

Moorabool
Shire Council

AGENDA

Development Assessment Committee Meeting

Wednesday, 18 October 2023

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

Date: Wednesday, 18 October 2023

Time: 6.00pm

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

**Derek Madden
Chief Executive Officer**

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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**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 PA2023004 - USE AND DEVELOPMENT FOR RURAL WORKER ACCOMMODATION AT 144 WOOLPACK ROAD, MADDINGLEY

Author: Thomas Tonkin, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Proposed plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2023004

Lodgement Date: 11 January 2023

Planning Officer: Thomas Tonkin

Address of the land: 144 Woolpack Road, Maddingley

Proposal: Use and Development for Rural Worker Accommodation

Lot size: 20.02ha

Why is a permit required? Clause 35.07 Farming Zone – use and development for rural worker accommodation; development within 100m of a waterway; development associated with accommodation located 500m from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990; Clause 42.01 Environmental Significance Overlay, Schedule 2 – buildings and works

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 PA2023004 for Use and Development for Rural Worker Accommodation at Lot 3 on PS607997S, known as 144 Woolpack Road, Maddingley, subject to the following conditions:

Endorsed Plans:

1. The development and use 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. All buildings and works must be located clear of any easements or septic tank and effluent lines unless written approval is provided by the relevant authority.

Operational:

2. No more than 55 persons shall be accommodated at any given time except with the written consent of the Responsible Authority.
3. The approved development must only be used to temporarily accommodate workers employed to work on land farmed by Boratto Farms.

4. Except where no permit is required under the Moorabool Planning Scheme for the use of land, no accommodation except as approved under this permit shall be provided on the land.
5. Provision must be made on the land for the storage and collection of garbage and other solid waste. This area must be graded and drained, as appropriate, and screened from public view to the satisfaction of the Responsible Authority.
6. All designated car parking spaces must be available at all times for vehicle parking and used for no other purpose.

Amenity:

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, waste water, waste products, grit or oil;
 - d) presence of vermin; and
 - e) any other way.
8. Any security alarm or similar device installed must be of a silent type.
9. Any external lighting must be provided with suitable baffles and located so that no direct light is emitted outside the site.

Accommodation Requirements:

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

Materials and Colour:

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

Vegetation Removal:

15. Unless otherwise exempt under the Moorabool Planning Scheme, vegetation must not be removed, destroyed or lopped without further planning approval.

Development Infrastructure:

16. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over any drainage pipes and easements on the property.
17. The stormwater drainage from the proposed building extension and any new impervious surfaces must be disposed of to the satisfaction of the Responsible Authority. Overflows from on-site storage systems must be directed away from any wastewater disposal areas. A Stormwater Point of Discharge permit must be obtained from the Assets Unit of the Responsible Authority prior to the commencement of the works associated with the permit.
18. 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.
19. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991).

Permit Expiry:

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

Permit Note:

Environmental Health: The proposed wastewater treatment system for the rural worker accommodation is a prescribed A03 activity per Schedule 1 of the *Environment Protection Regulations 2021* and requires a permission from EPA.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Not required.
Number of objections:	One.
Consultation meeting:	Yes, the proponent and objector met to discuss the proposal, but the objection was not resolved.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

Priority 2.4: Grow local employment and business investment

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Thomas Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, Greater Western Water, Melbourne Water, Environmental Protection Authority (EPA), Department of Transport and Planning and Council's Development Infrastructure, Environmental Health, Environment Emergency and Waste Management, Strategic Planning and Heritage Adviser
Any issues raised in referral responses?	Environmental Health disputed the wastewater calculation in the applicant's Land Capability Assessment (LCA) and advised that the treatment

	system would require EPA approval rather than Council approval.
Preliminary concerns?	In addition to the above, insufficient information was provided to assess bushfire risk given the location of the site in a designated bushfire prone area. Further information was provided to satisfy preliminary concerns.
Any discussions with applicant regarding concerns?	Yes. The applicant was advised in writing of the preliminary concerns.
Any changes made to the application since being lodged?	Yes. The applicant updated the Land Capability Assessment, submitted a bushfire assessment and updated the planning report.
Brief history.	Boratto Farms, the adjoining landowner to the north acquired the subject site from Genetics Australia in 2021 including the existing office building.
Previous applications for the site?	PA113/99 – Development and Use of a Car Park approved 25 November 1999. PA2008093 – Boundary Realignment (Three Lot Subdivision) approved 28 April 2009.
General summary.	<p>It is proposed to convert and extend an existing office building to accommodate rural worker accommodation for 55 persons employed on an adjoining commercial market garden.</p> <p>The application was advertised, and one objection was received raising concerns including land use compatibility with nearby uses, inconsistency with relevant planning policies and Aboriginal Cultural Heritage.</p> <p>Overall, the proposal is deemed to be generally consistent with the relevant planning controls. The proposal would provide bespoke accommodation in support of a local farming business without any loss of agricultural land or detriment to nearby land uses, including nearby Maddingley Brown Coal compositing facility and coal mine.</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 Notice of Decision to Grant Planning Permit PA2023004 for the Use and Development for Rural Worker Accommodation at Lot 3 on PS607887S, known as 144 Woolpack Road, Maddingley, subject to the conditions contained within this report.	

SITE DESCRIPTION

The surrounding area is characterised by properties located within the Farming Zone used for agricultural purposes with access to water and fertile soils.

The site forms part of a larger landholding of contiguous lots which extends northwards to the Werribee River, totally approximately 93ha, used predominantly for market gardening and ancillary rural industry. The property is within the boundaries of the Bacchus Marsh Irrigation District.

The subject site has an area 20.02ha located on the west side of Woolpack Road and bounded by the Melbourne-Ballarat railway corridor to the southwest, beyond which is Geelong-Bacchus Marsh Road. The site has varied topography, falling up to 24m from the southeast title boundary to approximately the centre of the site which is developed with several buildings on the south side of Parwan Creek.

The site was previously operated by Genetics Australia which comprised of offices, laboratories and other buildings. Vehicle access to the site is from Woolpack Road, approximately 430m north of the Geelong-Bacchus Marsh Road intersection leading to a car park of 40+ spaces located in the front setback.

