



AGENDA

Development Assessment Committee Meeting Wednesday, 17 May 2023

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

Date: Wednesday, 17 May 2023

Time: 6.00pm

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

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

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

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

4 CONFIRMATION OF MINUTES

Development Assessment Committee Minutes Wednesday 19 April 2023.

5 MATTERS ARISING FROM PREVIOUS MINUTES**6 DISCLOSURE OF CONFLICTS OF INTERESTS**

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

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

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

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

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

7 COMMUNITY PLANNING REPORTS

7.1 PA2022139 - USE AND DEVELOPMENT OF A DWELLING AT CROWN ALLOTMENT 35, SECTION A OF TP846142X, STONE HUT LANE, BALLAN

Author: Jyoti Makan, Senior Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: Nil

APPLICATION SUMMARY

Permit No: PA2022139

Lodgement Date: Original application lodged on 27 July 2022 and amended in process on 22 November 2022

Planning Officer: Jyoti Makan

Address of the land: Crown Allotment 35, Section A of TP846142X, Stone Hut Lane, Ballan

Proposal: Use and Development of a Dwelling

Lot size: 30.16ha

Why is a permit required? Use and development of a dwelling on a lot under 40ha in the Farming Zone; Clause 35.07-1 Buildings and Works Associated with a Section 2 land use (dwelling) in the Farming Zone; Clause 35.01-4 Buildings and works 100m from a waterway, wetlands or designated floodplain; Construct a building or carry out works associated with the use of accommodation (dwelling) in the Environmental Significance Overlay – Schedule 1 – Clause 43.01-3

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 PA2022139 for the Use and Development of a Dwelling at Crown Allotment 35, Section A of TP846142X, Stone Hut Lane, Ballan, subject to the following grounds:

1. The proposed use and development of the land for a dwelling will lead to the proliferation of dwellings in the Farming Zone and surrounding area.
2. The proposal does not meet the strategies and objectives of the Planning Policy Framework and the Farming Zone provisions of the Moorabool Planning Scheme.
3. The proposed use and development does not represent orderly planning for the area.

| PUBLIC CONSULTATION | |
|---------------------------------|-----------------|
| Was the application advertised? | Yes. |
| Notices on site: | Yes. |
| Notice in Moorabool Newspaper: | None. |
| Number of objections: | Nil. |
| Consultation meeting: | Not applicable. |

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

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

The proposal is not provided for in the Council Plan 2021-2025.

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 Mekan

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

EXECUTIVE SUMMARY

| | |
|--|---|
| Application referred? | Yes. |
| Any issues raised in referral responses? | Proliferation of residential land uses changing the strategic approach towards rural land. Capacity of the land to sustain the practice with the proposed dwelling, domestic wastewater systems, and other buildings on the land. |
| Preliminary concerns? | No proposed consolidation of the two titles, pasture improvements, water supply, sustainability of the practice considering the specialised nature and imports and exports expected. |

| | |
|--|---|
| Any discussions with applicant regarding concerns? | Discussions took place regarding the concerns. |
| Any changes made to the application since being lodged? | An amendment in process was made to alter the farming operations and capacity of the subject site and the change that only one title was to be used for the proposed capacity of livestock. |
| Brief history. | Not applicable. |
| Previous applications for the site? | None. |
| General summary. | <p>The proposal was made for the use and development of the land for a dwelling. The proposal includes a dwelling, wastewater treatments/domestic envelopes, associated with the keeping and breeding of Valais Blacknose Sheep.</p> <p>The land is zoned for Farming purposes. Land Capability Assessment, Farm Management Plan and Proposed Plans accompanied the application. The application was referred to several authorities.</p> <p>Agricultural Victoria is a recommending authority and identified concerns with the application.</p> <p>The application was assessed against the Moorabool Planning Scheme, site visits took place and the proposal is recommended for a refusal subject to the grounds contained within this report.</p> |
| Summary of Officer's Recommendation | |
| That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Refusal to Grant Planning Permit PA2022139 for the Use and Development of a Dwelling on Crown Allotment 35, Section 1 of TP846142X, Stone Hut Lane, Ballan, subject to the grounds contained within this report. | |

SITE DESCRIPTION

The site is located approximately 4kms north of the Ballan township and is at the eastern side of Frichots Lane which is an unmade single lane road.

The site has a total area of 30.16ha, is relatively flat with undulating neighbouring properties and has a number of waterway tributaries that connect to the Werribee River.

The site has no constructed vehicle access.

There are no restrictions nor covenants are registered on the title.



Figure 1: Aerial image of the site

PROPOSAL

A five bedroom dwelling with a footprint of 615sqm is proposed with associated, water tanks, domestic envelope for wastewater treatment.

The proposed dwelling includes a gym, two rumpus retreats, verandahs, bathrooms, kitchen and living areas. Face brick walls and Colorbond roofing is proposed.

Three sheds are proposed to cater for agricultural activities, two of which are proposed as animal shelters.

The farm operation consists of herd size of around 50 top quality Valais Blacknose Sheep (Ewes). This number will fluctuate up and down with sales and births, so between 50 and 100+ animals on the farm at any given time on the basis 50 ewes should drop an average of 1.6 lambs per year, leading to around 80 lambs.

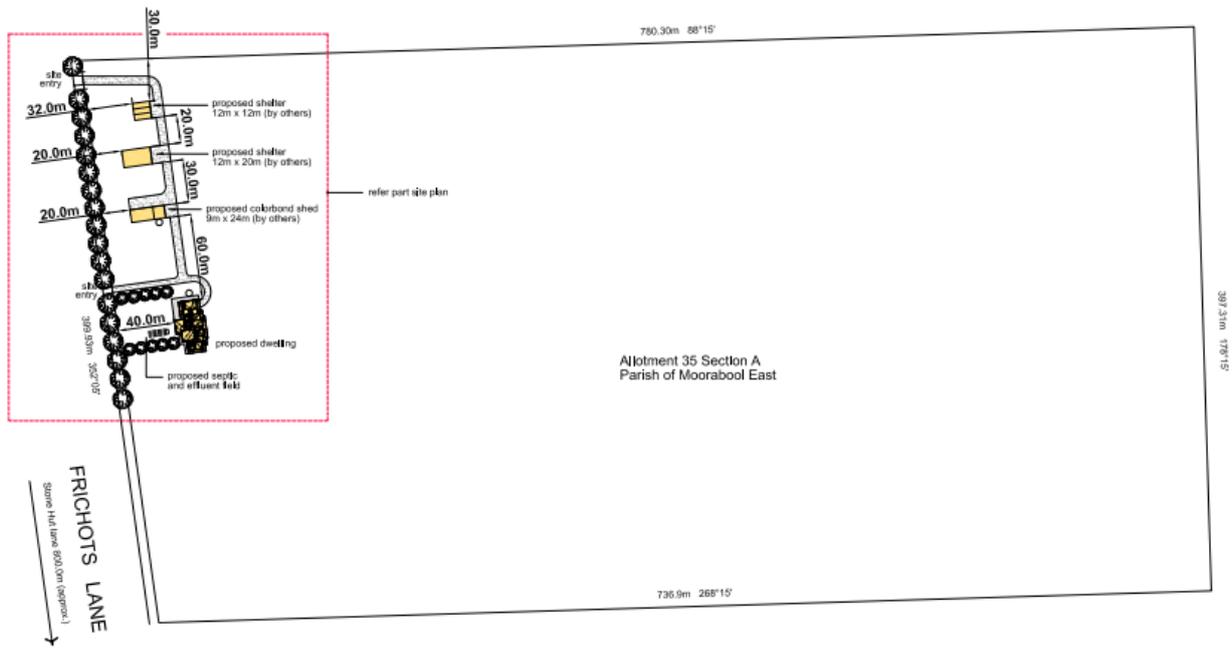


Figure 2: Proposed development and location on the site

BACKGROUND TO CURRENT PROPOSAL

The original application included two lots (Crown Allotment 35 and Lot 1 which is the southern adjacent property). However, the Farm Management Plan submitted with the application suggested that only Crown Allotment 35 is subject to this application and is the location of the proposed dwelling. The application was amended to exclude Lot 1 and only apply to Crown Allotment 35.

It is noted that the Farm Management Plan was prepared by a consultant, and comments received from the landowner regarding farming activities was inconsistent stating that Alpacas were not proposed on the site but will be kept and bred on the adjacent parcel.

The application was re-referred to Agricultural Victoria for comment and recommendations and Council site visits were conducted to understand the operations currently taking place.

