



MINUTES

Development Assessment Committee Meeting

Wednesday, 15 February 2023

Date: Wednesday, 15 February 2023

Time: 6.00pm

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

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1 OPENING

The Mayor opened the meeting with the Council Prayer at 6:00pm.

2 PRESENT AND APOLOGIES

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

IN ATTENDANCE:

Mr Derek Madden	Chief Executive Officer
Mr Henry Bezuidenhout	Executive Manager Community Planning & Development
Ms Celeste Gregory	Executive Manager Democratic Support & Corporate Governance
Mr Mark Lovell	a/g Manager Statutory Planning & Regulatory Services

APOLOGIES:

Nil.

3 RECORDING OF MEETING

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

4 CONFIRMATION OF MINUTES**COMMITTEE RESOLUTION**

Moved: Cr Tom Sullivan

Seconded: Cr Ally Munari

That the minutes of the Development Assessment Committee Meeting held on Wednesday 14 December 2022 be confirmed.

CARRIED

5 MATTERS ARISING FROM PREVIOUS MINUTES

Nil.

6 DISCLOSURE OF CONFLICTS OF INTERESTS

Nil.

PRESENTATIONS/DEPUTATIONS

Item	Community Planning and Development	Speaker/s	Position	Attendance
7.1	PA2022092 – Development and Use of a Dwelling and Ancillary Shed at Tierneys Road, Dunnstown	Neil Haydon	Legal Representative	In Person with Written Submission
7.2	PA2022170 – Use and Development of a Dwelling and Ancillary Outbuilding at 110 Pound Creek, Navigators	David Collins	Applicant	In Person
7.3	PA2022162 – Two Lot Subdivision (re-subdivision) at 229 Smiths Road, Parwan	Gina Christy	Applicant Representative	Online
7.4	PA2022159 – Two Lot Subdivision (re-subdivision) at 506 Bungaree-Creswick Road, Pootilla	Neil Haydon	Applicant	In Person with Written Submission
7.5	PA2021240 – Variation of Restrictive Covenant AD159230W at 10 Parkside Drive, Hopetoun Park	Kathy Charalambous	Landowner	In Person
7.6	PA2022031 – Removal of Native Vegetation at 3 Main Street, Gordon	Sarah Stapleton	Applicant	In Person
7.6	PA2022031 – Removal of Native Vegetation at 3 Main Street, Gordon	Helen Fernandez	Objector	Written Submission
7.6	PA2022031 – Removal of Native Vegetation at 3 Main Street, Gordon	Heidi Johnson	Objector	Written Submission
7.6	PA2022031 – Removal of Native Vegetation at 3 Main Street, Gordon	Maria Paola Torti	Objector	Written Submission
7.6	PA2022031 – Removal of Native Vegetation at 3 Main Street, Gordon	Anja Schneider	Objector	Written Submission
7.7	PA2019109-1 – Amendment to Use and Development of a Service Station, Convenience Restaurant, Three Lot Subdivision, Signage and the Creation of Access to a Road in a Road Zone Category 1, in accordance with the endorsed plans at 101 Gisborne Road, Bacchus Marsh	John Crossman	Objector	In Person

Neil Haydon addressed the Committee as the Applicant Legal Representative to Item 7.1.

7 COMMUNITY PLANNING REPORTS

7.1 PA2022092 - DEVELOPMENT AND USE OF A DWELLING AND ANCILLARY SHED AT TIERNEYS ROAD, DUNNSTOWN

Author: Victoria Mack, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments:

1. Dwelling Floor Plans & Elevations (under separate cover)
2. Dwelling Site Plans (under separate cover)
3. Shed Plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2022092

Lodgement Date: 1 June 2022

Planning Officer: Victoria Mack

Address of the land: Tierneys Road, Dunnstown
Lot 1 on TP099313J & Land in Plan of Consolidation PC 154465

Proposal: Development and Use of a Dwelling and Ancillary Shed

Lot size: 10.99ha

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.

MOTION

Moved: Cr Tonia Dudzik

Seconded: Cr Tom Sullivan

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2022092 for the Development and Use of a Dwelling and farm shed in association with an agricultural use of the land at Tierneys Road, Dunnstown otherwise known as Lot 1 on Title Plan TP 099313J and Land in Plan of Consolidation PC 154465 subject to the following conditions:

Endorsed Plans:

- 1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. All buildings and works must be constructed and or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority. All buildings and works must be located clear of any easements or water and sewer mains or septic tank and effluent lines unless written approval is provided by the relevant authority.**
- 2. Before the use and development starts Lot 1 TP99313 and Plan CP154465 must consolidated to the satisfaction of the Responsible Authority.**

Farm Management Plan:

- 3. A Farm Management Plan to the satisfaction of the Responsible Authority must be endorsed as part of this Permit, and cannot be varied without the written consent of the Responsible Authority.**

Section 173 Agreement:

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

Dwelling Requirements:

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

Environmental Health:

10. The land application area and all conditions must be in accordance to the Land Capability Assessment prepared by Ballarat Soil Testing Pty Ltd, ref number KB240821 dated 25 August 2021 or any approved amendment are to be strictly adhered to.
11. An onsite waste water management system with the capacity to treat effluent to a minimum of 20mg/L BOD, 30mg/L SS and 10orgs/100ml with chlorination, i.e. secondary treatment via an aerated wastewater treatment system must be installed.
12. The effluent disposal area must be kept free of buildings, driveways, vehicular traffic and services trenching.
13. All setback distances must be adhered to as dictated by Table 5 of the Code of Practice, Onsite Wastewater Management, EPA Publication Number 891.4
14. Subsurface Irrigation system needs to be installed to a depth of 150mm in situ or if the soil is of poor quality, imported good quality topsoil may be required, with a 1m spacing in between lines.

Development Infrastructure:

15. A standard rural vehicle crossing must be provided on Tierneys Road to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.
16. Storm water drainage from the proposed buildings and impervious surfaces must be retained and disposed of with a legal point of discharge issued by the Responsible Authority. If applicable, overflows from on-site storage systems must be directed away from any waste water disposal areas.
17. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991) and civil construction, building and demolition guide (EPA 2020).
18. Unless otherwise approved by the responsible authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
19. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset Services identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority.

Central Highlands Water:

20. The dwelling and effluent disposal system must be located in accordance with the Land Capability Assessment by Ballarat Soil Testing referenced KB240821 on 25 August 2021.
21. The owner must install a wastewater management system that provides a secondary level of treatment of wastewater, in accordance with the recommendations in section 5 of Land Capability Assessment by Ballarat Soil Testing Reference referenced KB240821 on 25 August 2021.
22. Any wastewater management system installed must be regularly serviced by an approved service agent in accordance with the relevant EPA Code of Practice, certificate of approval and Australian Standard.
23. Prior to a Building Permit being issued for a dwelling the owner must enter into an agreement with Central Highlands Region Water Corporation (CHW) and the Moorabool Shire Council (the Shire) under Sections 173 of the *Planning and Environment Act 1987*, requiring that:
 - (a) The owner must have any wastewater treatment facility and effluent disposal system for the dwelling inspected annually by a qualified environmental health officer and must provide annually to both the Shire and to CHW a written report from the Environmental Health Officer on the condition of the wastewater treatment and effluent disposal system.
 - (b) The Owner must have the wastewater treatment facility desludged at least once every three years or as otherwise determined by the Environmental Health Officer and evidence of this desludging must be provided in the Environmental Health Officer report referred to in Clause (a) herein.
 - (c) The Owner must carry out any works considered necessary by the EHO to ensure the satisfactory operation of the wastewater treatment facility and effluent disposal system.
 - (d) The owner will maintain all drainage lines at all times to divert surface water and subsurface water clear of the effluent disposal field.
 - (e) The Owner and the Shire agree to do all things necessary to register a memorandum of this Agreement on the title of the land pursuant to Section 181 of the *Planning and Environment Act 1987*.
 - (f) The Owner must meet all costs of inspections, reports and works referred to in Clauses (a), (b), (c) and (d) herein and all costs of the Shire in relation to stamping and registration of this Agreement.
 - (g) The Owner must not sell or enter into any contract to sell the land until this Agreement has been registered pursuant to Clause (e) herein.
 - (h) The landowners must meet all costs of preparing and recording this agreement.

Permit Expiry:

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

Permit Note:

1. Prior to installation of works commencing on the wastewater system, a permit to install an onsite wastewater management system must be submitted to Environmental Health.
2. This Permit for Use and Development is conditional. All permit conditions need to be

complied with and are enforceable.

- 3. Council will monitor ongoing compliance with the stated objectives and outcomes of the Farm Management Plan forming part of this Permit.**

CARRIED

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes, one notice.
Notice in Moorabool Newspaper:	No.
Number of objections:	Nil.
Consultation meeting:	N/A

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 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 – Victoria Mack

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

EXECUTIVE SUMMARY

Application referred?	The application was referred to Barwon Water, Agriculture Victoria and Council's Environmental Health and Infrastructure Services.
Any issues raised in referral responses?	Agriculture Victoria provided comments and recommendations which are included in the Discussion section of this report.
Preliminary concerns?	The scale of the agricultural enterprise proposed to justify the development and use of a dwelling on the land.

Any discussions with applicant regarding concerns?	A request for further information was sent to the applicant. Agriculture Victoria's referral response was also provided to the applicant.
Any changes made to the application since being lodged?	The Farm Management Plan was amended to address the issues raised.
Brief history.	The site contains an existing farm shed. The land has more recently been used for potato production and cattle grazing. Water from the dam on the property is currently sold to a neighbouring potato farmer. VCAT has issued a recent decision which has examined the Moorabool Planning Scheme and determined to refuse a permit for a dwelling in the Farming Zone. This decision must be taken into consideration with the current application.
Previous applications for the site?	PA2018132 - Development and use of a hayshed approved on 9 August 2018.
General summary.	The land is prime agricultural land demonstrated by a previous lease of the land for potato production. The land has since been resown to pasture. The proposed farming use to raise 20-25 calves a year on this property which is known to be highly productive agricultural land does not demonstrate that the development and use of a dwelling on the site is reasonably required for this enterprise. It is considered that the application should not be supported.
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 PA2022092 for the Development and Use of a Dwelling and Ancillary Shed at Tierneys Road, Dunnstown, otherwise known as Lot 1 on TP099313J and Land in Plan of Consolidation PC 154465 subject to the grounds contained within this report.	

SITE DESCRIPTION

The site is 10.993ha comprising two lots. The northern lot is 3.936ha in area and the southern lot is 7.057ha in area. The land is generally flat with quality perennial pasture established by the current owner. A large dam in the centre of the property has a surface area of 2.7ha including surrounding riparian vegetation particularly in the northern section. A waterway runs through the centre of the dam.

The land has been used in the past for potato production and cattle grazing. The site has a farm shed with a floor area of approximately 200sqm and an attached water tank.

The immediate surrounds consist of smaller lots many with dwellings on the east and north sides of the site with larger vacant agricultural lots to the west and south of the site. Surrounding land is used for potato production, grazing, horticulture and cropping.

The Dunnstown Recreation Reserve is located on the east boundary, the Ballarat Melbourne train line is located on the south boundary and Tierneys Road is located on the west boundary.

The site is located approximately 800m north-west of the Dunnstown township and approximately 4.3km south of the Western Freeway.



Figure 1: Aerial photo of the subject site.

PROPOSAL

It is proposed to construct a dwelling on the land in association with a calf rearing enterprise.

The dwelling would have four bedrooms, three bathrooms, an open plan kitchen, meals and lounge area and a separate family room. It would have verandas on three sides. External cladding would be face brick with aluminium windows and a Colorbond roof.



Figure 2: Site plan showing building envelope in aqua and the effluent disposal field in light purple

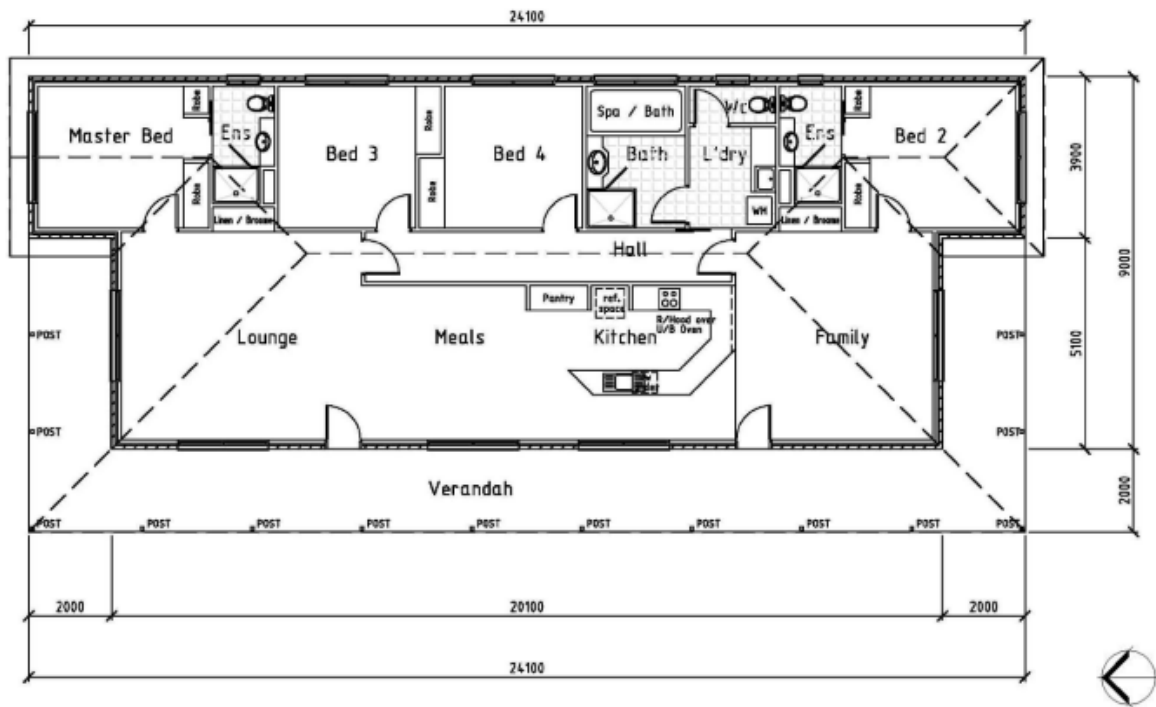


Figure 3: Dwelling floor plan

The dwelling would be orientated north south and would be located 20m east of Tierneys Road as shown in the site plan.

The land comprises two lots. The applicant was advised during the assessment process that if a permit was to be granted these lots would be required to be consolidated.

A Farm Management Plan was provided with the application which detailed the proposed agricultural use of the land. The owner wishes to live on the site to raise approximately 20-25 beef

dairy cross calves per annum in two groups each of 10 -12 calves. The calves would be weaned onto the pasture, recently established on the property. A set of cattle yards would be constructed. The current machinery shed would be used for the calf rearing and a new shed would be constructed near the existing shed for hay storage.

The calves would be raised with milk replacement and gradually introduced to pasture until they are weaned at 10-12 weeks of age. They would then be grown out and sold at 12 months of age. Some supplementary feed may be used as required which could be produced on the property or purchased.

The carrying capacity would be increased using a rotational grazing system and to that end there are plans to further divide the property into several smaller paddocks. A revised paddock layout would ensure optimal pasture production and stocking density.

The current stocking capacity of the property is estimated at 19DSE/Ha. This is based on 8.0 grazable hectares running 20 weaner steers, average weight about 250kg (152 DSE). It is assumed that with supplementary feeding and better feed utilisation via the proposed internal fencing subdivision a stocking rate of 25DSE/Ha could be achieved. This will allow the proponent to run 200 DSE per annum on the property or approximately 25 animals.

The dam has a capacity of 20ML and is fed by a reliable spring. Currently this water is sold annually to a neighbouring potato farmer. In the future the proponent will look at other intensive enterprises that could be developed to utilise this farm water.

It is noted that the owner has completed a Livestock Production Assurance (LPA) program for Animal Welfare for cattle and sheep.

The applicant has stated in the event a permit is issued, they do not want to register the Farm Management Plan on title via a Section 173 Agreement believing it limits future use of the land or changing agricultural uses.

BACKGROUND TO CURRENT PROPOSAL

Council's Development Assessment Committee held on 14 December 2022 determined to defer this application until the next available meeting after the applicant advised the owner wanted to present to the committee and was not able to attend the December meeting.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners and a large sign was placed on the site for a minimum period of 14 days.

No objections were received.