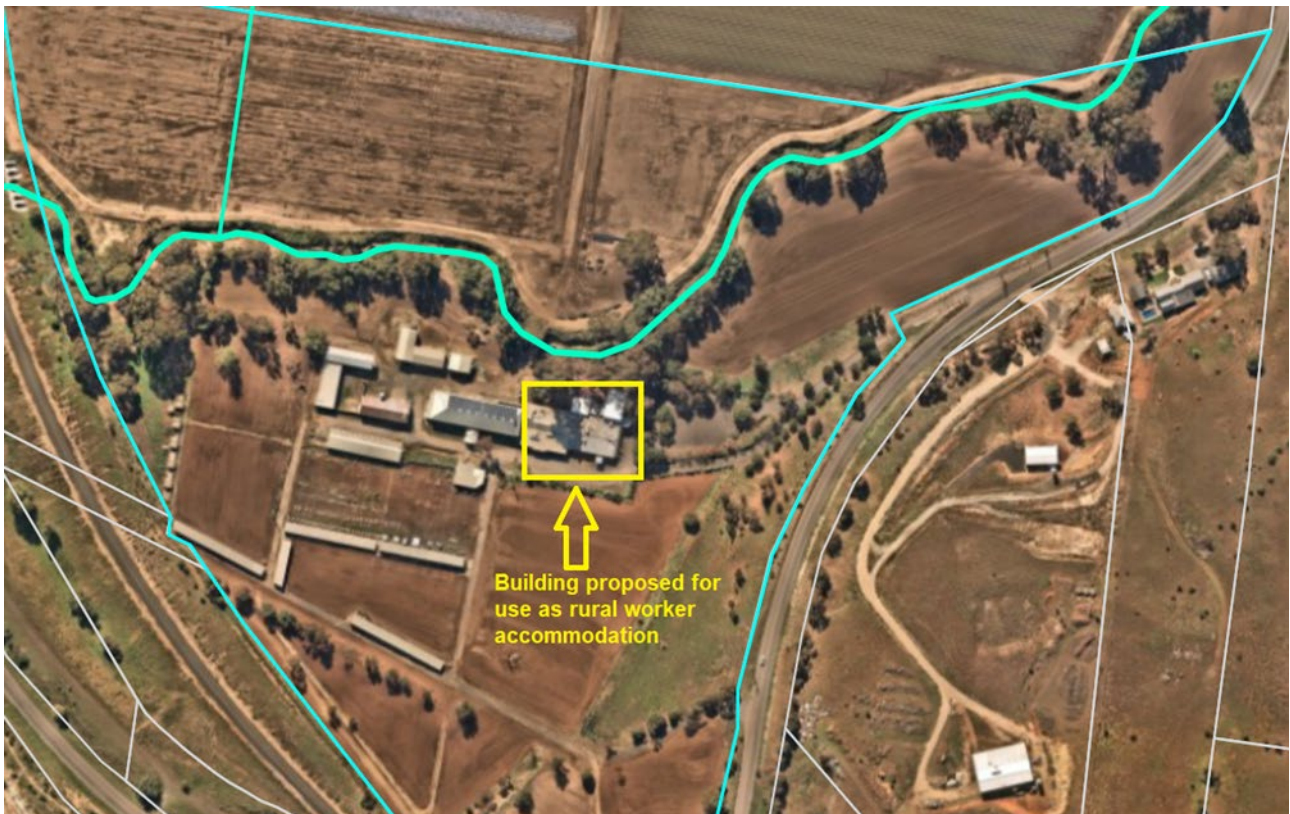


Figure 1: Aerial photograph

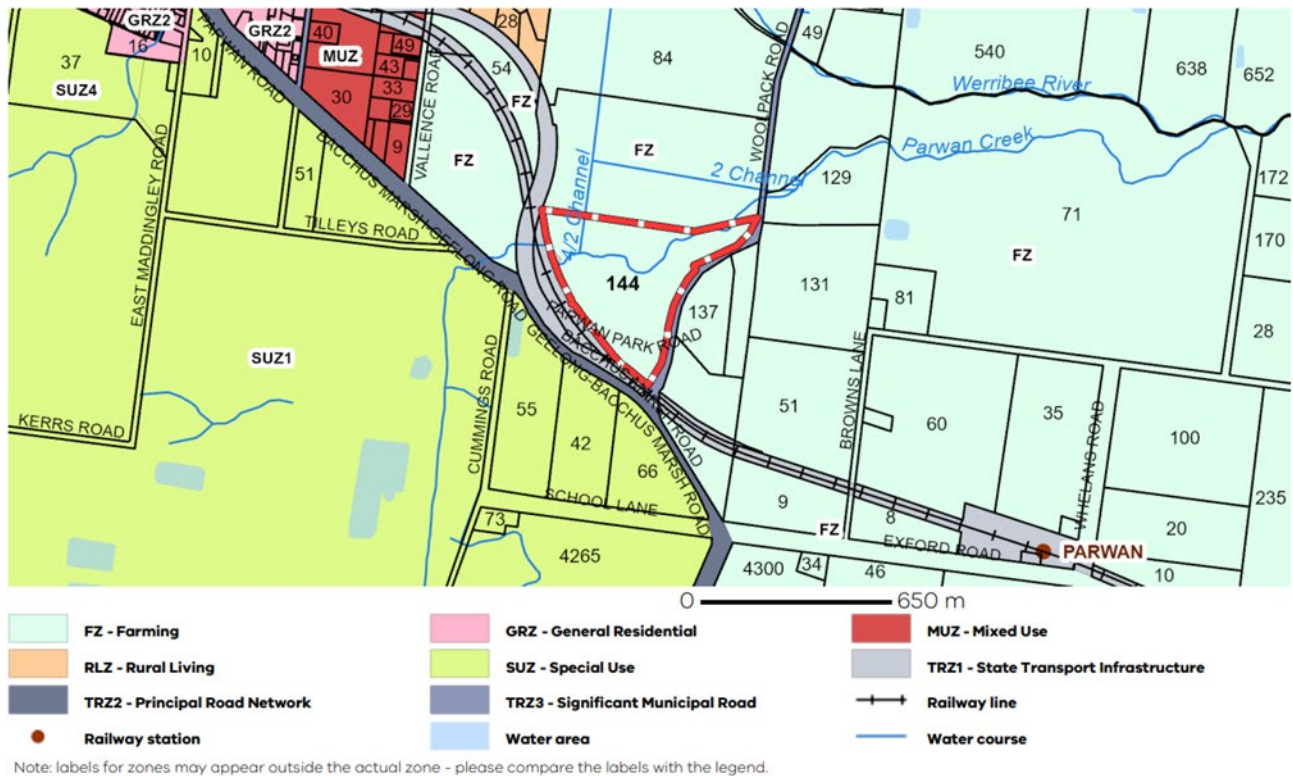


Figure 2: Zone map

PROPOSAL

It is proposed to convert and extend an existing building for use as rural worker accommodation, which is defined in Clause 73.03 of the Moorabool Planning Scheme as ‘land used to accommodate a person engaged in agricultural production, away from their normal place of residence.’

The existing building, most recently used for an office and laboratories by the previous owner Genetics Australia, would be internally altered to provide accommodation for up to 55 workers, comprising dorm style rooms including bathroom and kitchen facilities, and communal facilities including two kitchens and a laundry.

External buildings and works would comprise alterations to windows/doors and a 42sqm extension on the north side of the building to accommodate a communal kitchen.

Wastewater treatment would consist of an onsite treatment facility to meet EPA requirements.



Figure 3: Proposed site plan

BACKGROUND TO CURRENT PROPOSAL

Boratto Farms participates in the Pacific Australia Labour Mobility (PALM) scheme which allows eligible Australian businesses to hire workers from nine Pacific Islands and Timor-Leste when there are not enough local workers available in agriculture and select agriculture-related food product manufacturing sectors.

Through the PALM scheme, eligible businesses in rural and regional areas can recruit workers for seasonal jobs for up to nine months or for longer-term roles for between one and four years in unskilled, low-skilled and semi-skilled positions.

Boratto Farms employs workers from Samoa and the Solomon Islands for, on average, nine month rotations. Currently these workers are housed in various dwellings and motels around Bacchus Marsh. Boratto Farms acquired the subject site in 2021 with the intent to provide comfortable lodgings on site, for convenience to both workers and to encourage retention of workers for future seasonal employment.

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.

One objection was received.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
The proposal is inconsistent with the purpose of rural worker accommodation as outlined in the Explanatory Report for Planning Scheme Amendment VC202 which introduced the 'rural worker accommodation' land use in Victorian planning schemes.	Clause 35.07 – Farming Zone.
<p>Officer's Response:</p> <p>The Explanatory Report to Planning Scheme Amendment VC202 supports the application and operation of the Farming Zone by enabling a form of accommodation that is integral to agricultural activity and production. Providing accommodation for workers on-farm is consistent with the purpose of the Farming Zone and the use and development of land for agriculture.</p>	
The proposal is inconsistent with State planning policy. The scale of the proposal is inconsistent with the Farming Zone and the site is outside the Bacchus Marsh urban area which is near the subject site and provides significant opportunity for accommodation.	Clauses 11.01-1L-01, 11.01-1L-02, 11.03-3S, 14.01-1S, 14.02-3S, 16.01-1L, 16.01-2S, 16.01-3S, 16.01-3L-01, 17.01-1S & 17.01-1R.
<p>Officer's Response:</p> <p>The Planning Policy Framework includes a range of policies applicable to the proposal which require consideration of sometimes competing objectives. Overall, the proposal is consistent with applicable policies, particularly for the protection of productive agriculture and environmental assets and the provision of suitably located housing to facilitate economic activity.</p>	
The proposal is an incompatible land use within the buffer of the MBC State Significant Waste Hub and Coal Mine.	Clauses 13.07-1S, 17.03-2L, 17.03-3S & 19.03-5S.
<p>Officer's Response:</p> <p>The EPA Guideline <i>Assessing planning proposals within the buffer of a landfill</i> is consistent with and builds on the advice to planning and responsible authorities in <i>Best Practice Environmental Management: Siting, Design, Operation and Rehabilitation of Landfills</i> (the Landfill BPEM). The Landfill BPEM provides guidance on buffers for operating and closed landfills and identifies a 500m buffer between a landfill and a use for rural worker accommodation. The distance</p>	

<p>between the building subject to the planning permit application and the location of the landfill is approximately 850m.</p> <p>The EPA's 1518: <i>Recommended Separation Distances for Industrial Residual Air Emissions – Guideline</i> recommends a separation distance of 1000m between activity boundary of the existing industry in this case the coal mine to the activity boundary of the sensitive land use. The separation distance between the building subject to the proposal and the existing coal mine is approximately 870m and from edge of the mining licence is approximately 440m. The proposal is not considered to adversely impact the current coal mining operation.</p> <p>The EPA's 1588 "<i>Designing, constructing and operating compost facilities using method 2 for a reference 2 facility</i> recommends a separation of 2000m. The proposed is within this buffer area but is not considered to adversely affect the composting operation within Maddingley Brown Coal. This buffer should not be seen as a blanket prohibition of alternative forms of residential activity such as rural workers accommodation.</p>	
Requirement to prepare a Cultural Heritage Management Plan.	Clause 15.03-2S.
<p>Officer's Response:</p> <p>The proposed development comprises a 42sqm extension to an existing building within 200m of Parwan Creek, with the waterway corridor identified as an area of Aboriginal cultural heritage sensitivity. The proposed extension would occupy the footprint of an existing paved area and accordingly this location was previously subject to significant ground disturbance. It is deemed that pursuant to the <i>Aboriginal Heritage Regulations</i>, particularly Regulations 7, 26(2) and 46, the proposal is exempt from any requirement for preparation of a Cultural Heritage Management Plan (CHMP).</p>	

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 02.03-2 – 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 02.03-7 – Economic development
- Clause 11.01-1R – Settlement – Central Highlands
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.01-1L-02 – Bacchus Marsh
- Clause 11.03-3S – Peri-urban areas

- Clause 13.02-1S – Bushfire planning
- Clause 13.03-1S – Floodplain management
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.02-3S – Protection of declared irrigation districts
- Clause 15.01-5L – Landscape and neighbourhood character
- Clause 15.01-6S – Design for rural areas
- Clause 15.03 – Heritage
- Clause 16.01-1S – Housing supply
- Clause 16.01-1L – Housing supply in Moorabool
- Clause 16.01-2S – Housing affordability
- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural residential development in Moorabool
- Clause 17.01-1S – Diversified economy
- Clause 17.01-1R – Diversified economy – Central Highlands

The proposal is generally consistent with the relevant Municipal Planning Strategy and PPF clauses.

