



**Colac Otway**  
SHIRE

**PLANNING COMMITTEE MEETING**

**AGENDA**

**Wednesday 11 December 2019**

**at 12:00 pm**

**COPACC**

**95 - 97 Gellibrand Street, Colac Victoria**



# COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

Wednesday 18 December 2019

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## COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

NOTICE is hereby given that the next **PLANNING COMMITTEE MEETING OF THE COLAC OTWAY SHIRE COUNCIL** will be held at COPACC on Wednesday 11 December 2019 at 12:00 pm.

### AGENDA

#### **1 DECLARATION OF OPENING OF MEETING**

##### **OPENING PRAYER**

*Almighty God, we seek your blessing and guidance in our deliberations on behalf of the people of the Colac Otway Shire. Enable this Council's decisions to be those that contribute to the true welfare and betterment of our community.*

AMEN

#### **2 PRESENT**

#### **3 APOLOGIES AND LEAVES OF ABSENCE**

#### **4 WELCOME AND ACKNOWLEDGEMENT OF COUNTRY**

Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past, present and emerging and welcomes any descendants here today.

Please note: All Council and Committee meetings will be audio recorded, with the exception of matters identified as confidential items in the Agenda. This includes the public participation sections of the meetings.

By participating in open Council meetings, individuals consent to the use and disclosure of the information they share at the meeting (including any personal and/or sensitive information).

Audio recordings of meetings will be available to the public on Council's website as soon as practicable following the meeting and may be circulated by other means also. Audio recordings are also taken to facilitate the preparation of the minutes of open Council and Committee meetings and to ensure their accuracy. Original audio recordings will be retained by Council for a period of four years.

As stated in Local Law 4, other than an official Council recording, no video or audio recording of proceedings of Council Meetings will be permitted without specific approval by resolution of the relevant Council Meeting.

## **5 DECLARATIONS OF INTEREST**

A Councillor who has declared a conflict of interest, must leave the meeting and remain outside the room while the matter is being considered, or any vote is taken.

## **6 CONFIRMATION OF MINUTES**

- **Planning Committee Meeting held on 9 October 2019.**

### **Recommendation**

***That the Planning Committee confirm the minutes of the Planning Committee Meeting held on 9 October 2019.***

## **7 VERBAL SUBMISSIONS FROM APPLICANTS/OBJECTORS**

The Mayor is to read out the names of those applicants and objectors who have confirmed in writing that they wish to make a verbal submission. These verbal submissions will be made in relation to each respective agenda item and must be directly relevant to the respective agenda item. A time limit of five minutes will apply.

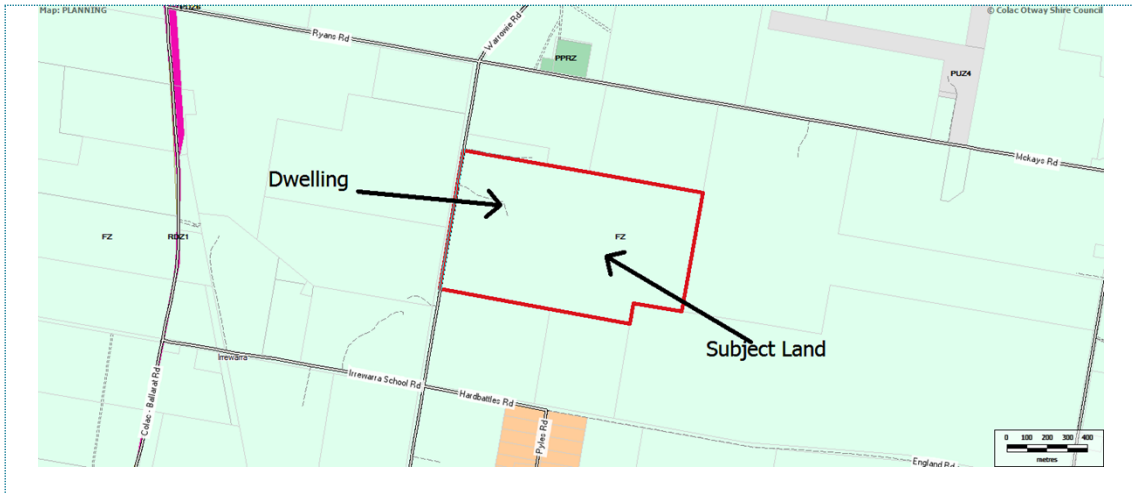
Item: 8.1

**PP142/2019-1 - 260 Warrowie Road Irrewarra**

<b>ADDRESS AND PROPERTY DETAILS</b>	260 Warrowie Road Irrewarra	<b>APPLICATION NUMBER</b>	PP142/2019-1
<b>PROPOSAL</b>	Two Lot Subdivision of Land		
<b>PERMIT TRIGGERS</b>	Clause 35.07-3 – Farming Zone – Subdivision Clause 45.02-3 – AEO2 – Subdivision		
<b>TRIGGER FOR DETERMINATION BY COMMITTEE</b>	Officer recommendation for refusal of excision of dwelling in Farming Zone		
<b>ZONE</b>	Farming Zone	<b>OVERLAYS</b>	Airport Environs Overlay – Schedule 2
<b>COVENANTS</b>	Nil		
<b>CULTURAL HERITAGE</b>	The site is partially within an area of cultural heritage sensitivity, with the dwelling and its driveway entirely within this area; however the proposal is not classed as a high impact activity.		
<b>OFFICER</b>	Helen Evans	<b>GENERAL MANAGER</b>	Ian Seuren
<b>DIVISION</b>	Development & Community Services		
<b>ATTACHMENTS</b>	1. P P 142 2019-1 - 260 Warrowie Road IRREWARRA - Application [8.1.1 - 3 pages]		

# 1. LOCATION PLAN / AERIAL PHOTO

## LOCATION PLAN



## AERIAL PHOTO



## 2. RECOMMENDATION

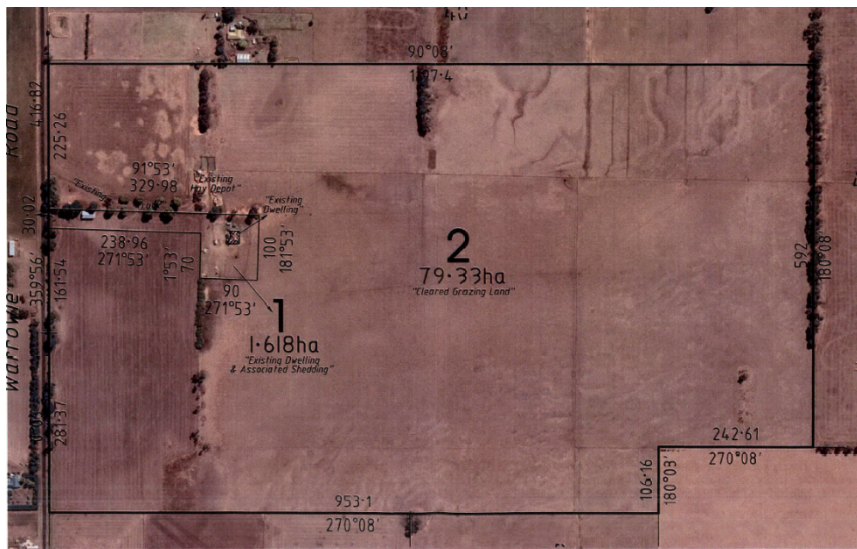
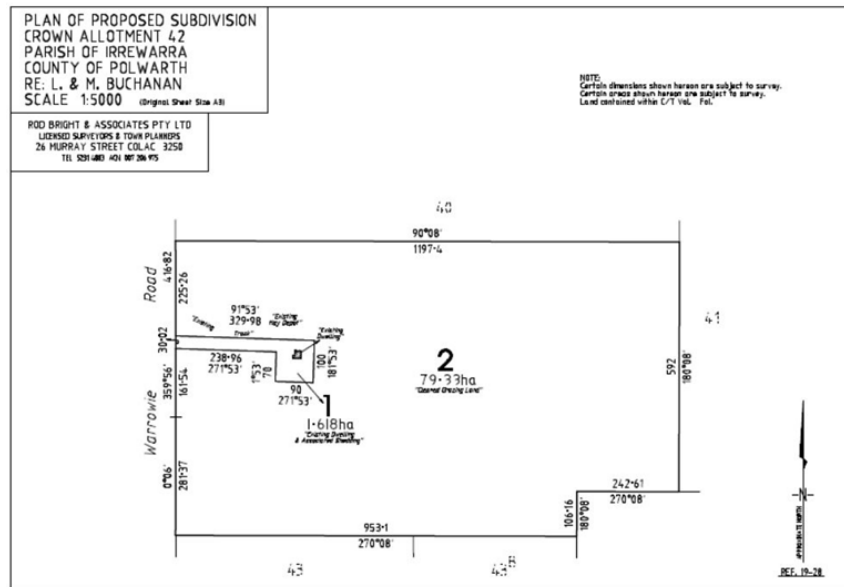
***That Council resolves to issue a Notice of Decision to Refuse to Grant a Permit for the Subdivision of Land into Two (2) Lots at 260 Warrowie Road Irrewarra, known as C/A 42 Parish of Irrewarra, on the following grounds:***

- 1. The proposed subdivision, which would create a 1.618 hectare lot projecting into a large agricultural landholding, is contrary to Clause 14.01-1S (Protection of Agricultural Land) of the Colac Otway Planning Scheme, which discourages development of isolated small lots in the rural zones from use for dwellings, and seeks to protect strategically important agricultural and primary production land from incompatible uses.***
- 2. The proposed subdivision is contrary to Clause 21.05-1 (Agriculture) of the planning scheme which seeks, inter alia, to limit the fragmentation of rural land by subdivision, to protect the rural and agricultural areas of the Shire from the proliferation of dwellings not associated with agriculture, and to discourage the subdivision of rural land that creates small lots for existing dwellings.***
- 3. The proposal, which would result in the fragmentation of productive agricultural land, does not accord with the purpose and relevant decision guidelines of the Farming Zone, set out in Clause 35.07 of the planning scheme which seek, inter alia, to ensure proposals are compatible with adjoining and nearby land uses, and require matters such as the potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses, and the potential for a proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture, to be taken into account.***
- 4. The proposed subdivision would result in the creation of a small 'battle-axe' lot extending over 300m into an agricultural landholding that would abut the entire length of its northern, southern and eastern boundaries. The excision of the dwelling as proposed would create the potential for land use conflicts and would not represent orderly planning, contrary to Clause 65 of the planning scheme.***

## 3. PROPOSAL

The proposal seeks to excise an existing dwelling and shedding from the existing lot to create a separate lot with an area of 1.618 hectares. The dwelling was until recently unoccupied and in poor physical condition and, at the time of writing this report, was being renovated. The proposed rural residential lot, (Lot 1), would require new access to Warrowie Road. An existing shed, located 60m from the road frontage, would be in the narrow section of the lot that would provide vehicle access to the dwelling, which is situated around 280m from the front (west) boundary. There are also outbuildings associated with the proposed dwelling in the square/eastern section of the proposed rural residential lot.

Lot 2 would be formed by the balance of the site and would have an area of 79.3 hectares. This lot, which would effectively be U-shaped around the proposed residential lot, would be used for agricultural purposes. It would contain an existing agricultural building to the north of proposed Lot 1 (in the area marked as 'Hay Depot' on the submitted plan). Proposed Lot 2 would utilise the existing access to Warrowie Road.





## 4. SUBJECT LAND & SURROUNDINGS

The subject lot has an area of 80.9ha, with a frontage of 698m to Warrowie Road. The land is used for grazing.

The site is located on the east side of Warrowie Road, approximately 2km north of the Princes Highway. The land is generally flat grazing land, with several shelter belts and minimal vegetation along the property boundary. There is an open-sided hay shed located 60m from the road, adjacent to the existing vehicle access. The vehicle access leads into the property to further shedding, stock yards, a hay storage area and a dwelling that was in a poor state of repair at the time of the application being lodged. It became apparent from site inspections to the property during the processing of the application that the dwelling is being renovated.

The following photographs provide evidence of its condition at the time of application and during the application processing:

**Photo provided as part of application - June 2019**



**Officer site inspection - July 2019**



Officer site inspection - September 2019





The applicant has advised that the dwelling was occupied until the previous owner died in January 2018. The land was purchased by the current owner in June 2018. The applicant further states that a relative has occasionally stayed in the dwelling; that the dwelling has an existing working septic system to the west of the dwelling; and that power is connected both for when the owner's father stays and for use by the builders whilst carrying out restoration. (See discussion about septic system later in this report.)

The nearest dwelling from the building being renovated is 300 metres to the north. Surrounding land is used for agricultural purposes, with the Irrewarra Bakery being located to the southwest of the site.