LOCALITY MAP

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

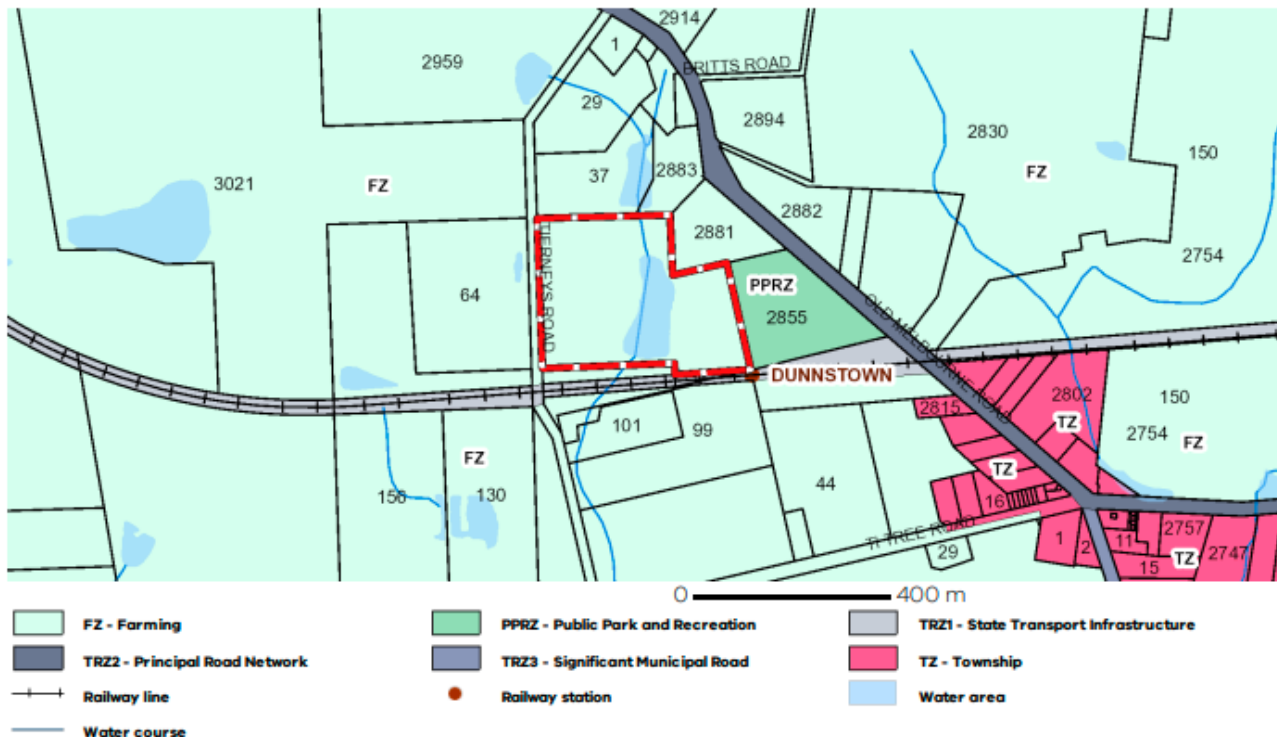


Figure 4: Map showing the zone of the land and the surrounding area

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03 — Peri Urban Areas
- Clause 14.01-1S — Protection of agricultural land
- Clause 14.02-1S — Catchment planning and management
- Clause 14.02-2S — Water quality
- Clause 15.01-6S — Design for rural areas
- Clause 16.01-5S — Rural residential development
- Clause 21.02-3 – Objective- Water and catchment management
- Clause 21.03-4 — Objective - Landscape and neighbourhood character
- Clause 21.03-6 — Objective - Rural lifestyle opportunities
- Clause 21.04 — Economic Development and Employment
- Clause 21.04-1 — Key issues and influences Agriculture and horticulture
- Clause 21.04-2 — Objectives - Agriculture

- Clause 22.03 — Houses and House Lot Excisions in Rural Areas
- Clause 21.04-2 — Objectives - Agriculture

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

PPF		
Clause 11.03-3S	Peri-urban areas	There is little nexus between the residential use of the land and the use of the land for agriculture.
Clause 14.01-1S	Protection of agricultural land Objective To protect the state's agricultural base by preserving productive farmland.	A dwelling intensifies the use of the land for residential pursuits. Raising 20-25 calves a year does not establish that a dwelling is reasonably required for this use of the site which was acknowledged by Agriculture Victoria.
Clause 16.01-5S	Rural residential development Objective To identify land suitable for rural residential development.	The proposal does not protect high quality agricultural land and represents inappropriate rural residential development.
LPPF	Title	Response
Clause 21.02-2	Non-Urban Landscapes.	The proposal would increase residential development in a prime rural location which erodes the rural character of the area.
Clause 21.03-4	Landscape and Neighbourhood Character	The proposed dwelling does not enhance the open landscape or rural character of the area.
Clause 21.03-6	Objective—Rural lifestyle opportunities	The proposal would fragment high value agricultural land in the Dunnstown agricultural district.
Clause 21.04-2	Objectives—Agriculture To protect good quality agricultural land and support the productivity and sustainability of existing and future agricultural and horticultural activities.	The proposal would not support productive, sustainable agriculture and food production. Raising 20-25 calves a year only requires intensive daily supervision for a short time, but once weaned the calves do not require intensive supervision.

ZONE

Farming Zone

The purpose of the Zone is to:

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

In accordance with Clause 35.07-1, Section 2, a permit is required to use land for a dwelling where the land is less than 40ha.

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

In accordance with Clause 35.07-4 a permit is required where a building is setback less than 100m from a dwelling not in the same ownership. The nearest neighbouring dwelling is located within approximately 80m of the site for the proposed dwelling and cattle rearing activities and a permit is required as the 100m setback distance cannot be achieved.

OVERLAYS

Environmental Significance Overlay, Schedule 1

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

The relevant water catchment authority, Central Highlands Water, consented to the application.

Design and Development Overlay, Schedule 2

In accordance with Clause 43.02 and Schedule 2 of this overlay, a permit is not required where all external cladding of buildings is non-reflective.

In this application, there are no reflective materials proposed and therefore a permit is not required under this overlay.

RELEVANT POLICIES

Council's Rural Growth Policy Statement

Council's Rural Growth Policy Statement was adopted by Council on 19 September 2012. GD007/01 provides guidance and direction to stakeholders within the shire on the development of rural areas within the Moorabool Shire for the next 30 years.

This document is designed to provide guidance to Council officers within the Statutory Planning Department to assess all applications for single dwellings in the Farming Zone in a fair and consistent manner. This will ensure that consistent information is provided to applicants when

seeking advice on single dwelling applications. It will also provide some clarity around the decision-making process.

This document applies to all land within the Farming Zone under the Moorabool Planning Scheme.

The policy aims to:

1. Encourage dwellings in areas nominated in Map 1 of Council Rural Growth Policy Statement.
2. 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.
3. Ensure it is clear whether the dwelling is required for agricultural operation, use or to maintain rural communities.
4. Ensure sufficient infrastructure is available or that alternative methods are available which do not require normal infrastructure.
5. 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 policy requires sufficient justification for a dwelling based on a proposed agricultural activity as is further detailed in the policy below.

It is recognised that a local population is critical to the success of small rural communities and in particular operational farming enterprises. However, this should not provide a free passage for rural areas to become quasi residential areas, which is not supported for a range of policy and logistical reasons.

Applications must be assessed against the relevant provisions of the Moorabool Planning Scheme and on its individual merits. Individual merits may include, but are not limited to, the current use of the site, surrounding land use, strategic planning for the area, historical land use, patterns of development etc. Despite these individual variables, there should be a consistent approach to assessing and deciding on these types of applications.

The key for these applications is to ensure that the location, design, access and context of a dwelling is appropriate for a dwelling to be provided on rural land without creating any land use conflicts or encouraging development that is inconsistent with the Moorabool Planning Scheme and any associated policies.

For applications where the land size is between 8ha and 20ha assessment principles include:

1. The objective of the dwelling on this size parcel of land should be to ensure that the viability of the agricultural practice or opportunities are not compromised as a result of the dwelling.
2. These applications must include a Farm Management Plan (FMP) to ensure that the obligations of the landowner/manager are met, and the agricultural practice is effective.
3. This FMP should include how the agricultural activities will be carried out and how the integrity of the site for agricultural uses will be maintained and enhanced.
4. It is also policy to minimise or avoid any land use conflict that may exist or be created as a result of the proposal.

Comment: It is not considered that running 20-25 calves on a site of approximately 8ha of available farming land justifies the use of a dwelling on the site. The calf rearing enterprise could

be conducted remotely which has been acknowledged by Agriculture Victoria in their referral response.

As stated in the policy *'it is recognised that a local population is critical to the success of small rural communities and in particular operational farming enterprises. However, this should not provide a free passage for rural areas to become quasi residential areas.'*

It is not considered that the objective of the dwelling on this size parcel of land is to ensure the viability of the agricultural practice, or that the FMP demonstrates that a dwelling is essential for this enterprise. The raising of young calves may require intense supervision for a few months of the year, but for the balance of the year, the cattle would graze on the land and would not require such supervision.

PARTICULAR PROVISIONS

No Particular Provisions apply to the application.

DISCUSSION

The Moorabool Planning Scheme provides discretion for a permit to be granted to use and develop of land for a dwelling on a lot less than 40ha. Where a permit is required, the purpose and decision guidelines of the Farming Zone require a range of matters be considered.

The Moorabool Planning Scheme asks Council to assess whether an application for the development and use of a dwelling in the Farming Zone is reasonably required to sustain the agricultural enterprises proposed.

The Farm Management Plan provided with the application states that 20-25 calves would be run on the site, from day old calves to 12 months of age. The application provides for supplementary feeding on an "as needs" basis but specific details were not provided.

The site has a waterway and dam in central section, and soils are high quality supporting productive agricultural use. It is considered that the agricultural potential of the site is not being realised with the current application.

While it is acknowledged that raising calves is an activity that could be intensive for a few months, this does not satisfy that the dwelling is reasonably required for such a small enterprise on a permanent basis.

The application does not accord with the purposes of the Farming Zone. It does not:

- support the retention of productive agricultural land.
- ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- ensure that the use and development of land is based on comprehensive and sustainable land management practices and infrastructure provision.

In relation to dwellings in the Farming Zone, the decision guidelines require the Responsible Authority to consider whether a dwelling would result in the loss or fragmentation of productive agricultural land. In this instance it is considered the dominant land use would become rural residential with the agricultural use ancillary to the use of the dwelling.

The Rural Residential Development Practice note No. 37, June 2015, states *'Rural residential development refers to land in a rural setting, used and developed for dwellings that are not primarily associated with agriculture. Some agriculture may take place on the land however it will*

be ancillary to the use for a dwelling. It is likely to be carried on for 'lifestyle' reasons and is unlikely to provide a significant source of household income'.

This application meets this definition.

While the raising of calves and production of vealers is an agricultural activity, it has not been clearly demonstrated that the use of the dwelling is reasonably required to undertake this activity on productive agricultural land on a permanent basis.

It is reasonable to assume that the grazing of cattle on the site will continue whether a dwelling is present or not.

The Practice note further describes productive agricultural land as generally having one or more of the following characteristics:

- a present pattern of subdivision favourable for sustainable agricultural production;
- can be used for a variety of agricultural pursuits;
- suitable soil type;
- suitable climatic conditions;
- suitable water supply; and
- suitable agricultural infrastructure, in particular irrigation and drainage systems.

The subject site meets more than one of the above characteristics of productive agricultural land. If rural residential use was to become the dominant use, then over time the agricultural potential of the site is likely to be diminished.

The proposal is not supported by either the PPF or the LPPF which includes protection of the state's agricultural base by preserving productive farmland and maintaining and enhancing the natural environment and the Shire's rural identity and character.

It is considered that the proposal would adversely affect high quality agricultural land from being used for a wholly productive purpose with the introduction of a rural residential use. A dwelling on such a small holding is not justified in the context of a small herd of calves because apart from the more intensive bottle-feeding stage for 6 weeks for each intake, the balance of the year the calves only need to be monitored and this is not required on a daily basis.

Agriculture Victoria has noted previously that the Dunnstown area is suitable for growing almost any temperate crop, given adequate water. These soils are also used for growing cereals, oil seeds, peas, potatoes, fodder crops, pastures and Lucerne. Several successive crops can be grown with little deterioration in soil structure or fertility.

Agriculture Victoria provided comments and recommendations in relation to this application in part stated that "a land use for grazing animal production and calf rearing can be carried without the presence of a dwelling as is the current management, but regular visits would be required to ensure against any animal welfare issues".

The applicant has not demonstrated that a dwelling is reasonably required to undertake an agricultural activity which improves the agricultural use of the land. The calves could be managed on the site without a dwelling.

Given that the land is already being farmed it is considered that the proposal would not realistically achieve any greater improvement of production than what is currently occurring.

Overall, the proposed development and use of the land for a dwelling is considered to be inconsistent with the PPF and LPPF, the Farming Zone objectives and the relevant decision guidelines at Clause 65 of the Moorabool Planning Scheme.

Recent VCAT Decision

Council has been notified of a decision of VCAT to affirm a refusal to grant a permit for the use and development of a dwelling in the Farming Zone. The *Alabakis v Moorabool SC* decision was issued on 22 December 2022. The decision reviewed the Moorabool Planning Scheme provisions and determined a dwelling is not an appropriate use in the Farming Zone.

The VCAT member acknowledged the policy at Clause 14.01-1S (Protection of agricultural land) seeks to limit new housing growth in rural areas by directing housing growth into existing settlements and discouraging development of isolated small lots in the rural zones from use for dwellings.

The member examined the Farm Management Plan and made advised *'I am not convinced that the agricultural activities proposed could not be successfully undertaken by personnel living off-site (particularly given the close proximity of the land to the Gordon township). Nor have I been persuaded that the proposed dwelling is required to support the proposed agricultural use of the land, having regard to the relevant policies at clauses 21.03-4 and 22.03 of the Scheme. Having considered the purposes and decision guidelines in the FZ, I have not been persuaded that the proposal to use the land for a dwelling is an acceptable outcome'*

In light of this VCAT decision, Council must consider the interpretation of the planning scheme provisions. The current application is for a small-scale operation consisting of 20-25 calves and can be conducted by personnel living off site in similar circumstances to the above decision.

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
Central Highlands Water	Consent with conditions.
Agriculture Victoria	Comments and recommendations.
Council's	
Infrastructure	Consent with conditions.
Environmental Health	Consent with conditions.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

Notice was undertaken for the application, in accordance with s.52 of the *Planning and Environment Act 1987*. No objections were received. The applicant was invited to attend this meeting and invited to address the Development Assessment Committee if required.

OPTIONS

That the Development Assessment Committee could consider the following options:

- Issue a refusal to Grant a Permit in accordance with the recommendations of this report; or
- issue an approval to Grant a Permit with conditions. The Committee would need consider how a dwelling in the Farming Zone satisfies the purpose and decision guidelines of the zone.

CONCLUSION

The proposal dwelling is located on highly productive land that can be used for a range of agricultural uses. The proposed dwelling will fragment the land and reduce the extent of land for farming purposes. The small herd of calves does not require a dwelling to sustain the activity which was acknowledged by Agricultural Victoria. There is no clear nexus between the proposed farming enterprise and need for a dwelling especially calves over six months of age that do not require intensive supervision. The proposed dwelling is not supported by state or local planning polices and is inconsistent with the objectives of the Farming Zone. This has been affirmed by a recent VCAT decision. It is recommended a refusal to grant a permit be issued.

David Collins addressed the Committee as the Applicant to Item 7.2.

7.2 PA2022170 - USE AND DEVELOPMENT OF A DWELLING AND ANCILLARY OUTBUILDING AT 110 POUND CREEK ROAD, NAVIGATORS

Author: Thomas Tonkin, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Proposed plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2022170

Lodgement Date: 7 September 2022

Planning Officer: Tom Tonkin

Address of the land: 110 Pound Creek Road, Navigators

Proposal: Use and development of a dwelling and ancillary outbuilding

Lot size: 8.09ha

Why is a permit required? Clause 35.07 Farming Zone – Use and development for a dwelling and ancillary outbuilding; Clause 42.01 Environmental Significance Overlay, Schedule 1 – Buildings and works; Clause 44.06 Bushfire Management Overlay – Buildings and works associated with accommodation

MOTION

Moved: Cr Tonia Dudzik

Seconded: Cr Tom Sullivan

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2022170 for the Use and Development of a Dwelling and Ancillary Outbuilding at 110 Pound Creek, Navigators, 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.**

Farm Management Plan:

- 2. A Farm Management Plan to the satisfaction of the Responsible Authority must be endorsed as part of this permit and cannot be varied without the written consent of the Responsible Authority.**

Section 173 Agreement:

- 3. Before the issue of a Building Permit for the dwelling the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the *Planning and Environment Act 1987* to the satisfaction of the Responsible Authority:**
 - (a) The owner of the land must acknowledge that while the land remains zoned as Farming Zone or its equivalent successor the primary use of the land is for agricultural activities and the use of the dwelling must be in conjunction with an approved agricultural activity.**
 - (b) Agricultural activities and environmental management identified in the endorsed Farm Management Plan must be undertaken on the land and must be in accordance with the Farm Management Plan endorsed under Condition 2 of the Planning Permit and cannot be varied without the written consent of the Responsible Authority.**

Dwelling Requirements:

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

adequate to accommodate emergency vehicles.

Materials and Colour:

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

Vegetation Removal:

9. Unless otherwise exempt under the Moorabool Planning Scheme or as shown on the plans endorsed under this planning permit, vegetation must not be removed, destroyed or lopped without further planning approval.

Development Infrastructure:

10. A standard rural vehicle crossing must be provided on Pound Creek Road to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.
11. The property access and the internal driveways must be constructed in accordance with the requirements specified in Table 5 of Clause 53.02-5 of the Moorabool Planning Scheme, to the satisfaction of the Responsible Authority.
12. Storm water drainage from the proposed buildings and impervious surfaces must be retained and disposed of within the boundaries of the subject land to the satisfaction of the Responsible Authority. Overflows from on-site storage systems must be directed away from any wastewater disposal areas.
13. 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).
14. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
15. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset Services identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority.

Environmental Health:

16. The land application area and all conditions must be in accordance with the Land Capability Assessment prepared by AGR GeoSciences Pty Ltd, Reference number 22F0858LCAv2 dated 13 October 2022 or any approved amendment.
17. An onsite wastewater management system with the capacity to treat effluent to a primary standard i.e., standard septic tank must be installed in accordance with the requirements of the *Environment Protection Act 1970*, the Guidelines for Environmental Management: Code of Practice – Onsite Wastewater Management 891. 4 (2016) and the Responsible Authority.
18. Effluent disposal must be undertaken via a subsurface irrigation system designed and installed by a wastewater irrigation expert in accordance with the EPA Code of Practice for Onsite Wastewater.
19. The approved dwelling's wastewater must be treated and contained within the property boundaries in accordance with the current EPA Code of Practice – Onsite Wastewater Management: Guidelines for Environmental Management, Australian Standards 1547 and

Council requirements.

20. The effluent disposal area must be kept free of buildings, driveways, vehicular traffic and services trenching.
21. All setback distances must be adhered to as dictated by Table 5 of the Code of Practice, Onsite Wastewater Management, EPA Publication Number 891.4.
22. The owner will maintain all drainage lines at all times to divert surface water and subsurface water clear of the effluent disposal field.
23. A shallow surface water cut off drain or surface water diversion mound, should be provided on the high side of the disposal areas to divert any surface water flows around the effluent fields.

