



AGENDA

Development Assessment Committee Meeting Wednesday, 16 August 2023

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

Date: Wednesday, 16 August 2023

Time: 6.00pm

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

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

Order Of Business

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

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

4 CONFIRMATION OF MINUTES

Development Assessment Committee Wednesday 19 July 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 PA2023056 - USE AND DEVELOPMENT OF A WAREHOUSE AND REDUCTION OF PARKING REQUIREMENTS AT 5 SMITH STREET, MADDINGLEY

Author: Jyoti Makan, Senior Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. PA2023056 - Proposed Plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2023056

Lodgement Date: 26 April 2023

Planning Officer: Jyoti Makan

Address of the land: 5 Smith Street, Maddingley

Proposal: Use and Development of a Warehouse and Reduction in Car Parking (two spaces)

Lot size: 890sqm

Why is a permit required? Clause 33.02-1 – use the land for warehousing; Clause 33.02-4 – a permit is required to construct a building or construct or carry out works; Clause 52.06 – reduction to the standard car parking requirements.

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2023056 for the Use and Development of the Land as a Warehouse and Reduction in Parking Requirements at 5 Smith Street, Maddingley, subject to the following conditions:

Endorsed Plans:

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application or some other specified plans but modified to show:
 - a) Landscape plan in accordance with Condition 8.
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.

General:

3. The hours of operation are Monday to Sunday from 7am to 6pm unless with the written consent of the responsible authority.
4. 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.
5. The loading and unloading of goods and materials from vehicles must only be carried out on the land.
6. Provision must be made within each warehouse for the storage and collection of garbage and other solid waste. Skip bins must not be located external to the building.
7. The amenity of the area must not be detrimentally affected by the use or development, through the:
 - a) Transport of materials, goods or commodities to or from the land.
 - b) Appearance of any building, works or materials.
 - c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil.
 - d) Presence of vermin.
 - e) Any other way.

Signage:

8. Unless exempt from the planning scheme requirements, no signage must be erected on the property.

Landscaping:

9. Before the use and development starts, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions. The plan must show:
 - a) Details of surface finishes of the accessway.
 - 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) Landscaping and planting within all open areas of the site.
 - d) Incorporation of rainwater garden in landscaped areas were possible.

Species selection must be to the satisfaction of the Responsible Authority and in accordance with the Moorabool Landscape Design Manual.

10. Before the use/occupation of the development starts or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed

plans must be carried out and completed to the satisfaction of the Responsible Authority.

11. 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.

Infrastructure:

12. A new standard Industrial vehicle crossing is to be constructed to the satisfaction to the Council. A vehicle crossing permit must be taken out for the construction of the vehicle crossing. Any redundant crossings to be removed and restored to the satisfaction to the Council.
13. 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.
14. Prior to the development and use commencing, engineering drainage plans and computations must be submitted to the Responsible Authority for approval and shall incorporate the following:
 - a) The development 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) 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) 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.
15. Stormwater runoff must meet the “Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)”.
16. Stormwater 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.
17. Prior to the use commencing, the car park 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 Australian Standard AS 2890.1:2004 Off-Street car parking. Disabled Parking bays shall comply with Australian Standard AS2890.1:2009 Off-Street Parking for People with Disabilities.
 - b) Designated loading areas shall be shown on layout plans.
 - c) The parking areas shall be provided with an 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.

18. The building shall be provided with disabled access in accordance with the provisions of AS1428 – Design for Access and Mobility.
19. 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.
20. 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:

21. 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.
-

| PUBLIC CONSULTATION | |
|---------------------------------|--|
| Was the application advertised? | No, application exempt pursuant to the notice requirements under the Industrial Zone 2 and the car parking provisions of Clause 52.06. |
| Notices on site: | No. |
| Notice in Moorabool Newspaper: | No. |
| Number of objections: | No. |
| 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 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 – 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, Council's Development Infrastructure. |
| Any issues raised in referral responses? | None. |
| Preliminary concerns? | Setback distances, landscaping, forwards motion vehicle movements, peak demands of car parking, operating hours of heavy vehicle deliveries, location of waste bins, and retaining walls. |

| | |
|--|--|
| Any discussions with applicant regarding concerns? | Yes. |
| Any changes made to the application since being lodged? | A response to the request for further information was submitted addressing the concerns. |
| Brief history. | Not applicable. |
| Previous applications for the site? | None. |
| General summary. | The application is made to change the land use to warehouse and its associated buildings and works. To facilitate the warehouse building, a reduction in car parking is requested. Council's Development Infrastructure consented to the application with conditions. It is recommended that the application be supported. |
| 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 Planning Permit PA2023056 for the Use and Development of the Land as a Warehouse and Reduction in Parking Requirement at 5 Smith Street, Maddingley, subject to the conditions contained within this report. | |

SITE DESCRIPTION

The site is within a pocket of the Industrial Zone 2. Within 155-300m of the site are General Residential Zones and the Public Use Zone. The land uses in the area are warehousing, restricted recreation (such as gyms, martial arts, doggy day care), and food and drink premises. The industrial buildings nearby are varied with large building footprints and limited landscaping.

The neighbouring property's car parks are located at the front of each industrial building. Smith Street is used to access the site however no footpaths or cycle paths service the properties along the street.

The site is located on the west side of Smith Street in Maddingley, just south of Griffith Street and is 890sqm in extent.



Figure 1: The site

[INDUSTRIAL 2 ZONE \(IN2Z\)](#)
[SCHEDULE TO THE INDUSTRIAL 2 ZONE \(IN2Z\)](#)

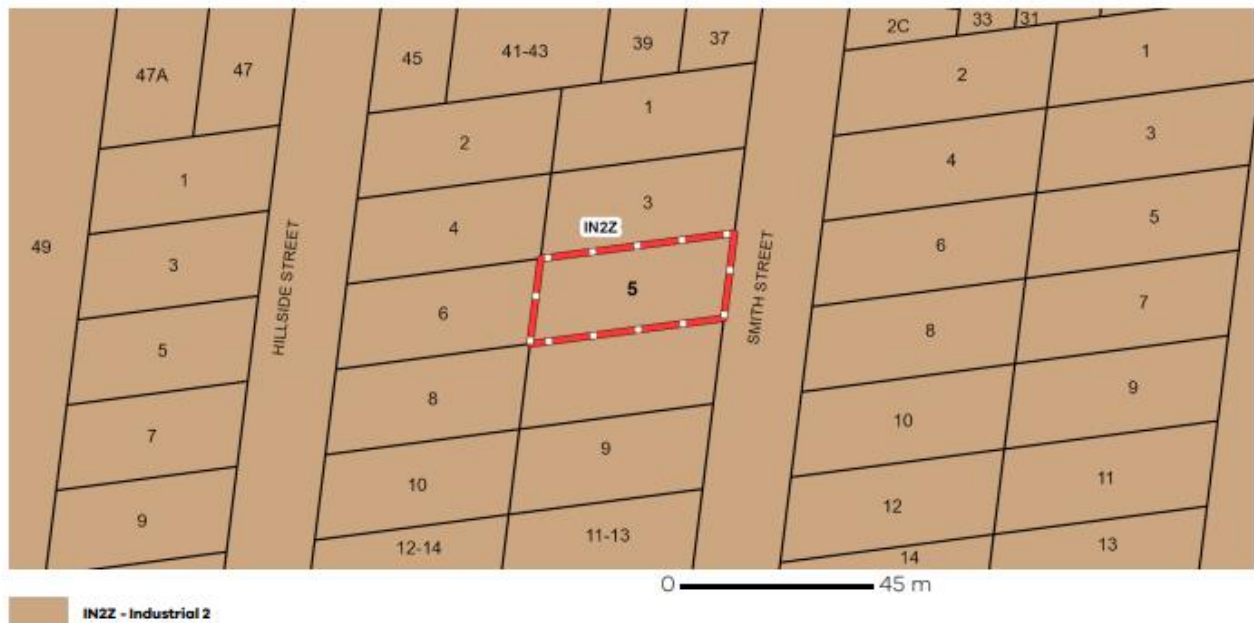


Figure 2: Zone Map

PROPOSAL

The application proposes a warehouse with a ground floor of 538sqm and mezzanine level of 87sqm to provide for additional office space.

