



# **MINUTES**

## **Development Assessment Committee Meeting**

**Wednesday, 21 September 2022**

**Date: Wednesday, 21 September 2022**

**Time: 6.00pm**

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

**Order Of Business**

<b>1</b>	<b>Opening .....</b>	<b>3</b>
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<b>5</b>	<b>Matters Arising from Previous Minutes.....</b>	<b>4</b>
<b>6</b>	<b>Disclosure of Conflicts of Interests .....</b>	<b>4</b>
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7.1	PA2021251 - Development and Use of a Dwelling and Ancillary shed in association with an equine enterprise and Earthworks at 99 Corries Lane, Mount Egerton .....	5
7.2	PA2022017 - Buildings and Works Ancillary to an Existing Industry, a Reduction of Car Parking (17 Car Spaces) and a Waiver of Bicycle Parking facilities at 11-13 McPherson Street, Maddingley .....	23
7.3	PA2022013 - Variation of Restrictive Covenant AK843052U at 25 View Gully Road, Hopetoun Park .....	35
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<b>11</b>	<b>Meeting Close .....</b>	<b>58</b>

**1 OPENING**

The Mayor opened the meeting with the Council Prayer at 6pm.

**2 PRESENT AND APOLOGIES**

Cr Tom Sullivan, Mayor	West Moorabool Ward
Cr Tonia Dudzik, Deputy Mayor	East Moorabool Ward
Cr David Edwards	East Moorabool Ward
Cr Moira Berry	East Moorabool Ward
Cr Paul Tatchell	Central Moorabool Ward
Cr Ally Munari	Woodlands Ward

**IN ATTENDANCE:**

Henry Bezuidenhout	a/g Chief Executive Officer
Sarah Kernohan	a/g Executive Manager, Community Planning & Development
Andy Gaze	a/g Manager, Statutory Planning & Regulatory Services
Mark Lovell	Coordinator, Statutory Planning

**APOLOGIES:**

Cr Rod Ward	East Moorabool Ward
Derek Madden	Chief Executive Officer

**3 RECORDING OF MEETING**

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

**4 CONFIRMATION OF MINUTES****COMMITTEE RESOLUTION**

Moved: Cr Moira Berry

Seconded: Cr Tonia Dudzik

That the minutes of the Development Assessment Committee Meeting held on Wednesday 17 August 2022 be confirmed.

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**CARRIED**

**5 MATTERS ARISING FROM PREVIOUS MINUTES**

Nil.

**6 DISCLOSURE OF CONFLICTS OF INTERESTS**

Nil.

**PRESENTATION/DEPUTATIONS**

<b>Item</b>	<b>Community Planning &amp; Economic Development</b>	<b>Speaker/s</b>	<b>Position</b>
7. 1	PA2021251 – Development and use of a Dwelling and Ancillary Shed in association with an Equine Enterprise and Earthworks at 99 Corries Lane, Mount Egerton	Roger Cripps	Applicant
7.3	PA2022013 – Variation of Restrictive Covenant AK843052U at 25 View Gully Road, Hopetoun Park	Michael Horan	On behalf of Applicant
7.3	PA2022013 – Variation of Restrictive Covenant AK843052U at 25 View Gully Road, Hopetoun Park	Thomas Quigley	Applicant
7.4	PA2022021 – Development of Three Dwellings at 13 Clarinda Street, Bacchus Marsh	Hamish Balzan	Supporter

## **7 COMMUNITY PLANNING REPORTS**

Mr Roger Cripps was not available to address the Committee as the applicant associated with Item 7.1.

### **7.1 PA2021251 - DEVELOPMENT AND USE OF A DWELLING AND ANCILLARY SHED IN ASSOCIATION WITH AN EQUINE ENTERPRISE AND EARTHWORKS AT 99 CORRIES LANE, MOUNT EGERTON**

**Author:** Victoria Mack, Statutory Planner

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

**Attachments:** 1. Site and Dwelling plans (under separate cover)  
2. Shed plan (under separate cover)

#### **APPLICATION SUMMARY**

**Permit No:** PA2021251

**Lodgement Date:** 8 November 2021

**Planning Officer:** Victoria Mack

**Address of the land:** 99 Corries Lane Mount Egerton  
Crown Allotment 14, Section 5, Parish of Bungal

**Proposal:** Development and Use of a Dwelling and Ancillary Shed in association with an equine enterprise and Earthworks

**Lot size:** 6.756ha

**Why is a permit required?** Clause 35.07 Farming Zone - Development and use of a dwelling, Clause 35.07-4 Farming Zone – Earthworks, Clause 42.01 Environmental Significance Overlay, Schedule 1 – Buildings and works

**MOTION**

Moved: Cr Tonia Dudzik

Seconded: Cr Ally Munari

**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 PA2021251 for the Development and Use of a Dwelling and Ancillary Shed in Association with an Equine Enterprise and Earthworks at 99 Corries Lane, Mount Egerton, otherwise known as Crown Allotment 14, Section 5, Parish of Bungal, subject to the following conditions:**

**Endorsed Plans:**

- 1. Before the use and/or development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application but modified to show:**
  - (a) A confined dwelling and domestic envelope, including the Land Application Area fenced off from livestock.**
  - (b) Prior to the commencement of the use and development of a dwelling the proposed infrastructure for the agricultural use of the land must be completed to the satisfaction of the Responsible Authority.**
  - (c) Site plan annotated that all earthworks and on site drainage must be in accordance with the approved Stormwater Management Strategy.**
- 2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. All buildings and works must be constructed and or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority. All buildings and works must be located clear of any easements or water and sewer mains or septic tank and effluent lines unless written approval is provided by the relevant authority.**

**Dwelling Requirements:**

- 3. The dwelling must be connected to a reticulated sewerage system if available. If reticulated sewerage is not available all wastewater from each dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the *Environment Protection Act 2017* for an on-site wastewater management system.**
- 4. 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.**
- 5. The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.**
- 6. Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.**

**Materials:**

- 7. 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.

**Farm Management:**

8. The domestic development must be contained within a defined envelope, shown on a endorsed plan and cannot be altered without the written consent of the Responsible Authority
9. Prior to the commencement of the use and development of a dwelling the proposed fencing and watering infrastructure for the agricultural use of the land must be completed to the satisfaction of the Responsible Authority.
10. A Farm 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:**

11. Before the issue of a Building Permit 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 land is for agricultural activities and the use of the dwelling must be in conjunction with an approved agricultural activity.
  - (b) Agricultural activities and environmental management identified in the endorsed Farm Management Plan must be undertaken on the land and must be in accordance with the Farm Management Plan endorsed under Condition 10 of the Planning Permit and cannot be varied without the written consent of the Responsible Authority.
  - (c) Before a Building Permit is issued for the dwelling, 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 the Act and the owner must provide evidence of that registration of the Agreement to the Responsible Authority.
  - (d) The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.

**Infrastructure:**

12. A standard vehicle crossing must be provided on Corries Lane to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossings.
13. Prior to the construction commencing, engineering drainage plans, and detailed computations must be submitted and approved by the Responsible Authority.
14. The drainage plans are to be undertaken in accordance with the Infrastructure Design Manual and Australian Rainfall and Runoff 2016 and shall incorporate (but not limited to) the following:
  - (a) The development as a whole must be self-draining to the legal point of discharge.
  - (b) All drainage courses within the development must pass through easements or

reserves shown on the plan of subdivision.

- (c) Volume of water discharging from the development in a 10% AEP storm shall not exceed the 20% AEP storm prior to development. Peak flow must be controlled by the use of a detention system located and constructed to the satisfaction of the Responsible Authority. If the existing drainage system is to be augmented to cater for the flows this is to be at the developer's cost. This augmentation can include upgrading or formalising swales within the road reserve down to a water course to ensure that the greater community is not impacted by the development.
  - (d) Stormwater runoff must meet the "Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)".
  - (e) Flow paths of the 1% AEP storm must be determined, and the development designed so that no property is inundated by such a storm. The flow paths must be indicated on the engineering plans
  - (f) The drainage system must be designed to include provision to intercept litter.
  - (g) The drainage design must take into account any applicable drainage or flood management strategy.
15. Storm water drainage from the development and impervious surfaces must be disposed of into the approved Stormwater Strategy and to the satisfaction of the Responsible Authority. Overflows from on-site storage systems must be directed away from any wastewater disposal areas.
16. 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).
17. 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.
18. 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.

#### Environmental Health:

19. Prior to installation of works commencing on the wastewater system, a permit to install an onsite wastewater management system must be submitted to Environmental Health.
20. The land application area and all conditions must be in accordance with the Land Capability Assessment prepared by Regional Project Consulting Pty Ltd, ref number 210720-1 dated 16 August 2021, or any approved amendment are to be strictly adhered to.
21. An onsite wastewater management system with the capacity to treat effluent to a minimum of 20mg/L BOD, 30mg/L SS and 10orgs/100ml with chlorination, i.e., secondary treatment via an aerated wastewater treatment system must be installed.
22. Effluent disposal must be undertaken via subsurface irrigation system designed and installed by a wastewater irrigation expert in accordance with the EPA Code of Practice for



**Onsite Wastewater.**

23. 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's requirements.
24. The effluent disposal area must be kept free of buildings, driveways, vehicular traffic and services trenching.
25. 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
26. 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.
27. 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.
28. The owner will maintain all drainage lines at all times to divert surface water and subsurface water clear of the effluent disposal field.

