5S – Neighbourhood character
- Clause 16.01-1S – Housing supply
- Clause 21.02-3 – Water and catchment management
- Clause 21.02-4 – Biodiversity
- Clause 21.03-2 – Urban Growth Management
- Clause 21.03-3 – Residential Development
- Clause 21.03-4 – Landscape and Neighbourhood Character
- Clause 21.08 – Ballan
- Clause 22.02 – Special Water Supply Catchments

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

**ZONE**

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

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

Schedule 7 specifies the following neighbourhood character objectives to be achieved in this area:

- To protect the character and identity of the town by maintaining the open and spacious character, and transition from rural to residential areas, along Old Melbourne Road.
- To maintain a streetscape rhythm of detached dwellings with conventional front and side setbacks. To ensure garages and carports do not visually dominate dwellings or streetscapes.
- To ensure garages and carports do not visually dominate dwellings or streetscapes.

- To encourage low, open front fencing, combined with landscaped front gardens to emphasise the country 'feel' of the township.

Under Clause 32.09-3 a permit is required to subdivide land. Each lot must meet the minimum 800sqm lot size specified in Schedule 7 and an application must meet the requirements of Clause 56.

The proposed subdivision complies with the minimum lot sizes specified in Schedule 7 and the proposal is generally consistent with the purpose and objectives of the NRZ7.

## **OVERLAYS**

### Environmental Significance Overlay Schedule 1

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

Subject to conditions, the subdivision and vegetation removal would be generally consistent with the overlay provisions. The relevant catchment authorities were notified of the application and consented to the tree removal subject to conditions.

## **Relevant Policies**

### Ballan Strategic Directions

Ballan Strategic Directions ('the Strategy') sets out objectives, strategies and actions for the long-term planning of Ballan. The Strategy informed Council's preparation of Planning Scheme Amendment C88 which proposed changes to local planning policy and the rezoning of land in Ballan, including the subject site. Council adopted C88 on 2 October 2019 after extensive public consultation and a review by an independent planning panel and the amendment was gazetted on 6 March 2020.

## **Particular Provisions**

### Clause 52.17 Native Vegetation

Under Clause 52.17-1 a permit is required to remove native vegetation. Pursuant to the Guidelines for the removal, destruction or lopping of native vegetation (DEWLP, 2017), the proposed removal of 0.209ha of native vegetation including three large trees in this location meets the Intermediate Assessment Pathway classification. One native tree located in the proposed road reserve is proposed to be removed. Two other native trees are proposed for retention. If the proposed subdivision is approved and the permit acted upon, then pursuant to Clause 52.17 there would be no future opportunity to obtain offsets for the two retained native trees. Accordingly, for the sole purpose of securing the required offsets three trees are classed as being removed.

Subject to conditions, the proposed native vegetation removal is considered acceptable in this instance. See 'Discussion' below.

### Clause 52.29 Land Adjacent to the Principal Road Network

Under Clause 52.29-2 a permit is required to subdivide land adjacent to a road in a Transport Zone 2, which in this case relates to Geelong-Ballan Road. The application was referred to the Department of Transport as the relevant Roads Corporation, who made no comment on the proposal. The proposed subdivision would not impact on the safe operation of Geelong-Ballan Road, given that none of the proposed lots rely on Geelong-Ballan Road for access. The proposal meets the purpose of this Clause.

Clause 53.01 Public Open Space Contribution and Subdivision

A person who proposes to subdivide land, including for industrial purposes, must contribute to Council for public open space if specified in a schedule to this clause. There is no amount specified in the applicable schedule in the Moorabool Planning Scheme, but a contribution may still be required under section 18 of the *Subdivision Act 1988*. It is understood that no prior contribution to public open space has been made for this land.

Consistent with Council officers' previous advice to the applicant, it is recommended that in this instance no public open space contribution be required as a condition of approval. This was based on the applicant modifying their proposal to be in accordance with the Crook Court Concept plan, which provided for improved pedestrian and vehicular connectivity. See 'Background to Current Proposal'.

Clause 53.18 Stormwater Management in Urban Development

Subject to conditions, the proposal meets the provisions of this clause.

Clause 56 Residential Subdivision

The proposal complies with the relevant provisions of Clause 56.

**DISCUSSION**

Overall, the proposal is considered to be generally consistent with relevant State and Local planning policy, the General Residential Zone, Environmental Significance Overlay, Clause 56 and the decision guidelines at Clause 65 in the Moorabool Planning Scheme.

