



# **MINUTES**

## **Development Assessment Committee Meeting**

**Wednesday, 21 June 2023**

**Date: Wednesday, 21 June 2023**

**Time: 6.00pm**

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

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**1 OPENING**

The Deputy Mayor opened the meeting at 6.00pm

**2 PRESENT AND APOLOGIES**

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

**IN ATTENDANCE:**

Caroline Buisson	Acting Chief Executive Officer
Henry Bezuidenhout	Executive Manager Community Planning & Development
Celeste Gregory	Executive Manager Democratic Support & Corporate Governance
Kaitlyn Zeeck	Manager Statutory Planning & Regulatory Services
Mark Lovell	Coordinator Statutory Planning
Kate Pryor	Governance Officer

**APOLOGIES:**

Cr Rod Ward, Mayor	East Moorabool Ward
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**NOT PRESENT:**

Cr Paul Tatchell	Central Moorabool Ward
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**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 Tonia Dudzik

Seconded: Cr Moira Berry

That the minutes of the Development Assessment Committee Meeting held on Wednesday 17 May 2023 be confirmed.

**CARRIED**

**5 MATTERS ARISING FROM PREVIOUS MINUTES**

Nil.

**6 DISCLOSURE OF CONFLICTS OF INTERESTS**

Nil.

**PRESENTATIONS AND DEPUTATIONS**

Item	Report	Speaker/s	Position	Attendance
7.1	PA2023005 - Use and Development of a Dwelling at 77 McPhans Road, Mollongghip	Michael Dowd	Landowner	In Person
7.3	PA2022081 – Development of a Second Dwelling with Associated Earthworks and Two Lot Subdivision (boundary realignment) at Crown Allotment 241A1 of Parish of Berembroke and Lot 1 on Title Plan 11714C, 253 Camerons Road, Berembroke	Morris Edwards & Justine Kanaris	Applicant	In Person
7.3	PA2022081 – Development of a Second Dwelling with Associated Earthworks and Two Lot Subdivision (boundary realignment) at Crown Allotment 241A1 of Parish of Berembroke and Lot 1 on Title Plan 11714C, 253 Camerons Road, Berembroke	Peter & Glen Burke	Objector	Written Statement
7.4	PA2021190-1 – Amended Permit for Development of a Shed Ancillary to a Dwelling and Variation of a Restrictive Covenant at 25 Cartons Road, Gordon	David Eason	Objector	In Person

Item	Report	Speaker/s	Position	Attendance
7.4	PA2021190-1 – Amended Permit for Development of a Shed Ancillary to a Dwelling and Variation of a Restrictive Covenant at 25 Cartons Road, Gordon	Steven McInnes	Objector	Written Statement to be read by David Eason - In person
7.4	PA2021190-1 – Amended Permit for Development of a Shed Ancillary to a Dwelling and Variation of a Restrictive Covenant at 25 Cartons Road, Gordon	Joshua & Ashlee Schumann	Landowner	In Person
7.5	PA2022205 – Three Lot Subdivision, Removal and Creation of Easement at Crown Allotments 8 and 8A, Section 20 and Crown Allotment 7, Section 20A, 534 Navigators Road, Navigators	Phil & Donna Bryce	Landowner	In Person

Michael Dowd addressed the Committee as the Landowner to Item 7.1

## **7 COMMUNITY PLANNING REPORTS**

### **7.1 PA2023005 - USE AND DEVELOPMENT OF A DWELLING AT 77 MCPHANS ROAD, MOLLONGGHIP**

**Author:** Thomas Tonkin, Statutory Planner

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

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

#### **APPLICATION SUMMARY**

**Permit No:** PA2023005

**Lodgement Date:** 13 January 2023

**Planning Officer:** Tom Tonkin

**Address of the land:** 77 McPhans Road, Mollongghip

**Proposal:** Use and Development of a Dwelling

**Lot size:** 8.09ha

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

#### **COMMITTEE RESOLUTION**

Moved: Cr Tom Sullivan

Seconded: Cr Tonia Dudzik

**That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2023005 for the Use and Development of a Dwelling at Lot 1 on TP161973T known as 77 McPhans Road, Mollongghip, subject to the following conditions:**

#### **Endorsed Plans:**

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans identified as Drawing No.'s A.200, A.201, A.202, A.300, A.400 dated 24 October 2022 and prepared by Arkular, and Land Management Plan Reference No. 083.2022 prepared by Infinity Landscape Architects, but modified to show:

(a) The Farm Management Plan (incorrectly titled Land Management Plan) to be amended to include details of the following:

i. management and harvesting of the hazelnut trees.

2. 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:**

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 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 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 Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Planning and Environment Act 1987 and the owner must provide evidence of that registration of the Agreement to the Responsible Authority.
  - (d) The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.

**Dwelling Requirements:**

5. 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*.
6. 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.
7. The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.
8. Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.

**Materials and Colour:**

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

**Vegetation Removal:**

10. 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:**

11. Unless otherwise approved by the Responsible Authority there must be no buildings, tree structures, or improvements located over any drainage pipes and easements on the property.
12. The proposed internal driveways within the site 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.
13. The stormwater drainage from the site must be retained within the boundaries of the property to the satisfaction of the Responsible Authority. Overflows from on-site storage systems must be directed away from any wastewater disposal areas.
14. Prior to the works commencing on the development, 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. If photographic evidence cannot be provided, then the damage must be fully reinstated at no cost to and to the satisfaction of the Responsibility Authority.
15. 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).

**Environmental Health:**

16. The land application area and all conditions must be in accordance with the Land Capability Assessment prepared by Civil Test Pty Ltd, Report No. 1221346-2 dated 22 August 2022 or any approved amendment.
17. An onsite wastewater management system with the capacity to treat effluent to a minimum 20mg/L BOD, 30mg/L SS and 10orgs/100ml with chlorination, i.e. secondary treatment via an aerated wastewater treatment system 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. 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.
19. The effluent disposal area must be kept free of buildings, driveways, vehicular traffic and services trenching.
20. Effluent disposal must be undertaken via subsurface irrigation system designed and installed by a wastewater irrigation expert in accordance with the EPA Code of Practise for Onsite Wastewater.



**Central Highlands Water:**

21. The dwelling and effluent disposal system must be located in accordance with the Land Capability Assessment by Civiltest Pty Ltd report No 1221346-2 dated 22nd August 2022.
22. The owner must install a wastewater management system that provides a secondary level of treatment of wastewater, in accordance with Option 1 in the recommendations in section 6 of Land Capability Assessment by Civiltest Pty Ltd Report No. 1221346-2 dated 22nd August 2022.
23. 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.
24. 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 (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 (“the EHO”) and must provide annually to both the Shire and to Central Highlands Water a written report from the EHO 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 EHO and evidence of this desludging must be provided in the EHO 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.

**Country Fire Authority:**

25. The bushfire protection measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible 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.

26. Before the development starts, the Bushfire Management Plan, Attachment 3, 77 McPhans Road Mollonghip, Version 1, dated 7 October 2022 on Page 21 in the Report prepared by Firefront Consultancies 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:**

27. 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:**

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.

**CARRIED**

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Not required.
Number of objections:	None. One submission was received in support of the application.
Consultation meeting:	Not required.

**POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

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

**Priority 2.3: Enhance our natural environments**

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

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

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

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

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

*Executive Manager – Henry Bezuidenhout*

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

*Author – Tom Tonkin*

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

**EXECUTIVE SUMMARY**

Application referred?	Yes, Central Highlands Water, Country Fire Authority and Agriculture Victoria, Council's Development Infrastructure and Environmental Health.
Any issues raised in referral responses?	Agriculture Victoria provided a letter of advice concluding that the proposal's justification for a dwelling in the Farming Zone appear contrary to the purpose of the zone and the strategic objectives of the Moorabool Planning Scheme.
Preliminary concerns?	Limited justification for the dwelling to be in the Farming Zone.
Any discussions with applicant regarding concerns?	Yes, following the advertising period. Discussions were around the appropriateness of the dwelling in the Farming Zone and the quality of the Farm Management Plan (titled Land Management Plan Reference Number: 083.2022).
Any changes made to the application since being lodged?	None.
Brief history.	Not applicable.
Previous applications for the site?	None.
General summary.	<p>It is proposed to use and develop the land for a dwelling.</p> <p>The proposed Farm Management Plan includes a proposal to revitalise the mature hazelnut plantation on site for commercial purposes. Other information within the Farm Management Plan identifies pest, animal and weed management.</p> <p>The proposal does not comply with the objectives of the Moorabool Planning Scheme and leads to a proliferation of dwellings in the Farming Zone.</p> <p>The proposal represents a rural lifestyle development with no tangible benefit to agricultural productivity.</p>

**Summary of Officer's Recommendation**

That, having considered all relevant matters as required by the *Planning and Environment Act 1987*, the Development Assessment Committee issue a Refusal to grant Planning Permit PA2023005 for the Use and Development of a Dwelling at Lot 1 on TP161973T known as 77 McPhans Road, Mollonghip, on the grounds contained within this report.

**SITE DESCRIPTION**

The subject site is located on the northern side of McPhans Road with a secondary road frontage to Gleasons Road at the rear, approximately 700m south of the Wombat State Forest. The Moorabool Reservoir closed catchment is located approximately 4.5km southeast of the subject site.

The surrounding area is predominantly zoned for farming with a mix of cleared agricultural land and heavily forested areas, of mostly native vegetation. Dwellings are not uncommon in the surrounding area and are developed on lots varying in size from less than 1ha to larger lots similar to or larger in size than the subject site.

The subject site is an irregular shaped lot, with a gradual fall of 25m (south to north), and an area of 8.09ha. The site is developed with two sheds located near the front of the site, accessed via two crossovers to McPhans Road connected by a semi-circular accessway. The site is vegetated with a mixture of trees, comprising of a grove of hazelnut trees planted towards the front and mostly native vegetation towards the side and rear property boundaries with some relatively cleared patches of land towards the centre and rear of the site.



**Figure 1:** Aerial photograph of the subject site.

**PROPOSAL**

It is proposed to use and develop the site for a dwelling. The proposed dwelling would be single storey and comprise two bedrooms, two bathrooms, study, laundry and open plan kitchen, dining and living area leading to a north-facing deck. The dwelling would be timber clad with a low-pitched hipped metal roofing. A site cut of less than 1m would be required and the dwelling would have a maximum height of 4m.

The dwelling would be setback approximately 115m from McPhans Road and approximately 55m from the nearest title boundary to the east, with vehicle access gained via an extension of the existing accessway. The dwelling would be constructed to BAL 29 with defensible space of 43m. No vegetation removal is proposed. The proposed septic tank and effluent field would be located on the northern side of the dwelling.

Regarding agricultural activity, the applicant proposes to revitalise the existing mature hazelnut plantation by pruning, feeding, irrigating, and mulching to increase productivity. The landowners have investigated product market pricing and sales opportunities in Melbourne however no further information was provided regarding the financial viability of the agricultural use.

The proposed Farm Management Plan proposes a 10-year plan which predominantly includes the eradication of weeds and pest animals (rabbits, foxes, mice, and rats) and planting of an ornamental garden in the front quarter of the property.

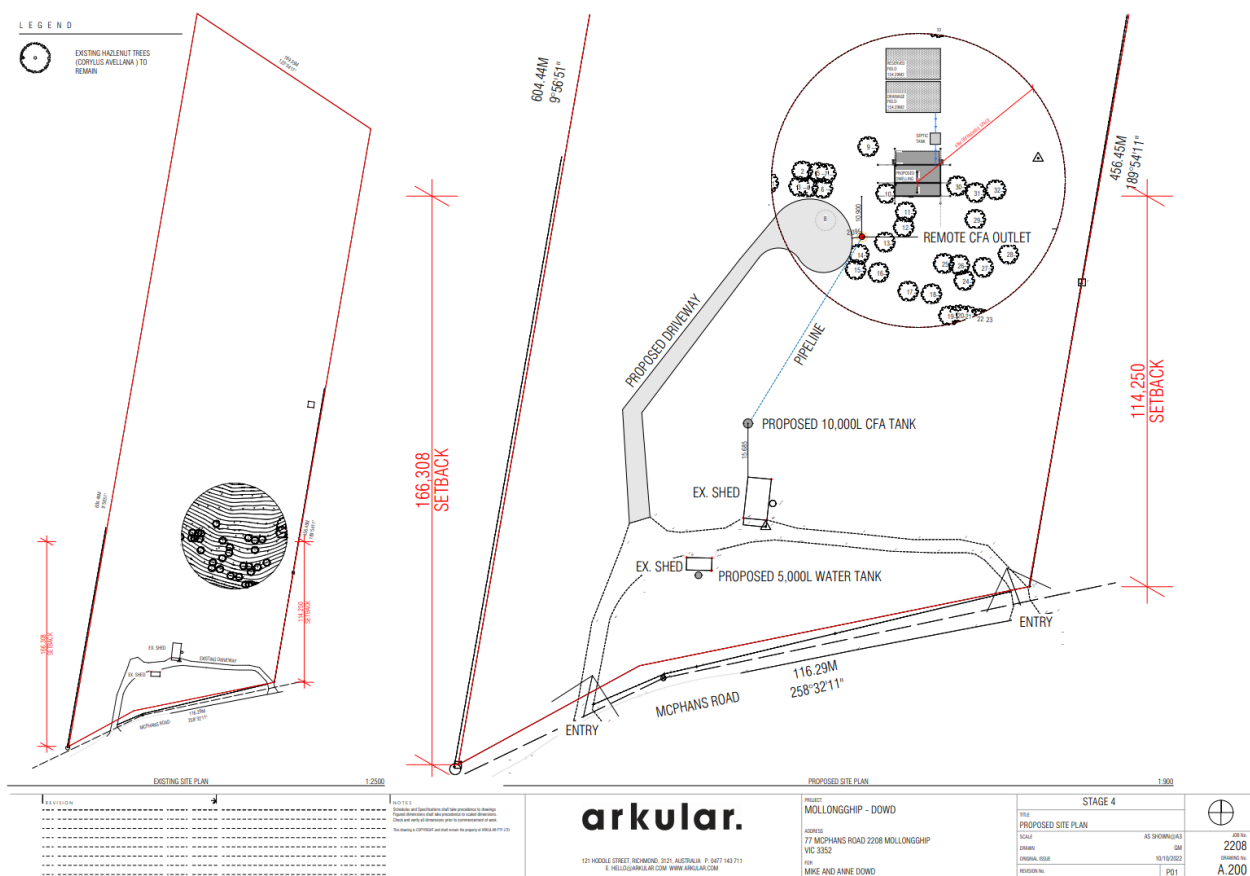


Figure 2: Proposed site plan.