PUBLIC NOTICE

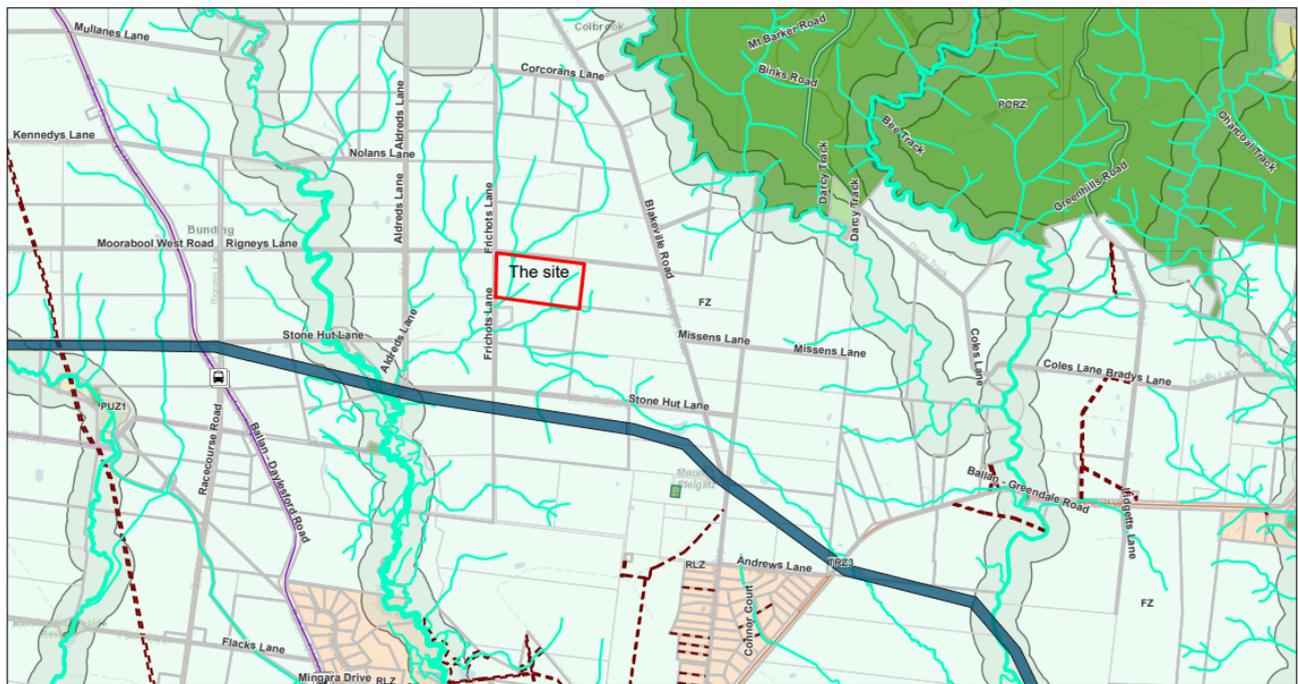
The application was notified to adjoining and surrounding landowners. A sign was placed on site.

SUMMARY OF OBJECTIONS

No objections were received.

LOCALITY MAP

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



4/17/2023, 4:58:34 PM

- Override 1
- Western Renewables Link Sept 2022 Easements
- Regional Bus Stops
- Watercourse
- H
- M
- L
- Parcel
- Active
- Cultural Sensitivity
- Property
- Vicmap Crown Land
- PUZ1
- RCZ
- RLZ
- FZ
- PCRZ
- 5
- 6
- Planning Zones
- Vicmap Roads
- 2
- 3

1:36,112
0 0.35 0.7 1.4 mi
0 0.5 1 2 km

Figure 3: Zone and locality 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 - Settlement - Planning
- Clause 12 - Environmental and Landscape Values
- Clause 13.02-1S - Bushfire Planning
- Clause 14.01 - Agriculture
- Clause 14.02-1S - Catchment planning and management
- Clause 14.02-2S - Water quality
- Clause 15.01-6S - Design for rural areas
- Clause 16.01-3S - Rural residential development

The proposal does not comply with the relevant sections of the PPF as outlined in the table below:

| PPF | Title | Response |
|-----------------|--|---|
| Clause 14.01-1L | Agriculture, rural dwellings and subdivision | It is considered that the application has not sufficiently demonstrated that the proposed dwelling is needed to support the agricultural purposes and therefore would reduce the land available for productive agricultural purposes. |
| Clause 16.01-3S | Rural Residential Development | The proposal does not seek to avoid rural residential development and will not protect agricultural land. |

ZONE

The subject site is in the Farming Zone.

The purpose of the zone is:

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

A permit is required to use the land for a dwelling pursuant to Clause 35.07-1.

A permit is required for building and works to a Section 2 land use pursuant to Clause 35.07-4.

OVERLAYS

Environmental Significant Overlay – Schedule 1

A permit is required for the buildings and works of the dwelling and the sheds and for the removal of vegetation under Clause 42.01-2.

Design and Development Overlay – Schedule 2

The proposal does not trigger a permit under this Overlay as the materials selected for the proposed buildings are non-reflective.

Other controls nearby include the Bushfire Management Overlay and Land Subject to Inundation Overlay.

Particular Provisions

Council's Rural Growth Policy

Council's Rural Growth Policy Statement was adopted by Council on 19 September 2012. The document applies to all land in Farming Zone. This Policy is not incorporated into the Moorabool Planning Scheme.

The policy states:

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

The site is shown on Map 1 of the Council Rural Growth Policy Statement in an area where dwellings are encouraged to locate on lots with an 8ha minimum size. The policy requires justification for the dwelling based on the proposed agricultural activity. Whilst the proposal includes agricultural activities in the form of sheep farming it is deemed that the success of the farming enterprise would not rely upon a dwelling on the site.

Council's Rural Housing Policy

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

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

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

The subject site is in an area shown on Map 1 where dwellings are supported on minimum 8ha lots, however, the proposal does not entirely align with the above principles.

Bushfire Planning:

This provision serves to ensure that the location, design and construction of development appropriately reduced the bushfire risk to life and property to an acceptable level.

DISCUSSION

As detailed in the decision guidelines of the planning scheme, Council as the responsible authority must make a determination on the proposed use and development of the dwelling based on the possibilities for enhanced agricultural potential and productive capacity of the land and whether or not it meets the purpose, objectives and strategies of the Moorabool Planning Scheme.

It is clear from visiting the site, that the agricultural productivity is already occurring without the presence of a dwelling such as keeping of sheep and alpacas. The proposal is for a dwelling associated with the keeping and breeding of Valais Blacknose Sheep.

Originally, the two lots owned by the same landowner were included in the application however this was corrected in an amendment in process to include only the 30.16ha northern lot (Crown Allotment 35). The original application also included the keeping and breeding of both Alpacas and Valais Blacknose sheep. After discussions with the applicant, the proposal was amended to only include Valais Blacknose sheep.

When considering the proposal and the submitted farm management plan, a land area of 30ha provides adequate food and water for the level of activity proposed (50 ewes) to be maintained. The applicant has also noted the climate and soil conditions in Ballan provides a good environment for this specialised sheep breed.

Consolidation of the two land parcels would have resulted in compliance with the Planning Scheme. However, the application does not propose consolidation and the applicant was not agreeable for conditions requiring consolidation. The application was amended, and the Farm Management Plan updated to only relate to this one land parcel. The subject site will only be used for the Valais Blacknose Sheep associated with a dwelling, whilst the second parcel is proposed to be used for Alpacas.

Consolidation of the two titles would assist in reducing the fragmentation of agricultural land and would assist in creating a better outcome for the area.

If the two lots were consolidated there would be no need for a planning permit to use the land for a dwelling because the combined total land area would be in excess of 40ha.

Following assessment of this application, it is apparent that the land can sustain grazing animal production without the presence of a dwelling if regular visits take place. This is supported by written advice from Agricultural Victoria The proposed dwelling use does not maximise land for agricultural purposes.

The development of dwellings in the Farming Zone, such as that proposed, contributes to a dispersal of scattered residential development beyond township boundaries. This threatens the rural landscape character, undermines the potential for viable agricultural ventures to succeed on such landholdings and reduces opportunities for contiguous land parcels to be consolidated to increase potential productivity.

The proposed use and development are contrary to the zone objectives and is not consistent with the objectives of the Farming Zone. It is also clear from the information provided that the proposed farming operations can be sustained without the presence of a dwelling.

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 |
|---|------------------------------|
| | |
| Country Fire Authority | No objection, no conditions. |
| Southern Rural Water | Consent with conditions. |
| Greater Western Water | Consent with conditions |
| Agriculture Victoria | Letter of advice. |
| Council's Development Infrastructure | Consent with conditions. |
| Environmental Health | Consent with conditions |

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

Notice was undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*, and further correspondence is required to all interested parties to the

application as a result of a decision in this matter. All submitters and the applicant were invited to attend this meeting and address the Development Assessment Committee.

OPTIONS

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

CONCLUSION

Overall, the proposed use and development for a dwelling does not satisfy the relevant provisions of the Moorabool Planning Scheme, in particular Planning Policy Framework relating to agricultural land and residential development, and the Farming Zone provisions. There is not sufficient justification for the proposal, based substantially on the proposed Farm Management Plan which does not demonstrate the requirement for a dwelling.

The subject site and one of the adjoining sites are both in the same ownership, and this proposal (without consolidation of the land) will further lead to fragmentation of agricultural land. Any existing dwellings in proximity to the subject site should not form a precedent or basis for decision making with regard to the current application. Whilst it is acknowledged that the business is highly specialised, requires significant financial investment with importation from overseas for breeding purposes, it does not sufficiently justify the need for a dwelling. With the proximity to Ballan, it is also clear that regular visits to this site could sustain the current agricultural practice.

Due to these factors and those mentioned in the report, the proposal is recommended for refusal.

7.2 PA2022220 - DEVELOPMENT OF AN EXTENSION TO A BUILDING USED FOR INDUSTRY, A REDUCTION OF CAR PARKING (NINE CAR SPACES) AND A WAIVER OF BICYCLE FACILITIES AT LOT 1 ON PS619842Y KNOWN AS 53 HADDON DRIVE, BALLAN

Author: Thomas Tonkin, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Proposed plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2022220

Lodgement Date: 27 October 2022

Planning Officer: Tom Tonkin

Address of the land: 53 Haddon Drive, Ballan

Proposal: Development of an Extension to a Building used for Industry, a Reduction of Car Parking (Nine Car Spaces) and a Waiver of Bicycle Facilities

Lot size: 1.54ha

Why is a permit required? Clause 33.01 Industrial 1 Zone – Buildings and works; Clause 42.01 Environmental Significance Overlay - Buildings and works; Clause 52.06 Car Parking - Reduction of car parking; Clause 52.34 Bicycle Parking - Waiver of bicycle facilities

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2022220 for the Development of an Extension to a building used for Industry, a Reduction of Car Parking (Nine Car Spaces) and a Waiver of Bicycle Facilities at Lot 1 on PS 619842Y known as 53 Haddon Drive, Ballan, 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 Proposed Factory Extension Site Plan dated 16 February 2023 and Proposed Factory Extension Elevations dated 1 February 2023 prepared by Andrew Ferguson, but modified to show:
 - (a) A landscape plan in accordance with Condition 7.
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 or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority.