**Barwon Water:**

29. Wastewater treatment is to achieve a minimum water quality standard of 20mg/L BOD, 30mg/L SS and 10 orgs/100ml, i.e., secondary treatment, via an EPA approved all wastewater treatment system
30. Effluent disposal must be undertaken via a subsurface irrigation system designed and installed by a wastewater irrigation expert as recommended in the Regional Project Consulting Land Capability Assessment – Report No. 210720-1, dated 16 August 2021
31. Cut off drain must be constructed across the upper slope side of the effluent disposal area.
32. Trenches excavated for the effluent disposal area must be treated with gypsum as recommended in the Regional Project Consulting Land Capability Assessment – Report No. 210720-1, dated 16 August 2021.
33. All components of the wastewater management system including the effluent disposal area must be located at least 100m from any surface waterway and 30m from any dam.
34. All stormwater must be directed away from the effluent disposal area and all roof stormwater must not be disposed to the effluent disposal area
35. Monitoring, Operation and Maintenance must be undertaken in accordance with Regional Project Consulting Land Capability Assessment – Report No. 210720-1, dated 16 August 2021.
36. The effluent disposal field must be protected by being isolated from any building, driveway, livestock, and vehicles.
37. The Shed must not be used for any habitable purpose and must not be used for any commercial or industrial purpose, except in accordance with the provisions of the Moorabool Planning Scheme.
38. The use, storage and disposal of fuel and chemicals must be managed in accordance with EPA's publication 1698 Liquid storage and handling guidelines. Chemicals and fuels used

on site must be registered by the Australian Pesticides and Veterinary Medicines Authority and must be stored in their own, labelled containers above flood levels to avoid water contamination in flood or overland flow events.

39. Appropriate farm waste management must be carried out, as outlined in EPA's publication IWRG641.1 Industrial Waste Resource Guideline
40. Sediment control measures as outlined in the EPA's publication No 275 Sediment Pollution Control shall be employed during the construction of the dwelling and shed and maintained until the disturbed area has regenerated.
41. Prior to a certificate of occupancy being issued for the dwelling the owner must enter into an agreement with the Responsible Authority and Barwon Water in accordance with Section 173 of the *Planning and Environment Act 1987* requiring that:
- (a) The Owner is to enter into a service contract to have any wastewater treatment facility and effluent disposal system for the dwelling inspected and maintained in accordance with the EPA Certificate of Approval for the installed system.
  - (b) The Owner must provide to Barwon Water and the Responsible Authority an annual report on the condition and operation of the wastewater treatment system which documents the effluent quality achieved and provides laboratory, inspection and maintenance reports for the preceding 12 months.
  - (c) The Owner shall have the wastewater treatment facility desludged at least once every three years or as otherwise determined by Council's Environmental Health Officer. Evidence of this desludging shall be provided in the annual report referred to in Clause (b) here in.
  - (d) The Owner shall carry out any works considered necessary by the service contractor to ensure the satisfactory operation of the wastewater treatment facility and effluent disposal system.
  - (e) The Owner will maintain all drainage lines at all times to divert surface water and subsurface water clear of the effluent disposal field.
  - (f) The Owner and the Responsible Authority agree to do all things necessary to register a memorandum of this Agreement on the title of the land pursuant to Section 181 of the *Planning and Environment Act 1987*.
  - (g) The Owner shall meet all costs of inspections, reports and works referred to in Clauses (a), (b), (c), (d), and (e) herein and all costs of the Responsible Authority in relation to stamping and registration of this Agreement.
  - (h) The Owner shall not sell or enter into any contract to sell the land until this Agreement has been registered pursuant to Clause (f) herein.
42. Barwon Water require the Section 173 to be signed by the Managing Director and Company Secretary and to state the following:

THE COMMON SEAL of the BARWON REGION WATER CORPORATION was hereunto affixed in the presence of

Permit expiry:

43. 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:**

**Environmental Health:**

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

**CARRIED**

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<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Not applicable.
Number of objections:	Two, one objection was later withdrawn.
Consultation meeting:	Yes, two on-site visits were organised between Council officers, the landowner and the objectors to discuss drainage concerns.

## **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 Barwon Water, Agriculture Victoria and Council's Environmental Health and Infrastructure.
Any issues raised in referral responses?	Council's Infrastructure requested a Stormwater Management Plan. Agriculture Victoria made specific recommendations which are included in the Discussion section of this report.
Preliminary concerns?	There were concerns about how stormwater would be managed on site and the drainage discharge point.

Any discussions with applicant regarding concerns?	Discussions were held with the applicant and the owner.
Any changes made to the application since being lodged?	Stormwater Management Plan provided.
Brief history.	No relevant history.
Previous applications for the site?	PAP99/075 Construction of a dwelling and ancillary outbuilding.
General summary.	<p>The application is for the development and use of a dwelling in conjunction with an equine enterprise. The land is in the Farming Zone and has an area of 6.756ha.</p> <p>Lots along Corries Lane and McFarlanes Lane are all of similar size with a growing number of lots used for equine activities.</p> <p>Storm water drainage from the site has been a significant issue for neighbours down slope, with recent earthworks on the site exacerbating localised flooding onto neighbouring properties. The Stormwater Management Plan, once fully implemented, has been designed to bring overland flows back to pre-existing levels.</p> <p>The horse enterprise proposed is small scale, but the Farm Management Plan submitted with the application covers the key agricultural principles including pasture improvement, weed control, revegetation, water harvesting and fencing.</p>
<b>Summary of Officer's Recommendation</b>	
<p>That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i>, issue a Notice of Decision to Grant Planning Permit PA2021251 for the Development and Use of a Dwelling and Ancillary Shed in Association with an Equine Enterprise and Earthworks at 99 Corries Lane, Mount Egerton, otherwise known as Crown Allotment 14, Section 5, Parish of Bungal, subject to conditions contained in this report.</p>	

## SITE DESCRIPTION

The site is 6.756ha and is rectangular in shape and generally flat with a slight slope to the south.

The front south boundary of the property abuts Corries Lane. There is an existing shed on the site constructed by a different ownership approximately 90m into the lot and the current owners have constructed a central internal driveway, have fenced horse paddocks and constructed a round yard and a hard stand area centrally on the site.

There are existing plantations of cypress and native trees on the south, south-west and south-east boundaries of the site with some planted vegetation around the existing shed. The balance of the site is pastured.

Lots in the surrounding area are in the Farming Zone and are generally similar in size ranging from 6ha to 8ha, with the majority having single dwellings and outbuildings and the balance being vacant grazing land.

The wider locality is also in the Farming Zone with waterways dissecting the wider area and flowing south to the Moorabool River.

The site is located approximately 6kms south of the Mount Egerton township via the Egerton-Ballark Road.



**Figure 1:** Aerial image

## PROPOSAL

It is proposed to construct a dwelling on the site and an ancillary outbuilding in association with an equine enterprise.

The single storey brick clad dwelling would have three bedrooms the master bedroom with ensuite and two WIRs, an open plan kitchen with WIP, dining and family room leading to a covered alfresco. There would be a separate laundry, family bathroom and powder room and a separate entrance foyer. There would be a 22.5° Colorbond steel pitched roof.

The shed would be a barn shape. It would be 12m wide and 12m long with a maximum height to the top of roof of 4.73m. There would be three roller doors on one side and a roller door and pedestrian door on the opposite side. The shed would have Colorbond external cladding.

A Farm Management Plan (FMP) was submitted with the application which detailed the proposed equine enterprise.

The FMP provided for the use of the land for keeping the owners' own horses, agistment of horses for clients, and breeding and training of horses. There would be seven horses on the site at any one time. The owners plan to establish a training facility for the Liberty training method. This training method is in high demand however extremely time consuming. This method requires the

trainer to initially be around or near the horse virtually 24/7 for the first several weeks. A maximum of two client horses would be in Liberty training at any one time, and these are the horses that would be listed as under agistment. If no training is underway then the owners may take on separate agistment of horses. The owners currently have a total of five of their own horses for breeding and riding.

A maximum of seven horses on the property should require pasture of approximately 12 DSE/ha which given the annual rainfall and temperature listed in the FMP should be achievable with good pasture management

The property currently has no water supply. There is evidence of a bore although is currently not operational and requires further investigation. New water tanks are proposed to collect water from all roofed areas. Based on proposed roof areas and annual rainfall data, these structures would be able to collect over 650,000 litres of rainfall in an average rainfall year. A reticulated watering system would be constructed supplying water to troughs in each paddock and all-weather tracks will be constructed to allow access to the dwelling, sheds and all paddocks in all weather conditions.

A native vegetation planting plan was also included for the property boundaries and centrally.

The dwelling and shed site would take up approximately 0.7ha.

Earthworks which have changed the rate of flow across the property requires planning approval and the already filled dam can be considered under this current application for use and development.

## **HISTORY**

The applicant undertook earthworks on the site prior to obtaining a planning permit which included filling in an existing dam and the construction of a shallow table drain running north south on the east side of the allotment. The table drain was designed to capture water from the property and direct it to the Council Road reserve in Corries Lane.

However, Council drainage in the road reserve is not fit for purpose and during high rainfall events, such as experienced earlier in 2022, resulted in water from the site flooding neighbouring properties to the east and southeast, including their buildings.

An Assets officer determined that the table drains in Corries Lane needed repair and has advised that this will be added to a future works program. Council's Infrastructure determined that the earthworks had exacerbated the drainage issues off the site and that rectification works needed to be undertaken as soon as practicable to return the site to pre-existing flows.

## **PUBLIC NOTICE**

The application was notified to adjoining and surrounding landowners. Two objections were received, with one objection later being withdrawn.