Relevant planning policy at the State and local level requires consideration of a range of policy directions which generally support the valued character of Melbourne's peri-urban settlements whilst ensuring growth is consolidated in suitable locations to ensure no detrimental impacts to the environment or rural land uses. The Central Highlands Regional Growth Plan (Victorian Government 2014) and local policy at Clause 21.08 of the Moorabool Planning Scheme recognises Ballan's role in supporting residential growth as the Shire's second largest town. This must be achieved by directing growth to areas within the town with ready access to services and infrastructure, respect for neighbourhood character and integration with surrounding development.

The subject site and surrounding land west of Crook Court is in the Neighbourhood Residential Zone, Schedule 7 (NRZ7). This area of Ballan is transitioning from rural residential type development to a more conventional urban residential typology, as evidenced by nearby developments which reflect Ballan's growth within the past 10 years. This is typified by the incremental subdivision of areas west and north-west of the town centre into smaller residential lots of generally 500-900sqm to accommodate single dwellings.

The gazettal of Planning Scheme Amendment C88 on 6 March 2020 rezoned land in and around Crook Court to give guidance to Council's preferred pattern of development for the area. Land to the west of Crook Court was rezoned to the NRZ7, with a minimum 800sqm lot size requirement for all new lots created. Land to the east of Crook Court remained as General Residential Zone, with a new Schedule 4 but no minimum lot size requirement. It is noted that existing lots in the Alexander Drive subdivision were created before the gazettal of Amendment C88, with only three of the 12 lots achieve the current minimum 800sqm requirement.

The proposed subdivision layout and lot sizes reflect the preferred pattern of development in this area of Ballan, integrates with the surrounding street network and provide for increased

population growth. Subject to conditions, the proposal meets the relevant requirements of Clause 56 for residential subdivision.

It is recommended that the neighbourhood character objectives of the NRZ7 be implemented by way of a restriction on the plan of subdivision to ensure future development respects the preferred neighbourhood character, as follows:

- Minimum front setback requirement of 4m.
- No front fencing or otherwise fencing with a maximum height of 1.2m.
- Side fences within 4m of the front title boundary no higher than 1.2m.

In accordance with the applicant's proposed retention of two native trees, it is further recommended that restrictions be placed on Lots 5 and 6 in the form of vegetation protection zones to protect the remnant trees on these lots and on the adjoining land to the north. Whilst Tree Protection Zones (TPZ) were specified in the submitted ecologist report, it is recommended that a qualified arborist be engaged to advise on required protection measures to fully inform the required extent of a TPZ around each tree. This recommendation takes account of the proposed lot dimensions and location of the proposed stormwater drain in the easement on Lot 6 ensuring that future development would not be unreasonably constrained by these requirements.

All proposed lots must be connected to sewer, and subject to conditions for stormwater drainage and sediment runoff there would be no detrimental impacts on the quality or supply of potable water within the catchment. The proposed vegetation removal would not have any unreasonable erosion impacts considering the site topography and noting that the nearest waterway is approximately 290m to the east.

There are no servicing or infrastructure concerns with the proposed subdivision layout and road arrangement with all authorities consenting to the application.

The proposed subdivision meets the minimum lot requirement and is consistent with the intent of the Crook Court Concept plan.

## **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.
Central Highlands Water	Consent with conditions.
Melbourne Water	Consent with conditions.
Powercor Australia	Consent with conditions.
Downer Utilities	Consent with conditions.
Department of Transport	No response. No conditions.
DELWP	
Council's	
Infrastructure	Consent with conditions.
Strategic Planning	Consent.
Environmental Planning	Consent with conditions.

**FINANCIAL IMPLICATIONS**

There are no financial implications for Council in approving this application for subdivision and vegetation removal.

**RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

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

**COMMUNICATIONS STRATEGY**

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

**OPTIONS**

- Issue a Notice of Decision to Grant a Permit in accordance with the conditions in the recommendation of this report; or
- issue a Notice of Decision to Grant a Permit with amendments to the conditions in the recommendation of this report. Either of these options may result in the objectors appealing Council's decision to VCAT; or
- issue a Refusal to Grant a Permit on grounds. Council would need to consider what reasonable grounds there would be to refuse the application. This option may result in the applicant appealing Council's decision to VCAT.