ZONE

Farming Zone

Pursuant to Clause 35.07-1 Rural Worker Accommodation is a Section 2 use which requires a permit for the following reasons:

- The number of persons accommodated at any time exceeds 10.
- There is no existing dwelling located on the same lot.
- The proposed use is within 500m of the nearest title boundary of land on which a work authority has been applied for or granted under the *Mineral Resources (Sustainable Development) Act 1990*.

Pursuant to Clause 35.07-4 a permit is required for building and works associated with a Section 2 use, within 100m of a waterway and for accommodation located within 500m from the nearest title boundary of land on which a work authority has been applied for or granted under the *Mineral Resources (Sustainable Development) Act 1990*.

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

OVERLAYS

Environmental Significance Overlay – Schedule 2 and 8

Pursuant to Clause 42.01-2 a permit is required to construct buildings and works. There are no relevant exemptions under Schedule 2. The relevant authority, Melbourne Water, had no objection to the application.

Under Schedule 8, a permit is not required to construct buildings and works outside the tree protection zone of any River Red Gum tree. The proposal meets this exemption; therefore, a permit is not required under Schedule 8.

Heritage Overlay – Schedule 177

Pursuant to Clause 43.01-1, a permit is required to construct buildings and works and for demolition. However, the overlay does not affect the area of proposed development, therefore a permit is not required under this overlay.

Design and Development Overlay – Schedule 2

Pursuant to Clause 43.02-3 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.

Land Subject to Inundation Overlay – Schedule 1

Pursuant to Clause 44.04-2 a permit is required to construct buildings and works. However, the overlay does not affect the area of the proposed development, therefore a permit is not required under this overlay.

RELEVANT POLICIES

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

PARTICULAR PROVISIONS

Clause 52.06 Car Parking

Pursuant to Clause 52.06-5 there is no specified car parking requirement for rural worker accommodation, pursuant to which under Clause 52.06-6 before a new use commences, car parking spaces must be provided to the satisfaction of the Responsible Authority. The existing sealed car park adjoining the building proposed for rural worker accommodation comprises 40 line-marked car parking spaces. The proposed car parking provision is deemed to be adequate to cater for the anticipated car parking demand. It is unlikely temporary workers from overseas countries will require purchase of motor vehicles and can rely on alternatives forms of transport especially those provided by the employer.

DISCUSSION

The proposal for rural worker accommodation entails the adaptation and modest expansion of an existing building located on the landholding of an established commercial market garden. An existing car park, accessway and vehicle crossover would be utilised for associated car parking and site access. The proposal would have negligible impact on the appearance of the site and surrounding rural landscape character, given the location and modest scale of the proposed building extension.

Use of land for rural worker accommodation

The proposal would utilise an existing building with substantial internal alterations and a modest extension for accommodation of up to 55 farm workers employed on Boratto Farms' commercial market garden located on the subject site and adjoining land. The nature of the proposed land use is to accommodate a person engaged in agricultural production, away from their normal place of residence. The proponent currently employs farm workers engaged under the PALM scheme who are currently accommodated in private rental accommodation and motels mainly within the Bacchus Marsh, a minimum 2.5km west of the subject site.

The proposal requires consideration of a range of relevant policies in the Moorabool Planning Scheme broadly relating to housing supply, protection of agricultural land, economic sustainability and land use compatibility and associated amenity impacts. These policy matters require consideration of competing interests, but overall, the proposal is deemed to be appropriate due to following planning reasons:

- Comprises the adaptive re-use of a former office/laboratory building and proposed modest building extension which otherwise has limited future use given its location in the Farming Zone.
- Utilises an existing building and car park resulting in no loss of, or disruption to, existing arable land.
- Would not limit the operation of nearby farming properties given its siting and design and the scale and nature of existing farming activities.
- Provides accommodation to meet the housing needs unique to temporary rural workers engaged under the PALM scheme, ensuring housing security for the benefit of workers, their employer, and the broader community.
- Reduces pressure on housing supply in the Bacchus Marsh urban area by providing bespoke accommodation for rural workers, without undermining Council's Housing Strategy.
- Provides greater certainty for the proponent that provision of appropriate rural worker accommodation will support farm operations, improving the ability to manage business operations and enhance agricultural productivity.
- Would not be detrimentally affected by existing site contamination. The contamination report submitted by the applicant concluded that methane concentrations do not appear to be present beneath the subject site, and that concentrations of carbon dioxide are below the adopted criteria. The fill material exhibited marginally elevated concentrations of arsenic and nickel however the report states that contaminant concentrations are unlikely to present possible risks to human health and the environment.
- Would not result in any detrimental land use conflict with the landfill operations occurring on the Maddingley Brown Coal (MBC) site. The proposed separation distance of approximately 1,100m exceeds the recommended minimum 500m buffer distances in the applicable EPA Publication 1642 *"Assessing planning proposals within the buffer of a landfill"*.
- The proposed separation distance of approximately 440m between the proposed use and the Maddingley Brown Coal (MBC) mining licence boundary is less than the recommended 1000m separation distance in the applicable EPA Publication 1518 *"Recommended separation Guideline distances for industrial residual air emissions"* and is less than 2000m from a composting facility in the applicable EPA Publication 1588 *"Designing, constructing and operating compost facilities using method 2 for a reference 2 facility"* However, the proposal would not be expected to result in any detrimental land use conflict with the mining or composting operations, principally due to the temporary nature of the proposed accommodation use which is considered to have a lesser amenity threshold than a dwelling with permanent residents.

Overlay considerations.

The proposed 42sqm building extension is within the Environmental Significance Overlay Schedule 2, proximate to Parwan Creek. The extension would be contained within an existing paved area

and Melbourne Water, the relevant authority, consented to the proposal. Permit conditions for stormwater drainage and sediment discharge would enable protection of the waterway to limit any sediment discharges consistent with the objectives of the overlay.

The subject site is partly affected by Heritage Overlay Schedule 177 (HO177), relating to the former Market Pavilion Building which adjoins the building subject to the proposed change of use. The proposal would not require demolition or development of the heritage building and Council's Heritage Advisor consented to the proposal. The proposal is in accordance with the provision of Clause 43.01 (Heritage Overlay) in the Moorabool Planning Scheme.

Overall, the proposed use and development for rural worker accommodation is generally in accordance with the relevant provisions of the Moorabool Planning Scheme, notably the Municipal Planning Strategy, Planning Policy Framework, zone and overlay controls.

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.
Melbourne Water	Consent.
EPA	Consent.
Department of Transport and Planning	Consent.
Council's Development Infrastructure	Consent with conditions.
Environmental Health	Consent.
Environment Emergency and Waste Management	Consent.
Strategic Planning	Letter of advice.
Heritage Adviser	Consent.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation to approve 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 and submitter were invited to attend this meeting and address the Development Assessment Committee.

OPTIONS

- Issue a Notice of Decision to Grant a Planning Permit in accordance with the conditions in the recommendation of this report; or
- issue a Refusal to Grant a Permit with specified 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

Overall, the proposed use and development for rural worker accommodation is generally consistent with the relevant provisions of the Moorabool Planning Scheme. The proposal would provide temporary accommodation for workers employed on the site of a commercial market garden forming part of the same landholding. The proposal provides economic benefits for rural workers and facilitates housing supply for a particular segment of the housing market without detriment to agricultural land or the local environment. The proposed separation distance from the Maddingley Brown Coal site is considered adequate to mitigate any potential land use conflicts.

7.2 PA2023076 - DEVELOPMENT AND USE OF A DWELLING AND ANCILLARY SHED IN ASSOCIATION WITH CATTLE PRODUCTION - BALLAN-GREENDALE ROAD, BALLAN.

Author: Victoria Mack, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. PA2023076 Site and Dwelling Plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2023076

Lodgement Date: 19 May 2023

Planning Officer: Victoria Mack

Address of the land: Ballan-Greendale Road, Ballan
Lot 1 on Title Plan TP 447825S

Proposal: Development and Use of a Dwelling and Ancillary Shed in association with cattle production

Lot size: Approximately 13ha

Why is a permit required? Clause 35.07-1 Farming Zone - Use of a dwelling; Clause 35.07-4, Farming Zone - Buildings and works for a Use in Section 2; Clause 42.01-2, Environmental Significance Overlay, Schedule 1 - 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 PA2023076 for the Development and Use of a Dwelling and Ancillary Shed in association with cattle production at Ballan-Greendale Road, Ballan, otherwise known as Lot 1 on Title Plan 447835S, 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 and the surrounding area.
4. 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:	No objections.
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 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, Greater Western Water, Southern Rural Water, Agriculture Victoria, and Council's Development Infrastructure and Environment Health Service Units.
Any issues raised in referral responses?	Greater Western Water requested a Secondary Wastewater treatment system be installed on the property due to its close proximity to Pykes Creek Reservoir. Agriculture Victoria did not consider the proposed cattle enterprise provided sufficient justification for a dwelling.
Preliminary concerns?	Justification for the development and use of a dwelling in the Farming Zone on 13ha allotment.
Any discussions with applicant regarding concerns?	Yes.

