



# **AGENDA**

## **Development Assessment Committee Meeting Wednesday, 20 July 2022**

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

**Date: Wednesday, 20 July 2022**

**Time: 6.00pm**

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

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

**Order Of Business**

<b>1</b>	<b>Opening .....</b>	<b>3</b>
<b>2</b>	<b>Present and Apologies .....</b>	<b>3</b>
<b>3</b>	<b>Recording of Meeting .....</b>	<b>3</b>
<b>4</b>	<b>Confirmation of Minutes .....</b>	<b>3</b>
<b>5</b>	<b>Matters Arising from Previous Minutes.....</b>	<b>3</b>
<b>6</b>	<b>Disclosure of Conflicts of Interests .....</b>	<b>3</b>
<b>7</b>	<b>Community Planning Reports .....</b>	<b>4</b>
7.1	PA2021095 - Development and Use of a Dwelling and Ancillary Shed at 337 Swans Road, Darley .....	4
7.2	PA2022029 - Use of Land for Free Range Poultry Farm, 3,000 Chickens and Development of a Shed at 2369 Old Melbourne Road Bungaree.....	20
7.3	PA2021182 - Development and Use for a Warehouse and a Reduction of Car Parking (Three Car Spaces) at 8 Bond Street, Maddingley .....	32
7.4	PA2022015 - Development and Use of a Dwelling and Ancillary Outbuilding and Vegetation Removal at Myrniong-Korobeit Road, Korobeit.....	45
7.5	PA2021240 Variation of Restrictive Covenant AD159230W at 10 Parkside Drive, Hopetoun Park .....	56
<b>8</b>	<b>Update on VCAT Decisions.....</b>	<b>66</b>
<b>9</b>	<b>Other Business .....</b>	<b>66</b>
<b>10</b>	<b>Date of Next Meeting .....</b>	<b>66</b>
<b>11</b>	<b>Meeting Close .....</b>	<b>66</b>

**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**

Wednesday 15 June 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 PA2021095 - DEVELOPMENT AND USE OF A DWELLING AND ANCILLARY SHED AT 337 SWANS ROAD, DARLEY

Author:	Victoria Mack, Statutory Planner
Authoriser:	Henry Bezuidenhout, Executive Manager Community Planning & Development
Attachments:	<ol style="list-style-type: none"><li>1. Dwelling Plans (under separate cover)</li><li>2. Land Management Plan (under separate cover)</li><li>3. Landscape Concept Plan (under separate cover)</li><li>4. Shed plans (under separate cover)</li></ol>

#### APPLICATION SUMMARY

Permit No:	PA2021095
Lodgement Date:	3 May 2021
Planning Officer:	Victoria Mack
Address of the land:	337 Swans Road, Darley Lot 1 on PS096559
Proposal:	Development and Use of a Dwelling and Ancillary Shed
Lot size:	18.20ha
Why is a permit required?	Clause 35.07 Development and Use of a Dwelling in the Farming Zone

#### 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 PA2021095 for the Development and Use of a Dwelling and Ancillary Shed at 337 Swans Road, Darley, otherwise known as Lot 1 on PS 096559, subject to the following conditions:

#### Endorsed plans:

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified as follows:
  - (a) The Land Capability Assessment amended so show the correct location of the dwelling.
  - (b) The landscape concept plan expanded to show a detailed planting plan and timelines for completion of the planting including the numbers of each species to be planted.
  - (c) Alter the Land Management Plan Action and Timeline to nominate the construction of dwelling to commence after substantial completion of the revegetation works to

watercourse and gullies. Previous actions timelines can be adjusted.

**Land Management Plan:**

2. A Land Management Plan to the satisfaction of the Responsible Authority must be endorsed as part of this Permit and cannot be varied without the written consent of the Responsible Authority.

**Section 173 Agreement:**

3. Before the issue of a Building Permit for the dwelling or the shed the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the *Planning and Environment Act 1987* to the satisfaction of the Responsible Authority:
  - (a) The owner of the land must acknowledge that while the land remains zoned as Farming Zone or its equivalent successor the primary use of the subject land is for land management activities and the use of the dwelling must be in conjunction with an approved Land Management Plan.
  - (b) Land and environmental management identified in the endorsed Land Management Plan under Condition 2 must be undertaken on the land in accordance with the Land Management Plan and cannot be varied without the written consent of the Responsible Authority.
  - (c) Before a Building Permit is issued for the dwelling or the shed, application must be made to the Register of Titles to register the Section 173 Agreement on the title to the land under Section 181 of that Act and the owner must provide evidence of that registration of the Agreement to the Responsible Authority.

**Dwelling Requirements:**

4. Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
5. The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for firefighting purposes.
6. The dwelling must be connected to a reticulate electricity supply or have an alternative energy source.
7. The dwelling must be connected to a reticulated sewerage system or if not available, the wastewater must be treated and retained on-site in accordance with the State Environment Protection Policy (Waters of Victoria) under the *Environment Protection Act 1970*.

**Materials and Colour:**

8. All external walls and roof areas of the proposed building/s are to be clade with non-reflective materials (zincalume prohibited) to the satisfaction of the Responsible Authority.

**Environmental Health:**

9. The land application area and all conditions must be in accordance with the Land Capability Assessment prepared by Provincial Geotechnical Pty Ltd, reference number 14757G dated 18 March 2021 or any approved amendment are to be strictly adhered to.
10. An onsite waste water management system with the capacity to treat effluent to a

minimum of 20mg/L BOD and 30mg/L Suspended Solids must be installed.

11. An onsite waste water management system with the capacity to treat effluent to a primary standard i.e. standard septic tank must be installed in accordance with the requirements of the *Environment Protection Act 1970*, the Guidelines for Environmental Management: Code of Practice – Onsite Wastewater Management 891. 4 (2016) and the Responsible Authority.
12. The wastewater management system from proposed dwelling/lots must be treated and contained within the property boundaries in accordance with the current EPA Code of Practice – Onsite Wastewater Management: Guidelines for Environmental Management, Australian Standards 1547 and Council requirements.
13. The effluent disposal area must be kept free of buildings, driveways, vehicular traffic and services trenching.
14. All setback distances must be adhered to as dictated by Table 5 of the Code of Practice, Onsite Wastewater Management, EPA Publication Number 891.4.
15. A shallow surface water cut off drain or surface water diversion mound, should be provided on the high side of the disposal areas to divert any surface water flows around the effluent fields.
16. Subsurface Irrigation system needs to be installed to a depth of 150mm in situ or if the soil is of poor quality, imported good quality topsoil may be required, with a 1m spacing in between lines.
17. The owner will maintain all drainage lines at all times to divert surface water and subsurface water clear of the effluent disposal field.

**Infrastructure:**

18. A standard vehicle crossing must be provided on Swans Road to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.
19. Storm water drainage from the proposed buildings and impervious surfaces must be retained and disposed of within the boundaries of the subject land to the satisfaction of the Responsible Authority. Overflows from on-site storage systems must be directed away from any waste water disposal area.
20. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991).
21. Unless otherwise approved by the responsible authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
22. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset Services 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.

**Permit Expiry:**

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

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

**Permit Note:**

**Prior to installation of works commencing on the wastewater system, a permit to install an onsite wastewater management system must be submitted to Council's Environmental Health.**

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<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes. The application was subsequently amended in process and re-advertised to all objectors on 3 March 2022.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Not required.
Number of objections:	Four initially with one objection updated after the second advertising period.
Consultation meeting:	After discussions between the parties, a consultation was not held.

## **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

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

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

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

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

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

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

*Executive Manager – Henry Bezuidenhout*

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

*Author – Victoria Mack*

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

## **EXECUTIVE SUMMARY**

Application referred?	The application was referred to Melbourne Water, Southern Rural Water and Council's Environmental Health and Infrastructure.
Any issues raised in referral responses?	No issues raised.
Preliminary concerns?	Concern included the siting of the dwelling close to the north boundary and the location of the shed in relation to the dwelling.

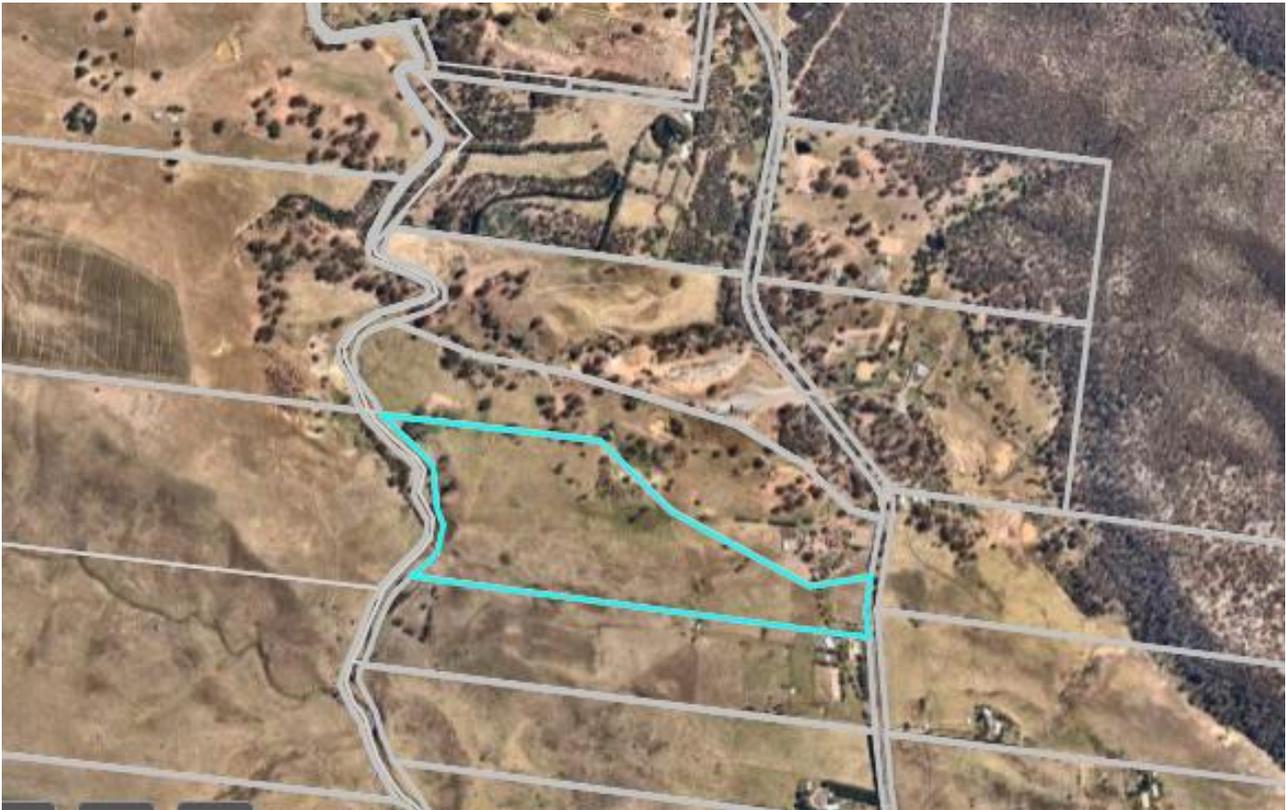
Any discussions with applicant regarding concerns?	Discussions were held with the applicant and the owner.
Any changes made to the application since being lodged?	The application was amended in process with amended plans provided which included moving the dwelling and shed to a different location. The Land Management Plan was also adjusted to reflect the changed dwelling location.
Brief history.	Nil.
Previous applications for the site?	None recorded.
General summary.	The application is for the development and use of a dwelling and ancillary shed in the Farming Zone and associated with a Land Management Plan. The land is not suited agricultural activities due to the soil type and steep topography. Surrounding properties are also not used for productive agricultural purposes. The Land Management Plan submitted will enhance biodiversity on the property and improve environmental outcomes. The dwelling has a relatively small footprint on the site close to Swans Road leaving the balance of the land able to be improved to create a wildlife corridor and enhance biodiversity.
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , issue a Notice of Decision to Grant Planning Permit PA2021095 for the Development and Use of a Dwelling and Ancillary Shed at 337 Swans Road, Darley, otherwise known as Lot 1 on PS 096559, subject to conditions contained within this report.	