**BACKGROUND TO CURRENT PROPOSAL**

Not applicable.

**HISTORY**

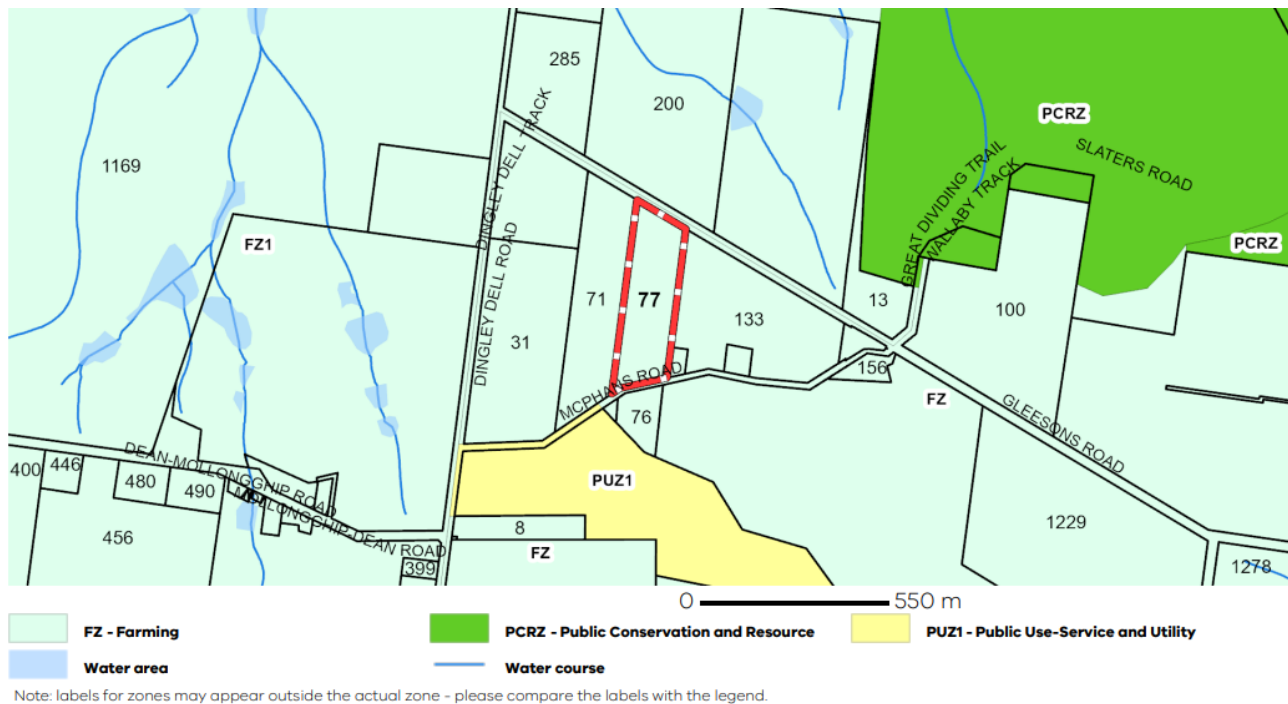
Not applicable.

**PUBLIC NOTICE**

Notice of the application was given to adjoining and nearby landowners and occupiers by mail and a sign erected on site. No objections were received. One submission was received in support of the application.

## LOCALITY MAP

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



**Figure 3:** Zone map.

## PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

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

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

Clause	Title	Response
Clause 02.03-4	Natural resource management – Agriculture	The associated farming enterprise comprising the management and harvesting of a mature hazelnut plantation does not necessitate need for a dwelling.
Clause 11.01-1L-01	Settlement in Moorabool	The proposal does not justify the need for a dwelling in a farming area and the location is unsuitable for rural lifestyle development.
Clause 11.03-3S	Peri-urban areas	The proposal goes against this policy which discourages dispersed settlement and encourages the protection of agricultural land.
Clause 14.01-1S	Protection of agricultural land	The nature of the proposal does not sufficiently justify the need for a dwelling, the development of which reduces the land available for potential agricultural production.
Clause 16.01-3S	Rural residential development	The proposed dwelling lacks strategic justification consistent with this policy.
Clause 16.01-3L-01	Rural residential development in Moorabool	The proposal constitutes a rural lifestyle development which is inappropriate in this location.

## **ZONE**

### Farming Zone

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

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

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

## **OVERLAYS**

### Environmental Significance Overlay - Schedule 1

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

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

### Design and Development Overlay - Schedule 2

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

### Bushfire Management Overlay

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

### **Particular Provisions**

#### Clause 53.02 Bushfire Planning

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

### **Relevant Policies**

#### Council's Rural Growth Policy

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

The policy states:

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

The site is not shown on Map 1 of the Council Rural Growth Policy Statement in an area where dwellings are encouraged. 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 hazelnut 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 align with the above principles.

## **DISCUSSION**

### Farming Zone

Overall, the proposed use and development for a dwelling is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular the Municipal Planning Strategy, Planning Policy Framework 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 application does not provide any reasons for why a dwelling would benefit the management or harvesting of the existing hazelnut plantation which covers less than 0.5ha of the subject site. Although it is stated that the landowners aim to increase commercial horticultural production, there were no details provided on how this would be achieved apart from pruning, feeding, irrigating and mulching the existing plantation. There is also a lack of detail regarding the financial inputs or outputs of the farming enterprise or the marketing or sales of the hazelnut crop. There is no proposed expansion of the hazelnut plantation or any other farming activity to maximise the agricultural yield of the site

The submitted Farm Management Plan includes weed and pest animal management and the planting of a substantial ornamental garden in the front part of the site. It is noted that the Farm Management Plan states that there are a limited number of weed species present on the property. The Farm Management Plan also states that there is evidence of rats near the front of the site, and previous evidence of rabbits. There has been no sighting of foxes or feral cats and no known evidence of burrows, warrens or dens. Pests on the land can be easily managed without the need for a dwelling.

Based on the submitted Farm Management Plan, and in consideration of the relevant policies in the Moorabool Planning Scheme, the use of the land for a dwelling is not justifiable. None of the proposed land management or agricultural activities would require a constant presence on the site and it is understood that the dwelling would not be occupied full-time, which further exemplifies the lack of intent to further improve farming activities on the land.

Furthermore, the proposed dwelling would be sited in a cleared area of the site which would otherwise appear best suited to an expansion of farming activities, considering the limits imposed by the size and features including substantial areas of vegetation cover. This demonstrates the limits of the site to accommodate a dwelling without negatively impacting on the longer-term agricultural viability of the property.

The proposal does not align with the purpose of the Farming Zone, considering there is insufficient justification for the proposed dwelling to benefit the proposed farming enterprise.

The application was referred to Agriculture Victoria, who provided the following advice:

- The land is Farming Zone. The pattern of small lot subdivision does not negate the purpose of the zone, or the clauses (in the Moorabool Planning Scheme) related to protecting against the potential loss of agricultural land.
- The siting of the house in the only open area of the lot, while practical from a bushfire protection perspective, reduces the potential for expansion of agriculture on the site.
- The proposal does not appear to effectively establish a domestic building envelope to minimise the domestic use impact on the land and, ensure maximising and maintaining the use of the land for agriculture.
- The proposal has the potential to result in a permanent loss of productive agricultural land in the Farming Zone.
- The approval of a dwelling on the lot would permanently remove the ability of the land to be incorporated into surrounding agricultural enterprises and has the potential to limit the operation and expansion of adjoining and nearby agricultural uses.
- The proposed dwelling presents a further proliferation of dwellings which has potential for the use and development to limit the operation and expansion of adjoining and nearby high value agricultural uses.

Overall, the proposal is generally characteristic of the demand for rural residential development with limited potential for dwellings to reasonably support or value-add to an agricultural use. The proposal which without sufficient strategic justification poses a potentially detrimental outcome for the agricultural land in Moorabool. Although there are dwellings in the surrounding area, the location is relatively isolated with the nearest services with Creswick township approximately 15km away. Additional dwellings in isolated areas of the Shire increases pressure for the delivery of services and infrastructure by residents which may not reasonably be expected outside of larger existing population centres. Furthermore, the development of dwellings beyond township boundaries, where insufficient justification exists, threatens the rural landscape character, undermines the potential for viable agricultural ventures to succeed on such landholdings and reduces opportunities for land parcels to be consolidated to increase potential productivity.

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

## GENERAL PROVISIONS

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

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

## REFERRALS

Authority	Response
Central Highlands Water	Consent with conditions.
CFA	Consent with conditions.
Agriculture Victoria	Letter of advice.

Authority	Response
Council's Development Infrastructure	Consent with conditions.
Council's Environmental Health	Consent with conditions.

### FINANCIAL IMPLICATIONS

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

### RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

### COMMUNICATIONS STRATEGY

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

### OPTIONS

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

### CONCLUSION

The proposed use and development of the subject site for a dwelling is inconsistent with the objectives of the Moorabool Planning Scheme, in particular planning policy framework relating to development in rural areas, and the Farming Zone provisions. The farming enterprise and land management activities proposed do not warrant a dwelling on the site. The proposal in its current form would restrict the longer-term agricultural viability of the land by reducing the land available for agriculture use. The dwelling would transform the site to rural residential lot in a location isolated from community services.

**7.2 PA2022268 - USE AND DEVELOPMENT OF A DWELLING AT 440 MAIN STREET (AVENUE OF HONOUR), BACCHUS MARSH**

**Author:** Victoria Mack, Statutory Planner

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

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

**APPLICATION SUMMARY**

**Permit No:** PA2022268

**Lodgement Date:** 5 December 2022

**Planning Officer:** Victoria Mack

**Address of the land:** 440 Main Street, Bacchus Marsh

**Proposal:** Use and Development of a Dwelling

**Lot size:** 2.539ha

**Why is a permit required?** Clause 35.07 Farming Zone Use and Development of a Dwelling; Clause 42.01-2 Environmental Significance Overlay Schedule 2 Building and Works; Clause 44.04 Land Subject to Inundation Overlay Building and Works

**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 Planning Permit PA2022268 for the Use and Development of a Dwelling at Lot 1 on TP763557H, 440 Main Street, Bacchus Marsh, on the following grounds:**

- 1. The proposal is inconsistent with the purpose and decision guidelines of the Farming Zone.**
- 2. The proposal does not comply with the Planning Policy Framework of the Moorabool Planning Scheme relevant to the development and use of agricultural land.**
- 3. The proposed development of the land will lead to the proliferation of dwellings in the Farming Zone and the surrounding area.**
- 4. The proposed use and development does not represent the orderly planning of the area.**

**CARRIED**

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

## **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

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

#### **Priority 2.3: Enhance our natural environments**

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

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

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

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

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

*Executive Manager – Henry Bezuidenhout*

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

*Author – Victoria Mack*

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

## **EXECUTIVE SUMMARY**

Application referred?	Yes, Melbourne Water, Department of Transport and Planning, Sothern Rural Water, Heritage Victoria, Agriculture Victoria, Council's Development Infrastructure, Environmental Health, Urban Design and Landscape, and Strategic Planning.
Any issues raised in referral responses?	Heritage Victoria raised concerns in their initial referral, however following amendments to the application Heritage Victoria have consented subject to conditions (initial concerns related to the location of dwelling and proposed crossover).