3. All buildings and works must be located clear of any easements or water and sewer mains unless written approval is provided by the relevant authority.

Car Parking:

4. A minimum of 53 onsite car parking spaces must be provided for in accordance with the endorsed plans and must be available at all times for vehicle parking only.

Amenity:

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

Landscape Plans:

7. 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 Proposed Factory Extension Site Plan dated 16 February 2023, drawn by Andrew Ferguson 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; and
- (c) existing landscaped areas.

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

8. 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.
9. 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.

Development Infrastructure:

10. Prior to the issue of Certificate of Occupancy, two standard Industrial vehicle crossings must be constructed to the satisfaction to the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossings. Any redundant crossings to be removed and restored to the satisfaction to the Responsible Authority.
11. Unless otherwise approved by the Responsible Authority there must be no buildings, tree structures, or improvements located over any drainage pipes and easements on the property.
12. Prior to the commencement of the development, engineering drainage plans and computations must be submitted to the Responsible Authority for approval and shall incorporate the following:
 - (a) The development as a whole must be self-draining and must be connected to an

- approved point of discharge in an approved manner to the satisfaction of the Responsible Authority.
- (b) Underground piped drainage for the whole development shall cater for 10% AEP storm.
 - (c) Overland 1% AEP flow path(s) for the development must be shown on layout plans and shall ensure that no property is subject to inundation by such a storm to the satisfaction of the Responsible Authority.
13. Stormwater runoff must meet the “Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)”.
 14. Storm water drainage from the proposed buildings and impervious surfaces must be directed to the legal point of discharge to the satisfaction of the Responsible Authority. A Stormwater Point of Discharge permit must be obtained from the Responsible Authority prior to the commencement of the works associated with the permit.
 15. Prior to the occupation of the approved development, the car parking areas must be constructed with an all-weather surface, line-marking and drainage to the satisfaction of the Responsible Authority, and shall incorporate the following:
 - (a) Parking bays and aisle widths of the car park shall comply with Clause 52.06-9 Design Standard 2 in the Moorabool Planning Scheme. Disabled Parking bays shall comply with Australian Standard AS2890.6-2009 (disabled).
 - (b) Designated loading areas shall be shown on layout plans.
 - (c) The parking areas shall be provided with an all-weather surface and associated drainage.
 - (d) Concrete kerb of a minimum height of 150mm must be provided between landscaped areas and areas provided for parking and the passage of vehicles.
 16. The building shall be provided with disabled access in accordance with the provisions of AS1428 – Design for Access and Mobility.
 17. Prior to the works commencing on the development, notification including photographic evidence must be sent to Council’s Infrastructure Services identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority. If photographic evidence cannot be provided, then the damage must be fully reinstated at no cost to and to the satisfaction of the Responsibility Authority.
 18. 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).

Permit Expiry:

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.

| PUBLIC CONSULTATION | |
|---------------------------------|------------------------------------|
| Was the application advertised? | Exempt from the notice provisions. |
| Notices on site: | None. |
| Notice in Moorabool Newspaper: | None. |
| Number of objections: | None. |
| Consultation meeting: | Not applicable. |

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

Priority 2.4: Grow local employment and business investment

The proposal is not 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 – Tom Tonkin

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

EXECUTIVE SUMMARY

| | |
|--|---|
| Application referred? | Yes, to Greater Western Water, Southern Rural Water and Council's Development Infrastructure. |
| Any issues raised in referral responses? | A Stormwater Management Strategy and car parking demand assessment were requested. |
| Preliminary concerns? | Insufficient details shown on the plans with regard to stormwater and car parking. |
| 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? | No. |
| Brief history. | Not applicable. |
| Previous applications for the site? | See 'History' below. |
| General summary. | <p>It is proposed to construct a 1,115sqm extension to an existing industrial building used to create additional storage space for goods and materials, reduce the car parking requirement by nine car spaces and waive the bicycle parking facilities.</p> <p>The proposal would accommodate the expansion of the existing business and support its economic viability without any detrimental impacts and the proposed building is appropriate for its physical context.</p> <p>The proposed car parking reduction and bicycle facilities waiver based on the additional floor area is acceptable having regard to existing operation and the location of the site. There would be no associated detrimental impacts on the amenity of the area.</p> <p>It is recommended that the application be approved, subject to conditions.</p> |
| Summary of Officer's Recommendation | |
| <p>That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i>, the Development Assessment Committee issue Planning Permit PA2022220 for the Development of an extension to a building used for Industry, a Reduction of Car Parking (Nine Car Spaces) and a Waiver of Bicycle Facilities at Lot 1 on PS 619842Y known as 53 Haddon Drive, Ballan, subject to the conditions contained within this report.</p> | |

SITE DESCRIPTION

The subject site, identified as Lot 1 on PS 619842Y, known as 53 Haddon Drive, Ballan, is roughly rectangular shaped 1.54ha lot located on the east side of Haddon Drive approximately 510m south of the Gillespies Lane intersection. The site is developed with a 3,550sqm industrial building used for the manufacture and wholesale distribution of windows and doors, with an ancillary 310sqm storage shed, loading and car parking facilities all occupying the northern half of the site. There are currently 30 onsite car spaces. The southern part of the site is currently undeveloped. The site contains no significant vegetation and has a slight fall generally from south to north. A 3m wide easement is located parallel to the northern title boundary for drainage and pipeline or ancillary purposes. It is noted that there is a hardstand car parking area in the road reserve adjoining the site accommodating approximately 15 vehicles.

The subject site and adjoining land to the south, west and north is in the Industrial 1 Zone and developed for a range of purposes including a Municipal Council depot in final stages of construction, small-scale manufacturing, service industries, warehouses and self-storage. Land to the west is in the Farming Zone and developed for a regional CFA Victorian Emergency Management Training Centre.



Figure 1: Aerial image of the site.

PROPOSAL

It is proposed to develop an extension to the existing factory building, reduce the statutory car parking requirement and waive the statutory bicycle facilities. The existing building would be extended to the south to provide an additional 1,115sqm storage space. The extension would be 32.8m in length, 34m in width x 8.27m in height. The form, scale, height, materials and colours would be consistent with the existing building. Twenty-three onsite car spaces are proposed in addition to the existing 30 car spaces. The statutory requirement for 32 car spaces for the additional floor area would therefore be reduced by nine car spaces.

LOCALITY MAP

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

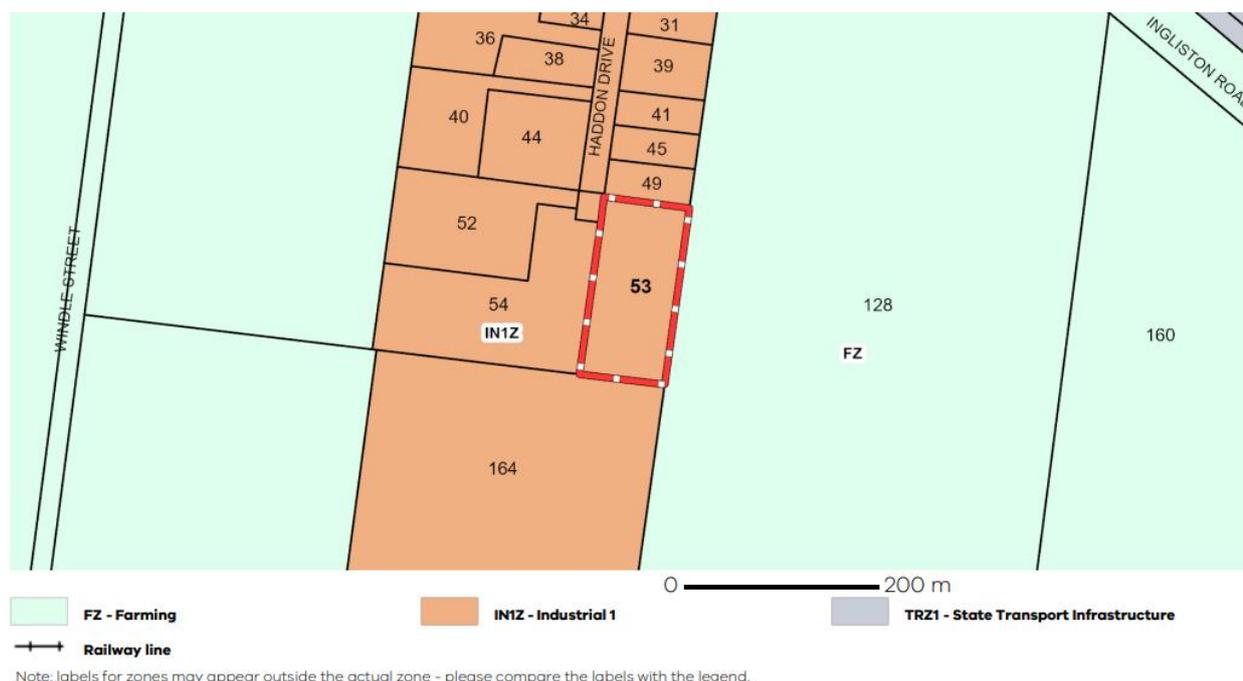


Figure 3: Zone map.