## SITE DESCRIPTION

The land is 18.2ha in area and is irregular in shape. It comprises flat land on the smaller eastern section and steeply undulating and dissected land on most of the western section including steep banks and gullies. The west boundary abuts the Korkuperrimul Creek. A waterway runs along the southern boundary of the site which terminates at the northeast boundary. There is scattered vegetation present, and some evidence of erosion problems

There is existing crossover from Swans Road to the site and gravel driveway. There are no improvements on the site.

The site is located approximately 6.7km north-west of the Darley shopping centre and 580m further to the Western Freeway. The surrounding area is in the Farming Zone and consists of similar sized allotments generally within an undulating and dissected landscape. Waterways also dissect the area.



**Figure 1:** Aerial Photograph

### **PROPOSAL**

It is proposed to construct a dwelling and ancillary shed on the site. The single storey dwelling would have the following details:

- Six bedrooms the master bedroom with ensuite.
- A family bathroom.
- A four-car attached garage at one end.
- An open plan kitchen, dining and living area with bifold doors to the outside.
- A separate living/reading room.
- A separate rumpus and games room.

The dwelling would be setback approximately 100m from Swans Road, approximately 96m from the neighbouring dwelling to the south and approximately 116m from the neighbouring dwelling to the north.

There will also be an ancillary shed that is 27.85m long and 7.35m wide for a total floor area of 205 sqm. It would be setback 5m from the south boundary.

The Land Management Plan objectives include revegetation along the creek and gully as well as improve existing eroded areas. This would address existing land management problems.



**Figure2:** Overall Management Strategy Site Plan

## BACKGROUND TO CURRENT PROPOSAL

The original application showed the dwelling and shed to be located further to the front of the site with a setback of 42m from Swans Road. The amended location increased the setback from the road to approximately 100m behind a plantation of trees to reduce the visual impact when seen from Swans Road and from neighbouring properties.

The dwelling location was changed by the owner in discussion with Council's planner. It was suggested that the siting of the dwelling and ancillary shed could be improved by increasing the setback from the road on the west side of an existing stand of trees. Relocation would also address some objector concerns.

## HISTORY

There is no relevant history in relation to the subject site.

## PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners.

Four objections were received.

After the plans were amended to show the revised location for the dwelling and ancillary shed the application was re-advertised. One objector responded with further comments. No objections were withdrawn.

**SUMMARY OF OBJECTIONS**

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

Objection	Any Relevant Requirement
The rolling hills of Swans Road, the natural beauty, neighbourhood and amenities do not require a high-density development of this nature.	Clause 35.07 Farming Zone
<b>Officer's Response:</b> The application is for a one dwelling and ancillary shed on one lot. The Land Management Plan can result in significant improvements to the natural environment. The dwelling will enable residents to live on the land to undertake ongoing land management improvements and maintenance.	
The roof surface area would collect 350,000 litres water per annum to tanks with a significant impact on the environmentally significant Korkuperrimul Creek.	Land Management Plan
<b>Officer's Response:</b> The Korkuperrimul Creek riparian area is generally in a degraded condition. The Land Management Plan provides a guide to assist the owners repair damaged sections of the property through revegetation, pest control and erosion repair to improve biodiversity values along the creek corridor.	
337 Swans Road was subdivided by the current landowner, carving up the land and reducing the amount of available agriculture land in the Farming Zone.	Council records
<b>Officer's Response:</b> The land has not been subdivided but has disposable title of which one has been subsequently transferred to a new landowner.	
The proposed development does not integrate with the rural neighbourhood character. The design conflicts with that of adjacent and surrounding properties. The proposed structural elements of the dwelling are not aligned with the characteristics of the local area and would destroy the visual amenity.	Landscape concept plan
<b>Officer's Response:</b> The owners plan to create a native garden around the dwelling site. Moving the dwelling site to the western side of the existing trees is an improved location and removes the visibility of the dwelling from the road frontage.	
From where Swans Road goes to single lane there are 19 dwellings and only two are less than 100m apart. The privacy and secluded characteristics of each property is what makes the area unique.	Site plan
<b>Officer's Response:</b> The proposed dwelling would be approximately 116m from the north neighbouring dwelling and 96m from the south neighbouring dwelling. Both vistas are predominantly screened by trees. It is considered the development will have little impact on privacy of existing dwellings.	

No bushfire report was submitted and there has been no assessment of the site in relation to the bushfire risk for the construction of the dwelling.	Bushfire Management Overlay
<b>Officer's Response:</b> A Bushfire Management Statement was not required as the site is not covered by the Bushfire Management Overlay	
The planning application has no statement of environmental effects. There is no way to understand what the application involves and identify if the development complies with the Local Environmental Plan.	Land Management Plan
<b>Officer's Response:</b> The submitted Land Management Plan addresses the current condition of the land and management actions and timelines to address land degradation and to create a biodiversity and wildlife friendly property.	
Approval of a dwelling in the Farming Zone does not meet the purpose of the Farming Zone as it will not provide for the use of land for agriculture.	
<b>Officer's Response:</b> It is considered that the land is generally unsuitable for productive agricultural purposes and better suited to natural resource management and biodiversity enhancement. The dwelling will enable residents to live on the land to undertake on going land management improvements and maintenance.	
Approval of a dwelling in the Farming Zone will not encourage retention of productive agricultural land, provide any employment opportunities, or support the rural community and is not required for the use and development of land.	Clause 35.07 Farming Zone
<b>Officer's Response:</b> The land is considered unsuitable for commercial agriculture purposes given the land condition.	
The submitted plans have multiple errors.	
<b>Officer's Response:</b> The applicant has been advised to correct the documents.	
The proposed development does not adequately address the decision guidelines of Clause 35.07 of the Moorabool Planning Scheme (Farm Zone) as it relates to: <ul style="list-style-type: none"> <li>• The protection and enhancement of agricultural productivity</li> <li>• Environmental issues</li> <li>• Design and siting issues.</li> </ul>	Land Management Plan
<b>Officer's Response:</b> It is considered that the Land Management Plan covers environmental issues on the land. The use of the land for biodiversity enhancement is an alternative use of the land.	

<p>How will adherence to the Land Management Plan be monitored by the Council and what resources will I, or others, have if this is not adhered to? I have no confidence the owners will undertake the proposed land management plan as presented here.</p>	<p>Land Management Plan</p>
<p><b>Officer’s Response:</b> The Land Management Plan will be endorsed as part of the permit and a Section 173 Agreement under the <i>Planning &amp; Environment Act 1987</i> required to be registered on title that the land must be managed in accordance with the endorsed Land Management Plan.</p>	
<p>Should there be substandard execution and/or subsequent poor ongoing management of the Land Management Plan this will have a flow on effect to my property.</p>	<p>Land Management Plan</p>
<p><b>Officer’s Response:</b> The Land Management Plan will be endorsed as part of the permit and a Section 173 Agreement required to be registered on title that the land must be managed in accordance with the endorsed Land Management Plan.</p>	

**LOCALITY MAP**

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



**Figure 3:** Zone map with contour information added.

## PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.01-1R Settlement - Central Highlands
- Clause 11.03-3S Peri-urban areas
- Clause 12.01-1S Protection of biodiversity
- Clause 12.03-1S River corridors, waterways, lakes and wetlands
- Clause 13.04-2S Erosion and landslip
- Clause 14.01-1S Protection of agricultural land
- Clause 14.01-2S Sustainable agricultural land use
- Clause 14.02-1S Catchment planning and management
- Clause 14.02-2S Water quality
- Clause 15.01-6S Design for rural areas
- Clause 16.01-3S Rural residential development
- Clause 22.02 Special Water Supply Catchments
- Clause 22.03 Houses and House Lot Excisions in Rural Areas
- Clause 21.02-1 Key issues and influences
- Clause 21.03-4 Objective—Landscape and neighbourhood character

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

## ZONE

### Farming Zone

In accordance with Clause 35.07 of the Moorabool Planning Scheme a permit is required for the development and use of a dwelling where the lot size of less than 40ha.

The relevant purposes of the zone are:

- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The land is not suited to agricultural use due to the fragile soils and steep and dissected landscape. The application was therefore accompanied by a Land Management Plan which addressed how

the land could be repaired to contribute to enhanced biodiversity and environmental performance.

## **OVERLAYS**

### Environmental Significance Overlay – Schedule 2 (ESO2)

In accordance with Clause 42.01-2 of the Moorabool Planning Scheme a permit is required under for buildings and works. The dwelling and ancillary shed are not located in the area covered by ESO2.

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

In accordance with Clause 43.02 of the Moorabool Planning Scheme, and Schedule 1 a permit is not required under the overlay and schedule where all external cladding would be with non-reflective materials. In this instance as no reflective material would be used a permit is not required under the DDO2.

## **Relevant Policies**

### Rural Housing Policy

Council's Rural Housing Policy 2012 was adopted by Council on 19 September 2012 and has been developed to provide direction for how limited farming potential rural dwellings should be considered, and more broadly, rural settlement patterns.

The principles of the policy relevant to this application include to:

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

The land is not suited for productive agricultural purposes but the proposal does accord with the Assessment principles contained within the Rural Housing Policy for lots between 8ha and 20ha.

## **DISCUSSION**

The original application was advertised, and four objections were received. Generally, the objections expressed a view that any development for residential use on the site would not be acceptable.

The changed location for the dwelling and shed is considered to be an improved outcome with an increased setback from Swans Road with the development located to the west of an existing tree plantation. It is considered that this provides improved screening from the road and when viewed from neighbouring properties.

The amended plans were re-advertised, and one additional comment was received from an objector. No objections were withdrawn.

The land along the Korkuperrimul Creek, as well as the central section of the property, is generally degraded with weeds, pest animals and erosion. Due to the limited topsoil and fragile clay soils across most of the property it is not suited to running livestock except in very limited numbers.

It would appear that the best use of the land is for wildlife and biodiversity protection which is what the application has indicated the owners wish to pursue. There would be the added benefit of restoration works to Korkuperrimul Creek.

In this instance it is considered that the land would benefit from owners being present on the site to attend to the improvement of the property and sustainable land management outcomes.

The Assessment Principles contained in the Rural Housing Policy require consideration of the following relevant matters.

The siting of the dwelling is suitably located at the front eastern boundary of the property close to Swans Road. This location leaves the balance of the land available for Land Management activities.

It is not considered that the site for the dwelling would have adverse impacts on neighbouring dwellings.

In the case of degraded land, the Assessment Principles require a land management plan to be provided. In this application the land management plan includes the management of weeds, pests, vermin, and revegetation and remedial works to rehabilitate the site.

The timetable of land management actions in the Land Management Plan is presented for a period of 10 years.

The Land Management Plan provided an assessment of the current condition of the land, including degraded areas, and objectives to improve the sustainability and the biodiversity of the farm overall. The LMP covered the following issues and included management actions for each:

Objective 1: To enhance the biodiversity of the property.

Objective 2: To revegetate along watercourse, gully and existing revegetation areas:

- Gully erosion repair and control.
- Revegetation including species lists and action timelines.
- Direct seeding options for revegetation.

Objective 3: To create a Shelterbelt along the north boundary of the property:

- Designing a windbreak.
- Revegetation Timelines.

Objective 4: To repair and install new fencing along the north property boundary.

Objective 5: To improve dam quality and repair leak in larger dam:

- Water filtering plants and habitat plants for Dam area.

Objective 6: To continue to monitor and control rabbits.

Objective 7: To control major weeds i.e. Boxthorn and Serrated Tussock.

- Timing of weed control – focusing on key weeds.

Objective 8: Environmental Monitoring.

Objective 9: Timeline of work – Fencing, Dam, Waterway & Revegetation Work over 10 years.

Provided these works are sustained consistently over time, it is considered the property should achieve a significantly improved environmental performance to benefit the local environment and biodiversity.

It is recommended that sufficient land management works must be completed prior to the issue of a building permit for a dwelling, and this should be made a condition of the permit.

It is considered that the dwelling is justified in this instance in the context of the land's degradation and its potential for biodiversity enhancement.

### 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
Southern Rural Water	No response received, after repeated requests.
Melbourne Water	Consent with no comment.
Council's Infrastructure Department	Consent with conditions.
Council's Environmental Health Department	Consent with conditions.

### FINANCIAL IMPLICATIONS

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

### RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation of approval of this development does not implicate any risk or OH&S issues to Council.

### COMMUNICATIONS STRATEGY

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

### OPTIONS

The Development Assessment Committee consider the following options:

- Issue a Notice of Decision to Grant a Planning Permit in accordance with the recommendations of this report; or
- issue a refusal to grant a planning permit with specific grounds. The grounds would need to demonstrate how the proposal does not comply with the Moorabool Planning Scheme.