	Council's Strategic Planning do not support the proposal.
Preliminary concerns?	Limited justification for the dwelling to be in the Farming Zone. The proposal impacts highly productive farming land as the subject site is within the Bacchus Marsh Irrigation District.
Any discussions with applicant regarding concerns?	A request for further information was sent to the applicant, this included preliminary concerns around the use and development of a dwelling on highly productive irrigated agricultural land.
Any changes made to the application since being lodged?	The application was amended to relocate the dwelling outside the 20m Avenue of Honour heritage precinct.
Brief history.	The land is currently being used for horticulture (irrigated turf production).
Previous applications for the site?	PA2008-022 - Development and Use of a Dwelling and Construction of a Crossover issued on 21 May 2000 (Permit lapsed prior to construction). PA2015164 - Creation of Access to a RDZ1 issued on 14 October 2015.
General summary.	It is proposed to use and develop the land for a dwelling associated with commercial horticulture (turf production). The Farm Management Plan identifies the continuation of an establish farm operation with no other proposed actions. The proposal sits within the Bacchus Marsh Irrigation District. The proposal does not comply with the objectives of the Moorabool Planning Scheme and leads to a proliferation of dwellings in the Farming Zone.
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Refusal to grant Planning Permit PA2022268 for the Use and Development of a Dwelling, at Lot 1 on Title Plan 763557H, 440 Main Street, Bacchus Marsh, on the grounds contained within this report.	

## SITE DESCRIPTION

The site is approximately 2.3km west of the centre of Bacchus Marsh town centre. The subject site is located on the southern side of the Avenue of Honour in Bacchus Marsh.

The subject site and surrounding area are zoned for farming with active farming activities occurring on both the subject site and adjoining properties. Commercial horticulture is currently

occurring on the subject site and on land to the west, east and north (with the land to the west and north being in the same ownership as the subject site).

The subject site a narrow rectangular shaped lot, with relatively flat topography, and an area of 2.6ha. The only native vegetation on the site is located on the south boundary which abuts the Werribee River. The land has been used for horticulture since 2021 (irrigated turf production). There is a shed on the site with a floor area of approximately 123sqm, the proposal includes the relocation of the shed to accommodate the proposed dwelling. There is an existing crossover to the site from the Avenue of Honour with double vehicular gates.



**Figure 1:** Aerial photograph of the subject site.

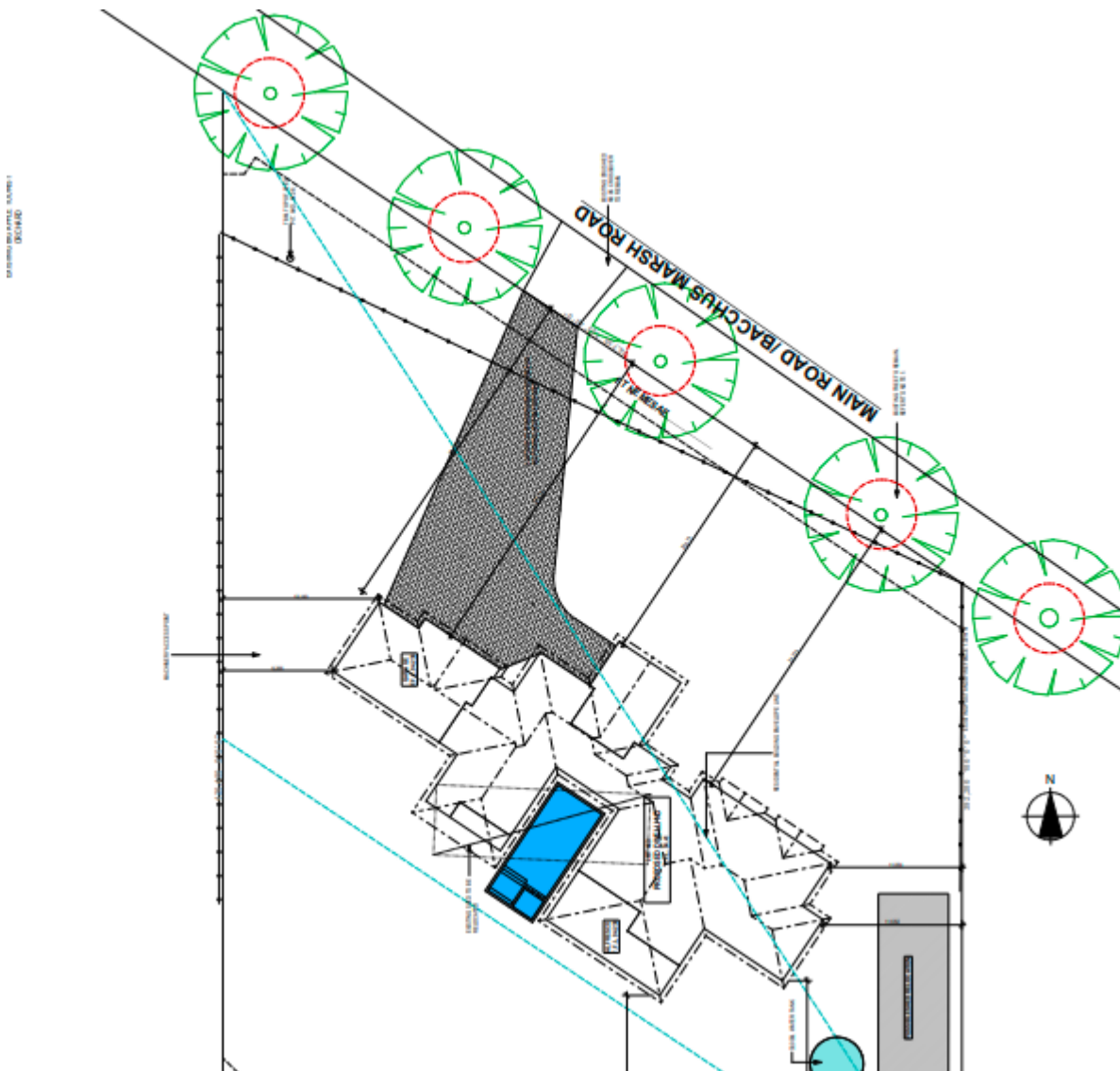
## PROPOSAL

It is proposed to use and develop the site for a dwelling for the purpose of a manager's residence. The proposed dwelling would contain an open plan kitchen, meals and living area; four bedrooms, the master with ensuite, two separate powder rooms; a separate office; and an attached three car space garage. A swimming pool would be located between the alfresco and the master bedroom. The dwelling would have a total floor area of 549.69sqm and the total dwelling envelope (including septic and swimming pool) would be 3,390sqm.

The dwelling would be setback at least 20m from the Avenue of Honour and would be constructed with a natural stone finish and would have a 35-degree Colorbond pitched roof.

The existing crossover would have a driveway extended into the site to the garages and front porch area and would be sealed with Lilydale toppings or similar surface.





**Figure 2:** Partial Site Plan

### **BACKGROUND TO CURRENT PROPOSAL**

Not applicable.

### **HISTORY**

A search of Council records shows that the following permits have been issued on the subject site:

- PA2008-022 - Development and Use of a Dwelling and Construction of a Crossover was issued on 21 May 2008 (the dwelling was not constructed, and the permit lapsed).
- PA2015164 - Creation of Access to a Road Zone Category 1 (RDZ1) was issued on 14 October 2015.

### **PUBLIC NOTICE**

Notice of the application was given to adjoining and nearby landowners and occupiers by mail and a sign erected on site. No objections were received.



## LOCALITY MAP

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



**Figure 3:** Zone map.

## PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 02.03-2 – Environmental and landscape values
- Clause 02.03-3 – Environmental risks and amenity
- Clause 02.03.01 – Bacchus Marsh
- Clause 02.03-4 – Natural resource management
- Clause 02.03-5 – Built environment and heritage
- Clause 02.03-6 – Housing
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.03-3S – Peri-urban areas
- Clause 14.01-1S – Protection of agriculture land
- Clause 14.01-1L – Agriculture, rural dwellings and subdivision
- Clause 14.02-3S – Protection of declared irrigation districts
- Clause 15.01-6S – Design for rural areas
- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural residential development in Moorabool

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

Clause	Title	Response
Clause 02.03-1	Bacchus Marsh	It is policy that Council seeks to protect the highly productive Bacchus Marsh Irrigation District from urban expansion. The proposal does not protect the highly productive land.
Clause 02.03-4	Natural resource management – Agriculture	The Bacchus Marsh Irrigation District, and other highly productive areas in the west of the Shire, need to be protected from the encroachment of residential development. The horticultural activity on the site does not necessitate the need for a dwelling.
Clause 11.01-1L-01	Settlement in Moorabool	The proposal does not justify the need for a dwelling in a farming area and the location is unsuitable for a dwelling.
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 potential agricultural production, specifically land in the Bacchus Marsh Irrigation District.
Clause 14.01-1L	Agriculture, rural dwellings and subdivision	There is insufficient justification for a dwelling on the land covered by the Farming Zone. The proposed dwelling results in the proliferation of dwellings in the area and limits opportunity to consolidate land parcels. A key strategy is to ensure that incompatible land use and development does not encroach upon productive agricultural land, particularly the Bacchus Marsh Irrigation District.
Clause 14.02-3S	Protection of declared irrigation districts	The objective of this clause to plan and manage for sustainable change within irrigation districts declared under Part 6A of the <i>Water Act 1989</i> . A strategy is to ensure non-agricultural land use does not undermine the integrity of irrigation infrastructure and

Clause	Title	Response
		<p>complements existing and future agricultural production.</p> <p>The land is serviced by rural water corporation irrigation infrastructure. The proposed dwelling is for a non-agricultural use on the land and would undermine the integrity of the irrigation district.</p>

## ZONE

### Farming Zone

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

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

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

## OVERLAYS

### Environmental Significance Overlay - Schedule 2

Pursuant to Clause 42.01-2 a planning permit is required for buildings and works within 100m of a waterway.

### Environmental Significance Overlay - Schedule 8

As no vegetation removal is proposed a planning permit is not required under this overlay.

### Heritage Overlay (HO47)

The first 20m of the site is covered by the HO47 which is included on the Victorian Heritage Register under the *Heritage Act 2017* with Reference No H2238.

Heritage Victoria advised as no change would occur to the existing crossover or access across the Avenue of Honour Heritage Precinct described by HO47, that a permit was not required for this application.

### Design and Development Overlay - Schedule 3

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

### Land Subject to Inundation Overlay

Pursuant to Clause 44.04-2 a permit is required for buildings and works.

Melbourne Water consented to the application subject to conditions in accordance with the objectives of the Land Subject to Inundation Overlay.

## Particular Provisions

There are no particular provisions that apply to the application.

## Relevant Policies

### Council's Rural Growth Policy

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

The policy states:

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

The site is not shown on Map 1 and need to refer to Urban Growth Strategy for Bacchus Marsh.

### Council's Rural Housing Policy

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

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

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

The proposal does not align with the above principles.

## DISCUSSION

### Farming Zone

Overall, the proposed use and development for a dwelling is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular the Municipal Planning Strategy, Planning Policy Framework and the Farming Zone.

The site is located in the Bacchus Marsh Irrigation District (BMID). The BMID is a state significant irrigation and agricultural district administered by Southern Rural Water. It supports most of agricultural production in Bacchus Marsh, due to its fertile alluvial soils and the produce generated is transported throughout Australia and internationally.

The proposed dwelling is inconsistent with the objectives of the relevant Planning Policy Framework which aims to protect prime agricultural land and declared irrigation districts from non-agricultural residential uses, where the land is serviced by rural water corporation district infrastructure. State investment in the BMID has been significant with the objective of securing this land as a resource for the future of all Victorians. The proposed dwelling conflicts with the intent of protecting this state significant resource.

The proposal is inconsistent with the purpose and decision guidelines of the Farming Zone which aims to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture; and to consider whether the dwelling will result in the loss or fragmentation of productive agricultural land.

Based on the submitted Farm Management Plan, and in consideration of the relevant policies in the Moorabool Planning Scheme, the use of the land for a dwelling is not justifiable. The current and ongoing agricultural activities do not require a constant presence on the land. Furthermore, given the relatively small size of the subject site, and the location of the proposed dwelling, the proposal reduces the extent of farming activities achievable on the land and negatively impacts the longer-term agricultural viability of the property.

The proposal does not align with the purpose of the Farming Zone, considering there is insufficient justification for the proposed dwelling to benefit the proposed farming enterprise.

The application was referred to Agriculture Victoria, who provided the following advice:

- The lot is part of a large existing farming business. Aerial imagery suggests at least one dwelling is associated with the business and is located across the road from the current application.
- The proposed dwelling is located on a small lot that could be sold separately from the rest of the farm, and at lot size of 2.6ha, with an elaborate dwelling, would most likely be utilised as a rural lifestyle property.
- The approval of the dwelling on the subject land may set a precedent for further dwelling approvals on the lots under the same ownership and for other land in the surrounding area.
- Security arrangements for the business would be most suitably located near the machinery storage area located on lots across the road from the current proposal. Electronic monitoring systems are available to assist in on-farm security.
- The addition of a dwelling to the lot will contribute to further proliferation of dwellings in the Farming Zone.