The warehouse would be constructed boundary to boundary with a 3m rear boundary setback to accommodate landscaping.

Eight car parks are proposed including the accessible car parking space. A 5,000L water tank is located on the northern and southern site boundary within the car park. A narrow landscape strip is proposed wrapping the car park area. The loading bay is proposed within the warehouse building. All waste and recycling storage areas are located within the warehouse.

The warehouse is proposed to be constructed in concrete tilt panels which include rendered texture finishes, with projecting elements comprising fibre cement sheeting and clear glazing on the façade.

The operating hours proposed are from Monday to Sunday 7am to 6pm. Deliveries are proposed to occur when required within the operating hours.

Five staff may be associated with the proposed use and development.

BACKGROUND TO CURRENT PROPOSAL

Not applicable.

HISTORY

Not applicable.

PUBLIC NOTICE

The site is more than 155m away from residential development, therefore the application is exempt from notice provisions as it is more than 30m away from residential zones.

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
- Clause 15.01 – Built Environment
- Clause 15.-02 – Sustainable Development
- Clause 17 – Economic Development
- Clause 18 – Transport

ZONE

The site is located in the Industrial Zone 2.

A permit is required to use and construct buildings and works for a warehouse in the Industrial Zone 2.

OVERLAYS

No overlays apply to the land.

Relevant Policies

Bacchus Marsh Urban Growth Framework – August 2018

The Maddingley area was investigated together with road networks, housing employment, rail corridors, local services, open spaces and other opportunities. The subject site is located in an identified industrial area which in part aims to unify Bacchus Marsh where all neighbourhoods from Parwan to Darley are connected and integrated. Maddingley is one of the key growth

neighbourhoods. Warehousing and Transport make up for more than 1,000 jobs according to the Bacchus Marsh Urban Growth Framework 2018.

Particular Provisions

Clause 52.06 – Car parking

A permit is required to reduce the required number of car parking bays.

For warehouses, the car parking requirement is two spaces for each premise plus 1.5 bays for every 100sqm of net floor area. The minimum car parking requirement is 10 spaces for the proposed warehouse.

The applicant proposes eight spaces including the accessible bay therefore a reduction of two bays from the standard car parking requirement.

Clause 52.34 – Bicycle facilities

Pursuant to Clause 52.34-1 Provision of bicycle facilities, a new use must not commence, or the floor area of an existing use must not be increased until the required bicycle facilities and associated signage has been provided on the land. The requirements for bicycle spaces are not listed for a “warehouse”. Two bike racks are provided near the accessible parking shared area.

Clause 53.18 – Stormwater Management and Urban Development

Clause 53.18 has the purpose to ensure that stormwater in urban development, including retention and reuse, is managed to mitigate the impacts of stormwater on the environment, property and public safety, and to provide cooling, local habitat and amenity benefits.

DISCUSSION

Industrial 2 Zone:

The proposed use and development for a double storey (first floor and mezzanine level) warehouse within an Industrial 2 zoned site. The proposed warehouse is compatible with the surrounding properties which are built as light industrial buildings with open narrow setbacks and minimal landscaping.

The proposal includes:

- landscaping at the front setback and the rear open space area; and
- two 5,000L rainwater tanks to add to stormwater and sustainable efficiency.

Upon the preliminary assessment of the proposal, concerns were related to:

- turning movements for trucks to exit the site in a forward direction;
- narrow setbacks;
- environmental sustainable design measures;
- operating hours of the business; and
- and access.

The applicant responded with additional detail and subject to some further conditions demonstrated compliance and consistency with the decision guidelines under the Industrial 2 Zone.

Conditions are proposed to increase landscaping and to show the type of vegetation and trees proposed on the site. The incorporation of rainwater gardens and canopy vegetation would assist

in cooling the industrial precinct. Conditions are recommended to ensure that the development is self-draining and must be connected to an approved point of discharge and meet water sensitive urban design principles of the “Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)”.

The proposed car parking numbers are reduced from the required amount by two spaces. The loss of two spaces is considered reasonable and acceptable as it includes the use of bicycle bays and is located close to bus stops along Griffith Street which is approximately 120m from the subject land.

The demand for car parking in the Industrial 2 Zone is minimal and the provision eight spaces will adequately service a low demand from staff and visitor to a warehouse building.

All loading and offloading activities will be conducted internally and are not proposed on the street nor in the proposed car park. Accessible car parking is provided within the car park area close to the front entry door.

Overall, the proposed use and development is consistent with the objectives of the Industrial 2 Zone.

GENERAL PROVISIONS

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

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

REFERRALS

| Authority | Response |
|--------------------------|--------------------------|
| Council's Infrastructure | Consent 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. The applicant was invited to attend this meeting and invited to address the Development Assessment Committee.

OPTIONS

- Issue a Planning Permit in accordance with the conditions in the recommendations 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 at VCAT.

CONCLUSION

The proposal for the use and development of the land for a warehouse in the Industrial 2 Zone is a reasonable and will not create unreasonable off site impacts.

All loading will take place inside the warehouse.

The reduction of two parking bays is a reasonable reduction given that the demand for car parking in the area is minimal. The proposal is recommended for approval subject to conditions contained within this report.

7.2 PA2022016 - USE AND DEVELOPMENT OF A DWELLING, OUTBUILDING WITH DOMESTIC ANIMAL HUSBANDRY (KEEPING AND BREEDING OF DOGS) AT LOT 1 ON TITLE PLAN TP953472C KNOWN AS MYRNIONG-KOROBEIT ROAD, KOROBEIT

Author: Jyoti Makan, Senior Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments:

1. Proposed Site Plan (under separate cover)
2. Floor and Elevation Plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2022016

Lodgement Date: 18 January 2022

Planning Officer: Jyoti Makan

Address of the land: Lot 1 on TP953472C – Myrniong-Korobeit Road, Korobeit

Proposal: Use and Development of a Dwelling, Outbuilding, with Domestic Animal Husbandry (keeping and breeding of dogs)

Lot size: 21.3ha

Why is a permit required? Use and development of a dwelling on a lot less than 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

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 PA2022016 for the Use and Development of a Dwelling, Outbuilding, with Domestic Animal Husbandry (keeping and breeding of dogs) at Lot 1 on Title Plan TP953472C known as Myrniong–Korobeit Road, Korobeit, on the following grounds:

1. The proposal is inconsistent with the purpose and objectives of the Farming Zone.
2. The proposal does not comply with the Planning Policy Framework of the Moorabool Planning Scheme relevant to the development and use of agricultural land.
3. The proposed development of the land will lead to the proliferation of dwellings in the Farming Zone.
4. The proposed cattle operation as the primary agricultural use does not justify the need for a dwelling on the land.
5. The proposed use and development does not represent the orderly planning of the area.