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 02.03-1 - Settlement, including Bacchus Marsh
- Clause 02.03-5 - Built environment and heritage
- Clause 02.03-7 - Economic development, including Local employment
- Clause 11.01-1L-01 - Settlement in Moorabool
- Clause 11.01-1L-03 - Ballan
- Clause 11.03-3S - Peri-urban areas
- Clause 13.07-1S - Land use compatibility
- Clause 15.01-1S - Urban design
- Clause 15.01-1L - Urban design
- Clause 15.01-2S - Building design
- Clause 15.01-2L-02 - Industrial development
- Clause 15.01-5L - Landscape and neighbourhood character
- Clause 17.01-1S - Diversified economy
- Clause 17.01-1R - Diversified economy - Central Highlands
- Clause 17.02-1S - Business

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

ZONE

The subject site is in the Industrial 1 Zone.

The purpose of the zone 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 uses in a manner which does not affect the safety and amenity of local communities.

Under Clause 33.01-4 a permit is required for building and works. Decision guidelines are also listed under Clause 33.01-4.

OVERLAYS

The site is affected by Environmental Significance Overlay, Schedule 1 (ESO1).

Under Clause 42.01-2 a permit is required to construct buildings and works. There are no relevant exemptions under Schedule 1.

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

Relevant Policies

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

Particular Provisions

Clause 52.06 Car Parking

Under Clause 52.06-5 the car parking requirement for Industry is 2.9 car spaces to each 100sqm of net floor area. Based on the floor area of the proposed extension only, 32 car parking spaces would be required, and 23 additional car parking spaces are proposed, therefore a car parking reduction of nine car parking spaces is required.

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

Clause 52.34 Bicycle Facilities

Based on the proposed floor area, there is a statutory requirement for one employee bicycle parking space. No formal bicycle parking is proposed; therefore, a waiver of this requirement is sought.

Clause 53.18 Stormwater Management in Urban Development

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

DISCUSSION

The subject site is in an established industrial precinct in Ballan with all utilities available and the proposed development is generally consistent with existing development on the subject site and surrounding properties. The proposal provides for the expansion of existing industry and would contribute to ongoing business productivity and economic growth without any unreasonable amenity or environmental impacts.

Clause 15.01-2L-02 Industrial development

The proposed development is generally consistent with Council's policy for industrial development at Clause 15.01-2L-02 of the Moorabool Planning Scheme. The proposed building footprint would be approximately 30% of the total site area and permeability exceeds 30%, comprising the vacant portion of the site, gravel accessways and landscaped areas. The proposed front setback would be equal to the existing building setback and provides acceptable space for landscaping including small canopy tree plantings, which assist in softening the development when viewed from the public realm.

The design response is acceptable, noting that proposal's consistency with the existing building, the low-pitched roof and non-reflective cladding and substantial setback from sensitive interfaces. The provision of additional landscaping in the front setback area is consistent with this policy objective. It is recommended that a condition of approval require a formal landscape plan be submitted for endorsement.

Clause 33.01 Industrial 1 Zone

The proposal is generally consistent with the Industrial 1 Zone provisions. The proposed development would complement the existing streetscape character and additional landscaping would be provided in the front setback.

The interface with land in the Farming Zone to the east is to a non-sensitive use, being an emergency services facility operated by the CFA.

The proposed car parking areas are located proximate to the building and there is sufficient space for turning, circulation and loading to meet relevant standards, including for trucks.

Outdoor storage areas would remain concealed from the street. Detailed stormwater treatment 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 32 car parking spaces. Twenty-three spaces are proposed, therefore a reduction of nine spaces is required.

Empirical data containing traffic and parking generation rates for industrial land use with mean peak parking rates typically within the following ranges:

- 0.3-0.6 spaces / 100m² for warehouses.
- 0.9-1.3 spaces / 100m² for factory / manufacturing.

Based on car parking data for the site from 2019 to 2023, there is a typical car parking demand of 20-26 car spaces, with a peak demand of 30 car spaces and includes use of the hardstand area in the adjoining the Haddon Drive road reserve. The demands of 26 and 30 spaces corresponds with the parking rates of 0.67 and 0.78 spaces/100m² gross floor area (GFA), respectively. Given the above and the proposed storage use of the additional floor space, it is considered reasonably conservative that peak parking demands associated with the use be estimated using a rate of 0.8 spaces/100m² GFA, equating to a total post development peak car parking demand of 40 spaces. It is further noted that the proposed increase in floor area is expected to generate a maximum increase of one to two employees. The proposed new car parking area comprising a total of 23 can easily accommodate the increase in the number of employees and any additional visitor numbers.

The 53 proposed onsite car parking spaces would readily absorb the anticipated peak demand for 40 spaces without relying on the availability of car parking spaces in the adjoining road reserve.

Council's Development Infrastructure reviewed the car parking demand assessment, agreeing with justification of a nine space reduction.

Therefore, the proposed development has sufficient justification for the proposed car parking reduction in accordance with the purpose and decision guidelines of Clause 52.06.

Clause 52.34 Bicycle Facilities

Similarly, the waiver of bicycle parking in this instance is deemed acceptable, given the site's relative isolation from the nearest residential areas and the lack of cyclist infrastructure (on or off-road bicycle paths) in the vicinity of the subject site. In this instance there is ample opportunity for informal undercover employee bicycle parking on the site, if required. There are no existing formal bicycle parking facilities.

Overall, the proposal is generally in accordance with the applicable provisions of the Moorabool Planning Scheme and consistent with the purpose of the zone and there is justification for a car parking reduction and the waiver of bicycle parking requirement.

GENERAL PROVISIONS

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

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

REFERRALS

| Authority | Response |
|--------------------------------------|--------------------------|
| Greater Western Water | Consent, no conditions. |
| Southern Rural Water | Consent, no conditions. |
| Council's Development Infrastructure | Consent with conditions. |

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 33.01-4 and 52.06-4 of the Moorabool Planning Scheme. The applicant was invited to attend this meeting and address the Development Assessment Committee.

OPTIONS

- Issue a Planning Permit in accordance with the conditions in the recommendation of this report; or
- issue a Planning Permit with amendments to the conditions contained in the recommendation of this report; or

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

CONCLUSION

The proposed development is generally in accordance with the relevant provisions of the Moorabool Planning Scheme, particularly the Industrial 1 Zone and Clauses 52.06 and 52.34.

The proposed extension of an existing factory would support local business growth, particularly local manufacturing, and be generally consistent with nearby development.

The associated car parking reduction of nine car spaces and waiver of bicycle facilities is acceptable in this instance, having regard for the site context, the availability of on-site car parking and the car parking demand in the immediate vicinity of the site.

It is recommended that the application be approved, subject to conditions.

7.3 PA2022243 - USE AND DEVELOPMENT OF A DWELLING AND ANCILLARY SHED AT CROWN ALLOTMENT 3, SECTION 5 OF TP293871, 177 CORRIES LANE, MOUNT EGERTON

Author: Mark Lovell, Coordinator Statutory Planning
Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development
Attachments: 1. Plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2022243
Lodgement Date: 14 November 2022
Planning Officer: Mark Lovell
Address of the land: Crown Allotment 3, Section 5 of TP293871P, 177 Corries Lane, Mount Egerton
Proposal: Use and Development of a Dwelling and Ancillary Shed
Lot size: 8.067ha
Why is a permit required? Clause 35.07-1 - Use of a land for a dwelling on a lot under 40ha; Clause 35.01-4 Buildings and works associated with a Section 2 land use in the Farming Zone; Clause 43.01-3 Construct a building or carry out works associated with the use of accommodation in the Environmental Significance Overlay Schedule 1; Clause 44.06 Buildings and works associated with accommodation in the Bushfire Management Overlay

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant a Permit PA2022234 for the Use and Development of a Dwelling and Ancillary Shed at Crown Allotment 3 Section 5 of TP293871P, 177 Corries Lane Mount Egerton, subject to the following grounds.

1. The proposed use and development of the land for a dwelling will lead to the proliferation of dwellings in the Farming Zone and surrounding area.
2. The proposal does not meet the strategies and objectives of the Planning Policy Framework and the Farming Zone provisions of the Moorabool Planning Scheme.
3. The proposed use and development do not represent orderly planning for the area.

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

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

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

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Mark Lovell

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

EXECUTIVE SUMMARY

| | |
|--|---|
| Application referred? | Yes, Agricultural Victoria, Barwon Water, Country Fire Authority, Corangamite Catchment Management Authority, Council's Development Infrastructure, and Environmental Health. |
| Any issues raised in referral responses? | Agriculture Victoria provided a letter of advice which concluded, in part, that the proposed agricultural pursuits could be achieved without a dwelling being present. |

| | |
|--|--|
| Preliminary concerns? | Concerns with a cropping activity on a small parcel of land further fragmented by a proposed dwelling and ancillary shed. |
| Any discussions with applicant regarding concerns? | Discussion took place with the applicant. The application providing more detail regarding the horticultural use of the land. |
| Any changes made to the application since being lodged? | Nil. |
| Brief history. | The subject site is comprised of vacant land. The applicant has undertaken a trial area of saffron to demonstrate the agricultural activity is viable. |
| Previous applications for the site? | Nil. |
| General summary. | <p>The proposal is for the use and development of the land for a dwelling and ancillary shed.</p> <p>The land is zoned for Farming purposes. A Land Capability Assessment, Farm Management Plan, Bushfire Management Statement and Proposed Plans accompanied the application.</p> <p>The application was referred to several authorities. Agricultural Victoria had some concerns with the dwelling use.</p> <p>The application was assessed against the planning scheme and site visits took place. The proposal is recommended for a refusal subject to the grounds contained within this report.</p> |
| Summary of Officer's Recommendation | |
| <p>That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i>, Development Assessment Committee issue a Refusal to Grant Planning Permit PA2022243 for the use and development of a dwelling and ancillary shed at Crown Allotment 3 Section 5 of TP293871P, 177 Corrie Lane, Mount Egerton, subject to the conditions contained within this report.</p> | |

SITE DESCRIPTION

The site is located approximately 7kms south of the Mount Egerton township.