Central Highlands Water:

24. The dwelling and effluent disposal system must be located in accordance with the Land Capability Assessment by AGR GeoSciences Pty Ltd Reference number 22F0858LCAv2 dated 13 October 2022.
25. The owner must install a wastewater management system that provides a level of treatment of wastewater, in accordance with the recommendations in section 5 of Land Capability Assessment by AGR GeoSciences Pty Ltd reference 22F0858LCAv2 dated 13 October 2022.
26. Any wastewater management system installed must be regularly serviced by an approved service agent in accordance with the relevant EPA Code of Practice, certificate of approval and Australian Standard.
27. Prior to a Building Permit being issued for a dwelling the owner must enter into an agreement with Central Highlands Region Water Corporation and the Moorabool Shire Council under Sections 173 of the *Planning and Environment Act 1987*, requiring that:
 - (a) The owner must have any wastewater treatment facility and effluent disposal system for the dwelling inspected annually by a qualified Environmental Health Officer and must provide annually to both the Shire and to Central Highlands Water a written report from the Environmental Health Officer on the condition of the wastewater treatment and effluent disposal system.
 - (b) The Owner must have the wastewater treatment facility desludged at least once every three years or as otherwise determined by the Environmental Health Officer and evidence of this desludging must be provided in the Environmental Health Officer report referred to in Clause (a) herein.
 - (c) The Owner must carry out any works considered necessary by the Environmental Health Officer to ensure the satisfactory operation of the wastewater treatment facility and effluent disposal system.
 - (d) The owner will maintain all drainage lines at all times to divert surface water and subsurface water clear of the effluent disposal field.
 - (e) The Owner and the Shire agree to do all things necessary to register a memorandum of this Agreement on the title of the land pursuant to Section 181 of the *Planning and Environment Act 1987*.
 - (f) The Owner must meet all costs of inspections, reports and works referred to in Clauses (a), (b), (c) and (d) herein and all costs of the Shire in relation to stamping and registration of this Agreement.
 - (g) The Owner must not sell or enter into any contract to sell the land until this Agreement has been registered pursuant to Clause (e) herein.
28. The landowners must meet all costs of preparing and recording this agreement.

Country Fire Authority:

29. The bushfire protection measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the Responsible Authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.
30. Before the development starts, the Bushfire Management Plan prepared by Central Highlands Environmental Consultancy, Version V01, dated 20 July 2022 must be endorsed by the Responsible Authority. Once endorsed the plan must not be altered unless agreed to in writing by Country Fire Authority and the Responsible Authority.

Permit Expiry:

31. 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:

1. Prior to installation of works commencing on the wastewater system, a permit to install an onsite wastewater management system must be submitted to Council's Environmental Health.
2. This Permit for Use and Development is conditional. All permit conditions need to be complied with and are enforceable.
3. Council will monitor ongoing compliance with the stated objectives and outcomes of the Farm Management Plan forming part of this Permit.

CARRIED

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

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

Priority 2.3: Enhance our natural environments

The proposal is not consistent with the Council Plan 2021 – 2025.

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, Central Highlands Water, Country Fire Authority and Agriculture Victoria, and to Council's Infrastructure and Environmental Health.
Any issues raised in referral responses?	Agriculture Victoria provided a letter of advice which concluded, in part, that the proposed agricultural pursuits could be achieved without a dwelling being present. Council's Environmental Health requested amendments to the submitted Land Capability Assessment.

Preliminary concerns?	Amendments to the submitted Farm Management Plan to provide further information were requested in accordance with the advice from Agriculture Victoria.
Any discussions with applicant regarding concerns?	The applicant was advised in writing of the preliminary concerns.
Any changes made to the application since being lodged?	Changes were made to the Farm Management Plan in response to the preliminary concerns.
Brief history.	Not applicable.
Previous applications for the site?	None.
General summary.	<p>It is proposed to develop the site with a dwelling and ancillary outbuilding in support of a harness racing training facility for a maximum of five horses.</p> <p>The application was advertised and no objections received. Agriculture Victoria provided Council with advice on the application, including that the farming venture could be undertaken without the proposed dwelling.</p> <p>The proposal does not adequately meet relevant state and local planning policies or the purpose of the Farming Zone in relation to residential development and fragments agricultural land.</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 PA2022170 for the Use and Development of a Dwelling and Ancillary Outbuilding at Crown Allotment 6B, Section 20, Parish of Warrenheip known as 110 Pound Creek Road, Navigators, on the grounds included in this report.	

SITE DESCRIPTION

The subject site, identified as Crown Allotment 6B, Section 20, Parish of Warrenheip and is known as 110 Pound Creek Road, Navigators. The site is located on the western side of Pound Creek Road approximately 560m north of Ted Lyons Road in Navigators.

The site is rectangular shaped, with a 149m wide frontage, depth of 543m and overall area of 8.09ha, with existing vehicle access via a crossover parallel to the southern title boundary. The internal accessway leads to the rear of the site. The site is developed with a 680m long horse trotting track occupying the eastern half of the site. Further to the west is a dam and near the rear of the site are small outbuildings. Vegetation comprises mostly mature native trees in clumps or scattered throughout the site although there are large, cleared areas. The southwest corner of the site is encumbered by overhead electricity supply line easements running diagonally through the site.

The subject site and surrounding land is in the Farming Zone and comprises lots generally 8ha to 17ha in size, with the occasional example of smaller and larger lots. Most lots are developed with

single dwellings and ancillary outbuildings and used as rural lifestyle or hobby farms supporting grazing and cropping. Whilst there is cleared farming land in the area there are also some substantial tracts of heavily forested private land proximate to the subject site to the north, south and west.



Figure 1: Aerial photograph

PROPOSAL

It is proposed to use and develop the subject site for a dwelling and ancillary outbuilding. The proposed dwelling would be single storey building comprising three bedrooms and the usual amenities with an attached double carport. The dwelling would be externally clad with brick and have a low pitched hipped Colorbond roof with an overall height of 4.4m. The dwelling would be sited to the west of the existing trotting track and is set back 41m from the southern title boundary, 179m from the western title boundary and 98m from the northern title boundary.

The proposed outbuilding would have dimensions of 19.8m length x 8.4m width, yielding a floor area of 166.3sqm. The outbuilding sited southeast of the proposed dwelling and is setback 17m from the south title boundary. The outbuilding would be clad with Colorbond, have a low pitched hipped roof and overall height of 5m. The building would comprise of three stables, a transitional area and a machinery bay partially open sided.

The proposal is in support of a harness racing training facility for a maximum of five horses, utilising the existing onsite horse trotting track.

The existing dam is proposed to be enlarged.

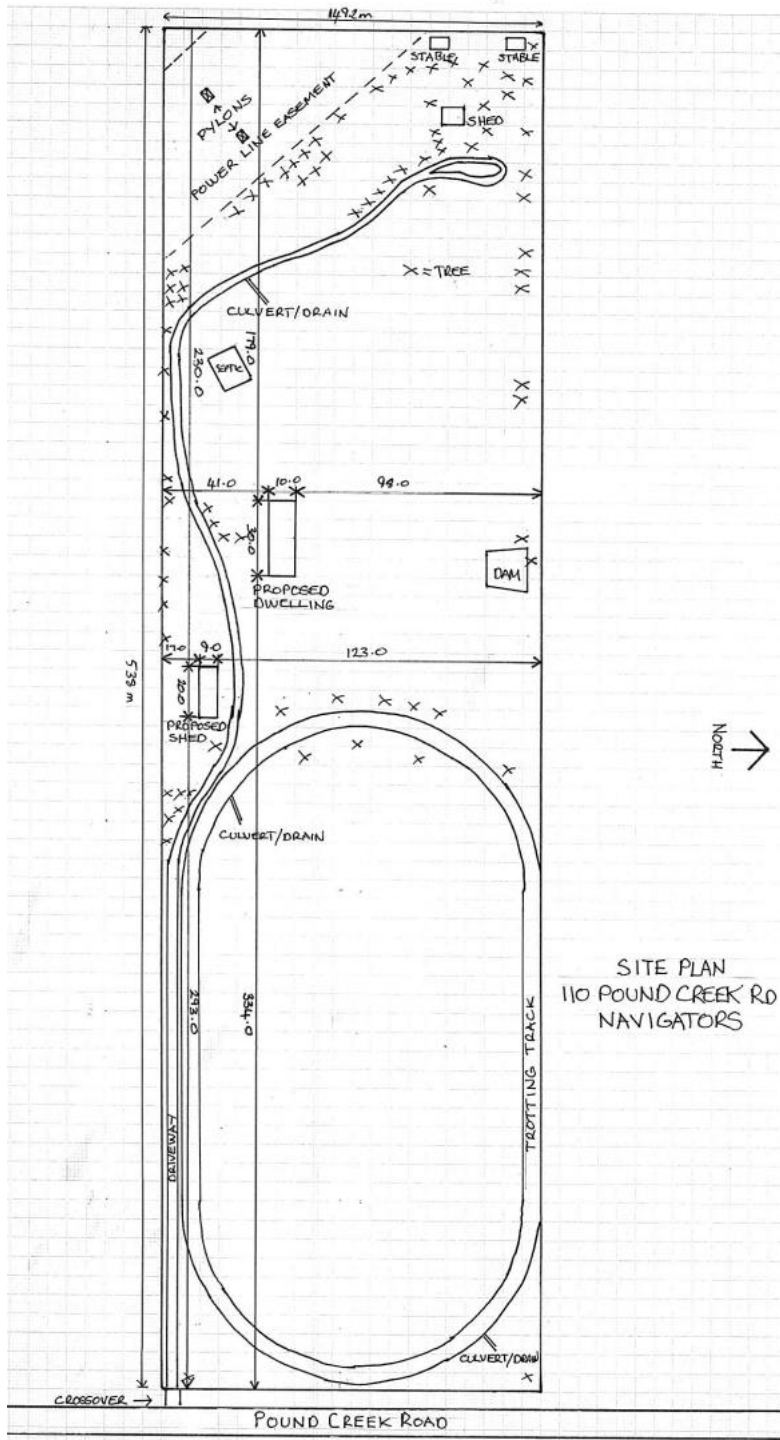


Figure 2: Proposed site plan

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.

LOCALITY MAP

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

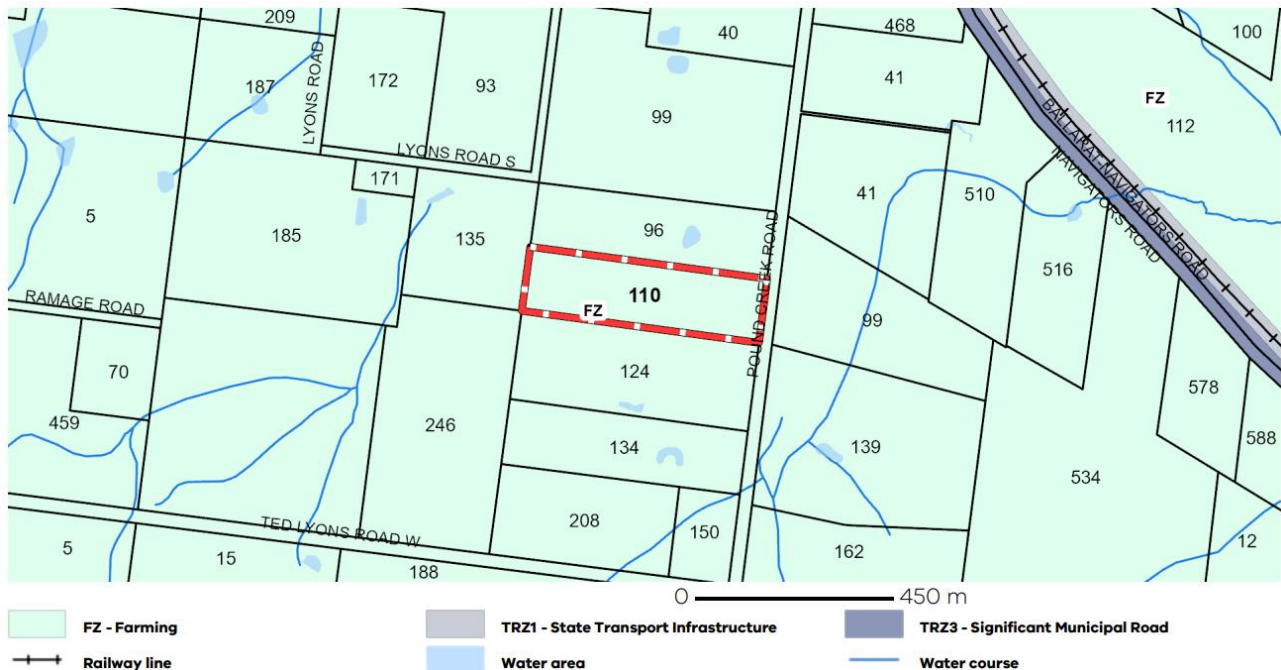


Figure 3: Zone map

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.01-1R – Settlement - Central Highlands
- Clause 11.03-3S – Peri-urban areas
- Clause 13.02-1S – Bushfire planning
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-2S – Water quality
- Clause 15.01-6S – Design for rural areas
- Clause 16.01-3S – Rural residential development
- Clause 21.02-2 – Non-urban landscapes
- Clause 21.02-3 – Water and catchment management
- Clause 21.03-4 – Landscape and neighbourhood character
- Clause 21.03-6 – Rural lifestyle opportunities

- Clause 21.04-2 – Agriculture
- Clause 21.09-1 – Small towns and settlements
- Clause 22.02 – Special Water Supply Catchments
- Clause 22.03 – Houses and House Lot Excisions in Rural Areas

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

SPPF	Title	Response
Clause 14.01-1S	Protection of agricultural land	The nature of the proposal does not sufficiently justify the need for a dwelling, the development of which reduces the land available for agricultural production.
Clause 16.01-3S	Rural residential development	The proposed dwelling lacks strategic justification consistent with this policy.
LPPF	Title	Response
Clause 21.03-6	Rural lifestyle opportunities	It has not been sufficiently demonstrated that the proposed dwelling is needed to support the farming enterprise. Accordingly, it is considered that the dwelling would reduce the land available for productive agricultural purposes.
Clause 21.04-2	Agriculture	The associated farming enterprise comprising of five horses does not necessitate a dwelling.
Clause 22.03	Houses and house lot excisions in rural areas	The small lot size does not support a further fragmentation with a proposed dwelling.

ZONE

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

The purpose of the zone is:

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

- To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

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

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

OVERLAYS

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

Environmental Significance Overlay, Schedule 1

Under Clause 42.01-2 a permit is required to construct buildings and works. It is noted that under Schedule 1 there is an exemption for the construction of a dam of less than 3ML not located on a waterway. The proposed dam enlargement meets this exemption, but the proposed dwelling and ancillary outbuilding is not exempt and requires a permit under this overlay.

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

Design and Development Overlay, Schedule 2

Under Clause 43.02-3 (DDO) 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.

Bushfire Management Overlay

Under Clause 44.06-2 (BMO) a permit is required to construct buildings and works associated with Accommodation, which includes a Dwelling, and therefore a permit is 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 shown on Map 1 of the Council Rural Growth Policy Statement in an area where dwellings are encouraged to locate on lots with an 8ha minimum size.

The policy requires justification for the dwelling based on the proposed agricultural activity. Whilst the proposal includes agricultural activities it is deemed that the success of the farming enterprise would not rely upon a dwelling on the site.

Council's Rural Housing Policy

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

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

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

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

Particular Provisions

Clause 53.02 Bushfire Planning

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

DISCUSSION

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

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

The subject site is an 8.09ha lot in Navigators, currently developed with a dam, harness racing training track and small outbuildings used for stables and the storage of harness training equipment and hay. The applicant intends for the facility to comprise two main purposes, as follows:

- Training of two race ready horses; and

- Education and preparation of young horses prior to commencement of their racing careers. Three horses at a time would go through this process on a 12-week rotation.

Additionally, growing of grass hay would also occur.

The applicant advises that there are several harness racing tracks within 100km of the property and that Moorabool and surrounding areas are home to many professional harness racing trainers. There are training facilities in Ballan and Bacchus Marsh and racetracks at Ballarat and Melton, with more than 140 race and trial meetings at these facilities annually, involving thousands of horses.

The applicant's justification for a dwelling in support of this farming activity includes the following:

- The existing for harness racing training is to intensify and accordingly the bloodstock will be more valuable than was previously trained onsite. Correspondingly there is a greater need for security achieved by residing onsite.
- Supervision of animals to ensure appropriate animal welfare.
- Efficiencies achieved by residing onsite to undertake horse training, property maintenance and improvement and agricultural input which can require long hours.
- Foaling of livestock and necessary monitoring.
- Owners of high-quality horses will not consider giving a horse to a trainer where 24 hour a day supervision and an ability to intervene is absent.

Although the subject site is in an area characterised by lots generally 8ha to 17ha in size, most of which are developed with dwellings and used predominantly as rural lifestyle or hobby farming properties, increased dwellings in the area further removes the land available for farming purposes.

The proposal does not align with the purpose of the Farming Zone, considering that the proposed dwelling is not considered essential to operate the proposed farming enterprise.

Council referred the application to Agriculture Victoria, who provide an advisory service for the assessment of applications that include Farm Management Plans. It is noted that Agriculture Victoria's advice includes that 'the land use for horse husbandry can be carried out without the presence of a dwelling, but regular visits would be required to ensure daily management of the property and animal welfare were maintained.' This advice is consistent with relevant state and local planning policies and the Farming Zone provisions, which discourages land use change, including dwellings, which reduces land available to agriculture and results in the dispersal of urban development into rural areas beyond established townships.

Overall, the proposal is generally characteristic of the demand for rural residential development with limited potential for dwellings to reasonably support agricultural use. The proposal represents the ad hoc nature of such development, which without sufficient strategic justification pose a potentially detrimental outcome for the Shire's agricultural land base and the associated economic and environmental values. Although the surrounding area is populated by dwellings, the area is relatively isolated with the nearest services in Buninyong, Warrenheip or Dunnstown approximately 7km away and an additional dwelling will exacerbate a scattered community without convenient access to services. The development of dwellings in the Farming Zone, such as that proposed, contributes to a dispersal of scattered residential development beyond township boundaries. This threatens the rural landscape character, undermines the potential for viable

agricultural ventures to succeed on such landholdings and reduces opportunities for contiguous land parcels to be consolidated to increase potential productivity.

The proposed use and development are contrary to the zone objectives. The use of land of land five horse can occur without the presence of a dwelling.

The proposed use is not consistent with the objectives of the Farming 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
Central Highlands Water	Consent with conditions.
CFA	Consent with conditions.
Agriculture Victoria	Letter of advice.
Council's	
Infrastructure	Consent with conditions.
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 if required.

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.

