



Colac Otway  
SHIRE

**PLANNING COMMITTEE MEETING**

**AGENDA**

**Wednesday 8 May 2019**

**at 4:00 pm**

**COPACC**

**95 - 97 Gellibrand Street, Colac**



# COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

Wednesday 8 May 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 8 May 2019 at 4:00 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.

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

Audio recordings of meetings are taken to facilitate the preparation of the minutes of open Council and Committee meetings and to ensure their accuracy.

In some circumstances a recording will be disclosed to a third party. Those circumstances include, but are not limited to, circumstances, such as where Council is compelled to disclose an audio recording because it is required by law, such as the Freedom of Information Act 1982, or by court order, warrant, or subpoena or to assist in an investigation undertaken by the Ombudsman or the Independent Broad-based Anti-corruption Commission.

Council will not use or disclose the recordings for any other purpose. It is an offence to make an unauthorised recording of the 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 10 April 2019.**

### **Recommendation**

***That the Planning Committee confirm the minutes of the Planning Committee Meeting held on 10 April 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**

**Eight (8) lot subdivision, associated works and native vegetation removal at 3036 Colac Forrest Road, Forrest**

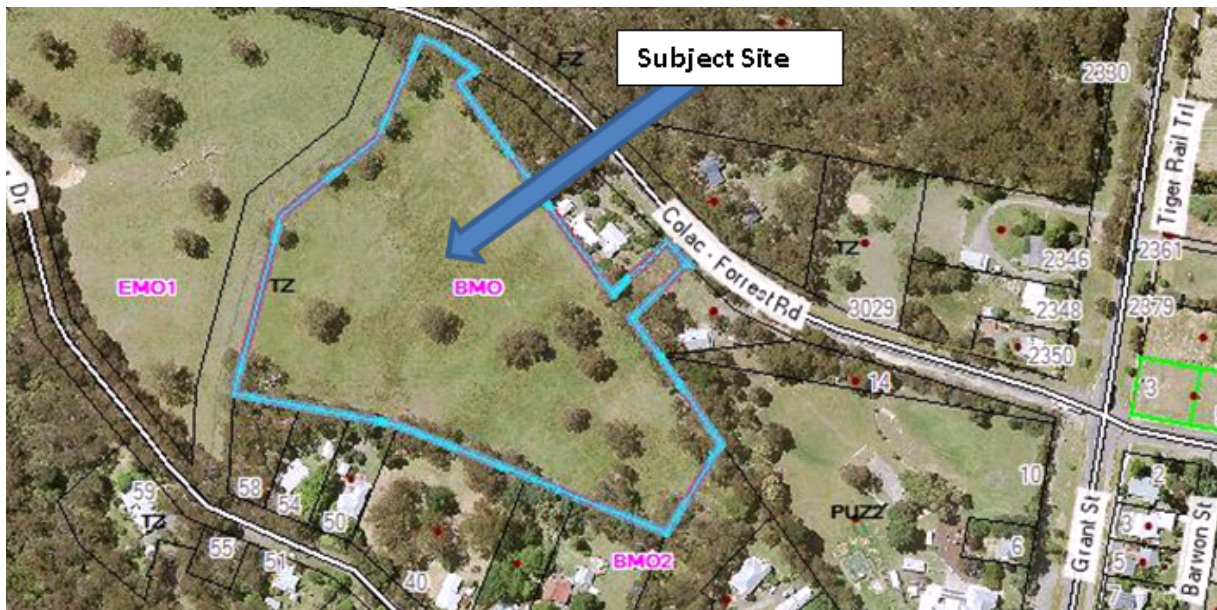
<b>ADDRESS AND PROPERTY DETAILS</b>	3036 Colac Forrest Road, Forrest	<b>APPLICATION NUMBER</b>	PP253/2017-1
<b>PROPOSAL</b>	Eight (8) lot subdivision, associated works and native vegetation removal		
<b>PERMIT TRIGGERS</b>	Clause 32.05-5 (TZ) – Subdivision; Clause 44.01-5 (EMO) – Subdivision; Clause 44.06-2 (BMO) – Subdivision; Clause 52.29 – Subdivision and Alteration of Access to RDZ1; and Clause 52.17 – Native Vegetation		
<b>TRIGGER FOR DETERMINATION BY COMMITTEE</b>	Number of objections (7) Note: Council resolution required for VCAT appeal against failure to determine		
<b>ZONE</b>	Township Zone; Adjacent Road Zone Category 1	<b>OVERLAYS</b>	Erosion Management Overlay (EMO1) and Bushfire Management Overlay (BMO)
<b>COVENANTS</b>	Nil		
<b>CULTURAL HERITAGE</b>	No		
<b>OFFICER</b>	Ian Williams	<b>GENERAL MANAGER</b>	Ian Seuren
<b>DIVISION</b>	Development & Community Services		
<b>ATTACHMENTS</b>	<ol style="list-style-type: none"> <li>1. P P 253 2017 - 3036 Colac Forrest Road Forrest - Application Form <b>[8.1.1]</b></li> <li>2. P P 253 2017 - 3036 Colac Forresr Road Forrest - Application Plans <b>[8.1.2]</b></li> <li>3. P P 253 2017 - 3036 Colac Forrest Road Forrest - Copy of Title <b>[8.1.3]</b></li> </ol>		