## 5. PLANNING SCHEME PROVISIONS

### Planning Policy Frameworks

The state-wide Planning Policy Framework (PPF) seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development policies. The policies considered relevant to this application are identified below:

- 11.01 – Victoria
- 11.01-1S – Settlement
- 11.03-5R – The Great Ocean Road Region
- 14.01-1S – Protection of Agricultural Land
- 14.01-2R – Agricultural Productivity - Geelong G21

The Local Planning Policy Framework sets a local and regional strategic policy context for the Shire. The policies considered relevant to the application are identified below:

- 21.02 – Vision
- 21.03 – Settlement
- 21.05-1 – Agriculture

### Zone

The subject site is located within the Farming Zone (FZ). The key purpose of this zone is to provide for the use of land for agriculture, and to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture. Under Clause 35.07-3, a planning permit is required for subdivision. The minimum specified lot size for this area is 80ha. A permit *may* be granted to create smaller lots in a limited number of other circumstances, including if the subdivision is to create a lot for an existing dwelling and the subdivision is a two-lot subdivision.

### Overlays

A small portion on the northeast corner of the subject site is impacted by the Airport Environs Overlay Schedule 2 (AEO2). A key purpose of this overlay is to identify areas which are, or will be, subject to high levels of aircraft noise, including areas where the use of land for uses sensitive to aircraft noise will need to be restricted. A permit is required for subdivision under Clause 45.02-3 and an application is required to be referred to the airport owner.

### Particular Provisions

There are no particular provisions relevant to this application.

### General Provisions

Clause 65 - Decision Guidelines states that:

*“Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.”*

#### Clause 65.01 - Approval of an Application or Plan

This clause states, inter alia, that:

*“Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:*

- *The matters set out in section 60 of the Act.*
- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.”*

#### Clause 65.02 - Approval of an Application to Subdivide Land

This clause states that, before deciding on an application to subdivide land, the responsible authority must also consider, amongst other things:

- *The suitability of the land for subdivision.*
- *The existing use and possible future development of the land and nearby land.*
- *The availability of subdivided land in the locality, and the need for the creation of further lots.*
- *The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.*
- *The density of the proposed development.*
- *The area and dimensions of each lot in the subdivision.*

#### **Other Relevant Provisions**

##### Clause 71.02-3 - Integrated Decision Making

This clause states that:

*“Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.”*

#### **Relevant Planning Scheme Amendments**

Nil

## **6. REFERRALS**

### **Internal Referrals**

The application was referred internally to Council’s Health Protection, Infrastructure and Building Units, and the Airport Manager.

#### Health Protection Unit

Council’s Health Protection Unit carried out an inspection of the site in early September 2019 and concluded that the current septic tank is a ‘legacy system’ and appears not to be functioning. It was found that the house plumbing is not connected to the septic tank, the terracotta pipes are cracked and broken, and the trenches were unable to be located. Concern was expressed about whether there are any trenches. The primary concern raised was that, due to the age of the building, the septic system may not be functioning as expected.



**July 2019**



**September 2019**

Council's Health Protection Unit commented that it may be inappropriate for Council to allow a subdivision, knowing that the house is not connected to a septic system. It was considered unclear whether the house had been lived in recently.

The Health Protection Unit noted that the house was under renovation and advised that it would therefore expect an application to install/alter a septic tank to be submitted. To date no such application has been received.

#### Infrastructure Unit

The application was referred to Council's Infrastructure Unit, which raised no objection subject to conditions relating to drainage and vehicle access.

#### Building Unit

Council's Building Unit advised that it does not have any issues with the subdivision on the basis that all existing buildings comply with building setback regulations from boundaries.

#### Airport Manager

Council's Airport Manager raised no objection to the proposal.

#### **External Referrals**

No external referrals were required. Clause 66.01 (Subdivision Referrals) of the planning scheme applies to applications for the subdivision of land, and referral is not required to servicing authorities for two lot subdivisions providing the conditions at Clause 66.01-1 are included on any permit issued.

## 7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application to all adjoining landowners/occupiers and a sign was erected on the site for 14 days. One objection was received. A letter of support was also received which commented, inter alia, on planning policy, the number of objections, potential controls to protect the right to farm and previous decisions by Council.

A Consultation Meeting (i.e. a meeting between the applicant and objector, facilitated by Council) was offered but the applicant declined this. The grounds of objections are summarised as follows:

- Impact on land values.
- Subdivision will cause fragmentation of viable agricultural land which is not consistent with Planning Policy Framework.
- Does not provide for orderly or sustainable planning and is not consistent with purpose of the Farming Zone.
- Subdivision is prohibited as it creates a lot below the minimum lot size specified in the schedule to the Farming Zone. The dwelling which is relied upon is not a dwelling which can be resided in.

### Response

The issues raised are considered relevant planning considerations and are discussed in the assessment section below.

## 8. OFFICER'S ASSESSMENT

Before considering the merits of the proposal, it is necessary to consider whether the proposal is prohibited or not. It is noted that the objector has raised issues about whether the subdivision is prohibited, and this was also an issue of concern to officers when the state of disrepair of the building came to light during site inspections. The building must have existing use rights as a dwelling (prior to the subdivision being allowed) for this application to be considered; the refurbished building cannot claim such rights, nor can the proposed subdivision be allowed unless, at the time the permit is issued for the subdivision, the building's use is classed as a dwelling. Clause 63.06 (Expiration of Existing Use Rights) states that *"an existing use right expires if...the use has stopped for a continuous period of 2 years, or has stopped for two or more periods which together total 2 years in any period of 3 years"*. If the occupation of the building as part of the 80ha lot has ceased for either of those time periods, it is not considered that the building can be classed as a dwelling. If the building currently being renovated does not have existing use rights as a dwelling, the proposed subdivision is prohibited.

Whilst it is the understanding of officers that the dwelling on the site has not been lived in recently, the applicant has advised that it was occupied until January 2018. Council's records do not contradict this. As such, given that the occupation occurred less than two years ago and there is no evidence that the dwelling was unoccupied for 2 years in any period of 3 years, it is not challenged that the building has an existing use right as a dwelling under Clause 63 of the planning scheme.

A planning permit is required to subdivide land in the Farming Zone and in the AEO2. Under the provisions of the Farming Zone, the minimum specified lot size for subdivision in this location is 80ha. The application seeks to excise the dwelling (which is currently being renovated) from the land, creating a battle-axe lot of 1.618ha, with improvements including the dwelling and shedding. The grazing land, vehicle access and stock yards would occupy the balance of the land, on a lot of 79.33ha. The site is within an area identified as medium agricultural capability in Council's Rural Land Strategy 2007 and is not in an area identified as Farmland of Strategic Significance.

The AEO2 only affects a small portion of the land in the northeast corner of the lot and the Airport Management raised no objection to the proposal.

The applicant considers that the proposal would be consistent with Clause 14.01-1S (Protection of Agricultural Land), as the land within proposed Lot 1 has already been taken out of agricultural production and has in the past been used for residential purposes. However, it is noted that the dwelling would historically have been occupied in association with the agricultural landholding.

It is considered that the proposal is incompatible with the following State and local planning policies in the Colac Otway Planning Scheme:

Clause 14.01-1S (Protection of Agricultural Land)

- *Protect strategically important agricultural and primary production land from incompatible uses.*
- *Limit new housing development in rural areas by:*
  - *Directing housing growth into existing settlements.*
  - *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*

Clause 21.05-1 (Agriculture)

- *To limit the further fragmentation of rural land by subdivision.*
- *To protect the rural and agricultural areas of the Shire from the proliferation of dwellings not associated with agriculture.*
- *To ensure that lots resulting from subdivision are of a sufficient size to be of benefit to agricultural production or environmental protection.*
- *Discourage the subdivision of rural land that creates small lots for existing dwellings or vacant lots for the purposes of a dwelling.*

The application states that an inflated price had to be paid for the land as a result of having to compete with the lifestyle market. It is considered that this argument is one reason why the current proposal should not be supported, as rural lifestyle market pressure can impact on agricultural land values even when, as in this case, a dwelling is in a dilapidated state requiring significant renovation. The owner has elected to renovate the dilapidated dwelling notwithstanding the fact that it is stated in the application that it is superfluous to their needs. Whilst they are entitled to renovate the dwelling without the need for a planning permit, in this case it is being done with the clear intention of excising it from the agricultural land and selling it as a rural lifestyle property. It appears that the renovation works are being undertaken (with associated expenditure to make the dwelling liveable) to benefit from the inflated land prices for rural living lifestyle properties. On the contrary, it may also be viewed as realising the capital opportunity of the dwelling to invest into farming enterprises.



The physical land separation between the dwelling and the proposed lot boundary around the dwelling would range between 24 and 53 metres. Whilst it is considered that this would be sufficient space to provide landscaping to screen the farmland from the dwelling, it is not considered it would be enough to negate other amenity concerns such as noise, dust and smell from the nearby agricultural activities. This lack of separation could result in conflict in the future.

The applicant submits that the dwelling is not required for the viable farming activity. It is acknowledged that this may be the case for the current landowner, who is restoring the dwelling solely to sell it off on a separate rural living lot. The current lot is a little over 80ha and a dwelling is an 'as-of-right' use and development (subject to setbacks) on a lot of at least 80ha in area. The current owner submits that the dwelling is not required for the agricultural activity; however, when determining this application, it is the responsibility of Council to have regard to future landowners that may require a dwelling to operate agricultural activity on the land. Further to this, the opportunity for the balance lot of 79ha to provide for a more intensive agricultural activity in the future would potentially be limited due to the proposed dwelling lot being located 300 metres into the proposed agricultural lot (Lot 2). In addition, it is conceivable that an application could be submitted in the future for a dwelling on Lot 2, which would be only 0.67ha below the land size on which a dwelling would be 'as-of-right'.

Clause 14.01-2S (Sustainable Agricultural Land Uses) encourages sustainable agricultural land use. It is considered that the owner would be able to continue his genuine farming activities without the creation and sale of a rural living style lot occupied by the renovated dwelling. The separation and potential sale of the dwelling into separate ownership through the creation of a small rural living style lot could limit or otherwise affect the operation of the farmland due to the potential conflict of land uses, particularly given the location of the dwelling enveloped by agricultural land.

Clause 21.02-2 (Land Use Vision) states that rural living development *"will occur in areas associated with settlements and established rural residential precincts where there are fewer environmental, social, land use and servicing constraints and impacts on productive farming uses are minimised"*. Whilst it is acknowledged that this site is not within the farmland of strategic significance, the area is not highly fragmented and approval of this application would potentially lead to pressure on Council to permit the excision of other dwellings and result in further fragmentation of the area.

Clause 21.05-1 (Agriculture) is Council's local policy which seeks to protect agricultural land with the following relevant strategies:

- *Discourage the subdivision of rural land that creates small lots for existing dwellings or vacant lots for the purposes of a dwelling.*
- *Discourage the realignment of boundaries which create small lots for existing dwellings unless the re-subdivision contributes to the restructure and/or consolidation of agricultural holdings into larger farming units.*
- *Encourage the consolidation and restructure of agricultural land into larger parcels that meet the subdivision minimum under the zone or schedule to the zone.*
- *Ensure that small lot subdivisions or excisions facilitate sustainable rural production and do not prejudice surrounding rural activities.*

The applicant has submitted that:

*We have here a 'real life' example of why Councils above strategy is hampering our agricultural industry as opposed to assisting as we believe it was intended to do when drafted. In this instance our client was given the opportunity to consolidate his farming operation closer to the home farm, but in doing so has also been required to purchase a dwelling superfluous to his requirements. The dwelling and proximity to the township of Colac and its associated facilities has placed the value of this farm in the lifestyle market.*

*Should our client choose to invest the money themselves into bringing the dwelling back to its former glory to then rent it out, results in a significant change in direction of our clients core business as renting the dwelling is a skill set not required for farming and a liability many farmers are not prepared to take on.*

As noted above, when the land was bought it contained a dilapidated dwelling that had historically been associated with the agricultural landholding (as is evident by its location within the existing lot). The location of the former dwelling is not considered to lend itself to excision, due to its position on the land. The proposed subdivision layout is considered to clearly demonstrate that the proposal would not represent orderly planning, as required by clause 60 of the planning scheme.

The proposal is considered, in particular, contrary to the policy strategies of discouraging “the subdivision of rural land that creates small lots for existing dwellings or vacant lots for the purposes of a dwelling”, and ensuring “that small lot subdivisions or excisions facilitate sustainable rural production and do not prejudice surrounding rural activities”.

Allowing this proposal is likely to lead to further pressure to allow the creation of small rural living lots in farming areas.

The applicant also acknowledges that:

*the house lot excision does create a small lot for an existing dwelling, we contend this is necessary to enable our client to purchase this farm which immediately abuts additional land to the east which they also farm, albeit via a lease at this stage and is across the road from their home farm.*

The land referred to is 160 McKays Road, which the owner of the subject land is leasing. This land is 105ha in area and is also developed with a dwelling. In terms of the potential pressure for other excisions that the current proposal could create it is not inconceivable that, should the proposed subdivision at 260 Warrowie Road be allowed, the current (or future) owner of that land may apply to excise the dwelling on 160 McKays Road. Whilst each application is assessed on its merits, such a subdivision arguably could be difficult to resist if the current proposal is allowed and, if permitted, would result in further fragmentation of farmland.