**SUMMARY OF OBJECTIONS**

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

Objection	Any relevant requirement
The current drainage infrastructure on Corries Lane is completely insufficient to support any further development on this road. Development at 99 Corries Lane has already commenced, and a spoon drain has been dug along the Eastern boundary. The dam located on the Eastern boundary has been filled in. The works were done prior to any permit being issued. The drain empties onto the road reserves and all the run-off flows directly into the entrance to my own property.	Council's Assets Services.
<b>Officer's Response:</b> A Council Assets officer inspected the site and agreed that the table drains in Corries Lane were not working appropriately. The officer agreed to add the required drainage works to the future works plan, which has budget implications.	
Currently there is no diversion of the drain in the road and all the water flows directly down my driveway, through the horse yards, in front of my cabin, through a small shed and paddock, and floods my arena. The new drain dug by the owners of 99 Corries Lane has caused significant damage to my property.	Assets and Infrastructure Services; Storm Water Management Plan.
<b>Officer's Response:</b> It is agreed by all parties that the impact of the earthworks on the subject site have exacerbated the flooding experienced by neighbours. Rectification works have been assessed as being required.	
It is not fair or reasonable that all the runoff from 99 Corries Lane be directed into the entrance to my property. Until a comprehensive drainage plan is developed, and Council's drains are repaired, I object to this application proceeding	<i>Water Act 1989 (Vic)</i>
<b>Officer's Response:</b> Drainage rectification works are required to address current drainage problems. Proposed Infrastructure conditions 12-14 cover drainage works for the new development	



## 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 — Peri Urban Areas
- 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 16.01-5S — Rural residential development
- Clause 21.02-3 — Objective- Water and catchment management
- Clause 21.03-4 — Objective - Landscape and neighbourhood character
- Clause 21.03-6 — Objective - Rural lifestyle opportunities
- Clause 21.04 — Economic Development and Employment
- Clause 21.04-1 — Key issues and influences Agriculture and horticulture
- Clause 21.04-2 — Objectives - Agriculture
- Clause 22.03 — Houses and House Lot Excisions in Rural Areas
- Clause 21.04-2 — Objectives - Agriculture

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

## **ZONE**

### **Farming Zone**

The purpose of the Zone is to:

- Implement the Municipal Planning Strategy and the PPF.
- Provide for the use of land for agriculture.
- Encourage the retention of productive agricultural land.
- Ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- Encourage the retention of employment and population to support rural communities.
- Encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
- 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, a permit is required to use land for a dwelling where the land is less than 40ha.

In accordance with Clause 35.07-4 a permit is required for a building or works associated with a use in Section 2 of Clause 35.07-1.

In accordance with Clause 35.07-4 a permit is required for earthworks that change the rate of flow across a property.

## **OVERLAYS**

### **Environmental Significance Overlay, Schedule 1**

In accordance with Clause 42.01-2 a permit is required for buildings and works.

### **Design and Development Overlay, Schedule 2**

In accordance with Clause 43.02 and Schedule 2 of this overlay, a permit is not required where all external cladding of buildings is non-reflective. In this application, there is no reflective materials proposed and therefore a permit is not required under this overlay.

## **Relevant Policies**

### **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 Council policy is not incorporated into the Moorabool Planning Scheme.

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 into 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 policy applies to lots under 8ha where the policy aims to:

- Ensure the opportunities available for the site are not compromised by the proposal, and the dwelling is located in a position that maximises its use for residential purposes while supporting any agricultural practices.
- Establish a maximum area for residential use in high quality agricultural areas ensure the integrity of the site for current or future agricultural pursuits.

#### High Agricultural value - strategies

The smaller the land parcel the greater the potential to erode the lands capabilities for agricultural practices.

- The objective of the dwelling on this size parcel of land should be to ensure that the viability of the agricultural practice or opportunities are not compromised as a result of the dwelling.
- These applications must include a FMP to ensure that the obligations of the landowner/manager are met, and the agricultural practice is effective.
- This Plan should include how the agricultural activities will be carried out and how the integrity of the site for agricultural uses will be maintained and enhanced.

Landowners have an obligation to maintain their land to a certain standard and not encourage any adverse amenity impacts on adjoining or surrounding property owners. There is an opportunity, through the planning permit process, for Moorabool to be proactive when it comes to land management practices and advocating for effective land management strategies.

It is also policy to minimise or avoid any land use conflict that may exist or be created as a result of the proposal.

#### **Particular Provisions**

No Particular Provisions apply to the application.

#### **DISCUSSION**

The application is for the development and use of a dwelling on a small lot of 6.756ha in the Farming Zone. Justification for the dwelling is based on a niche horse breeding and training enterprise.

The dwelling and shed cover a modest area of the site allowing the balance of the land to be used for horse breeding and training. The FMP submitted with the application was considered to cover the key requirements for the small-scale enterprise proposed.

It is also noted in the Rural Housing Policy that "Landowners have an obligation to maintain their land to a certain standard and not encourage any adverse amenity impacts on adjoining or surrounding property owners".

The application was advertised with two objections being received. Both objections related to the same issues being drainage works and the filling in of a dam on the site undertaken by the owners which concentrated the flow of storm water from the site resulting in flooding onto neighbours' properties. The owners have subsequently expressed concern as they did not realise that the works would create these issues. It was noted by Council's Infrastructure that by filling in the dam and redirecting the water, the landowner has resulted in a liability under the *Water Act 1989*.

The earthworks undertaken can be considered under the current use and development application. Subject to the submission of a level survey, the earthworks already completed without planning approval and any future remediation works must ensure the drainage discharge does not affect any adjacent properties.

The applicant is required to satisfy the drainage layout objectives of Clause 56.07 of the Moorabool Planning Scheme which seek:

- To prevent stormwater damage to property.
- To provide a stormwater system that can be maintained economically.
- To minimise increases in stormwater run-off and protect the environmental values and physical characteristics of receiving watercourses from degradation by urban run-off.

A Stormwater Drainage Plan was provided, and Council's Infrastructure consented to the application subject to specific conditions being placed on the permit in relation to the management of storm water. Council's Asset Services also conceded that the table drains in Corries Lane were not fit for purpose and they advised that they have added drainage rectification works to their works plan.

The application was referred to Barwon Water and Council's Environmental Health, both of which consented to the application with conditions.

The application was referred to Agriculture Victoria which noted that a land use for horse husbandry can be carried without the presence of a dwelling, but regular visits would be required and/or locked gates and security systems to ensure daily management of the property and animal welfare were maintained. On the basis of above, it can be concluded that a dwelling is reasonably required for the proposed agricultural use.

Agriculture Victoria also responded with the following advice and recommendations:

- That any permit issued that allows the use and development of a dwelling in the Farming Zone is in association with agricultural production, protects against the potential for further subdivision and ensures the use does not compromise farming activity in the area.
- That the domestic development is contained within a defined envelope, shown on a plan, that minimises the loss of agricultural land.
- That prior to the commencement of the use and development of a dwelling that the proposed infrastructure for the agricultural use of the land must be completed to the satisfaction of the Responsible Authority.
- That a binding agreement is entered into that:
  - The continued use of a dwelling in the Farming Zone has been permitted on the basis that the dwelling is reasonably required for the operation of the agricultural activity conducted on the land in accordance with an endorsed business plan, or approved alternative, and the dwelling will only be used on that basis.

- There will be no further subdivision of the land to increase the number of lots.
- The owner acknowledges and accepts the possibility of nuisance from adjoining agricultural operations including animal production, spray drift, agricultural machinery use, pumps and associated hours of operation necessary for agricultural production.

It is recommended that conditions are placed on the permit in relation to the above advice.

Generally, there are a number of small-scale equine and farming operations in Corries Lane and nearby McFarlanes Lane, where there are a large number of lots each approximately 6ha in area. It is unlikely that any of these lots would be consolidated into larger farming parcels. The locality is emerging as a small-scale farming precinct.

It is recommended that this application is supported with a Notice of Decision issued.

### 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
Barwon Water	Consent with conditions.
Council's Infrastructure	Consent with conditions.
Council's Environmental Health	Consent with conditions.
Agriculture Victoria	Advice.

### FINANCIAL IMPLICATIONS

There is no financial implication associated with approval of the application. However, the objectors make seek review at VCAT with associated cost to Council.

### RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

### COMMUNICATIONS STRATEGY

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

### OPTIONS

The Development Assessment Committee could consider the following options:

- issue a Notice of Decision to grant a permit in accordance with the recommendations of this report; or
- issue a refusal to Grant a Permit with specific grounds.

**CONCLUSION**

The application is for a dwelling to support an equestrian facility. After a full assessment of the application, it can be concluded that a dwelling is reasonably required to support the proposed agricultural use and therefore recommended for approval.

**7.2 PA2022017 - BUILDINGS AND WORKS ANCILLARY TO AN EXISTING INDUSTRY, A REDUCTION OF CAR PARKING (17 CAR SPACES) AND A WAIVER OF BICYCLE PARKING FACILITIES AT 11-13 MCPHERSON STREET, MADDINGLEY**

**Author:** Thomas Tonkin, Statutory Planner

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

**Attachments:** 1. Proposed site plan and elevation drawings (under separate cover)

**APPLICATION SUMMARY**

**Permit No:** PA2022017

**Lodgement Date:** 19 January 2022

**Planning Officer:** Tom Tonkin

**Address of the land:** 11-13 McPherson Street, Maddingley

**Proposal:** Buildings and works ancillary to existing industry, a reduction of car parking (17 car spaces) and a waiver of bicycle parking facilities

**Lot size:** 8,066sqm

**Why is a permit required?** Clause 33.02 Industrial 2 Zone – Buildings and works, Clause 52.06 Car Parking – Reduction of car parking, Clause 52.34 Bicycle Parking – Waiver of bicycle parking facilities

**COMMITTEE RESOLUTION**

Moved: Cr Tonia Dudzik

Seconded: Cr Moira Berry

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2022017 for Buildings and Works Ancillary to an Existing Industry, a Reduction of Car Parking (17 Car Spaces) and a Waiver of Bicycle Parking Facilities at 11-13 McPherson Street, Maddingley, subject to the following conditions:

**Endorsed Plans:**

1. Before the 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 identified as Job No. 100-23, Drawing no.'s P02 & P05, rev. B dated 27 October 2021 prepared by D.J.Dineen P/L but modified to show:
  - (a) The onsite car spaces located between the crossovers each with a minimum width of 2.6m.
  - (b) A landscape plan in accordance with Condition 6.
2. Unless otherwise approved in writing by the Responsible Authority, all buildings and works are to be constructed or undertaken in accordance with the endorsed plans to the

**satisfaction of the Responsible Authority.**

**Operational:**

3. A minimum of eight onsite car spaces must be provided in accordance with the endorsed plans and be available for car parking at all times to the satisfaction of the Responsible Authority.

**Amenity:**

4. Any security alarm or similar device installed must be of a silent type.
5. External lighting must be provided with suitable baffles and located so that no direct light is emitted outside the site.