# 1. LOCATION PLAN / AERIAL PHOTO

## LOCATION PLAN



## AERIAL PHOTO



## 2. RECOMMENDATION

*That Council advises the Victorian Civil and Administrative Tribunal (VCAT) that:*

- A. *Had an appeal not been lodged, it would have resolved to issue a Notice of Decision to Refuse to Grant a Permit for an Eight (8) Lot Subdivision, Associated Works and Native Vegetation Removal at 3036 Colac-Forrest Road, Forrest, on the following grounds:***
- 1. The proposal fails to provide an adequate drainage and effluent disposal design taking into account the topography of the land, the presence of an ephemeral waterway and the density of the development.***
  - 2. The proposed subdivision fails to adequately address the requirements of Clause 56.07-4 (Urban Runoff Management Objectives) of the Colac Otway Planning Scheme, which seeks to minimise inconvenience to residents from urban runoff and to ensure that the street operates adequately during major storm events and provides for public safety.***
  - 3. The proposal fails to adequately address the requirements of Clause 56.07-3 (Waste Water Management Objective) of the Planning Scheme, which seeks to provide a waste water system for the lots that is adequate for the maintenance of public health and the management of effluent in an environmentally friendly manner.***
  - 4. The proposed vegetation loss fails to comply with the application requirements specified in the 'Guidelines for the removal, destruction or lopping on native vegetation' (Department of Environment, Land, Water and Planning, 2017) as set out in Clause 52.17 (Native Vegetation) of the Planning Scheme.***
- B. *Council considers the subdivision of the subject land into residential lots to be acceptable and appropriate in principle, subject to drainage and wastewater concerns being appropriately addressed (which may require a reduction in the number of lots).***

## 3. PROPOSAL

Planning permission is sought for the subdivision of the subject land into eight (8) lots, with associated works and the removal of native vegetation (15 trees), as shown on the plan below.

Under a previous planning application (PP74/2010-01), the applicant sought planning approval for an eight (8) lot subdivision and associated works at 3036 Colac-Forrest Road. This was refused by Council's Planning Committee on 14 February 2013 on grounds relating to "stormwater disposal, effluent disposal and bushfire associated risks". Council's decision to refuse this application was upheld by VCAT. The VCAT Order acknowledged that the policy framework cautions against approving development until the erosion, effluent disposal, drainage and bushfire risks have been adequately addressed. The applicant has submitted the current application (PP253/2017-1) with the aim being to address the concerns previously raised.



**PLAN OF PROPOSED SUBDIVISION & BUILDING AND EFFLUENT ENVELOPES**  
**CROWN ALLOTMENTS 5J(Pt), 5J1 & 5X(Pt)**  
**SECTION A**  
**PARISH OF YAUGHER**  
**COUNTY OF POLWARTH**  
**RE: NEWLANDS PASTORAL CO.**  
**SCALE 1:1250** (Original Sheet Size A3)

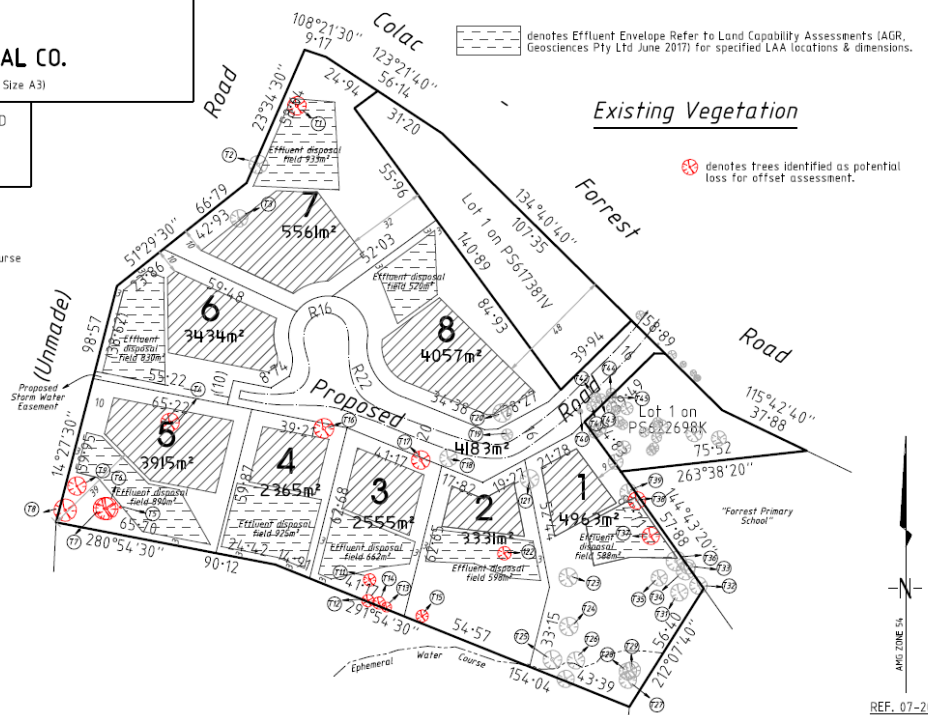
ROD BRIGHT & ASSOCIATES PTY LTD  
 LICENSED SURVEYORS & TOWN PLANNERS  
 26 MURRAY STREET COLAC 3250  
 TEL 5231 4883 ACN 007 206 975