Any changes made to the application since being lodged?	Additional Information was provided including a plantation plan, and an addendum to the Farm Management Plan.
Brief history.	The allotment was part of a larger pastoral allotment which was sold to the current owners in 2022. The existing barn was the film set for the feature movie 'Charlotte's Web'.
Previous applications for the site?	PAP99/169 - 3 lot re-subdivision. PA2004-315 - Buildings and Works Associated with the Construction of Temporary Structures (Film Set) and Accessway within 100 metres of a Waterway. PA2005252 - Development of the Two (2) Barns on the land known as "Arable" and "Zucherman" and associated driveway. PA2007267 - Use of the land for a Place of assembly (Charlotte's Fair) One Day Event 25 th November 2007.
General summary.	The application is for the development and use of a dwelling on a 13ha lot in the Farming Zone. The Farm Management Plan does not demonstrate the need for a dwelling. The proposal does not comply with the objectives of the Moorabool Planning Scheme and leads to a proliferation of dwellings in the Farming Zone. The application does not accord with State and local planning policies that aim to preserve Farming Zone land for the use of agriculture.
Summary of Officer's Recommendation	
That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i> , issue a Refusal to Grant Planning Permit PA2023076 for the Development and Use of a Dwelling and Ancillary Shed in association with cattle production at Ballan-Greendale Road, Ballan, otherwise known as Lot 1 on Title Plan 447835S, on grounds contained in this report.	

SITE DESCRIPTION

The site is located approximately 5.3km northeast of the centre of the Ballan township and approximately 3.6km west of the Greendale township. The site is approximately 1.2km north of the most recent electricity transmission towers alignment proposed by the Western Renewables Link (September 2022).

Surrounding lots are generally larger in size with some similar sized lots. Surrounding land is used for agriculture predominantly livestock grazing.

The subject site is approximately 13ha, is irregular in shape and steep to undulating except along the creek flats. The whole of the eastern boundary of the site abuts the Korjamnunnip Creek. The site has been used for grazing over many decades.

There are two barns on the site, both constructed in 2004 as part of a film set “Charlotte’s Web”. The barns are known as “Arable” and “Zuckerman”. The film set also included other structures such as a dwelling and fencing but these have all since been removed. There is also a portable building on the site near an existing dam.

Access to the lot is via a carriageway easement that crosses land owned by a neighbour to the south at 573 Ballan-Greendale Road.



Figure 1: Aerial photograph of the subject site

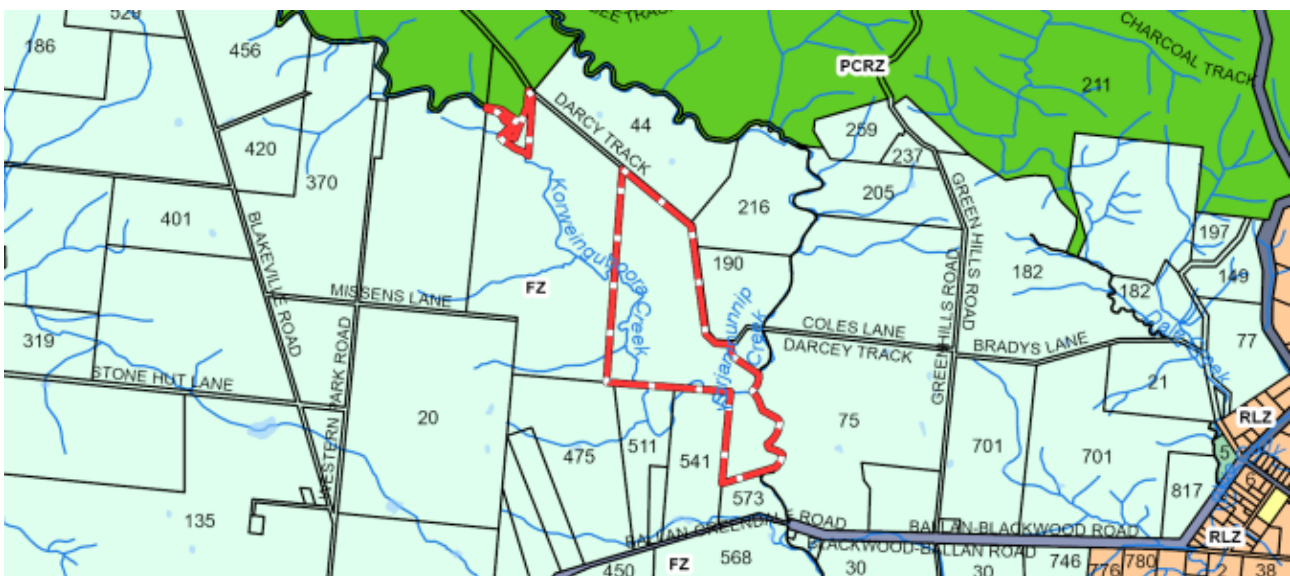


Figure 2: Zone Map (the subject site is only the southern lot)

PROPOSAL

It is proposed to convert the existing barn known as “Arable” into a double storey dwelling.



Figure 3: Photo of the Arable barn in its current condition.

The dwelling at the ground floor level is comprised of open plan kitchen, dining and lounge and the upper floor would be three bedrooms, open library space, powder room, separate bathroom, kid's nook, and laundry.

The original barn building would be substantially modified with Colorbond roofing and completely new weatherboard external cladding and several new windows and doorways. Some of the structural steel would be retained.

The applicant also proposes to construct a 6m x 12m detached ancillary shed to the southern end of the property. No floor or elevation plans have been provided at this stage.

The Farm Management Plan proposes 10 heifers and one bull in the first year and 15 heifers and one bull after five years. The owner currently has Angus Cattle on a leased property in Pentland Hills and intends to move them to the subject site to save on lease costs.

The owners plan to use a rotational grazing system based on the regenerative agriculture model to produce optimal pasture growth and optimal weight gain for vealer cattle. The cattle would be rotated around the four paddocks every three weeks to allow grasses to maintain strength and regrow throughout the year. Calves would also be raised each year to enable expansion of the cattle herd. It expected to produce up 15 calves per year.

In addition to the Farm Management Plan, there is a revegetation plan to address erosion issues with Korjumnunnip Creek. The applicant intends to plant out the bank with native indigenous trees such as Swamp Gums and shrubs to stabilize the banks.