It is considered that this application is not consistent with the following purposes of the Farming Zone:

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

The Victorian Civil and Administrative Tribunal (VCAT) in *Alford v Corangamite SC [2018] VCAT 853* considered a proposed excision of a dwelling in the Farming Zone, similar to the subject site. The Tribunal refused the excision and made the following comments in this recent decision:

23. *The proposal will create a small lot within a Broadacre farming area. The larger Lot 2 will comprise the farming activity, while the dwelling is excised. While the land is north of the area identified in the Shire's framework plan as the most significant agricultural land, the area forms part of the rural assets of the Shire as well as part of the lakes landscape.*
24. *I accept that the land uses that presently exist will not alter on the land because of this subdivision. I also find that the dwelling is habitable, waste water can be managed and the lot is close to the preferred size set out in the local policy. I also accept that the excision will not necessarily lead to a proliferation of dwellings in the area and there is no existing clustering of dwellings, although I note that there is a small title associated with a former school site opposite the review site.*
25. *These positive aspects must be weighed against the overall objectives of policy and the zone to protect agricultural land and to prevent land use conflict. I find that the proposal is not supported by the State and local policy relating to agriculture or the objectives of the Farming Zone as set out below.*

(Note: this case was also cited by the objector and a full copy of the decision is attached to the objector's submission).

Whilst the Farming Zone allows the opportunity for the excision of existing dwellings to be considered, the creation of small lots in broadacre agricultural areas is generally discouraged under policy in the State and Local Planning Policy Frameworks as described earlier in this report and reflected in Tribunal decision above. The land currently has an area of 80.9 hectares, consistent with the minimum lot size in the schedule to the Farming Zone. It is not considered that the fragmentation of the land through creation of a 1.6 hectare rural living style lot, with a balance 79 hectare lot, would assist with the broader agricultural opportunities on the land or the adjoining area. The proposed excision appears to be based on the potential sale of the dwelling lot, rather than delivering a specific outcome to support the existing farming operation. Such an outcome would create opportunity for land use conflicts between potential owners of the proposed Lot 1 and adjacent farming uses given the 'battle axe' arrangement of the lot and the expectations that may come with new owners.

Clause 35.07-2 (Use of Land for a Dwelling) states that a lot used for a dwelling must meet the following requirements:

- *Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.*
- *The dwelling must be connected to a reticulated sewerage system or if not available, the waste water must be treated and retained on-site in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.*
- *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 fire fighting purposes.*
- *The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.*

The applicant states that the dwelling has an existing working septic system to the west of the dwelling, that power is connected and that access to the site is also available. No reticulated potable water supply is available to site and therefore it would be reliant on water tanks. Whilst the applicant's comments are noted, Council's Health Protection Unit inspected the site in early September 2019 and concluded that the current septic tank is a 'legacy system' and appears not to be functioning. Therefore, should this application be allowed, it would be necessary to require that the wastewater treatment system be updated to meet today's regulations.

The applicant has also offered the registration of an agreement under Section 173 of the *Planning and Environment Act 1987* on the title of proposed Lot 2, thus making it transparent into the future that no further subdivision of the land so as to create additional lots would be allowed, nor would the construction of any additional dwellings. Should the application be allowed, a permit condition requiring the applicant to enter into such an agreement is recommended. However, whilst it is considered that a s173 agreement would have to be required if the current subdivision proposal is allowed, to prevent further dwellings being erected due to the proposed excision, this approach is not considered the preferred planning outcome. Preventing a future owner of the agricultural portion of the subject land from being able to apply to have a dwelling would, in officers' view, be unreasonable and contrary to policies relating to the Farming Zone, given that proposed Lot 2 would have an area only 0.67ha less than that at which a dwelling would be 'as-of-right'. Such a restriction would be of particular concern as the reason for preventing the future construction of a dwelling on the 79.33ha lot (i.e. the reason for the s173 agreement) would be to allow the creation of a rural living style lot surrounded by the agricultural landholding.

The applicant has advised that the owners are prepared to negotiate with Council about the location of the lot boundaries for the dwelling. However, given the fact that the dwelling would be located well within the existing 80ha lot, and not on the perimeter where it could arguably be easier to excise a dwelling from the balance of the land, it is not considered that the location of the boundaries would alter the policy conflict with Clauses 14.01-1S and 21.05-1, and the objectives of the Farming Zone. The proposal is also considered contrary to those decision guidelines of Clause 65.02 related to subdivision in context of the size of lots created, the impacts of a smaller lot for a dwelling and the creation of a balance lot less than the minimum lot size.

#### Other planning decisions in the area

At a meeting convened between Councillors and the other parties prior to the Planning Committee meeting, the applicant provided a map which purported to show a range of subdivision and dwelling decisions made in recent years, as support for the current proposal (ie providing precedent). That map did not accurately reflect planning decision making over the past 10 years or so.

Below is a map with Council data relating to planning applications within a 4 kilometre radius ('study area') of the application site since the mid-2000s. This information provides details of:

- the location of planning applications for subdivisions and dwellings;
- whether the site is within the 40ha or 80 ha minimum lot size area.

Of the 18 sites shown (excluding the subject site), 5 applications were for the subdivision of land (shown green on the map). Three were approved – two of these were for the re-subdivision of land (not creating any additional lots); one of these was in the Low Density Residential Zone; one lapsed; and the other was refused.

No dwelling excisions or subdivisions (excluding the aforementioned re-subdivisions) have been approved within this study area since the Rural Land Strategy was adopted in 2007.

Applications for dwellings are shown blue on the map. All of these were approved, with 3 being replacement dwellings. It is noted that a number of dwellings were allowed on existing small lots south of the Princes Highway, and that this area south of the Highway is not comparable to the area north of the Highway for the following reasons:

1. The area south of the highway, with the 40ha minimum lot size for subdivision, is already lost to agricultural farming due to the smaller historical subdivisions and the encroachment of dwellings on the smaller lots. This is why it has been considered reasonable to allow dwellings on these smaller landholdings, as nearly each lot now has a dwelling. It is noted that this area was reviewed during the Rural Living Strategy and considered for rezoning to Rural Living Zone due to its existing fragmentation.
2. North of the highway the minimum subdivision area is 80ha. This area is not as fragmented with dwellings and it is considered that it should be retained to ensure opportunity for farmers to continue to farm without the intrusion of dwellings on smaller lots unrelated to agricultural use.

Applications shown red on the map below relate to dwellings on lots within the 80ha minimum lot size area, all of which were permitted. Of the 4 applications received, two were for replacement dwellings; one was on a site partially within the 40ha site (and was allowed subject to consolidation of lots); and one was on 17.9ha.



Legend:

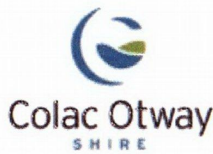
	Dwelling related applications within 80ha
	Dwelling related applications within 40ha
	Subdivision related applications in both areas

In summary it is not considered that any decisions made by Council in the past decade could be argued to create a precedent for allowing the proposed dwelling excision on the subject land.

## 9. OFFICER DIRECT OR INDIRECT INTEREST

No officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

D19/85455



## Application for Planning Permit for a Subdivision

**Supplied by** Anthony Bright  
**Submitted Date** 28/06/2019

### Application Details

**Application Type** Planning Permit for a Subdivision  
Version 1  
**Applicant Reference Number** 19-28  
**Application name or Estate name** Buchanan  
**Responsible Authority Name** Colac Otway Shire  
**Responsible Authority Reference Number(s)** (Not Supplied)  
**SPEAR Reference Number** S143121S  
**Application Status** Submitted  
**Planning Permit Issue Date** NA  
**Planning Permit Expiry Date** NA

### The Land

**Primary Parcel** 260 WARROWIE ROAD, IRREWARRA VIC 3249  
Volume 6874/Folio 790  
SPI 42\PP2775  
CPN 11640  
**Zone:** 35.07 Farming  
**Overlay:** 45.02 Airport Environs

### The Proposal

**Plan Number** (Not Supplied)  
**Number of lots** 2  
**Proposal Description** Excision of existing dwelling and associated farm shedding to enable expansion of an existing farming operation  
**Estimated cost of the development for which a permit is required \$** 0

### Existing Conditions

**Existing Conditions Description** Existing Dwelling and associated Shedding on the Proposed Lot 1, with the Proposed Lot 2 being the balanced cleared grazing land.  
**Title Information - Does the proposal breach an encumbrance on Title?** The proposal does not breach an encumbrance on title, such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope.

### Applicant Contact

**Applicant Contact** Mr Anthony Bright  
Rod Bright and Associates Pty Ltd  
26 Murray Street, Colac, VIC, 3250  
Business Phone: 03 5231 4883  
Email: [rodbright@iprimus.com.au](mailto:rodbright@iprimus.com.au)

### Applicant

SPEAR S143121S

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D19/85455

**Applicant**

L.C. & M.E. Buchanan  
205 Warrowie Road, Irrewarra, VIC, 3249 Australia  
Mobile Phone: 0428 511 250  
Email: [lmbuchanan@hotmail.com](mailto:lmbuchanan@hotmail.com)

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**Owner**

**Owner**

(Owner details as per Applicant)

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**Declaration**

I, Anthony Bright, declare that the owner (if not myself) has been notified about this application.

I, Anthony Bright, declare that all the information supplied is true.

**Authorised by  
Organisation**

Anthony Bright  
Rod Bright and Associates Pty Ltd

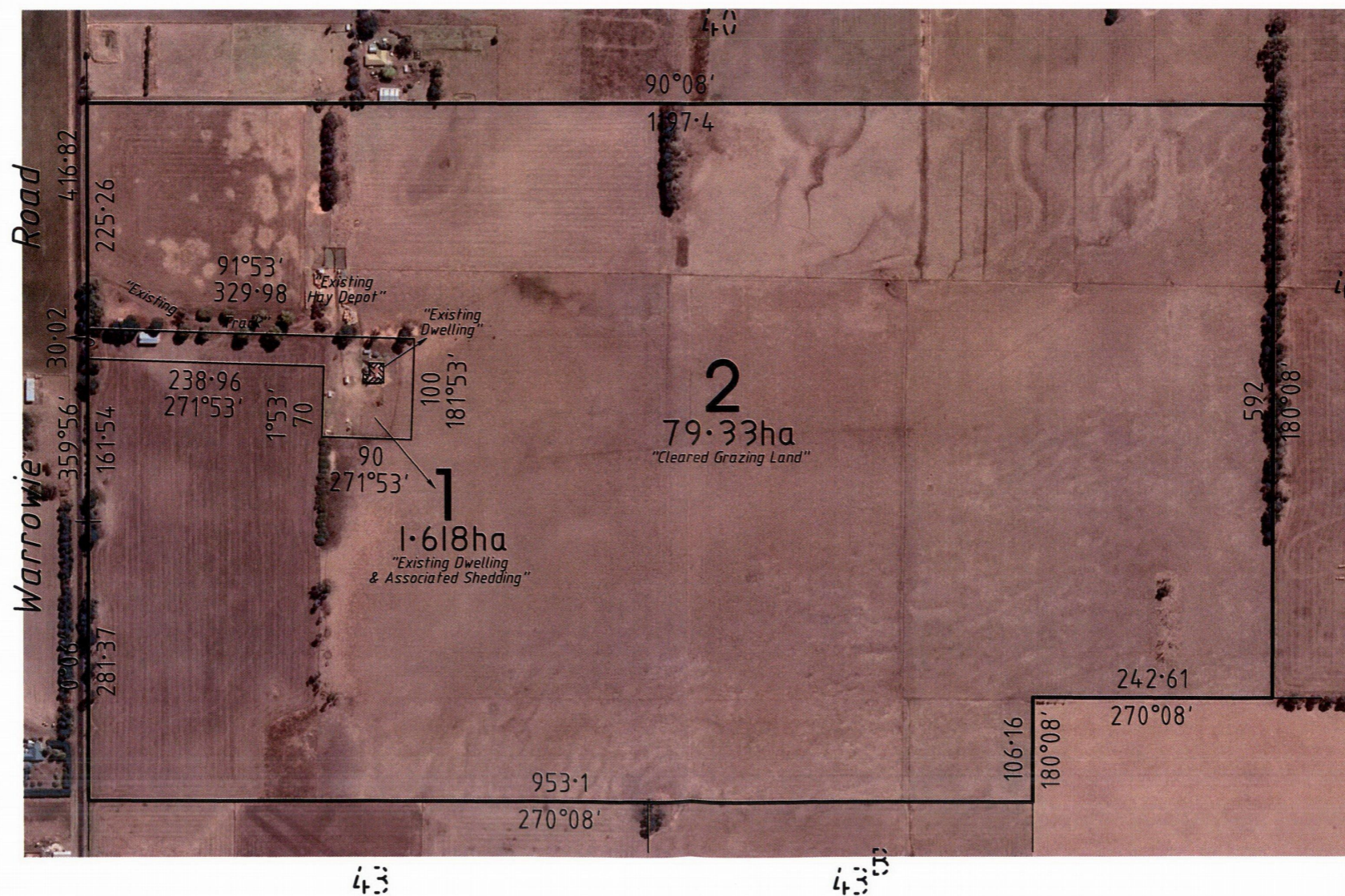


D19/85455

**PLAN OF PROPOSED SUBDIVISION  
CROWN ALLOTMENT 42  
PARISH OF IRREWARRA  
COUNTY OF POLWARTH  
RE: L. & M. BUCHANAN  
SCALE 1:5000** (Original Sheet Size A3)

ROD BRIGHT & ASSOCIATES PTY LTD  
LICENSED SURVEYORS & TOWN PLANNERS  
26 MURRAY STREET COLAC 3250  
TEL 5231 4883 ACN 007 206 975

NOTE:  
Certain dimensions shown hereon are subject to survey.  
Certain areas shown hereon are subject to survey.  
Land contained within C/T Vol. Fol.