**CONCLUSION**

Overall, the proposed subdivision and vegetation removal is consistent with the relevant planning policies for Ballan in a manner which contributes positively to integrated growth, residential amenity, and respect for existing and preferred neighbourhood character. The proposed lot design and layout integrates with the surrounding neighbourhood and, subject to conditions, meets the relevant requirements of Clause 56 for a residential subdivision. It is recommended that the application be approved.

**7.3 PA2022013 - VARIATION OF RESTRICTIVE COVENANT AK843052U AT 25 VIEW GULLY ROAD, HOPETOUN PARK**

**Author:** Thomas Tonkin, Statutory Planner

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

**Attachments:** 1. Proposed plans (under separate cover)

**APPLICATION SUMMARY**

**Permit No:** PA2022013

**Lodgement Date:** 14 January 2022

**Planning Officer:** Tom Tonkin

**Address of the land:** 25 View Gully Road, Hopetoun Park

**Proposal:** Variation of Restrictive Covenant AK843052U

**Lot size:** 6,043sqm

**Why is a permit required?** Clause 52.02 Easements, Restrictions and Reserves – Variation of a restriction

**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 PA2022013 for Variation of Restrictive Covenant AK843052U at Lot 141 on PS628117C known as 25 View Gully Road, Hopetoun Park, on the following grounds:

1. The proposed variation of covenant does not satisfy the tests in Section 60(5) of the *Planning and Environment Act 1987*.
  2. The proposed variation of covenant will likely cause owners benefitting from the restriction to suffer detriment, including perceived detriment.
-

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Yes.
Number of objections:	Two
Consultation meeting:	No. The Council officer liaised separately with the applicant and first objector, and the application was subsequently amended, however the objection was not withdrawn. The second objection was received late in the processing of the application and did not change the officer's recommendation.

## **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**

## **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?	No.
Any issues raised in referral responses?	Not applicable.
Preliminary concerns?	Regarding the intended use and location of the proposed shed.



Any discussions with applicant regarding concerns?	The applicant was advised in writing of the preliminary concerns.
Any changes made to the application since being lodged?	Yes, the application was amended on 18 May 2022 to reduce the proposed shed width from 18m to 16m and overall height from 6.8m to 6.5m.
Brief history.	See 'History' below.
Previous applications for the site?	None.
General summary.	<p>It is proposed to vary covenant AK843052U item (k) which relates to the size and height of an ancillary outbuilding to an existing dwelling. The proposed variation would increase the allowable size of an outbuilding.</p> <p>The application was advertised, and two objections received, including from a beneficiary of the covenant, which raised neighbourhood character and amenity concerns. The application was amended to slightly reduce the width and height of the outbuilding but did not result in a withdrawal of objection.</p> <p>With a beneficiary objection, the proposal is deemed to be inconsistent with the relevant provisions of the Moorabool Planning Scheme for the protection of residential amenity and neighbourhood character and thereby fails to meet the tests of Section 60(5) of <i>Planning and Environment Act 1987</i>.</p>
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Refusal to Grant Planning Permit PA2022013 for the Variation of Restrictive Covenant AK843052U at Lot 141 on PS628117C known as 25 View Gully Road, Hopetoun Park, on the grounds included in this report.	

## SITE DESCRIPTION



**Figure 1:** Aerial photograph.

## PROPOSAL

It is proposed to vary Covenant number AK843052U, item (k).

Covenant AK843052U states that *“the Transferee with the intent that the benefit of this covenant shall be attached to and run at law and in equity with every lot on Plan of Subdivision No. PS628117C other than the Lot hereby transferred and that the burden of this covenant shall be annexed to and run at law and in equity with the said Lot hereby transferred does hereby covenant from himself/herself, their heirs, executors, administrators and transferee and the registered proprietor or proprietors for the time being of every lot described in the said Plan of Subdivision (other than the Lot hereby transferred) that the Transferee, his/her executors, administrators and transferees will not...(k) site any outbuildings on the Lot other than towards the rear of the Lot and behind any dwelling house and generally in such a manner as to minimise visual impact from the streetscape. No such outbuilding shall be of a size greater than 20 metres in length, 9 metres in width and 4 metres in height to the eaves nor shall they be constructed prior to the erection of a dwelling house on the Lot.”*

The proposed variation of item (k) is to allow construction of an outbuilding up to 40m long x 16m wide x 5m in height to the eaves. This variation is required to facilitate the storage of a tandem truck, two excavators, two float trailers, four cars, two motorbikes, boat and trailer, tandem trailer, tandem car trailer, ride on lawnmower and fishing boat and includes a workshop with a toilet.