The application was referred to Council's Strategic Planning which also did not support the application based on the strategic direction of the irrigation district.

Land Subject to Inundation Overlay and Environmental Significance Overlay Schedule 2

The application was referred to Melbourne water with conditions to address flood risk and impact on local waterways and had no objection subject to conditions.

**GENERAL PROVISIONS**

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

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

**REFERRALS**

Authority	Response
Southern Rural Water	No response.
Melbourne Water	Consent with conditions.
Department of Transport and Planning	Consent with conditions.
Heritage Victoria	Consent with conditions.
Agricultural Victoria	Letter of advice.
Council's Development Infrastructure	Consent with conditions.
Council's Environmental Health	Consent with conditions.
Council's Strategic Planning	Advice.
Council's Urban Design & Landscape Architecture	Advice.

**FINANCIAL IMPLICATIONS**

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

**RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

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

**COMMUNICATIONS STRATEGY**

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

**OPTIONS**

That the Development Assessment Committee could consider the following options:

- Issue a Refusal to Grant a Planning Permit in accordance with the grounds in the recommendation of this report; or

- Should the Development Assessment Committee wish to support the application and issue a Planning Permit with conditions, the Committee will need to demonstrate how the proposal complies with the Moorabool Planning Scheme.

### **CONCLUSION**

The proposed use and development of the subject site for a dwelling is inconsistent with the objectives of the Moorabool Planning Scheme, in particular planning policy framework relating to development in rural areas, and the Farming Zone provisions. The current operational farming activities (turf production) do not warrant a dwelling on the site. The proposal in its current form would restrict the longer-term agricultural viability of the land by reducing the land available for agriculture use. Due to the size of the lot, the proposed dwelling would transform the site to rural residential lot and further impact the viability of this significant agricultural land located in the Bacchus Marsh Irrigation District. It is recommended that this application is not supported.

Morris Edwards & Justine Kanaris addressed the Committee as the Applicants to Item 7.3

**7.3 PA2022081 - DEVELOPMENT OF A SECOND DWELLING WITH ASSOCIATED EARTHWORKS AND TWO LOT SUBDIVISION (BOUNDARY REALIGNMENT) AT CROWN ALLOTMENT 241A1 OF PARISH OF BEREMBROKE AND LOT 1 ON TITLE PLAN 11714C, 253 CAMERONS ROAD, BEREMBROKE**

**Author:** Mark Lovell, Coordinator Statutory Planning

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

**Attachments:** Nil

**APPLICATION SUMMARY**

**Permit No:** PA2022081

**Lodgement Date:** 22 April 2022

**Planning Officer:** Mark Lovell

**Address of the land:** Crown Allotment 24A1 Parish of Beremboke and Lot 1 on Title Plan 117148C, 253 Camerons Lane Beremboke

**Proposal:** Development of a second dwelling with associated earthworks and two lot subdivision (boundary realignment)

**Lot size:** 4.78 ha

**Why is a permit required?** Clause 35.07-4 Buildings and works associated with a Section 2 land use in the Farming Zone; Clause 35.07-3 Subdivide land in the Farming Zone; Clause 44.04-2 Building and Works in Land Subject to Inundation Overlay; Clause 44.04-3 Subdivide land in the Land Subject to Inundation Overlay; Clause 44.06-2 Buildings and works associated with accommodation in Bushfire Management Overlay; Clause 44.06-2 Subdivide land in the Bushfire Management Overlay

**COMMITTEE RESOLUTION**

Moved: Cr Tonia Dudzik

Seconded: Cr David Edwards

**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 a permit for the Development of a Second Dwelling with Associated Earthworks and Two Lot Subdivision (Boundary Realignment) at Crown Allotment 241A1 of Parish of Berembroke and Lot 1 on Title Plan 11714C, 253 Camerons Road, Berembroke with the following conditions:**

**Endorsed Plans:**

- 1. Before the use and/or development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application or**



some other specified plans but modified to show:

- (a) Amended Bushfire Management Plan in accordance with Condition 24 contained herein.
- (b) Fully dimensioned site plan showing all setbacks to the title boundary not the proposed subdivision boundary and setback to the existing dwelling.
- (c) Site plan to show extent of cutting and filling.

**Section 173 Agreement:**

2. A Land 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.
3. 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 land management plan.
  - (b) Environmental management measures identified in the endorsed Land Management Plan must be undertaken on the land and must be in accordance with the Land Management Plan endorsed under Condition 2 of the Planning Permit and cannot be varied without the written consent of the Responsible Authority.
  - (c) No further subdivision is permitted on the land.
  - (d) 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 *Planning and Environment Act 1987* and the owner must provide evidence of that registration of the Agreement to the Responsible Authority.
  - (e) The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.

**Dwelling Requirements:**

4. The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for firefighting purposes.
5. The dwelling must be connected to a reticulated 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*.
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:**

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

**Development Infrastructure:**

9. A standard vehicle crossing must be provided on Camerons Lane to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.
10. 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.
11. Stormwater drainage from the proposed buildings and impervious surfaces must be retained and disposed of to the satisfaction of the Responsible Authority. Overflows from on-site storage systems must be directed away from any wastewater disposal areas.
12. 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).
13. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
14. 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.
15. The earthworks must be designed and constructed to the appropriate Standards and engineering best practice to the satisfaction of the Responsible Authority

**Melbourne Water:**

16. The dwellings must be constructed with finished floor levels set no lower than 307.97 metres, to Australian Height Datum (AHD), which is 300mm above the applicable flood level of 307.67m to AHD.
17. The garages must be constructed with finished floor levels no lower than 307.67 metres to AHD, which is equivalent to the applicable flood level.
18. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the AHD, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
19. Imported fill must be kept to a minimum on the property and only be used for the sub floor areas of the dwellings, garages and driveway ramps.
20. All landscaping should be finished at the existing natural surface level so to not obstruct the passage of overland flows.
21. Any new fencing / gates must be open-style (50% open), or standard timber paling fence, to allow the passage of floodwaters.
22. Any proposed decking including stairs must be constructed with unenclosed foundations

to allow for the passage of overland flows. Stairs up to the decking must contain no vertical risers.

**Country Fire Authority:**

23. The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible 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.
24. Before the development starts, an amended Bushfire Management Plan must be prepared to the satisfaction of the Country Fire Authority then submitted to and 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. The plan must be generally in accordance with the Bushfire Management Plan prepared by MPD (dated 8 June 2022) but modified to:
  - (a) replace the conditions for "Construction" with "The building must be constructed to a minimum Bushfire Attack Level of 29 (BAL-29)."; or
  - (b) show an amended lot boundary to the south that is at least 37m from the southern edge of the dwelling.

**Servicing:**

25. 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.
26. 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.
27. 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.

**Permit Expiry:**

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

**Statement of Compliance must be achieved and certified plans registered at the Titles office within five years from the date of certification.**

In Favour: Crs Tonia Dudzik, David Edwards, Ally Munari and Moira Berry

Against: Nil

Abstained: Cr Tom Sullivan

**CARRIED 4/0**

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Not required.
Number of objections:	Two objections.
Consultation meeting:	No consultation with the objectors is required as the recommendation is for refusal.

## **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

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

#### **Priority 2.3: Enhance our natural environments**

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

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

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

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

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

*Executive Manager – Henry Bezuidenhout*

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

*Author – Mark Lovell*

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

## **EXECUTIVE SUMMARY**

Application referred?	Yes, Melbourne Water, Country Fire Authority, Council's Development Infrastructure, and Environmental Health.
Any issues raised in referral responses?	CFA required an amended Bushfire Management Plan, which was submitted and CFA subsequently consented to the application subject to conditions.
Preliminary concerns?	Limited justification for a second dwelling in the Farming Zone and more information required in the Farm Management Plan.

Any discussions with applicant regarding concerns?	Yes, following the advertising period. Discussions were around the appropriateness of the dwelling in the Farming Zone and alternatives for consideration.
Any changes made to the application since being lodged?	The application was amended to change the Farm Management Plan to a Land Management Plan.
Brief history.	The proposal applies to two lots, the existing dwelling sits across the lot boundary.
Previous applications for the site?	None.
General summary.	<p>It is proposed to retain the exiting dwelling on the land and construct a second dwelling with associated earthworks and a subsequent boundary realignment. The boundary realignment is proposed to enable one dwelling in each lot.</p> <p>The application was advertised, and two objections were received. The objections raised concerns with overdevelopment and the proposals compliance with the planning scheme.</p> <p>The proposal does not comply with the objectives of the Moorabool Planning Scheme and leads to a proliferation of dwellings in the Farming Zone.</p> <p>The subdivision (boundary realignment) further fragments land that could be consolidated.</p>
<b>Summary of Officer's Recommendation</b>	
<p>That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i>, Development Assessment Committee issue a Refusal to grant Planning Permit PA2022081 for the Development of a second dwelling with Associated Earthworks and Two Lot Subdivision (boundary realignment), at Crown Allotment 24A1 Parish of Beremboke and Lot 1 on Title Plan 117148C, 253 Camerons Lane, Beremboke, on the grounds contained within this report.</p>	

## SITE DESCRIPTION

The subject site is located on the southern extent of Camerons Lane in Beremboke with the eastern property boundary adjacent to Little River with the Brisbane Ranges National Park beyond Little River. The Moorabool Wind Farm is located 9.3km to the north-west. The nearest township is Meredith, located approximately 16km to the south-west.

The surrounding area is a mixture of well heavily vegetated vacant lots and scattering of dwellings on large lots. There is limited agricultural use in the area due to the extent of native vegetation.

The subject site consists of two lots, the northern lot is an irregular shaped lot with an area of 3.924ha and the smaller southern rectangular shaped lot has an area of 8,600sqm which is dissected by a carriageway easement (for Camerons Lane). The land has significant sloping topography from a west to east direction reflective of a river valley environment with Little River at the lowest point. The site contains an existing dwelling located near the southern boundary and has large patches of cleared land with well-established native trees concentrated to the eastern half and along the southern boundary.



**Figure 1:** The subject site with the grey internal line showing the border between the two existing titles.

## **PROPOSAL**

### Dwelling

The proposed dwelling is located on the northern section of the site and would contain four bedrooms, one bathroom, one ensuite, and a combined kitchen, meals and living room. The dwelling would have a simple architectural form with a flat roof and be constructed of recycled brick walls, Colorbond roofing and powder coated framed windows.

The dwelling would be setback 25m from the front western property boundary where vehicle access is obtained off Camerons Lane, setback 30m from the northern side boundary and setback 63.7m from the eastern property boundary adjacent to Little River. There is no proposed under cover parking in the form of a carport or garage.

Due to the slope of the land, earthworks would be undertaken which include a site cut of up to 0.8m and a site fill of up to 0.7m to establish the dwelling on a flat building pad.

### Subdivision

The boundary between the two existing lots will be realigned with the proposed dwelling located on new Lot 2 with an area of 8,500sqm and the existing dwelling proposed on new Lot 1 with an area of approximately 4ha.

### Land Management Plan

The Land Management Plan submitted with the application proposes a conservation area to the east of existing and proposed dwelling and will include measures to control weed areas located adjacent to Little River. Also, two small horticulture areas containing raised garden beds are proposed within each new lot to be created.