CONCLUSION

Overall, the proposed use and development for a dwelling does not satisfy the relevant provisions of the Moorabool Planning Scheme, in particular state and local planning policies relating to agricultural land and residential development, and the Farming Zone provisions. There is not sufficient justification for the proposal, based substantially on the proposed Farm Management

Plan which does not demonstrate the requirement for a dwelling. Agriculture Victoria acknowledged while a daily presence is required for a horse enterprise, it does not require to be supported by a dwelling on site. The proposed use and development should not be supported.

Gina Christy addressed the Committee as the Applicant Representative to Item 7.3.

7.3 PA2022162 - TWO LOT SUBDIVISION AT 229 SMITHS ROAD, PARWAN

Author: Jyoti Makan, Senior Statutory Planner

Authoriser: Robert Fillisch, Manager Statutory Planning & Regulatory Services

Attachments: 1. Proposed Plan of Subdivision (under separate cover)

APPLICATION SUMMARY

Permit No: PA2022162

Lodgement Date: 23 August 2022

Planning Officer: Jyoti Makan

Address of the land: 229 Smith Road Parwan

Proposal: Two Lot Subdivision

Lot size: Approximately 122ha total size over four existing lots

Why is a permit required? Clause 35.07-3 Farming Zone – Subdivide land; Clause 42.01 - Environmental Significance Overlay – Subdivide land; Clause 45.02 - Airport Environs Overlay – Subdivide land

COMMITTEE RESOLUTION

Moved: Cr Paul Tatchell

Seconded: Cr Moira Berry

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 PA2022162 for a Two Lot Subdivision at 229 Smiths Road, Parwan subject to the following conditions:

Endorsed Plans:

- 1. The formal plan of subdivision lodged for certification must be generally in accordance with the endorsed plan and must not be modified except to comply with statutory requirements or with the written consent of the Responsible Authority.**

Subdivision:

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

Infrastructure:

5. Prior to the issue of Statement of Compliance, the property access and the internal driveways must be constructed in accordance with the requirements specified in Table 5 of Clause 53.02.5 of the Moorabool Planning Scheme, to the satisfaction of the Responsible Authority.
6. Prior to the issue of Statement of Compliance, a standard vehicle crossing must be provided to Daisybank Lane and Smiths Road to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.
7. 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).
8. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
9. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset Services identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority.

Melbourne Water:

10. Prior to the issue of a Statement of Compliance, a separate application direct to Melbourne Water must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses. Prior to accepting an application, evidence must be provided demonstrating that Council considers that it is not feasible to connect to the local drainage system.

Permit Expiry:

11. This permit will expire if:
 - (a) The plan of subdivision is not certified within two years of the date of this permit.
 - (b) Statement of Compliance must be achieved and certified plans registered at Titles office within five years from the date of certification.

CARRIED

PUBLIC CONSULTATION	
Was the application advertised?	Yes
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	One.
Consultation meeting:	Details of the application was provided to the objector, but the objection was maintained. No further consultation was conducted.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 1: Healthy, inclusive and connected neighbourhoods

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

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – 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, Melbourne Water, Victorian Planning Authority, Bacchus Marsh Aerodrome Management Inc., Council's Development Infrastructure and Strategic Planning.
Any issues raised in referral responses?	No.
Preliminary concerns?	No.
Any discussions with applicant regarding concerns?	No.

Any changes made to the application since being lodged?	No.
Brief history.	The site contains two existing dwellings over four existing lots.
Previous applications for the site?	PA2006-294 – Four lot subdivision (re-subdivision of existing lots).
General summary.	<p>The proposal for a two-lot subdivision in the form of realignment of boundaries to consolidate four fragment lots within the Farming Zone. Each lot is accessible and contains an existing dwelling and associated outbuildings.</p> <p>The proposal has no detrimental implications towards the ongoing Parwan Precinct Structure Plan.</p> <p>One objection was received regarding the intensification of the residential use of the land contrary to the objectives of the Farming Zone. No new dwellings are proposed.</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 Notice of Decision to Grant Planning Permit PA2022162 for a Two Lot Subdivision at 229 Smiths Road, Parwan, subject to the conditions contained within this report.	

SITE DESCRIPTION

The site is located within the Farming Zone and contains two existing dwellings. Each dwelling currently has separate access points from a crossover and driveway via Daisybank Lane and Smiths Road. Easements existing on the site are for the purposes of powerlines. The site consists of four lots and identified on the title plan as follows:

- Lot 1 on Plan of Subdivision 21422T with an area 105.4ha.
- Crown Allotment 4D Section 4 Parish of Parwan with an area of 2.023ha.
- Crown Allotment C2 Section 9 Parish of Parwan with an area of 1.529ha.
- Lot 2 on Plan of Subdivision 214227T with an area of 13.27ha.
- The total size area is 122.2ha and is surrounded by smaller landholdings containing dwellings in the Farming Zone. The Bacchus Marsh Aerodrome is located on the southern and eastern boundaries. Parwan Creek is located to the north and is covered by the Airport Environs Overlay (AEO1) and the Design and Development Overlay Schedule 2. The Environmental Significance Overlay – Schedule 2 (ESO2) covers the creek boundary north of the site. Easements existing on the site are for powerline purposes.



Figure 1: Aerial photograph

PROPOSAL

It is proposed to subdivide the site into two lots as a re-subdivision of the four existing lots into two lots. The existing dwellings and structures will remain on the land.

- Proposed Lot 1 is 40.57ha in area and will be accessed from Daisybank Lane.
- Proposed Lot 2 is 79.97ha in area and accessed from Smiths Road.

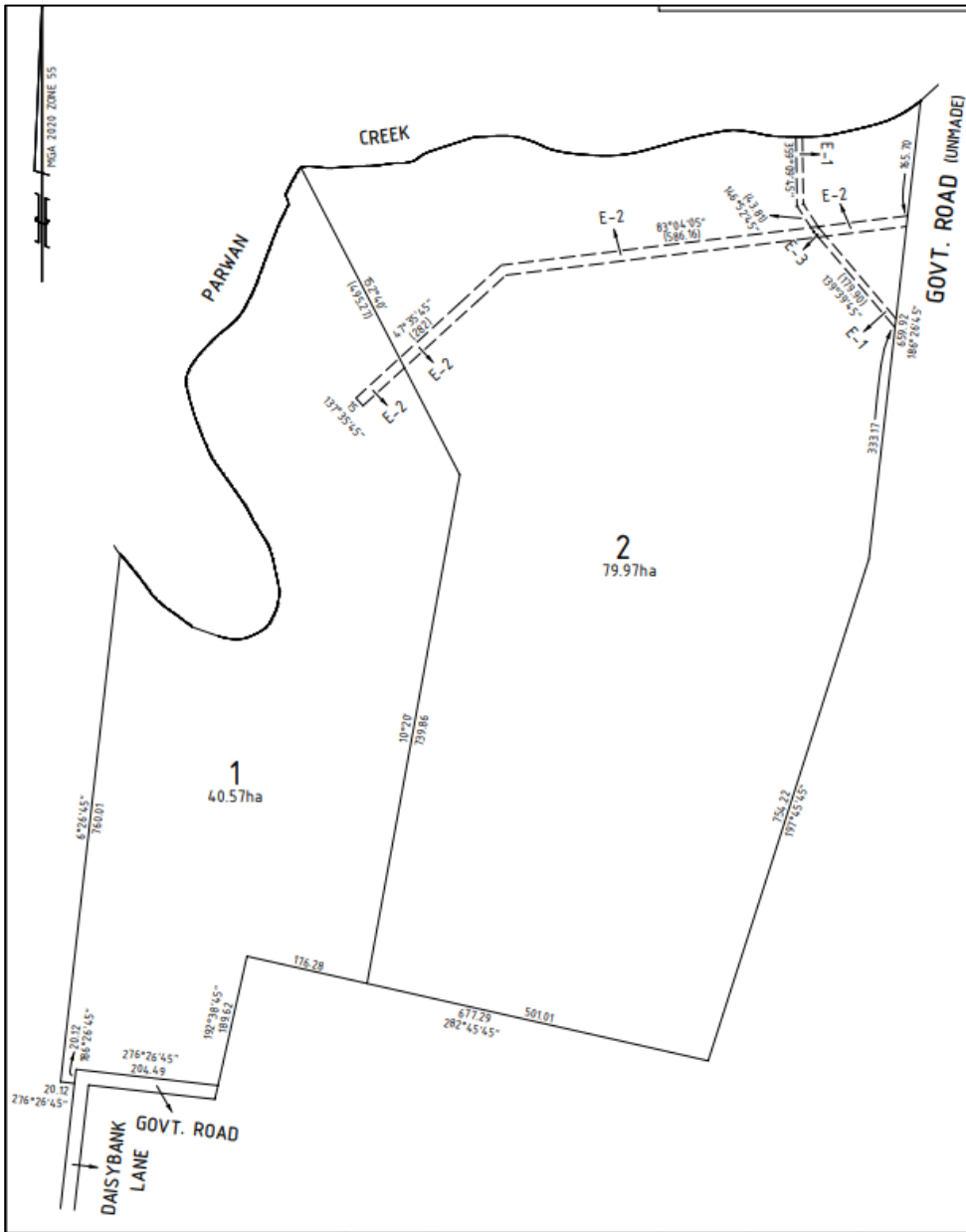


Figure 2: Plan of Subdivision

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners.

One objection was received.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
<p>Maddingley Brown Coal (MBC) objects to this subdivision proposal which seeks to subdivide land in a manner which will facilitate the piecemeal development of the land and the intensification of the residential use of the land contrary to the objectives of the farming zone.</p> <p>MBC considers that this "gateway" application will result in an intensification of the use of the land in manner which is incompatible with current and future site activities and the objectives of the State-wide Waste and Resource Recovery Infrastructure Plan.</p> <p>In addition, this proposal is ill-timed when regard is had to the strategic planning work currently being undertaken by the Victorian Planning Authority in relation to the Parwan Station Precinct Structure Plan and the Parwan Employment Precinct – in relation to which we note the entirety of the subject land forms a part. This proposal is potentially inconsistent with the objectives of that work.</p>	<p>Clause 35.07 – Farming Zone</p> <p>Clause 21.07 – Bacchus Marsh</p>
<p>Officer's Response: The existing conditions of the site include two dwellings with its associated outbuildings on four lots. Both dwellings are existing, and no proposal is made for additional dwellings or the intensification of residential use. The proposal is to re-subdivide land from four lots to two lots.</p>	

LOCALITY MAP

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

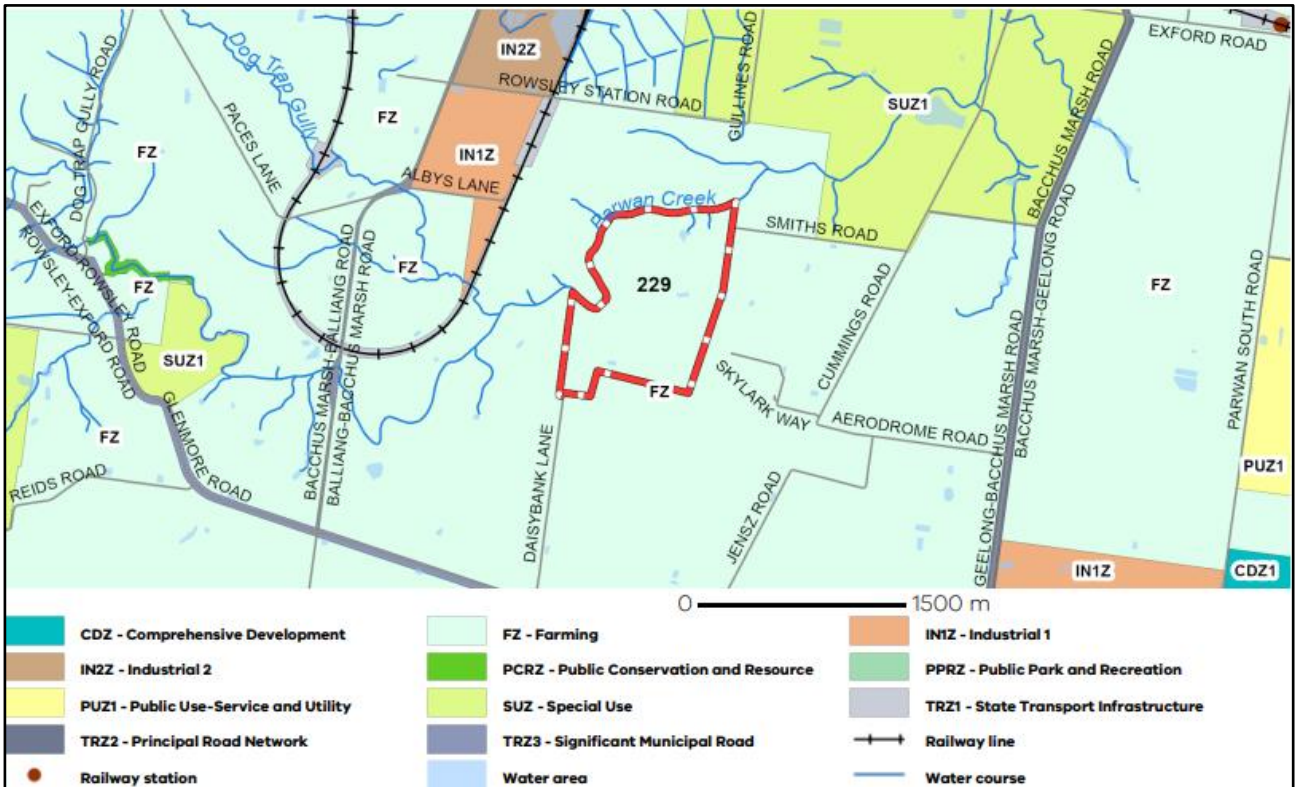


Figure 3: Zone map

PLANNING SCHEME PROVISIONS

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

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

ZONE

Farming Zone

One purpose of the Farming Zone is to encourage the retention of employment and population to support rural communities and to encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

A permit is required to subdivide land in the Farming Zone pursuant to Clause 35.07-3. Each lot must be at least 40ha unless specified otherwise in the schedule to the Farming Zone. The Schedule of the Farming Zone states that a minimum 100ha applies to the land for subdivision.

A permit may also be granted to create smaller lots if the subdivision is the re-subdivision of existing lots and the number of lots are not increased. This provision in the Farming Zone is what allows for the subdivision of the subject land.

OVERLAYS

Airport Environs Overlay (AEO)

The Airport Environs Overlay aims to assist in shielding people from the impact of aircraft noise by requiring appropriate noise attenuation measures in new dwellings and other noise sensitive buildings.

Under Clause 45.02-3 a permit is required to subdivide land.

Design and Development Overlay – Schedule 2 (DD02)

There are no permit requirements for the subdivision of land under this overlay.

Environmental Significance Overlay Schedule 2 (ES02)

The environmental objectives of Schedule 2 are:

- To protect the habitat significance of vegetation.
- To provide for appropriate development of land within 100m of either side of a waterway.
- To prevent pollution and increased turbidity of water in natural waterways.
- To prevent increased surface runoff or concentration of surface water runoff leading to erosion or siltation of waterways.
- To conserve existing flora and fauna habitats close to waterways and to encourage generation and regeneration of habitats.

Under Clause 42.01-2 a permit is required to subdivide land.

The application was referred to Melbourne Water who had no objection subject to one condition.

Particular Provisions

No relevant particular provisions.

DISCUSSION

The proposal is to re-subdivide the site comprised of four lots into two lots. Each proposed lot will contain an existing dwelling. The subdivision boundaries are well proportioned and do not show negative impacts toward the natural features of the land. Each lot has the opportunity to be serviced with road access via Daisybank Lane and Smiths Road as proposed. Conditions are recommended to ensure that access is constructed to the satisfaction of the Responsible Authority. This proposal does not intensify residential development but rather allows for the consolidation of fragmented land. Due to this, there is no impact on the Environmental Significance Overlay (Parwan Creek) and Airport Environs Overlay (Bacchus Marsh Aerodrome). The proposed two lots is minor in nature as no new use or development is proposed. The Farming Zone provisions creates the opportunity to re-subdivide land if the number of lots are not increased as is the case in this proposal. It will assist agricultural productivity by removing the fragmented lots. The re-subdivision does not affect the continued operation of MBC's waste facility as there are no additional lots created. The proposed re-subdivision is consistent with the zone and overlay objectives.

It is noted that the applicant states Lot 1 has an existing internal access via Daisybank Lane, but this is inconsistent with the site. The dwelling located on proposed Lot 1 clearly attains access via Lot 2. Therefore, a condition has been included in the permit to ensure an appropriate internal access is provided to the dwelling on Lot 1.

GENERAL PROVISIONS

Clause 65 - Decision Guidelines under the zone and overlays 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
Melbourne Water	Consent with conditions.
Bacchus Marsh Aerodrome Management Inc.	No response was received to date after repeated requests.
Victorian Planning Authority (VPA)	Noted the proposed subdivision will not result in any changes to the boundary of the Parwan Employment Precinct nor will it result in the land-locking of any lots and considered that the proposed re-subdivision will not prejudice the delivery of the future Parwan Employment Precinct.
Council's Development Infrastructure	Consent with conditions.
Council's Strategic Planning	No objection.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

That the Development Assessment Committee could consider the following options:

- Issue a Notice of Decision to Grant a Permit with conditions contained in this report, or
- issue a Refusal to Grant a Permit with grounds of refusal. The Development Assessment Committee will need to consider how the re-subdivision does not comply with the Moorabool Planning Scheme.

CONCLUSION

The proposal presents the orderly planning of the area and promotes the consolidation of fragmented lots.

The proposed re- subdivision meets the requirements of the planning scheme and has no impact of any surrounding land uses. The application is consistent with planning policy framework of the Moorabool Planning Scheme. It is recommended the re-subdivision be approved subject to conditions.

Neil Haydon addressed the Committee as the Applicant Representative to Item 7.4.

7.4 PA2022159 - TWO LOT SUBDIVISION (RE-SUBDIVISION) AT 506 BUNGAREE-CRESWICK ROAD, POOTILLA

Author: Victoria Mack, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Proposed plan of subdivision (under separate cover)

APPLICATION SUMMARY

Permit No: PA2022159

Lodgement Date: 18 August 2022

Planning Officer: Victoria Mack

Address of the land: 506 Bungaree-Creswick Road, Pootilla.