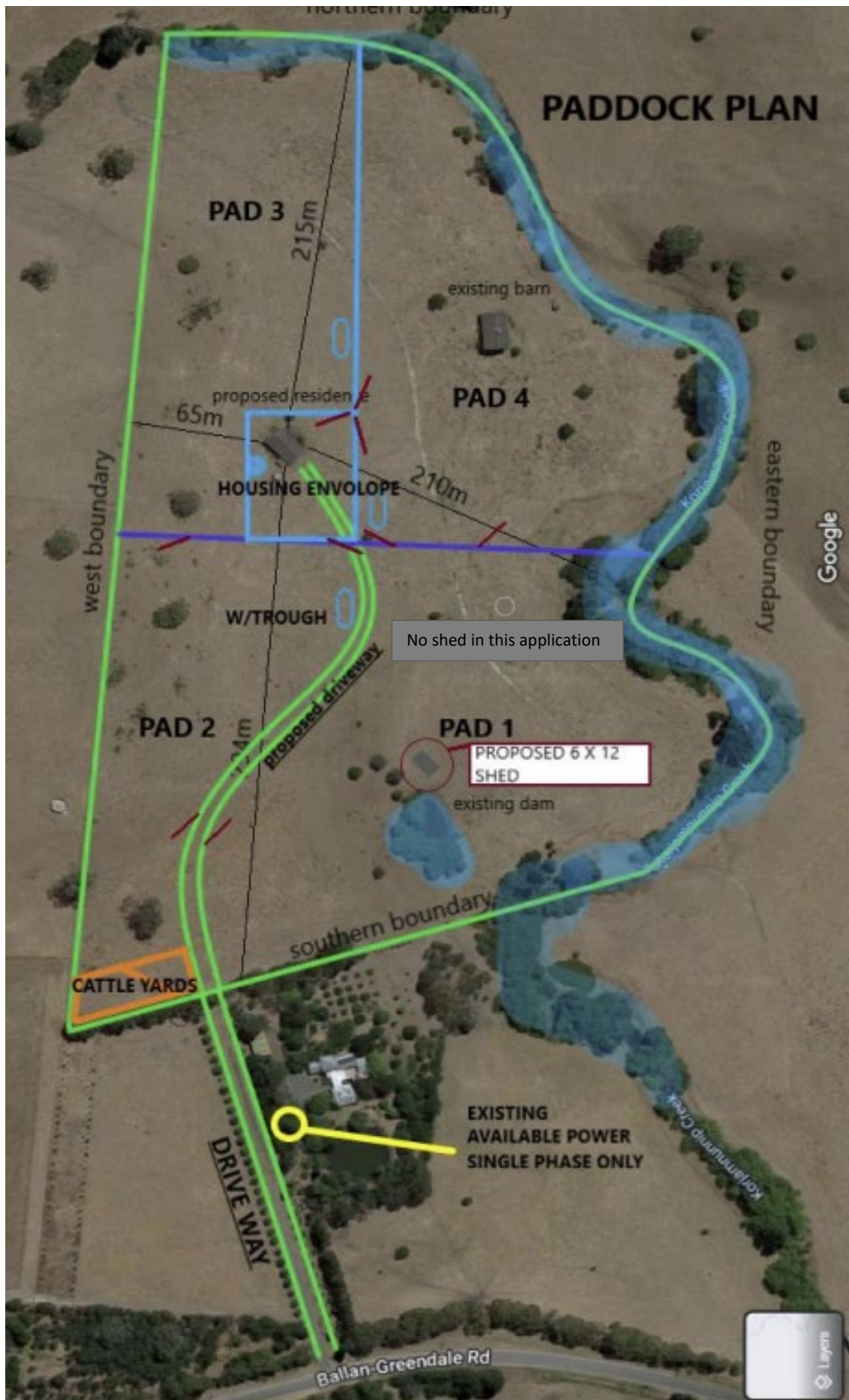


Figure 4: Site plan**HISTORY**

The following permits have been issued on the site.

- PAP99/169 – 3 lot re-subdivision.
- PA2004-315 – Buildings and Works Associated with the Construction of Temporary Structures (Film Set) and Accessway within 100 metres of a Waterway.
- PA2005252 – Development of the Two (2) Barns on the land known as “Arable” and “Zucherman” and associated driveway.
- PA2007267 – Use of the land for a Place of assembly (Charlotte’s Fair) One Day Event 25th November 2007

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners.

No objections were received.

BACKGROUND TO CURRENT PROPOSAL

Permit PA2004-315 was issued on 21 December 2004 to Paramount Pictures Productions Australia being for Buildings and Works Associated with the Construction of Temporary Structures (Film Set) and Accessway within 100 metres of a Waterway. The permit was associated with the production of the feature film called Charlotte’s Web.

A condition of this permit included that within three months of the completion of filming, all temporary buildings and structures must be removed, and the site suitably rehabilitated to the satisfaction of the Responsible Authority. However, the barns on the site were not removed within the three-month period.

Permit PA2005252 was issued on 4 May 2007 being for Development of the Two (2) Barns on the land known as “Arable” and “Zucherman” and associated driveway. This permit intended for the barns remain on the site permanently. Council initially refused the application after considering objections to application. VCAT on review determined a permit should be granted.

Permit PA2007267 was issued on 10 October 2007 being for Use of the land for a Place of assembly (Charlotte’s Fair) One Day Event 25th November 2007. It is understood that this was a charity event.

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 02.03-1 – Settlement
- Clause 02.03-4 - Natural resource management
- Clause 11.01-1S – Settlement
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.03-3S – Peri-Urban Areas
- Clause 12.03-1S – River and riparian corridors, waterways, lakes, wetlands and billabongs
- Clause 13.03-1S – Floodplain Management

- Clause 14.01-1S – Protection of agricultural land
- Clause 14.01-1L – Agriculture, rural dwellings and subdivision
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-2S – Water quality
- Clause 15.01-6S – Design for rural areas
- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural residential development in Moorabool

The proposal does not comply with the relevant clause of the PPF and the MPS outlined in the table below:

MPS	Title	Response
Clause 02.03-4	Natural resource management: Agriculture and Declared Special Water Supply Catchments.	This application has not demonstrated the need for a dwelling.
PPF	Title	Response
Clause 11.01-1L-01	Settlement in Moorabool.	This application does not accord with the strategies that are key parts of Moorabool's settlement policy.
Clause 14.01-1S	Protection of agricultural land.	The site has operated long term with livestock and initially sheep grazing which has not required a dwelling to support the agricultural use of the land.
Clause 14.01-1L	Agriculture, rural dwellings and subdivision.	This application does not accord with this policy.
Clause 16.01-3S	Rural residential development	The proposed dwelling lacks strategic justification consistent with this policy.
Clause 16.01-3L-01	Rural residential development in Moorabool.	The proposal will lead to proliferation of dwelling in the area.

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 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, Schedule 2 of the Moorabool Planning Scheme a permit is not required to construct a building or construct or carry out works where all external walls and roof areas are clad with non-reflective materials. Therefore, a permit is not required under this overlay.

Land Subject to Inundation Overlay

Pursuant to Clause 44.04-2 a permit is required for building and works. A small section of land adjacent to Korjumnunnip Creek is covered by this overlay however, as no works are proposed in the area, a permit is not required.

POLICY

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 a Farm Management Plan and a native plant revegetation plan across the site, the land size at 13ha in the Farming Zone does not justify the use of a dwelling for a small number of cattle.

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 Planning Policy Framework, Victorian Planning Provisions and Moorabool Planning Strategy do not support dwellings in the Farming Zone on lots of less than 40ha, without substantial justification for the dwelling being essential for the proposed agricultural use.

The application is for a dwelling on the site to support calf rearing and cattle production. The proponent has been running cattle on leased land in Pentland Hills for the last six years and has stated that this proposal will allow the business to expand. However, the lot is only 13ha and the proposed cattle can be managed without the need for a dwelling. Justification for a dwelling on such a small site based on a stocking rate of a total of 10-12 breeding cows does not accord with planning policies.

The purpose of the Farming Zone includes to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture. The barns can be retained for agricultural purposes and can support the cattle operation. If approved this would set a precedent for the further proliferation of dwellings on small farming zoned allotments across the region.

The application was referred to Agriculture Victoria which in their summary concerns stated that:

- The approval of a dwelling on the lot would have the potential set a precedent for dwelling approvals on land under the same ownership and surrounding properties.
- The approval of a dwelling on the lot would permanently remove the ability of the land to be incorporated into surrounding agricultural enterprises and has the potential to limit the operation and expansion of adjoining and nearby agricultural uses.
- The proposed dwelling presents a further proliferation of dwellings which has potential for the use and development to limit the operation and expansion of adjoining and nearby high value agricultural uses.

The proposed use and development which without sufficient strategic justification poses a potentially detrimental outcome for the agricultural land in the local area.

Water Catchment:

There was initial discrepancy between the referral responses received from Greater Western Water requesting an amended Land Capability Assessment (LCA) showing secondary treatment, while Southern Rural Water and Council's Environmental Health were satisfied with the submitted LCA.

The applicant agreed to a secondary wastewater treatment system and all authorities consented with amended conditions. The proposal complies with the objectives of the Environmental Significance Overlay Schedule 1.

Overall, the proposed use and development are contrary to the purpose of the Farming Zone and the intended agricultural and land management practices proposed in the submitted documents are realistically achievable without the presence of a dwelling. It is recommended that the application is not supported.

GENERAL PROVISIONS

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

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

REFERRALS

Authority	Response
Greater Western Water	Consent with conditions.
Southern Rural Water	Consent with conditions.
Agriculture Victoria	Advice.
Council's Development Infrastructure	Consent with conditions.
Council's 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*, no further correspondence is required as no objections were received. The applicant was 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 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

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, the Moorabool Planning Strategy and the Farming Zone provisions relating to development of dwellings in rural areas. The development and use of a dwelling on a 13ha lot has not been justified as being required to operate the cattle enterprise.

7.3 PA2023098 - DEVELOPMENT AND USE OF A DWELLING AND OUTBUILDING IN ASSOCIATION WITH HARNESS RACING HORSES - 4156 GEELONG-BALLAN ROAD, MOUNT WALLACE

Author: Victoria Mack, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Site plan (under separate cover)

APPLICATION SUMMARY

Permit No: PA2023098

Lodgement Date: 11 July 2023

Planning Officer: Victoria Mack

Address of the land: 4156 Geelong-Ballan Road, Mount Wallace
Lot 2 on PS328927M

Proposal: Development and Use of a Dwelling and Outbuilding in association with Harness Racing Horses

Lot size: 22.87ha

Why is a permit required? Clause 35.07-1, Farming Zone - Use of a dwelling; Clause 35.07-4, Farming Zone - Buildings and works for a Use in Section 2; Clause 42.01-2, Environmental Significance Overlay, Schedule 1 - 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 PA2023098 for the Development and Use of a Dwelling and Outbuilding in association with Harness Racing horses at 4156 Geelong-Ballan Road, Mount Wallace, otherwise known as Lot 2 on PS328927M, 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 and the surrounding area.
4. The proposed use and development does not represent the orderly planning of the area.

PUBLIC CONSULTATION	
Was the application advertised?	Yes, including to neighbouring wind farm - Moorabool Wind Farm and Pacific Blue Wind Farm.
Notices on site:	No.
Notice in Moorabool Newspaper:	Not required.
Number of objections:	No objections.
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 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, Southern Rural Water, Agriculture Victoria and Council's Development Infrastructure and Environmental Health Service Units.
Any issues raised in referral responses?	Agriculture Victoria has advised they have discontinued their service of providing advice on planning applications for dwellings in the Farming Zone.