The site has a total area of 8.067ha and has a relatively flat topography.

The site is vacant land with the exception of a small shed. There are two dams, one near the southeast corner of the site and the other located along the western property boundary. A waterway is present in the southeast corner of the site. A row of planted Cyprus trees is located on the southern boundary and either side of the internal driveway.

Other than the shed there are no other improvements on the allotment.

The surrounding area does include similar sized lots and a number of lots contain existing dwellings, especially to the north-west, close to Egerton-Ballark Road.

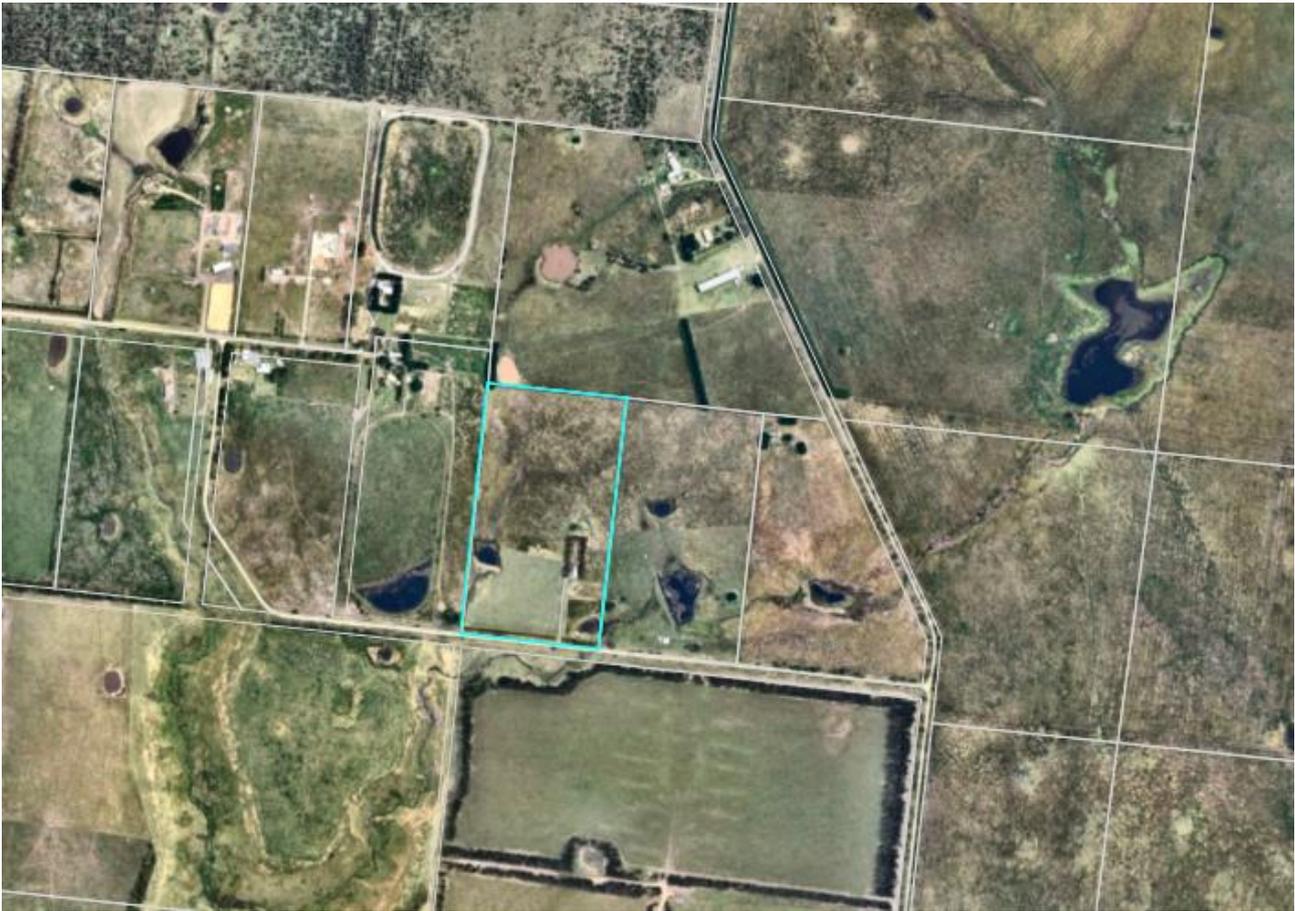


Figure 1: Aerial photograph

PROPOSAL

It is proposed to construct a dwelling and ancillary shed on the site in association with the use of the land for horticulture production (saffron).

The proposed dwelling includes the following:

- Four bedrooms
- Two bathrooms
- Open plan kitchen, walk-in pantry, meals, and family area
- Living Area
- Laundry
- Mud room
- Attached two car space garage

The proposed dwelling has a front setback of 67.70m to Corries Lane which runs along the southern boundary and is setback 103.70m from the western side boundary.

The external cladding would be recycled brick at the base, vertical Hardie cladding walls and a Colorbond roof. Colours would be Monument for the roof and Surf Mist for the wall cladding.

The proposal also includes a detached shed with a floor area of 180sqm and an overall height of 4.73m. The shed is setback 20m from the eastern side of the dwelling and setback 40.70m to the

eastern property boundary. It will have three roller doors and the wall and roof cladding will Colorbond in Monument colour.

A contained dwelling and shed envelope with an area of 8,133sqm is shown on the site plan where no horticulture use would be undertaken.

The Farming activity involves using 5ha of the 8ha property for rotational saffron cropping over five paddock areas.

Saffron is produced by growing the *Crocus Sativus* corm, harvesting the flower, removing the three thin threads from the centre of the flower and drying them. Saffron as a spice is used in many food dishes.

Additional features of the proposal include running a few breeding cows and dorper sheep; the establishment of a biodiversity corridor along the west side boundary; revegetation planting with a species list provided and a personal orchid adjacent to the eastern side boundary.

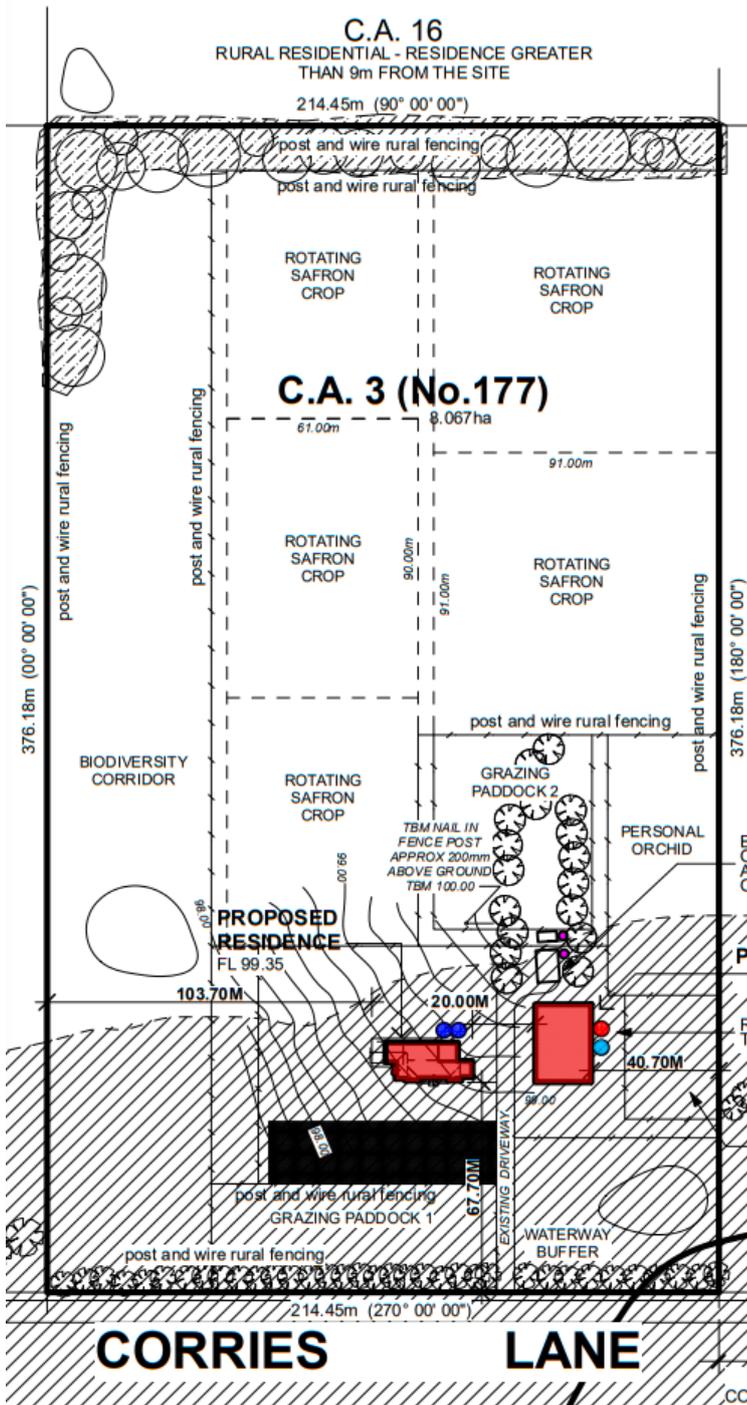


Figure 2: Site Plan

BACKGROUND TO CURRENT PROPOSAL

The applicant undertook a trial saffron crop on the property to determine the suitability in this location. The test crop was successful enabling the lodgement of this planning application to include a dwelling and ancillary shed.