Proposal: Two Lot Subdivision (re-subdivision)

Lot size: 33.39ha

Why is a permit required? Clause 35.07 – Farming Zone - Subdivide land
Clause 42.01 – Environmental Significance Overlay - Subdivide land

MOTION

Moved: Cr Tonia Dudzik

Seconded: Cr Tom Sullivan

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Notice of Decision for Planning Permit PA2022159 for a Two Lot Subdivision (re-subdivision) at 506 Bungaree Creswick Road, Pootilla, otherwise known as Lot 1 on TP 826533U & Lot 1 on TP 826490L subject to the following conditions:

Endorsed Plans:

1. The formal plan of subdivision lodged for certification must be generally in accordance with the endorsed plan and must not be modified except to comply with statutory requirements or with the written consent of the Responsible Authority.

Subdivisions:

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

Native vegetation:

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

Development Infrastructure:

6. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991) and civil construction, building and demolition guide (EPA 2020).
7. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
8. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset Management identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority.

Central Highlands Water:

9. Any plan lodged for certification will be referred to the Central Highlands Region Water Corporation pursuant to Section 8(1)(a) of the Subdivision Act.

Permit expiry:

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

CARRIED

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	One sign facing the Bungaree-Creswick Road.
Notice in Moorabool Newspaper:	No.
Number of objections:	One objection.
Consultation meeting:	Discussion with the objector and the owner separately.

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 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 – Victoria Mack

EXECUTIVE SUMMARY

Application referred?	Referred to Central Highlands Water, Country Fire Authority (CFA), Agriculture Victoria and Council's Environmental Health and Development Infrastructure.
Any issues raised in referral responses?	No concerns raised. The CFA stated that it supported the Responsible Authority waiving/modifying the application requirements under clause 44.06-3 of the Scheme on this occasion as only a portion of one of the lots is within the Bushfire Management Overlay.
Preliminary concerns?	A request for further information was sent to the applicant requesting further justification for the re-subdivision of the land in the context of the current

	farming operations and how the re-subdivision would benefit the farming enterprise on the site. The applicant was also asked why the lots could not be consolidated to ensure a more viable land parcel in the Farming Zone.
Any discussions with applicant regarding concerns?	The applicant advised that the re-subdivision of these lots in the Farming Zone would create an unencumbered rectangular lot with enhanced access to the Bungaree-Creswick Road. The application documents indicated that the owner wished to retain the large dam within the house lot and the re-subdivision would achieve this. In discussion the owner also raised financial planning as a reason for the re-subdivision.
Any changes made to the application since being lodged?	No.
Brief history.	Both lots were purchased by the current owners on 1 December 2021.
Previous applications for the site?	None recorded.
General summary.	It is considered that the re-subdivision has not been sufficiently justified in the context of the agricultural use of the land. The re-subdivision would appear to have no agricultural benefit and is inconsistent with the purpose and decision guidelines of the Farming Zone. The vacant lot to be created would limit agricultural potential as a standalone lot representing a poor planning outcome in the highly productive Pootilla agricultural district. It is recommended the application be refused.
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 PA2022159 for a Two Lot Subdivision (re-subdivision) at 506 Bungaree-Creswick Road, Pootilla, otherwise known as Lot 1 on TP 826533U and Lot 1 on TP 826490L on the following grounds contained in this report.	

SITE DESCRIPTION

The land is generally flat and comprises two lots, Lot 1 on TP 826533U with an area of 16.19ha and Lot 1 on TP 826490L also with an area of 16.19ha providing a total area of 32.38ha. There is a minor discrepancy between the areas shown on the titles and the areas shown on the proposed plan of subdivision. This is possibly due to part of the north boundary being the Yarrowee River frontage.

Land in the surrounding area is generally used for intensive grazing and cropping including potato production, cereal crops, prime lambs and cattle breeding and fattening.

The subject site is well watered with two dams, one large dam and one smaller dam, with several waterways crossing the property connected to both dams. There are plantations on some fence lines and good stands of native vegetation around the dams.

The site contains a dwelling, two large sheds and sundry smaller sheds. Land in the immediately surrounding the site consists of lots of similar size, as well as some smaller and several larger lots. Pootilla is a highly productive agricultural district.



Figure 1: Aerial photo of the site and immediate surrounds

PROPOSAL

It is proposed to re-subdivide the land which comprises two lots into two differently configured lots. No additional lots would be created. The proposed plan of re-subdivision would have the following details:

Lot 1 would be vacant land, approximately rectangular in shape, with an area of 12.18ha. The lot would have an increased frontage to the Bungaree-Creswick Road from approximately 36m to 272.70m. The vacant lot would be smaller in area compared to the existing title arrangement.

Lot 2 would contain the dwelling and sheds, would be approximately rectangular in shape, with an area of 21.21ha. The large dam would be contained wholly within this lot. Existing access to the

Bungaree-Creswick Road would remain unchanged. The dwelling lot would be larger in area compared to the existing title arrangement.

The existing and proposed lots are shown of the single plan below.

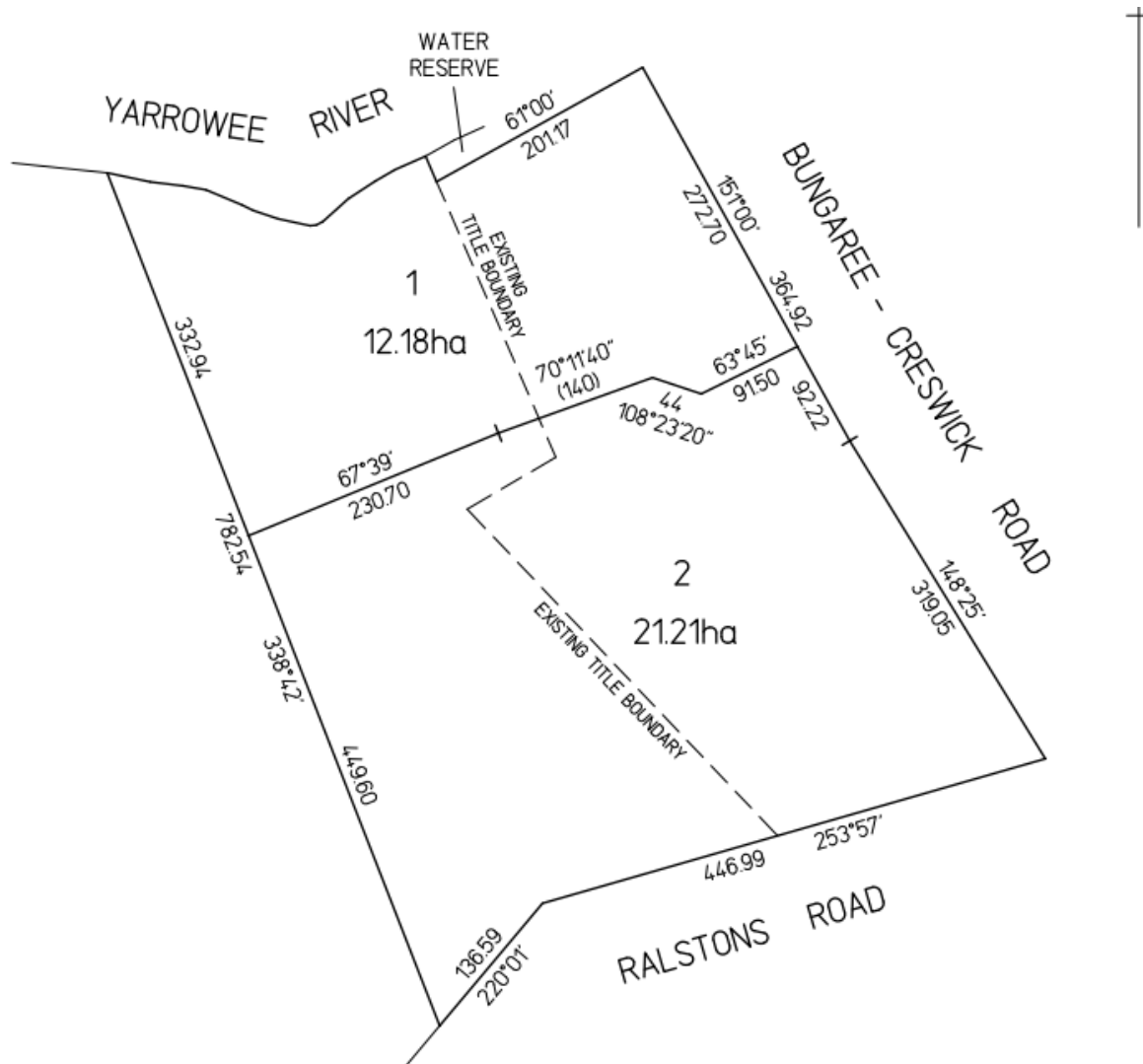


Figure 2: Showing existing lots separated by a hatched line, and proposed plan of subdivision

HISTORY

The land has had two owners since 2016, with the current owners purchasing both properties on 1 December 2021.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners. 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 for the re-subdivision from the current north south direction to the proposed east west direction has no real bearing on the day-to-day operation of a farm or fattening lambs.	Clause 35.07 Farming Zone
Officer's Response: The justification provided for the reconfiguration of the lots is discussed further in the discussion section of this report.	
The only benefit clearly is to create a block on the corner of Ralstons Road and Bungaree Creswick Road and a second block with Road frontage to Bungaree Creswick Road. Under the current planning provisions for the Farming Zone, Clause 35.07 the property is already under the required land size for subdivision and should be consolidated back to one lot, as is the current process for planning applications covering multiple titles on farming land less than 40ha.	Clause 35.07 Farming Zone
Officer's Response: The reconfiguration of the lots has been justified in part by the current location of fencing and that a title boundary runs through the middle of the large dam. This would not be an issue if the land was to be retained in one ownership.	
As mentioned in the application, the farming land within the Pootilla area is exceptionally fertile and should be farmed accordingly. Currently no genuine reason for the re subdivision has been provided that could be considered genuine as all the points mentioned in the RFI letter dated 7 September 2022 have no bearing whatsoever on running a farm or managing the land.	
Officer's Response: The re-subdivision does not accord with the purpose and decision guidelines of the Farming Zone as also identified by the objector.	

<p>The existing title boundary is merely a line on a title only and does not affect the land. If the application is to proceed as proposed, you will no doubt see a further application for a dwelling as mentioned in point 10 of the RFI letter. Should this application be granted a planning permit, it should be worded that no further construction of dwellings be granted on the subdivided vacant lot to ensure that the land is farmed accordingly to the farming zone. This should not pose a problem with the landowners or applicant as they have not requested further development of the land, only the re subdivision.</p>	
<p>Officer’s Response A condition could be recommended which prevents the development and use of a dwelling on the vacant lot by way of a Section 173 Agreement registered on title.</p>	

LOCALITY MAP

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

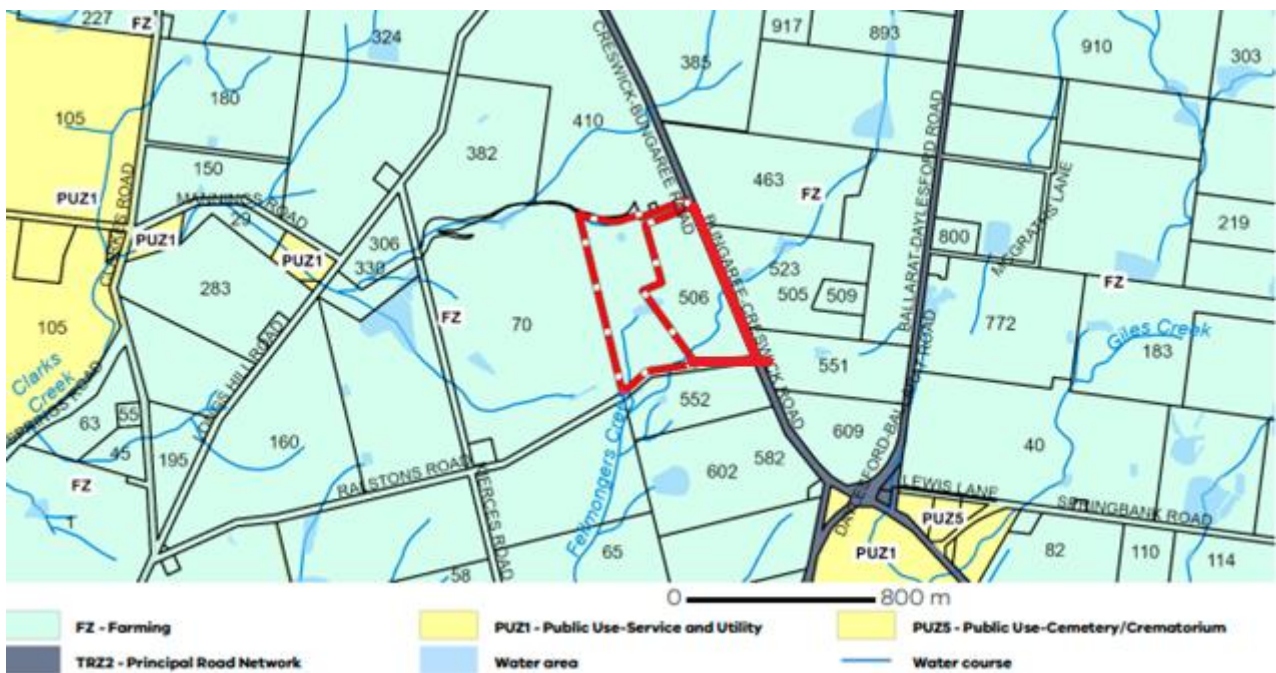


Figure 3: Zone map of site and surrounding area

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03 — Peri Urban Areas
- Clause 12.03-1R — Rivers of Barwon

- 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 21.02-3 — Objective- Water and catchment management
- Clause 21.03-4 — Objective - Landscape and neighbourhood character
- Clause 21.03-6 — Objective - Rural lifestyle opportunities
- Clause 21.04-1 — Key issues and influences Agriculture and horticulture
- Clause 21.04-2 — Objectives - Agriculture

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

PPF	Title	Response
Clause 14.01-1S	Protection of agricultural land. Objective To protect the state's agricultural base by preserving productive farmland.	The re-subdivision of the land will create a smaller vacant lot. The land is highly productive and should be protected for agricultural use and not limited for future farming enterprises.
LPPF		
Clause 21.03-6	Objective—Rural lifestyle opportunities	The proposal would reconfigure valuable agricultural land in the Pootilla agricultural district. On prime agricultural land such an outcome with smaller vacant lot should not be supported as the applicant has not demonstrated that the re-subdivision is in any way related to increased agricultural productivity.
Clause 21.04-2	Objectives—Agriculture To protect good quality agricultural land and support the productivity and sustainability of existing and future agricultural and horticultural activities.	It is considered that the lots should be consolidated rather than re-subdivided, and the property protected and retained for high value agriculture and food production. The current proposal creates a more fragmented outcome.

ZONE

Farming Zone

The purpose of the Zone is to:

- Implement the Municipal Planning Strategy and the Planning Policy Framework.
- Provide for the use of land for agriculture.
- Encourage the retention of productive agricultural land.

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

In accordance with Clause 35.07-3 of the Moorabool Planning Scheme, a permit is required to subdivide land.

Each lot must be at least the area specified for the land in a schedule to this zone. If no area is specified, each lot must be at least 40ha.

The Schedule to the Farming Zone in this location states that each lot must be at least 100ha.

However, Clause 35.07-3 also states that a permit may be granted to create smaller lots if the following applies:

- The subdivision is the re-subdivision of existing lots and the number of lots is not increased.

This application is for the re-subdivision of existing lots and the number of lots would not be increased and therefore the current application can be considered.

OVERLAYS

Environmental Significance Overlay, Schedule 1

In accordance with Clause 42.01-2 of the Moorabool Planning Scheme a permit is required to subdivide land. This does not apply if a schedule to this overlay specifically states that a permit is not required.

In this instance the schedule does not exempt the application from requiring a planning permit.

Design and Development Overlay, Schedule 2

In accordance with Clause 43.02 and Schedule 2 of this overlay, a permit is not required for the subdivision of land.

RELEVANT POLICIES

Council's Rural Growth Policy Statement

Council's Rural Growth Policy Statement was adopted by Council on 19 September 2012. GD007/01 and provides guidance and direction to stakeholders within the shire on the development of rural areas within the Moorabool Shire for the next 30 years.

The Policy does not provide guidelines for applications for the re-subdivision of land.

PARTICULAR PROVISIONS

No Particular Provisions are applicable to this application.

DISCUSSION

The applicant has provided the several reasons for the reconfiguration of the lots including:

1. The proposed re-subdivision would create a common boundary along an existing fence line resulting in a practical and orderly planning outcome.
2. The proposed re-subdivision would result in the whole of the interface with the Yarrowee River creek reserve being contained in a single lot (Lot 1).
3. Even if proposed Lot 1 (vacant) were to be sold, it does not necessarily follow that it would become an unviable piece of farming land but would rather be capable (due to its high agricultural value) of being a useful and valuable adjunct to an adjoining, nearby or even a remote farming enterprise.

It is considered that these responses do not consider the context of the farming operations on the whole of the site. A re-subdivision in the Farming Zone should seek to maximise agricultural productivity of the land and reduce the area set aside for a dwelling. The applicant has presented a design response with large dwelling lot and small vacant lot. The Farming Zone has the purpose to promote the agricultural productivity of the land.

It is considered that this proposed outcome should not be facilitated, and that prime agricultural land should be protected for agricultural use as a whole. This is further reinforced because the subject land is within a renowned farming district and should not be fragmented to facilitate in any way lots being sold off separately.

It is considered that the lots should be consolidated rather than re-subdivided, and the property protected and retained for high value agriculture and food production. This would be best planning outcome which applicant acknowledged in their written submission.

The application was referred to Agriculture Victoria for their comments under Section 52 of the *Planning and Environment Act 1987*.

Agriculture Victoria's response considered that:

1. The current use of the land for agriculture, its layout and function is not related to the alignment of land titles if the intent is for the land to remain in the same ownership.
2. The re-subdivision of the lots will not result in an increase in agricultural productivity.
3. Given the proximity to urban centres and services, if the proposal was approved, it is likely that the re-subdivision will create two separately saleable lots with improved road and services access.
4. The re-subdivision creates an attractive creek frontage for proposed Lot 1 and any subsequent approval of a dwelling will lead to the potential for viable holdings being reduced to hobby farm or lifestyle blocks, a divergence from productive farming and the purpose of the Farming Zone.