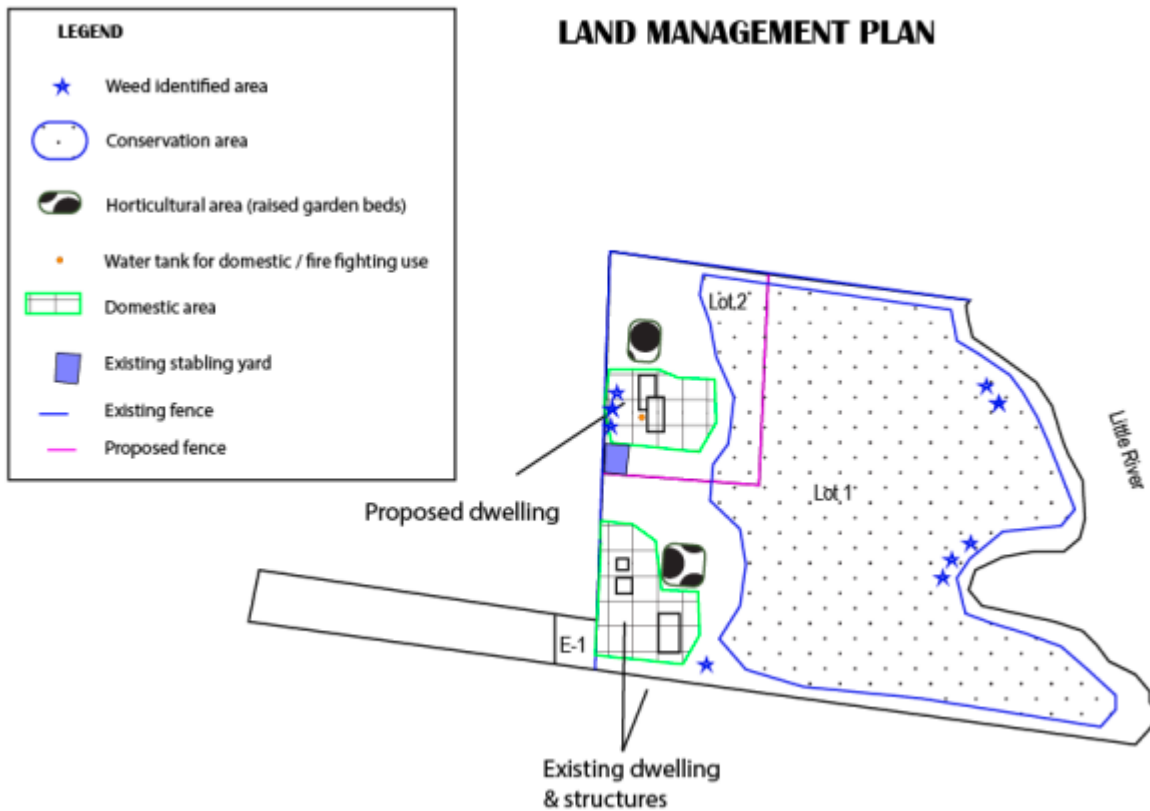


Figure 2: Proposed site plan and Land Management Plan.

**BACKGROUND TO CURRENT PROPOSAL**

Not applicable.

**HISTORY**

Not applicable.

**PUBLIC NOTICE**

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

**SUMMARY OF OBJECTIONS**

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

Objection	Any Relevant Requirement
This proposal does not comply with the Zoning or the Moorabool Planning Scheme and would significantly alter the general character of the immediate neighbourhood resulting in a loss of sustainability and biodiversity for the environment and a reduction in the general amenity for the residents	Clause 14.01-1L Clause 35.07 Farming Zone

<b>Officer's Response:</b> The proposal increases the number of dwellings and will change the rural character of this area due to the proliferation of dwellings.	
The proposal is said to seek permission to "realign the boundaries" but it actually creates a subdivision of 253 Camerons Lane into two inappropriate, non-compliant small properties both out of character in this very special rural area of larger properties with one house. The district is connected to a unique and fragile National Park across the Little River Creek that is an already threatened and depleted watercourse essential for the National Park and Western Water downstream.	Clause 14.01-1L Clause 35.07 Farming Zone
<b>Officer's Response:</b> Rather than consolidate the smaller lot, the proposal seeks to create two lots with associated dwellings, resulting in a proliferation of dwellings in the immediate area. The proposal would undermine protection of the nearby Brisbane Ranges National Park.	
The various documents that accompany the Application contain many errors, inaccuracies, omissions and conflicting information all of which obfuscate and mislead.	
<b>Officer's Response:</b> The report contains inconsistencies. In assessment of this application, officers have assessed the application against the provisions of the planning scheme.	
Considering the already small size of the lot, a subdivision and construction of two dwellings on it would be entirely inappropriate for the rural character of the area. Beremboke is characterised by pristine, secluded forest, far removed from the hustle and bustle of town and city life. This proposal if approved would amount to significant overdevelopment of the area	Clause 14.01-1L Clause 35.07 Farming Zone
<b>Officer's Response:</b> The proposed second dwelling would adversely impact upon the character of the area and result in a proliferation of dwellings. The lots sizes are small as a result of the subdivision and do not reflect the prevailing subdivision pattern of the area.	

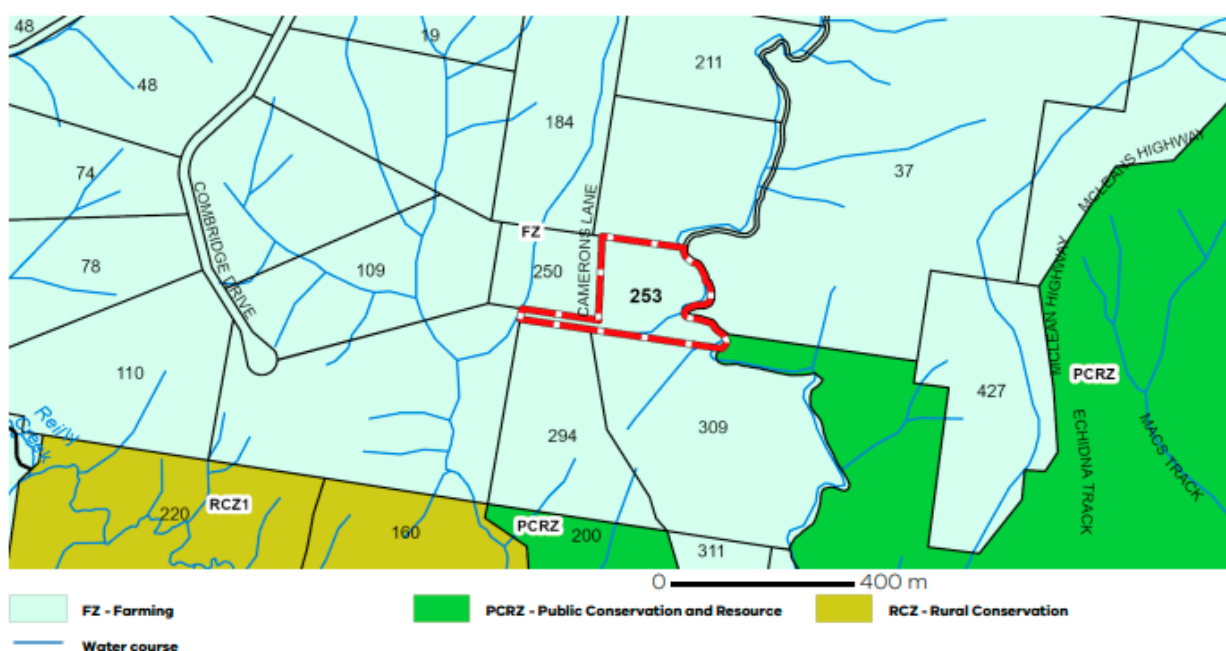
## LOCALITY MAP

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



## FARMING ZONE (FZ) (MOORABOOL)

## SCHEDULE TO THE FARMING ZONE (FZ) (MOORABOOL)



**Figure 3: Zone Map**

### PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

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

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

Clause	Title	Response
Clause 11.01-1L-01	Settlement in Moorabool	The proposal does not justify the need for an additional dwelling in a Farming Zone.
Clause 11.03-3S	Peri-urban areas	The proposal goes against this policy which discourages dispersed settlement and encourages the protection of agricultural land.
Clause 14.01-1S	Protection of agricultural land	The nature of the proposal does not sufficiently justify the need for a dwelling, the development of which reduces the land available for potential agricultural production.
Clause 14.01-1L	Agriculture, rural dwellings and subdivision	There is insufficient justification for a second dwelling on the land covered by the Farming Zone. Additional dwellings result in the proliferation of dwellings in the area and limits opportunity to consolidate land parcels.
Clause 16.01-3S	Rural residential development	The proposal does not seek to avoid rural residential development and results in the continued fragmentation of rural land.

## ZONE

### Farming Zone

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

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

Pursuant to Clause 35.07-3 a permit is required to subdivide land. A permit is also required to subdivide land under Clause 35.07-3. A permit may be granted to create smaller lots if the subdivision is the re-subdivision of existing lots and the number of lots is not increased.

The site contains two existing lots, and the proposal does not increase the number of lots.

## OVERLAYS

### Design and Development Overlay – Schedule 2

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

### Bushfire Management Overlay

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

Pursuant to Clause 44.06-2 a planning permit is required to subdivide land.

A permit which creates a lot for a single dwelling on land zoned for residential or rural residential purposes must include the following condition:

*“Before the statement of compliance is issued under the Subdivision Act 1988 the owner must enter into an agreement with the responsible authority under Section 173 of the Planning and Environment Act 1987. The agreement must:*

- *State that it has been prepared for the purpose of an exemption from a planning permit under Clause 44.06-2 of the [\*insert name of applicable planning scheme] Planning Scheme.*
- *Incorporate the plan prepared in accordance with Clause 53.02-4.4 of this planning scheme and approved under this permit.*
- *State that if a dwelling is constructed on the land without a planning permit that the bushfire protection measures set out in the plan incorporated into the agreement must be implemented and maintained to the satisfaction of the responsible authority on a continuing basis.*

*The landowner must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.”*

### Land Subject to Inundation Overlay

Part of the property is subject to flooding.

Pursuant to Clause 44.04-2 a permit is required for building and works. Land management works that alter topography within the flood area require planning approval, this application includes works within the flood area (for the Land Management Plan).

A permit is also required to subdivide land under Clause 44.04-3.

### **Particular Provisions**

#### Clause 53.02 Bushfire Planning

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

### **Relevant Policies**

#### 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 only supported with minimum area of 8ha Combined area of both lots is less than 8ha.

### Council's Rural Housing Policy

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

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

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

The proposal does not align with the above principles and the lots do not achieve the 8ha minimum area.

## **DISCUSSION**

### Farming Zone

Overall, the proposed development for an additional dwelling and resultant two lot subdivision is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular planning policy framework and the objectives of the Farming Zone.

The subject already contains an existing dwelling and providing for a second dwelling in the Farming Zone reduces the ability to consolidate land and leads to encroachment of rural lifestyle properties inconsistent with the zone objectives.

The applicant could undertake land management practices on site including conserving the eastern section of land adjacent to Little River and remove weed infestations. Two dwellings are not required to support biodiversity protection for this site which can easily be performed by the occupants of the existing dwelling. The site has limited agricultural production potential and conserving woodlands is an important consideration given the proximity to the Brisbane Ranges National Park on the eastern side of Little River.

The introduction of the second dwelling with its associated wastewater field and its defensible space to comply with the Bushfire Management Overlay further removes land that could be set aside for additional woodlands or could be utilised for conservation protection. The proposal intensifies residential development inconsistent with the surrounding development pattern comprised of a mixture of vacant lots and scattered dwellings on larger sized lots.

The site does contain two lots but there are already small sized, and one lot is bisected by a carriageway easement which provides for limited development potential including outbuildings. The subdivision would still result in one lot less than 1ha which maintains the fragmentation of Farming Zone land. Where possible, fragmented lots should be consolidated to enable the site to reflect the surrounding pattern of larger lot sizes.

The development of dwellings and the resultant two lot subdivision 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 and undermines the potential to conserve native woodlands. On this basis, the application should not be supported.

#### Bushfire Planning

The proposed dwelling would have BAL rating of 12.5 with a defensible space of up to 48m and include a 10,000L water tank for firefighting purposes. These measures will mitigate the bushfire risk. The CFA consented to the application, subject to the endorsement of the submitted Bushfire Management Plan. The implementation of the Bushfire Management Plan will minimise the risk to human life in accordance with Clause 13.02.

#### Earthworks

The proposed dwelling is located on sloping land requiring site cutting and site filling. The site cut into a river valley environment alters the rural setting and does expose the area surrounding the dwelling to sediment runoff. Earthworks could be avoided by building to the slope of the land.

#### Flooding

Melbourne Water assessed the flood risk and consented to the development and subdivision of land subject to conditions. The conditions required finished floor levels above the applicable flood level, open styled fencing and all landscaping finished at the existing natural surface level so to not obstruct the passage of overland flows. The applicant is proposing raised garden beds near both the existing dwelling and proposed dwelling, and these could be altered to remain at natural surface level.

### **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
Melbourne Water	Consent with conditions with flood advice.
Country Fire Authority	Consent with conditions.
Council's Development Infrastructure	Consent with conditions.
Council's Environmental Health	Concerns identified (regarding the existing dwelling septic system).

**FINANCIAL IMPLICATIONS**

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

**RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

The recommendation 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/or invited to address the Development Assessment Committee.

**OPTIONS**

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

**CONCLUSION**

The proposed development of a second dwelling and a two-lot subdivision does not satisfy the relevant provisions of the Moorabool Planning Scheme, in particular planning policy framework relating to development in rural areas, and the Farming Zone provisions. There is insufficient justification for a second dwelling, and the proposed additional buildings on the land will adversely alter this unique rural landscape setting of native woodlands. The subdivision of two existing lots maintains rather than eliminates the small lot arrangement, continuing the fragmentation of Farming Zone land. Objectors to the application have expressed similar planning concerns. The proposed development and subdivision should not be supported.