**CONCLUSION**

Dwellings in the Farming Zone are generally not supported where the use of the land for agricultural purposes would be compromised by dwellings. In this instance it is considered that the land would benefit from owners being present on the site to attend to the improvement of the property and sustainable land management outcomes. The submitted Land Management Plan demonstrates that substantial improvements will be made to the existing degraded creek environment and will improve the biodiversity of the area. There are no productive farming operations in the area that would be affected by a use of the land for a dwelling and the latest set of plans have increased the front setback to reduce the impact of dwelling in a rural setting. The proposed should be supported with implementation of the submitted Land Management Plan.

**7.2 PA2022029 - USE OF LAND FOR FREE RANGE POULTRY FARM, 3,000 CHICKENS AND DEVELOPMENT OF A SHED AT 2369 OLD MELBOURNE ROAD BUNGAREE**

- Author:** Victoria Mack, Statutory Planner
- Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development
- Attachments:**
1. Shed plans (under separate cover)
  2. Low Density Mobile Outdoor Poultry Farm Development Plan (under separate cover)
  3. Nutrient Management Plan (under separate cover)

**APPLICATION SUMMARY**

- Permit No:** PA2022029
- Lodgement Date:** 2 February 2022
- Planning Officer:** Victoria Mack
- Address of the land:** 2369 Old Melbourne Road, Bungaree  
Lots 1 and 2 on TP 224934G
- Proposal:** PA2022029 - Use of Land for Free Range Poultry Farm (3,000) Chickens and Development of a Shed
- Lot size:** 7.99ha
- Why is a permit required?** Clause 35.07 Farming Zone - Use and development of land for a Poultry Farm;  
Clause 42.01-2 Environmental Significance Overlay (ESO1) - Buildings and works;  
Clause 53.09 Poultry Farm.

**RECOMMENDATION**

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2022029 for the Use of Land for Free Range Poultry Farm (3,000) Chickens and Development of a Shed at 2369 Old Melbourne Road, Bungaree, otherwise known as Lots 1 and 2 on TP 224934G subject to the following conditions:

**Endorsed Plans:**

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the Low Density Mobile Outdoor Poultry Farm Development Plan, but modified as follows:
  - (a) Revised dimensioned site plan detailing free range areas and setbacks from boundaries, waterway and other infrastructure.
  - (b) Fully dimensioned mobile van plans including materials that are non reflective.

**Materials:**

2. All external walls and roof areas of the proposed building/s are to be clad with non-reflective materials (zincalume prohibited) to the satisfaction of the Responsible Authority.

**Corangamite Catchment Management Authority:**

3. Plans must be updated to show a minimum setback of 30m from top of bank of the waterway traversing the property.

**Farm Management:**

4. No more than 3,000 poultry may be kept on the site at any one time
5. All poultry must be kept within the 12 pen areas as shown on the endorsed plan.

**Poultry Conditions:**

6. The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:
  - (a) Processes carried out on the land.
  - (b) Transportation of livestock, materials, good or commodities to or from the land.
  - (c) The emission of odour, dust, noise, artificial light, wastewater or waste products
  - (d) The presence of vermin or in any others way.

If the Responsible Authority determines that the amenity of the nearby residents is adversely affected by the emission of an unreasonable level of odour, dust, or noise from the site, the operator must immediately and to the satisfaction of the Responsible Authority take action to prevent those emissions, which may include adjusting stocking density, greater separation distances between the poultry and residents, or any other actions reasonably required to rectify the unreasonable emissions.

7. The waste produced from the use must:
  - (a) Not discharge beyond the boundaries of the land or directly into waterways to the satisfaction of the Responsible Authority.
  - (b) Effluent run-off must not be discharged to the Lal Lal Creek at any time. All effluent must be treated on site in accordance with the relevant EPA Requirements.

**Infrastructure:**

8. Storm water drainage from the proposed buildings and impervious surfaces must be retained and disposed of with a legal point of discharge issued by the Responsible Authority. If applicable, overflows from on-site storage systems must be directed away from any waste water disposal areas.
9. 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) and civil construction, building and demolition guide (EPA 2020).
10. 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.

11. 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.
12. A rural vehicle crossing must be provided on Old Melbourne Road to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.

**Central Highlands Water:**

13. The operation of the Poultry Farm must be in compliance with the Victorian Low Density Poultry Farm Planning Permit Guidelines, June 2008.
14. Stocking levels must not, at any point in time, exceed 3,000 chickens within the 2.6ha free range pen areas.
15. Chickens must be rotated within and between pen areas (notionally 12 x 2,000sqm pen areas) to ensure no pen area is in continuous use for greater than 6 weeks at a time, and poultry must not be returned to a previously used pen area for at least 3 months after such use.
16. A minimum of 50% of ground cover must be maintained within each pen at all times.

**Agriculture Victoria:**

17. The use of land for a Poultry farm must in accordance with the Victorian Low Density Mobile Outdoor Poultry Farm Planning Permit Guidelines (June 2018).

**Permit Expiry:**

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

**Permit Notes:**

**Corangamite Catchment Management Authority:**

It is recommended that the farm develop an operational plan which includes regular inspections of the bunds and drainage runoff areas. If groundcover is reduced and or frequent rainfall events occur, it may be necessary to install more formalized stormwater runoff and nutrient management systems onsite.

**Environmental Health:**

The free range poultry farm must comply with the *Environmental Protection Act 2017*.

**Agriculture Victoria:**

The free range farm must comply with all the conditions set by Agriculture Victoria as they are the registration authority.

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	No, the application is exempt from notice in accordance with criteria contained in Clause 53.09 of the Moorabool Planning Scheme relating to Poultry Farms and repeated in the Victorian Low Density Mobile Outdoor Poultry Farm Guidelines (June 2018).
Notices on site:	None.
Notice in Moorabool Newspaper:	No.
Number of objections:	None.
Consultation meeting:	Not applicable.

### **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 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 – Victoria Mack*

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

The General Manager, Assets and Infrastructure declared a Direct Conflict of Interest in relation to this application. Therefore, the General Manager had no involvement in any preparation or deliberation of referral responses to the planning team in relation to this application.

**EXECUTIVE SUMMARY**

Application referred?	Yes, to Agriculture Victoria, Environment Protection Authority (EPA), Department of Environment, Land, Water and Planning (DELWP), Corangamite Catchment Management Authority (CCMA), Central Highlands Water and Council's Environmental Health Services.
Any issues raised in referral responses?	Agriculture Victoria and the CCMA requested further information.
Preliminary concerns?	Agriculture Victoria requested further information in relation to compliance with the <i>Victorian Low Density Mobile Outdoor Poultry Farm Planning Permit Guidelines (June 2018)</i> . CCMA requested the provision of a Nutrient Management Plan.
Any discussions with applicant regarding concerns?	Yes. Further information was provided by the applicant.
Any changes made to the application since being lodged?	The applicant provided amended documents.
Brief history.	Nil.
Previous applications for the site?	No previous applications recorded.
General summary.	The application is to operate a Low Density Mobile Outdoor Poultry farm for egg production on the site. Agriculture Victoria has provided support to the applicant and Council has assessed the application based on the Victorian Low Density Mobile Outdoor Poultry Farm Planning Permit Guidelines (June 2018). The proposed shed can satisfy the requirements of the Environmental Significance Overlay. The applicant has met all the requirements and it is recommended that the application is supported.
<b>Summary of Officer's Recommendation</b>	
<b>That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i>, issue Planning Permit PA2022029 for the Use of Land for Free Range Poultry Farm (3,000) Chickens and Development of a Shed at 2369 Old Melbourne Road, Bungaree, otherwise known as Lots 1 and 2 on TP 224934G.</b>	

**SITE DESCRIPTION**

The property is 7.99ha and approximately square in shape. It is located in the southeast corner of the intersection of Old Melbourne Road with Lesters Road. The land has been used for walnut farming for more than 30 years and prime lamb production from a small sheep flock. These enterprises will continue.

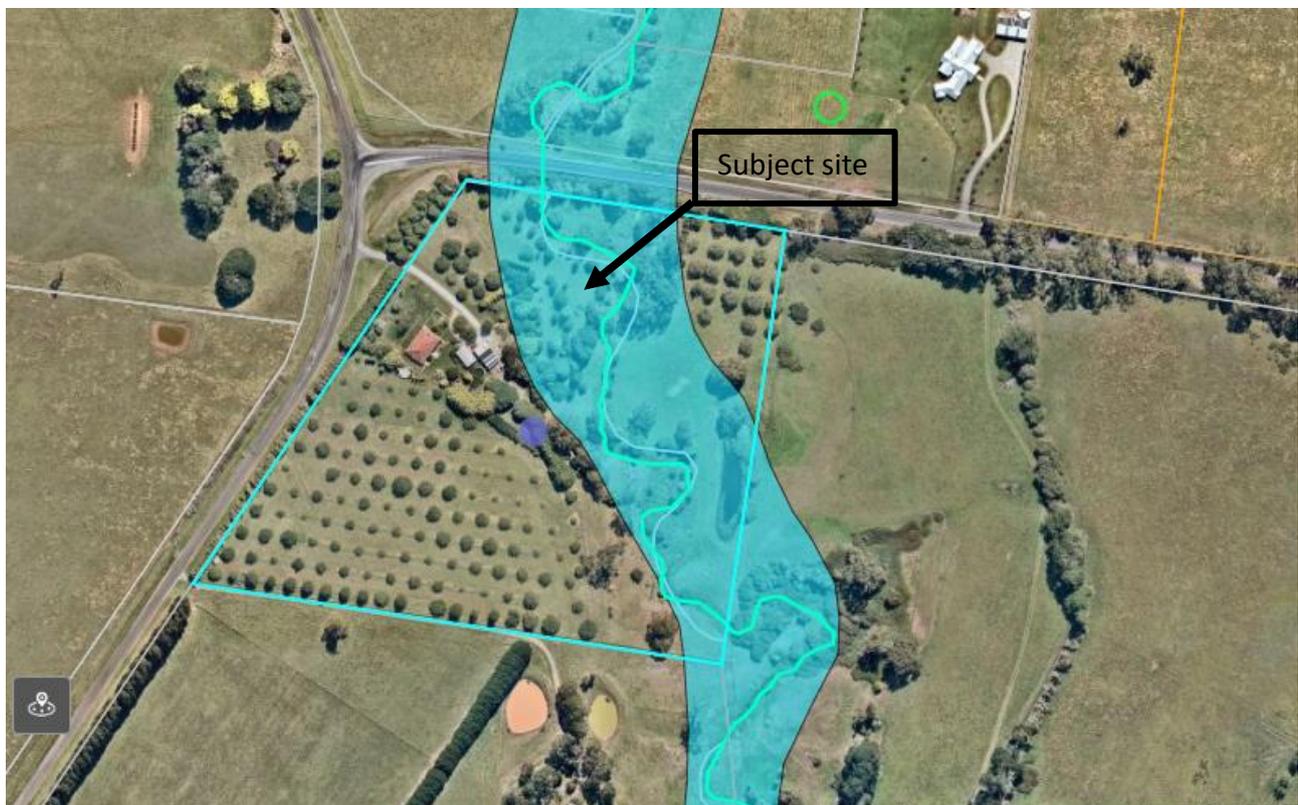
The Lal Lal Creek traverses the property from the north boundary to the southeast corner of the site. The creek is covered by a Corangamite Catchment Management flood layer but is not covered by the Land Subject to Inundation Overlay. There is a small dam located centrally on the east boundary.

The land is generally flat on the west side of the Lal Lal Creek which contains the existing dwelling and outbuildings in a garden and treed setting. The majority of the 130 walnut trees are planted on the west side of the creek. On the east side of creek, the land slopes up to pastured land with additional walnut tree plantings.

Existing access to the dwelling is from Old Melbourne Road on the west boundary.

Immediate surrounds include land that is generally cleared in the Farming Zone with dwellings and outbuildings. Surrounding lots are generally larger than the subject site and are generally used for grazing and cropping.

The site is located approximately 2.5km southeast of the Bungaree township.