Item: 8.2

**PP182/2019-1 - 2235 Birregurra-Forrest Road Forrest**

<b>ADDRESS AND PROPERTY DETAILS</b>	2235 Birregurra Forrest Road, Forrest	<b>APPLICATION NUMBER</b>	PP182/2019-1
<b>PROPOSAL</b>	Use and Development of the Land for a Dwelling and Alteration of Access to a Road in a Road Zone Category 1		
<b>PERMIT TRIGGERS</b>	<p>Clause 35.07-1 - Farming Zone – Use of the land for a dwelling</p> <p>Clause 35.07-4 - Farming Zone – Building and works associated with a Section 2 (permit required) use</p> <p>Clause 44.01-2 - Erosion Management Overlay – Construction of a building or construction or carrying out of works</p> <p>Clause 44.06-2 - Bushfire Management Overlay – Construction of a building or construction or carrying out works associated with accommodation</p> <p>Clause 52.29 - Adjacent RDZ1 – creation or alteration of access to a road in a Road Zone Category 1</p>		
<b>TRIGGER FOR DETERMINATION BY COMMITTEE</b>	Officer recommendation for refusal of an application for a dwelling in the Farming Zone		
<b>ZONE</b>	<p>Farming Zone (FZ)</p> <p>Adjacent Road Zone Category 1 (RDZ1)</p>	<b>OVERLAYS</b>	<p>Erosion Management Overlay – Schedule 1 (EMO1)</p> <p>Land Subject to Inundation Overlay (LSIO)</p> <p>Bushfire Management Overlay (BMO)</p>
<b>COVENANTS</b>	Nil		
<b>CULTURAL HERITAGE</b>	The site is within an area of cultural heritage sensitivity; however, the proposal is not classed as a high impact activity.		
<b>OFFICER</b>	Helen Evans	<b>GENERAL MANAGER</b>	Ian Seuren
<b>DIVISION</b>	Development & Community Services		
<b>ATTACHMENTS</b>	1. P P 182 2019-1 - 2235 Birregurra Forrest Road FORREST - Planning Permit application [8.2.1 - 13 pages]		

# 1. LOCATION PLAN / AERIAL PHOTO

## LOCATION PLAN



## AERIAL PHOTO



## 2. RECOMMENDATION

***That Council resolves to Refuse to Grant a Permit for the use and development of the land for a dwelling and alteration of access to a road in a Road Zone Category 1 at 2235 Birregurra Forrest Road, Forrest on the following grounds:***

- 1. The proposal does not accord with the decision guidelines of Clause 21.05-1 of the Colac Otway Planning Scheme, which require applications to adequately demonstrate that a dwelling is genuinely required to carry out a long term agricultural activity on land having regard to the size of the lot, intensity and ongoing nature of the proposed agricultural activity.***
- 2. The proposal does not accord with the purpose and relevant decision guidelines of the Farming Zone set out in Clause 35.07 of the Planning Scheme, given that:***
  - a) The proposal would permanently remove land from agricultural production.***
  - b) The application has not demonstrated that a dwelling would enhance agricultural production on the land.***
  - c) The development has the potential to limit the operation and expansion of adjoining and nearby agriculture.***
  - d) The application has not demonstrated that a dwelling would not lead to a concentration or proliferation of dwellings in the area, which would impact on the use of the land for agriculture.***
- 3. The proposal does not accord with Council's adopted Rural Land Strategy 2007 or its Rural Living Strategy 2011, not being within an area nominated in these documents for rural living purposes.***

## 3. PROPOSAL

Planning permission is sought for the use and development of the land for a dwelling and alteration of access to a RDZ1.

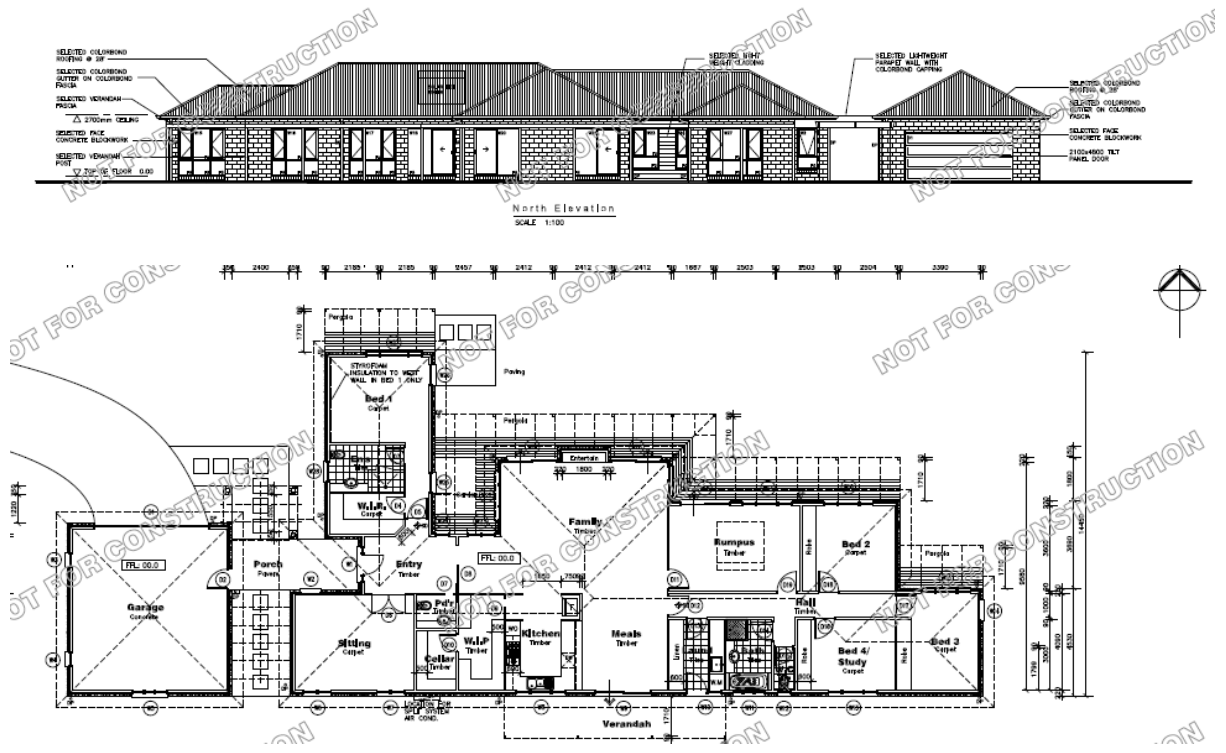
The proposal is for a 311.06sqm dwelling. The dwelling would be 57m from the eastern boundary and 57m from the northern boundary. The proposed house would have 4 bedrooms, 3 living rooms, 2 bathrooms, a kitchen and meals area, and a garage. There would also be a porch connecting the garage to the dwelling, a pergola to the north side of the dwelling and a verandah to the south. The driveway accessing the dwelling would have a length of approximately 300m.

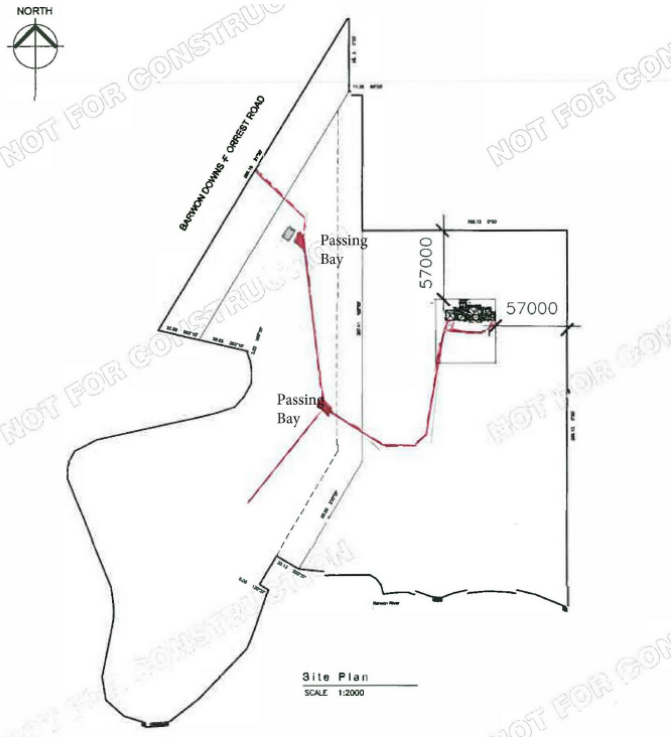
The applicant states that the dwelling would be used in conjunction with a commercial orchard, which the applicant advised is currently being established. Within the supporting information, the applicant has provided desk top research undertaken about expected yield production for mature trees. The application advises that the proposal includes trees and plantings such as apples, apricots, cherries, grapefruit, lemon, lime, oranges, peaches, pears etc., totalling 1,140 trees and 250 flowering plants on the land, to provide a gross income of \$166,458 (this includes a spoil rate of between 25% and 50%]) The fruit trees are proposed to be located towards the western boundary (adjacent to the Birregurra-Forrest Road) and towards the southern boundary, which appear to be the areas of the land within the LSIO and subject to inundation, with more fruit trees and the flowering plants proposed to be located on the higher land that is not subject to inundation.

The applicant has also confirmed that there would be no on-site sales to the public. Sales are proposed to be through a mix of wholesale and local farmer markets throughout the region.



The majority of the site is low-lying and liable to flooding. The dwelling would be located on the higher flood-free land to the north east corner of the site. No additional shedding is proposed.





The applicant has advised that a dwelling is required for the establishment of a summer fruits orchard and native plant nursery, in order to support the long-term agricultural activity on the land and deliver a sustainable and financial return. In addition, the applicant has also stated that a dwelling would also provide security for any machinery, plants and/or animals that are stored/kept on the land.

The applicant has acknowledged that, due to the property's size, location and environmental surrounds, there are many forms of agricultural land use that cannot be pursued. Elevated sandy soils are prone to erosion if cultivated, and intensive farming of pigs or poultry in close proximity to the river would be environmentally challenging. The applicant has also advised that the existing steel shed would be used to store organic pest control agents and pruning equipment; this shed would need upgrading as the plants grow.

#### 4. SUBJECT LAND & SURROUNDINGS

The subject site is located within the Farming Zone and is known as 2235 Birregurra Forrest Road. It comprises several lots (CA 1H Sec A, Lots 1 and 2 TP120818, and Lot 1 TP126624). The site has a total area of 9.6ha. The site has a 288.19m frontage to Birregurra-Forrest Road and is located on the eastern side of this road. The nearest dwelling is on an abutting lot located to the north at 2 Yaugher Road, Forrest.

The site is mostly void of any significant vegetation cover and contains 19 gum trees, 13 Blackwood trees and 3 Cypress trees. This vegetation is located mostly in the north and north-eastern portion of the site.

The site has in the past been used for pasture, with small numbers of cattle periodically on the land throughout the year. The site contains three sheds and a water tank. Structures on the land appear dilapidated and there are no dams or bores. Water entitlement is via a 1mg license to extract water from the West Barwon River. The applicant has confirmed this is for stock purposes only, and domestic purposes if a dwelling is permitted.