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

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 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

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| Application referred? | Yes, Greater Western Water, Melbourne Water, Southern Rural Water, Agriculture Victoria Department of Transport, Council's Environment, Emergency and Waste Management, Development Infrastructure, Assets, Environmental Health and Strategic Planning. |
|-----------------------|--|

| | |
|---|--|
| Any issues raised in referral responses? | Agricultural Victoria raised concerns regarding the domestic envelope and use in the Farming Zone. It was also mentioned that the dog breeding facilities require extensive care and maintenance. Council's Environmental Health had concerns over the filtration system and disposal of wastewater. |
| Preliminary concerns? | Only one wastewater disposal system is proposed to be used for both domestic (human) and animal husbandry purposes. The size of the domestic envelope. The use of the land changing from farming land to residential land and the precedent this will set for similar lots in the areas. |
| Any discussions with applicant regarding concerns? | Yes. |
| Any changes made to the application since being lodged? | Yes, the applicant submitted a Land Management Plan and a Farm Management Plan. Plans were amended to show buffer distance to dwellings, site layout and location of buildings. |
| Brief history. | Not applicable. |
| Previous applications for the site? | None. |
| General summary. | It is proposed to use and develop the land for a dwelling, an outbuilding for a cattle operation and conduct domestic animal husbandry to keep and breed dogs (five breeding dogs). Some of the concerns with the application related to the capacity of the land as farming land being used for residential purposes, narrow allotment, wastewater disposal system and soil degradation, water catchment quality and land management. The application was advertised. No objections were received. The primary agricultural use of land is for 30 Angus Cattle with a secondary use as dog breeding. The proposal is considered to lead to the proliferation of the farming zone. |
| 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 PA2022016 for the Use and Development of a Dwelling, Outbuilding, with Domestic Animal Husbandry at Lot 1 on Title Plan TP953472C known as Myrniiong-Korobeit Road, Korobeit, subject to the grounds contained within this report. | |

SITE DESCRIPTION

The site is zoned for farming purposes and is controlled by the Design and Development Overlay - Schedule 2 (Visual Amenity) and the Environmental Significance Overlay - Schedule 1 (Proclaimed Water Catchment Areas). The rear of the site is covered by Aboriginal Cultural Heritage Sensitivity.

The neighbouring property north of the site is currently vacant with cypress windbreak plantations centrally located and connecting to neighbouring lots to the north and south. All neighbouring land is in the Farming Zone. The subject site is located on the western side of Korobeit Road, Korobeit. The site is generally rectangular in shape, 21.3ha in area, 1108m deep and 189m wide along the Korobeit Road frontage.

The land is currently vacant except for fencing and improved pastures. The land slopes down to the west to a waterway and is currently used for grazing purposes.

Recent aerial photography shows that the proposed Western Renewable Link may run the whole length of the property adjacent to the northern property boundary occupying half the width of the site.



Figure 1: Site Map

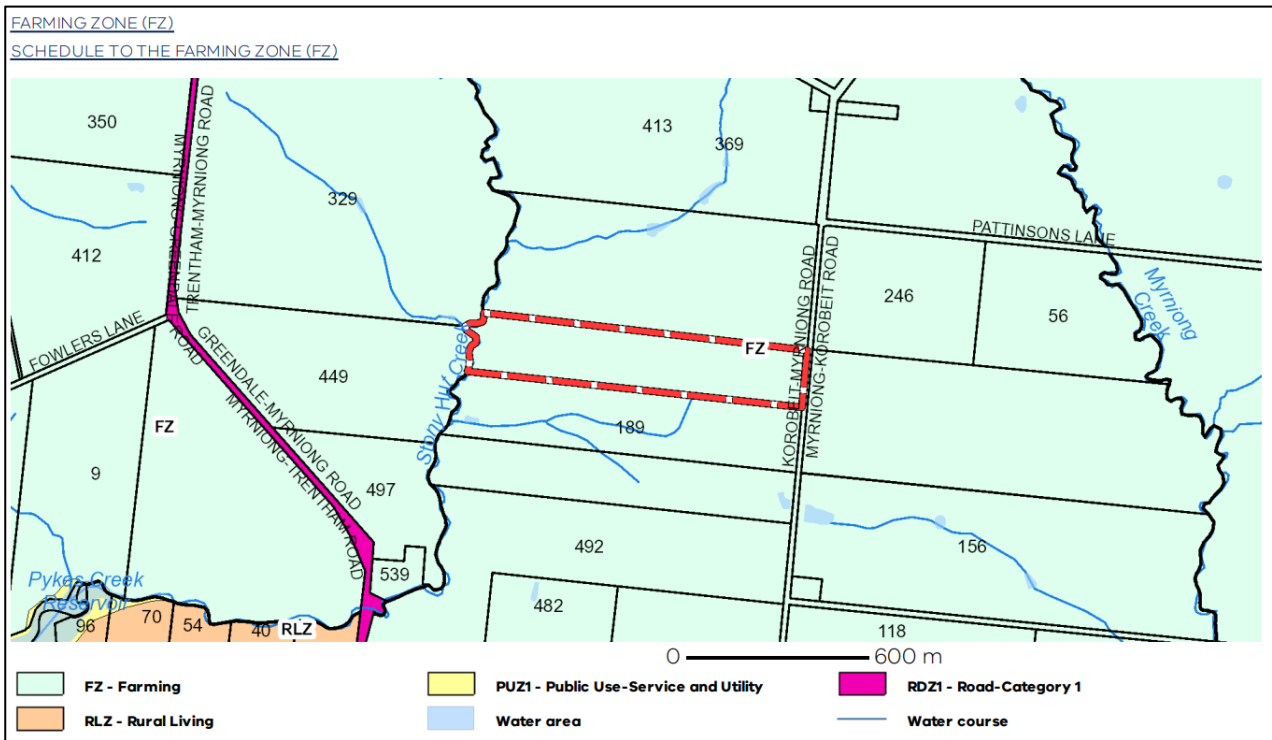


Figure 2: Zone Map

PROPOSAL

It is proposed to develop and use the site for a dwelling associated with cattle and for domestic animal husbandry (keeping and breeding of dogs).

The dwelling is proposed to be single storey and will contain four bedrooms and features normal to a dwelling, including a double garage. It will measure 29.8m wide and 16m in length. The dwelling would be setback 70m from the street boundary and 50m from the closest southern boundary.

The primary agriculture use of the site is for 30 Angus Cattle. The secondary agricultural use would be for domestic animal husbandry, being the breeding of five dogs with litters.

The domestic animal husbandry will involve construction of kennels which are proposed to be located approximately 80m to the north of the proposed dwelling and 90m from the front boundary. The side setback proposed is 20m (the side setback of the property faces north). The kennel would be 480sqm in area with a site office, storeroom, and pens (for the dogs to sleep and welp in). The materials used for the kennel facility would be Colourbond steel with acoustic plaster walls around the dog holding pens.

Six pens and an enclosed exercise yard are proposed in the external dog run. The pens would be constructed from Colorbond steel with the dog run/exercise yard area enclosed with 1.5m high hay bales. The dog run would be located to the west of the main kennel building and measure 1,580sqm in area. These pens would be located more than 500m from the nearest dwelling not in the same ownership. Three car parking spaces would service the dog facilities. Access to the building would be via a driveway extending from the proposed private dwelling.

Access to the dwelling and kennels would be via a new all-weather driveway located close to the southern boundary of the site. No significant vegetation would be impacted by the dwelling, new crossover or driveway.

BACKGROUND TO CURRENT PROPOSAL

Not applicable.

HISTORY

Not applicable.

PUBLIC NOTICE

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

No objections were received.