**BACKGROUND TO CURRENT PROPOSAL**

Not applicable.

**HISTORY**

At its 21 September 2022 meeting, Council's Development Assessment Committee resolved to defer a decision on the application to provide Council officers further opportunity to resolve concerns regarding the application. The objecting covenant beneficiary has advised Council officers that no amendments to the application would resolve their objection. The proposed variation of covenant therefore does not meet the tests of Section 60(5) of the *Planning and Environment Act 1987*, as per the 'Discussion' below. Accordingly, the recommendation above remains unchanged.

**PUBLIC NOTICE**

Notice of the application was given all beneficiaries of the covenant which included adjoining and surrounding landowners by way of letters to landowners and occupiers and notices on site and in the Moorabool News, a newspaper circulating in the local area.

One objection was received from a beneficiary of the covenant and a second objection was received from a non-beneficiary.

**SUMMARY OF OBJECTIONS**

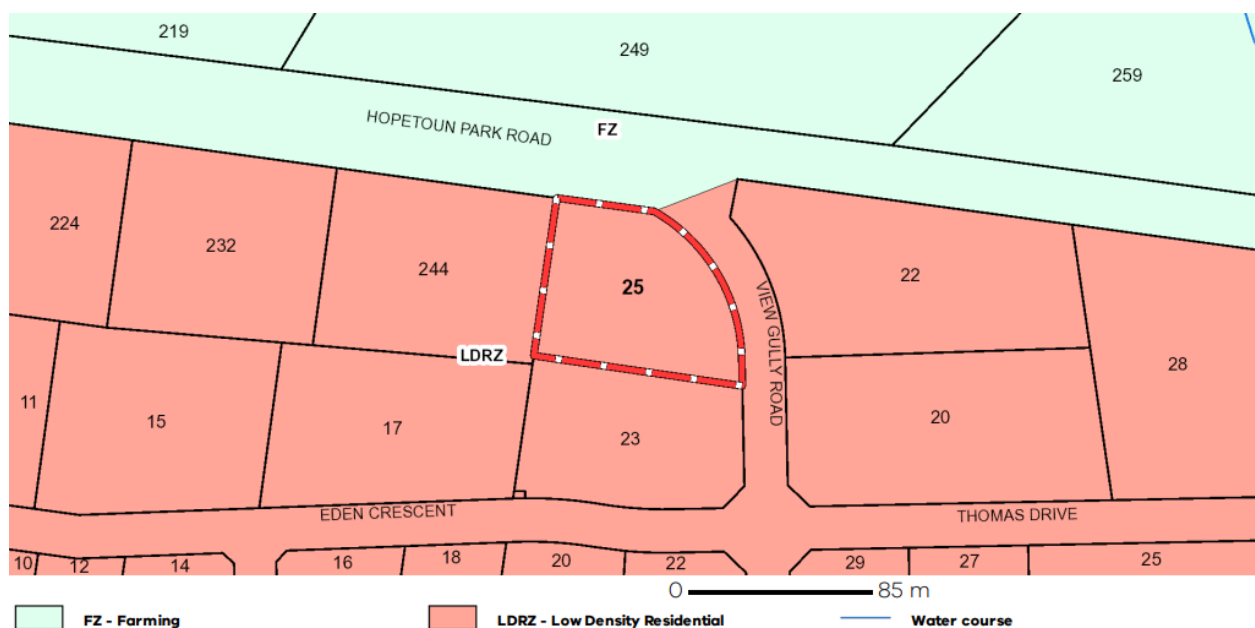
The objections received are detailed below with officer's comments accompanying them:

Objection	Any Relevant Requirement
This is a residential area which is being transformed into an industrial area with truck depots and businesses being conducted from residential properties. Restrictive covenants are being ignored.	Clause 52.02.
<b>Officer's Response:</b> See 'DISCUSSION' below.	
Such a huge shed is not in the best interests of the residents.	Clause 52.02.
<b>Officer's Response:</b> It is noted that following receipt of the objection the application was amended to slightly reduce the proposed shed width and height. See 'DISCUSSION' below.	
The covenant is for the benefit of the residents.	Clause 52.02.
<b>Officer's Response:</b> Noted. See 'DISCUSSION' below.	