**LEGEND**

Tree  
 Ephemeral water course

NOTE  
 Certain dimensions shown herein are subject to survey.  
 Certain areas shown herein are subject to survey.  
 Land contained within C/T Vol. 11174 Fol. 481, being Lot 2 on PS622698K

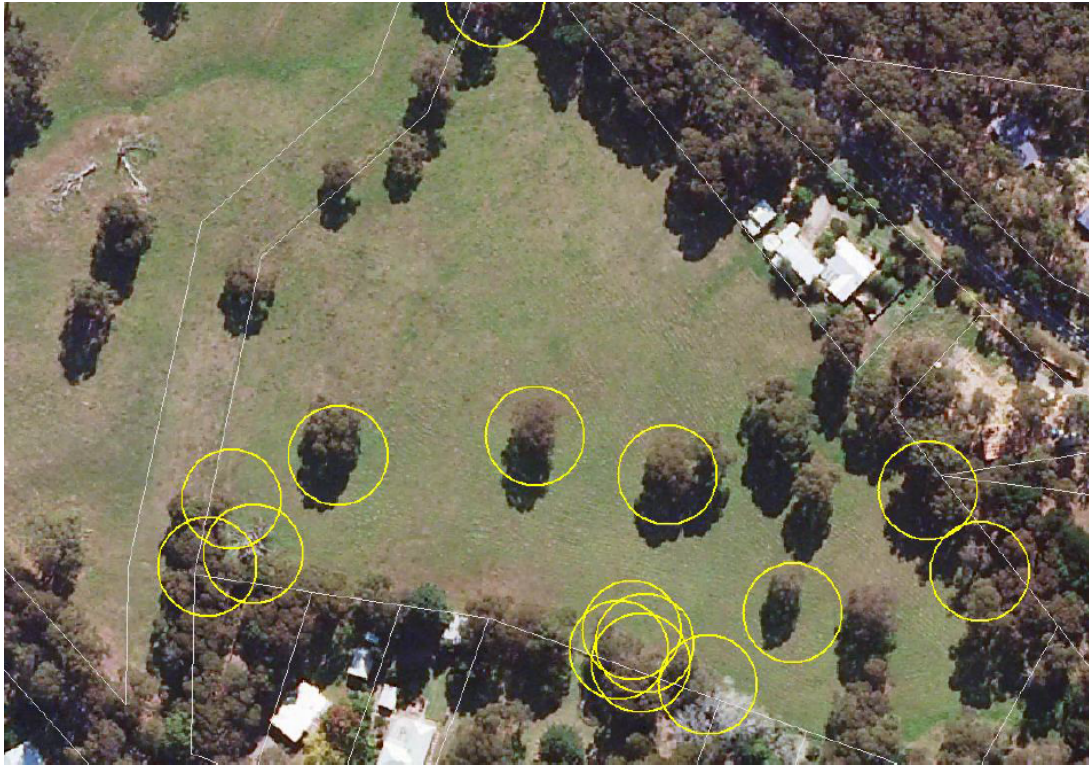
 denotes Dwelling Envelope with 6 metre setback from road boundary and side boundaries unless otherwise shown on the Plan. Outbuildings excepted.  
 denotes Effluent Envelope Refer to Land Capability Assessments (AGR, Geosciences Pty Ltd June 2017) for specified LAA locations & dimensions.



The proposed lots would range in size from 2,365sqm to 5,561sqm and, due to the constraints on the ground, the shape of the proposed lots would be fairly irregular. The applicant has included building envelopes (with 6m setbacks from road and side boundaries) and effluent envelopes which are cross referenced in the submitted Land Capability Assessment reports (LCAs). The above plan also identifies the location of the trees that would be lost as a result of this proposal.

The aerial image below is an extract from the Biodiversity Impact Assessment submitted with the application. The image also identifies the location of the 15 scattered trees which must be considered as lost under this application. The applicant's report identifies the vegetation lost as being within the 'Moderate Risk Based Pathway' with a total habitat hectare of 0.211.





Note: Following a Consultation Meeting (i.e. a meeting attended by the applicant and objectors, facilitated by Council) officers had requested further clarification on elements of the proposal, such as wastewater disposal and stormwater management. Whilst it was indicated that the requested information would be provided the applicant instead opted to lodge an appeal to VCAT against Council's failure to make a decision on the application.

## 4. SUBJECT LAND & SURROUNDINGS

The application site is located on the south side of the Colac Forrest Road, approximately 300 metres to the northwest of the Forrest Township. The site comprises an irregularly shaped parcel of land, with an area of 3.437 hectares. The site does not contain any built form and is currently used for grazing horses. A number of remnant trees are scattered across the site. The land falls to the south and southwest. Land to the south, east and north generally comprises lots of 1,500 to 6,000 square metres, occupied by single dwellings.