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 02.03-2 – Environmental and landscape values
- Clause 02.03-3 – Environmental risks and amenity
- Clause 02.03-4 – Natural resource management
- Clause 02.03-5 – Built environment and heritage
- Clause 02.03-6 – Housing
- Clause 11.01-1R – Settlement - Central Highlands
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.03-3S – Peri-urban areas
- Clause 13.02-1S – Bushfire planning
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-2S – Water quality
- Clause 15.01-6S – Design for rural areas
- Clause 16.01-3S – Rural residential development

The proposal does not comply with the relevant Municipal Planning Strategy and PPF clauses outlined in the table below:

| Clause | Title | Response |
|----------------|---|---|
| Clause 02.03-4 | Natural resource management – Agriculture | The farming enterprise comprising the management of breeding of dogs and cattle does not justify the need for a dwelling. |

| | | |
|--------------------|--|---|
| Clause 11.01-1L-01 | Settlement in Moorabool | Altering the use of the land to residential does not meet the objectives of settlement patterns for Moorabool. |
| Clause 11.03-3S | Peri-urban areas | The proposal goes against this policy which discourages dispersed settlement and encourages the protection of agricultural land. |
| Clause 14.01-1S | Protection of agricultural land | The nature of farming enterprise does not sufficiently justify the need for a dwelling. The development reduces the land available for potential agricultural production. |
| Clause 16.01-3S | Rural residential development | The proposed dwelling lacks strategic justification as required by this clause. |
| Clause 16.01-3L-01 | Rural residential development in Moorabool | This strategy aims to discourages rural residential development if it will encroach on high quality productive land or impact on waterways. If rural land is to be used for residential purposes, it should be close to existing towns and urban centres. The proposed application does not meet the requirements of this clause. |

ZONE

Farming Zone

Pursuant to Clause 35.07-1 a dwelling is a Section 2 use on a lot of less than 40ha.

Pursuant to Clause 35.07-4 a permit is required for building and works associated with a Section 2 use.

Overall, the proposal is inconsistent with the purpose of the zone.

OVERLAYS

Environmental Significance Overlay - Schedule 1

Pursuant to 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 authority had no objection to the application.

Design and Development Overlay - Schedule 2

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

Relevant Policies

Council's Rural Growth Policy

Council's Rural Growth Policy Statement was adopted by Council on 19 September 2012. The document applies to all land in Farming Zone. 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 not shown on Map 1 of the Council Rural Growth Policy Statement.

The policy requires justification for the dwelling based on the proposed agricultural activity.

Whilst the proposal includes agricultural activities, it is deemed that the success of the cattle enterprise does not require 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, where there is physical and social infrastructure and services.
- Recognise that there are substantial existing lots under 40ha capable of supporting the viable operation of agricultural enterprises.
- Promote a rural housing market that meets the needs of the Shire's rural communities.
- Land parcels for the proposed on-farm living dwellings are to have a minimum lot size of 8ha as identified in Map 1.

The proposal does not align with the above principles as the site is less than 40ha.

DISCUSSION

Farming Zone

The proposed use and development for a dwelling is inconsistent with the relevant provisions of the Scheme, the Municipal Planning Strategy, and the Farming Zone. Additionally, concerns exist regarding the impact of the proposal on the health of waterways, the wellbeing of animals and soil degradation of the land.

The fundamental concern with the application relates to the introduction of a dwelling in the Farming Zone, as the submitted Farm Management Plan does not justify the need for a dwelling to support the farming enterprise. The secondary business of domestic animal husbandry (keeping and breeding of dogs), would be more appropriate in the Farming Zone, on land with a pre-existing dwelling. Furthermore, the introduction of domestic animal husbandry does not provide reasonable grounds to support the dwelling in this location, rather, this introduction increases the domestic envelope required.

A Farm Management and Land Management Plan were submitted to support the application. The agricultural enterprise proposed includes retaining the current stock of 20 breeding cows on the property with the introduction of an additional 10 breeding cows and a stud bull in the future (bringing the total to 30). No cropping is proposed with 19ha of the land to be used for grazing only.

As identified in the application, breeding Staffordshire dogs is a secondary business on this property. Five breeding Staffordshire Bull Terriers would be kept on the property which are expected to achieve four to five live puppies per litter. The breeding objective is seven litters per year.

The application states that 1ha of the land would be retained for the domestic zone and an additional 2ha retained for planting of native and exotic vegetation (for windbreaks and firewood).

The proposal (dwelling and domestic envelope) limits the availability of land for agricultural uses and will permanently change the use of the land from farming to residential. The site is constrained and is inappropriate for a residential use, as the rear of the property is close to a major waterway and is covered by the aboriginal cultural heritage significance overlay.

If approved the application would create a precedent leading to further a proliferation of dwellings in Farming Zone land. Neighbouring allotments are narrow and smaller than 40ha thus allowing this development could create settlement patterns in conflict with the objectives of the Moorabool Planning Scheme.

In the VCAT decision *Morabito V Macedon Ranges* [2018] VCAT 1313 which considered the need for a dwelling on a 16.25ha property. It refers to providing opportunities for people who wish to live on lots that are larger than those that are available in the existing towns and outside the existing settlements to enjoy rural lifestyle environments. These opportunities should be provided in planned settlements where appropriate infrastructure and services can be provided and where precincts do not consume valuable agricultural land or intrude into attractive landscapes. The opportunity to enjoy rural lifestyle should not be achieved through allowing dwellings to be constructed on existing agricultural properties, thereby removing such land from agricultural use. It is also mentioned that the policies aim to prevent smaller agricultural lots being used as rural lifestyle lots because such use fragments or prevent the consolidation of smaller lots into larger ones. Ad hoc incremental development of small lots for dwellings can encourage land values to rise, thereby making consolidation of agricultural lots more difficult. Dwellings may also be incompatible with agricultural activities on adjoining and nearby land.

Agricultural land is seen as a rare and valuable resource that needs to be preserved for agriculture in the long term. According to advice received from Agriculture Victoria, the carrying capacity of the land would be maximised under a grazing system at no more than 20 breeder cows with calves at foot.

The use and development of the site for a dwelling is not considered to meet the objectives of the Farming Zone. Therefore, a recommendation to refuse the application is made on the grounds mentioned in this report.

Major Electricity Transmission Line

Furthermore, the northern boundary is possibly constrained by future major electricity transmission lines. Council's adopted High Voltage Transmission Line Setback Policy recommends that a residence should have a setback distance of 300m from the edge of the overhead transmission line easement where it is 500kV or greater.

GENERAL PROVISIONS

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

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

REFERRALS

| Authority | Response |
|--------------------------------------|--------------------------|
| Greater Western Water | Consent with conditions. |
| Southern Rural Water | Consent with conditions. |
| Melbourne Water | Consent. |
| Agriculture Victoria | Letter of Advice. |
| Council's Development Infrastructure | Consent with conditions. |
| Council's Environmental Health | Consent with conditions. |
| Council's Environmental Management | Consent with conditions. |

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

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 support the application, issue a Planning Permit with conditions. The Committee will need to demonstrate how the proposal complies with the Moorabool Planning Scheme.

CONCLUSION

The proposed use and development of the site for a dwelling is inconsistent with the objectives of the Moorabool Planning Scheme, in particular planning policy framework relating to development in rural areas, and the Farming Zone provisions.

The farming enterprise and land management activities proposed do not justify a dwelling on the site.

The proposal in its current form would restrict the longer-term agricultural viability of the land by reducing the land available for agriculture, therefore, permanently changing the use of the land to a rural residential use. Therefore, it is recommended that the application not be supported.