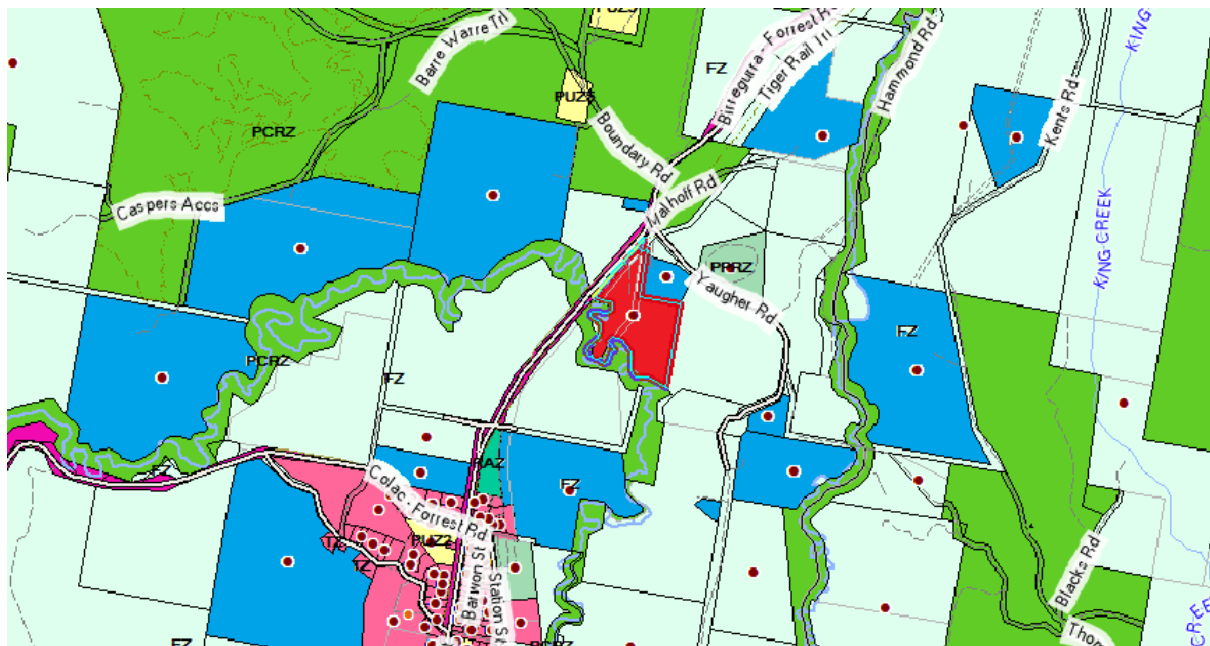
There appear to have been no pasture improvements made to improve the productivity the land despite its small size, with blackberry and thistle as well as dense bracken fern in the more elevated areas of the site. The land is grazed by a small number of cattle. A site inspection has confirmed that no real investment has occurred on the land.

Surrounding land is also within the Farming Zone and is used for agricultural purposes. To the south of the site is the Public Conservation and Resource Zone (PCRZ) that encompasses the Barwon River. To the north is the Forrest Recreation Reserve, which is in the Public Park and Recreation Zone. The site is approximately 876m from the township of Forrest to the south.

The map produced below by Council includes the subject site in red with all surrounding lots which contain existing dwellings or dwellings approved through planning permits highlighted in blue. The pink area is the township of Forrest, which is approximately 870m to the south. The light green area is the Farming Zone and the darker green land within the Public Conservation and Resource Zone.

The majority of the dwellings marked in blue were permitted pre-2000. One was approved in 2007, which had a landholding totalling 27ha, and another in 2010 with a land area of 25ha. Both of these landholdings had much greater agricultural potential than the small landholding that forms the subject of the current planning application.

It is also worth noting that the Rural Land Strategy was finalised in September 2007. Before the research for this document was undertaken and the Rural Land Strategy issued, Council had limited strategic direction relating to the agricultural capability of land throughout the Shire.



## **BACKGROUND**

On 20 May 2019 planning application PP267/2018, which proposed the use and development of a dwelling, was refused under delegated authority. The application was refused on the basis that the proposed use of the land for a dwelling did not accord with the provisions of the Farming Zone and did not adequately demonstrate that a dwelling is genuinely required to carry out a long term agricultural activity on the land having regard to the size of the lot, intensity and ongoing nature of the proposed agricultural activity.

It was also considered that the proposed use did not accord with Council's adopted Rural Land Strategy 2007 or its Rural Living Strategy 2011, as it is not within an area nominated in these documents for rural living purposes. At the time the applicant did not appeal this matter to VCAT. Should Council determine to refuse this application, this option would be open to the applicant to pursue.

## 5. PLANNING SCHEME PROVISIONS

### Planning Policy Frameworks

The Planning Policy Framework (PPF) seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development policies. The policies considered relevant to the application are identified below:

- 14.01-1S - Protection of Agricultural Land
- 14.01-2S - Sustainable Agricultural Land Use
- 21.02-2 - Land Use vision
- 21.03-1 - General
- 21.03-9 - Rural Living
- 21.05-1 - Agriculture

#### Colac Otway Shire Rural Land Strategy (Clause 21.05-1 'Overview')

The Rural Land Strategy has acknowledged that to maintain viability, many farms will have to increase in size or look to more intensive, alternative enterprises. However, there are evident land use trends which pose significant threats to the consolidation and expansion of farm holdings. It is anticipated that the need to protect arable land within the Shire will intensify as the Shire's significant landscapes continue to attract those seeking a rural/coastal lifestyle, and farmers seeking to relocate and/or diversify their business, and as farming land in other areas of the State becomes increasingly vulnerable to harsher climactic conditions. The Strategy identifies the subject site as being of medium agricultural capability being suited to less intensive industries, such as grazing and cropping, and not within an area of 'Farmland of Strategic Significance'.

#### Colac Otway Shire Rural Living Strategy

The subject site and surrounding area is not identified as a potential rural living area within this strategic document.

### Zone

The subject site is located within the Farming Zone (FZ). The key purpose of this zone is to provide for the use of land for agriculture and to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture. Under Clause 35.07-1 of the Farming Zone a permit is required to use the land for a dwelling and under Clause 35.07-4 a permit is required for building and works associated with a dwelling on a lot less than 40ha.

### Overlays

The site is covered by the Erosion Management Overlay (EMO1). A key purpose of this overlay is to protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development. A planning permit is required under the provisions of Clause 44.01-2 for buildings and works.



The site is covered by the Land Subject to Inundation Overlay (LSIO). A key purpose of this overlay is to identify land in a flood storage or flood fringe area affected by the 1 in 100-year flood and to ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions, and will not cause any significant rise in flood level or flow velocity, to protect water quality in accordance with State Environment Planning Policy (SEPP). A planning permit is not required under this overlay as the site of the proposed dwelling is outside of the area covered by the LSIO. It is noted that the area proposed for fruit trees is subject to inundation and covered by this overlay.



The site is covered by the Bushfire Management Overlay (BMO). A key purpose to this overlay is to ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire, and to ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level. A planning permit is required for buildings and works associated with the use of the land for a dwelling under Clause 44.06-2 of this overlay.

### Particular Provisions

**Clause 52.29 (Land Adjacent RDZ1)** - The subject land is located adjacent to a road which is within a Road Zone Category 1. A key purpose of this clause is to ensure appropriate access to identified roads. A planning permit is required for the alteration of the access to the RDZ1.

### Relevant Planning Scheme amendments

Nil

## 6. REFERRALS

### Internal Referrals

The application was referred internally to Council's Environment, Health, Building and Infrastructure Units. No objections were raised subject to conditions being included on any permit issued.

### External Referrals

The application was referred externally to the CFA and Regional Roads Victoria. No objections were raised. The Country Fire Authority recommended conditions should a permit be issued. Regional Roads Victoria did not object subject to a condition relating to the construction of the access and driveway being imposed.

## 7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application in the form of a site notice and letters to adjoining landowners/occupiers. One objection was received, on the basis that the application included limited information about the horticultural use of the land and how this would be protected from pests. The objection was withdrawn on 15 November 2019 as the applicant's response was considered satisfactorily address the objectors' concerns.

## 8. OFFICER'S ASSESSMENT

The key issues for consideration in the determination of this application are whether the proposal is in accordance with planning policy for the Farming Zone, including whether reasonable justification has been submitted to demonstrate that the proposed dwelling is required for agricultural production and would present a substantial economic benefit to the land.

It is considered that the proposal is incompatible with the following State and local planning policies in the Colac Otway Planning Scheme, namely:

Clause 14.01-1S (Protection of Agricultural Land):

- *Protect strategically important agricultural and primary production land from incompatible uses.*
- *Limit new housing development in rural areas by:*
  - *Directing housing growth into existing settlements.*
  - *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*

Clause 21.05-1 (Agriculture)

- *To protect the rural and agricultural areas of the Shire from the proliferation of dwellings not associated with agriculture.*
- *To discourage the development of dwellings that has a detrimental impact in areas of high landscape value and significant environmental quality.*
- *To ensure that incompatible land uses (including dwellings) do not negatively impact on the ability to farm.*

Clause 14.01-1S seeks to protect agricultural land, with the objective being to protect the state's agricultural base by preserving productive farmland. The strategies behind this policy seek to avoid the permanent removal of productive agricultural land, protect agricultural land from incompatible land uses and limit new housing development in rural areas by discouraging development of isolated small lots in the rural zones from use for dwellings. This policy states that use proposals should be assessed in relation to the desirability and impacts of removing the land from primary production, and the compatibility between the proposed use and the surrounding land use. Whilst it is acknowledged that the applicant has included details of a proposed agricultural use of the land as part of the application (i.e. an orchard), it is not considered that the proposed orchard requires onsite management to the extent that a dwelling is required on the land.

Clause 14.01-2S seeks to ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources whilst supporting the development of innovative and sustainable approaches.

It is considered that the owner would be able to implement his proposed agricultural activity without the construction of a dwelling on this small lot.

Clause 21.05-1 seeks to protect the rural and agricultural areas of the Shire from the proliferation of dwellings not associated with agriculture, and to ensure that the development of dwellings on rural land does not prejudice existing agricultural production or forestry activities on surrounding land. This policy also seeks to ensure that incompatible land uses (including dwellings) do not negatively impact on the ability to farm. Clause 21.05-1 (Agriculture) describes how agriculture is a key economic contributor to the Colac Otway Shire, and the protection of agricultural industries is critical to the economic and social wellbeing of the Shire. Without a viable agricultural use that requires a permanent on-site presence, the proposal would result in a rural living type use on the subject site. Council's Rural Living Strategy 2011 nominates appropriate nodes for rural living development, and this area is not identified as a potential node. It is considered that the application would not result in an orderly planning outcome, and is against the policy direction provided by the Colac Otway Planning Scheme.

The Rural Land Strategy notes that a viable farm should generate a minimum gross annual income of between \$270,000 and \$300,000 (based on 2007 values). It is accepted that the subject site is a very small agricultural land holding, being only 9.6 hectares. If the area towards the south and western side of the lot (within the Land Subject to Inundation Overlay) is excluded from the available agricultural land, then approximately 4.3 hectares remains viable agricultural land and this includes the area nominated for the proposed dwelling and associated infrastructure.

The Rural Land Strategy also notes that the diversity of land uses resulting from change in rural land use for dwellings may bring conflict between agriculture and other uses. The strategy adds that the proliferation of dwellings for lifestyle/hobby farm purposes in the Farming Zone will compromise the long-term viability of farming in Colac Otway Shire. The Strategy identifies the subject site as being of medium agricultural capability being suited to less intensive industries, such as grazing and cropping and not within an area of 'Farmland of Strategic Significance'.

The applicant has advised that proposed agricultural land use would require a high frequency of labour in small amounts and would not be feasible without a resident manager on the property to ensure that the orchard reaches the best production levels possible, provides security for the property and acts as a passive deterrent to herds of kangaroos. The applicant's submission adds that "*the dwelling required to support an intensive agriculture use on a small lot that is otherwise not economical to farm*". It must be noted that the lot is small in terms of the Farming Zone [9.6 hectares or 4.3 hectares of viable agricultural land] and – given the lot size, the on-site constraints limiting productive land and the nature of the proposed agricultural activity – it has not been demonstrated that the proposed dwelling is reasonably required to support the proposed agricultural use on the land. It is not considered that the proposed orchard and native plant nursery justifies, or reasonably requires, a dwelling on the land, particularly when this site is so close to the township of Forrest which provides an appropriate location for a residence (whether new build or rented) without having to construct a dwelling in the Farming Zone. It is considered that the proposed dwelling would effectively change the land use to rural residential and negatively impact on the ability to farm.

The dwelling is proposed on a site with a combined lot area of 9.6ha, in an area where a minimum lot area of 40 hectares is specified for a dwelling to be an '*as of right*' use in the schedule to the Farming Zone. The application, which states that the dwelling is required to manage a proposed summer fruits orchard (which would take a number of years to establish) supplemented by growing native flowers for the cut flower market, has not demonstrated why the dwelling is required to operate this particular agricultural activity, or how the dwelling would not become the dominant use of the land.

It is also noted from the application form that the current landowner has a dwelling approximately 7km away from the subject land (8 minutes away by car) and it is considered that, given the nature of the proposed agricultural use, the subject land could be appropriately managed without an additional dwelling being provided on the subject land, either from the landowner's current dwelling 7km away, or from a new or existing dwelling in the Forrest township less than 1km away.

Allowing this proposal would also have the potential to result in pressures for dwellings on other rural lots in the area. As the land is close to the Forrest Township, there is pressure to allow development of Farming zoned lots for rural residential purposes, being an attractive location for establishing a dwelling. Planning policy seeks to prevent a proliferation of dwellings in rural areas, and to protect agricultural land. Allowing a dwelling on a small site (with a combined lot area of less than 10ha) where the requirement for a permanent on-site presence has not been demonstrated would be contrary to policy.