David Eason addressed the Committee as an Objector to Item 7.4

Joshua & Ashlee Schumann addressed the Committee as the Landowners to Item 7.4

**7.4 PA2021190-1 - AMENDED PERMIT FOR DEVELOPMENT OF A SHED ANCILLARY TO A DWELLING AND VARIATION OF A RESTRICTIVE COVENANT AT 25 CARTONS ROAD, GORDON VIC 3345**

**Author:** Justin Rocio, Statutory Planning Officer

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

**Attachments:** 1. Shed Plans and Elevations (under separate cover)

**APPLICATION SUMMARY**

**Permit No:** PA2021190-1

**Lodgement Date:** 26 July 2022

**Planning Officer:** Justin Rocio

**Address of the land:** 25 Cartons Road, Gordon

**Proposal:** Amended Permit for Development of a Shed Ancillary to a Dwelling and Variation of a Restrictive Covenant

**Lot size:** 1,584.86sqm

**Why is a permit required?** Clause 43.02-2 Design and Development Overlay Schedule 5 Construction of a building within 5m of a rear boundary and total floor area of all buildings on the land exceeding 300sqm; Clause 44.06-2 Bushfire Management Overlay Construction of a building associated with accommodation greater than 100sqm; Clause 52.02 Variation of a Restrictive Covenant.

**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 Notice of Decision to Grant an Amendment to Planning Permit PA2021190-1 for the Development of a Shed Ancillary to a Dwelling and Variation of Restrictive Covenant at 25 Catons Road, Gordon with the following amendments:**

- 1. Amend the Permit Preamble to Development of Dwelling and Ancillary Shed.**
- 2. New Conditions 11 and 12 under the subheading Shed Requirements:**
  - (a) 11. The proposed shed must not be used for industrial or commercial purposes.**
  - (b) 12. The proposed shed must not be used for any form of accommodation.**
- 3. New condition 13 under the subheading Landscaping:**
  - (a) 13. All proposed garden beds must be completed prior to occupation of the shed to**

the satisfaction of the Responsible Authority.

**4. New condition 14 under subheading Subdivision:**

- (a) **14. 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. The wording of the Description of Restriction has been approved as follows: "No dwelling will be constructed outside of the hatched area and any ancillary building constructed outside of the hatched area must be in accordance with the endorsed plans approved under PA2021190-1. No vehicle access is permitted between the property and adjoining Government Road to the west."**

**5. Permit expiry condition renumbered and to include:**

- (c) **The approved variation of the restriction is not registered with the Titles Office within two years of the date of this permit.**

In Favour: Crs Tonia Dudzik, David Edwards, Ally Munari and Moira Berry

Against: Nil

Abstained: Cr Tom Sullivan

**CARRIED 4/0**

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	No.
Notice in Moorabool Newspaper:	Not required.
Number of objections:	Three objections.
Consultation meeting:	A consultation meeting was undertaken between the objectors, applicant and the officer where issues were discussed.

**POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

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

**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 – Justin Rocio*

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

**EXECUTIVE SUMMARY**

Application referred?	Yes, CFA and Council's Development Infrastructure.
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?	Yes, the applicant amended the location of the shed from the northern side to the southern side of the lot.
Brief history.	The site has planning approval for a single storey dwelling. Construction has not commenced.
Previous applications for the site?	PA2021190 – Development of a Dwelling issued on 7 September 2021.
General summary.	<p>The proposed shed would be ancillary to an approved dwelling. The floor area, setbacks and overall height are considered appropriate for the site.</p> <p>The application was advertised, and three objections were received regarding height and bulk of the proposed outbuilding.</p> <p>The building height complies with the planning provisions and is not a planning permit trigger.</p> <p>It is recommended that the application be approved with amended conditions.</p>
<b>Summary of Officer's Recommendation</b>	
<p>That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i>, the Development Assessment Committee issue a Notice of Decision to Grant amended Planning Permit PA2021190-1 for the Development of a Shed Ancillary to a Dwelling and Variation of a Restrictive Covenant at 25 Catons Road, Gordon subject to the amended conditions contained within this report.</p>	

**SITE DESCRIPTION**

The subject site is located on the western side of Cartons Road, south of Corbetts Road, Gordon. There is a waterway that runs roughly in an east-west direction just south of the site. The site is located within a water catchment that is managed by Barwon Water. The property and the surrounding area are currently serviced by reticulated water and sewerage. There is a reserve located just rear of the site leading from Corbetts Road to the north down to the Public Park and Recreation Zone area to the south.

The lots in the general vicinity differ in both shape and lot size with lots being as low 1,200sqm while other lots exceed 1ha. The area is fairly established with several single dwellings already located in adjacent lots except for the neighbouring properties to the south and northeast of the site which are currently vacant. Vegetation in the general area appears denser towards the northeast and southeast of the site.

The subject site has an area of 1584.86sqm and has vehicles access from Cartons Road. The land is currently vacant except for a shipping container on the southwestern corner. The property slopes down to the south and is cleared of vegetation.

The property was originally part of 3 Corbetts Road, Gordon before the land was subdivided into five lots.



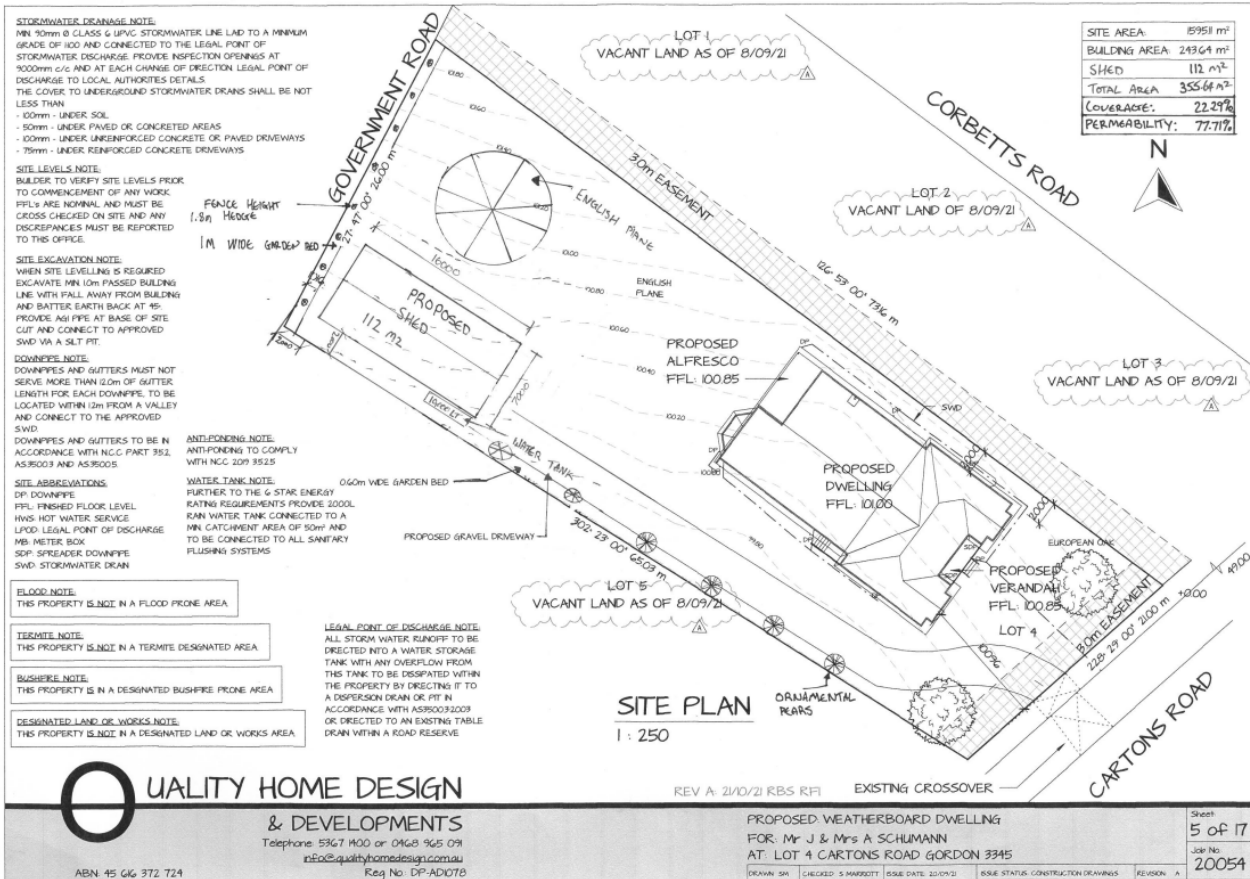
**Figure 1:** Aerial Photograph

**PROPOSAL**

It is proposed to amend Planning Permit PA2021190 to include a shed ancillary to the proposed dwelling. The shed would be 16m long and 7m wide with an overall height of 5.131m (3.11m to the eaves). The shed will have two roller doors along the north-eastern side wall and four bays.

The plans include landscaping along the western boundary and the relocation of an English Plane Tree towards the rear of the property.

The Variation of Restrictive Covenant is to allow the shed to be built within 5m of the southern property boundary.



**Figure 2:** Site plan of the proposed shed.

**BACKGROUND TO CURRENT PROPOSAL**

Three objections were received during this advertising period. The comments from the objectors were relayed through to the applicant who amended the site plan. The further amended plan were re-advertised but no objections were withdrawn. A consultation meeting was undertaken on 12 January 2023, no resolution was reached between the parties during this meeting.

**HISTORY**

PA2017099 – Five Lot Subdivision and Tree Removal. Amended permit issued on 17 September 2020 and titles released on 3 May 2021.

PA2021190 – Development of a Dwelling issued on 7 September 2021.

**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
The height of the proposed shed will have a great impact on us by significantly restricting our view towards the main township of Gordon, the waterway, native trees, public park and water reserve / The rear of this property is on full view to residences on Corbetts Road and impacts visual amenity.	Clause 43.02-2 – Design and Development Overlay Schedule 5
<b>Officer’s Response:</b> The shed does not trigger permit for the height under the Design & Development Overlay Schedule 5. Vegetation will be planted on the rear property boundary to assist in visual reducing bulk.	
I believe this size shed is commercial size and the feel of a country community will be taken away from us	Clause 43.02-2 – Design and Development Overlay Schedule 5.
<b>Officer’s Response:</b> Conditions will be included on any amended permit to issue to prevent industrial or commercial use.	

**LOCALITY MAP**

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



**Figure 3: Zone Map**



## **PLANNING SCHEME PROVISIONS**

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

The relevant clauses are:

- Clause 11.01-1S – Settlement
- Clause 11.01-1L-04 – Small towns and settlements
- Clause 13.02-1S – Bushfire planning
- Clause 15.01-2S – Building design
- Clause 15.01-2L-01 – Building design
- Clause 15.01-5S – Neighbourhood character
- Clause 15.01-5L – Landscape and neighbourhood character

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

## **ZONE**

### Neighbourhood Residential Zone Schedule 1

A permit is not required under the zone as the land is greater than 300sqm.

## **OVERLAYS**

### Bushfire Management Overlay

Pursuant to Clause 44.06 a planning permit is required to construct an outbuilding ancillary to a dwelling with a floor area exceeding 100sqm.

CFA consented to the application and had no new conditions for the proposed shed.

### Design and Development Overlay Schedule 2

As the proposed shed will be clad with non-reflective materials, no permit is required under this overlay.

### Design and Development Overlay Schedule 5

Pursuant to Clause 43.02 (Schedule 5) a planning permit is required for buildings and works within 5m of a rear setback and where the total floor area of all buildings on site exceed 300sqm (the shed and dwelling now exceed 300sqm).

### Environmental Significance Overlay Schedule 1

As the site is serviced by reticulated sewerage and stormwater is discharged to an approved drainage system, no permit is required under this overlay.

### Significant Landscape Overlay Schedule 2

As the site is cleared of vegetation and the shed will not be located within 4 metres of any existing tree, no permit is required under this overlay.

## **Particular Provisions**

None.

**Relevant Policies**

None.

**DISCUSSION**Design & Design Overlay Schedule 5

A permit is required for buildings and works within 5m of a rear setback and where the total floor area of all buildings on site exceed 300sqm (the shed and dwelling now exceed 300sqm).

One of the objections received related to the proposed height of the shed, however under the Design and Development Overlay Schedule 5 buildings only require a planning permit if greater than 9m in height. The proposed shed has a maximum height of 5.131m, which is well under the requirement of the overlay. To further alleviate this issue raised by an objector, the applicant has provided screening vegetation to be planted along the rear of the property.

The total floor area of both the approved dwelling and proposed shed will not dominate the lot mainly due to the large lot size and setbacks to property boundaries provided including a large front setback of 10m which is unchanged. The proposed shed is considered not to detract from the village character of Gordon due to its positioning to the rear of the lot.

The 2m rear setback of the shed from the rear of the property will not create any amenity issues to the properties to the west as there is an abutting reserve adjacent to this boundary. A shed to the rear of a property behind the dwelling is a common theme of the existing neighbourhood character and several examples can be cited in the immediate area.

There will be a 2m southern side setback and in addition with the 5m building setback that is imposed as part of the restrictive covenant to the southern adjacent property (23 Cartons Road) creates a 7m building separation which is considered adequate.