7.3 PA2022078 - USE AND DEVELOPMENT FOR A DWELLING AT SPARGO-BLAKEVILLE ROAD, BLAKEVILLE

Author: Thomas Tonkin, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments:

1. Proposed plans (under separate cover)
2. Blakeville Restructure Plan (under separate cover)

APPLICATION SUMMARY

Permit No: PA2022078

Lodgement Date: 4 May 2022

Planning Officer: Tom Tonkin

Address of the land: Spargo-Blakeville Road, Blakeville

Proposal: Use and Development of a Dwelling

Lot size: 2.06ha (combined parcels)

Why is a permit required? Clause 35.06 Rural Conservation Zone – Use and development of a dwelling; Clause 44.06 Bushfire Management Overlay – Buildings and works associated with accommodation; Clause 45.05 Restructure Overlay – Buildings and works

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to grant Planning Permit PA2022078 for the Use and Development of a Dwelling at Crown Allotments 5, 6, 7, 8, 9 and 10, Section 2; Crown Allotment 2, Section 5; and Crown Allotments 1, 2 and 3, Section 14, Parish of Moorabool East known as Spargo-Blakeville Road, Blakeville, on the following grounds:

1. The proposed development does not propose a restructured lot in accordance with the Clause 45.05 of the Moorabool Planning Scheme.
2. The proposal does not comply with the objectives of Restructure Overlay, Schedule 1 of the Moorabool Planning Scheme.
3. The proposed use and development does not represent the orderly planning of Blakeville.

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

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 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

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| Application referred? | Yes, Central Highlands Water, Greater Western Water, Southern Rural Water, Melbourne Water, Country Fire Authority and Council's Development Infrastructure and Environmental Health. |
| Any issues raised in referral responses? | Country Fire Authority requested further information. |
| Preliminary concerns? | Clarification was sought regarding the inconsistency with required lot consolidation as shown in the approved Blakeville Restructure Plan. Additionally, further information was requested regarding title documents and proposed land management. |

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| Any discussions with applicant regarding concerns? | Yes. |
| Any changes made to the application since being lodged? | Yes, submission of a Land Management Plan and legal advice in support of the proposed application. |
| Brief history. | Not applicable. |
| Previous applications for the site? | None. |
| General summary. | <p>It is proposed to use and develop the site for a dwelling.</p> <p>The application was advertised, and no objections were received.</p> <p>As part of the proposal, the 10 lots comprising the subject site would be consolidated, however the proposed restructured lot does not accord with the Blakeville Restructure Plan which is an Incorporated Document in the Moorabool Planning Scheme.</p> <p>Legal advice obtained by Council agreed the proposal does not comply with the Restructure Overlay. For this reason, the application is not supported.</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 a Refusal to grant Planning Permit PA2022078 for the Use and Development of a Dwelling at Crown Allotments 5, 6, 7, 8, 9 and 10, Section 2; Crown Allotment 2, Section 5; and Crown Allotments 1, 2 and 3, Section 14, Parish of Moorabool East known as Spargo-Blakeville Road, Blakeville, on the grounds included in this report.</p> | |

SITE DESCRIPTION

The subject site and immediate surrounding land are in the Rural Conservation Zone and characterised by a mix of forested and cleared land. The pattern of subdivision is highly irregular, with a small number of lots developed with single dwellings. Surrounding Blakeville in all directions is forested land located in a Public Conservation and Resource Zone.

To the east of the site is an unnamed waterway contained within a Crown land reserve and to the north of the site are dwellings fronting Herrods Lane. To the west is a vacant forested parcel of land and to the south is cleared vacant land.

The subject site is identified as Crown Allotments 5, 6, 7, 8, 9 and 10, Section 2; Crown Allotment 2, Section 5; and Crown Allotments 1, 2 and 3, Section 14, Parish of Moorabool East and known as Spargo-Blakeville Road, Blakeville. The 10 lots are in the same ownership, have a total area of 2.06ha and are cleared of vegetation, with gently undulating topography (currently used for grazing purposes).



Figure 1: Aerial photograph of the subject site comprising of 10 lots

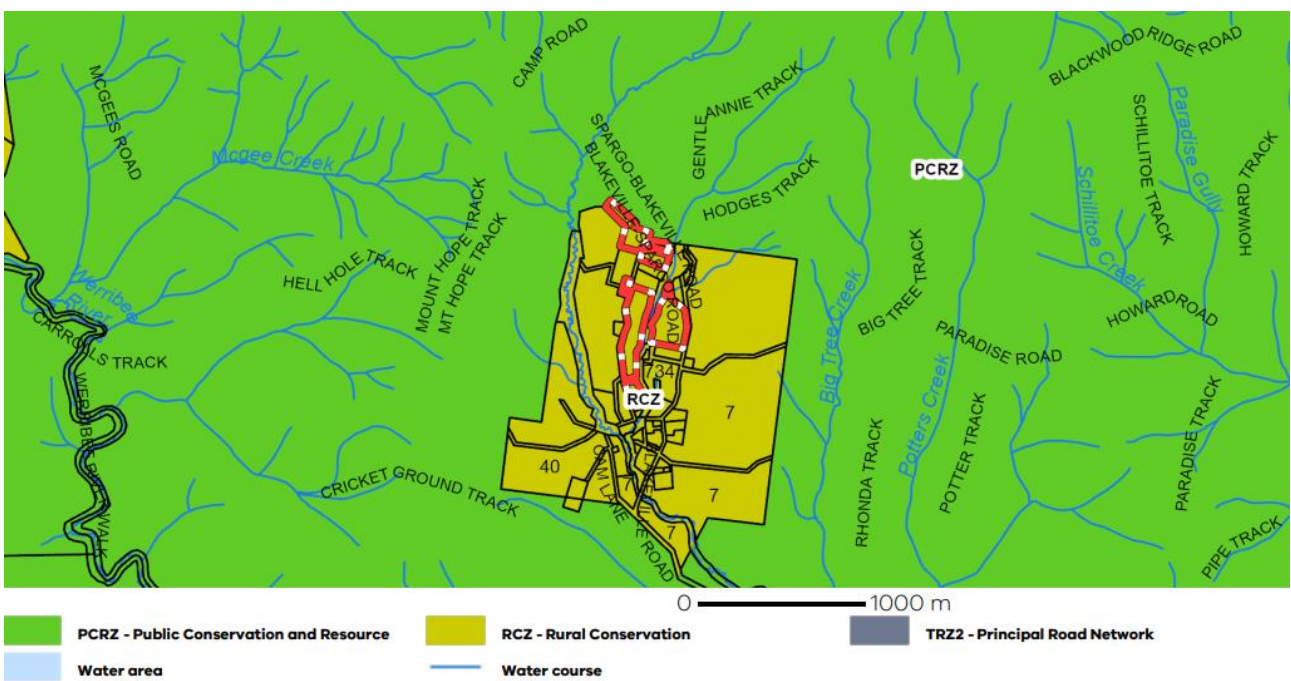


Figure 2: Zone map

PROPOSAL

It is proposed to use and develop the site for a dwelling located on Crown Allotment 3, Section 14, Parish of Moorarbool which is the northern most lot forming part of the subject site, abutting Herrods Lane.

The proposed dwelling would have a 40m front setback from Herrods Lane, be single storey and comprise of three bedrooms, two bathrooms and the usual amenities, with car parking provided in an attached double garage. The dwelling would be constructed of brick with a low pitched hipped Colorbond roof. Vehicle access would be via a proposed crossover to Herrods Lane leading to a proposed accessway with vehicle turning area in the front setback.

The 10 lots comprising the subject site would be consolidated.

BACKGROUND TO CURRENT PROPOSAL

Not applicable.

HISTORY

Not applicable.

PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners and occupiers by mail and a sign erected on site.

No objections were received.