HISTORY

Nil.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners and placing a large notice on site for a period of 14 days.

SUMMARY OF OBJECTIONS

No objections were received.

LOCALITY MAP

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



Figure 3: Zone Map

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11 - Settlement - Planning
- Clause 12 - Environmental and Landscape Values
- Clause 13.02-1S- Bushfire Planning
- Clause 13.02-1L - Bushfire Planning
- Clause 14.01-1S - Protection of Agricultural Land
- Clause 14.01-1L - Agriculture, Rural Dwellings and Subdivisions
- Clause 14.01-2S - Sustainable Agricultural Land Use
- Clause 14.02-1S - Catchment planning and management
- Clause 14.02-1L - Declared Special Water Supply Catchment
- Clause 14.02-2S - Water quality
- Clause 15.01-6S - Design for rural areas
- Clause 16.01-3S - Rural residential development

The proposal does not comply with the relevant sections of the PPF as outlined in the table below:

| PPF | Title | Response |
|-----------------|--|---|
| Clause 14.01-1L | Agriculture, rural dwellings and subdivision | It has not been sufficiently demonstrated that the proposed dwelling is needed to support the horticultural enterprise. Accordingly, it is considered that the dwelling and ancillary shed would reduce the land available for productive agricultural purposes. |
| Clause 16.01-3S | Rural Residential Development | The proposal does not seek to avoid rural residential development and will not protect agricultural land. |

ZONE

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

The purpose of the zone is:

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

A permit is required to use the land for a dwelling under Clause 35.07-1.

A permit is required for building and works to a Section 2 land use under Clause 35.07-4.

OVERLAYS

Relevant Policies

Environmental Significant Overlay – Schedule 1

A permit is required for the buildings and works under Clause 42.01-2.

The environmental objective of Schedule 1 is:

- To protect the quality and quantity of water produced within proclaimed water catchments.
- To provide for appropriate development of land within proclaimed water catchments.

Design and Development Overlay – Schedule 2

The proposal does not trigger a permit under this overlay as the materials selected for the proposed buildings are non-reflective.

Bushfire Management Overlay

A permit is required to construct buildings and works associated with Accommodation, which includes a Dwelling under Clause 44.06-2.

Particular Provisions

Clause 53.02 Bushfire Planning

The application meets the applicable requirements of Clause 53.02-4 of the Moorabool Planning Scheme.

Council's Rural Growth Policy

Council's Rural Growth Policy Statement was adopted by Council on 19 September 2012. The document applies to all land in Farming Zone. This Policy is not incorporated into the Moorabool Planning Scheme.

The policy states:

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

The site is shown on Map 1 of the Council Rural Growth Policy Statement in an area where dwellings are not supported.

Council's Rural Housing Policy

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

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

- Support the agricultural sector so that it can be more productive, diverse, resilient, and adaptive to changing agricultural trends, including supporting agricultural activities that recognise Moorabool's advantageous proximity to market.
- Protect agricultural land use from loss and allow development that increases agricultural productivity.

- Focus growth opportunities in settlements along major transport corridors, in particular where there is physical and social infrastructure and services.
- Recognise that there are substantial existing lots under 40ha capable of supporting the viable operation of agricultural enterprises.
- Promote a rural housing market that meets the needs of the Shire's rural communities.
- Land parcels for the proposed on-farm living dwellings are to have a minimum lot size of 8ha as identified in Map 1.

The subject site is in an area shown on Map 1 where dwellings are not supported. Furthermore, the proposal does not entirely align with the above principles and does not increase agricultural production of the land.

DISCUSSION

Farming Zone:

Overall, the proposed use and development for a dwelling and ancillary shed is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular planning policy framework and the objectives of the Farming Zone.

Relevant planning policies address a range of considerations including rural landscape values, land capability, protection of productive agricultural land and assets, and the location of rural residential development.

This application is for a small area but highly labour-intensive horticultural use of the land. It does not require a major investment in farm machinery but the labour demand particularly during harvest time will be high. Saffron is boutique enterprise for Australia with most saffron grown in Tasmania or the Central West region of New South Wales. There are only approximately 80 saffron producers in Australia and only a few in Victoria.

The land parcel is small at 8.06ha and is further reduced when the building envelope for the dwelling, wastewater field and ancillary shed occupying an area of 8,133sqm. The intent of the Farming Zone is to maximise agricultural potential.

Agriculture Victoria advised that the saffron crop can be planted, maintained and harvested without the presence of a dwelling, that will involve working on the site during daylight hours and workers residing elsewhere on more suitably zoned land for residential purposes. The recent VCAT decision, *Alabakis v Moorabool Shire SC [2022]* VCAT 1456 highlighted an intensive horticultural activity involving fruit trees and orchard can be conducted by persons not living on site.

The development of dwellings in the Farming Zone, such as that proposed, contributes to a dispersal of scattered residential development beyond township boundaries. This threatens the rural landscape character, undermines the potential for viable agricultural ventures to succeed on such landholdings and reduces opportunities to increase potential productivity. On this basis, the application should not be supported.

Catchment Planning

The location of the wastewater field well within the boundaries of the site and sufficient separation distance from the nearest waterway at greater than 100m will ensure there is no negative impact upon the surrounding water catchment area.

Both Council's Environmental Health and Barwon Water consented to the application.

Bushfire Planning

The proposed dwelling will have BAL rating of 12.5 with a defensible space of up to 48m and include a 10,000L water tank for firefighting purposes. These measures will mitigate the bushfire risk. The CFA consented to the application, subject to the endorsement of the submitted Bushfire Management Plan.

GENERAL PROVISIONS

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

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

REFERRALS

| Authority | Response |
|--|--------------------------|
| Barwon Water | Consent with conditions. |
| Corangamite Catchment Management Authority | No response. |
| Agricultural Victoria | Advice provided. |
| Country Fire Authority | Consent with conditions. |
| Council's | |
| Development Infrastructure | Consent with conditions. |
| Environmental Health | Consent with conditions. |

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

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

CONCLUSION

Overall, the proposed use and development for a dwelling does not satisfy the relevant provisions of the Moorabool Planning Scheme, in particular planning policy framework relating to agricultural land, rural residential development, and the Farming Zone provisions.

There is not sufficient justification for the proposal, based substantially on the proposed Farm Management Plan, which does not demonstrate the need for a dwelling to support the horticultural activity comprised of saffron. Agriculture Victoria acknowledged the use of the land for Crop raising (saffron production) can be carried out without the requirement of a dwelling. If supported, it would further fragment valuable agricultural land and lead to the proliferation of dwellings in Mount Egerton. The proposed use and development should not be supported.

7.4 PA2022096 - TWO LOT SUBDIVISION AT 190 LERDERDERG GORGE ROAD, DARLEY**Author:** Victoria Mack, Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development**Attachments:** 1. Proposed Plan of Subdivision (under separate cover)**APPLICATION SUMMARY****Permit No:** PA2022096**Lodgement Date:** 1 June 2022**Planning Officer:** Victoria Mack**Address of the land:** 190 Lerderderg Gorge Road, Darley being Lot 2 on PS332882J**Proposal:** Two Lot Subdivision**Lot size:** 13.33ha**Why is a permit required?** Clause 35.07 Farming Zone – Subdivision of land**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 PA2022096 for a Two Lot Subdivision at 190 Lerderderg Gorge Road, Darley, otherwise known as Lot 2 on PS332882J subject to the following conditions:

Endorsed Plans:

1. Before the plan of subdivision is certified, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application or some other specified plans but modified to show:
 - (a) Easement in favour of Melbourne Water in accordance with Condition 9 contained herein.

Subdivisions:

2. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services (where it is proposed to be connected) to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
3. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
4. The plan of subdivision submitted for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act.

Development Infrastructure:

5. **Sediment discharges must be restricted from any construction activities within the property in accordance with the relevant guidelines including Construction Techniques for Sediment Control (EPA1991) and Civil Construction, Building and Demolition Guide (EPA 2020).**
6. **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.**
7. **Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset Management 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.**

Tree Protection:

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

Melbourne Water:

9. **Prior to the certification of the plan, amended plans must be submitted to and approved by the Responsible Authority and Melbourne Water. Once approved the plans will form a part of the permit. The plan must be generally in accordance with the Plan of Subdivision 903810E Version 02 drawn by Farren Group but modified to show:**
 - (a) **A 30m wide Memorandum of Common Provision easement, from the top of bank of Goodmans Creek, in favour of Melbourne Water for the purposes of wetland, floodplain, drainage and stormwater management.**

Permit Expiry:

10. **This permit will expire if the plan of subdivision is not certified within two (years of the date of issue of the permit.**
11. **Statement of Compliance must be achieved, and certified plans registered at Titles office within five years from the date of certification.**

Permit Note:

Melbourne Water: The Property has frontage to Goodmans Creek. There is opportunity for the landowners to apply for a Melbourne Water grant to assist in the management of this frontage/required easement area. More information can be found at: Liveable Communities, Liveable Waterways Program | Melbourne Water.

| PUBLIC CONSULTATION | |
|---------------------------------|--|
| Was the application advertised? | Yes. |
| Notices on site: | One notice. |
| Notice in Moorabool Newspaper: | No. |
| Number of objections: | One. |
| Consultation meeting: | Contact was not able to be made with the objector. |

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

Priority 2.3: Enhance our natural environments

The proposal is not provided for in the Council Plan 2021 – 2025 and can be actioned by utilising existing resources.