A primary school abuts the eastern boundary. Land to the west is vacant and used for grazing. The commercial centre of the township of Forrest is located on Grant Street, to the site's southeast. The centre contains several cafes and several other commercial premises. The town is a small service centre for the farming community and for visitors to the region.



The above image was taken from the southern corner of the lot, facing towards the east. An ephemeral drainage line is located to the south-east of the subject land. The drainage line is not formed or carved through water erosion so as to form a channel and does not have defined edges or 'lips'. Whilst the applicant has stated that the drainage line does not continue into Turner Drive but dissipates into neighbouring land to the south of the subject land, the VCAT decision noted that the drainage line continues through the rear part of Nos. 34, 40 and 50 Turner Drive (para. 22).

## 5. PLANNING SCHEME PROVISIONS

### Planning Policy Framework

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 the application are identified below:

- 11.01 - Victoria
- 11.01-1s - Settlement
- 11.02 - Managing Growth
- 11.02-1s - Supply of Urban Land
- 12 - Environmental and Landscape Values
- 12.01 - Biodiversity
- 12.01-1s - Protection of Biodiversity
- 12.01-2s - Native Vegetation Management
- 12.03 - Water Bodies and Wetlands
- 12.03-1s - River Corridors, Waterways, Lakes and Wetlands

- 13 - Environmental Risks and Amenity
- 13.02 - Bushfire, 13.02-1s Bushfire Planning
- 13.04-2s - Erosion and Landslip
- 14.02 - Water
- 14.02-1s - Catchment Planning and Management
- 15.01-3s - Subdivision Design
- 15.01-5s - Neighbourhood Character
- 19.03 - Development Infrastructure

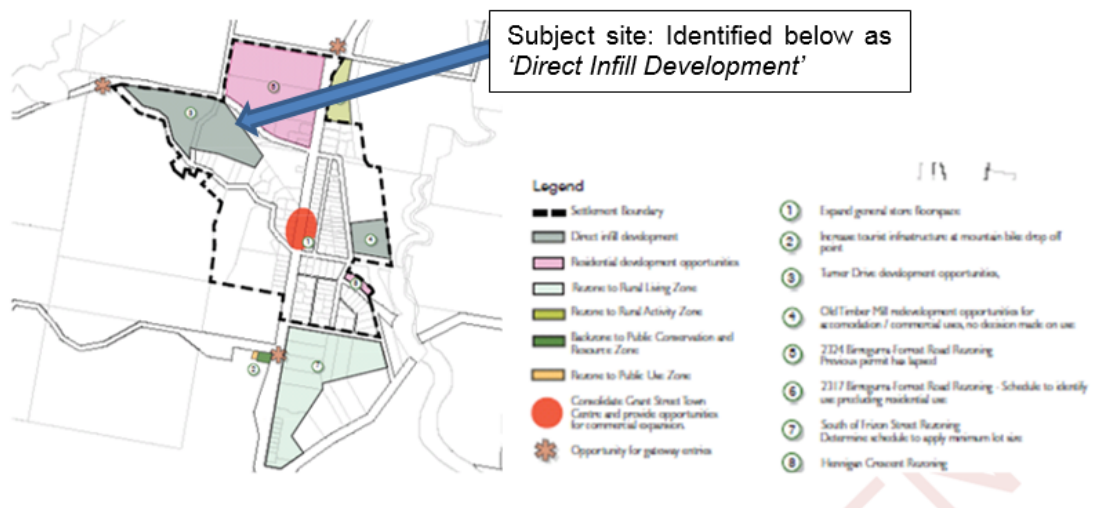
### Local Policy Planning Framework (LPPF), including the Municipal Strategic Statement (MSS)

The Local Planning Policy Framework (LPPF) 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
- 21.03-7 - Forrest
- 21.04 - Environment

#### The Rural Living Strategy

Planning policy encourages further development within the town boundaries for Forrest, although it is acknowledged that future development needs to demonstrate that erosion and bushfire risk can be mitigated (this was also previously identified by VCAT in relation to the subject land, as discussed below). This approach is consistent with the *Rural Living Strategy* (December 2011) which identifies the application site as a preferred location for limited expansion, noting that the site is also subject to constraints.



The map above is an extract from page 128 of the *Rural Living Strategy*. The map identifies the application site as an area of Forrest for 'direct infill development'.

The *Rural Living Strategy* also acknowledges that the town is currently undergoing a transitional period as it moves away from a reliance on the timber industry and embraces its emerging role as a tourist destination based around the natural beauty of the Otways and a network of world class mountain bike trails. Opportunities for development are currently limited to infill on existing vacant lots within the Township Zone, with land to the north of the township constrained by flooding, landslip and bushfire. Rural residential development is generally most appropriately located adjacent to existing settlements, with access to a range of services and infrastructure as in Forrest.

#### Forrest Structure Plan (Amendment C69 July 2013)

The purpose of a structure plan is to provide a framework for settlement and integrated development of a town's activity centre within its natural setting. The *Forrest Structure Plan* provides guidance to the community, government, business and the development industry about appropriate directions and opportunities for change. Section 1.2 states "the plan defines specific objectives for the growth within Forrest, and identifies opportunities and strategies to complete those objectives". The Structure Plan establishes a defined settlement boundary to provide a strategic direction for the town's growth and notes that opportunities for expansion are limited.