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 02.03-2 – Environmental and landscape values
- Clause 02.03-3 – Environmental risks and amenity
- Clause 02.03-4 – Natural resource management
- Clause 02.03-5 – Built environment and heritage
- Clause 11.01-1R – Settlement - Central Highlands
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.03-3S – Peri-urban areas
- Clause 13.02-1S – Bushfire planning
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-2S – Water quality
- Clause 15.01-2L-01 – Building design
- Clause 15.01-5L – Landscape and neighbourhood character
- Clause 15.01-6S – Design for rural areas

- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural residential development in Moorabool

ZONE

Rural Conservation Zone

Pursuant to Clause 35.06-1 a dwelling is a Section 2 use which requires a permit.

Pursuant to Clause 35.06-5 a permit is required for building and works associated with a Section 2 use.

Overall, the proposal is consistent with the purpose of the zone.

OVERLAYS

Design and Development Overlay - Schedule 2

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

Bushfire Management Overlay

Pursuant to Clause 44.06-2 a planning permit is required to construct buildings and works associated with Accommodation (which includes a Dwelling).

Subject to conditions the proposal is consistent with the purpose of this overlay.

Restructure Overlay

Pursuant to Clause 45.05-2 a permit is required to construct a dwelling. A permit must be in accordance with a restructure plan for the land listed in a schedule to the overlay.

In this instance, the relevant plan is the Blakeville Restructure Plan which identifies that the lot proposed to be built on must be consolidated with nine other lots and a section of an unmade road reserve.

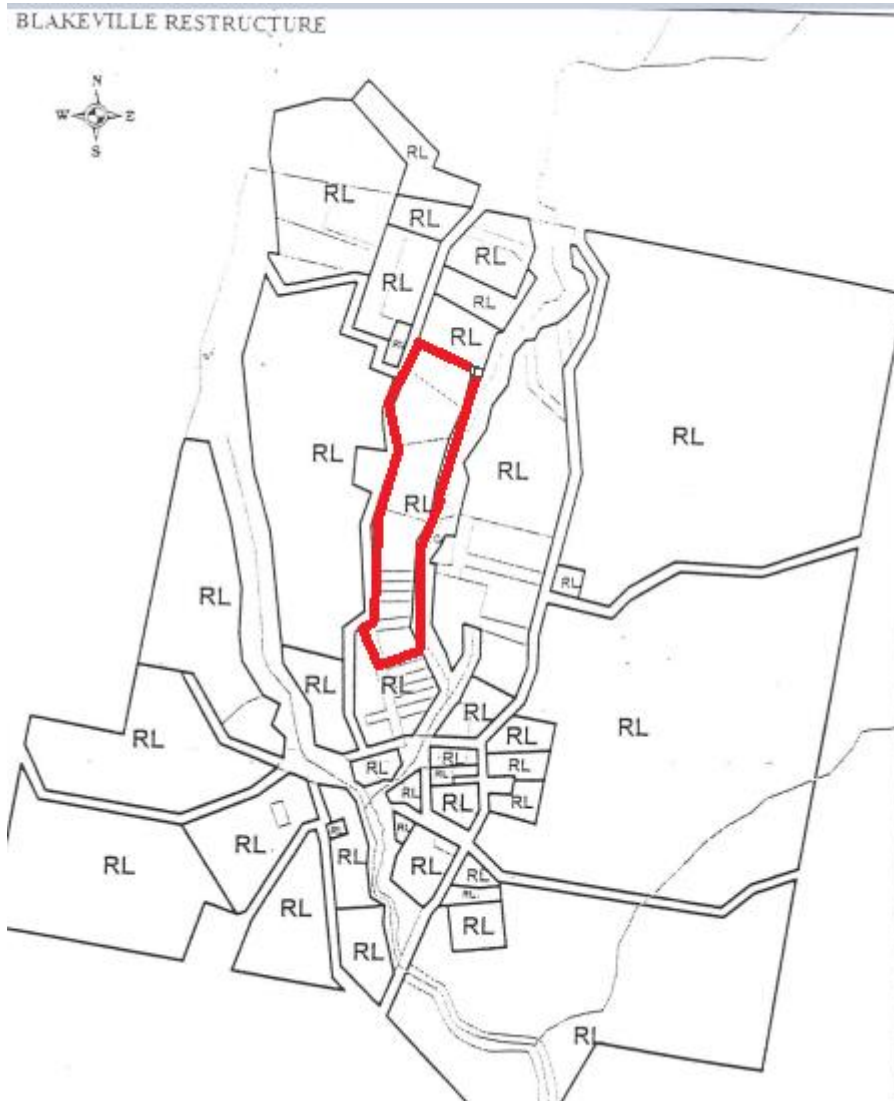


Figure 3: Blakeville Restructure Plan with the subject Restructured Lot (RL) marked red

Particular Provisions

Clause 53.02 Bushfire Planning

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

Relevant Policies

Not applicable.

DISCUSSION

Rural Conservation Zone

The proposed use and development do not affect any biodiversity value in the area which is largely comprised of cleared land. The location of the dwelling, setback from boundaries and the use of external material such as Colorbond roofing complements the rural setting.

The proposal is generally consistent with most of the provisions of the Moorabool Planning Scheme. It is noted that the subject site is in a Special Water Supply Catchment and is unsewered,

and accordingly the applicant submitted a Land Capability Assessment in support of onsite wastewater treatment. All the water catchment authorities provided consent to the proposal.

The subject site is affected by a Bushfire Management Overlay and the applicant submitted a Bushfire Management Statement, based on which the proposed dwelling would be constructed to BAL 29 with 39m of defendable space. No vegetation removal would be required to meet the defendable space requirements.

Vehicle access from Herrods Lane is directly available with a turning area for fire trucks in the front setback area of the dwelling and direct access to a 10,000L static water supply for firefighting purposes. The proposed use and development mitigates bushfire risk to human life.

Restructure Overlay

The key concern with this application for the use and development of a dwelling relates to the proposed restructured lot not being in accordance with the Blakeville Restructure Plan under the Restructure Overlay, an incorporated document in the Moorabool Planning Scheme.

The purpose of the Restructure Overlay is as follows:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify old and inappropriate subdivisions which are to be restructured.
- To preserve and enhance the amenity of the area and reduce the environmental impacts of dwellings and other development.

Pursuant to Clause 45.05-2 (Restructure Overlay), a permit is required to construct a dwelling. A permit must be in accordance with a restructure plan for the land listed in a schedule to the overlay, in this instance the Blakeville Restructure Plan. There are no relevant exemptions to allow a development not in accordance with this requirement.

The restructured lot comprising the subject site in the Blakeville Restructure Plan includes 10 lots and a section of unmade road reserve. The section of road in question is identified as a Government Road. It is noted that the road is not under licence from the Department of Energy, Environment and Climate Action (DEECA). The required inclusion of the road reserve in the restructured lot is disputed by the applicant after receiving their own legal advice.

Council has obtained legal advice which confirms that the inclusion of the road reserve as part of the restructure lot is intentional and consistent with other restructure lots in Blakeville and in other schedules of the Restructure Overlay. This intention is further reinforced as road reserves which are clearly excluded from the restructured lots are either designed to maintain current access or to allow for future access. Furthermore, excluding all unmade road reserves would be inconsistent with the holistic purpose of a Restructure Overlay in managing inappropriate historic subdivisions.

The applicant is unable to comply with the provisions of the Restructure Overlay which in this instance required the consolidation of 10 lots and part of an unmade road reserve. Council must refuse the application as it is prohibited.

GENERAL PROVISIONS

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

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

REFERRALS

| Authority | Response |
|--------------------------------------|--------------------------|
| Greater Western Water | Consent with conditions. |
| Southern Rural Water | Consent with conditions. |
| Central Highlands Water | Consent with conditions. |
| Melbourne Water | Consent. |
| Country Fire Authority | Consent with conditions. |
| Council's Development Infrastructure | Consent with conditions. |
| Council's Environmental Health | Consent with conditions. |

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

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, issue a Planning Permit with conditions. The Committee will need to consider the legal advice obtained and the proposal non-compliance with the Moorabool Planning Scheme.