**Figure 1:** Aerial photo of the subject site with flood extent coloured blue.

## PROPOSAL

It is proposed to use the land for a Poultry farm. The farm would be operated in accordance with the Victorian Low Density Mobile Outdoor Poultry Farm Planning Permit Guidelines (June 2018) otherwise known as the LDMO Guidelines. A maximum of 3,000 chickens would be run.

The nearest sensitive receptor is a neighbouring house to the southeast that is 120m from the closest poultry paddock, exceeding the required separation distance of 100m.

The existing waterway is, and will continue to be, fenced to exclude poultry, and a minimum setback of 40m would be maintained, exceeding the 30m requirement.

A core flock of 1,500 – 2,000 birds is proposed for egg production. Every six months, 500 pullets would be purchased that would increase the numbers, but this would decrease back to the core flock through sale of older birds once younger pullets are laying.

Traffic associated with the proposal would include monthly feed supplies delivered by a commercial supplier to the farm; delivery of eggs two to three times per week by van directly to restaurants and markets; and delivery or dispatch of birds by truck estimated every six months.

A property plan showing the layout of available poultry range areas was provided as follows:

- Total area available for birds: 2.6ha.
- Number of paddocks: One Paddock sectioned into 12 temporary fenced pens.
- Area in use by the entire flock at any point in time: 1ha.
- Stocking Density: 1,150 birds per ha.

The paddock layout is shown below:



**Figure 2:** Paddock layout for poultry flock management also showing the new shed location.

Typically, Pens 1 to 4 would contain birds for three to four months (with mobile caravan movement within each pen area every two weeks). Birds would then move to Pens 5 to 8 for the same period and then Pens 9 to 12 again for three to four months. Based on this movement pattern, a paddock fallow period of six to eight months is achievable, however would be adjusted based on ground conditions and weather patterns with flexibility to activate further pens if required.

The housing is in chicken caravans fitted with solar, deep cycle battery and timing system to automate opening, closing, and lighting. They contain a draw bar to easily hitch up and move

location. The caravans are proposed to be moved every 10 to 14 days by the approximate length of one van. This ensures nutrient load is evenly spread and that chickens will continue to roost in the vans as they tend to stay in the old location if moved too far in one go. Feeding and water will be moved in conjunction with vans.

Temporary fencing will be used consisting of electric netting. This fencing contains posts with prongs that allow simple dismantling and erection.

Pellets would be stored in a 13-tonne silo which is weather, vermin and bird proof. Seven tonnes of pellets would be used per month.

A shed would be constructed on the site. The shed would be 18m long x 9m wide and 3.6m high to the eaves. The shed floor area would be 162sqm. The shed would be used for egg processing, packaging and a cool store. The shed would be constructed just north of the poultry paddocks and a new crossover is required to be constructed from Old Melbourne Road on the west boundary to access the shed.

### **BACKGROUND TO CURRENT PROPOSAL**

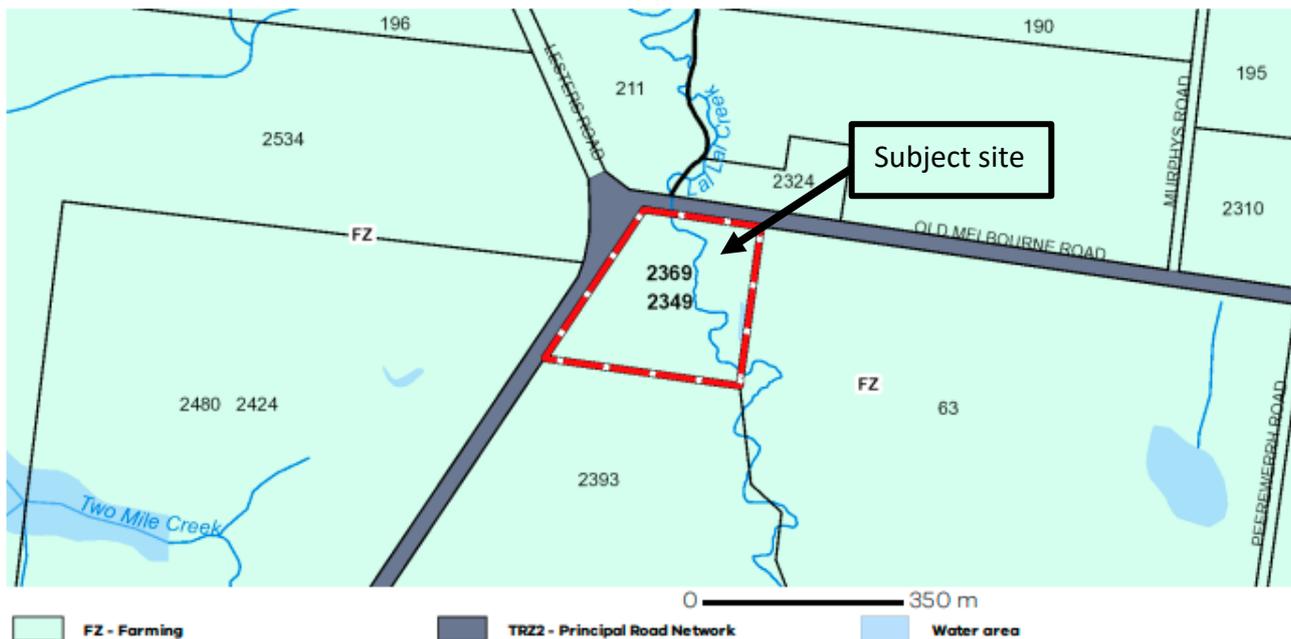
The existing farming operation consists of a 30-year-old walnut orchard with approximately 130 trees producing two varieties of walnuts. Walnuts are harvested in April/May, processed off site, and sold through local markets. The property also has a core sheep flock of 15 ewes and a Suffolk ram for prime lamb production and a small number of poddy calves are raised each year. Approximately 15 to 20 round bales of rye/clover hay are provided to the livestock per annum.

### **PUBLIC NOTICE**

This application meets the met the exemptions contained in Clause 53.09 of the Moorabool Planning Scheme. The number of chickens to be kept for egg production would be less than 5,000; the outdoor stocking density would be less that 1,500 birds per ha; the chickens would be housed in mobile infrastructue with 50% ground cover maintained; and the setback requirement of Standard 3.1 would be met which relates to setback distances from a sensitive or residential use.

## LOCALITY MAP

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



**Figure 3:** Zone map showing the zoning of surrounding land.

## 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 12.03-1S - River corridors, waterways, lakes and wetlands.
- Clause 14.01-1S - Protection of agricultural land.
- Clause 14.01-2S - Sustainable agricultural land use.
- Clause 14.02-1S - Catchment planning and management.
- Clause 17.01-1S - Diversified economy.
- Clause 22.02 - Special Water Supply Catchments.
- Clause 21.04-1 - Key issues and influences - Agriculture and horticulture.
- Clause 21.01-2 - Key issues Economic Development.

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

## ZONE

### Farming Zone

The Purpose of the Farming Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.

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

In accordance with Clause 35.07-1, Section 2 of the Moorabool Planning Scheme a permit is required in to use land for a poultry farm.

In accordance with Clause 35.07-4 of the Moorabool Planning Scheme a permit is required for building or works associated with a use in Section 2 of Clause 35.07-1, where the floor area of an outbuilding is greater than 100sqm.

It is considered that the proposal generally accords with the purposes of the Farming Zone.

## **OVERLAYS**

### Environmental Significance Overlay Schedule 1 (ESO1)

In accordance with Clause 42.01 Schedule 1 of the Moorabool Planning Scheme a permit is required for buildings and works.

The proposed shed would be setback more than 100m from the Lal Lal Creek and the poultry paddocks would meet the required setback of 30m from a waterway.

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

In accordance with Clause 43.02 Schedule of the Moorabool Planning Scheme a permit is required if the external cladding of buildings or works is with reflective materials. The applicant has advised the shed would be clad with a non-reflective material, and a permit is not triggered by this overlay.

## **Relevant Policies**

There are no relevant Council policies that relate to this application.

## **PARTICULAR PROVISIONS**

### Clause 53.09 – Poultry Farm

This clause applies to permit applications to use land or construct a building or construct or carry out works for a poultry farm, including to increase the farm capacity of an existing poultry farm.

Before deciding on an application to use land or construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the Responsible Authority must consider, as appropriate:

- The purpose of the relevant zone.
- The design, height, setback and appearance of the proposed buildings and works.
- The proposed landscaping.
- The need to protect amenity of existing uses on adjoining land.
- The impact of the use of the land on the surrounding area, including from the emission of noise, light, vibration, odour, dust, or waste products.
- The impact of the proposal on any wetlands, waterways, or water bodies.

- The likely environmental impact on the natural physical features and biodiversity of the land, including consideration of any Nutrient Management Plan submitted with the application.
- Whether the development will support and enhance agricultural production.
- The requirements of the Victorian Low Density Mobile Outdoor Poultry Farm Planning Permit Guidelines (June 2018).

The application was referred to Agriculture Victoria which assessed the application against the LDMO Guidelines and consented to the application with conditions.

It is considered that proposal fully accords with the decision guidelines of Clause 53.09.

## **DISCUSSION**

The application is for a small low density mobile outdoor poultry farm for egg production. It would have less than 3,000 laying hens. The application complies with Clause 53.09 of the Moorabool Planning Scheme for a Poultry Farm and meets the requirements of the Victorian Low Density Mobile Outdoor Poultry Farm Planning Permit Guidelines (June 2018).

The application was referred to Agriculture Victoria's Planning and Advisory service which supports the planning application for the use of land for an agricultural enterprise in accordance with the poultry farm guidelines.

The application was also referred to the Corangamite Catchment Management Authority (CCMA) which requested a Nutrient Management Plan (NMP) was provided particularly in relation to the Lal Lal Creek. The resulting NMP was provided, and the CCMA consented to the application with conditions.

It is considered that the proposal has been well considered and would provide a valuable agricultural commodity to local markets. The proposed shed is appropriately sited and would not cause any adverse impact to potable water supply as determined by Central Highlands Water. It is considered that the application meets the core purposes of the Farming Zone to provide for the use of land for agriculture and to encourage the retention of productive agricultural land. It is also considered that the application generally complies with the relevant sections of the PPF and LPPF. It is recommended that the application is supported.

## **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**

<b>Authority</b>	<b>Response</b>
Central Highlands Water.	Consent with conditions.
Agriculture Victoria.	Consent with conditions.
Corangamite Catchment Management Authority.	Consent with conditions.
Environment Protection Authority (EPA).	No response.
Department of Environment, Land, Water and Planning (DELWP).	No response.
Council's Environmental Health.	Consent with conditions.

**FINANCIAL IMPLICATIONS**

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

**RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

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

**COMMUNICATIONS STRATEGY**

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

**OPTIONS**

- Issue a Planning Permit in accordance with the conditions in the recommendation of this report; or
- Issue a Refusal to Grant a Permit on specific grounds. The Development Assessment Committee would need to consider what reasonable grounds there would be to refuse the application that complies with the particular provision for a poultry farm.

**CONCLUSION**

As demonstrated by the referral response from Agriculture Victoria the proposal meets the Objectives and Standards of the Victorian Low Density Mobile Outdoor Poultry Farm Planning Permit Guidelines (June 2018) and is considered to be a low-risk farming system for poultry.

Overall, the application has provided detailed documentation that is considered would lead to the operation of a well-managed small egg production enterprise within the Farming Zone. It is recommended that the application is supported.

**7.3 PA2021182 - DEVELOPMENT AND USE FOR A WAREHOUSE AND A REDUCTION OF CAR PARKING (THREE CAR SPACES) AT 8 BOND STREET, MADDINGLEY**

**Author:** Thomas Tonkin, Statutory Planner

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

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

**APPLICATION SUMMARY**

**Permit No:** PA2021182

**Lodgement Date:** 17 August 2021

**Planning Officer:** Tom Tonkin

**Address of the land:** 8 Bond Street, Maddingley

**Proposal:** Development and Use of a Warehouse and a Reduction of Car Parking (Three Car Spaces)

**Lot size:** 533.84sqm

**Why is a permit required?** Clause 33.02 Industrial 2 Zone – Development and use of a warehouse, Clause 43.02 Design and Development Overlay, Schedule 7 – Buildings and works, Clause 44.04 Land Subject to Inundation Overlay, Schedule 1 – Buildings and works, Clause 52.06 Car Parking – Reduction to the standard car parking rate

**RECOMMENDATION**

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2021182 for the Development and Use of a Warehouse and a Reduction of Car Parking (Three Car Spaces) at Lot 1 on TP 893770A & Lot 1 on TP 952312G known as 8 Bond Street, Maddingley, 3340, subject to the following conditions:

**Endorsed Plans:**

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans identified as Job No. 20469, Sheet No.'s TP03 rev. B and TP04 rev. B dated 28 March 2022 and prepared by Draft Comps Services but modified to show:
  - (a) A schedule of external building materials, colours and finishes.  
Removal of nominated floor level 'FFL: 100.48' from the ground floor plan and inclusion of floor level 'FFL 101.2' on the elevation drawings to accord with Melbourne Water's requirements.
  - (b) A landscape plan in accordance with Condition 11.