Concerns on the shed being used for a commercial use can also be addressed by including a new condition to state that the shed must not be used for industrial or commercial purposes.

Overall, the proposed amendments are generally in accordance with the applicable provisions of the Moorabool Planning Scheme and is consistent with the objectives of the Design and Development Overlay Schedule 5.

Bushfire Planning

CFA consented to the application and had no new conditions for the proposed shed and did not require any altered Bushfire Management Plan.

**GENERAL PROVISIONS**

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

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

**REFERRALS**

Authority	Response
CFA	Consent with conditions.
Council's Development Infrastructure	Consent with conditions.

**FINANCIAL IMPLICATIONS**

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

**RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES**

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

**COMMUNICATIONS STRATEGY**

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

**OPTIONS**

- Issue an Notice of Decision to Amend a Planning Permit in accordance with the conditions in the recommendation of this report; or
- should the Development Assessment Committee wish to refuse the application and issue a Refusal to Grant an Amended Permit, the Committee will need to demonstrate reasonable grounds to refuse the application under the Moorabool Planning Scheme. This option may result in the applicant appealing the Committee's decision to VCAT.

**CONCLUSION**

The proposed shed will be ancillary to a dwelling and variation of covenant is generally in accordance with the relevant provisions of the Moorabool Planning Scheme and the objectives within the Design and Development Overlay Schedule 5.

The shed will not dominate the lot due to the large setbacks and large lot size that can accommodate both a dwelling and ancillary shed. The reduced rear setback triggering planning approval under the Design and Development Overlay Schedule 5 has limited amenity impacts as there are no dwellings directly adjacent to the rear of the site due to the presence of the reserve. The southern 2m setback of the shed 2m requires variation of restrictive covenant and is considered acceptable by providing a larger northern side setback.

It is recommended that the application be supported, and the permit be amended subject to conditions.

Phil & Donna Bryce addressed the Committee as the Landowners to Item 7.5.

**7.5 PA2022205 - THREE LOT SUBDIVISION, REMOVAL AND CREATION OF EASEMENT AT CROWN ALLOTMENTS 8 AND 8A, SECTION 20 AND CROWN ALLOTMENT 7, SECTION 20A, 534 NAVIGATORS ROAD, NAVIGATORS**

**Author:** Thomas Tonkin, Statutory Planner

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

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

**APPLICATION SUMMARY**

**Permit No:** PA2022205

**Lodgement Date:** 17 October 2022

**Planning Officer:** Tom Tonkin

**Address of the land:** 534 Navigators Road, Navigators

**Proposal:** Three Lot Subdivision, Removal and Creation of Easement

**Lot size:** 35.23ha (combined lots)

**Why is a permit required?** Clause 35.07 Farming Zone Subdivide land in the Farming Zone; Clause 42.01 Environmental Significance Overlay Subdivide land; Clause 52.02 Easements, Restrictions and Reserves Create, vary or remove an easement

**COMMITTEE RECOMMENDATION**

Moved: Cr Tom Sullivan

Seconded: Cr Moira Berry

**That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2022205 for a Three Lot Subdivision and Removal and Creation of an Easement at Crown Allotments 8 and 8A Section 20 and Crown Allotment 7, Section 20A, known as 534 Navigators Road, Navigators, subject to the following conditions:**

**Endorsed Plans:**

- 1. Before certification of the plan of subdivision, an amended plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be generally in accordance with the plan identified as Plan of Proposed ReSubdivision Layout Revision 3 dated 16 August 2022 prepared by Cardno TGM, but modified to show:
  - (a) The indicative building envelopes deleted.****
- 2. 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:**

3. The plan/s of subdivision and removal and creation of an easement submitted for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act.

**Section 173 Agreement:**

4. Before the issue of Statement of Compliance, 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 land must not be further subdivided to create any additional lots.
  - (b) Before the issue of Statement of Compliance, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the *Planning and Environment Act 1987* 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.

**Telecommunications:**

5. The owner of the land must enter into an agreement with:
  - (a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
  - (a) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
6. Before the issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
  - (a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
  - (b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

**Development Infrastructure:**

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 any 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 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.

**Vegetation:**

10. Except where no permit is required under the Moorabool Planning Scheme, vegetation must not be removed without further planning approval.

**Central Highlands Water:**

11. 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 1988*.
12. Prior to a Statement of Compliance being issued for the subdivision the applicant must:
- (a) Erect livestock proof fencing to the satisfaction of Central Highlands Water on the proposed Lots 2 and 3 to a minimum width of 15m either side of the waterway.
  - (b) No work will commence on the fencing referred to in Condition 12(a) until the Applicant has submitted to Central Highlands Water for endorsement a plan showing the location and form of fencing proposed and Central Highlands Water has provided written endorsement of the fencing plan.

**Powercor:**

13. The plan of subdivision submitted for certification under the *Subdivision Act 1988* shall be referred to the Distributor in accordance with Section 8 of that Act.
14. The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards.

Notes: Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make such supplies available, with the cost of such works generally borne by the applicant.

15. The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).

Notes: Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.

16. The applicant shall establish easements on the subdivision, for all existing Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements.

**Notes:**

- Existing easements may need to be amended to meet the Distributor's requirements
- Easements required by the Distributor shall be specified on the subdivision and show the Purpose of Power Line, Origin Section 88 – *Electricity Industry Act 2000* and land benefitted in Favour of Powercor Australia Ltd.

**Permit Expiry:****17. This permit will expire if:**

- (a) **The plan of subdivision and removal and creation of easement is not certified within two years of the date of this permit.**

**Statement of Compliance must be achieved and certified plans registered at the Titles office within five years from the date of certification.**

In Favour: Crs Tonia Dudzik, Tom Sullivan, Ally Munari and Moira Berry

Against: Nil

Abstained: Cr David Edwards

**CARRIED 4/0**

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

**POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

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

**Priority 2.3: Enhance our natural environments**

The proposal is not 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, Agriculture Victoria, Central Highlands Water, Corangamite Catchment Management Authority, Powercor, Downer Utilities and Council's Development Infrastructure and Environmental Health.
Any issues raised in referral responses?	Agriculture Victoria provided a letter of advice concluding that the proposed three lot re-subdivision with two additional dwellings will set the presumption for the subsequent approval of dwellings that has the potential to diminish the long-term agricultural productive capacity of the land and will lead to a proliferation of dwellings in the Farming Zone. The proposal would be contrary to the purpose of the Farming Zone and the strategic objectives of the Moorabool Planning Scheme, with particular reference to Clause 14.01-1S Protection of agricultural land and Clause 14.01- L Agriculture, rural dwellings and subdivision.
Preliminary concerns?	Lack of consistency with planning policies which encourage consolidation of small, isolated lots and discourage subdivision of productive agricultural land from diminishing its long-term productive capacity. Lack of justification to support the fragmentation of Farming Zone land.
Any discussions with applicant regarding concerns?	Yes, the applicant was advised in writing of the preliminary concerns.
Any changes made to the application since being lodged?	Submission of a Farm Management Plan.
Brief history.	An existing dwelling occupies the site.
Previous applications for the site?	PA2002-043 for Development and use of additions to a dwelling was issued on 3 May 2002.
General summary.	It is proposed to re-subdivide three existing lots by realigning title boundaries to create three new lots with land area of 8ha, 8ha and 19.22ha in order to facilitate a farming family succession plan. Details of farm enterprises on each proposed lot are prime lamb and sheep, Poll Dorset sheep and equine thoroughbred agistment, The application was advertised, no objections were received.

	The proposal does not comply with the objectives of the Moorabool Planning Scheme which seek to protect agricultural land in the Farming Zone.
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Refusal to grant Planning Permit PA2022205 for a Three Lot Subdivision, Removal and Creation of Easement at Crown Allotments 8 and 8A, Section 20, and Crown Allotment 7, Section 20A, known as 534 Navigators Road, Navigators, on the grounds included in this report.	

## SITE DESCRIPTION

The subject site is located south of the Geelong-Ballarat railway line and Navigators Road, between Pattons Road and Butlers Road, with a secondary frontage to Ted Lyons Road to the south.

The surrounding area is mostly in the Farming Zone, with a range of lot sizes, typically between 4ha to 20ha in size (many lots are developed with single dwellings).

The subject site consists of three lots with a total area of 35.23ha. Details of each lot is shown below:

- Crown Allotment 7 is a trapezoid shape with a 239.19m wide frontage to Navigators Road, and an area of approximately 7.1ha. CA 7 is encumbered by a drainage and carriageway easement benefitting CA 8, occupying 48.3m of the lot frontage and tapering to a 10m width located parallel to the west title boundary. CA 7 is vacant and mostly cleared of vegetation apart from planted exotic windbreaks and scattered trees.
- Crown Allotment 8A is 1.17ha in size, with a 21.97m maximum width and 594.5m length, vacant and forming part of an unmade road reserve which divides CA7 from CA 8.
- Crown Allotment 8 is a trapezoid shape approximately 26.9ha in size with a 543.2m wide abuttal to Ted Lyons Road. CA8 is developed with a single storey dwelling and ancillary outbuildings accessed from Navigators Road via the abovementioned carriageway easement. CA8 comprises substantially cleared areas but also areas of remnant and planted native vegetation. An unnamed waterway flows northeast through the site. There is no existing vehicle access from Ted Lyons Road.



**Figure 1:** Aerial photograph.

## PROPOSAL

It is proposed to re-align title boundaries to subdivide the land into three lots, as follows:

- Lot 1, irregularly shaped with an area of 19.22ha, containing the existing dwelling and outbuildings with a 48.3m wide frontage to Navigators Road aligned with the existing easement to maintain vehicle access. Lot 1 would support an existing prime lamb sheep enterprise.
- Lot 2, trapezoid shaped with an area of 8ha, fronting Navigators Road. Lot 2 would support a proposed boutique equine thoroughbred agistment enterprise.
- Lot 3, irregularly shaped with an area of 8ha, with a 232m wide frontage to Ted Lyons Road. Lot 3 would support a proposed Poll Dorset sheep stud.

Other details associated with the subdivision are:

- Removal of the existing drainage and carriageway easement and partial replacement with a carriageway easement in favour of Lot 2.
- No common property is proposed.
- No vegetation removal would be required to facilitate the proposal.
- Indicative building envelope for Lots 2 and 3 to allow for residential development.



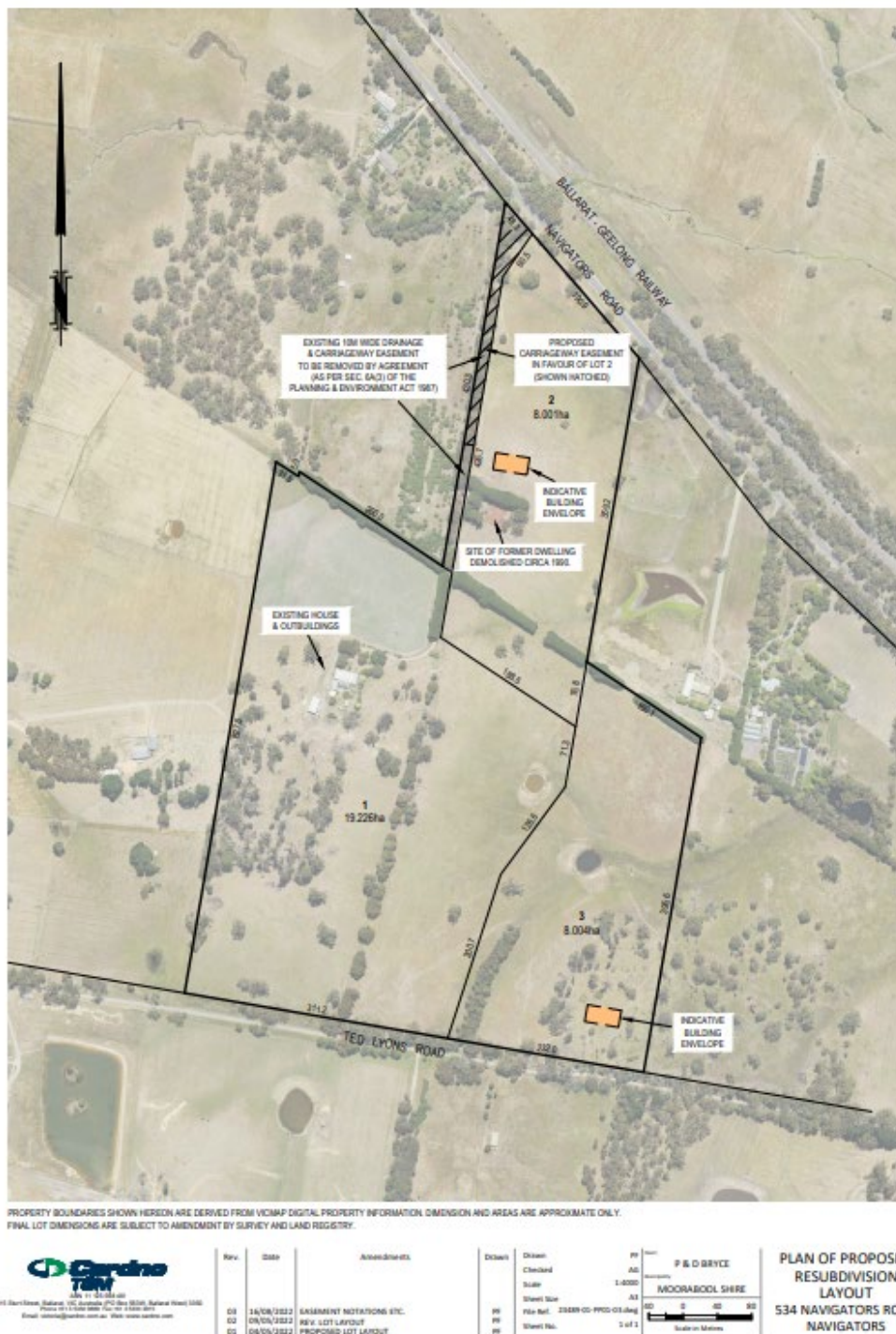


Figure 2: Proposed plan of subdivision.