An extract from the *Forrest Current Land Supply Analysis* (page 35) is provided below and notes that there is a theoretical supply of 9 lots within the subject site (one more than proposed under the current application). The location of the application site is identified as No. 2 below.



#### **Other relevant provisions**

##### Colac Otway Planning Scheme – Clause 56 – Subdivision

The purpose of this clause is to achieve residential subdivision outcomes that appropriately respond to a site and its context. An application to subdivide land *must* meet all of the objectives included in the clauses specified in the zone and *should* meet all of the standards included in the clauses specified in the zone. Clauses 56.03-5, 56.04-2 to 56.04-5, 56.05-1, 56.06-2, 56.06-4, 56.06-5, 56.06-7 and 56.06-8 to 56.09-4 of the planning scheme, which are relevant to this application, are considered later in this report.

## Relevant Planning Scheme amendments

There are no Planning Scheme amendments relevant to the consideration of this application.

## 6. REFERRALS

### Internal Referrals

The application was referred internally to Council's Infrastructure, Health and Environment Units. Objections were raised by all Units, which are discussed later in this report.

### External Referrals

This application was externally referred to Barwon Water, the CFA, Powercor, Tenix (Gas) and VicRoads under Section 55 of the *Planning and Environment Act 1987* (the Act). The Department of Environment, Land, Water and Planning (DELWP), the Environmental Protection Authority (EPA) and the Corangamite Catchment Management Authority (CCMA) were notified of the application under Section 52 of the Act. No responses were received from the EPA or CCMA. No objections were received from the other authorities, subject to conditions being included on any permit issued.

Note: Correspondence from DELWP regarding the process of the native vegetation removal requirements, which version of the regulations should be applied and which version of the guidelines to follow was somewhat contradictory and unclear. When Council therefore sought clarification from DELWP regarding the native vegetation removal assessment and documentation required, DELWP acknowledged that it may have been appropriate to seek further information earlier in the assessment process, but advised that it does not wish to object to the proposal or require further information at this stage. This is discussed in greater detail later in this report, noting the Environment Unit's objection to the proposal given the concerns with the information submitted.

## 7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application to all adjoining land owners/occupiers. A total of seven (7) letters of objection were received in response. The objections are summarised as follows:

### Objection

No prior notification of this application to surrounding landowners, which has not afforded landowners the ability to elicit independent advice on the planning documents.

### Response

The applicant is not obliged under the Act to undertake pre-application notification to adjoining landowners.

### Objection

The proposed development is out of character with the surrounding area. The subdivision and construction of a court and bowl, lighting, and the number of lots is not in keeping with the surrounding character. The lots would be treeless because of fire, wastewater and drainage requirements fitting a pre-determined number of blocks.

### Response

VCAT has previously provided direction that the subdivision of this land into eight lots would not compromise the neighbourhood character of the immediate and surrounding area. This is considered in greater detail within the assessment section of this report.

### **Objection**

There is insufficient information on the native vegetation impacts and there is no landscaping concept plan. The loss of vegetation would have a negative impact on the wildlife of the area and the general environment.

### Response

Council's Environment Unit has considered this application, in consultation with DELWP. Council's Environment Unit considers that the proposal fails to comply with the application requirements specified in the '*Guidelines for the removal, destruction or lopping on native vegetation*' (DELWP, 2017) as set out in Clause 52.17 (Native Vegetation). Should this application be allowed by VCAT, then a condition would be recommended by Council to ensure that a planting schedule is provided prior to certification of the plan of subdivision.

### **Objection**

The proposal would lead to soil damage and erosion. The Land Capability Assessments found that the existing soil is of poor quality, which would increase the risk of erosion.

### Response

A Geotechnical Assessment has been provided as part of the application. The report notes that the calculated risk for the proposal is within the '*acceptable range*' as specified in the schedule to EMO1, which is considered to be acceptable. It should also be noted that a planning application required under the EMO1 is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

### **Objection**

The proposed sewage solutions for the number of lots proposed are likely to result in effluent on adjacent land. The LCAs on the individual lots are unreliable on at least four grounds:

- First, the applicant bases wastewater flow calculations on water consumption of 180 litres per person per day. The effluent field areas are calculated on this basis. Although EPA Code 2016 suggests 180 litres per person per day to calculate a minimum wastewater flow, a realistic figure would be higher.
- Second, Bureau of Meteorology (BOM) data for rainfall in Forrest is not used in the LCAs. Relative to BOM records, the LCAs understate average annual rainfall in Forrest by 12.3% (claiming 910 mm rather than 1038 mm) and peak monthly rainfall in August by 11.5% (115 mm rather than 130 mm). This means critically important assumptions in the application, such as run-off, drainage capacity, effluent disposal capacity, etc. are also under-stated by about 12%.
- Third, reserve effluent fields may be required but could not fit on the proposed lots. EPA Code 2016 requires reserve effluent fields equal in size to the operating fields and separately located, in case of failure of the operating fields (page 43). The fields are mandatory if the Council considers there is environmental or operational risk with the proposed fields. The LCAs do not contain any risk analysis of the site as a whole or for individual lots so the Council could not make an informed decision on the risk posed by the applicant's design.