**Use:**

2. The use of the site must comply with the requirements of Clause 53.10 (Uses with Adverse Amenity Potential) of the Moorabool Planning Scheme or separate planning approval obtained.
3. Before the development commences, Lot 1 on TP 893770A and Lot 1 on TP 952312G must be held in common ownership or a lease of Lot 1 on TP 952312G is obtained to the satisfaction of the Responsible Authority.

**Operational:**

4. The loading and unloading of goods and materials from vehicles must only be carried out on the land.
5. Provision must be made within the warehouse for the storage and collection of garbage and other solid waste. Skip bins must not be located external to the building.

**Amenity:**

6. The amenity of the area must not be detrimentally affected by the use or development, through the:
  - (a) transport of materials, goods or commodities to or from the land;
  - (b) appearance of any building, works or materials;
  - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
  - (d) presence of vermin; or
  - (e) any other way.
7. Effective noise levels from the use of the premises must not exceed the recommended levels as set out in the Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011) or as amended.
8. External lighting must be provided with suitable baffles and located so that no direct light is emitted outside the site.
9. Any security alarm or similar device installed must be of a silent type.
10. Goods, equipment or machinery must not be stored or left exposed in a position that can be seen from the street.

**Landscape Plans:**

11. Before the use and development starts, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and must show:
  - (a) Details of surface finishes of the accessway.
  - (b) A planting schedule which must incorporate a mix of trees, shrubs and ground covers and include botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
  - (c) Landscaping and planting within all open areas of the site.
  - (d) Include details of any proposed fencing. The design of fencing must comply with Condition 27.

Species selection must include indigenous species and shall be to the satisfaction of the

**Responsible Authority.**

12. Before the occupation of the development starts or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
13. 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.

**Signage:**

14. Except where exempt under the Moorabool Planning Scheme, advertising signage must not be constructed or displayed without separate planning approval.

**Infrastructure:**

15. Prior to the use commencing, the proposed vehicle crossings on Bond and Park Streets must be constructed to urban industrial standard to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossings.
16. 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.
17. 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.
18. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991).
19. 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.
20. 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.
21. Prior to the use commencing, the car park areas must be constructed with concrete or asphalt, 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.
  - (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.
22. The building shall be provided with disabled access in accordance with the provisions of AS1428 – Design for Access and Mobility.

**Melbourne Water:**

23. The warehouse must be constructed with finished floor levels set no lower than 101.2 metres to the Australian Height Datum (AHD), which is 600mm above the applicable flood level of 100.6m to AHD.
24. Prior to council endorsement, amended plans must be submitted to Council and Melbourne Water for approval that demonstrate that Melbourne Water's finished floor level requirements have been met.
25. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the AHD, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
26. Imported fill must be kept to a minimum on the property and only be used for the sub floor areas of the warehouse and driveway ramps.
27. Any new fence must be of an open style of construction (minimum 50% open) or timber paling to allow for the passage of overland flows.

**Permit Expiry:**

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

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	No. The application is exempt from the notice requirements under all applicable provisions of the Moorabool Planning Scheme.
Notices on site:	None.
Notice in Moorabool Newspaper:	No.
Number of objections:	None.
Consultation meeting:	Not applicable.

## **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**

## **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, to Melbourne Water and Council's Infrastructure.
Any issues raised in referral responses?	<p>Council's Infrastructure raised concerns with parts of the traffic impact assessment. Additionally, there were concerns that the proposed driveway accessed from Bond Street could be informally used as a loading bay resulting in delivery vehicles projecting from the site over the public footpath.</p> <p>Melbourne Water requested plans showing the proposed floor levels to Australian Height Datum (AHD).</p>

Preliminary concerns?	Information was requested about the integration of future signage as part of the overall building design.
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?	Amendment in Process was lodged on 29 March 2022 addressing concerns and providing floor level detail as requested by Melbourne Water.
Brief history.	Not applicable.
Previous applications for the site?	See 'History' below.
General summary.	It is proposed to develop the site for a warehouse and reduce the car parking requirement by three spaces. Overall, the proposal is generally in accordance with all relevant planning policies. Subject to conditions, the proposed use and development is appropriate for the site and the reduction of car parking would be acceptable considering the scale and floor area of the proposed building.
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Council issue Planning Permit PA2021182 for the Development and Use of a Warehouse and a Reduction of Car Parking (Three Car Spaces) at 8 Bond Street Maddingley in accordance with Section 61 of the <i>Planning and Environment Act 1987</i> , subject to the conditions included in this report.	

## SITE DESCRIPTION

The subject site, identified as Lot 1 on TP 893770A & Lot 1 on TP 952312G and known as 8 Bond Street, Maddingley, is located on the northeast corner of Bond and Park Streets. The site is rectangular in shape, with a width of approximately 16.38m, length of 32.59m and overall site area of 533.84sqm. The site is currently vacant and cleared of vegetation. Existing vehicle access is on Bond Street via a double crossover located parallel to the north title boundary shared with the adjoining property. The site has a fall of only 0.1m and is not burdened by any easements or restrictions registered on title.

The subject site and surrounding land to the north, south and east is in the Industrial 2 Zone. To the north are single detached dwellings fronting Bond Street that are within the Industrial 2 Zone. To the east, fronting Park Street, is a motor repairs workshop. Further to the east are predominantly small scale industrial building and warehouses. To the south of Park Street is a bus depot. To the west of Bond Street is Maddingley Park which is in the Public Park and Recreation Zone. Bacchus Marsh Railway Station is approximately 180m to the south. All reticulated services are available to the site.



**Figure 1:** Aerial photograph

## PROPOSAL

It is proposed to develop and use the site for a warehouse and to reduce the car parking requirement. The proposed building would have a 330.63sqm footprint and be constructed to the east, north and south property boundaries and have a finished floor level (FFL) of 101.2m to Australian Height Datum (AHD). The building would comprise a 291.6sqm warehouse with internal loading bay and toilet at ground level and an upper level ancillary office with an area of 47.8sqm. The proposed loading bay would be accessed via a new 4.5m wide crossover on Bond Street and 8.8m long access ramp with a 1:10 grade from street level. Three car spaces, including one accessible car space, would be accessed via a proposed 7.6m wide crossover on Park Street. A reduction of three car spaces is proposed.

The building would be contemporary in appearance, with concrete panels incorporating lightweight coloured cladding to sections of the west and south façades. The building would have an overall height of approximately 8m and a minimum 3.61m front setback including an access ramp, with the building's front wall set back 6.11m from Bond Street. The upper storey incorporating the office would cantilever above the ground floor west façade and have a 5.11m setback from Bond Street. Landscaping would be confined to the building's front setback and a small section of the Park Street setback.



Figure 2: Site and floor plans

**BACKGROUND TO CURRENT PROPOSAL**

Lot 1 on TP 952312G comprises a sliver of land at the southern edge of the subject site, and is currently owned by Moorabool Shire Council, separate to the ownership of the balance of the land which comprises Lot 1 on TP 893770A. The separate ownership of these titles effectively prevents the proposed development from proceeding, including vehicle access to the site from Park Street. It is recommended that a condition of approval require either these lots to be held in common ownership or a lease of Lot 1 on TP 952312G is obtained prior to the commencement of the approved development.

**HISTORY**

PA2015180 for Development and Use of a Warehouse and Retail Premises (Uniform Sales, Printing and Sign Writing), Display of Business Identification Signage and a Reduction of Car Parking and Loading Requirements was issued by Council on 9 March 2016. The permit was not acted upon and has since expired.

**PUBLIC NOTICE**

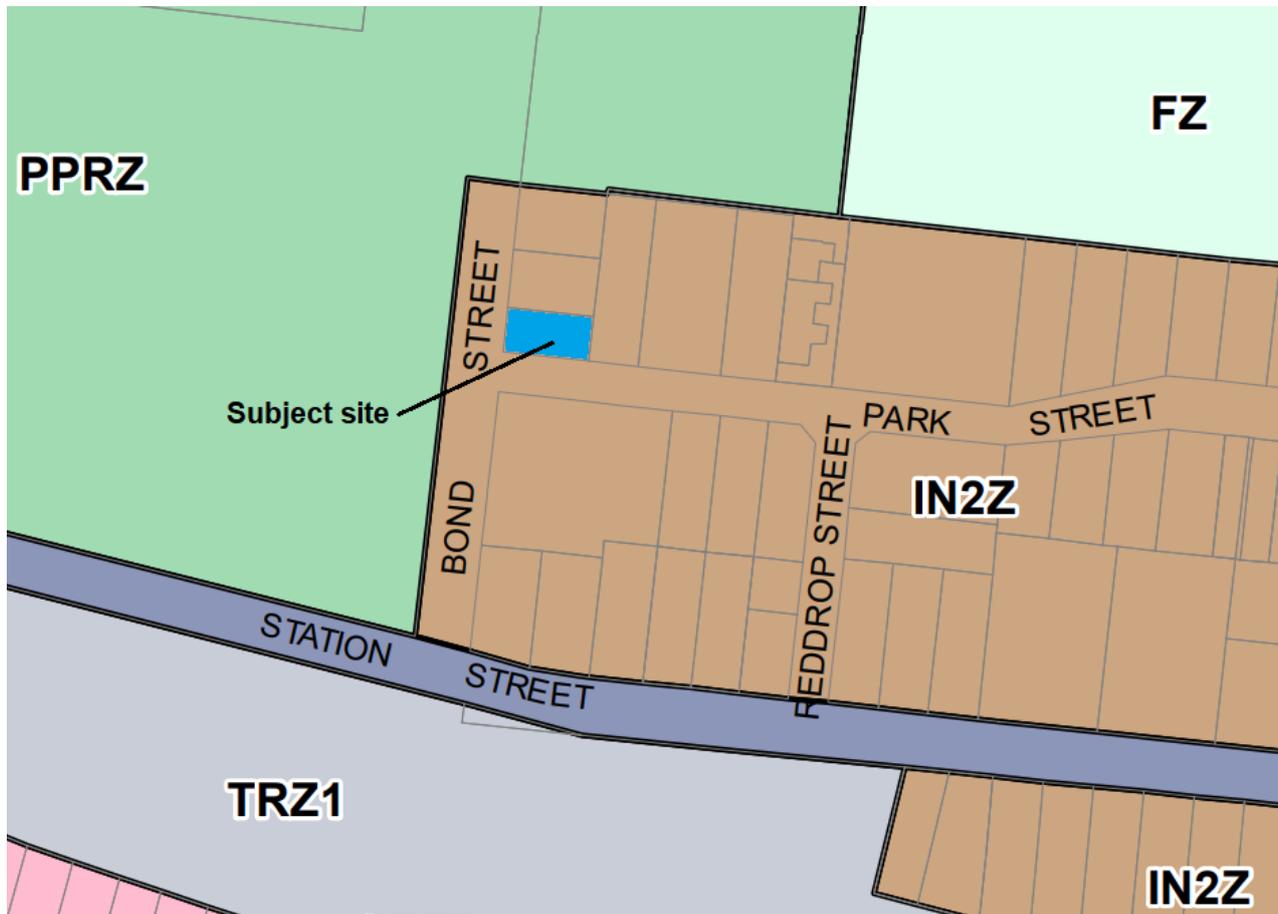
Pursuant to S.52(4) of the *Planning and Environment Act 1987* the application is exempt from notice under Clauses 33.02-2, 33.02-4, 43.02-2, 44.04-6 and 52.06-4 of the Moorabool Planning Scheme.

**SUMMARY OF OBJECTIONS**

Not applicable.