**Landscape Plans:**

6. Before the 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 be generally in accordance with the Site Plan-Proposed Works drawing no. P02, rev. B dated 27 October 2021, Job No. 100-23 prepared by D.J. Dineen P/L, and must show:
  - (a) details of surface finishes of pathways and driveways;
  - (b) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;
  - (c) planting in the south and east boundary setbacks; and
  - (d) existing landscaped areas.

All species selected should be native vegetation and low maintenance to the satisfaction of the Responsible Authority.

7. Within one month of the occupation of the development 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.
8. 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.

**Tree Protection:**

9. Unless exempt under Clause 52.17 or any other relevant provision of the Moorabool Planning Scheme, native vegetation must not be removed, destroyed or lopped without further planning approval.

**Infrastructure:**

10. The two existing vehicle crossings must be upgraded in accordance with an industrial standard crossover as specified in the Infrastructure Design Manual to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossings with any redundant crossings to be removed and restored to the satisfaction of the Responsible Authority.



11. Prior to construction commencing engineering drainage plans, and detailed computations must be submitted and approved by the Responsible Authority for approval. The plans must ensure that:
  - (a) The development as a whole must be self draining.
  - (b) Volume of water discharging from the development in a 10% AEP storm shall not exceed the 20% AEP storm prior to development. Peak flow must be controlled by the use of a detention system located and constructed to the satisfaction of the Responsible Authority.
  - (c) Stormwater runoff must meet the “Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)”.
  - (d) Storm water drainage from the development must be directed to a legal point of discharge to the satisfaction of the Responsible Authority. A legal point of discharge permit must be taken out prior to the construction of the stormwater drainage system.
12. 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.
13. Sediment discharges must be restricted from any construction activities within the property in accordance with the relevant Guidelines including “Construction Techniques for Sediment Control” (EPA 1991) and “Environmental Guidelines for Major Construction Sites” (EPA 1995).
14. Prior to the commencement of the development, notification including photographic evidence must be sent to Council’s Asset Services identifying any existing change 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:**

15. 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.

**CARRIED**

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<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	No. The application is exempt from notice requirements under the applicable zone and car parking and bicycle facilities provisions.
Notices on site:	Not required.
Notice in Moorabool Newspaper:	Not required.
Number of objections:	Not applicable.
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 the EPA and Council's Infrastructure and Environment and Emergency and Waste Management.
Any issues raised in referral responses?	Infrastructure requested appropriate justification for the proposed car parking reduction and a concept stormwater management plan. Council's Environmental Planner also raised concern regarding the proposed native tree removal.
Preliminary concerns?	Refer to the 'referral responses' above.

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 in process on 4 July 2022 to delete the native vegetation removal from the proposal.  The application was further amended on 20 July 2022 to include the waiver of bicycle parking facilities as part of the proposal.
Brief history.	Not applicable.
Previous applications for the site?	See 'History' below.
General summary.	The proposed development, car parking reduction and waiver of bicycle facilities is generally in accordance with the relevant provisions of the Moorabool Planning Scheme. The proposed development associated with an existing industry would upgrade storage facilities for raw materials. The proposed car parking reduction and waiver of bicycle parking facilities is justified, particularly given there is sufficient existing onsite car parking, and the proposed development would not result in any increase in staff or visitor numbers to the site.
<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 Planning Permit PA2022017 for Buildings and Works Ancillary to an Existing Industry, a Reduction of Car Parking (17 Car Spaces) and a Waiver of Bicycle Parking Facilities at 11-13 McPherson Street, Maddingley, subject to the conditions contained within this report.	

## SITE DESCRIPTION

The subject site, identified as Lot 2 on PS 219769C and known as 11-13 McPherson Street, Maddingley, is an 8,066sqm trapezoid shaped lot located on the south side of McPherson Street, between Smith and Hillside Streets. The site is used and developed for an emulsion blending facility, with activities including cold asphalt manufacturing and distribution, emulsions blending and distribution and the operation of an enclosed packaging facility. Other ancillary on-site activities include bulk chemical storage and handling, storage and handling of raw sand and aggregate materials, a field laboratory and buildings for staff amenities and office use. Vehicle access via two crossovers leads to an accessway which circuits through the site. Landscaped areas border sections of all title boundaries and part of the administrative building's front setback where eight car parking spaces are also located. There is a 3m wide drainage and sewerage easement located parallel to the rear title boundary.

The subject site and surrounding land is in the Industrial 2 Zone and used for a variety of uses, mainly small-scale manufacturing, service industry and warehousing. To the east is a motor mechanic/auto electrician and car wreckers, to the west a fuel blending facility and gym, to the south a Council Depot and animal pound. To the north, across McPherson Street, are engineering workshops.



**Figure 1:** Aerial photograph

## PROPOSAL

It is proposed to construct buildings and works comprising a three walled material storage shed at the rear of the property. Raw materials such as sand and aggregate and the processed final product 'Kolmix' are currently stored in segregated uncovered bunkers and stockpiles at the rear of the site, exposed particularly to rain. The proposed shed would have an overall area of 619sqm, constructed to within 200mm of the west title boundary and set back 3m from the rear title boundary. The shed would comprise of seven storage bunkers with dimensions of 5m x 12m and one bunker with dimensions of 15m x 12m for finished products. The bunkers would be constructed with 3m high concrete walls to their base, with the upper wall sections and roofing clad with Colorbond. The maximum wall height would be 8.47m and overall height to the roof pitch 9m.

Additionally, it is proposed to remove the existing 5m wide vegetation buffer abutting the south, east and west title boundaries – noting that the latter has already been encroached upon – and remove two planted trees from the south landscape buffer, although this appears to have occurred previously. An existing sloping pit in the southwest corner of the site would be relocated to near the southeast corner for the storage of captured contaminated runoff which is then removed from the site by licenced waste contractors. Relocation to the low part of the site would further assist in stormwater capture and treatment.

The proposed development would require the provision of 17 car spaces and one bicycle parking space pursuant to, respectively, Clauses 52.06-5 and 52.34-5 of the Moorabool Planning Scheme but it is proposed to waive these requirements.



Both vehicle crossovers are proposed to be widened, however it is noted that these works have already been undertaken with a permit from Council's Assets.