- Fourth, there is too much ambiguity and uncertainty in the LCAs. For example, the Lot 1 LCA recommends secondary treatment but on page 8 says, almost in passing, advanced treatment might be necessary.

#### Response

Council's Health Protection Unit considers that the proposal fails to adequately address the requirements of Clause 56.07-3 (Waste Water Management Objective) which seeks to provide a wastewater system for the lots that would be adequate for the maintenance of public health and the management of effluent in an environmentally friendly manner. It is accepted that the submitted LCAs would achieve the minimum standard in compliance with EPA Code of Practice -Onsite Wastewater Management (891.4) and the Australian Standard 1547:2012. However, whilst the minimum standard would be met, the EPA Code acknowledges that wastewater systems even when properly designed can still pose a public health risk. Council's Health Protection Unit has reviewed the application and advised that it objects to the proposal.

#### **Objection**

The proposed effluent field setback from the Forrest Primary school boundary is not shown but appears to be at most 1 metre. EPA Code 2016 requires a 3 metre setback (page 41, particularly footnote 15).

#### Response

Council's Health Protection Unit has advised that a 1.5m setback has been recommended in the submitted LCA (p25 for Lot 1). This is the minimum recommended setback for a secondary treatment and, as such, would comply with the Code.

#### **Objection**

The application should be referred to the Environment Protection Agency (EPA) for resolution.

#### Response

Council referred this application to the EPA on 19/12/2018. The EPA has not responded in writing to this referral, notifying Council by telephone only that this is a matter for Council to consider.

#### **Objection**

The proposed drainage solutions are likely to be insufficient and exacerbate runoff into adjacent properties. The VCAT Tribunal specifically requested a schematic drainage plan at planning application stage.

#### Response

Council's Infrastructure Unit has considered the proposed drainage solution presented by the applicant and, for the reasons outlined later in this report, has raised an objection. The proposal is considered to fail to adequately address the requirements of Clause 56.07-4 (Urban Runoff Management Objectives), which seeks to minimise inconvenience to residents from urban runoff and to ensure that subdivisions operate adequately during major storm events and provide for public safety.

#### **Objection**

There would be a significant increase in traffic on the quiet country road and a single point of access on an 80kph stretch of road with double lines. If the subdivision is approved, Council should liaise with VicRoads to have the road widened at the entry point to provide a turning lane.

### Response

This application was referred to VicRoads, which raised no objection to the proposed access onto Colac-Forrest Road and has not required this road to be widened. VCAT considered the issue of increased traffic onto the Colac-Forrest Road under PP74/2010, noting that this road experiences light traffic levels and, as such, there was not sufficient reason to refuse the earlier application on this ground.

### **Objection**

The proposed subdivision must guarantee fire safety as previously required by VCAT. There is no analysis of the fire risk, and the applicant's response on this matter comes nowhere near the standard.

### Response

A bushfire plan has been submitted within this application to demonstrate that lots would be capable of meeting defendable space in accordance with Column C – BAL 29 of Table 2 to Clause 53.02-5 (Bushfire Planning – Tables), and the approved measure AM5.2. Defendable space would be located wholly within the title boundaries of the lots. The CFA has not objected to this application subject to the Bushfire Management Plan prepared by Rod Bright and Associates (version 7, dated 14/06/2018) being endorsed to form part of any permit issued.

### **Objection**

A safe pedestrian and bike pathway from the site to the township paths must be provided.

### Response

Council's Infrastructure Unit has considered this issue and, should this application be allowed by VCAT, an appropriate permit condition will be recommended to ensure a concrete footpath is provided between the subject site and the existing footpath at the corner of Colac Forrest Road and Birregurra-Forrest Road (Grant Street).

### **Objection**

The application site is being considered in the Barwon Water study of wastewater management in Forrest, as outlined in the Forrest Structure Plan prepared by Colac Otway Shire. Barwon Water notes that almost half of the existing septic tanks in the township are unsatisfactory.

### Response

Council cannot delay its decision based on the potential for alternative wastewater treatment options in Forrest. Council must make a decision on the current application based on today's circumstances. The decision on whether to proceed and invest in the subdivision, whilst waiting for a decision on the current Barwon Water project and funding of the preferred design, would rest with the landowner. Should a form of reticulated sewerage become available during or post subdivision, the landowner would need to respond accordingly at that time.

### **Objection**

The single access road would be directly alongside the properties at 3040 and 3030 Colac-Forest Road. These properties would overlook the new road, which would be devoid of screening, with little or no privacy.

### Response

If the subdivision is allowed by VCAT, any future dwellings on Lots 1 and 8 would be required to be designed to address the overlooking requirements of Clause 54.04-6 ('ResCode' – Overlooking Objective) as assessed at the time by the Relevant Building Surveyor. Additional landscaping would also be required by permit condition adjacent to the access if required by VCAT.



## 8. OFFICER'S ASSESSMENT

### Relevant Background

Planning application PP74/2010-01, which sought a permit for an eight (8) lot subdivision and associated works, was refused by Council's Planning Committee on 14 February 2013. Council's Planning Committee refused this application on grounds relating to "stormwater disposal, effluent disposal and bushfire associated risks". At the time the lots proposed ranged from 3,159 square metres to 5,248 square metres, and details were provided of building and effluent disposal envelopes. Access to all lots was proposed via a single access road onto the Colac Forrest Road.