The owner knew of the restrictive covenant before buying the land.	Clause 52.02.
<b>Officer's Response:</b> Noted.	
The shed would be 40m long x 18m wide which is twice the size allowed by the existing covenant.	Clause 52.02.
<b>Officer's Response:</b> Noted. See ' <b>DISCUSSION</b> ' below.	
The visual impact in the streetscape is unacceptable.	Clause 52.02.
<b>Officer's Response:</b> Noted. See ' <b>DISCUSSION</b> ' below.	
When I look out my front windows, I already see nothing but huge sheds and a two-storey dwelling which impact on my view, all exceeding the restrictive covenants.	Clause 52.02.
<b>Officer's Response:</b> Noted. See ' <b>DISCUSSION</b> ' below.	
The shed facilitated by the application would be used to store heavy commercial equipment which is inconsistent with Council requirements.	Clause 32.03-1
<b>Officer's Response:</b> Noted. This objection was made by a non-beneficiary of the covenant. See ' <b>DISCUSSION</b> ' below.	

## LOCALITY MAP

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



**Figure 2:** Zone map.

## PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S – Peri-urban areas
- Clause 15.01-5S – Neighbourhood character
- Clause 21.03-4 – Landscape and Neighbourhood Character

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

PPF	Title	Response
Clause 15.01-5S	Neighbourhood character	Based on the assessment against the provisions of section 60(5) of the <i>Planning and Environment Act 1987</i> the proposal is deemed to be inconsistent with the neighbourhood character of immediate adjacent properties.
<b>LPPF</b>		
Clause 21.03-4	Landscape and Neighbourhood Character	Based on the assessment against the provisions of section 60(5) of the <i>Planning and Environment Act 1987</i> the proposal is deemed to be inconsistent with the neighbourhood character.

**ZONE**

The subject site is in the Low Density Residential Zone (LDRZ).

The purpose of the Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

There is no permit requirement under the zone to vary a restrictive covenant.

**OVERLAYS**

The subject site is affected by Development Plan Overlay, Schedule 2 (DP02).

No permit is required under the overlay provisions to vary a covenant.

**Relevant Policies**

There are no Council policies applicable to the assessment of this application.

**Particular Provisions**Clause 52.02 Easements, Restrictions and Reserves

A permit is required before a person proceeds under Section 23 of the *Subdivision Act 1988* to vary or remove a restriction.

The decision guidelines state before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider the interests of affected people.

**DISCUSSION**

Pursuant to subsection (4) of the *Planning and Environment Act 1987*, the relevant consideration for assessment of this application are the provisions of Section 60(5) of that Act. Subsection (4) states the following:

Subsection (2) does not apply to any restriction which was:

- (a) registered under the *Subdivision Act 1988*; or
- (b) lodged for registration or recording under the *Transfer of Land Act 1958*; or
- (c) created before 25 June 1991.

In this instance, subsection (4)(b) above applies to covenant AK843052U which was registered under the *Transfer of Land Act 1958*.

Pursuant to this, subsection 60(5) of the Planning and Environment Act 1987 states the following:

The Responsible Authority must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that:

- (a) The owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and

- (b) if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.

As outlined above, objections were received to the application, including from a beneficiary of the covenant, primarily relating to the potential impact on the neighbourhood character and amenity of the area if the covenant was varied. In consideration of the beneficiary's objection and the provisions of section 60(5)(a) and (b) it is deemed that Council is unable to satisfy itself that any of the beneficiaries would be unlikely to suffer any detriment of any kind, including perceived detriment, because of the proposed variation of the covenant.

The beneficiary has outlined what they believe the actual or perceived negative consequences of the covenant variation to be. Furthermore, there is nothing in the beneficiary's objection to suggest that it is vexatious or not made in good faith. The interests of non-beneficiaries also need to be considered under Clause 52.02.

The covenant currently allows for the development of outbuildings to a maximum of 20m long x 9m wide x 4m high to the eaves. The proponent seeks approval to vary the covenant to allow an outbuilding up to 40m long x 16m wide x 5m high to the eaves.

The site and surrounding land to the east, west and south is zoned for Low Density Residential purposes and the area is typified by generally large single storey dwellings on spacious allotments with generous boundary setbacks. Ancillary outbuildings are commonplace but vary in size.