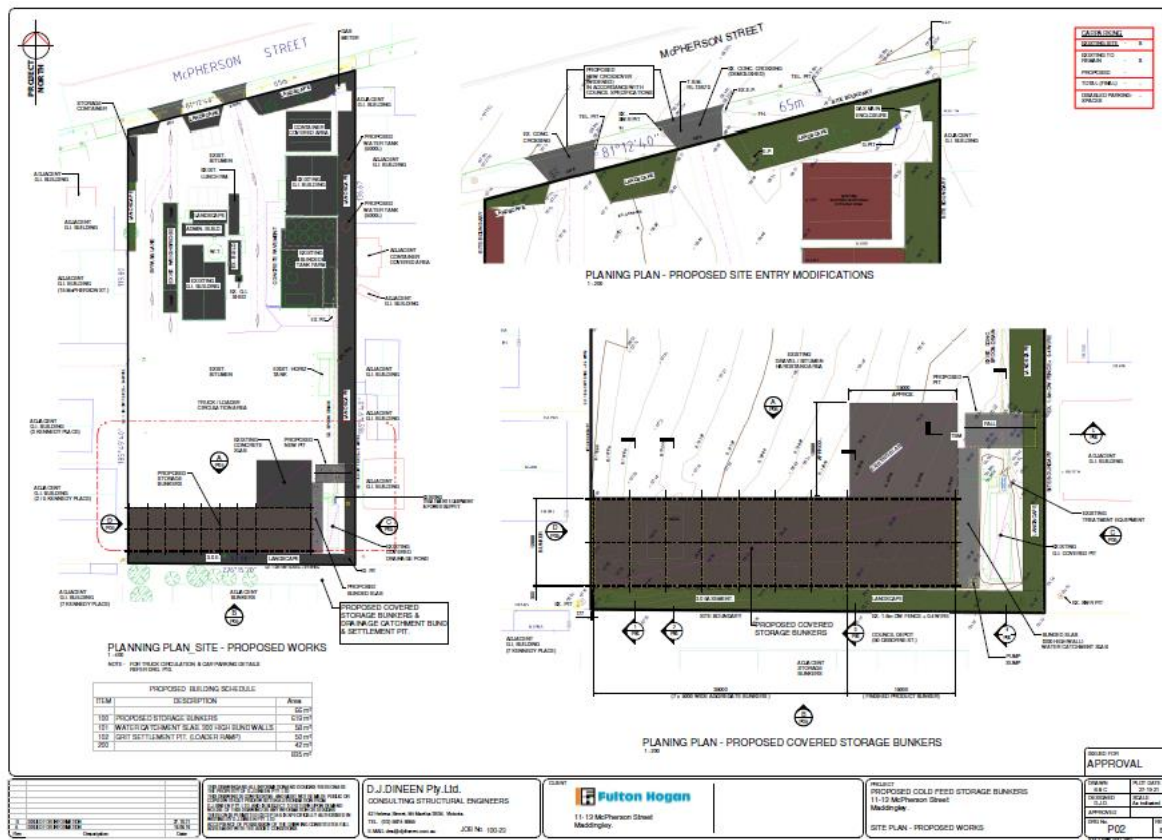


Figure 2: Proposed site plan

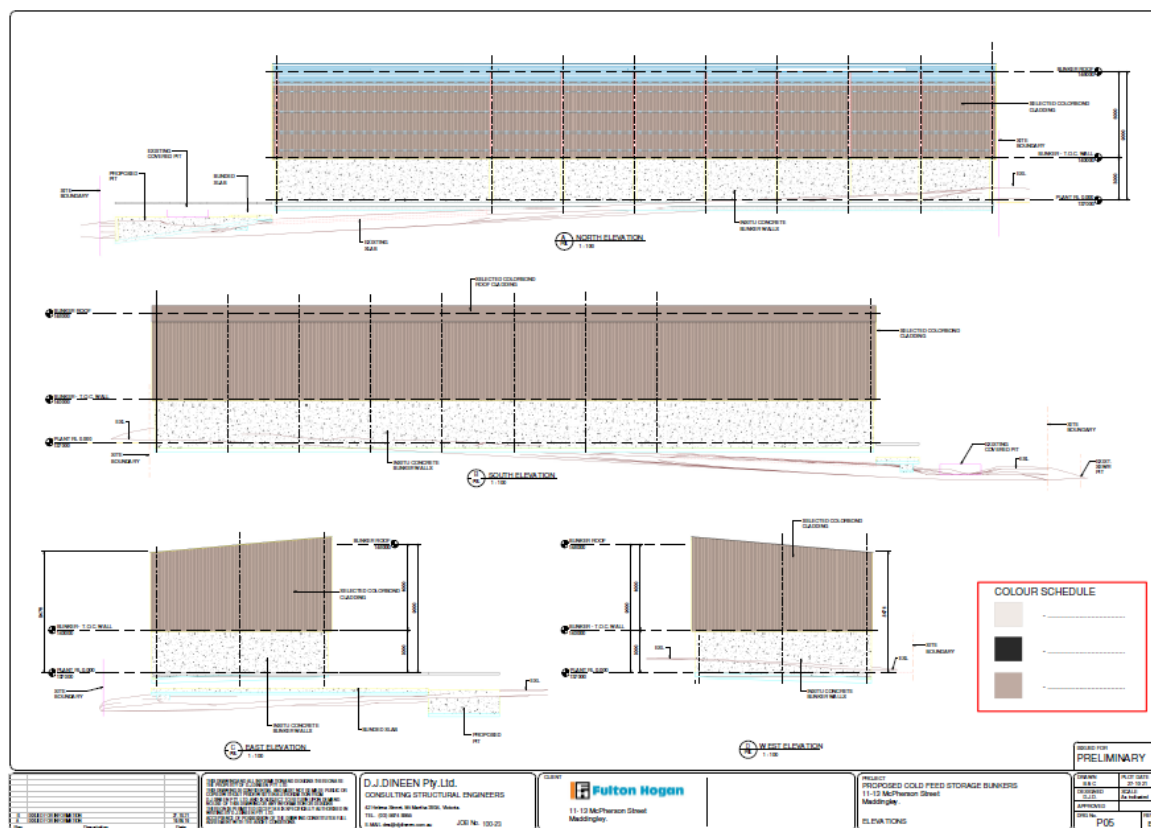


Figure 3: Proposed building elevations

## BACKGROUND TO CURRENT PROPOSAL

Not applicable.

## HISTORY

Planning permit 110990 was issued on 12 December 1989 by the Minister for Planning and Environment, acting as the Responsible Authority, which it is understood allows for the current use and development of the subject site.

## PUBLIC NOTICE

Pursuant to s.52(4) of the *Planning and Environment Act 1987* the application is exempt from notice under Clauses 33.02-4, 52.06-4 and 52.34-3 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.

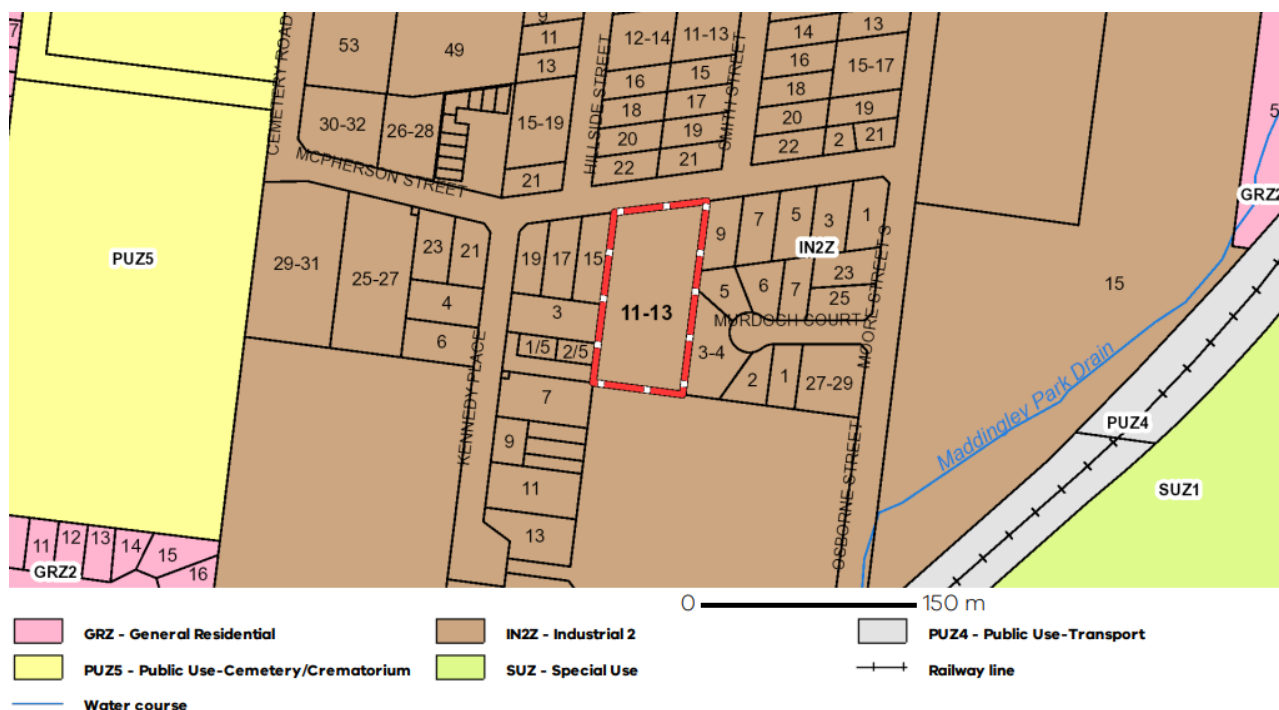


Figure 4: Zone map.

## 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 15.01-2S – Building design
- 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 33.02-4 a permit is required for building and works.

## **OVERLAYS**

The subject site is not affected by any Overlays.

## **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 Industry requires 2.9 car spaces to each 100sqm of proposed net floor area. Based upon the required calculations in Clause 52.06-5 the proposed 619sqm net floor area equates to 17 car spaces. No car spaces additional to those existing are proposed, therefore a reduction of 17 car parking spaces is required.

### Clause 52.34 Bicycle Facilities

Under Clause 52.34-5 Industry requires one employee bicycle parking space to each 1,000sqm of proposed net floor area. Based upon the required calculations in Clause 52.34-5 the proposed

619sqm net floor area equates to one bicycle parking space. No bicycle parking spaces are proposed, therefore a reduction of one bicycle parking space is required.

#### Clause 53.10 Uses with Adverse Amenity Potential

There is no assessment required under this Clause for proposed development associated with an existing use of land.

#### 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.

The subject site is in an established industrial precinct in Maddingley, and the proposed buildings and works are generally consistent with the surrounding built form. The proposed buildings would be at the rear of the site, not readily visible from the street, and would enhance the current site operations by improving the management of site operations. The proposal supports the ongoing viability of the existing business and to the Shire's economic prosperity more generally.

#### 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. The building footprint is substantially less than the maximum preferred 60%. The existing areas identified for landscaping would be maintained, comprising approximately 10% of the site area, although it is noted that apart from plantings along the site frontage the areas set aside for landscaping along the south and east boundaries appear to be mostly unplanted. It is recommended that a condition of approval require submission of a landscape plan for these areas. The proposed building would be located at the rear of the site with the front of the site maintained for access, car parking, vehicle circulation and landscaping. The proposed building materials and finishes comply with the policy.

#### Clause 33.02 Industrial 2 Zone

The proposal is generally consistent with the Industrial 2 Zone provisions. The proposed building would be located at the rear of the site and be visually unobtrusive in the streetscape. The proposed form, scale and appearance of the building would be generally consistent with surrounding development. Existing areas set aside for landscaping would be maintained, but as stated above it is recommended that a condition of approval require submission of a landscape plan for endorsement. There are no residential areas located proximate to the site and the proposed crossover widening would improve site access with minimal disruption to on-street parking capacity. Eight existing onsite car parking spaces are proposed to be maintained, to be reinforced by way of a permit condition. Existing loading and service areas would be maintained, and the proposal would significantly improve outdoor storage by substantially enclosing the existing raw materials storage area. Lighting and stormwater discharge would be managed by way of permit conditions.

#### Clause 52.06 Car Parking

Under the car parking provisions at Clause 52.06-5 of the Moorabool Planning Scheme, the proposal requires an additional 17 car spaces to be provided. A full reduction of the car parking requirement is proposed. Whilst the proposed development would increase the building footprint on the site, given the specific nature of the proposal to provide cover for the storage of raw



materials there would be no increase in production volumes or number of products manufactured on site. There will no increase employee or visitor numbers. The eight existing car spaces would be maintained and would adequately cater for the five staff members based at the site. Furthermore, the site is a 'closed' facility and is not open to the public. Access to site is provided only through pre-qualification training and safety requirements. The closed nature of the site to only employees and permitted visitors assists in managing ongoing parking demands.

#### Clause 52.34 Bicycle Facilities

Under Clause 52.34 one employee bicycle parking space is required. The applicant advises that there is informal bicycle parking available on site if required and does not propose any formal bicycle parking facilities. As previously noted, whilst the proposed development would result in an increased building footprint there would be no increase in staff numbers and thus no increased demand for bicycle parking. Furthermore, given the nature of the use whereby visitors to the site typically travel by truck and lack of infrastructure for cyclists in the site's vicinity the proposed waiver of bicycle parking is acceptable in this instance.

#### Clause 53.18 Stormwater management in urban development

Subject to recommended Infrastructure conditions, site drainage will be managed to Council's satisfaction, generally consistent with the requirements of this clause.

### **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
EPA	No objection.
Council's Infrastructure Environmental Planning	Consent with conditions. No objection.

### **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 33.02-4, 52.06-4 and 52.34-3 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 Committee would need to consider what reasonable grounds there would be to refuse the application. This option may result in the applicant appealing the Committee's decision to VCAT.