Agriculture Victoria considered that the proposal's justification for a subdivision on the subject land in the Farming Zone would appear contrary to the purpose of the Farming Zone and the strategic objectives of the Moorabool Planning Scheme. The refusal of the application would be supported by the VCAT decision as identified by Agricultural Victoria referenced below.

In *Estate of JE Walker v Wangaratta RCC* [2021] VCAT 125, Senior Member Martin discusses the purpose of the Farming Zone including the three purposes as below:

- *To provide for the use of land for agriculture.*

- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*

'These purposes are very on point here: a focus on protecting/retaining productive agricultural land and avoiding non-agricultural uses which would undermine such productive agricultural focus" and "the planning policy framework is also promoting the productive agricultural use of land zoned Farming Zone and discouraging subdivision that would compromise same.'

The VCAT example cited, relied on a body of case law, in concluding that by satisfying the requirements for subdivision of land in the Farming Zone doesn't mean it is an acceptable planning outcome in terms of the broader planning framework.

In addition, given the proximity to urban centres and services, if the proposal was approved, it is likely that the proposed lots will lead to the potential for viable holdings being reduced to hobby farm or lifestyle block.

It is not considered that this application has demonstrated a relationship with the continuing agricultural use of the land or, taking a long-term view, would be compatible with the long term agricultural meaningful production within the Pootilla agricultural district.

Approval of this application of a small sized vacant lot does not accord with the purpose or decision guidelines of the Farming Zone or the Strategic Objectives of the Moorabool Planning Scheme.

Clause 22.03 of the Moorabool Planning Scheme relates to Houses and house lot excisions in rural areas it has the objectives as follows:

- To ensure that subdivision and dwellings in rural areas are required to increase agricultural productivity.
- To minimise the potential for adverse impacts on farm production through land use conflicts.

Within this clause it is policy to:

- Discourage subdivision and dwellings unless they are directly related to the agricultural use of land.
- Discourage non-agricultural use and development in areas of productive agricultural land.
- Encourage the consolidation of small lots.

It is not considered that the application accords with Clause 22.03 of the Moorabool Planning Scheme as it has not demonstrated that the re-subdivision is in any way related to increased agricultural productivity. The application does not accord with Clause 65.02 where the Responsible Authority should consider the existing use and possible future development of the land and nearby land. While the application is not an application for a dwelling, by supporting this application Council would create a limitation in how the land can be used. Larger parcels are more sustainable in the long term to support the use of agriculture.

The proposed re-subdivision does not represent the orderly planning of the area and creates future problem for a landowner wanting to use the vacant lot for a productive purpose.

It is recommended that the application is not supported.

GENERAL PROVISIONS

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

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

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

REFERRALS

Authority	Response
Central Highlands Water	Consent with conditions.
CFA	Consent, no conditions, further comment provided.
Agriculture Victoria	Advice.
Council's Development Infrastructure	Consent with conditions.
Council's Environmental Health	Consent.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

That the Development Assessment Committee could consider the following options:

- issue a Refusal to Grant a Permit in accordance with the recommendations of this report; or
- issue a Notice of Decision to Grant a Permit with conditions. The Development Assessment Committee would need consider how the re-subdivision of the land in the Farming Zone complies with the provisions of the Moorabool Planning Scheme.

CONCLUSION

It is considered that the application does not represent orderly planning, but rather the creation of a smaller vacant lot that limits the land's future agricultural productivity. The re-subdivision design is also considered inappropriate given the location of the existing dwelling which will impact on any potential agriculture use of the lot. This is considered a poor planning outcome in

the fertile Pootilla agricultural district. The proposal does not accord with the objectives of the Farming Zone and planning policies to sustain agricultural production. It is recommended that the application is refused.

Kathy Charalambous addressed the Committee as the Landowner to Item 7.5.

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

Author: Thomas Tonkin, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Proposed plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2021240

Lodgement Date: 12 October 2021

Planning Officer: Tom Tonkin

Address of the land: 10 Parkside Drive, Hopetoun Park

Proposal: Variation of Restrictive Covenant AD159230W

Lot size: 5,197sqm

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

MOTION

Moved: Cr Tonia Dudzik

Seconded: Cr Paul Tatchell

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2021240 for the Variation of Restrictive Covenant AD159230W items (b) & (k), subject to the following conditions:

Subdivisions:

1. The plan of variation of the restriction must be certified under Section 6 of the *Subdivision Act 1988* and then must be registered with the Registrar of Titles before a Building Permit is issued.

Section 173 Agreement:

2. Before the certification of the variation of covenant, the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the *Planning and Environment Act 1987* agreeing that:
 - (a) Outbuildings ancillary to the existing dwelling must not be used for any business activity, commercial and/or industrial purpose and habitation.
 - (b) Before the registration of the variation of covenant, application must be made to the Register of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act and the owner must provide evidence of that registration of the Agreement to the Responsible Authority.
 - (c) The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.

Permit Expiry:

3. 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 this permit. The wording of items (b) and (k) have been approved as follows:
 - (b) Erect or construct on the Lot hereby transferred any boundary fence other than a standard post and wire type fence, or internal fence other than a Colorbond, picket style or standard post and wire type fence.
 - (k) Site any outbuildings on the lot other than towards the rear of the lot and behind any dwelling house and generally in such a manner as to minimise visual impact from the streetscape. Outbuildings must not be greater than 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 35m long x 18m wide x 4.2m high to the eaves, nor shall any outbuilding be constructed prior to the erection of a dwelling house on the lot.

CARRIED

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Yes.
Number of objections:	One, later withdrawn
Consultation meeting:	The Council officer liaised separately with the applicant and objector and the application was subsequently amended twice and the objection withdrawn.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

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

The proposal is not consistent with the Council Plan 2021 – 2025.

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Thomas Tonkin

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

EXECUTIVE SUMMARY

Application referred?	No.
Any issues raised in referral responses?	Not applicable.
Preliminary concerns?	Further information was requested of the applicant regarding the intended use of the proposed shed and the intended location of fencing.

Any discussions with applicant regarding concerns?	The applicant was advised in writing of the preliminary concerns.
Any changes made to the application since being lodged?	Yes, the application was amended on 18 May 2022 to reduce the proposed wall height of the shed from 5.2m to 5m, in response to the objection. The objection was not withdrawn. The application was further amended on 2 November 2022 to reduce the proposed wall height from 5m to 4.2m and the objection was subsequently withdrawn.
Brief history.	See 'History' below.
Previous applications for the site?	None.
General summary.	<p>It is proposed to vary covenant AD159230W items (b) and (k) which respectively relate to fencing and size and height of an ancillary outbuilding to an existing dwelling. The proposed variation would expand the range of allowable fencing styles/materials and increase the allowable size of outbuildings.</p> <p>The application was advertised, and one objection received, which raised amenity and neighbourhood character concerns due to the increase in the allowable outbuilding height. The application was twice amended to reduce the height of the outbuilding, ultimately resulting in the objection being withdrawn.</p> <p>The proposal is still deemed to be inconsistent with the relevant provisions of the Moorabool Planning Scheme for the protection of residential amenity and neighbourhood character and thereby fails to meet the tests of Section 60(5) of the <i>Planning and Environment Act 1987</i>. The applicant has not been able to demonstrate there will be no perceived detriment as a result to change to the neighbourhood character.</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 PA2021240 for the Variation of Restrictive Covenant AD159230W at Lot 64 on PS 518686Y known as 10 Parkside Drive, Hopetoun Park, on the grounds included in this report.	

SITE DESCRIPTION



Figure 1: Aerial photograph

PROPOSAL

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

Covenant AD159230W states that *“the Transferee with the intent that the benefit of this covenant shall be attached to and run at law and in equity with every lot on Plan of Subdivision No. 518686Y other than the Lot hereby transferred and that the burden of this covenant shall be annexed to and run at law and in equity with the said Lot hereby transferred does hereby covenant from himself/herself, their heirs, executors, administrators and transferee and the registered proprietor or proprietors for the time being of every lot described in the said Plan of Subdivision (other than the Lot hereby transferred) that the Transferee, his/her executors, administrators and transferees will not...**(b) erect or construct on the Lot hereby transferred any boundary or internal fence other than a standard post and wire type fence; (k) site any outbuildings on the Lot other than towards the rear of the Lot and behind any dwelling house and generally in such a manner as to minimise visual impact from the streetscape. No such outbuilding shall be of a size greater than 13 metres in length, 7 metres in width and 4 metres in height to the eaves nor shall they be constructed prior to the erection of a dwelling house on the Lot.**”*

The proposed variation of item (b) is to allow for the construction of Colorbond or picket style fencing as partitions on or across the property but not forward of the existing dwelling.

The proposed variation of item (k) is to allow construction of an outbuilding up to 35m long x 18m wide x 4.2m in height to the eaves. This variation is required to facilitate the storage of a motor home, work car, two tandem trailers, two family cars, a box trailer, five hobby cars, two boats, a tandem truck, an excavator, a float trailer and three motor bikes.

BACKGROUND TO CURRENT PROPOSAL

Not applicable.

HISTORY

A decision on this application was deferred at the July and August 2022 Development Assessment Committee meetings to allow for time for discussion between the applicant and the beneficiary objector.

PUBLIC NOTICE

Notice of the application was given all beneficiaries of the covenant which included adjoining and surrounding landowners by way of letters to landowners and occupiers and notices on site and in the Moorabool News, a newspaper circulating in the local area.

One objection was received from a beneficiary of the covenant but following an amendment to the application on 2 November 2022 was withdrawn.

LOCALITY MAP

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



Figure 2: Zone map

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

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

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

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

ZONE

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

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

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

OVERLAYS

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

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

Relevant Policies

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

Particular Provisions

Clause 52.02 Easements, Restrictions and Reserves

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

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

DISCUSSION

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

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

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

In this instance, subsection (4)(b) above applies to covenant AD159230W that was registered under the *Transfer of Land Act 1958*.

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

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

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

As outlined above, an objection was received to the application from a beneficiary of the covenant but later withdrawn following an amendment to the application to address their concerns. However, in considering the potential impact on the neighbourhood character and amenity of the area and the provisions of section 60(5)(a) and (b) it is deemed that Council is unable to satisfy itself that any of the beneficiaries would be unlikely to suffer any detriment of any kind, including perceived detriment, because of the proposed variation of the covenant.

The covenant currently allows for the development of outbuildings a maximum of 13m long x 7m wide x 4m in height to the eaves. The proponent seeks approval to vary the covenant to allow an outbuilding up to 35m long x 18m wide x 4.2m in height to the eaves.

The site and surrounding land is zoned for low density residential purposes and the area is typified by generally large single storey dwellings on spacious allotments with generous boundary setbacks. Ancillary outbuildings are not uncommon but vary in size, with some outbuildings similar in size to what the proposed variation of item (k) would enable, although such outbuildings are not a prominent feature of this area of Hopetoun Park.

In the context of the subject site and surrounding neighbourhood, it is considered that the proposed variation of item (k) may result in a loss of amenity. The scale and bulk of an outbuilding facilitated by the proposed variation would be visually prominent as viewed from adjoining and nearby properties, Eyrie Court and the adjoining public reserve to such an extent that the general visual amenity of the neighbourhood would be unreasonably compromised.

The proponent provided detailed plans of the intended use of a future outbuilding, indicating the storage of a range of vehicles and equipment for work, household and recreational purposes. If a permit was to issue Council officers would recommend the imposition of a legal agreement on title

to require that the use of a future outbuilding only be for purposes ancillary to the dwelling on the site and not for commercial purposes. This is in recognition of the potential for an outbuilding of the size facilitated by the proposed variation of item (k) to be used for uses inconsistent with the amenity of the area.

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

With regard to neighbourhood character, the area is defined by single dwellings on lots of roughly 4,000sqm to 6,000sqm in size. Dwellings are predominantly single storey with spacious boundary setbacks. The area is characterised by its lot sizes and configuration, general low-rise scale of development and views of the distant landscape in some areas. Whilst there are examples of large bulky sheds in Hopetoun Park which are visually dominant, these are not characteristic of the area surrounding the subject site. Outbuildings, where present, generally blend with the scale of dwellings and are not visually dominant. The subject site and surrounding lots are affected by a covenant which allows for development of outbuildings up to 13m long x 7m wide x 4m high to the eaves.

As discussed above, outbuildings in the surrounding area vary in size but typically are substantially smaller than what the proposed variation of item (k) would facilitate. Smaller outbuildings consistent with item (k) exemplify the contribution that outbuildings make to the existing neighbourhood character of this area of Hopetoun Park. Council must satisfy itself that the covenant's beneficiaries will be unlikely to suffer any detriment of any kind (including perceived detriment) if the maximum outbuilding dimensions are increased to 35m length x 18m width x 4.2m height to the eaves. The development of an outbuilding matching those dimensions would not be in keeping with the neighbourhood character, as described above. It is deemed that the character of the area would change as a result of the proposed variation of the covenant. Based on this, and on observations of the site and surrounding area, it is deemed that a beneficiary of the covenant would be likely to suffer detriment (including perceived detriment).

GENERAL PROVISIONS

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

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

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

REFERRALS

The application was not required to be referred.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

- Issue a Refusal to Grant a Permit on the grounds listed in the recommendation of this report; or
- issue a Planning Permit with conditions. The Development Assessment Committee would need to satisfy itself that the covenant beneficiaries would be unlikely to suffer any detriment of any kind (including any perceived detriment) consistent with the provisions of Section 60(5) of the *Planning and Environment Act 1987* because of the covenant variation.

CONCLUSION

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

The application was advertised, and one objection received but later withdrawn following an amendment to the application. Nevertheless, for the reasons outlined in this report the proposal is deemed to be inconsistent with the relevant provisions of the Moorabool Planning Scheme and Section 60(5) of the *Planning and Environment Act 1987* for the protection of residential amenity and neighbourhood character.

Sarah Stapleton was an apology and did not address the Committee as the Applicant to Item 7.6.

Helen Fernandez provided a written submission to the Committee as an Objector to Item 7.6.

Heidi Johnson provided a written submission to the Committee as an Objector to Item 7.6.

Maria Paola provided a written submission to the Committee as an Objector to Item 7.6.

Anja Schneider provided a written submission to the Committee as an Objector to Item 7.6.

7.6 PA2022031 - REMOVAL OF NATIVE VEGETATION AT 3 MAIN STREET GORDON

Author: Mark Lovell, Coordinator Statutory Planning

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: Nil

APPLICATION SUMMARY

Permit No: PA2022031

Lodgement Date: 10 February 2022

Planning Officer: Mark Lovell

Address of the land: Lot 2 on Plan of Subdivision 132336, 3 Main Street Gordon

Proposal: Removal of Native Vegetation (14 trees and one to be pruned) (27 trees evaluated)

Lot size: 4,000sqm

Why is a permit required? Clause 42.01 Environmental Significance Overlay, Schedule 1 – Vegetation Removal; Clause 42.03 Significant Landscape Overlay, Schedule 2 – Vegetation Removal

COMMITTEE RESOLUTION

Moved: Cr Tom Sullivan

Seconded: Cr Paul Tatchell

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 PA2022031 for Removal of Native Vegetation at Lot 2 on Plan of Subdivision 132336 known as 3 Main Street, Gordon with the following conditions

Endorsed Plans:

1. Before the vegetation removal commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans identified as:

- (a) Site plan to show trees to be removed and trees to be retained in accordance with the recommendations of the Tree Assessment report prepared by NuLeaf Tree**

Services dated 13 October 2022.

- (b) Tree Protection Zone marked on all trees retained in accordance with Condition 2.**

Tree Protection Zones:

- 2. All tree protection zones, and fencing must comply with AS 4970-2009 Protection Trees on Development Sites and Moorabool Shire Tree Protection Guidelines to the satisfaction of the Responsible Authority.**
- 3. No excavation, heavy machinery, constructions works or activities, grade changes, surface treatments or storage of materials of any kind are permitted within the Tree Protection Zone unless otherwise approved within this permit or with the written consent of the Responsible Authority.**

Barwon Water:

- 4. Sediment control measures outlined in the EPA's publication No 275, Sediment Pollution Control, must be employed and maintained until the disturbed area has been permanently stabilised and/or revegetated.**

Permit Expiry:

- 5. This permit will expire if:**
 - (a) the vegetation removal not started within two years of the date of this permit; or**
 - (b) the vegetation removal is not completed within four years of the date of this permit.**

CARRIED

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	One objection and One supporter
Consultation meeting:	Discussions with the applicant, the supporter and objector.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 1: Healthy, inclusive and connected neighbourhoods

Priority 1.1: Improve the health and wellbeing of our community

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

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Mark Lovell

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

EXECUTIVE SUMMARY

Application referred?	Barwon Water and Council's Operations.
Any issues raised in referral responses?	No.
Preliminary concerns?	Extent of trees being removed.
Any discussions with applicant regarding concerns?	Yes, applicant advised of the preliminary concerns and the objectives of the Significant Landscape Overlay Schedule 2.
Any changes made to the application since being lodged?	No.

Brief history.	In response to the applicant's Arborist report recommending removal of all 24 trees, Council engaged an independent Arborist to undertake a peer review and onsite inspection. This Arborist identified 27 trees and recommended removal of 14 trees, pruning one tree and retaining 12 trees. All parties were made aware of these recommendations.
Previous applications for the site?	PA2021039 for the removal of vegetation lapsed on 9 August 2021 due to failure to provide further information. The same application was re-lodged and now forms this current application.
General summary.	The applicant proposes to remove native trees covering the front of property as it poses a safety risk due to falling limbs. After a peer review by an Arborist engaged by Council, it is warranted to remove 14 trees on site, prune one tree and retain 12 trees. The application was advertised with one objection and one letter of support was received. It is recommended the application be supported consistent with the advice obtained by Council's engaged Arborist.
Summary of Officer's Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Development Assessment Committee issue a Notice of Decision to Grant Planning Permit PA2022031 for the Removal of Native Vegetation at 3 Main Street, Gordon subject to the conditions contained within this report.	