As noted, the applicant has attempted to justify the dwelling on the basis that it is necessary to house an on-site manager for the proposed orchard and native plant nursery. The applicant has advised that the owner has commenced planting a summer fruits orchard. A recent site inspection has confirmed that trees have been planted. The applicant provided documentation, including a farm plan, although there are a number of reservations with the submitted documentation including:

- It has not been established why an on-site manager would be required for the orchard and other elements of the proposed agricultural use to be successful.
- The five-year plan submitted with the application provides for the planting of an initial test orchard in 2018 (as shown on the aerial photo). For the next 4 years, the plan is to review planting to establish whether it is successful or otherwise (amongst other things) and to add further plants dependent on the success of the test orchard. In the event that the orchard is not successful, and should a planning permit be issued for the dwelling, the orchard could fail/cease whilst the dwelling is in the meantime constructed, resulting in a rural living property on 9.6ha close to Forrest.
- The construction of associated infrastructure – access ways and storage sheds. Currently the sheds on the land are in poor condition and are not likely to be suitable to securely house agricultural equipment. The five-year plan does indicate that the shed would be repaired in 2019, but also notes this “can be deferred”.
- The West Barwon river forms part of the southern boundary of the site. The applicant states that the land holds a 1 mega litre licence to take water from the West Barwon for domestic and stock purposes, but any form of water harvesting for irrigation is not permitted and there is no plan to install a dam or bores on the property. The applicant claims that the property is ideally suited with a high rainfall and would have adequate rainfall to sustain the orchard, and the land is on the river flats and only 5-10 metres from the water table. The applicant also advises that, in the event additional water is required, tanks could be installed to the shed. This raises two matters of concern:
  - the suitability of the sheds for harvesting water is questionable given their size and condition; and
  - “watering as needed” is listed for 3 months of the year in the property maintenance; however the water source is not secured.

- The Farm Management Plan does not address, and there is concern about, the impact any flooding or inundation would have on the orchard and, vice versa, the impact on the water quality from the orchard. There is the potential for significant damage to the orchard in the event of prolonged inundation due to lack of oxygen to the plant root, potential to affect growth of the plant, and plant disease. One strategy would be to drain or pump water from the orchard within 48 hours or, where possible, a spoon drain dug in the centre of the traffic line will help surface drainage. It is important to note that earthworks greater than 200mm in the LSIO is subject to the requirement for a planning permit.

Additional concerns relate to the dwelling and surrounds occupying a substantial portion of the site and, combined with the driveway, the majority of flood-free land on the site would be occupied by domestic infrastructure. It does not appear that the placement of the dwelling has sought to minimise the loss of productive land. Furthermore, the size of the proposed dwelling and its location suggests that this is foremost a residential proposal and that any agriculture on the land would be ancillary to the dwelling.

It is not considered that any real argument has been put forward to demonstrate that the dwelling would be reasonably required for the operation of the agricultural activity proposed on the land. Whilst it is acknowledged that the proposal includes an innovative and sustainable approach to agriculture on a relatively small lot (as detailed within the Farm Management Plan) which is supported by Council, it is considered that this could be undertaken without a dwelling being constructed on this site. Whilst it may be preferable to the owners to be on the site, the option is available to undertake the agricultural land use from their existing dwelling or from the nearby Forrest township, which is within easy commuting distance of the land.

The following VCAT decision – *Russell v Moira SC [2017] VCAT 429 (27 March 2017)* is relevant to this application. The case relates to an application for the use and development of land for a dwelling. The applicant submitted that the dwelling was required to support the associated use of the land for vegetable growing on a small lot. The Tribunal provided the following commentary:

- *“Mr Russell provided no information with regard to the cropping, packing and storage of his vegetables. He provides no information on the size of his crop...there is no information regarding the number of punnets or packages of vegetables, and the number, volume or tonnage of vegetables, or even the number of car or truck trips per week that the agricultural production would generate”* [30]
- *“On the information before me I agree with the responsible authority that the proposal is a very small enterprise. It fails to use the whole of the land for agricultural production. I conclude that the farming enterprise would effectively be ancillary to the dwelling and the residential use of the land”* [32]
- *“If the dwelling is constructed, and Mr Russell’s farming venture ceased due to ill health, lack of successful crops or buyers, it is very likely the use of the land for a dwelling would continue. The whole of the land would be used for a dwelling. The land would be permanently removed from agricultural production.”* [38]

Similar concerns exist for the current application, in that insufficient evidence of a credible agricultural proposal has been provided to demonstrate the need for a dwelling on the land. It is considered that the proposal would not assist with the protection of productive agricultural land, but would present an incompatible permanent change in land use to one which is unrelated to the surrounding agricultural land, ultimately result in a proliferation of incompatible rural lifestyle dwellings on lots not associated with agriculture.

In response to the Decision Guidelines of the Farming Zone:

### **General Issues**

The applicant submitted a Land Capability Assessment that has been considered by Council's Health Protection Unit, which did not raise any objection to the proposal subject to permit conditions should the proposal be considered acceptable. On this basis, it is considered that the site would be capable of accommodating the proposed use and development in terms of the disposal of effluent and wastewater.

### **Agricultural issues and the impacts from non-agricultural uses**

As detailed in this report, it is considered that this small lot could not reasonably be used for any significant extensive agricultural production other than an area for horticulture and native plants or animal grazing to keep the grass under control. It is not considered that the agricultural use outlined in this application justifies allowing a dwelling on the land. This situation does not appear to have changed since the earlier submission under PP267/2018.

### **Dwelling issues**

With regard to the 'dwelling issues' it is considered that, for the reasons outlined in this report, allowing a dwelling on such a small lot is very difficult to justify on planning policy grounds. In this particular instance, the dwelling is not considered to be reasonably required to support and enhance the proposed agricultural activity.

### **Environmental issues**

It is not considered that the proposal would negatively impact on the natural physical features and resources of the area; in particular on soil and water quality. The proposed use and development would not require the removal of any vegetation.

### **Design and siting issues**

Had the proposal been considered acceptable from a planning policy perspective, it is considered that the proposed scale, height, bulk, materials and location of the dwelling would have been acceptable in the context of the site and the surrounding land use. The proposed dwelling would be of a reasonable scale and appearance in the context of surrounding agricultural use and buildings on surrounding land.

It is also noted that Council has in the past allowed a number of applications for dwellings on smaller holdings in the Farming Zone where the applicant appears to have submitted a bona-fide application, including very detailed information about the proposed agricultural activities (such as egg production and equestrian use) and how those uses would be implemented and managed on an ongoing basis. Such permits have been issued in the recent past in Barongarook and Cororooke. A short period after the permits were issued, enquiries were received from potential purchasers asking about those particular properties and whether an agricultural activity need to be developed as notated on the permit, or whether the dwelling could be constructed and occupied as a rural living property.

In this case it would appear reasonable, should the proposed activity on the land be considered one that would potentially warrant allowing a dwelling, that the agricultural enterprise be implemented (i.e. the orchard established) prior to a permanent dwelling being constructed on this small lot. Once the agricultural activity has been established, it would be open to the landowner to clarify why the agricultural activity on the land requires a permanent on-site presence.

#### Erosion Management Overlay

The applicant has submitted a Geotechnical Assessment and, based on the information submitted and the Form A declaration, the site is able to meet the acceptable risk criteria.

#### Bushfire Management Overlay

A Bushfire Management Plan has been submitted as part of the application. The application was referred to the CFA, which raised no objection subject to conditions being imposed on any permit issued.

## **9. OFFICER DIRECT OR INDIRECT INTEREST**

No officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

D19/107677



Planning Enquiries  
Phone: (03) 5232 9400  
Web: [www.colacotway.vic.gov.au](http://www.colacotway.vic.gov.au)

Clear Form

## Office Use Only

Application No.:

Date Lodged: / /

Application for a **Planning Permit**

If you need help to complete this form, read MORE INFORMATION at the end of this form.

**⚠** Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act 1987*. If you have any questions, please contact Council's planning department.

**⚠** Questions marked with an asterisk (\*) must be completed.

**⚠** If the space provided on the form is insufficient, attach a separate sheet.

**i** Click for further information.

The Land **i**

Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

## Street Address \*

Unit No.:	St. No.: 2235	St. Name: Birregurra Forrest Rd
Suburb/Locality: Forrest		Postcode: 3236

## Formal Land Description \*

Complete either A or B.

**⚠** This information can be found on the certificate of title.

If this application relates to more than one address, attach a separate sheet setting out any additional property details.

A	Lot No.: 1 & 2	<input type="radio"/> Lodged Plan	<input checked="" type="radio"/> Title Plan	<input type="radio"/> Plan of Subdivision	No.: TP120818 & TP 126624
<b>OR</b>					
B	Crown Allotment No.: 1C part, IH		Section No.: A		
Parish/Township Name: Yaughar					

## The Proposal

**⚠** You must give full details of your proposal and attach the information required to assess the application. Insufficient or unclear information will delay your application.

**i** For what use, development or other matter do you require a permit? \*

This application is for a dwelling to support the development of a summer fruit orchard and native plant production business. The farm plan is to change the property from pasture only to summer fruits orchard and native plant production for cut flowers.

**⚠** Provide additional information about the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.

**i** Estimated cost of any development for which the permit is required \*

Cost \$ 250,000

**⚠** You may be required to verify this estimate. Insert '0' if no development is proposed.



D19/107677



## Existing Conditions i

### Describe how the land is used and developed now \*

For example, vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

Pasture - existing

A summer fruits orchard is being planned in 2018 the first batch 180 young trees were planted

Provide a plan of the existing conditions. Photos are also helpful.

## Title Information i

### Encumbrances on title \*

Does the proposal breach, in any way, an encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope?

- Yes (If 'yes' contact Council for advice on how to proceed before continuing with this application.)
- No
- Not applicable (no such encumbrance applies).

Provide a full, current copy of the title for each individual parcel of land forming the subject site. The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', for example, restrictive covenants.

## Applicant and Owner Details i

Provide details of the applicant and the owner of the land.

### Applicant \*

The person who wants the permit.

Please provide at least one contact phone number \*

Where the preferred contact person for the application is different from the applicant, provide the details of that person.

### Owner \*


The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.

Name:		
Title: Mr	First Name: Peter	Surname: Scott
Organisation (if applicable): PG & SL Scott Pty Ltd		
Postal Address:		If it is a P.O. Box, enter the details here:
Unit No.:	St. No.: 150	St. Name: Seven Bridges Road
Suburb/Locality: Gerangamete	State: Vic	Postcode: 32
<b>Contact information for applicant OR contact person below</b>		
Business phone: 5236 6287	Email: pg_sl_scott@hotmail.com	
Mobile phone:	Fax:	
<b>Contact person's details*</b>		
		Same as applicant <input type="checkbox"/>
Name:		
Title:	First Name:	Surname:
Organisation (if applicable):		
Postal Address:		If it is a P.O. Box, enter the details here:
Unit No.:	St. No.:	St. Name:
Suburb/Locality:	State:	Postcode:
<b>Owner *</b>		
		Same as applicant <input type="checkbox"/>
Name:		
Title: Mr & Mrs	First Name: Peter and Sandra	Surname: Scott
Organisation (if applicable):		
Postal Address:		If it is a P.O. Box, enter the details here:
Unit No.:	St. No.: 150	St. Name: Seven Bridges Rd
Suburb/Locality: Gerangamete	State: Vic	Postcode:
Owner's Signature (Optional):	Date:	
	day / month / year	

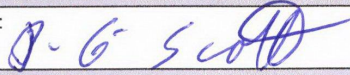
D19/107677

**Declaration** **This form must be signed by the applicant \***

 Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.

I declare that I am the applicant; and that all the information in this application is true and correct; and the owner (if not myself) has been notified of the permit application.

Signature:



Date:

day / month / year

**Need help with the Application?** 

General information about the planning process is available at [planning.vic.gov.au](http://planning.vic.gov.au)

Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist. Insufficient or unclear information may delay your application.

**Has there been a pre-application meeting with a council planning officer?**

 No  Yes

If 'Yes', with whom?: Various Meetings


Date: June / July 2019

day / month / year

**Checklist** 

Have you:

 Filled in the form completely? Paid or included the application fee?

 Most applications require a fee to be paid. Contact Council to determine the appropriate fee.