**CONCLUSION**

The proposed development, car parking reduction and waiver of bicycle facilities is generally in accordance with the relevant provisions of the Moorabool Planning Scheme. The proposed development is associated with an existing industry and would provide for upgraded storage facilities for raw materials. The proposed car parking reduction and waiver of bicycle parking facilities is justified in this instance, particularly given there is sufficient existing onsite car parking based on existing demands and new under cover area does not increase employee or visitor numbers. Visual and amenity Improvements to the operation of an existing industrial site by providing weather protection to raw material should be supported.

Mr Thomas Quigley addressed the Committee as the applicant associated with Item 7.3.  
Mr Michael Horan attended but did not address the Committee.

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

**Author:** Thomas Tonkin, Statutory Planner

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

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

**APPLICATION SUMMARY**

**Permit No:** PA2022013

**Lodgement Date:** 14 January 2022

**Planning Officer:** Tom Tonkin

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

**Proposal:** Variation of Restrictive Covenant AK843052U

**Lot size:** 6,043sqm

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

**MOTION**

Moved: Cr Ally Munari

Seconded: Cr Tonia Dudzik

**That the Development Assessment Committee, defer the matter.**

**CARRIED**

**RECOMMENDATION**

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2022013 for Variation of Restrictive Covenant AK843052U at Lot 141 on PS628117C known as 25 View Gully Road, Hopetoun Park, on the following grounds:

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

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

## **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

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

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

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

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

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

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

*Executive Manager – Henry Bezuidenhout*

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

*Author – Tom Tonkin*

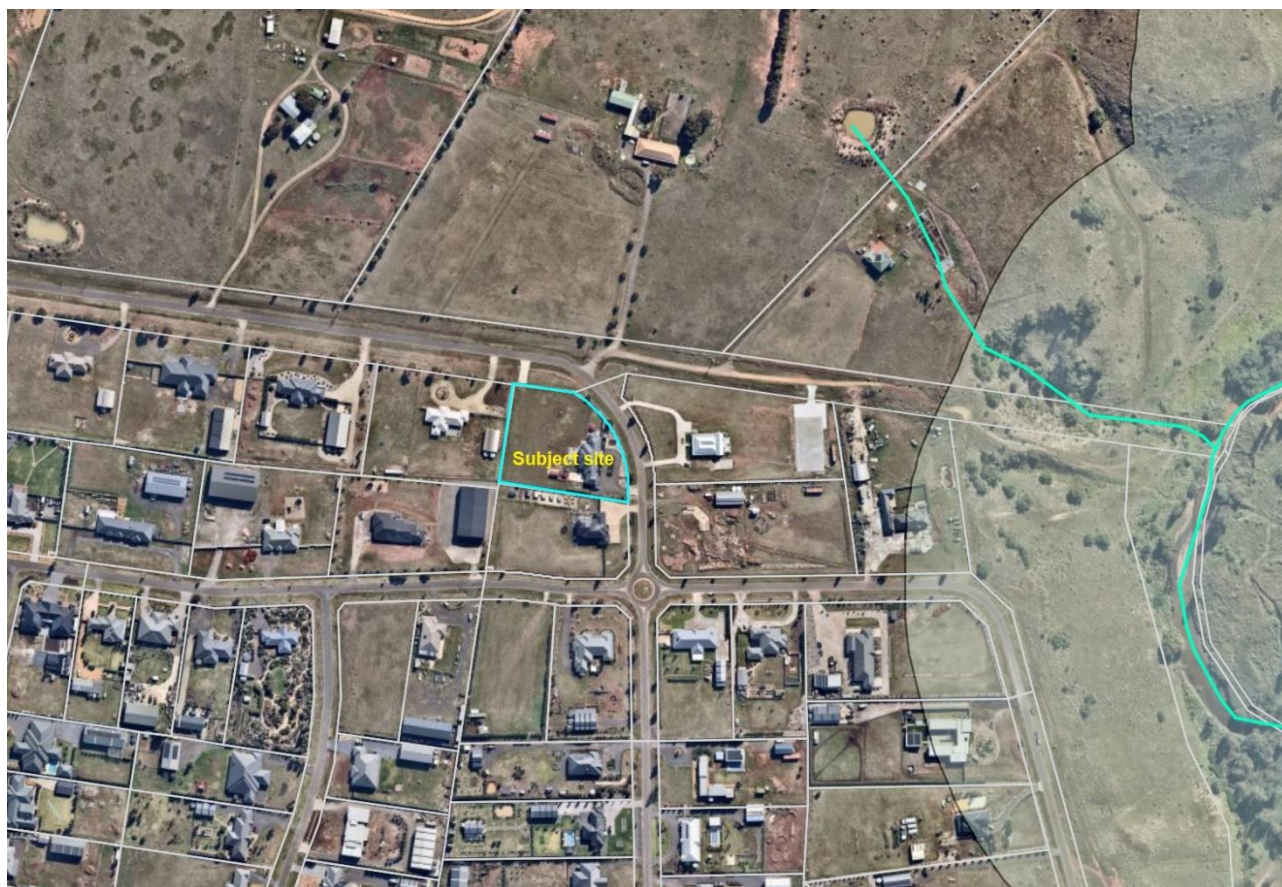
In providing this advice to Council as the Author, I have no interests to disclose in this report.

## **EXECUTIVE SUMMARY**

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

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

## SITE DESCRIPTION



**Figure 1:** Aerial photograph.

## PROPOSAL

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

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

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

**BACKGROUND TO CURRENT PROPOSAL**

Not applicable.

**HISTORY**

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 and a second objection was received from a non-beneficiary.

**SUMMARY OF OBJECTIONS**

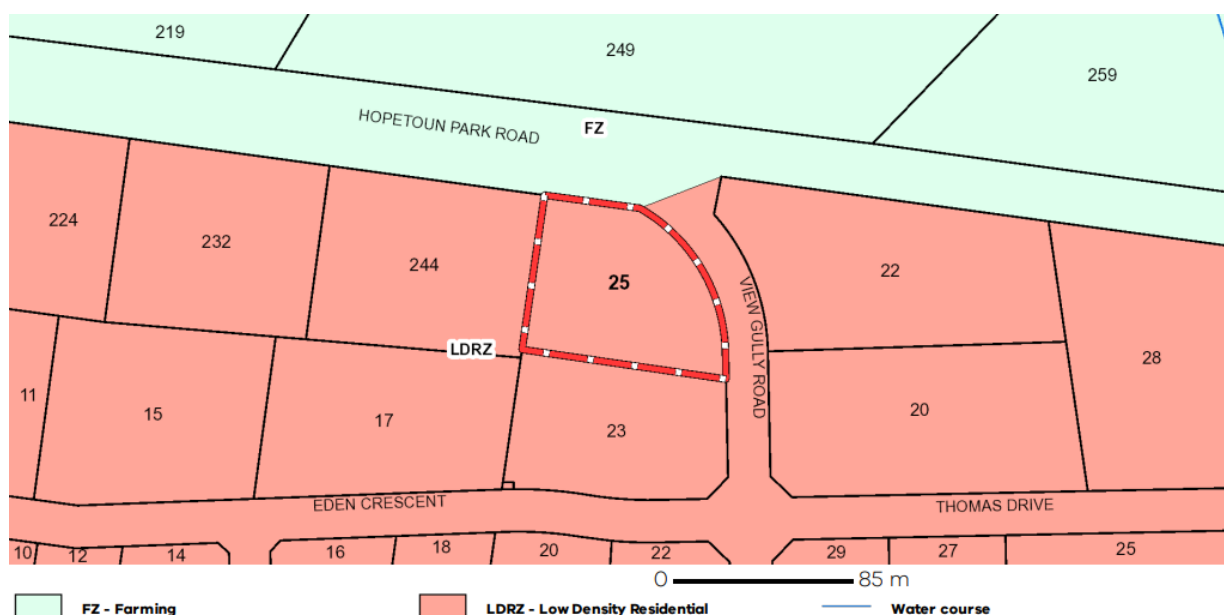
The objections received are detailed below with officer's comments accompanying them:

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

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

## LOCALITY MAP

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



**Figure 2:** Zone map.



## PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

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

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

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

## ZONE

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

The purpose of the Zone is:

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

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

## OVERLAYS

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

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

## Relevant Policies

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

## Particular Provisions

### Clause 52.02 Easements, Restrictions and Reserves

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

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

## DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

With regard to the objection received from a non-beneficiary of the covenant, pursuant to Clause 52.02 of the Moorabool Planning Scheme and section 60(5) of the *Planning and Environment Act 1987*, the objection cannot be given as strong consideration as that afforded to the objection from

the covenant beneficiary. However, it is noted that the non-beneficiary's concerns are also shared by the beneficiary.

### **GENERAL PROVISIONS**

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

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

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

### **REFERRALS**

The application was not required to be referred.

### **FINANCIAL IMPLICATIONS**

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

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

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

### **COMMUNICATIONS STRATEGY**

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

### **OPTIONS**

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

### **CONCLUSION**

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

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

Mr Hamish Balzan addressed the Committee as a supporter associated with Item 7.4.

**7.4 PA2022021- DEVELOPMENT OF THREE DWELLINGS AT 13 CLARINDA STREET, BACCHUS MARSH**

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

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

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

**APPLICATION SUMMARY**

**Permit No:** PA2022021

**Lodgement Date:** 25 January 2022

**Planning Officer:** Jyoti Makan

**Address of the land:** 13 Clarinda Street, Bacchus Marsh

**Proposal:** Development of Three Dwellings

**Lot size:** 714.72sqm

**Why is a permit required?** Clause 32.08-6 – Construction of two or more dwellings on a lot

In Favour: Crs David Edwards, Paul Tatchell, Tom Sullivan and Ally Munari

Against: Crs Tonia Dudzik and Moira Berry

CARRIED 4/2

**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 PA2022021 for the Development of Three Dwellings at 13 Clarinda Street, Bacchus Marsh subject to the following conditions:

1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority
2. Unless otherwise approved in writing by the Responsible Authority, all buildings and works are to be constructed and or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority prior to the commencement of the use.