In the context of the subject site and surrounding neighbourhood, it is considered that the proposed variation of item (k) may result in a loss of amenity. The scale and bulk of an outbuilding facilitated by the proposed variation would be visually prominent as viewed from some adjoining and nearby properties to such an extent that the general visual amenity of the neighbourhood would be unreasonably compromised. The objector benefitting from the covenant has raised concerns that the size of outbuilding facilitated by the proposed variation to item (k) would be visually prominent and creates an industrial aesthetic in a residential area.

More generally, the objector benefitting from the covenant has raised concerns about businesses operating from residential properties in the area. The proponent provided detailed plans of the intended use of a future outbuilding, indicating the storage of a range of vehicles and equipment for work, household and recreational purposes. If a permit was to be issued, Council officers would recommend the imposition of a legal agreement on title to require that the use of a future outbuilding only be for purposes ancillary to the dwelling on the site and not for commercial purposes. This is in recognition of the potential for an outbuilding of the size facilitated by the proposed variation of item (k) to be used for uses inconsistent with the residential amenity of the area.

With regard to neighbourhood character, the area is defined by single dwellings on lots of roughly 5,500sqm to 10,000sqm in size. Dwellings are predominantly single storey with spacious boundary setbacks. The area is characterised by its lot sizes and configuration, general low-rise scale of development and views of the distant landscape in some areas. Whilst there are nearby examples of large bulky sheds in Hopetoun Park which are visually dominant, these are not characteristic of the wider residential area. Smaller outbuildings in conformity with the covenant, where present, generally blend with the scale of dwellings and are not visually dominant. The subject site and selected surrounding lots, including one objector's property, are affected by a covenant which allows for development of outbuildings up to 20m long x 9m wide x 4m high to the eaves. Properties in the subdivision to the immediate west of the subject site are subject to a different covenant which allows for outbuildings unrestricted in length and width but restricted to a maximum height of 5.4m.

The Development Assessment Committee must satisfy itself that the covenant's beneficiaries will be unlikely to suffer any detriment of any kind (including perceived detriment) if the maximum outbuilding dimensions are increased to 40m length x 16m width x 5m height to the eaves. The development of an outbuilding matching those dimensions would not be in keeping with the existing or preferred neighbourhood character. The objector benefitting from the covenant has expressed concerns that the variation of item (k) would facilitate development inconsistent with the streetscape character, which is a key element when assessing neighbourhood character. Furthermore, that objector has identified that such development would be akin to that found in an industrial area. It is deemed that the character of the area would change as a result of the proposed variation of the covenant and a beneficiary of the covenant would suffer detriment (including perceived detriment). The proposed variation of covenant does not meet the tests of Section 60(5) of the *Planning and Environment Act 1987*.

With regard to the objection received from a non-beneficiary of the covenant, pursuant to Clause 52.02 of the Moorabool Planning Scheme and section 60(5) of the *Planning and Environment Act 1987*, the objection cannot be given as strong consideration as that afforded to the objection from the covenant beneficiary. However, it is noted that the non-beneficiary's concerns are also shared by the beneficiary.

### **GENERAL PROVISIONS**

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

Pursuant to Clause 65 of the Moorabool Planning Scheme, the Responsible Authority must consider, among other things, the matters set out in Section 60 of the *Planning and Environment Act 1987*, as per the 'Discussion' above.

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

### **REFERRALS**

The application was not required to be referred.

### **FINANCIAL IMPLICATIONS**

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

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

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

### **COMMUNICATIONS STRATEGY**

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



**OPTIONS**

- Issue a Refusal to Grant a Permit on the grounds listed in the recommendation of this report; or
- issue a Notice of Decision to Grant a Permit with conditions. The Development Assessment Committee would need to satisfy itself that the covenant beneficiaries would be unlikely to suffer any detriment of any kind (including any perceived detriment) consistent with the provisions of Section 60(5) of the *Planning and Environment Act 1987*. This option may result in the objectors appealing the Committee's decision to VCAT.

**CONCLUSION**

The proposed variation to covenant AK843052U item (k) relates to increasing the allowable size of an outbuilding to an existing dwelling.

The application was advertised, and two objections received, which raised amenity and neighbourhood character concerns related to the proposed increase in the allowable outbuilding size. Based on the objection received from a beneficiary of the covenant, the proposal is deemed to be inconsistent with Section 60(5) of the *Planning and Environment Act 1987* for the protection of residential amenity and neighbourhood character.

**8 UPDATE ON VCAT DECISIONS**

**9 OTHER BUSINESS**

**10 DATE OF NEXT MEETING**

Wednesday 16 November 2022.

**11 MEETING CLOSE**