CONCLUSION

The proposal is inconsistent with the relevant provisions of the Moorabool Planning Scheme, specifically the Restructure Overlay, Clause 45.05.

The proposed use and development of the land for a dwelling does not accord with the Blakeville Restructure Plan which requires the consolidation of lots in accordance with the plan, an Incorporated Document of the Moorabool Planning Scheme. Separate legal advice obtained by Council has confirmed the proposal cannot be supported as the consolidation is inconsistent with the restructured lot. It is therefore recommended the application be refused.

7.4 PA2022189 - DEVELOPMENT AND USE OF A DWELLING, OUTBUILDINGS AND THE REMOVAL OF VEGETATION FOR A GOAT DAIRY FARM AT CROWN ALLOTMENT 1K ON TP330797W, BOUNDARY ROAD, WARRENHEIP

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: PA2022189

Lodgement Date: 21 September 2022

Planning Officer: Jyoti Makan

Address of the land: Crown Allotment 1K on TP330797W, Boundary Road, Warrenheip

Proposal: Development and Use of a Dwelling, Outbuildings and Removal of Vegetation for a Goat Dairy Farm

Lot size: Approximately 8.2ha

Why is a permit required? Clause 35.07-1 Farming Zone – Use of a land for dwelling on a lot less than 40ha; Clause 35.07-4 Farming Zone – Buildings and Works for a Section 2 use; and Clause 42.01-2 Environmental Significance Overlay Schedule 1 – Buildings and Works (Dwelling, Shed and Removal of Vegetation)

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 PA2022189 for the Development and Use of a Dwelling, Outbuildings and Removal of Vegetation for a Goat Dairy Farm at Crown Allotment 1K on Title Plan TP330797W, Boundary Road, Warrenheip, subject to the following grounds:

1. The proposed buildings and works leads to loss of vegetation and habitat within the Environmental Significant Overlay Schedule 1 and the Farming Zone.
2. The residential use of the land removes agricultural productivity.
3. The proposed development of the land will lead to the proliferation of dwellings in the Farming Zone.
4. The proposal does not meet the strategies and objectives of the Planning Policy Framework, Operations Provisions, Overlays and Zoning of the land.

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

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.

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

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|--|---|
| Application referred? | Yes, Central Highlands Water, Country Fire Authority (CFA), Agricultural Victoria, Department of Energy, Environment and Climate (DEECA), Corangamite Catchment Management Authority and Council's Environmental Health, Development Infrastructure and Environmental Management. |
| Any issues raised in referral responses? | Vegetation loss, dwelling siting, unsustainable agricultural practice, and the proliferation of dwellings on agricultural land. |

| | |
|--|--|
| Preliminary concerns? | Biodiversity and habitat loss, siting of buildings, limited site area for agricultural production after buildings are developed and sustainability of the agricultural practices. |
| Any discussions with applicant regarding concerns? | Yes. |
| Any changes made to the application since being lodged? | Yes, the submitted Farm Management Plan was revised and changes were made to the Native Vegetation Management Report. |
| Brief history. | Not applicable. |
| Previous applications for the site? | None. |
| General summary. | <p>The proposal is made for a dwelling, two outbuildings, and removal of native vegetation. The application was advertised, and no objections were received.</p> <p>The proposal does not encourage sustainable agricultural practices as it removes the land that could be set aside for farming.</p> <p>The siting of the residential dwelling increases biodiversity losses.</p> <p>Overall, there is inadequate justification for a dwelling on a small lot in the Farming Zone.</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 PA2022189 for the Development and Use of a Dwelling, Outbuildings and Removal of Vegetation for a Goat Dairy Farm at Crown Allotment 1K on TP330797W, Boundary Road, Warrenheip, subject to the grounds within this report. | |

SITE DESCRIPTION

The subject site and surrounds are in the Farming Zone and are located approximately 3kms from the Western Freeway which is accessible via Warrenheip Road. Dwellings exist within the vicinity on small lots of 1-2ha or lots larger than 40ha.

The site slopes downwards towards the southwest corner of Foos Lane. The site contains vegetation (scattered in the middle of the site, and rows of trees along the boundaries of the site), a recently constructed vehicle crossover and a partially completed driveway. A powerline runs north south through the property.

A dam exists on the Foos Lane boundary which is fed by a gully in the southwest corner. A watercourse flows from the southeast towards the southwestern corner of the site.



Figure 1: Aerial image of the site

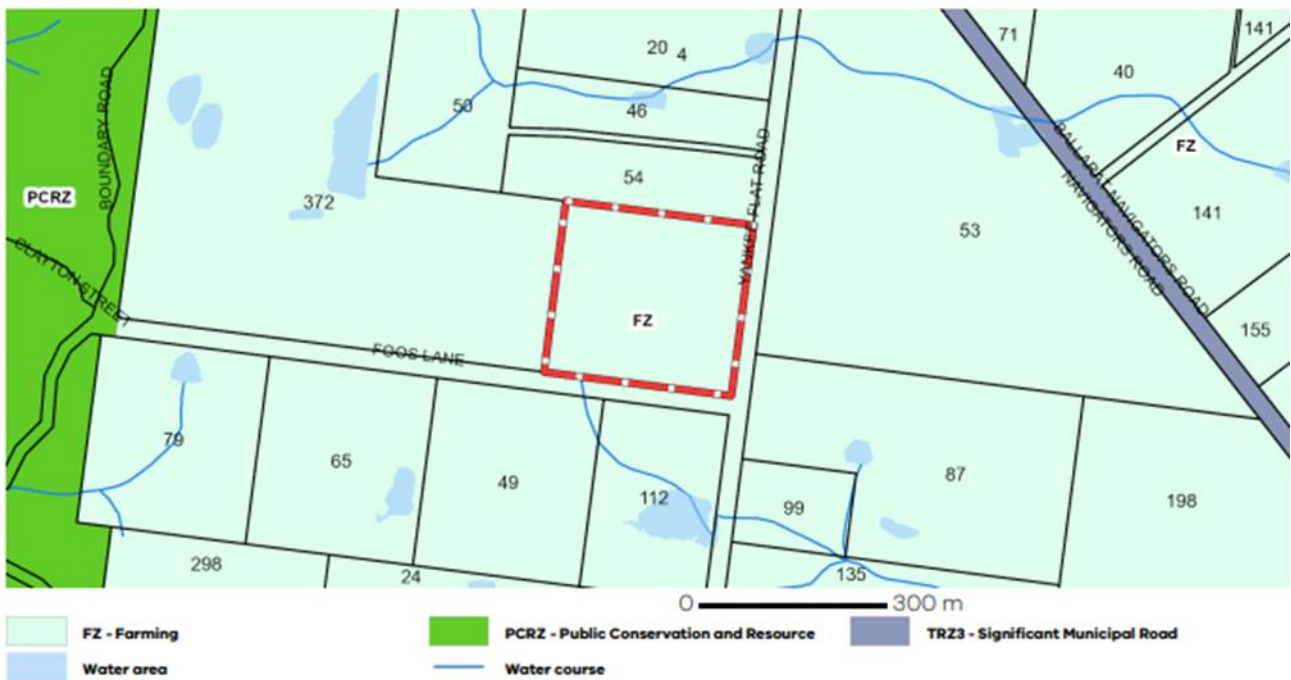


Figure 2: Zone Map

PROPOSAL

The proposal is for the development and use of a dwelling, outbuildings, and removal of native vegetation.