Preliminary concerns?	Limited justification for a dwelling in the Farming Zone.
Any discussions with applicant regarding concerns?	Yes.
Any changes made to the application since being lodged?	No.
Brief history.	The land was formerly part of an equestrian complex located on the south boundary with the site containing existing horse shelters and small paddocks.
Previous applications for the site?	PA2000-008 – Development and Use of six (6) sheds. PA2004-005 – Development and use of twelve (12) farm sheds. Both permits appear to have been for horse shelters now existing on the site.
General summary.	The application is for the development and use of a dwelling in the Farming Zone. The documentation submitted with the application does not demonstrate the need for a dwelling as horse training and breeding does not require a dwelling on site. The application does not accord with State and local planning policies that aim to preserve Farming Zone land for the use of agriculture. The proposal represents a rural lifestyle development with no tangible benefit to agricultural productivity
Summary of Officer's Recommendation	
That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i> , issue a Refusal to Grant Planning Permit PA2023098 for the Development and Use of a Dwelling and Outbuilding in association with Harness Racing horses at 4156 Geelong-Ballan Road, Mount Wallace, otherwise known as Lot 2 on PS328927M, on the grounds contained in this report.	

SITE DESCRIPTION

The site and surrounding land is in the Farming Zone which is generally used for cropping and grazing. The nearest neighbouring dwelling is located at 4152 Geelong- Ballan Road on the south boundary of the site.

The site is located on the east side of the Geelong-Ballan Road approximately 15km south of the Ballan township. The site was originally part of an equestrian centre located on the south boundary. The site is flat and irregular in shape and has driveway access from Glenmore Road to the north (the driveway is part of the land title).

The property is pastured grazing land with eleven fenced horse paddocks and several existing horse shelters serviced by a central laneway. There are two dams on the site and small sheds located at the western end of the site.

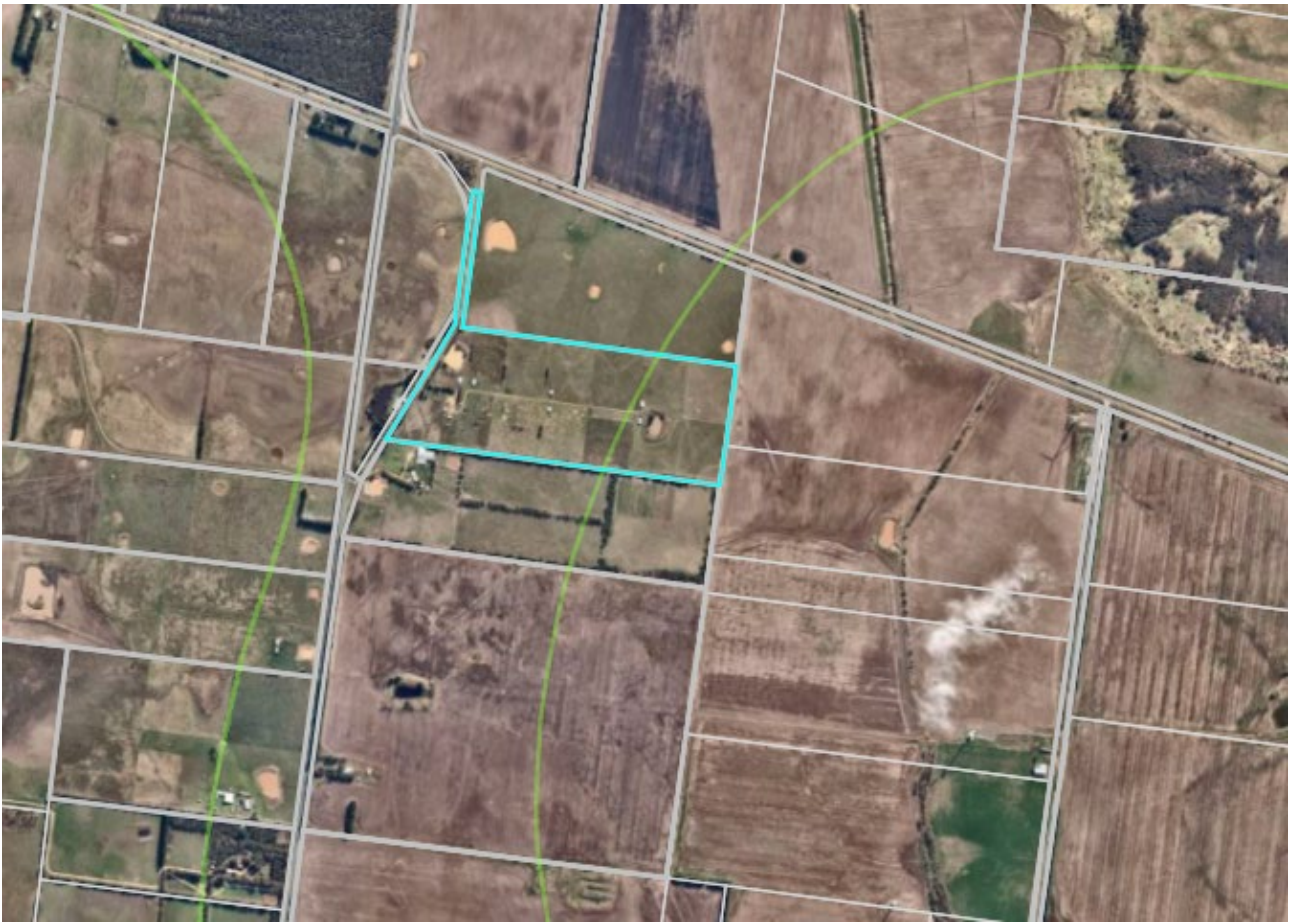


Figure 1: Aerial photograph of the subject site with the green radius line showing 40db limit to nearest wind turbine



Figure 2: Zone Map

PROPOSAL:

It is proposed to construct a dwelling on the site in association with the training and breeding of harness racing horses. The dwelling would four bedrooms, three living areas and other usual

amenities with an attached two car space garage. The dwelling would be constructed with brick cladding and would have Colorbond roofing.

The dwelling would be located a minimum of 140m from the west boundary and approximately 190m from the nearest neighbouring dwelling to the south. The site is located close to windfarms and Figure 1 (above) shows the 40 dB buffers for both the Moorabool Wind farm to the west and the Pacific Blue windfarm to the east. The proposed dwelling is sited outside of either buffer area.

A further horse shed would be constructed, with dimensions 8m x 16m. It would contain four stables, a work area, a wash area and feed area. It would be located to the north of the dwelling site.

The Farm Management Plan states over the next five years up to 24 horses would be run on the site. The enterprise mix would consist of horses in training, brood mares, yearling horses for sale, private agistment and eight cattle.

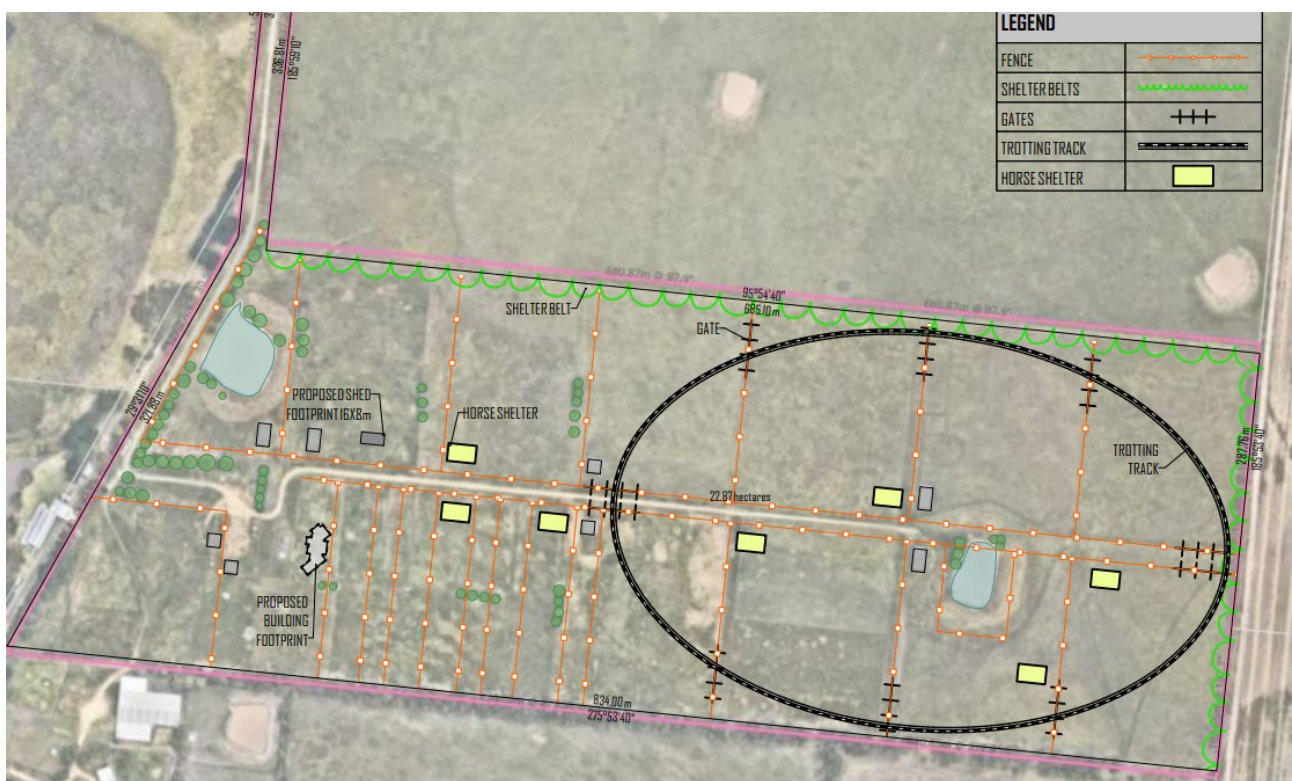


Figure 3: Site layout plan showing the proposed development with the trotting track

HISTORY

The following permits have been issued on the site.