## LOCALITY MAP

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



**Figure 3:** Zone map

## PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.01-1R Settlement – Central Highlands
- Clause 11.03-3S Peri-urban areas
- Clause 13.03-1S Floodplain management
- Clause 15.01-2S Building design
- Clause 15.02-1S Energy and resource efficiency
- Clause 17.01-1R Diversified economy – Central Highlands
- Clause 21.03-2 Urban growth management
- Clause 21.03-4 Landscape and neighbourhood character
- Clause 21.04-3 Commercial

- Clause 21.04-5 Local employment
- Clause 21.07-6 Urban design
- Clause 22.05 Presentation of Industrial Areas

Subject to conditions, the proposal is generally consistent with the relevant sections of the PPF and LPPF.

## **ZONE**

The subject site is in the Industrial 2 Zone (IN2Z). The purpose of the IN2Z is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for manufacturing industry, the storage and distribution of goods and associated facilities in a manner which does not affect the safety and amenity of local communities.
- To promote manufacturing industries and storage facilities that require a substantial threshold distance within the core of the zone.
- To keep the core of the zone free of uses which are suitable for location elsewhere so as to be available for manufacturing industries and storage facilities that require a substantial threshold distance as the need for these arises.

Under Clause 33.02-1 a permit is required to use land for a warehouse.

Under Clause 33.02-4 a permit is required for building and works.

## **OVERLAYS**

The site is affected by Design and Development Overlay, Schedule 7 (DDO7), Environmental Significance Overlay, Schedule 8 (ESO8) and Land Subject to Inundation Overlay, Schedule 1 (LSIO1).

### Design and Development Overlay, Schedule 7

Under Clause 43.02-3 a permit is required to construct buildings and works. There are no relevant exemptions under Schedule 7.

The proposed development is generally in accordance with the DDO7 provisions.

### Environmental Significance Overlay, Schedule 8

Under Clause 42.01-2 a permit is required to construct buildings and works. It is noted that under Schedule 8 there is an exemption for the construction of a building or carry out works outside the Tree Protection Zone (TPZ) of any River Red Gum tree. The TPZ is defined as being an area with a radius equal to the furthest point of the tree canopy from the centre of the trunk plus 5m. The footprint of the proposed development is not within the TPZ of any River Red Gum therefore a permit is not required under this Overlay.

### Land Subject to Inundation Overlay, Schedule 1

Under Clause 44.04 a permit is required to construct buildings and works. There are no relevant permit exemptions under Schedule 1.

Subject to conditions, the proposal is generally in accordance with the LSIO1 provisions. Melbourne Water as the responsible floodway authority had no objection to the application.

**Relevant Policies**

The Moorabool Industrial Areas Strategy, 2015 is a reference document in the Moorabool Planning Scheme. The strategy's key recommendations are not directly relevant to the current proposal, and the proposal would not prejudice the implementation of any of the recommendations.

**Particular Provisions**Clause 52.06 Car Parking

Under Clause 52.06-5 the Warehouse the car parking requirement is two space per premises plus 1.5 spaces for each 100sqm of net floor area, excluding the loading bay - equalling a total of six car spaces. Three car spaces are proposed, therefore a reduction of three car spaces is required.

The proposed car space dimensions, crossover and accessway dimensions meet the design standards of Clause 52.06-9.

Clause 52.34 Bicycle Facilities

There is no specified requirement for the provision of bicycle facilities for a Warehouse.

Clause 53.10 Uses with Adverse Amenity Potential

Detailed information about the use of the proposed warehouse is not available. It is recommended that a condition of approval specify that the site not be used for the storage purposes listed in this clause to prevent any adverse amenity impacts on residential zoned land in the local area.

Clause 53.18 Stormwater Management in Urban Development

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

**DISCUSSION**

Overall, the proposal is generally in accordance with the applicable provisions of the Moorabool Planning Scheme and is consistent with the purpose of the Industrial 2 Zone.

The subject site is in an established industrial precinct in Maddingley with all utilities available and the proposed use for a warehouse is generally consistent with the surrounding mix of uses. The proposed building would be contemporary in appearance and would complement the surrounding area, providing facilities able to accommodate a small to medium-scale warehouse use. The proposal supports consolidated growth of the Shire's largest township and would contribute to local economic growth, in particular catering to the local demand for warehouse facilities.

Clause 22.05 Presentation of Industrial Areas

The proposed development is generally consistent with Council's policy for industrial development at Clause 22.05 of the Moorabool Planning Scheme. While the building footprint would be 66.39% of total site area, more than the maximum preferred 60%. Is it acceptable given the small lot and corner lot arrangement, with limited scope to provide upper storey facilities. Site permeability would be 11.21%, comprising landscaped areas achieving the preferred 10%. The proposed building's front setback varies from 6.11m to 8.8m, not including the access ramp, only partly exceeding the minimum preferred 7.5m setback. The setback would incorporate loading bay access and landscaping.

The design response is acceptable, owing to the site constraints outlined above and the consolidated area of landscaping the building's front setback soften the development. The proposed building materials and finishes comply with the policy. It is recommended that a condition of approval require a landscape plan to be submitted for endorsement.

### Clause 33.02 Industrial 2 Zone

The proposal is generally consistent with the Industrial 2 Zone provisions. Whilst the specific future warehouse use is unknown at this stage, subject to conditions there would be no detrimental amenity impacts. The surrounding road network can readily accommodate traffic associated with the development. The proposed streetscape presentation would provide for landscaped areas in the front setback capable of being planted to complement and soften the building's appearance, particularly as viewed from Bond Street. The proposed building's design and front façade articulation would improve the overall appearance of the area and remain generally consistent with the scale of nearby industrial buildings. Detailed stormwater treatment would be managed by way of permit conditions.

### Clause 43.02 Design and Development Overlay, Schedule 7

The proposed development is generally consistent with the DDO7 provisions, in particular the design objectives.

### Clause 44.04 Land Subject to Inundation Overlay, Schedule 1

Melbourne Water provide conditional consent to the proposal, and it is noted that the plans submitted as part of the amended application meet Melbourne Water requirements for finished floor levels 600mm above the flood level in a 1% storm event.

### Clause 52.06 Car Parking

Under the car parking provisions at Clause 52.06-5 of the Moorabool Planning Scheme, the proposal requires six car spaces to be provided. Three car spaces are proposed and therefore a reduction of three car spaces is required.

Overall, the proposed parking provision is deemed to be adequately responsive to the proposed use and the site features and context. A car parking assessment was submitted with the application, including an empirical study of car parking requirements for warehouses based on floor area. For a warehouse of less than 500sqm in total area, as proposed in this instance, a maximum of four car spaces would likely be required by future users. In this instance the parking provision of three spaces is considered adequate and in consideration of limiting the amount of hardstand occupied by the open car spaces. The warehouse use is unlikely to generate high staff numbers or regular visitors.

A site advantage which allows for a reduction in car parking is the site is within cycling and walking distance of residential areas and is close to the Bacchus Marsh railway station, providing opportunities for alternative modes of transport.

Overall, there is sufficient evidence to demonstrate the availability of on-street parking to cater for any overflow parking from the proposed development, which the assessment indicates is unlikely to exceed more than one vehicle.

Council's Infrastructure has reviewed the car parking demand assessment and agreed with its conclusions. There is sufficient justification for a reduction of the three car spaces under Clause 52.06.

## **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**

<b>Authority</b>	<b>Response</b>
Melbourne Water	Consent with conditions.
Council's Infrastructure Strategic Planning	Consent with conditions. Consent.

**FINANCIAL IMPLICATIONS**

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

**RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

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

**COMMUNICATIONS STRATEGY**

Pursuant to s52(4) of the *Planning and Environment Act 1987* the application is exempt from notice under Clauses 33.02-2, 33.02-4, 43.02-2, 44.04-6 and 52.06-4 of the Moorabool Planning Scheme. The applicant was invited to attend this meeting and address Council if required.

**OPTIONS**

- Issue a Planning Permit in accordance with the conditions in the recommendation of this report; or
- issue 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 Council's decision to VCAT.

**CONCLUSION**

The proposal is generally in accordance with the relevant planning policies, particularly the Industrial 2 Zone provisions and Clauses 22.05, 43.02, 44.04 and 52.06. The proposed warehouse would contribute to the growth of the local economy and be located and designed to avoid any detrimental amenity impacts. The proposed car parking reduction of three car spaces is deemed to be acceptable, with on-street parking able to absorb the any anticipated extra spaces. The layout of car parking and access would provide for safe and functional vehicle access and parking. It is recommended that the application be approved, subject to conditions.

**7.4 PA2022015 - DEVELOPMENT AND USE OF A DWELLING AND ANCILLARY OUTBUILDING AND VEGETATION REMOVAL AT MYRNIONG-KOROBEIT ROAD, KOROBEIT**

**Author:** Thomas Tonkin, Statutory Planner

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

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

**APPLICATION SUMMARY**

**Permit No:** PA2022015

**Lodgement Date:** 17 January 2022

**Planning Officer:** Tom Tonkin

**Address of the land:** Myrniong-Korobeit Road, Korobeit

**Proposal:** Development and Use of a Dwelling and Ancillary Outbuilding and Vegetation Removal

**Lot size:** 0.897ha

**Why is a permit required?** Clause 35.07 Farming Zone – Development and use of a dwelling and ancillary outbuilding, Clause 42.01 Environmental Significance Overlay, Schedule 1 – Buildings and works and vegetation removal

**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 PA2022015 for the Development and Use of a Dwelling and Ancillary Outbuilding and Vegetation Removal at Lot 1 on TP 810821D known as Myrniong-Korobeit Road, Korobeit 3341, on the following grounds:

1. The proposal is inconsistent with the purpose and objectives of the Farming Zone.
2. The proposal does not comply with the relevant provisions of the Planning Policy Framework and Local Planning Policy Framework of the Moorabool Planning Scheme for the use and development of rural land, particularly for residential purposes.
3. The application provides insufficient justification for the use of the land for a dwelling in the Farming Zone.

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

## **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

**Strategic Objective 1: Healthy, inclusive and connected neighbourhoods**

**Priority 1.1: Improve the health and wellbeing of our community**

### **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, to Greater Western Water, Southern Rural Water, and Council's Infrastructure, Environmental Health and Heritage Advisor.
Any issues raised in referral responses?	No.
Preliminary concerns?	There were several preliminary concerns. The applicant's justification for a dwelling in this location is not supported by relevant planning policy for dwellings in the Farming Zone. The layout of the dwelling and passive solar access. Lack of information regarding the proposed shed, proposed dam and vegetation removal.

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, vegetation removal was included as part of the proposal, shed plans provided and the proposed dam was removed from the plans. The planning report was updated as required and swept paths shown on the plans in support of the garage and driveway layout. No changes were made to the dwelling design to address passive energy efficiency.
Brief history.	Not applicable.
Previous applications for the site?	None.
General summary.	<p>It is proposed to use and develop the vacant lot for a dwelling and ancillary outbuilding and to remove non-native vegetation. The application was lodged without any proposed farming or land management activities, rather it is simply a rural lifestyle proposal.</p> <p>The proposal does not accord with relevant planning policies for the use and development of farming land and there is insufficient justification to permit a dwelling on the land. The application was advertised, and no objections were received.</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 PA2022015 for the Development and Use of a Dwelling and Ancillary Outbuilding and Vegetation Removal at Lot 1 on TP 810821D known as Myrniong-Korobeit Road, Korobeit, on the grounds included in this report.	

## SITE DESCRIPTION

The subject, identified as Lot 1 on TP 810821D and known as Myrniong-Korobeit Road, Korobeit, is located on the east side of Myrniong-Korobeit Road at the intersection with Morrisons Lane, approximately 3.75km from Myrniong township. The site is rectangular in shape, with a 40.23m width and 201.17m length, for a total area of 0.897ha. The site is vacant and cleared apart from several established exotic trees planted along the site's north boundary and falls slightly generally from west to east. The site is not encumbered by any easements.

The subject site and surrounding land is in the Farming Zone, with land mostly cleared and used for grazing and fodder crops. Landholdings are typically much larger than the subject site and dwellings, whilst not uncommon in the surrounding area, are not a prominent feature. A historic church is located opposite the site.



**Figure 1:** Aerial photograph with waterways highlighted in green.

## PROPOSAL

It is proposed to develop and use the site for a dwelling and ancillary outbuilding and to remove vegetation. The proposed dwelling would be set back 45m from the front boundary, 5.45m from the north side boundary, 1m from the south side boundary and be oriented to the front of the site.