The dwelling is a four-bedroom weatherboard house. Two 20m X 9m sheds are proposed north of the dwelling, one for the proposed for the goat diary (milking shed and cheese room) and the other for machinery and storage.

The agricultural activity proposed to justify the dwelling is predominately goat dairy farming, consisting of 30 goats. Other portions of the land will be used as a vegetable garden and free-range chicken for personal use only.

The infrastructure proposed is the milking shed, hayshed and kid rearing facility. Boundary fencing is underway and internal fencing will be constructed.

Water is proposed to be sourced from the small dam and water tanks. It is proposed that the 180sqm shed will be an animal shelter, milking and a cheese room.

All effluent management is via a septic tank system, which will generate 50 litres of waste daily during the milking and clean-up process. All the whey by-products will be fed to the goats and the goat diary effluent is considered grey water and will be used to irrigate pastures when required.

Access is proposed in accordance with the Country Fire Authority requirements with a T-turning area near the dwelling. Access will be from Foos Lane and will extend to the sheds.

The total area native vegetation removal proposed is at 0.0346ha.

PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners and occupiers by mail and a sign erected on site.

No objections were received.

BACKGROUND TO APPLICATION:

The application did not proceed to the Development Committee Meeting of 15 March 2023 after DECCA undertook a site inspection which identified recent removal of native vegetation. DECCA required a revised Native Vegetation Management report, which was revised by the applicant, and it was referred to DECCA.

DECCA reviewed the report, however, are not a determining referral authority and therefore were not required to provide conditions under Clause 52.17.

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 (in part) are:

- Clause 02.03-2 – Environmental and landscape values
- Clause 02.03-3 – Environmental risks and amenity
- Clause 02.03-4 – Natural resource management
- Clause 02.03-5 – Built environment and heritage
- Clause 02.03-6 – Housing

- Clause 11.01-1R – Settlement - Central Highlands
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.03-3S – Peri-urban areas
- Clause 13.02-1S – Bushfire planning
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-2S – Water quality
- Clause 15.01-6S – Design for rural areas
- Clause 16.01-3S – Rural residential development

The proposal does not comply with the relevant Municipal Planning Strategy and PPF clauses outlined in the table below:

| PPF | Title | Response |
|-----------------|--|--|
| Clause 14.01-1S | Protection of agricultural land | The proposal removes land from the primary use of the land for agriculture. Residential development is not appropriate in this location. |
| Clause 14.01-1L | Agriculture, rural dwellings and subdivision | The proposal adversely affects and constrains existing farming land with the introduction of a dwelling and associated servicing envelope. |
| Clause 14.01-2S | Sustainable agriculture land use | The proposal does not ensure that agricultural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources. |
| Clause 13.02-1S | Bushfire Planning | The proposal does not direct population growth and development to low-risk urban locations where human life can be better protected from the effects of bushfire. |
| Clause 12.05 | Environmentally sensitive areas and Landscapes | The proposal hinders the link of existing vegetation towards the heavily vegetated reserve in the west, therefore fragmenting habitat and leading to cumulative impacts. |
| Clause 12.01-2S | Native vegetation management | Although an intermediate pathway is used, patches of vegetation at the corner of Foos Lane and Yankee Flat Road will be disturbed by the removal of nearby patches. |

ZONE

Farming Zone

Pursuant to Clause 35.07-1 a dwelling is a Section 2 use on a lot of less than 40ha.

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

Overall, the proposal is inconsistent with the purpose of the zone.

OVERLAYS**Environmental Significant Overlay – Schedule 1**

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

Bushfire Management Overlay

Pursuant to Clause 44.06-2 a permit is required for the use and development of the land for accommodation.

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.

Particular Provisions**Bushfire Planning**

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

Native Vegetation (Clause 52.17)

The purpose of this Clause is to ensure that there is no net loss to biodiversity because of the removal, destruction or lopping of native vegetation. A planning permit is required to remove native vegetation.

Relevant Policies**Council's Rural Growth Policy**

Council's Rural Growth Policy Statement was adopted by Council on 19 September 2012. The document applies to all land in Farming Zone. 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 not shown on Map 1 of the Council Rural Growth Policy Statement.

The policy requires justification for the dwelling based on the proposed agricultural activity.

Whilst the proposal includes agricultural activities it is deemed that the success of the goat dairy 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 proposal does not align with the above principles.

DISCUSSION

Farming Zone

The proposed use and development for a dwelling is inconsistent with the relevant provisions of the Scheme, the Municipal Planning Strategy, and the Farming Zone. Additionally, concerns exist regarding the siting of the proposed buildings due to the site constraints of vegetation, size, slope, and access.

The proposal does not meet the purpose of the Farming Zone as there is insufficient justification for the proposed dwelling. The keeping of 30 goats for dairy production does not justify the need for a dwelling.

The proposed dwelling will fragment agricultural land and will lead to a proliferation of dwellings in the Farming Zone, undermining existing farming operations on the site and in the surrounding area. The Rural Living Zone is approximately 6kms from the subject site which caters for rural residential living.

Agriculture Victoria reviewed the submitted Farm Management Plan and noted that a dwelling is not required to sustain the proposed farming activities. Their advice furthermore identified numerous information gaps, such as:

- No detail on whether the effluent system is combined with the dwelling septic system and there is no account of dry manure and how it will be managed and utilised.
- The waste management from the cheese room is not addressed.

- The capital contribution estimates, and operating budgets do not correlate with the annual costing rates.
- No water source estimates for the on-farm cheese room were submitted, despite the Farm Management Plan been revised.

Agricultural Victoria suggested that there may be difficulties sustaining the long-term operation of the farming business.

The use and development of the site for a dwelling is not considered to meet the objectives of the Farming Zone. Therefore, a recommendation to refuse the application is made on the grounds mentioned in this report.

Bushfire Planning

Bushfire planning (Clause 53.02 and Clause 13.02) seeks to ensure that any settlement growth and development approval can implement bushfire protection measures without unacceptable biodiversity impacts.

The submitted Bushfire Management Plan demonstrates there are adequate measures to protect the dwelling with a sufficient defendable space in compliance with the objectives of the Bushfire Management Overlay.

The Vegetation Management Plan shows a different location of water tanks when compared to the proposed site plans. This could be addressed through the submission of revised plans.

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 |
|--|--|
| Section 55 – Determining Authorities | |
| Country Fire Authority | Consent with Conditions. |
| Central Highlands Waters | Consent with conditions. |
| Corangamite Catchment Management Authority | Consent with conditions. |
| Department of Energy, Environment and Climate Action | Consent with conditions. |
| Section 52 – Recommending Authorities | |
| Council's Infrastructure | Consent with conditions. |
| Agriculture Victoria | Letter of advice. |
| Council's Environmental, Emergency and Waste Unit | Concerns with siting of the dwelling and loss of vegetation. |

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

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, issue a Planning Permit with conditions. The Committee will need to demonstrate how the proposal complies with the Moorabool Planning Scheme.

CONCLUSION

The proposed use and development of the subject site for a dwelling is inconsistent with the objectives of the Moorabool Planning Scheme, in particular planning policy framework relating to development in rural areas, and the Farming Zone provisions.

The proposed dwelling is not sited to reduce and minimise the extent of vegetation loss on the site.

The site is not considered to have the capacity to cater for several outbuildings, a dwelling, wastewater systems and spaces for goat grazing to sustain long term goat dairy production.

Therefore, it is recommended that the application not be supported.

8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS

9 UPDATE ON VCAT DECISIONS

10 OTHER BUSINESS

11 DATE OF NEXT MEETING

Wednesday 20 September 2023.

12 MEETING CLOSE