**Landscaping:**

3. All the landscape works shown on the endorsed landscape plans must be carried out and completed to the satisfaction of the Responsible Authority.
4. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

**Car parking:**

5. Car spaces, access lanes and driveways shown on the endorsed plan must not be used for any other purpose other than the parking of vehicles, to the satisfaction of the Responsible Authority.

**Amenity:**

6. All pipes, fixtures, fittings and vents servicing any building on the site, other than stormwater down pipes, must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

**Waste Management:**

7. All waste collection bins must be placed along the streetscape for collection and then stored in the bin locations as identified in the endorsed plans.

**Infrastructure:**

8. The common property driveway must be constructed in reinforced concrete to a depth of 125mm. The layout of the driveway must be designed and constructed in accordance with Clause 52.06-8 of the Moorabool Planning Scheme.
9. The development must be provided with a drainage system constructed to a design approved by the Responsible Authority, and must ensure that:
  - (a) The development as a whole must be self-draining.
  - (b) Volume of water discharging from the development in a 10% AEP storm shall not exceed the 20% AEP storm prior to development. Peak flow must be controlled by the use of a detention system located and constructed to the satisfaction of the Responsible Authority.
  - (c) All units must be provided with a stormwater legal point of discharge at the low point of each potential lot, to the satisfaction of the Responsible Authority.
10. Stormwater runoff must meet the "Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)".
11. Storm water drainage from the development must be directed to a legal point of discharge to the satisfaction of the Responsible Authority. A legal point of discharge permit must be taken out prior to the construction of the stormwater drainage system.
12. Prior to the commencement of the development, design computations for drainage of the whole site must be prepared and submitted to the Responsible Authority for approval.
13. 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.
14. Sediment discharges must be restricted from any construction activities within the property in accordance with the relevant Guidelines including "Construction Techniques for Sediment Control" (EPA 1991) and "Environmental Guidelines for Major Construction Sites" (EPA 1995).
15. Prior to the commencement of the development, notification including photographic evidence must be sent to Council's Asset Services identifying any existing change 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.

16. Prior to the commencement of the development, plans and specifications of all road and drainage works must be prepared and submitted to the Responsible Authority for approval, detailing but not limited to the following:
- (a) details of the underground drainage;
  - (b) location of drainage legal points of discharge;
  - (c) standard details for legal point of discharge; and
  - (d) civil notes as required to ensure the proper construction of the works to the satisfaction of the Responsible Authority.

**Department of Health and Human Services:**

17. Cranes and other associated construction equipment must be fitted with continuously operated low intensity steady red obstruction lighting in accordance with the Civil Aviation Safety Authority (CASA) Part 139 (Aerodromes) Manual of Standards 2019 Chapter 9 Division 4 – Obstacle Lighting at their highest point(s) to ensure that they can be seen within the helicopter flight paths.
18. Should any cranes and associated construction equipment be used, details of the crane location and height must be provided in writing to the Department of Health at least five days prior to commencement of development.
19. Any cranes to be used on the site during construction must not exceed the height of adjacent power poles.

**Permit Expiry:**

20. 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.

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	Four objections were submitted.
Consultation meeting:	A consultation meeting occurred on 25 July 2022.

## **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

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

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

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

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

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

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

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

*Executive Manager – Henry Bezuidenhout*

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

*Author – Jyoti Makan*

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

## **EXECUTIVE SUMMARY**

Application referred?	Yes, the application was referred to the Department of Health and Human Services and Council's Infrastructure.
Any issues raised in referral responses?	Stormwater Management.



Preliminary concerns?	Meeting objectives of the Housing Strategy, housing typologies, building footprints, provision of tree protection zones, solar access, providing the distance from the units to local shops, transport, open spaces and services, crossovers to provide more streetscaping, energy and resource efficiency (sustainable buildings).
Any discussions with applicant regarding concerns?	Location of garages and crossovers. One crossover for a narrow lot frontage is more suitable and will provide more landscaping along the street interface.
Any changes made to the application since being lodged?	Changes were made to accommodate safer vehicle movements, provision of one crossover rather than two and additional landscaping.
Brief history.	The application was lodged showing a 7m front setback, this was recommended to be varied to allow for more open space to each unit. Two crossovers were changed to one and secluded private open spaces were increased.
Previous applications for the site?	PA2020044 – Two dwelling units.
General summary.	The proposal is for three dwellings in the General Residential Zone 3 (Increased Growth). Four objections were received on neighbourhood character and the impact of the proposal on street car parking. The application proposed meets the car parking provisions on the site and does not propose street parking. The application does not show material detriment to adjacent properties by means of overlooking, overshadowing or amenity impacts. The application met the ResCode objectives, zone provisions and overlay requirement. The site is located within close proximity to the Bacchus Marsh town centre. The proposal is recommended for an approval subject to conditions.
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Notice of Decision to Grant Planning Permit PA2022021 for the Development of Three Dwellings at 13 Clarinda Street, Bacchus Marsh, subject to the conditions contained within this report.	

## SITE DESCRIPTION

The site is located on the west side of Clarinda Street, Bacchus Marsh. It is rectangular in shape, has an area of 714.72sqm and has a gradual slope from the rear of the site to the front. The site is directly opposite the intersection of Clarinda Street and Millbank Street where there is a large traffic island located within Millbank Street.

There is an existing single storey weatherboard dwelling on the site without any substantial garden setting. The existing driveway is located on the north side of the site.

The rear of the site contains a small shed and lawn with one small tree.

Neighbouring dwellings are of a similar vintage and present a similar façade to the street.

The site is located approximately 140m north of the Bacchus Marsh Hospital Clarinda Street entrance, and approximately 130m south of the intersection with Main Street. The site is located approximately 440m from the Bacchus Marsh town centre and approximately 1.7km north of the Bacchus Marsh Railway Station.

Figure 1 below shows the site and its surrounding residential development. Two and three unit developments are emerging in the surrounding area with some sites containing reduced open spaces and larger building footprints.

The land is within the Neighbourhood Character Precinct No. 24. The site is within walkable catchment to the Bacchus Marsh main commercial precinct (town centre), a range of medical facilities and a hospital, newly emerging residential developments, services, such as the fire and police station. Several parks and open spaces exist 500m away from the site.



**Figure 1:** Aerial Photo

## PROPOSAL

A three unit development is proposed with a single storey typology. Each unit is proposed to have two bedrooms and a garage. Some of the architectural features are hipped, tiled roofing and face brick walls. Approximately 130sqm of the 714sqm site will be covered with buildings.

The garages will be accessed via one crossover. Landscaping treatments proposed consist of Silver Banksias, Black Roly Poly, Spiny-headed Mat-rush and Knobby Club-Sedges. The Silver Banksia trees are proposed to be 2m high at the time of planting.

The proposed street setback is 5m and side and rear setbacks vary to enable secluded private open spaces and garages on the site.

The site currently contains an existing dwelling which is proposed to be demolished to enable the development of three dwellings.

### BACKGROUND TO CURRENT PROPOSAL

Due to the neighbourhood character objectives and the design of the initial proposed second dwelling unit, planning concerns were raised by Council officers. The applicant undertook changes to the plans to allow for more secluded private open spaces, one vehicle access and adequate on-site vehicle turning movements. This led to a design which more positively contributes towards internal amenity for future residents and meets the neighbourhood character objectives.

### HISTORY

Application, PA2020044, was submitted to Council for the development of a second dwelling behind an existing dwelling. The proposal was recommended for approval subject to conditions and 15 objections were received. At the Ordinary Meeting of Council (OMC) held on 4 August 2021, Council refused the application based on the following grounds:

- The development does not accord with the existing or preferred neighbourhood character for the precinct.
- The proposed crossover and side driveway does not allow for enhancement of the front garden character, including increased canopy tree plantings.
- The siting of buildings, driveways and private open space represents an overdevelopment of the site.

### PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners. Four objections were submitted on the application.

### SUMMARY OF OBJECTIONS

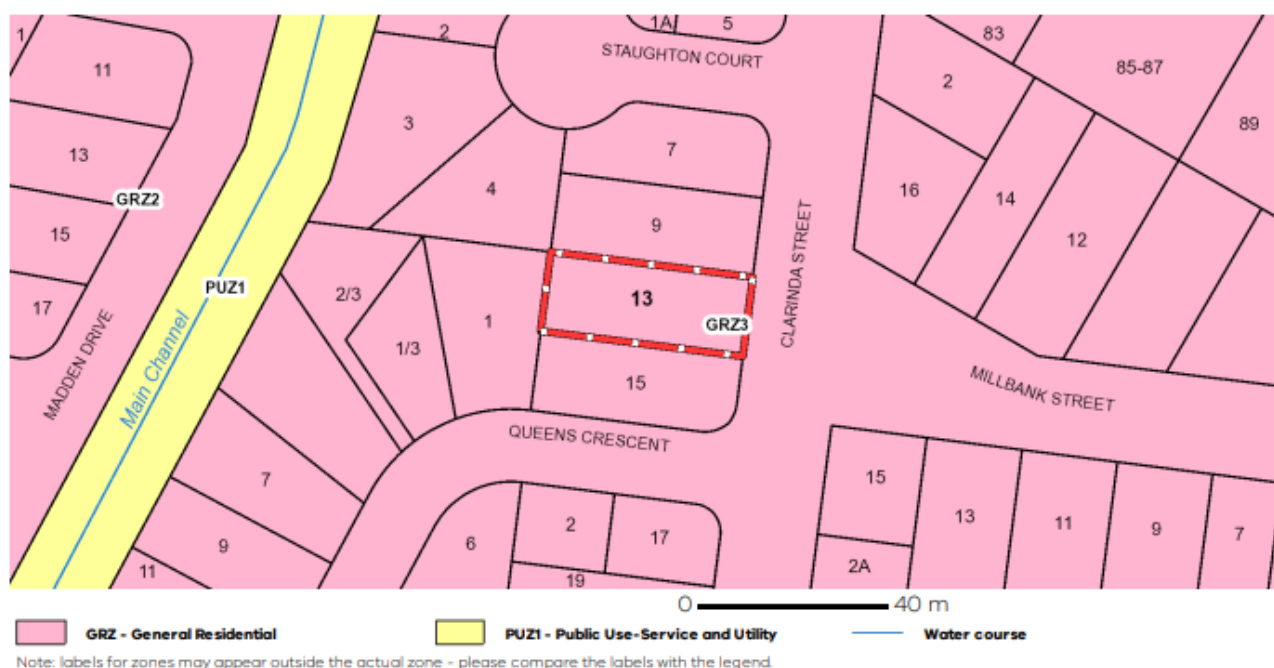
The objections received are detailed below with officer's comments accompanying them:

Objection	Any Relevant Requirement
Street parking issues	Clause 52.06 – Car parking provisions
<b>Officer's Response:</b>	
The proposal requires one car space for a dwelling with two bedrooms. Each dwelling is provided with a garage space to accommodate one vehicle. No reduction in car parking is sought as it meets the requirements of the planning scheme.	