Council's decision to refuse this application was upheld by VCAT on 3 October 2013. The VCAT Order noted that the key issues for consideration included:

- *orderly planning of the area,*
- *proximity of the land to any public land,*
- *the degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard,*
- *the suitability of the land for subdivision,*
- *the use of the land and nearby land,*
- *the density of the proposed development and the design and siting of buildings having regard to safety and the risk of spread of fire.*

The VCAT Order noted that at the time the planning policy framework provided cautious support for the review site to be subdivided and developed with dwellings. The land is identified in strategic studies and policy to be the preferred location for limited expansion, being included in an appropriate zone. The VCAT Order also acknowledged that the policy framework cautions against approving development until the erosion, effluent disposal, drainage and bushfire risks have been adequately addressed. Additional detail on these matters is provided below, with the VCAT decision being a material consideration in the assessment of the current application.

### Wastewater

The VCAT Tribunal Member considered whether the proposal presented any adverse environmental impacts, acknowledging the detail provided within the Land Capability Assessment (LCA) reports. In summary, he noted that:

- An ephemeral waterway runs from the review site through the rear part of Nos. 34, 40 and 50 Turner Drive.
- The southernmost lots would include effluent disposal envelopes that would be located 6 metres from property boundaries and 30 metres from an 'occasional water course', being the ephemeral stream that flows across the review site and the neighbours' properties.
- The southern lots were not considered to be capable of providing treatment areas with adequate separation distances from the waterway.
- The submitted LCAs did not include contour lines, the precise location of the waterway, the nearby Roadknight Creek, the depth to groundwater in winter, the condition of adjoining properties, the location of infrastructure, or details of the types of primary and secondary wastewater systems that might be appropriate given the soils, slope and groundwater conditions identified.

- Lots 1-5 (on the steeper sloping land nearest to the watercourse) would have building envelopes for the dwellings at their northern end (on the higher land) and wastewater envelopes at the southern end, only short distances from the ephemeral waterway. They would not provide the separation distances from the waterway now required by the Code.
- The proposal did not adequately demonstrate compliance with the Code of Practice Onsite Wastewater Management (February 2013).
- The LCAs note that the soil condition is poor and a cautious approach should be taken with wastewater solutions. Effluent solutions to the lots may be possible, although these need to be developed at subdivision stage.

The Tribunal Member noted that, whilst Council's ground of refusal was inadequate in terms of its specificity, VCAT shared its sentiment adding that, if the wastewater envelopes are not appropriate, it is not sufficient in a sensitive locale to rely on a note on a permit to advise prospective purchasers that there may be problems complying with the EPA Code. It is not adequate on a highly sensitive lot to defer the solution to the next stage of development and the next owner. The Member added that it would be poor planning to allow the land to be subdivided into lots and then find they are incapable of accommodating dwellings with septic tanks. It was noted that this is not an issue that can be taken on trust and deferred to a later stage of development (para. 36).

#### Drainage

The VCAT Member noted Council's and objectors' concerns that, as the site drains to the south and west, increased runoff caused by additional hard surfaces would adversely affect the adjoining land. He advised that:

*"Whilst I consider that the matter of drainage can be resolved through permit conditions and secondary consent; I concur that in light of the area's high rainfall, the topography of the land and the presence of an ephemeral waterway, a schematic drainage scheme should accompany the application for subdivision. It need not provide all the technical details, but be sufficiently resolved to provide comfort to the responsible authority and neighbours that the matter can be resolved."* (para. 58)

#### Access onto Colac-Forrest Road

VCAT acknowledged that Colac-Forrest Road is narrow and view lines are limited. However, the Tribunal Member noted that other nearby properties have access points, and traffic levels are light. On this basis, it was considered that local residents who use the Colac-Forrest Road regularly would learn to use it safely and therefore no objection was raised.

#### Bushfire concerns

With regard to the safety impacts and whether the risks from wildfire had been adequately addressed, the Tribunal Member noted that:

- The application for the planning permit was lodged with Council on 18 March 2010 and the initial application would have been assessed under the provisions of the Wildfire Management Overlay.
- The Bushfire Management Overlay was introduced through Amendment VC83 on 18 November 2011. The permit application was amended in July 2012.

The VCAT Member considered that the permit application was required to demonstrate that it complied with the then current provisions of clause 13.05 and clause 44.06 of the Bushfire Management Overlay. It was also noted that clause 13.05 had no transitional provisions and that it

required a highly precautionary approach to be taken to bushfire risk. The objectives of the Bushfire Management Overlay closely align with clause 13.05 as it provides that development should not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.

The Tribunal Member acknowledged that the overlays applicable to the land would trigger the requirement for further planning permits for any dwellings on each of the lots and would be subject to the provisions of clause 44.06. He also added that deferring the proper assessment of wildfire risk to a later stage and to possibly eight separate owners was unacceptable and contrary to clauses 13.05 and 44.06 and, as such, the matter needs to be resolved at the subdivision stage.