 Provided all necessary supporting information and documents? A full, current copy of title information for each individual parcel of land forming the subject site. A plan of existing conditions. Plans showing the layout and details of the proposal. Any information required by the planning scheme, requested by council or outlined in a council planning permit checklist. If required, a description of the likely effect of the proposal (for example, traffic, noise, environmental impacts). Completed the relevant council planning permit checklist? Signed the declaration above?**Lodgement** 

Lodge the completed and signed form, the fee and all documents with:

Colac Otway Shire  
PO Box 283  
Colac VIC 3250  
2-6 Rae Street  
Colac VIC 3250

**Contact information**

Phone: (03) 5232 9400

Email: [inq@colacotway.vic.gov.au](mailto:inq@colacotway.vic.gov.au)

**Deliver application in person, by post or by electronic lodgement.**



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**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

Page 1 of 1

VOLUME 09898 FOLIO 960

Security no : 124078702173N  
Produced 06/08/2019 02:01 PM

**LAND DESCRIPTION**

Lots 1 and 2 on Title Plan 120818N.  
PARENT TITLE Volume 09391 Folio 040  
Created by instrument P108086C 04/04/1989

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Joint Proprietors  
PETER GERARD SCOTT  
SANDRA LYNN SCOTT both of 150 SEVEN BRIDGES ROAD GERANGAMETE VIC 3243  
AL695351W 19/02/2015

**ENCUMBRANCES, CAVEATS AND NOTICES**

MORTGAGE AL695352U 19/02/2015  
CLARKE & BARWOOD LAWYERS COLAC LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE TP120818N FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

See MI309994U for WATER FRONTAGE LICENCE details

DOCUMENT END



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**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

Page 1 of 1

VOLUME 01996 FOLIO 155

Security no : 124078702172P  
Produced 06/08/2019 02:01 PM

CROWN GRANT

**LAND DESCRIPTION**

Crown Allotment 1H Section A Parish of Yaughar.

**REGISTERED PROPRIETOR**

Estate Fee Simple

Joint Proprietors

PETER GERARD SCOTT

SANDRA LYNN SCOTT both of 150 SEVEN BRIDGES ROAD GERANGAMETE VIC 3243

AL695351W 19/02/2015

**ENCUMBRANCES, CAVEATS AND NOTICES**

MORTGAGE AL695352U 19/02/2015

CLARKE & BARWOOD LAWYERS COLAC LTD

Any crown grant reservations exceptions conditions limitations and powers noted on the plan or imaged folio set out under DIAGRAM LOCATION below. For details of any other encumbrances see the plan or imaged folio set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE TP560527T FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 2235 BIRREGURRA-FORREST ROAD FORREST VIC 3236

See MI309994U for WATER FRONTAGE LICENCE details

DOCUMENT END



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**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

Page 1 of 1

VOLUME 09391 FOLIO 039

Security no : 124078702174M

Produced 06/08/2019 02:01 PM

**LAND DESCRIPTION**

Lot 1 on Title Plan 126624U.  
PARENT TITLE Volume 02125 Folio 827  
Created by instrument J061812 10/07/1980

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Joint Proprietors  
PETER GERARD SCOTT  
SANDRA LYNN SCOTT both of 150 SEVEN BRIDGES ROAD GERANGAMETE VIC 3243  
AL695351W 19/02/2015

**ENCUMBRANCES, CAVEATS AND NOTICES**

MORTGAGE AL695352U 19/02/2015  
CLARKE & BARWOOD LAWYERS COLAC LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE TP126624U FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

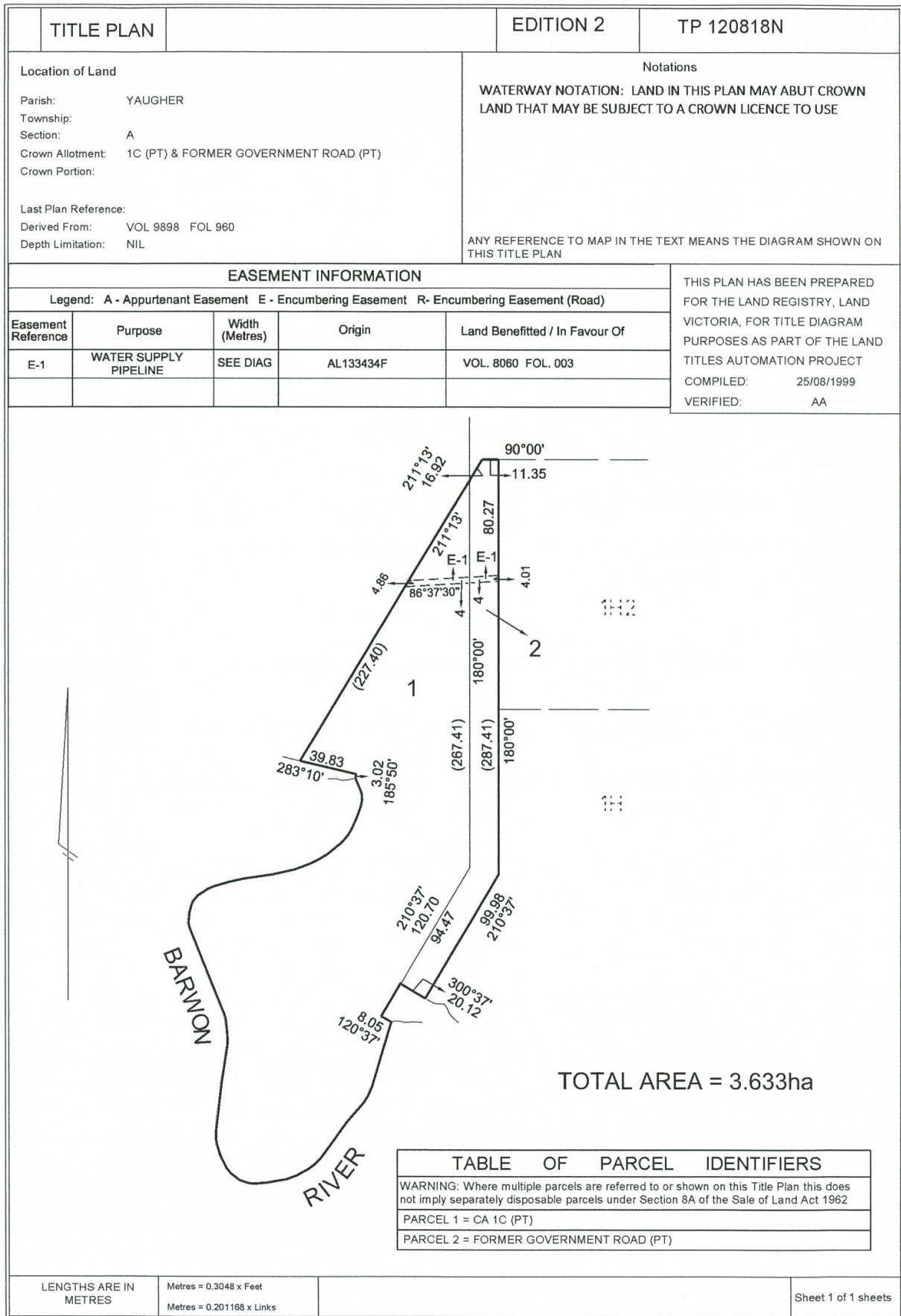
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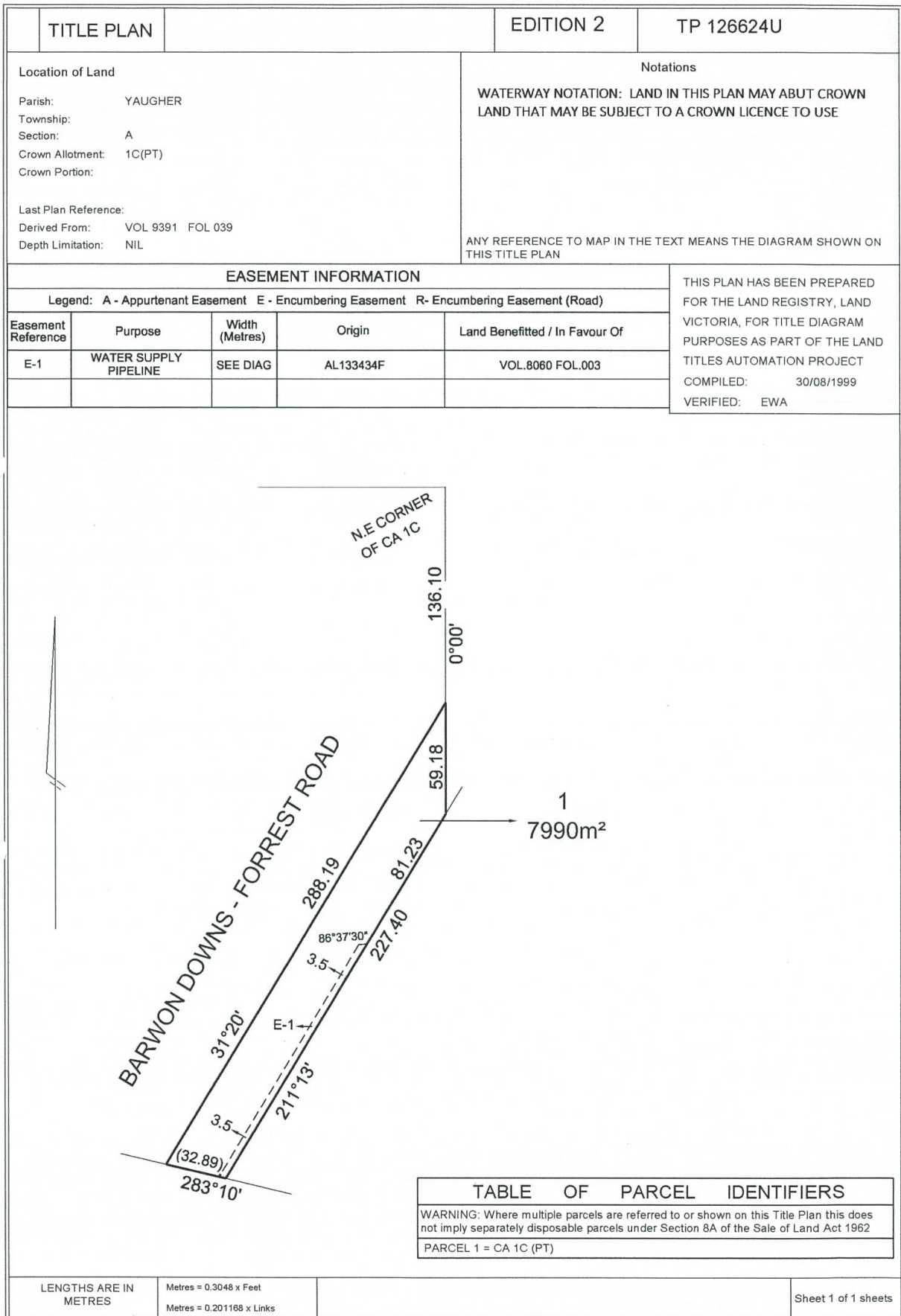
Additional information: (not part of the Register Search Statement)

Street Address: 2235 BIRREGURRA-FORREST ROAD FORREST VIC 3236

See MI309994U for WATER FRONTAGE LICENCE details

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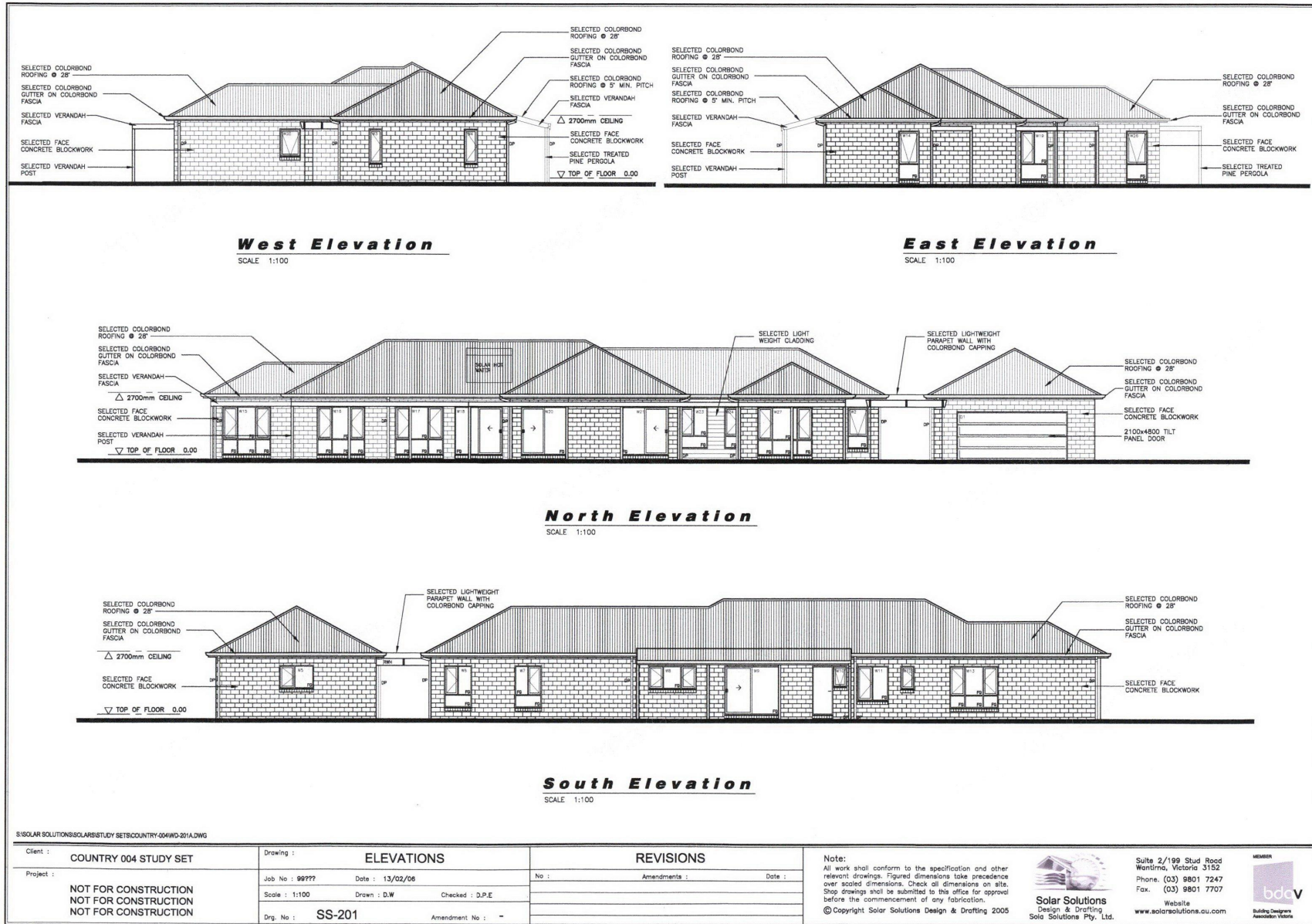