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Victoria Mack

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

EXECUTIVE SUMMARY

| | |
|--|--|
| Application referred? | Yes, referred to Melbourne Water and Council's Development Infrastructure. |
| Any issues raised in referral responses? | No. |
| Preliminary concerns? | The subdivision initially proposed a small residential lot which was not consistent with the subdivision pattern of the area. Revised plans created better proportioned lot sizes. |

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|---|---|
| Any discussions with applicant regarding concerns? | The applicant was asked to reconsider the subdivision boundaries. An amended plan of proposed subdivision was submitted. |
| Any changes made to the application since being lodged? | Yes, the lot configurations were altered with two improved lot sizes. |
| Brief history. | The land was subdivided in 1994 creating Lots 1 and 2 on PS332882J. The subject land is Lot 2 od PS332882J. |
| Previous applications for the site? | <p>PP3/04 – Two Lot Subdivision which created Lot 1 and Lot 2 on PS332992J.</p> <p>PA2004-265 - Use of a Dwelling and Associated Outbuildings on a Lot of Less than 40ha and Buildings and Works Associated with the Use of the Dwelling issued 4 November 2004.</p> <p>This application was for Lot 1 on PS332882J and the applicant at the time was the current owner of Lot 2 on PS332882J. The dwelling was not constructed.</p> <p>PA2010192 - Development and Use of a Dwelling and Garage on Lot 1 of PS332882J issued 29 October 2010. The applicant was the purchaser of the Lot.</p> <p>PA2012050 - Development and Use of a Second Dwelling on Lot 2 on PS332882J issued 17 October 2012. The applicant was the current owner of Lot 2 on PS332882J.</p> <p>PA2016235 - Two Lot Subdivision on Lot 2 of PS332882J issued 29 November 2016. The applicant is the current owner of Lot 2 on PS332882J. The proposed plan of subdivision was not certified, and the permit has expired.</p> |
| General summary. | <p>The land was subdivided in 1994 creating Lot 1 and Lot 2 on PS332882J. Lot 2 had an existing old farmhouse style dwelling.</p> <p>A dwelling was constructed on Lot 1 approved under Planning Permit PA2010192.</p> <p>An application for a second dwelling on Lot 2 being PA2012050 was approved by Council on 17 October 2012. This dwelling was constructed in approximately 2016.</p> <p>An application for a two lot subdivision, similar to this original application but slightly larger area for the excised dwelling lot, was approved on 29 November 2016, but was never certified and the permit expired on 29 November 2018.</p> <p>This application proposes a subdivision, each creating a lot for an existing dwelling, the size of each lot retains the potential for small scale horticulture in the</p> |

| | |
|---|--|
| | <p>future.</p> <p>A second dwelling on Lot 2 of the subdivision was approved in 2012. Lot 2 now has two dwellings and is the subject of this application for further subdivision.</p> <p>It is recommended that the application is supported with standard subdivision conditions.</p> |
| <p>Summary of Officer's Recommendation</p> | |
| <p>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 PA2022096 for a Two Lot Subdivision at 190 Lerderderg Gorge Road, Darley, otherwise known as Lot 2 on PS332882J subject to the conditions contained within this report.</p> | |

SITE DESCRIPTION

The site is 13.33ha and is irregular in shape with slightly undulating topography. It is located on the northeast side of Lerderderg Gorge Road, Darley.

There are two dwellings on the site, each with separate access from Lerderderg Gorge Road. The original older style farmhouse dwelling is located at the northern end of the lot, and a new dwelling constructed in approximately 2016, is located centrally on the lot. The land contains an old orchard, two dams and sundry outbuildings.

The site has lightly scattered native vegetation, none of which would be impacted by the proposed subdivision.

The orchard on the site is approximately 5,000sqm in area. It does not look as if it is operating at a commercial scale.

Neighbouring land to the west, south and southeast is in the Farming Zone, to the north is the Rural Living Zone and to the northeast and east is the Special Use Zone Schedule 2 – Earth and Energy Resources Industry.

The wider locality is mixed farming uses with some orchards, other horticulture and a large equestrian complex. The precinct was a historic horticulture area and in recent years a number of dwellings have been approved.

There is a powerline easement that runs centrally through the property from approximately east to west. A second powerline easement services the farmhouse.

The proposed plan of subdivision is shown below.

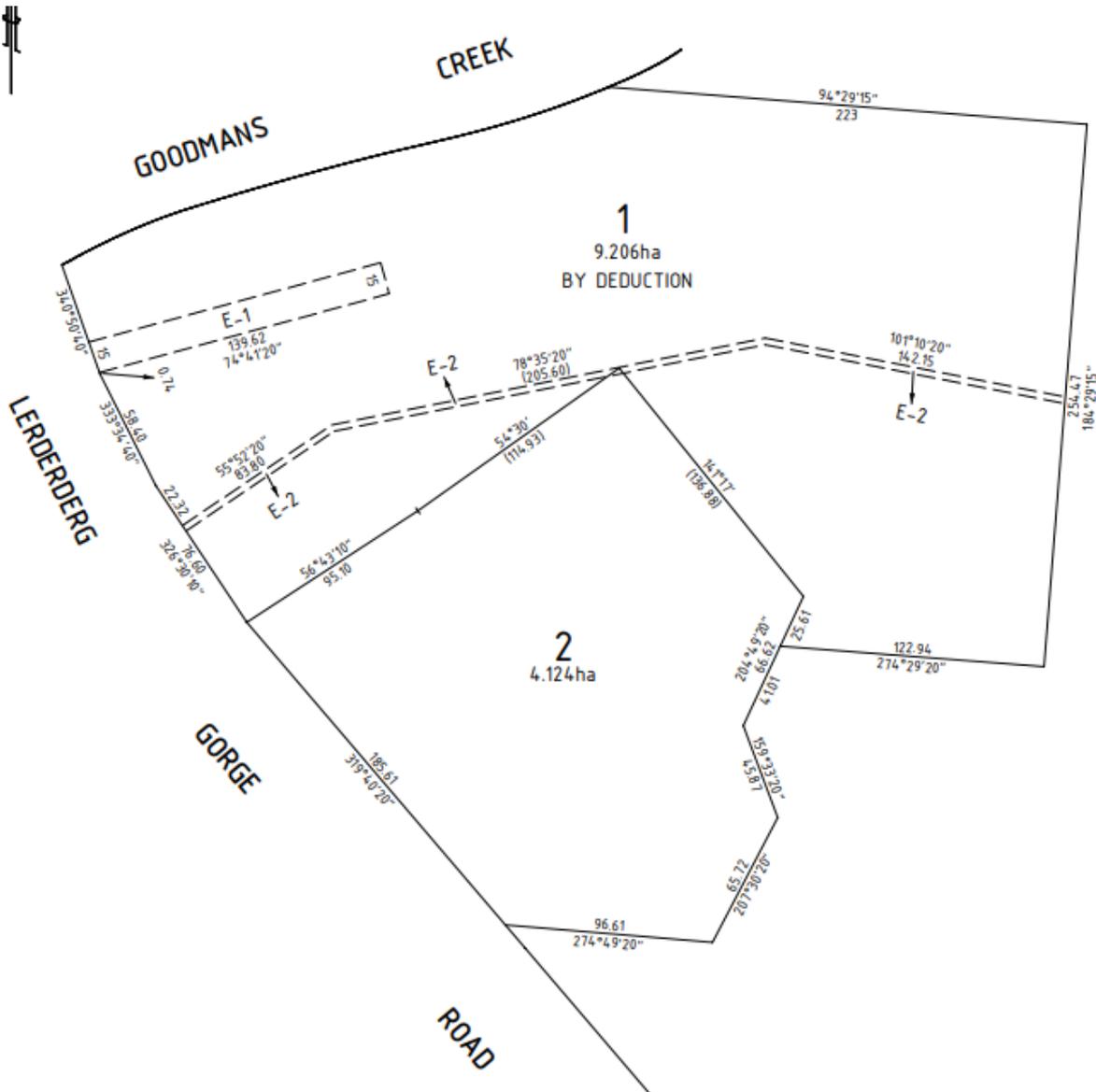


Figure 2: Proposed plan of subdivision

BACKGROUND

The site has a history of Planning Permits. The original farm was subdivided in 1994. A dwelling was constructed on Lot 1 of that subdivision in approximately 2010. A second dwelling on Lot 2 of the subdivision was approved in 2012. Lot 2 now has two dwellings and is the subject of this application for further subdivision. A similar subdivision was approved in 2016, but the owner did not progress the application and the plan was not certified, resulting in the permit expiring.

HISTORY

Discussed throughout the report.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners. One objection was received.