The dwelling would be double storey with an additional basement for storage and comprise five bedrooms, three bathrooms, powder room, laundry, study, study nook, rumpus, lounge and open plan kitchen, dining and living area leading to a covered alfresco area to the rear. The dwelling would have a gross floor area of 684.84sqm and would be conventional in appearance, with brick and weatherboard clad walls and a low pitched hipped Colorbond roof with eaves.

Three car spaces would be provided in an attached triple car garage. Vehicle access would be via two crossovers leading to a circular driveway in the front setback and to the garage on the north side of the dwelling and outbuilding further to the rear of the site.

The proposed outbuilding would be located to the rear of the dwelling and be set back 1.61m from the north side boundary, with a 30.4m length and 21m width, for an area of 638.4sqm. The outbuildings would have a 6m wall height and low-pitched hipped roof. Wall and roof cladding would be Colorbond. The applicant advises that the outbuilding would be used to store vehicles including a caravan, tractor, and ride on mower along with excavating equipment for the owner's work use.

Vegetation proposed for removal would comprise seven non-native trees planted along the north side boundary, to facilitate the construction of the outbuilding.

The applicant has not submitted any Farm Management Plan or Land Management Plan in support of the application.

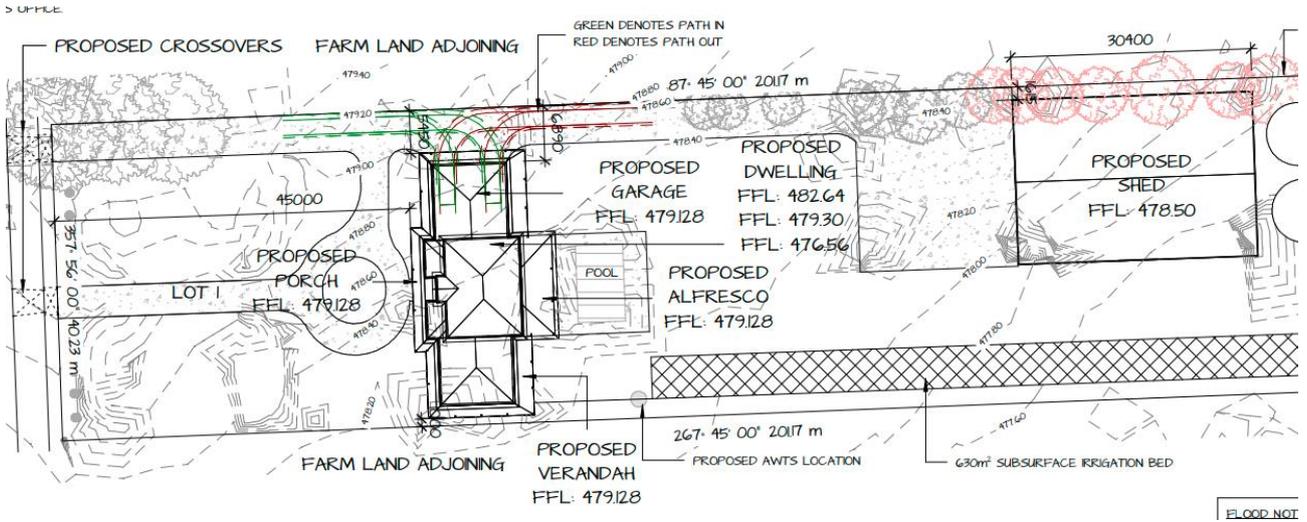


Figure 2: Part Site plan.

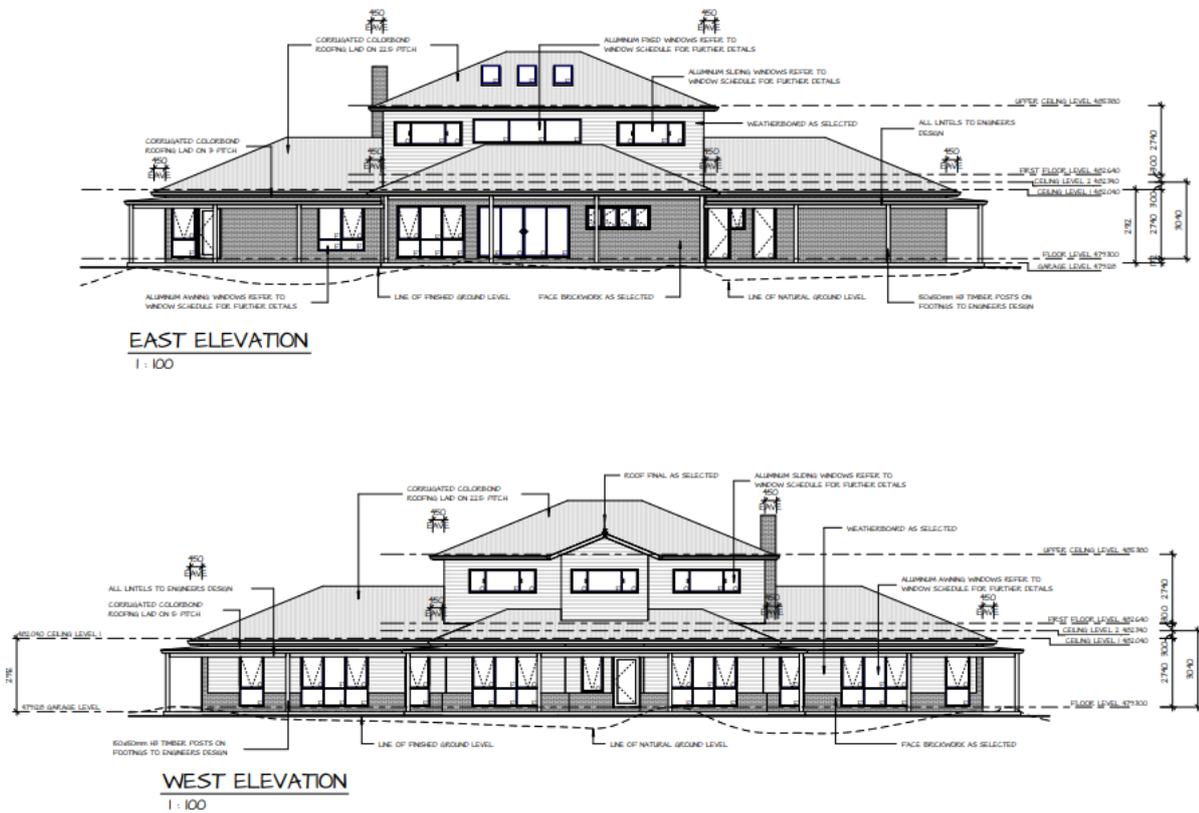


Figure 3: East and west dwelling elevations.

## BACKGROUND TO CURRENT PROPOSAL

Title plan information shows the lot was previously a crown allotment associated with another separate crown allotment to the south. The current owner took possession of the title on 31 July 2020.

## HISTORY

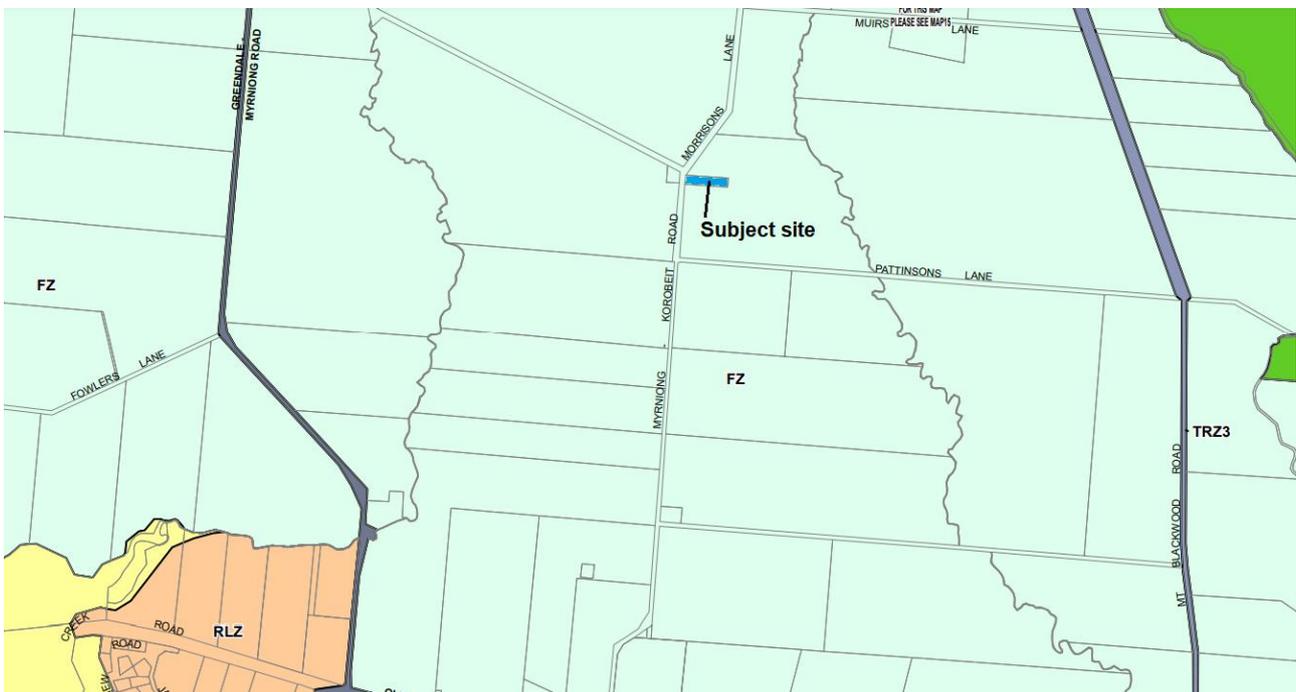
Not applicable.

## PUBLIC NOTICE

Notice of the application was given by way of a sign erected on site and letters posted to adjoining and nearby landowners and occupiers. No objections were received.

## LOCALITY MAP

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



**Figure 4:** 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 11.01-1R Settlement - Central Highlands
- Clause 11.03-3S Peri-urban areas
- Clause 13.02-1S Bushfire planning
- Clause 14.01-1S Protection of agricultural land
- Clause 14.02-1S Catchment planning and management

- Clause 14.02-2S Water quality
- Clause 15.01-6S Design for rural areas
- Clause 16.01-3S Rural residential development
- Clause 21.02-2 Non-urban landscapes
- Clause 21.02-3 Water and catchment management
- Clause 21.03-4 Landscape and neighbourhood character
- Clause 21.03-6 Rural lifestyle opportunities
- Clause 21.04-2 Agriculture
- Clause 21.09-1 Small towns and settlements
- Clause 22.02 Special Water Supply Catchments
- Clause 22.03 Houses and House Lot Excisions in Rural Areas

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

<b>PPF</b>	<b>Title</b>	<b>Response</b>
Clause 11.03-3S	Peri-urban areas	The proposal would contribute to dispersed residential settlement unrelated to farming beyond township boundaries which is not supported by this policy.
Clause 14.01-1S	Protection of agricultural land	The use of a small rural lot for a dwelling with no nexus to farming is not supported by this policy. The surrounding agricultural activities would not be compatible with the proposed residential use.
Clause 16.01-3S	Rural residential development	The proposed dwelling lacks strategic justification consistent with this policy.
<b>LPPF</b>		
Clause 21.02-2	Non-urban landscapes	The proposed development is urban in nature, with no connection to farming, and inconsistent with the surrounding rural landscape character.
Clause 21.03-6	Rural lifestyle opportunities	The proposed dwelling, being a rural lifestyle development with no nexus to farming, is inconsistent with this policy. This policy encourages residential development to locate close to established settlements accessible to services and facilities rather than in remote locations.
Clause 21.04-2	Agriculture	The proposal is inconsistent with this policy which directs rural residential developments to locate in strategic growth areas where impacts on agricultural production are avoided.

Clause 21.09-1	Small towns and settlements	This policy discourages residential development located outside of established townships and settlements.
Clause 22.03	Houses and house lot excisions in rural areas	The proposed dwelling is unrelated to any farming activity and is inconsistent with this policy.

## **ZONE**

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

The purpose of the zone is:

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

Under Clause 35.07-1 a dwelling is a Section 2 use on a lot of less than 40ha and under Clause 35.07-4 a permit is required for the associated buildings and works, and pursuant to the Zone schedule, for a building within 5m of a property boundary.