SITE DESCRIPTION

The subject site is located on the southern side of Main Street, east of Cemetery Lane, Gordon. The site is located at the eastern end of Main Street with the Gordon retail area located to the west. The lot is 51.50m in width and 77.82m in length for a total area of 4,000sqm. There is an existing single storey dwelling which has an elevated position compared to natural ground level located towards the rear of the property. The existing crossover and gravel driveway is located to the eastern side of the lot. There are existing native trees in the front setback and row of trees adjacent to the rear property boundary. To the west are single storey dwellings on large sized residential lots and the Gordon Cemetery is visible from the road reserve to the south-east.



Figure 1: Aerial Photograph

PROPOSAL

The applicant has requested to remove all trees between the street frontage and the front of the dwelling. The reason for the removal is the trees pose a safety risk with potential of trees falling or limbs falling on the residents. The applicant has advised all trees were planted by the landowner.

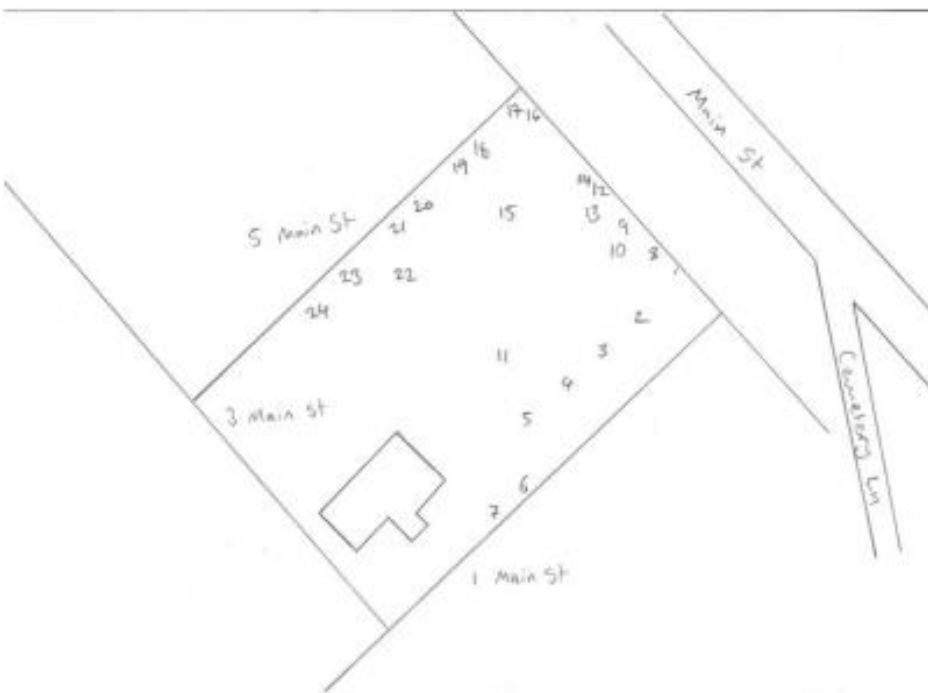


Figure 2: Proposed Tree removal plan



Figure 3: Council’s engaged Arborist site plan of tree identified for assessment

The Arborist’s assessment identified the following trees to be removed, retained and pruned:

- Retain trees: 1,3,4,9,11,12,13,14,19,20,25 and 26
- Remove trees: 2,5,6,7,10,15,16,17,18,21,22,23,24, and 27
- Prune tree: 8 (clear of powerlines)

BACKGROUND TO CURRENT PROPOSAL

The applicant’s Arborist report recommended removal of all 24 trees from their site plan. With the exception of Tree 9, all of the identified trees were given a low retention value rating.

In response to this report, Council engaged an independent Arborist to review the submitted report and undertake a separate assessment. This Arborist identified 27 trees on site and recommended 14 trees for removal and tree to be pruned. The remaining 12 trees were identified to be retained.

The applicant reviewed the recommendation and believed there is sufficient grounds to remove eight of the proposed 12 retained trees as they pose a danger.

The supporter of the application reviewed the recommendation and believes two of proposed retained trees should be removed as they are at risk of falling on their property.

HISTORY

PA2021039 for the removal of vegetation lapsed on 9 August 2021 due to failure to provide further information. The applicant advised that all trees are planted and therefore does not require a Native Vegetation Assessment but had not provided a written response to the decision guidelines of the Significant Landscape Plan Overlay Schedule 2.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
This is still too many trees to remove in one event for Gordon's wildlife to have to adapt to. Could this not be a staged reduction of mature trees on the block instead?	Clause 42.01 Clause 42.03
Officer’s Response: It is agreed that removing all existing trees is excessive. Council’s engaged Arborist recommended retaining 12 trees which would provide benefit to local wildlife and achieve the objectives of the Significant Landscape Overlay Schedule 2 which is to maintain Gordon’s unique landscape character.	

LOCALITY MAP

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

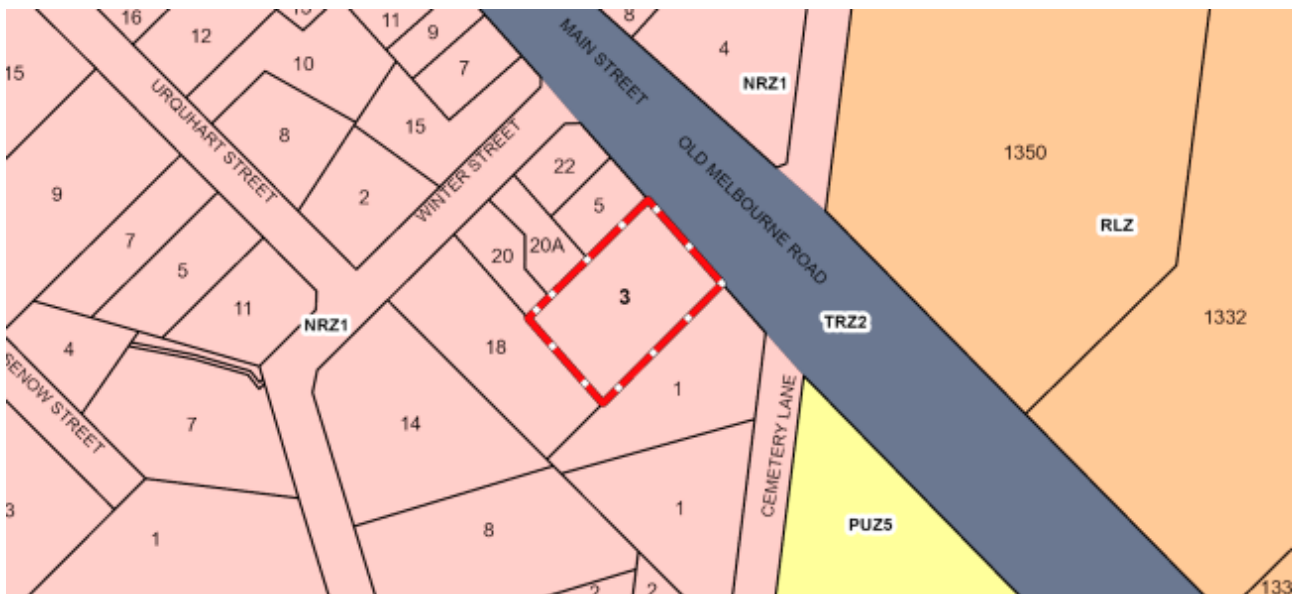


Figure 4: Zone Map

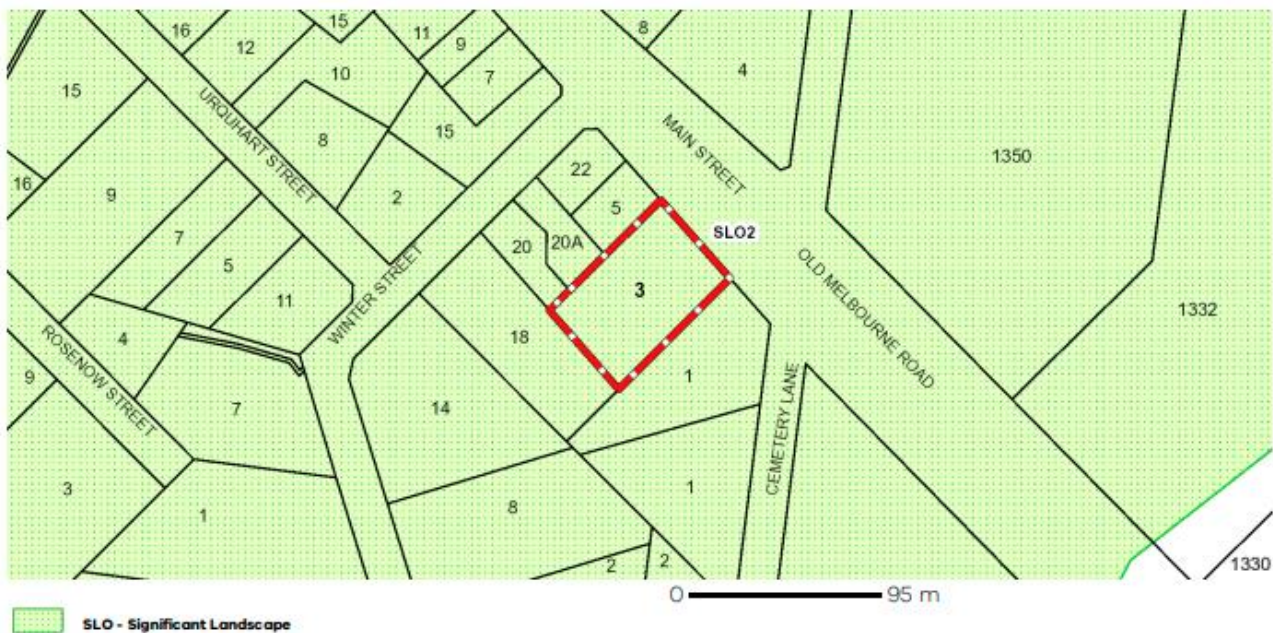


Figure 5: Significant Landscape Overlay Schedule 2

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S – Peri-urban areas
- Clause 14.02-2S – Water quality
- Clause 15.01-5S – Neighbourhood character
- Clause 21.03-4 – Landscape and Neighbourhood Character
- Clause 21.09-2 – Gordon
- Clause 22.02 – Special Water Supply Catchments

The proposal complies with the relevant sections of the PPF and LPPF subject to retenting 12 trees as recommended by Council's engaged Arborist.

ZONE

The subject site is in the Neighbourhood Residential Zone, Schedule 1 (NRZ1).

The purpose of the Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage environmental or landscape characteristics.

- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

There is no permit requirement to remove vegetation.

OVERLAYS

The site is affected by several planning overlays.

Environmental Significance Overlay, Schedule 1 (ESO1)

The ESO1 applies to land in a Special Water Supply Catchment.

Under Clause 42.01-2 a permit is required to remove vegetation.

Design and Development Overlay, Schedules 2 and 5 (DDO2 & DD05)

The DDO2 applies to development using reflective exterior cladding and is not applicable to this proposal. The DDO5 applies to the Gordon township and rural surrounds.

No permit requirement to remove vegetation.

Significant Landscape Overlay, Schedule 2 (SLO2)

The landscape objectives under Part 2 of Schedule 2:

- To retain and protect significant trees, vegetation and windbreaks that are significant component of local identity and landscape of the township character of Gordon.
- To protect vegetation and trees of special significance, natural beauty, interest and importance.
- To retain trees where they have high amenity value, unless identified as an environmental weed. To support the retention and planting of further exotic and indigenous trees.

Overall, the proposed vegetation removal consisting of 14 trees is considered acceptable. The applicant can retain some existing vegetation with Tree Protection Zones to ensure the objectives of the clause are achieved.

Bushfire Management Overlay

No permit requirement to remove vegetation that is not associated with a development or subdivision of land.

Relevant Policies

Nil.

Particular Provisions

Clause 52.17 Native Vegetation

Under Clause 52.17-7 list exemptions from native vegetation removal.

Within the table of exemption is planted vegetation which is native vegetation that is to be removed, destroyed or lopped that was either planted or grown as a result of direct seeding.

The applicant who is related to the prior landowner confirmed all vegetation was planted.

DISCUSSION

Vegetation Removal

The applicant was concerned with trees falling and potential risk to their safety and risk of damage to their dwelling. The trees identified are located between the street frontage and the front of the dwelling. This large area is used by the occupants as their private open space, and they are quite concerned by the current situation of large trees on their property.

The applicant's Arborist reviewed all 24 trees and recommended their removal. This recommendation required further investigation as it would have the effect of 'moonscaping' the street frontage and was not justified against the Significant Landscape Overlay Schedule 2. An onsite meeting was beneficial as it identified a small number of dying trees and some healthy trees. Council engaged the services of external Arborist who visited the site and recommended removal of 14 of 27 trees identified. This report provided a balance of removing trees that warranted removal and retaining trees that will add to the landscape value to the area. Where possible tree removal should be minimised in area clearly identified having landscaping value which includes both native and non-native trees. The retained trees, 13 in total including one to be pruned will still provide the impression of a well vegetated lot and retains Gordon's unique landscape setting. The retained trees can be protected with Tree Protection Zones. The applicant will not be able to remove the retained trees without further planning approval.

The applicant and supporter of the application disagree with the recommendation for retained trees and have requested certain trees be removed, both based on the applicant's Arborist report. Council's engaged Arborist only identified four trees in poor health which are all recommended for removal while retained trees were either in fair or good health. Removing healthy trees is an unacceptable landscaping response and would undermine the long-term environmental benefits to Gordon which is characterised by well vegetated lots located in the Neighbourhood Residential Zone. Partial tree removal in accordance with the recommendations of Council's engaged Arborist should be 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
Barwon Water	Advised standard sediment condition to apply.
Council's Operations	No comment.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

- Issue a Notice of Decision to Grant a Permit in accordance subject to the conditions in the recommendation of this report; or
- issue a Notice of Decision to Grant a Permit with amendments to the conditions in the recommendation of this report. Either option for approval may result in the objector appealing the decision at VCAT; or
- issue a Refusal to Grant a Permit on grounds. This option may result in the applicant appealing the decision at VCAT.

CONCLUSION

Based on the recommendation of Council's engaged Arborist, there is support to remove 14 of 27 trees on the subject site while ensuring protection of the retained trees. The retained trees will maintain amenity and visual interest in the natural environment consistent with the objectives of the Significant Landscape Overlay Schedule 2. Standard conditions will protect the area from sediment run-off in accordance with the Environmental Significance Overlay Schedule 1. The proposed tree removal should be supported with the issue of a Notice of Decision.

John Crossman addressed the Committee as an Objector to Item 7.7.

7.7 PA2019109-1 - AMENDMENT TO USE AND DEVELOPMENT OF A SERVICE STATION, CONVENIENCE RESTAURANT, THREE LOT SUBDIVISION, SIGNAGE AND THE CREATION OF ACCESS TO A ROAD IN A ROAD ZONE CATEGORY 1, IN ACCORDANCE WITH THE ENDORSED PLANS AT 101 GISBORNE ROAD, BACCHUS MARSH

Author: Mark Lovell, Coordinator Statutory Planning

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: Nil

APPLICATION SUMMARY

Permit No: PA2019109-1

Lodgement Date: 11 May 2022

Planning Officer: Mark Lovell

Address of the land: 101 Gisborne Road Bacchus Marsh

Proposal: Amend endorsed plans of the service station to include a drive-thru with associated signage and amend permitted operating hours to 24 hours a day, seven days a week

Lot size: 8,000sqm

Why is a permit required? Amendment to the endorsed plans and permit conditions

COMMITTEE RESOLUTION

Moved: Cr Tonia Dudzik

Seconded: Cr Moira Berry

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant an Amended Planning Permit PA20192019-1 for the Use and Development of a Service Station, Convenience Restaurant, Three Lot Subdivision, Signage and the Creation of Access to a Road in a Road Zone Category 1 (RDZ1) at 101 Gisborne Road, Bacchus Marsh based on the following grounds:

- 1. The amendment will result in adverse amenity impact to adjacent and nearby properties through noise and increased vehicle movements in a residential area.**
- 2. The proposed drive thru will result in removal of existing landscaped areas without any new landscaping treatments**
- 3. There has been insufficient justification to allow the use to operate 24 hours a day within a General Residential Zone.**
- 4. Inconsistent with the original VCAT mediation agreement preventing 24 hour operation of the site.**
- 5. Insufficient evidence was provided to ensure noise regulations would be met.**
- 6. Insufficient evidence provided to ensure internal traffic movements would comply with**

minimum requirements.

- 7. The amendment does not result in the orderly planning of the area.**

CARRIED

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	Two
Consultation meeting:	No consultation with the objectors as the recommendation is a refusal.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 1: Healthy, inclusive and connected neighbourhoods

Priority 1.1: Improve the health and wellbeing of our community

The proposal is not consistent with the Council Plan 2021 – 2025.

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Mark Lovell

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

EXECUTIVE SUMMARY

Application referred?	Department of Transport and Council's Development Infrastructure, Environmental Health
Any issues raised in referral responses?	Development Infrastructure identified the traffic report stated the turning area does not work but did not provide a solution or alternative plan. Environmental Health raised concerns about acoustic report which was outdated and did not have noise level data from the actual site.

Preliminary concerns?	The proposal is inconsistent with the previous VCAT mediated response to avoid having a second convenience restaurant or 24 hour business operation in a residential area.
Any discussions with applicant regarding concerns?	The applicant was advised of the concerns.
Any changes made to the application since being lodged?	The applicant provided a written response and made references to the operation of other service stations and fast food premises in Bacchus Marsh.
Brief history.	The current operators of the service station seeks a drive thru function similar to a convenience restaurant and have no limitation on trading hours.
Previous applications for the site?	PA2019109 was issued on 11 March 2020 authorising the Use and Development of a Service Station, Convenience Restaurant, Three Lot Subdivision, Signage and the Creation of Access to a Road in a Road Zone Category 1 (RDZ1) in accordance with the endorsed plans. The permit was the result of a VCAT mediation process where the applicant lodged a failure to determine the application within the prescribed time. The applicant agreed to the restriction to the hours of operation and limiting the entire site to one convenience restaurant.
General summary.	<p>The applicant seeks to alter the original development by including a drive thru café and 24 hour a day service station operation.</p> <p>There has been no significant change in the circumstances to warrant a change to allow a second drive thru and extended trading hours to 24 hours a day. The major change since the permit was issued is that planning approval has been granted for 68 residential dwellings and one future medium density housing lot on the adjacent land. It will create a sensitive interface with this proposed intensification of a commercial use. The proposed amendment to the plans and permit conditions is recommended for refusal.</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 an Amended Planning Permit PA20192019-1 for the Use and Development of a Service Station, Convenience Restaurant, Three Lot Subdivision, Signage and the Creation of Access to a Road in a Road Zone Category 1 (RDZ1) at 101 Gisborne Road, Bacchus Marsh based on the grounds within this report.	