**BACKGROUND TO CURRENT PROPOSAL**

The subject site has been in its current ownership since 2000, and a prime lamb and sheep enterprise has been established.

**HISTORY**

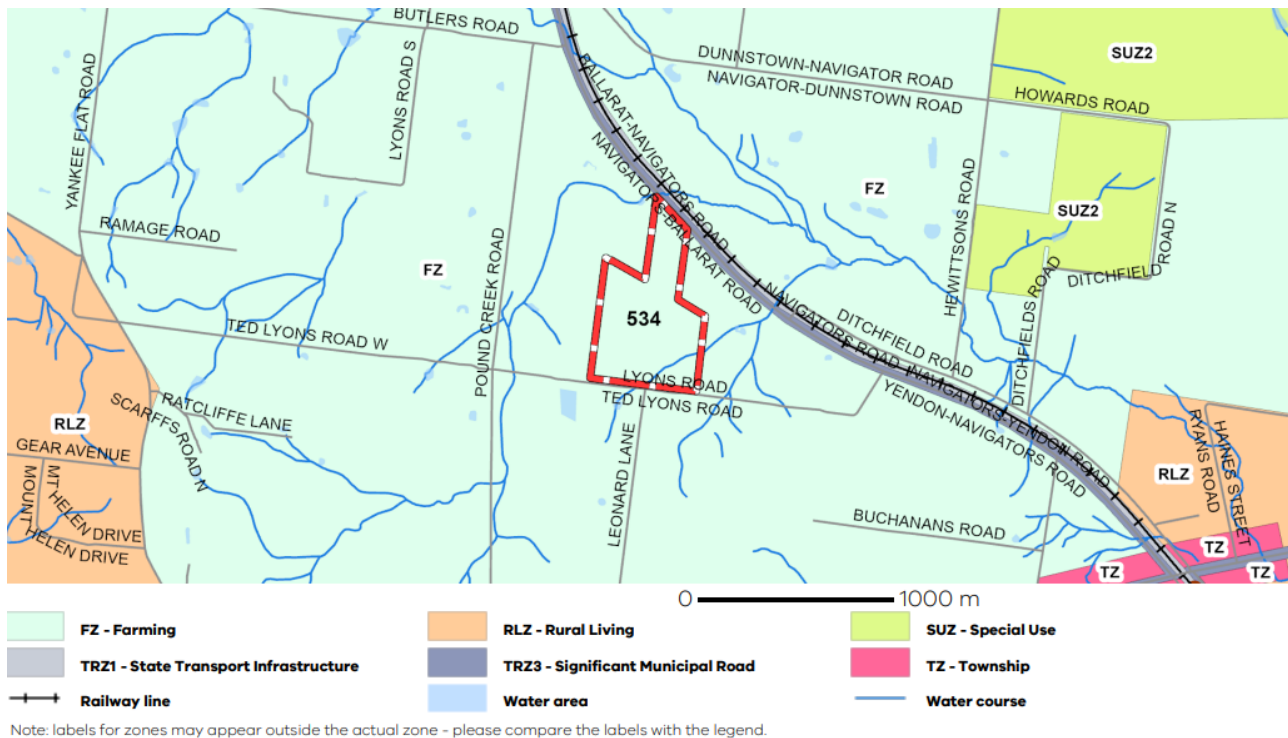
Not applicable.

## PUBLIC NOTICE

Notice of the application was given to adjoining and surrounding landowners and occupiers by mail and two signs 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 Municipal Planning Strategy and Planning Policy Framework (PPF).

The relevant clauses are:

- Clause 02.03-2 – Environmental and landscape values
- Clause 02.03-4 – Natural resource management
- Clause 02.03-7 – Economic development
- Clause 11.01-1R – Settlement - Central Highlands
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.03-3S – Peri-urban areas
- Clause 13.02-1S – Bushfire planning
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.01-1L – Agriculture, rural dwellings and subdivision
- Clause 14.02-1S – Catchment planning and management



- Clause 14.02-2S – Water quality
- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural residential development in Moorabool

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

Clause	Title	Response
Clause 02.03-4	Natural resource management – Agriculture	Whilst the proposed subdivision relates to proposed agricultural land uses, it would contribute to further fragmentation of agricultural land, reduce the size of the largest lot and increase the likelihood of future dwelling development which is contrary to this policy objective.
Clause 11.01-1L-01	Settlement in Moorabool	The proposed subdivision contributes to further fragmentation of agricultural land and increases the likelihood of future development for rural lifestyle purposes instead of viable farming activities.
Clause 11.03-3S	Peri-urban areas	The proposal goes against this policy which discourages dispersed settlement and encourages the protection of agricultural land.
Clause 14.01-1S	Protection of agricultural land	The proposal reinforces the fragmentation of land and would create a lot sizes which encourages rural residential growth with diminished opportunity for viable agriculture uses.
Clause 14.01-1L	Agriculture, rural dwellings and subdivision	Whilst a Farm Management Plan was submitted in support of the proposal, the subdivision would maintain the existing fragmented lot pattern and exacerbate rural residential use and development.
Clause 16.01-3S	Rural residential development	The policy encourages consolidation of isolated small lots; however, the proposal would maintain the existing fragmented lot pattern.
Clause 16.01-3L-01	Rural residential development in Moorabool	The proposal creates vacant lots which are likely to create pressure for their future use for rural residential purposes inconsistent with this policy objective.

**ZONE**Farming Zone

Pursuant to Clause 35.07-3 a permit is required to subdivide land. Under the zone schedule the default minimum lot size in this location is 100ha, however the proposal meets the exemption under Clause 35.07-3 for no minimum lot size requirement for the re-subdivision of existing lots which result in no increase in lot yield.

**OVERLAYS**Environmental Significance Overlay, Schedule 1

Pursuant to Clause 42.01-2 a permit is required to subdivide land. There are no relevant exemptions under this Schedule.

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

Design and Development Overlay, Schedule 2

Pursuant to Clause 43.02-3 (DDO) a permit is required to subdivide land unless the relevant schedule to the overlay specifies otherwise. Under Schedule 2 a permit is not required for subdivision, therefore a permit is not required under this overlay.

**Particular Provisions**Clause 52.02 Easements, Restrictions and Reserves

Pursuant to Clause 52.02 a permit is required before a person proceeds under Section 23 of the *Subdivision Act 1988* to create, vary, or remove an easement. A permit is required to remove and vary the current restrictions on title.

Clause 53.01 Public Open Space Contribution and Subdivision

A person who proposes to subdivide land must contribute to Council for public open space if specified in a schedule to this clause. There is no amount specified in the applicable schedule in the Moorabool Planning Scheme, but a contribution may still be required under section 18 of the *Subdivision Act 1988*. It is understood that no prior contribution to public open space has been made for this land.

No net additional lots are created and therefore no public open space contribution is required.

**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 in 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 only supported with minimum area of 8ha. The combined area of both lots is less than 8ha.

The land is suited to agricultural use as demonstrated by the farm management plan, but the proposal would increase pressure for the proposed lots, particularly the two smaller lots to instead to be developed for future rural residential use.

#### 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 as it does not increase agricultural production of the land.

#### **DISCUSSION**

##### Farming Zone

Overall, the proposed subdivision is inconsistent with the relevant provisions of the Moorabool Planning Scheme, in particular the Municipal Planning Strategy, Planning Policy Framework and the Farming Zone.

The subject site comprises three lots broken up into 1.17ha, 7.1ha and 26.9ha in area, all of which are in single ownership and with a dwelling and several ancillary outbuilding.

The proposed re-subdivision would result in three lots at 19.22ha, 8ha and 8ha in size. Lot 1 would continue with its current prime lamb sheep enterprise. The proponent's rationale for the two

independent farming enterprises on Lots 2 and 3 is to implement their farming family succession plan, further to which they have a stated intent to construct a dwelling on both lots, subject to future planning approval. The applicant has shown building envelopes on the proposal plan to the vacant lots along with a Land Capability Assessment to demonstrate that the vacant lots can be used for residential purposes.

Planning policies seek to protect the state's agricultural base by preserving productive farmland. Strategies to achieve this include:

- Protect productive agricultural land from unplanned loss due to permanent changes in land use.
- Prevent inappropriately dispersed urban activities in rural areas.
- Limit new housing development in rural areas by:
  - Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses.
  - Encouraging consolidation of existing isolated small lots in rural zones.
- In considering a proposal to use, subdivide or develop agricultural land, consider the:
  - Desirability and impacts of removing the land from primary production, given its agricultural productivity.
  - Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.
  - Compatibility between the proposed or likely development and the existing use of the surrounding land.
- Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.
- Give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land.

Agriculture Victoria cited several VCAT cases relating to subdivision or dwellings in the Farming Zone. This case law included *Estate of JE Walker v Wangaratta RCC* [2021] VCAT 125. Member Martin discusses the purpose of the Farming Zone including the focus on protecting/retaining productive agricultural land, avoiding non-agricultural uses which would undermine such productive agricultural focus and the planning policy framework promoting the productive agricultural use of land zoned Farming Zone by discouraging subdivisions.

In *Stoll v Baw Baw SC* [2018] VCAT 603 Member Gaschk stated the tribunal must take a long-term view. It is not influenced by the potentially short term stated needs of a particular landowner over and above the longer-term community interest as expressed through the planning scheme, and the interpretation of policies and strategies within it, including those for land use zones and overlays. In this regard the creation of a separate title for the dwelling, simply enables the future sale of that title to another party without any connection or interest to the adjoining farm activity.

The current application also seeks a subdivision of land that would undermine productive agricultural use of the land.

It is likely that the proposed vacant lots with building envelopes will lead to the potential for viable agricultural land being reduced to lifestyle blocks, a divergence from productive farming and contrary to the purpose of the Farming Zone.

The subject site comprises three lots, one of which is a 1.17ha unmade former road reserve. Planning policies indicate small lots that have limited potential for farming should be consolidated. Such an outcome would expand opportunities for a given farming enterprise rather than creating conditions which limit options for future growth based on the resultant lot sizes. The already fragmented pattern of lots surrounding the subject site, is not reasonable justification to further to create more smaller lots.

Whilst the Farm Management Plan indicates that the proposed Poll Dorset sheep stud would to some extent be farmed in conjunction with the established prime lamb enterprise, each enterprise could occur without the need for a dwelling in each lot resulting in three dwellings over three lots.

The proposal does not align with the purpose of the Farming Zone, considering that the proposed subdivision is not considered essential or sufficiently beneficial to undertaking the proposed farming enterprises.

### 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.
Powercor	Consent with conditions.
Downer Utilities	Consent.
Agriculture Victoria	Letter of advice.
Corangamite Catchment Management Authority	Consent.
Council's Development 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.

**OPTIONS**

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

**CONCLUSION**

The proposal subdivision and removal of easement does not satisfy the relevant provisions of the Moorabool Planning Scheme, in particular planning policy framework relating to subdivision in rural areas, and the Farming Zone provisions. The proposal does not represent the orderly planning of the area, but rather the creation of lots which limit the long-term agricultural productivity of the site. The proposed subdivision should not be supported.

**8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS**

Nil

**9 UPDATE ON VCAT DECISIONS**

Mr Lovell provided an update on the VCAT appeal for Planning Application PA2022034 - Use And Development Of The Land For A Road Freight Terminal And Create An Access To Transport Road Zone 2 At 355 Bungaree-Wallace Road, Bungaree. The VCAT appeal concluded today and Officers are now awaiting a decision from VCAT.

Cr Edwards sought an update on the VCAT hearings concluded back in January. Mr Lovell advised that Officers are still awaiting a decision from VCAT, a further update will be provided when a decision is made.

**10 OTHER BUSINESS**

Nil.

**11 DATE OF NEXT MEETING**

Wednesday 19 July 2023

**12 MEETING CLOSE**

**The Meeting closed at 6.47pm.**

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**CHAIRPERSON**