SUMMARY OF OBJECTIONS

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

| Objection | Any Relevant Requirement |
|---|----------------------------------|
| <p>I am taking steps to establish a sand mining quarry at 222 Lerderderg Gorge Road. To this end, I have obtained geologist reports, legal advice and advice from town planners.</p> <p>I intend to lodge a planning permit application for this development shortly. I submit that the subdivision would be inconsistent with proper and orderly planning given the sand mining quarry to be established. It would be a poor planning outcome for a subdivision to be permitted in such close proximity to a sand mining quarry given the potential for reverse amenity complaints leading to opposition to a strategically importing sand mining.</p> | Requirement under ResCode |
| <p>Officer's Response: The land mentioned in the objection is 222 Lerderderg Gorge Road to the north which is in the Rural Living Zone where industry, such as mining, is prohibited unless an application is made for a planning scheme amendment.</p> | |
| <p>Clause 65.02 provides that, before deciding on an application to subdivide land, the responsible authority must consider the existing use and possible future development of the land and nearby land.</p> | Clause 35.03 - Rural Living Zone |
| <p>Officer's Response: There is an existing quarry on east and part of the northeast boundaries of the subject land which have been operating for many years. This does not appear to have created detrimental amenity for the current residents of the subject site and surrounding dwellings.</p> <p>The subdivision does not create additional dwellings, rather just formalise the boundaries associated with the existing dwellings on the land.</p> | |
| <p>The potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500m from the nearest title boundary of land on which a work authority has been applied for or granted under the <i>Mineral Resources (Sustainable Development) Act 1990</i>.</p> | |
| <p>Officer's Response: A dwelling already exists on both proposed lots. As mentioned above an extractive industry permit could not be approved on the land located to the north of the subject site because it is a prohibited use in the Rural Living Zone.</p> | |

LOCALITY MAP

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

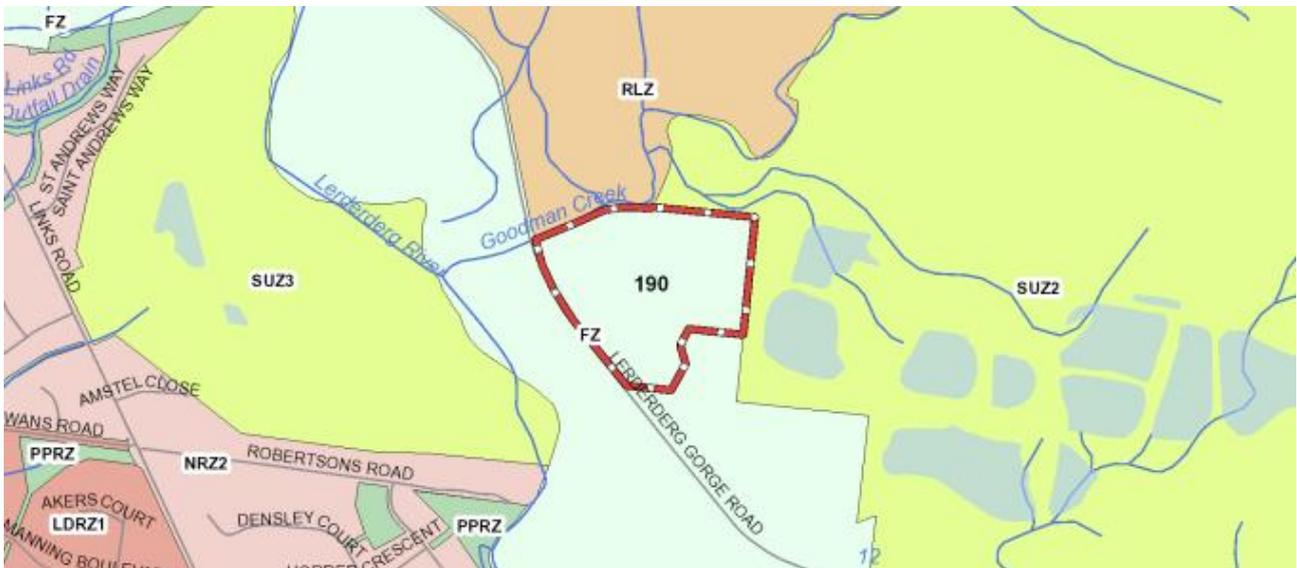


Figure 3: Zoning of the subject site and surrounding area

PLANNING SCHEME PROVISIONS

Council is required to consider the Victoria Planning Provisions and give particular attention to the Planning Policy Framework (PPF), and Regional Local provisions.

The relevant clauses are:

- Clause 02.01 - Context
- Clause 02.03-4 - Natural resource management: Agriculture
- Clause 14.01-1S - Protection of agricultural land
- Clause 14.01-1L - Agriculture, rural dwellings and subdivision
- Clause 14.01-2S - Sustainable agricultural land use

The proposal does not readily comply with the relevant sections of the PPF and local policies summarised in the table below:

| PPF | Title | Response |
|--------------|---------|--|
| Clause 02.01 | Context | The clause states that: ‘Agriculture is a major sector in Moorabool’s economy which also contributes to the rural landscape setting that typifies the Shire. Agricultural production is predominantly broad acre cropping and grazing with horticulture on irrigated land around Bacchus Marsh’ |

| | | |
|-----------------|---|--|
| | | The land is 13.33ha. The minimum subdivision area in this location is 15ha per Lot, however each lot contains an existing dwelling. |
| Clause 02.03-4 | Natural resource management: Agriculture | <p>The following strategies apply to this clause:</p> <ol style="list-style-type: none"> 1. Allow the excision of a lot for a dwelling where it would facilitate the ongoing agricultural use of the remaining land. 2. Maintain productive farm sizes by discouraging fragmentation of land for non-rural use and development. 3. Ensure that incompatible land use and development does not encroach upon productive agricultural land, particularly the Bacchus Marsh Irrigation District. <p>The land is within the Bacchus Marsh Irrigation District but is not currently used for agricultural or horticultural activities.</p> <p>Furthermore, the subdivision creates two lots each containing an existing dwelling and is considered appropriate given the context of the site and the surrounding area.</p> |
| Clause 14.01-1S | Protection of agricultural land | <p>In considering a proposal to use, subdivide or develop agricultural land, the responsible authority is asked to consider the:</p> <ul style="list-style-type: none"> • Desirability and impacts of removing the land from primary production, given its agricultural productivity. • Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production. • Compatibility between the proposed or likely development and the existing use of the surrounding land. <p>The applicant has amended the proposed subdivision boundaries to create a more sustainable subdivision arrangement.</p> |

| | | |
|-----------------|--|--|
| Clause 14.01-1L | Agriculture, dwellings subdivision rural and | Discourage subdivision and dwellings unless they are directly related to the agricultural use of land. Allow the excision of a lot for a dwelling where it would facilitate the ongoing agricultural use of the remaining land. Maintain productive farm sizes by discouraging fragmentation of land for non-rural use and development. The land is not currently used for any commercial agricultural enterprise and consists of two existing dwellings. |
|-----------------|--|--|

ZONE

Farming Zone

The purpose of the Farming Zone is to:

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

OVERLAYS

Environmental Significance Overlay Schedule 2

In accordance with Clause 42.01-2 a permit is required for the subdivision of land.

Decision guidelines:

Where an application is for the subdivision of land, whether the plan of subdivision shows appropriate building and effluent disposal envelopes.

The subdivision boundaries do not impact on the existing effluent disposal area.

Design and Development Overlay Schedule 2

A permit is not required to subdivide land under this overlay.

Relevant Policies

No relevant policies.

Particular Provisions

No relevant provisions

DISCUSSION

The subject site contains two dwellings with limited agriculture occurring on the site.

Clause 14.01-1L of the Moorabool Planning Scheme relating to agriculture, rural dwellings and subdivision recommends that house lot excisions are confined to approximately 2ha. However, in this instance it is considered that a better outcome would be to create two lots each with sufficient area to potentially allow for small scale horticulture in the future if required by either future landowner.

The application was advertised, and one objection was received. Efforts to contact the objector to discuss details of the objection have not been successful. The main reason for the objection was that the objector intends to construct a sand quarry on their property abutting the north boundary of the site. However, this land cannot be approved for any sand mining as it is in the Rural Living Zone, where industry is prohibited. Preventing a lawful subdivision on the basis an adjacent landowner seeks to change permitted uses in a future planning scheme amendment that may not be supported by Council or Panel should not influence the planning considerations of this application.

The application was referred to Melbourne Water and Council's Development Infrastructure. Both consented to the application with conditions.

The approval of the second dwelling on site in 2012, provides for a procedural subdivision to be undertaken. This application proposes a subdivision, each creating a lot for an existing dwelling, the size of each lot retains the potential for small scale horticulture in the future.

GENERAL PROVISIONS

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

- The suitability of the land for subdivision.
- The existing use and possible future development of the land and nearby land.
- The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.
- The area and dimensions of each lot in the subdivision.

Clause 66 - Stipulates all the relevant referral authorities to which the application must be referred. Clause 66.01-1 identifies mandatory conditions on any permit to issue, there are mandatory telecommunication conditions in addition to other mandatory conditions relating to an application that does not require referral under Clause 66.01 (of which this is).

The requirement for telecommunication conditions does not apply to a subdivision of land in a rural zone (incl. Farming Zone) where the responsible authority is satisfied that connection to telecommunication services is not warranted. Given this application is to subdivide land already containing a dwelling connection and telecommunication services is not necessary in the farming zone.

REFERRALS

Referrals were undertaken as follows:

| Authority | Response |
|--------------------------------------|---|
| Melbourne Water | No objection with conditions including a requirement for amended plans. |
| Council's Development 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/refusal of this application does not implicate any risk or OH&S issues to Council.

COMMUNICATIONS STRATEGY

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

OPTIONS

That the Development Assessment Committee could consider the following options:

- Issue a Notice of Decision to Grant a Planning Permit in accordance with the recommendations of this report; or
- Issue a Refusal to Grant a Planning Permit 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 decision at VCAT.

CONCLUSION

It is considered that the subdivision layout is appropriate given that there is an existing dwelling on each lot, and also that the land has not been used for commercial agricultural uses for many years.

The subdivision creates two lots each containing an existing dwelling. The proposed subdivision creates two lots of an appropriate size and should be supported with standard conditions.

8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS

9 UPDATE ON VCAT DECISIONS

10 OTHER BUSINESS

11 DATE OF NEXT MEETING

Wednesday 21 June 2023.

12 MEETING CLOSE