- PA2000-008 – Development and Use of six (6) sheds.
- PA2004-005 – Development and use of twelve (12) farm sheds.

Both permits appear to have been for horse shelters.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners.

No objections were received.

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 02.03-1 – Settlement.
- Clause 02.03-4 – Natural resource management:
- Clause 11.01-1S – Settlement.
- Clause 02.03-6 – Housing
- Clause 11.01-1L-01 – Settlement in Moorabool.
- Clause 14.01-1S – Protection of agricultural land.
- Clause 14.01-1L – Agriculture, rural dwellings and subdivision.
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-2S – Water quality
- Clause 14.02-1L – Declared special water supply catchments.
- Clause 16.01-3S – Rural residential development.
- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural residential development in Moorabool.

The proposal does not comply with the relevant clause of the PPF and the MPS outlined in the table below:

MPS	Title	Response
Clause 02.03-4	Natural resource management: Agriculture and Declared Special Water Supply Catchments.	This application has not demonstrated the need for a dwelling.
PPF	Title	Response
Clause 11.01-1L-01	Settlement in Moorabool.	This application does not accord with the strategies that are key parts of Moorabool's settlement policy.
Clause 14.01-1S	Protection of agricultural land.	The proposal will reduce and diminish the long-term productive capacity and economies of scale afforded to larger land parcels.
Clause 16.01-3S	Rural residential development	The proposed dwelling lacks strategic justification consistent with this policy.
Clause 16.01-3L-01	Rural residential development in	The proposal constitutes a rural

	Moorabool.	lifestyle development which is inappropriate in this location.
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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.

Transport Zone 2 and Transport Zone 3

In accordance with Clause 36.04 of the Moorabool Planning Scheme a permit is not required as no new access is proposed to a Transport 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, Schedule 2 of the Moorabool Planning Scheme a permit is not required to construct a building or construct or carry out works where all external walls and roof areas are clad with non-reflective materials. Therefore, a permit is not required under this overlay.

POLICY

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 has not been clearly demonstrated that the success of the Harness Racing horse enterprise relies 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 Planning Policy Framework, Victorian Planning Provisions and Moorabool Planning Strategy do not support dwellings in the Farming Zone on lots of less than 40ha, without substantial justification for the dwelling being essential for the proposed agricultural use.

It is understood that horses do need specific care and usually on a regular basis, but it is possible for horse owners to live in nearby residential areas and travel to their farm as required. Horse keeping can occur on property without the presence of a dwelling.

The purpose of the Farming Zone includes to encourage the retention of productive agricultural land and to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

The addition of a dwelling onto agricultural land changes the use of the land from farming to rural residential and once a dwelling is constructed with its associated wastewater field it prevents agricultural use of the land.

Agricultural Victoria has previously expressed concerns with fragmentation of farming land through the introduction of residential uses in the Farming Zone. The application was referred to Agricultural Victoria who advised they are no longer providing advice on dwelling application in rural zones and have discontinued this service to local councils.

The proposed use and development are contrary to the purpose of the Farming Zone and the intended farm management practices proposed in the submitted documents are realistically achievable without the presence of a dwelling.

Water Catchment:

It was not considered that the application would have a detrimental impact on the water supply catchment area. The application was then referred to Central Highlands Water who consented to the application with conditions.

Proximity to Wind Farms:

The application was advertised including to both wind farm organisations, and no objections received. The proposed dwelling is located outside of 40db buffer areas to the nearest wind turbine.

Overall, the proposed use and development are contrary to the purpose of the Farming Zone and the farm management practices proposed in the submitted documents are realistically achievable without the presence of a dwelling. It is recommended that the application is not supported.

GENERAL PROVISIONS

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

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

REFERRALS

Authority	Response
Southern Rural Water	Not in SRW catchment area.
Central Highlands Water	No objection.
Agriculture Victoria	Advised no comment to be provided.
Council's Development Infrastructure	Consent with conditions.
Council's 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*, no further correspondence is required as no objections were received. The applicant was 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 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

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, the Moorabool Planning Strategy and the Farming Zone provisions relating to development in rural areas. The farming enterprise proposed does not warrant 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 use. The dwelling would transform the site to a rural residential lot in a location isolated from community services.

7.4 PA2021001 - VARIATION OF RESTRICTIVE COVENANT AJ807260A AT 9 PELICAN POINT, HOPETOUN PARK

Author: Mark Lovell, Coordinator Statutory Planning

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: Nil

APPLICATION SUMMARY

Permit No: PA2021001

Lodgement Date: 24 December 2020

Planning Officer: Mark Lovell

Address of the land: 9 Pelican Point, Hopetoun Park

Proposal: Variation of Restrictive Covenant AJ807260A

Lot size: 1.26ha

Why is a permit required? Clause 52.02 – Variation of a restriction

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2021001 for a Variation of Restrictive Covenant AJ807260A Items (b) and (k) at Lot 105 on PS 619339J, known as 9 Pelican Point, Hopetoun Park, subject to the following conditions:

1. This permit will expire if the variation of the restriction permitted is not registered with the Land Titles Office within two years of the date of issue. The wording of Item (b) has been approved as follow: (b) Erect or construct on the Lot hereby transferred any boundary or internal fence other than a standard post and wire type fence or Colorbond fence that is not forward of the frontage of any existing building and excluding swimming pool fencing. The wording of item (k) has been approved as follows: (k) Site any outbuildings on the lot other than behind the frontage any of existing building and generally in such a manner as to minimise visual impact from the streetscape. Outbuildings must not be greater that 13m long x 7m wide x 4m high to the eaves, with the exception of no more than one single outbuilding which shall be no greater than 25m long x 15m wide x 4.6m in high to the eaves, nor shall any outbuilding be constructed prior to the erection of a dwelling house on the lot.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Yes.
Number of objections:	None. One initial objection was withdrawn.
Consultation meeting:	Consultation between the parties resulted in the withdrawal of objection.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

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

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?	No.
Any issues raised in referral responses?	Not applicable.
Preliminary concerns?	None.
Any discussions with applicant regarding concerns?	Not applicable.
Any changes made to the application since being lodged?	Yes. The application was amended twice to reduce the number of variations to the restrictive covenant.

Brief history.	Since 2016 there have been issues with non-compliance with relevant building and planning requirements, including up to 18 shipping containers placed on the property for the storage of goods and materials. Submission of the current permit application in December 2020 was done in part to resolve identified enforcement issues.
Previous applications for the site?	None.
General summary.	<p>It is proposed to vary covenant AJ807260A items (b) and (k) to enable the construction of Colorbond fencing and outbuildings up to 25m long x 15m wide x 4.6m high to the eaves.</p> <p>One beneficiary objection was initially received raising concerns including detrimental impacts on amenity and neighbourhood character. As of consultation between the parties, the objection was withdrawn,</p> <p>With no beneficiary objection, the proposed variation of covenant now meets the tests of Section 60(2) of <i>Planning and Environment Act 1987</i>.</p> <p>The application is recommended for approval.</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 Planning Permit PA2021001 for Variation of Restrictive Covenant AJ807260A items (b) and (k) at Lot 105 on PS 619339J, known as 9 Pelican Point, Hopetoun Park, on the grounds contained within this report.	

SITE DESCRIPTION

The subject site and surrounding land are in the Low Density Residential Zone and characterised by single dwelling developments on lots of generally 5,500sqm-1.1ha in size. Ancillary outbuildings of varying sizes are commonplace. To the south of the site is an escarpment below which the Werribee River flows into Melton Reservoir to the southeast.

The subject site known as 9 Pelican Point, Hopetoun Park, is located on the south side of Pelican Point approximately 280m west of Thomas Drive. The site is irregularly shaped with an 84.27m wide frontage and developed with a single storey dwelling located close to the rear property boundary and several ancillary outbuildings including shipping containers spread across the site. Vehicle access is via two crossovers and a gravel internal driveway.



Figure 1: Aerial photograph highlighting subject site and objector’s property.