Objection	Any Relevant Requirement
Neighbourhood Character	Clause – 55.02-1 – Standard B1
<b>Officer's Response:</b>	
The is zoned as General Residential Zone 3 which has the objective to increase housing growth to meet population demands and to support the Commercial Zone which is in walkable distance from the site. The design of the proposal is in keeping with the neighbourhood character and proposes single storey brick materials and roofing similar to the neighbouring properties. The site will be accessed via one crossover as is other developments in the area.	

## 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 11.03-2S — Growth areas

Clause 11.03-3S — Peri-urban areas

Clause 15.01-1S — Urban design

Clause 15.01-2S — Building design

Clause 15.01-5S — Neighbourhood character

Clause 16.01-1S — Integrated housing

Clause 16.01-2S — Location of residential development

Clause 16.01-3S — Housing diversity

Clause 21.03 — Settlement and Housing and Clause 21.03- Key issues and influences

Clause 21.03-2 — Objectives - Urban growth management

Clause 21.03-3 — Objectives - Residential development

Clause 21.07 — Bacchus Marsh and Clause 21.07-2 Objectives - Managing urban growth

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

## **ZONE**

### General Residential Zone – Schedule 3

A planning permit is required to construct two or more dwellings on a lot. The application must be assessed against the standards of ResCode, Clause 55 of the Moorabool Planning Scheme.

### Schedule 3 of the General Residential Zone

Schedule 3 applies to areas identified for Increased Residential Growth.

The Neighbourhood character objectives in Schedule 3 include:

- To encourage new development, including innovative and unique development that enhances and responds positively to the existing neighbourhood character.
- To encourage sufficient front setbacks to allow for enhancement of the front garden character including increasing canopy tree plantings.
- To encourage new development to have minimal or low scale front fencing.
- To ensure new garages and carports do not dominate dwellings or streetscapes.

## **OVERLAYS**

### Design and Development Overlay Schedule 15

The overlay relates to Bacchus Marsh Hospital Emergency Medical Services Helicopter Flight Path Protection (inner area).

Design objectives:

- To ensure that the height of buildings and works do not encroach on the flight path areas associated with the Bacchus Marsh Hospital helicopter landing site.
- To ensure that the height of development avoids creating a hazard to aircraft using the Bacchus Marsh Hospital helicopter landing site.

The application was required to be referred to the Department of Health and Human Services.

### Specific Controls Overlay – Schedule 2 (SCO2)

The purpose of this overlay is to “*apply specific controls designed to achieve a particular land use and development outcome in extraordinary circumstances*”. This schedule applies to the Hospital Emergency Medical Services - Helicopter Flight Path Protection Areas Incorporated Document, June 2017.

Land affected by this overlay may be used or developed in accordance with a specific control contained in the incorporated document corresponding to the notation on the planning scheme map (as specified in the schedule to this overlay). The specific control may:



- Allow the land to be used or developed in a manner that would otherwise be prohibited or restricted.
- Prohibit or restrict the use or development of the land beyond the controls that may otherwise apply.
- Exclude any other control in this scheme.

### **Relevant Policies**

#### Housing Bacchus Marsh to 2041

One of the objectives of the Strategy is to provide a clear direction and policy guidance to enable orderly growth, managed change, and retention of key elements of character including neighbourhood character mapping and character precinct brochures. This policy addresses the management of growth, housing and guides neighbourhood character in Bacchus Marsh and surrounds. This policy guides development towards sustainable principles such as:

- Environmentally Sustainable Design
- Compact Neighbourhoods
- Walkable and Pedestrian Scale
- Mixed Land Uses
- Diverse Housing, Streets and Public Spaces
- Interconnected Streets
- Variety of Transport Options
- Range of green spaces as features

The site is contained within Precinct 24 of the Bacchus Marsh Housing Strategy. The preferred neighbourhood character states the following criteria:

*“Site coverage will be increased, however new development, including multi dwelling developments should ensure adequate private open space and garden plantings are provided. Front setbacks will be sufficient to allow for enhancement of the front garden character, including increasing canopy tree plantings. Front fences will be low or absent, allowing for views into front gardens. New developments will minimise the need for additional crossovers to the street and have a positive street interface to ensure strong passive surveillance is achieved. Building to both side boundaries will generally be avoided, however may be considered where the preferred character of the precinct is not compromised. Garages and carports that do not visually dominate dwellings or streetscapes are encouraged and should be recessed from the front building line or located to the side or rear of the dwelling”.*

### **Particular Provisions**

#### Clause 55 – Two or more dwellings on a lot and residential buildings (ResCode):

A permit is required to develop two or more dwellings on the land.

Clause 55 provides the opportunity to assess development to meet the following purpose:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To achieve residential development that respects the existing neighbourhood character, or which contributes to a preferred neighbourhood character.

- To encourage residential development that provides reasonable standards of amenity for existing and new residents.
- To encourage residential development that is responsive to the site and the neighbourhood.

The proposal generally complies with ResCode (Clause 55).

#### Clause 52.06 Car Parking

Pursuant to Clause 52.06-5 Table 1, the required car spaces have been provided for the three dwellings. Each dwelling provides two bedrooms and one garage. One car parking space is required for each dwelling in compliance with this standard.

### **DISCUSSION**

The site is located in Precinct 24 of the Bacchus Marsh Housing Strategy to 2041. This precinct is walking distance to the Bacchus Marsh Town Centre, Hospital, Fire Station, and Police station. The Housing Strategy details preferred neighbourhood character which states that multi-unit developments are encouraged provided that adequate landscaping is provided, it also adds that crossovers be minimised, and garages should not dominate the streetscape. The proposal shows that the building designs meet the neighbourhood character by providing one crossover, sufficient secluded open spaces, landscaping. The front setback is proposed in accordance with the requirements under Schedule 3 of the General Residential Zone.

Furthermore, the single storey, hipped roof typology respects the existing neighbourhood character whilst also meeting the objectives of the preferred character.

Pursuant to Clause 52.06 of the Planning Scheme, one car space is required for every two bedroom dwelling. The proposal meets the car parking requirements of the planning scheme.

The single storey proposal does not create adverse amenity impacts and complies with the overlooking and overshadowing standards of ResCode. All surrounding private open spaces will receive adequate solar access due to the orientation of the proposed dwelling. The setbacks and wall heights meet the requirements of ResCode. The garden area requirement is 35% and has been satisfied.

The development is designed using energy efficient standards with solar access, water tanks, and increased open spaces.

All infrastructure including stormwater management has been assessed by Council's Infrastructure who consented subject to conditions. The swept path diagrams drafted by Traffic Solutions meets the engineering requirements and shows that vehicles would have the ability in ingress and egress the site safely.

The main concern from the objections is the impact on the street caused by the additional dwellings. No reduction in car parking is sought and car parking to each resident is proposed on the site in accordance with the provisions of the Moorabool Planning Scheme.

The site is located in a high activity area and is within close proximity to the Hospital and Medical services. The intention of Moorabool's Housing Strategy to 2041 considered sites near services, transport routes and commercial activities to be sites that have potential to increase density levels. Therefore, the site is zoned as General Residential Zone 3 to facilitate growth on sites with greater levels of accessibility.

According to the current demographics, the supply of housing in Moorabool's growth areas mostly comprise of three – four-bedroom dwellings and does not supply two-bedroom typologies to

serve single parents, aged, or persons downsizing housing close to the activity centre. The proposed dwellings are two-bedroomed dwellings which Moorabool currently has limited supply.

Spaces are proposed on site for recycling and general waste bins.

The proposal is considered to meet the objectives of the zone and the housing strategy.

### 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
Department of Health and Human Services	Consent with conditions.
Council's Infrastructure	Consent with conditions.

### FINANCIAL IMPLICATIONS

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

### RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

### COMMUNICATIONS STRATEGY

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

### OPTIONS

Council could consider the following options:

- issue a Notice of Decision to grant a permit in accordance with the conditions recommended in this report; or
- issue a Notice of Decision to grant a permit with varied conditions in this report; or
- issue a Refusal to grant a permit which may result in the applicant seeking a review at VCAT.

### CONCLUSION

The proposal for three dwellings within walking distance to services and public transport, reflects in a positive strategic outcome and meets the intentions of the Housing Moorabool to 2041 Strategy.

The development was altered from the initially submitted plans in consultation with Council officers and tailored towards meeting the neighbourhood character objectives of the planning scheme which provided better arranged secluded private open spaces to improve internal amenity.



The building design and materials with the setbacks proposed complements the existing single storey streetscape. The proposed development provides all of the required car spaces on site in accordance with the planning scheme.

The proposal is therefore recommended for approval subject to conditions contained within this report.

**8 UPDATE ON VCAT DECISIONS**

30 Maddisons Lane, Greendale – Applicant withdrew appeal.

**9 OTHER BUSINESS**

Nil.

**10 DATE OF NEXT MEETING**

Wednesday 19 October 2022.

**11 MEETING CLOSE**

The Meeting closed at 6:16pm.

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**CHAIRPERSON**