TITLE PLAN		EDITION 1	TP 560527T
<b>Location of Land</b> Parish: YAUGHER Township: Section: A Crown Allotment: 1H Crown Portion:  Last Plan Reference: Derived From: VOL 1996 FOL 155 Depth Limitation: NIL		<b>Notations</b> SUBJECT TO THE RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS CONTAINED IN CROWN GRANT VOL. 1996 FOL. 155 AND NOTED ON SHEET 2 OF THIS PLAN  WATERWAY NOTATION: LAND IN THIS PLAN MAY ABUT CROWN LAND THAT MAY BE SUBJECT TO A CROWN LICENCE TO USE  ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN	
<b>Description of Land / Easement Information</b>			THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT COMPILED: 10/07/2000 VERIFIED: AA
LENGTHS ARE IN LINKS	Metres = 0.3048 x Feet Metres = 0.201168 x Links	Sheet 1 of 2 sheets	





TITLE PLAN		TP 560527T
<p>LAND DESCRIPTION INCLUDING RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS SHOWN ON THE CROWN GRANT</p>		
<p><i>All THAT PIECE OF LAND in the said Colony containing ten acres three roods and five perches more or less being Allotment one H of Section A in the Parish of Yaughan County of Polwarth</i></p>		
<p>delineated with the measurements and abuttals thereof in the map drawn in the margin of these presents and therein colored yellow</p>		
<p>EXCEPTING however unto us our heirs and successors all gold and auriferous earth or stone and all mines containing gold within the boundaries of the said land AND ALSO reserving to us our heirs and successors free liberty and authority for us our heirs and successors and our and their agents and servants at any time or times hereafter to enter upon the said land and to search and mine therein for gold and to extract and remove therefrom any gold and any auriferous earth or stone and for the purposes aforesaid to sink shafts erect machinery carry on any works and do any other things which may be necessary or usual in mining PROVIDED ALWAYS that it shall be lawful for us our heirs and successors at any time on paying full compensation to the said GRANTEE</p> <p>his heirs executors administrators or assigns for the full value other than auriferous of the said piece of land or so much thereof as may be resumed as hereinafter mentioned and of the improvements upon the said piece of land or the part so resumed such value in case of disagreement to be ascertained by arbitration to resume the said piece of land or any part thereof for mining purposes</p> <p>AND THAT the terms conditions and events upon which such land may be resumed and the manner in which such arbitration may be conducted may be determined by regulations in such manner as the Governor in Council may from time to time direct or if at any time no such regulations shall be in force then by the regulations concerning the resumption of land for mining purposes in force at the date of this Grant unless Parliament shall otherwise determine.</p>		
<p>LENGTHS ARE IN LINKS</p>	<p>Metres = 0.3048 x Feet Metres = 0.201168 x Links</p>	<p>Sheet 2 of 2 sheets</p>

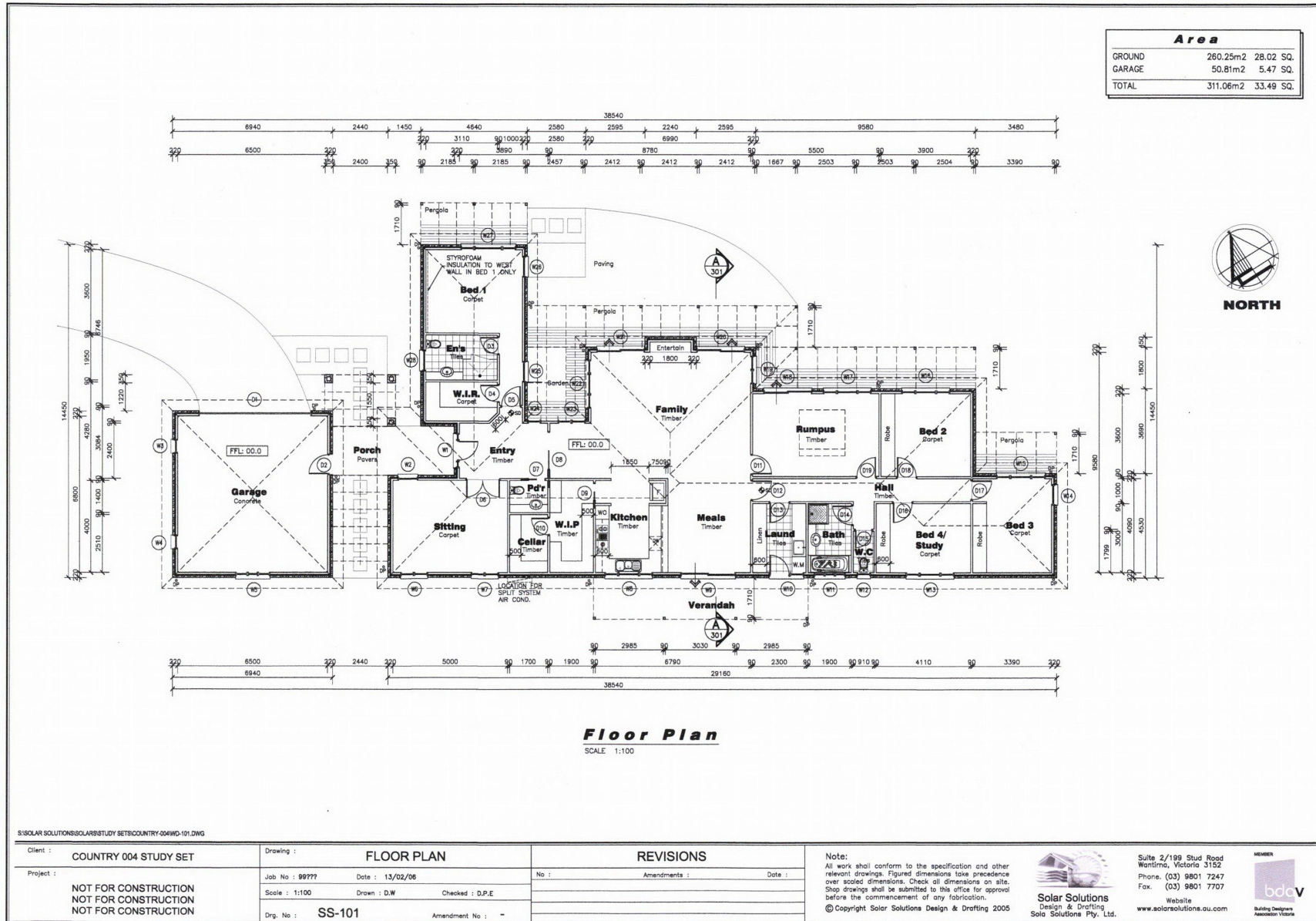
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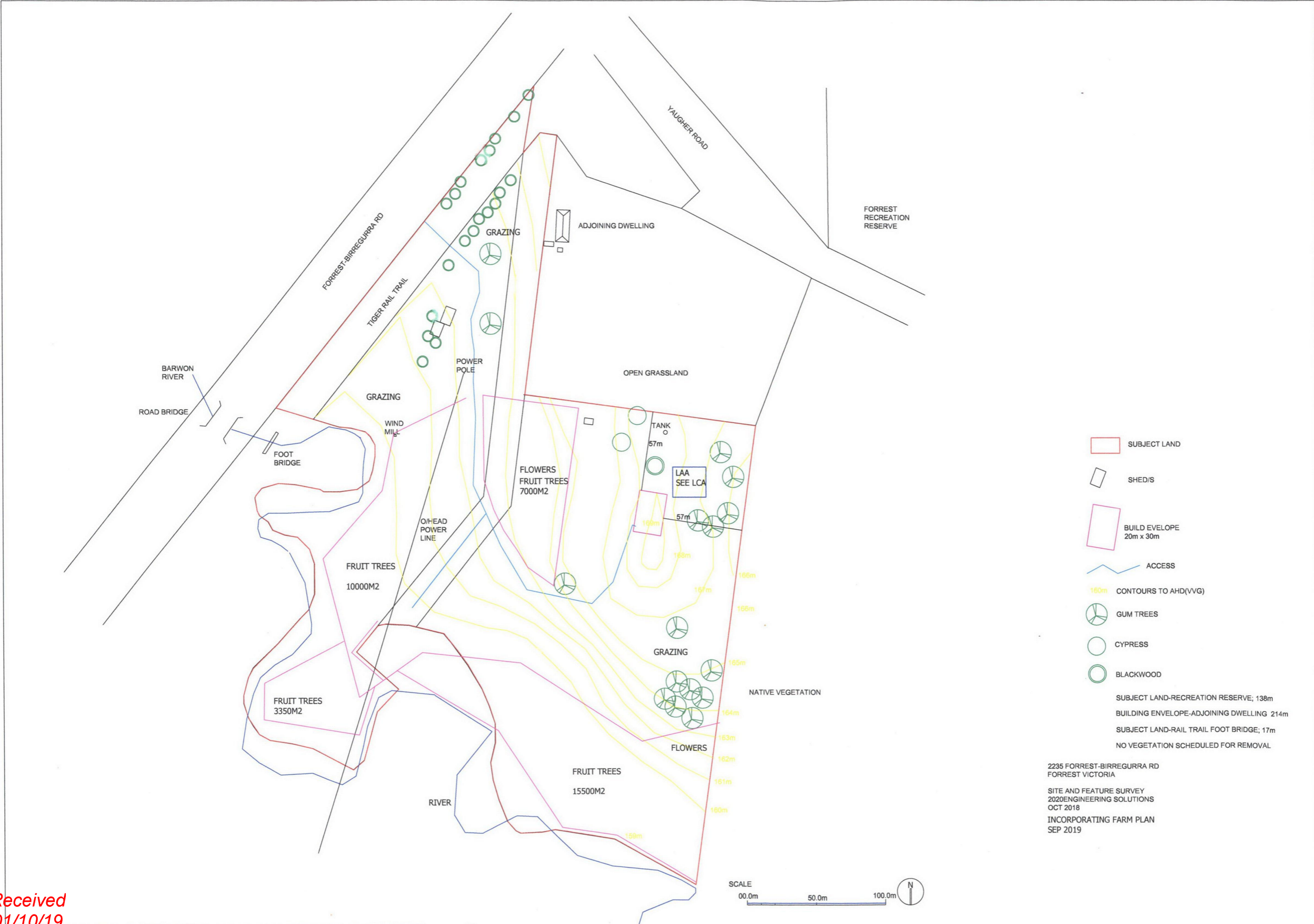
S:\SOLAR SOLUTIONS\SOLARS\STUDY SETS\COUNTRY 004\W0-201A.DWG

Client : <b>COUNTRY 004 STUDY SET</b>	Drawing : <b>ELEVATIONS</b>	<b>REVISIONS</b>		Note: All work shall conform to the specification and other relevant drawings. Figured dimensions take precedence over scaled dimensions. Check all dimensions on site. Shop drawings shall be submitted to this office for approval before the commencement of any fabrication. © Copyright Solar Solutions Design & Drafting 2005	 <b>Solar Solutions</b> Design & Drafting Solar Solutions Pty. Ltd.	Suite 2/199 Stud Road Wantirna, Victoria 3152 Phone: (03) 9801 7247 Fax: (03) 9801 7707 Weballa www.solarsolutions.au.com	 bda Building Designers Association Victoria
Project : <b>NOT FOR CONSTRUCTION NOT FOR CONSTRUCTION NOT FOR CONSTRUCTION</b>	Job No : 99997 Date : 13/02/06	No :	Amendments :				
	Scale : 1:100 Drawn : D.W Checked : D.P.E						
	Drg. No : <b>SS-201</b> Amendment No : -						

D19/107677



D19/135830



Received  
01/10/19