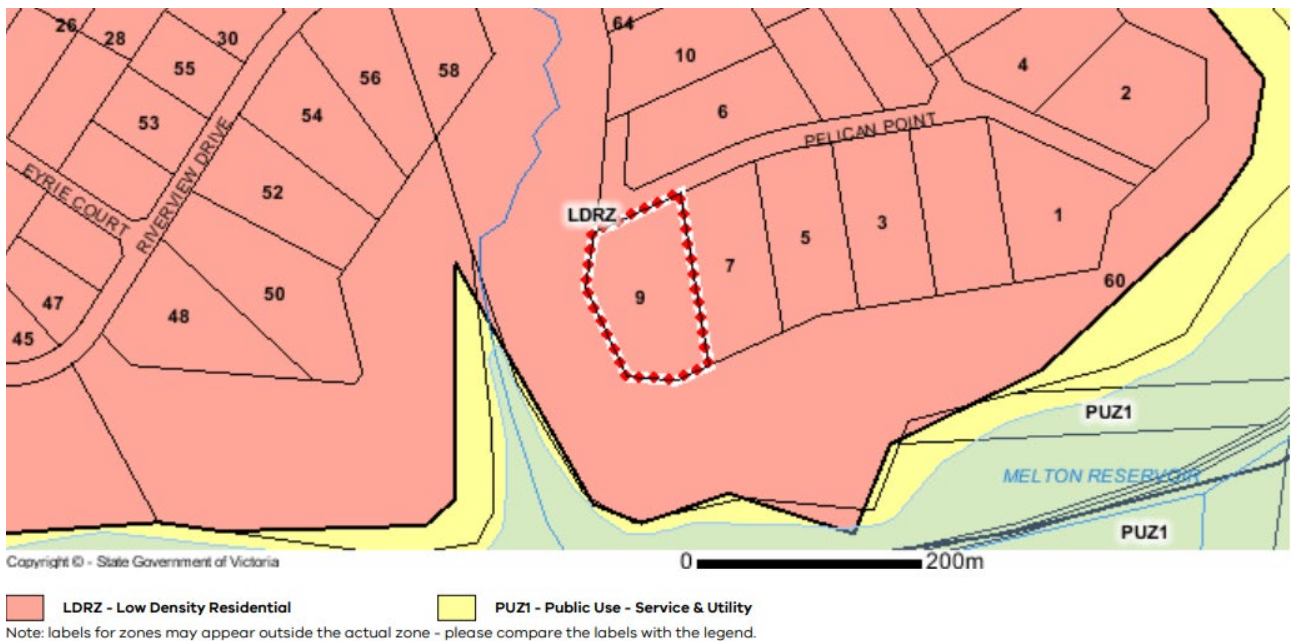


Figure 2: Zone map.

PROPOSAL

It is proposed to vary Covenant number AJ807260A, items (b) and (k).

Covenant AJ807260A states that *“the Transferee with the intent that the benefit of this covenant shall be attached to and run at law and in equity with every lot on Plan of Subdivision No. 619339J other than the Lot hereby transferred and that the burden of this covenant shall be annexed to and run at law and in equity with the said Lot hereby transferred does hereby covenant from himself/herself, their heirs, executors, administrators and transferee and the registered proprietor or proprietors for the time being of every lot described in the said Plan of Subdivision (other than the Lot hereby transferred) that the Transferee, his/her executors, administrators and transferees will not...(b) erect or construct on the Lot hereby transferred any boundary or internal fence*

other than a standard post and wire type fence, excluding swimming pool fencing; (k) site any outbuildings on the Lot other than towards the rear of the Lot and behind any dwelling house and generally in such a manner as to minimise visual impact from the streetscape. No such outbuilding shall be of a size greater than 13 metres in length, 7 metres in width and 4 metres in height to the eaves nor shall they be constructed prior to the erection of a dwelling house on the Lot.”

The proposed variation of item (b) is to allow for the construction of Colorbond fencing on or around the perimeter of the property.

The proposed variation of item (k) is to allow construction of an outbuilding up to 25m long x 15m wide x 4.6m in height to the eaves. This variation is proposed to facilitate the storage of various personal goods and materials. The shed will have an area of 375sqm.

BACKGROUND TO CURRENT PROPOSAL

Since 2016 there have been issues with non-compliance with relevant building and planning requirements, including up to 18 shipping containers placed on the property for the storage of goods and materials. Submission of the current permit application in December 2020 was a result of identified enforcement issues.

The application was presented to Council’s Development Assessment Committee (DAC) on 20 September 2023 with a recommendation for refusal due to a beneficiary objection. DAC determined to defer the application to a future meeting. As a result of further discussions between the parties, the sole beneficiary objector withdrew their objection on 24 September 2023. The assessment now needs to be re-considered on the basis that no beneficiary objection remains with the application.

HISTORY

There is no relevant planning history on the site.

PUBLIC NOTICE

Notice of the application was given by post to all beneficiaries of the covenant which included adjoining and surrounding landowners and occupiers, a sign was erected on site for a minimum 14 days and a notice placed in the local newspaper.

One initial beneficiary objection was received and later withdrawn.

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 02.03-5 – Built environment and heritage
- Clause 11.03-3S – Peri-urban areas
- Clause 15.01-5S – Neighbourhood character
- Clause 15.01-5L – Landscape and neighbourhood character

Subject to conditions, the proposal complies with the above.

ZONELow Density Residential Zone

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

OVERLAYSDevelopment Plan Overlay, Schedule 2

There is no permit requirement under the overlay provisions to vary a covenant.

RELEVANT POLICIES

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

PARTICULAR PROVISIONSClause 52.02 Easements, Restrictions and Reserves

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

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

DISCUSSION

The relevant consideration for assessment of this application are the provisions of Section 60(2) of the *Planning and Environment Act 1987*. Under Section 60(2) of that Act, the Responsible Authority must not grant a permit which allows the variation of a restriction (within the meaning of the *Subdivision Act 1988*) unless it is satisfied that the owner of any land benefited by the restriction will be unlikely to suffer as a consequence of the variation of the restriction.

Two of the tests under Section 60(2) *Planning and Environment Act 1987* are b) and c), which are:

- b) loss of amenity; and
- c) loss arising from change to the character of the neighbourhood.

The character of the neighbourhood is defined by single dwellings on large residential allotments with ancillary outbuildings of varying dimensions. The scale and form of development combine with mostly low scale garden plantings of ground covers, shrubs and small trees and the relatively flat or gently sloping topography above an escarpment to the east, west and south, create a spacious character setting. There are some examples of prominent detached outbuildings due to their size, height and lack of visual screening in contrast with the prevailing neighbourhood character of the area.

All beneficiaries were notified of the application in accordance with the *Planning and Environment Act* and the initial objection from one beneficiary was withdrawn after a two year period. The applicant has reduced the size of the shed twice from initially proposal of 50m in length and 25m in width or occupying an area 1,250sq.m.

The development of an outbuilding is now proposed at 25m long x 15m wide x 4.6m in height while exceeding the covenant requirement of 13m in length, 7m in width and 4m in height to the eaves has no active beneficiary objections.

There is a recent VCAT decision that looked at larger sheds in Hopetoun Park and variation of covenants under Section 60(2) of the *Planning and Environment Act 1987*. *Quigley vs Moorabool*

SC (2023) affirmed a refusal to grant a permit to variation of covenant at 25 View Gully Road Hopetoun Park and stated that all four tests set out at sub-paragraphs (a) to (d) must be met to satisfy the overall ‘...unlikely to suffer...’ test set out in Section 60(2), in relation to any relevant beneficiary of the covenant. In conclusion, the tribunal found that the applicant had failed to show that the beneficiary objector is unlikely to suffer a loss arising from a change to the character of the neighbourhood as the written objection made it clear the beneficiary does not want to live in a neighbourhood which includes a very large shed. This decision highlighted the interests of beneficiaries must be considered.

The beneficiaries in this current application have not expressed concerns or objection with regard to a larger shed affecting neighbourhood character or creating a loss of amenity. The application also did not receive any objections from non-beneficiaries whose interests can be considered under Clause 52.02 of the Moorabool Planning Scheme. The amendments to the application reducing the size of the shed allows for an acceptable outbuilding that will not dominate the surrounding streetscape or river valley and has reduced potential amenity impacts to the adjacent property. The proposal now meets the tests of Section 60(2) of the *Planning and Environment Act*.

GENERAL PROVISIONS

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

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

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

REFERRALS

The application was not required to be referred.

FINANCIAL IMPLICATIONS

There are no financial implications for Council in approving this 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

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

OPTIONS

- Issue a Planning Permit in accordance with the conditions in the recommendation of this report; or
- Issue a Refusal to Grant a Permit with specified 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 application was advertised, and one initial beneficiary objection was withdrawn after consultation between the parties. Based on the absence of objections received from beneficiaries and non-beneficiaries of the covenant and in consideration the applicant has the reduced scale of the outbuilding, the proposal is deemed to be consistent with the tests of Section 60(2) of the *Planning and Environment Act 1987* for the protection of residential amenity and neighbourhood character. The application is recommended for approval.

- 8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS**
- 9 PROCESS FORWARD AND WORK PROGRAM**
- 10 UPDATE ON VCAT DECISIONS**
- 11 OTHER BUSINESS**
- 12 DATE OF NEXT MEETING**
- 13 MEETING CLOSE**