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

## **OVERLAYS**

The site is affected by Environmental Significance Overlay, Schedule 1 (ESO1) and Design and Development Overlay, Schedule 2 (DDO2).

### Environmental Significance Overlay, Schedule 1

Under Clause 42.01-2 a permit is required to construct buildings and works and remove vegetation. There are no relevant permit exemptions under Schedule 1, therefore a permit is required under this provision.

The relevant water catchment authorities had no objection to the application.

### Design and Development Overlay, Schedule 2

Under Clause 43.02-3 (DDO2) a permit is required to construct buildings and works. Under Schedule 2 there is an exemption where non-reflective external building cladding is proposed, as in this instance. Therefore, a permit is not required under this overlay.

## **Relevant Policies**

### Council’s Rural Growth Policy

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

The policy states:

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

The site is not located in Map 1 of the Council Rural Growth Policy Statement. The policy requires justification for the dwelling based on the proposed agricultural activity.

There is no farming activity proposed as a result of this application.

#### Council's Rural Housing Policy

Council's Rural Housing Policy 2012 was adopted by Council on 19 September 2012 and has been developed to provide direction for how limited farming potential rural dwellings should be considered, and more broadly, rural settlement patterns. This Policy is not incorporated into the Moorabool Planning Scheme.

The principles of the policy relevant to this application include to:

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

The proposal does not align with the above principles. The subject site is in an area not within any of the designated rural development areas where dwellings are encouraged to locate. The subject site is 0.897ha in size and no farming enterprise is proposed in support of a dwelling. The proposal does not accord with this policy.

#### **Particular Provisions**

None applicable.

## DISCUSSION

Overall, the proposed use and development for a dwelling and an ancillary outbuilding is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular state and local planning policies and the Farming Zone.

Relevant planning policies address a range of considerations including rural landscape values, land capability, protection of productive agricultural land and assets, and the location of rural residential development. These policies are outlined above and the proposal's non-compliance with several of these policies is also noted.

The subject site is a vacant 0.897ha lot approximately 3.75km from Myrniong township and 1.9km from Greendale's established rural living settlement. Given its relatively small size the site's agricultural value is limited. Adjoining landholdings are separately owned and substantially larger in size, undeveloped and used for either grazing or cropping. Notwithstanding the site's limited opportunity for agricultural use, there is a lack of policy support in the Moorabool Planning Scheme for the use of the land for a dwelling and the policy framework does not encourage dispersal of residential development beyond the boundaries of existing small towns and settlements.

The proposal does not align with the purpose of the Farming Zone, considering that the dwelling would not support any agricultural activity. No land management plan or any supporting documentation was provided to demonstrate that the proponent would manage the property to avoid any detrimental impacts on adjoining farming land, such as pest or weed control. The proposed dwelling would permanently remove the land from any potential agricultural use and contribute to fragmentation of farming land by reducing the potential for consolidation with adjoining lots which could enhance agricultural production and avoid potential land use conflicts.

The proposal is characteristic of the demand for rural residential development on lots which due to their size, have limited potential for viable agricultural use. The proposal represents the ad hoc nature of such development, which without sufficient strategic justification pose a potentially detrimental outcome for the Shire's rural landscape character and the associated social, economic, and environmental values. The site lies between Myrniong and Greendale, locations where residential growth is generally supported on existing vacant lots zoned for residential use. The development of dwellings outside of these areas, such as that proposed, contributes to a dispersal of scattered residential development beyond settlement boundaries. This threatens the rural landscape character which is typified by a generally undulating landscape of open paddocks with planted windbreaks and stands of established trees with only occasional dwellings which are visually unobtrusive in the landscape, and generally established to enhance farming activities. Furthermore, the proposal undermines the potential for new agricultural ventures to develop and prosper on such landholdings and reduces opportunities for contiguous land parcels to be consolidated to increase potential productivity.

The introduction of residents on a small land holding surrounded by farming properties can result in complaints from the occupants regarding residential amenity through noise, dust and water spray. Such complaints could have the effect of limiting the agricultural uses of surrounding land. Creating future land use conflicts should be avoided.

The subject site is located opposite a historic church which is covered by a Heritage Overlay in the Moorabool Planning Scheme. Council's Heritage Advisor does not object to the proposal from a heritage perspective.

## 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.
Southern Rural Water	Consent.
Council's Infrastructure	Consent with conditions.
Environmental Health	Consent with conditions.
Heritage Advisor	Consent.

## FINANCIAL IMPLICATIONS

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

## RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

## COMMUNICATIONS STRATEGY

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

## OPTIONS

- Issue a Refusal to Grant a Planning Permit in accordance with the grounds in the recommendation of this report; or
- should the Development Assessment Committee wish to support the application, issue a Planning Permit with conditions, and would need to demonstrate how the proposal complies with the provisions of the Moorabool Planning Scheme.

## CONCLUSION

There is insufficient policy support in the Moorabool Planning Scheme to approve the proposed use and development of the subject site for a dwelling. The proposed dwelling on a lot of 0.897ha would not be used in conjunction with any agricultural land use or any land management practices. Approval of the residential use of the land could limit the agricultural use of the surrounding land. The proposal represents the use of agricultural land for rural residential purposes which has no robust policy support in the Moorabool Planning Scheme and does not support the orderly planning of the area. The proposed use and development is recommended for refusal.

**7.5 PA2021240 VARIATION OF RESTRICTIVE COVENANT AD159230W AT 10 PARKSIDE DRIVE, HOPETOUN PARK**

**Author:** Thomas Tonkin, Statutory Planner

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

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

**APPLICATION SUMMARY**

**Permit No:** PA2021240

**Lodgement Date:** 12 October 2021

**Planning Officer:** Tom Tonkin

**Address of the land:** 10 Parkside Drive, Hopetoun Park

**Proposal:** Variation of Restrictive Covenant AD159230W

**Lot size:** 5,197sqm

**Why is a permit required?** Clause 52.02 Easements, Restrictions and Reserves

**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 PA2021240 for Variation of Restrictive Covenant AD159230W at Lot 64 on PS 518686Y known as 10 Parkside Drive, Hopetoun Park 3340, 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 benefiting 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:	One.
Consultation meeting:	No. The Council officer liaised separately with the applicant and objector and the application was subsequently amended but the objection was not withdrawn.

## **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 – Thomas 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?	Further information was requested of the applicant regarding the intended use of the proposed shed and the intended location of fencing.
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 wall height of the shed from 5.2m to 5m, in response to the objection. The objection was not withdrawn.
Brief history.	Not applicable.
Previous applications for the site?	None.
General summary.	<p>It is proposed to vary covenant AD159230W items (b) and (k) which respectively relate to fencing and size and height of an ancillary outbuilding to an existing dwelling. The proposed variation would expand the range of allowable fencing styles/materials and increase the allowable size of outbuildings.</p> <p>The application was advertised, and one objection received, which raised amenity and neighbourhood character concerns due to the increase in the allowable outbuilding height. The application was amended to reduce the height of the outbuilding but did not result in 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 &amp; Environment Act 1987</i>.</p>
<b>Summary of Officer's Recommendation</b>	
<p>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 PA2021240 for the Variation of Restrictive Covenant AD159230W at Lot 64 on PS 518686Y known as 10 Parkside Drive, Hopetoun Park, on the grounds included in this report.</p>	

## SITE DESCRIPTION

The subject site.



**Figure 1:** Aerial photograph.

## PROPOSAL

It is proposed to vary Covenant number AD159230W, items (b) and (k).

Covenant AD159230W 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. 518686Y 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...(b) erect or construct on the Lot hereby transferred any boundary or internal fence other than a standard post and wire type fence; (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 13 metres in length, 7 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 (b) is to allow for the construction of Colorbond or picket style fencing as partitions on or across the property but not forward of the existing dwelling.

The proposed variation of item (k) is to allow construction of an outbuilding up to 35m long x 18m wide x 5m in height to the eaves. This variation is required to facilitate the storage of a motor home, work car, two tandem trailers, two family cars, a box trailer, five hobby cars, two boats, a tandem truck, an excavator, a float trailer and three motor bikes.

**BACKGROUND TO CURRENT PROPOSAL**

Not applicable.

**HISTORY**

Not applicable.

**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.

**SUMMARY OF OBJECTIONS**

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

<b>Objection</b>	<b>Any Relevant Requirement</b>
The proposed 5.2m wall height would have a significant impact on the streetscape and make it look like an industrial area. A shed with a 5.2m wall height would also be visible from my backyard. The use of the proposed shed and associated noise is also a concern.	Clause 52.02.
<p><b>Officer's Response:</b></p> <p>It is noted that following receipt of the objection the application was amended to reduce the proposed wall height to 5m. See 'Discussion' below.</p>	

**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.

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 this Act. Subsection (4) states the following:

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

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

In this instance, subsection (4)(b) above applies to covenant AD159230W that 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, an objection was received to the application 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 objection received 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. It is considered that the application cannot be approved based on the objection received.

The covenant currently allows for the development of outbuildings a maximum of 13m long x 7m wide x 4m in height to the eaves. The proponent seeks approval to vary the covenant to allow an outbuilding up to 35m long x 18m wide x 5m in height to the eaves.

The site and surrounding land 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 not uncommon but vary in size, with some outbuildings similar in size to what the proposed variation of item (k) would enable, although such outbuildings are not a prominent feature of this area of Hopetoun Park.

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 adjoining and nearby properties, Eyrie Court and the adjoining public reserve to such an extent that the general visual amenity of the neighbourhood would be unreasonably compromised. The objector has raised concerns that the outbuilding height facilitated by the proposed variation to item (k) would be visible from their backyard and create an industrial aesthetic in a residential area.

Additionally, the objector has raised concerns about the potential use of an outbuilding of the size facilitated by the proposed variation to item (k). 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 issue 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 amenity of the area.

The proposed variation to item (b) would allow for Colorbond or picket style fencing within the property boundaries and behind the front wall of the dwelling, in addition to the allowable post and wire type fencing. The potential for covenant beneficiaries to suffer detriment as a result of this variation would be likely to rest on the height, colour, particular style and extent of such fencing. Depending on these factors, there is the potential for detriment. Notwithstanding surrounding dwellings being either well set back from the rear part of the subject site or otherwise oriented to face away from the site, it is difficult to argue that the covenant beneficiaries would be unlikely to suffer any perceived detriment as a consequence of the variation to item (b). This is due in large part to the visibility of the subject site from properties in Eyrie Court and adjoining public reserve and the spacious character of the area created in part by the absence of prominent solid fencing, particularly in streetscape views. Non-post and wire type fencing such as Colorbond panel fencing, where present, is generally not disruptive to the neighbourhood character. This is particularly the case where the fencing is not readily visible from the street.

With regard to neighbourhood character, the area is defined by single dwellings on lots of roughly 4,000sqm to 6,000sqm 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 examples of large bulky sheds in Hopetoun Park which are visually dominant, these are not characteristic of the area surrounding the subject site. Outbuildings, where present, generally blend with the scale of dwellings and are not visually dominant. The subject site and surrounding lots, including the objector's property, are affected by a covenant which allows for development of outbuildings up to 13m long x 7m wide x 4m in height to the eaves.

As discussed above, outbuildings in the surrounding area vary in size but typically are substantially smaller than what the proposed variation of item (k) would facilitate. Smaller outbuildings consistent with item (k) exemplify the contribution that outbuildings make to the existing neighbourhood character of this area of Hopetoun Park. Council 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 35m length x 18m width x 5m height to the eaves. The development of an outbuilding matching those dimensions would not be in keeping with the neighbourhood character, as described above. The objector 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, the 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. Based on this, and on observations of the site and surrounding area, it is deemed that a beneficiary of the covenant would suffer detriment (including perceived detriment).

### **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 submitter 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* because of the covenant variation. This option may result in the objector appealing the Committee's decision to VCAT.

**CONCLUSION**

The proposed variation to covenant AD159230W items (b) and (k) respectively relate to fencing and outbuilding dimensions. The proposed variation would expand the range of allowable fencing styles and materials and increase the allowable size of an outbuilding.

The application was advertised, and one objection received, which raised amenity and neighbourhood character concerns related to the proposed increase in the allowable outbuilding height. Based on objection received, the proposal is deemed to be inconsistent with the relevant provisions of the Moorabool Planning Scheme and 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 17 August 2022.

**11 MEETING CLOSE**