SITE DESCRIPTION

The site is bounded by Gisborne Road to the east, Clifton Drive to the South and the Western Freeway to the North and occupies a total area of 8,000sqm. The site is comprised of a service station operated by EG Fuels with an ancillary café operated by Oporto at the southern end of the lot, a Hungry Jacks convenience restaurant in the central part of the lot, and Child Care Centre currently under construction in the northern end of the lot. The surrounding area is predominately residential with small pockets of commercial uses. The immediate property to the west, also known as 101 Gisborne Road, has planning approval for 68 residential dwellings and one future medium density housing lot, with construction works to commence soon on the 68 dwellings.

The subject building has vehicle access from a large central crossover off Gisborne Road and a crossover off Clifton Drive. There are well established street trees located within road reserves and raised landscaped beds immediately to the northern side of the service station.



Figure 2: Aerial Photograph

PROPOSAL

Building and layout changes:

The applicant proposes to accommodate a new drive thru area. At the southern end of the building, there will be two vehicular entry points and ordering stations with associated menu signage. The rear of the building will be modified to include a pickup window. There will be a new driveway area from the entry point then along the rear of the building and exiting at the northern side. Existing car space number 12 will be converted to a waiting bay. The drive thru will allow the existing Oporto café to provide for an alternative ordering and collecting point compared to the existing internal service area.

Permit condition change:

Amend Condition 19 which restricts the hours of operation from 6am to 12am to allow 24 hours a day, seven days a week operation.

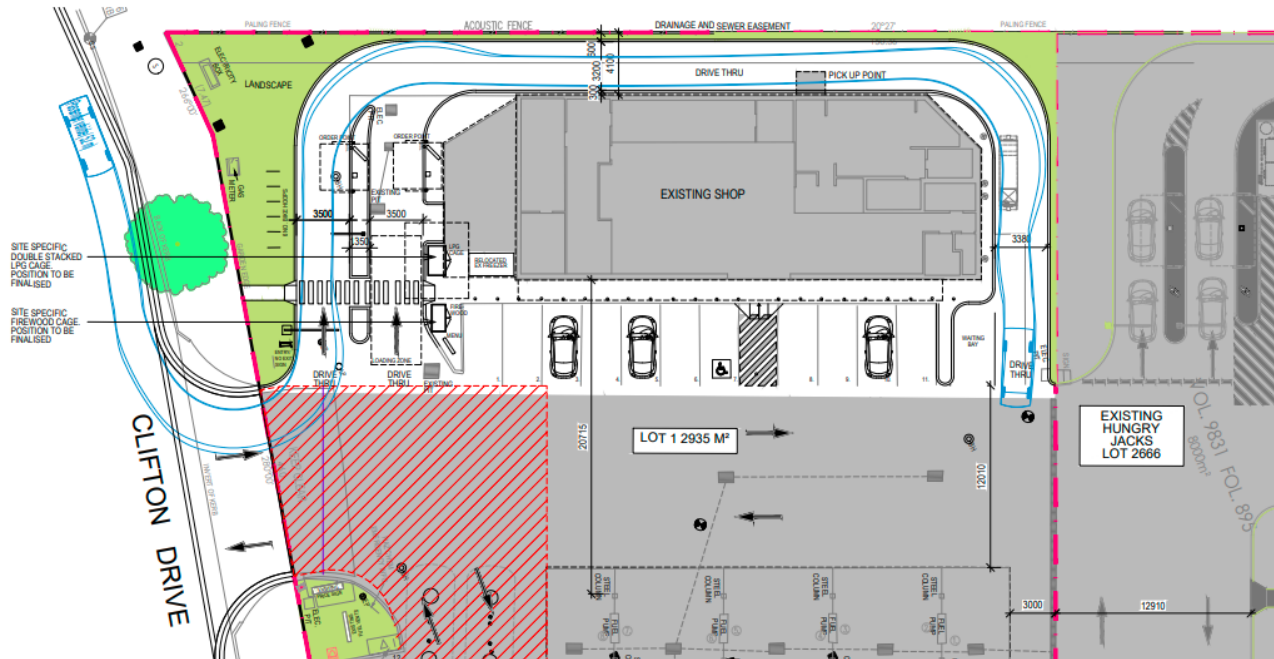


Figure 1: Site plan

BACKGROUND TO CURRENT PROPOSAL

The development under Planning Permit PA2019109 has been completed and is operating as a service station with an ancillary café.

The application history is important to understand in how conditions were created and why this development response was undertaken.

The planning permit was issued as a result of the applicant lodging a failure to determine the application within the prescribed statutory period after Council had received 31 objections. At the Ordinary Meeting of Council held on 5 February 2020 Council advised VCAT it did not support the application based on the following grounds

1. The proposal is inconsistent with Clauses 11.03-3S, 15.01-1S and 15.01-5S in the Planning Policy Framework;
2. The proposal is inconsistent with Clauses 21.03-4 and 21.07-6 in the Local Planning Policy Framework;
3. The proposal is inconsistent with the purpose of the General Residential Zone;
4. The proposal is inconsistent with the neighbourhood character objectives for Schedule 3 of the General Residential Zone in the Moorabool Planning Scheme;
5. The layout of car parking and accessways on the site pose concern for driver safety and convenience and does not satisfy the purpose of Clause 52.06;

6. The proposal would have unreasonable amenity impacts on nearby residential properties; and
7. Traffic movements associated with the proposal would have a detrimental impact on the safety and function of Gisborne Road and Clifton Drive in the vicinity of the subject site.

VCAT conducted a compulsory conference meeting to determine if all parties could mediate. The applicant agreed to address a number of primary concerns expressed by Council including not constructing a second convenience restaurant, constructing a building for a community purpose and limiting the hours of operation from 6am to 12am. The parties reached an agreement, and a consent order was issued by VCAT. The permit subsequently issued on 11 March 2020 with plans endorsed on 18 December 2020.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
<p>The Victorian government always claims to take the health and safety of its residents and communities as its number one priority.</p> <p>Most recently we witnessed how strongly they feel about keeping the community safe with the COVID prevention actions the state used to protect its residents both young and old.</p> <p>Please ask the state planning department to send me information on how raw Hydrocarbon fumes 24 hours a day are good for your health and safety.</p>	<p>General Residential Zone</p>
<p>Officer's Response: Amenity is a key consideration in determining to intensify a non-residential activity in a residential zone with nearby dwellings. In the normal operation of a service station, petrol fumes are expected to be confined to the subject land as there is a risk posed by fire if allowed to spread over a wider area.</p>	

<p>The state health professionals recommend 8-9 hours of UN INTERRUPTED sleep each day for a healthy life.</p> <p>I'd also like the information presented to me on how large, illuminated signage and a busy driveway right outside their houses keeping people awake and upsetting their circadian rhythm does nothing good for anybody.</p> <p>I also would have thought all the extra coal being burnt to power the hours of operation and large illuminated signage would fall short at the government's greenhouse reduction targets.</p>	<p>General Residential Zone.</p>
<p>Officer's Response: The drive thru proposed adjacent to proposed residential dwellings at 101 Gisborne Road and extending the trading hours to 24 hours a day is likely to cause noise impacts from vehicles either moving through the site or stationary vehicles making orders or picking up food and drinks. The limitation to the existing trading hours to prevent night time activity from 12am to 6am as stated in the original permit condition protects the amenity of surrounding and nearby residents</p>	
<p>Freeway access on both Code 1 and Code 2 cases is important, as is being able to access Gisborne Road when traffic accumulates at the Traffic Controls Signals adjacent to the freeway off ramp west bound.</p> <p>A possible solution to assist the rapid egress of emergency vehicles and to ensure obstruction does not occur, is to have the existing Keep Clear road markings longer and repainted to ensure they were more visible, and, as well as the potential for a sign indicating that an ambulance station was adjacent to the road, which will allow unimpeded access to Gisborne Road and will ensuring the egress point of the Ambulance Vehicle is not blocked by any traffic.</p>	<p>Response from the Department of Transport.</p>
<p>Officer's Response: Ambulance Victoria are concerned with traffic movements to and from the existing site. The Department of Transport has consented to the amended application. Ambulance Victoria can have separate discussions with the Department of Transport regarding improved line marking and signage on the main roads.</p>	

LOCALITY MAP

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

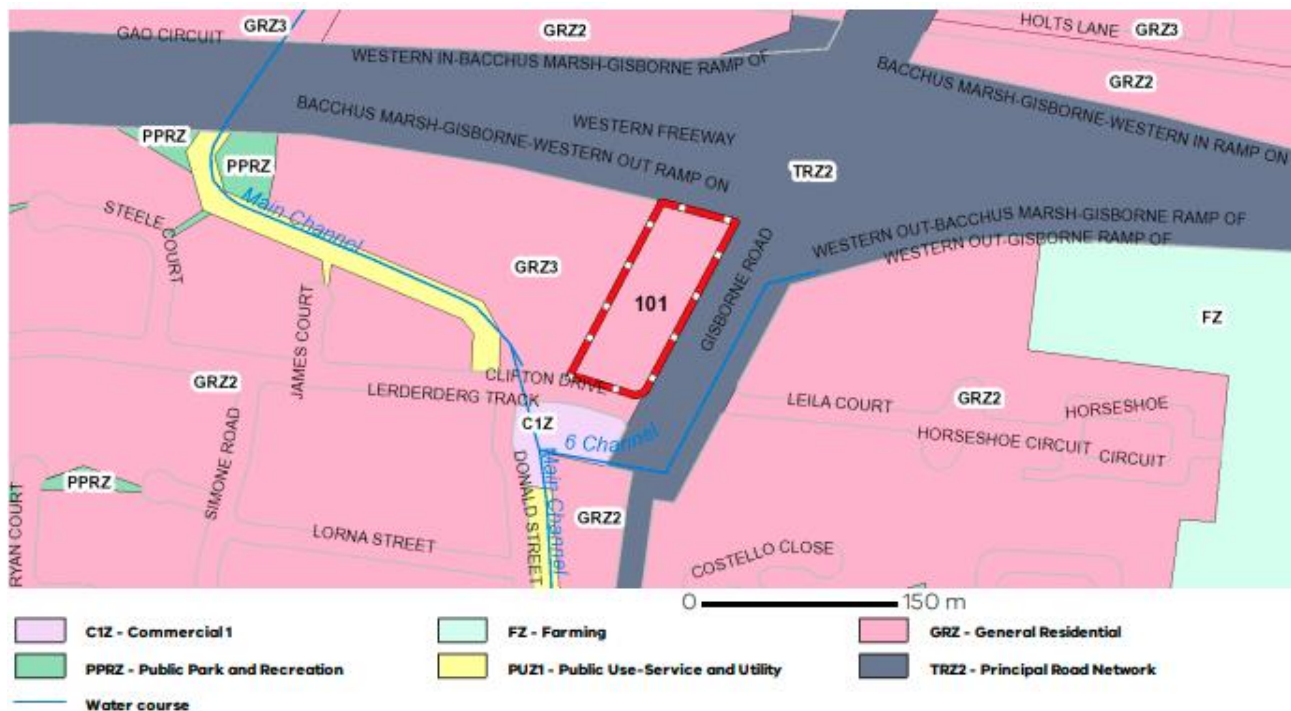


Figure 3: Zone Map

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.03-3S – Peri-urban areas
- Clause 13.05-1S – Noise abatement
- Clause 13.07-1S – Land use compatibility
- Clause 15.01-1S – Urban design
- Clause 15.01-2S – Building design
- Clause 15.01-5S Neighbourhood character
- Clause 17.01-1R – Diversified economy – Central Highlands
- Clause 17.02-1S – Business
- Clause 21.03-2 – Urban growth management
- Clause 21.03-4 – Landscape and neighbourhood character
- Clause 21.04-3 – Commercial
- Clause 21.07-6 – Urban design

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

PPF	Title	Response
Clause 13.05-1S	Noise Abatement	The applicant has relied on a 2019 noise report which was completed prior to the approval of the service station. The report does not provide data of existing noise levels generated and does not demonstrate how the intensification of the use and operating hours during night time hours will not adversely affect residential amenity.
Clause 13.07-1S	Land use compatibility	Commercial activities should have limitations where they are located in residential areas to ensure they do not adversely affect residential amenity.

ZONE

General Residential Zone Schedule 3

The purpose of the zone:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

There is no new permit trigger for the proposed works.

OVERLAYS

There are no planning overlays.

PARTICULAR PROVISIONS

Clause 52.05 Advertising Signs

With drive thru menu boards, additional business identification and directional signage, will result in increase of 4.47 sqm on top of the existing 97.16 sqm of signage. None of the additional signage is prohibited under the Category 3 controls with the electronic signs combined have less than 3sqm limit.

The signs complement the café use and will not result in excessive signage clutter.

A permit is required to increase the amount of business identification signage.

Clause 52.29 Land Adjacent to Principal Road Network

There is no new access proposed to Gisborne Road as result of the amended application.

DISCUSSION

Drive Thru Area

The approved development contained a dedicated convenience restaurant with a drive thru function. This commercial activity is operated by Hungry Jacks and is located immediately to the north of the service station and shares a common driveway which allows the service station patrons access to the restaurant.

The approved development also contains an ancillary café to a service station rather than a standalone café or restaurant. Access to the ancillary café is from service station via a pedestrian doorway and there is no internal dividing walls allowing internal access between the service station counter and the café counter. The café performs the ancillary function as the primary use of the building is for the service station. The introduction of drive thru will allow the café to operate more like a convenience restaurant which is defined under Clause 73.03 as land used to prepare and sell food and drink for immediate consumption, where substantial provision is made for consumption both on and off the premises. The drive thru function with two vehicle ordering areas will intensify the café use and generate more vehicle movement to and from the site. There is concern with the location of the drive thru immediately adjacent to one of only two entry points for the whole site. Should queuing occur it has the potential to limit access to this key entry point for the whole site.

The purpose of the General Residential Zone is to allow a limited range of non-residential uses in order to protect residential amenity. The site already has one convenience restaurant and creating a second drive thru will adversely affect the amenity of the surrounding area. The location of the proposed drive thru requires vehicles to travel along the western property boundary that is adjacent to an approved large scale residential development. The cumulative effect of two drive thru areas will generate noise and vehicle fumes which is inappropriate in a residential setting.

Increasing traffic flows into and out of the site will not maintain or reduce amenity impacts to existing and future residents. The applicant stated at the time of constructing the service station it was measured that the small strip of landscaping located at the rear of the store would be held back until the outcome of the proposed drive-thru amendment was finalised and that suggests an ancillary café was not the intent for this site. Planning cannot be conducted in a piecemeal approach and the original approval correctly identified this site required limitations with one service station with an ancillary café rather than having a standalone café with its own entry points in addition to existing convenience restaurant.

Hours of operation

Condition 19 states the service station and convenience restaurant must operate only between the hours of 6.00am-12.00am. The provision of 18 hours provides sufficient viability for a commercial operation while closing between 12.00am and 6.00am provides relief from amenity impacts to existing and future residents. The applicant stated the proposed extension of the hours of operation was to allow the "Driver Reviver" notion to come to fruition by giving fatigued drivers travelling along the Western Highway a place to stop and have a break, a coffee, fill up the car and recharge before continuing on into the night.

The service station is not a freeway service centre where there are no other options for driver reprieve and there is no direct access to the freeway instead access is from Clifton Drive and Gisborne Road. Drivers including truck drivers can utilise existing freeway centres along the Western Freeway.

Noise

The applicant has not provided up to date data relating to noise. They are relying on the 2019 document which was provided prior to the use and development of the site. This was appropriate at the time given the development was not constructed or in operation. In this instance where the site is now in full operation, it is considered inappropriate to rely on the 2019 document without undertaking some form of testing with the current operation. Once that data is collected the report should then make some recommendations with consideration of the additional traffic movements and operation of the drive thru and how that impacts on the overall noise generation. An updated report should also consider the implications of a 24 hour operation. Failure to provide an updated acoustic report leaves Council with no other alternative but to refuse on grounds of insufficient information to determine the application.

Signage

The proposed signs would be appropriate for drive thru business given their total size being less than 3sqm. The location of the electronic sign is orientated to the south-east and should not be visible to the nearest residential properties. The signage design and materials are consistent with the objectives of Clause 52.05.

GENERAL PROVISIONS

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

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

REFERRALS

Authority	Response
Department of Transport	Consent.
Council's Development Infrastructure Environmental Health	Requested additional information. Refusal.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

- Issue a Refusal to Grant an Amended Permit in accordance with the recommendations of this report; or
- issue an approval to a Notice of Decision to Amend a Permit with new and altered conditions. The Development Assessment Committee would need consider how the amendment meets the purpose and decision guidelines of the zone.

CONCLUSION

The proposed drive thru to an existing ancillary café and extending the trading hours to 24 hours a day, seven days a week is not consistent with planning policies framework and the purpose of the General Residential Zone. The proposed amendment would add to existing emissions from the site and negatively impact residential amenity to existing and future residents.

The initial approval mediated through a VCAT process was a well-considered position that considered residential amenity. There are no circumstances to warrant a departure of this approval which has limitation of how the entire site would be used for commercial purposes and the hours of operation. Objectors have expressed similar amenity concerns. It is recommended the amendment be refused.

8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS

Nil.

9 PROCESS FORWARD AND WORK PROGRAM

Nil.

10 UPDATE ON VCAT DECISIONS

Nil.

11 OTHER BUSINESS

MOTION

COMMITTEE RESOLUTION

Moved: Cr Moira Berry

Seconded: Cr Tonia Dudzik

That Council write to the Department of Transport to investigate Gisborne Road and Clifton Drive and the area around Ambulance Victoria, Bacchus Marsh station.

CARRIED

12 DATE OF NEXT MEETING

Wednesday 15 March 2023.

13 MEETING CLOSE

The Meeting closed at 7:04pm.

.....

CHAIRPERSON