#### Neighbourhood Character

VCAT did not consider that '*neighbourhood character*' was a sufficient reason to refuse the application. The Member acknowledged that the topography of the land would mean that not all lots and subsequent dwellings would be visible from adjoining properties or the Colac-Forrest Road. The land is distant from the township and the adjoining lots to the south are largely comparable in size to the proposed lots. He also noted that planning policy generally encourages new development to be directed to existing towns and that land is to be used efficiently to minimise the incursion of rural lifestyle dwellings into areas with agricultural and landscape value. However, it was recognised that the potential fire risk, wastewater and drainage issues all need to be comprehensively addressed as part of any further proposal to subdivide this land.

#### Current Application (PP253/2017-1)

It remains that the key issues for consideration in the determination of the current planning application by Council's Planning Committee are whether the proposal positively responds to the existing and preferred neighbourhood character for the township of Forrest and adequately addresses stormwater disposal, effluent disposal and bushfire associated risks.

As noted earlier in this report, the applicant has appealed against Council's failure to determine the application. At the time the appeal was lodged, officers were awaiting additional information on matters such as wastewater disposal and stormwater management from the applicant, which the applicant advised would be submitted to address outstanding concerns. As the requested information was not submitted, this report seeks a resolution on Council's position on the application as supported by the documentation submitted to date.

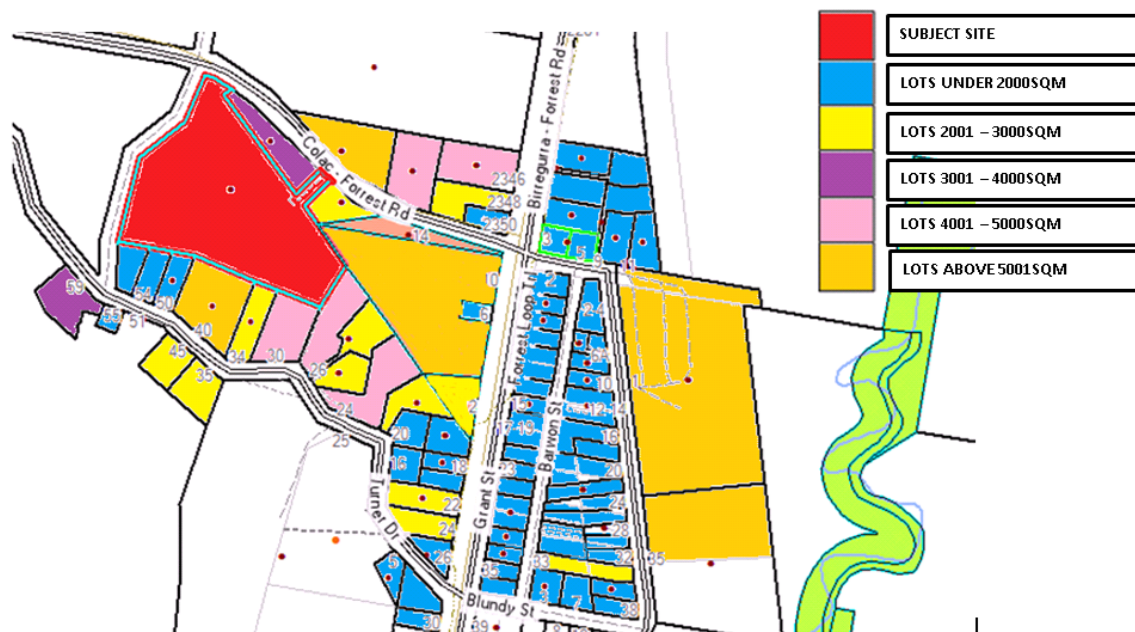
The subject land is located within the Township Zone, the key purpose of which is to provide for residential development in small towns and to encourage development that respects the neighbourhood character of the area. A permit is required to subdivide the land under this zone and to construct buildings and works, but no permission is required to use a lot for a dwelling provided the requirements of clause 32.05-3 (relating to wastewater, potable water supply, and electricity supply) are met. With regard to this proposal, consideration must be given to the suitability of the land for subdivision, the use of the land and nearby land, the density of future development on the proposed lots, and the design and siting of buildings having regard to safety and the risk of spread of fire.

#### Neighbourhood Character

VCAT has previously expressed the view that the subdivision of this land into eight lots would not compromise the neighbourhood character of the immediate and surrounding area, and this was therefore not a sufficient reason to refuse the application. The proposed lot configuration under the current application would also comprise eight lots, which would range in area from 2,365sqm to 5,561sqm.

The diagram below is an accurate representation of lot sizes adjacent to the subject site within Forrest. Lots adjacent to the subject site range in area from under 2,000sqm to above 5,000sqm. It remains that the lot areas proposed under this application would not be dissimilar to existing lot areas surrounding the application site. Lots to the east and south within Grant Street are also within the Township Zone and are, on average, considerably smaller (being under 2,000sqm in area) than those proposed under this planning application.

Planning policy generally encourages new development to be directed to existing towns and states that land is to be used efficiently to minimise the incursion of rural lifestyle dwellings into areas with agricultural and landscape value. Clause 56.03-5 (Neighbourhood Character Objective) also seeks to ensure that subdivisions are designed to respect the neighbourhood character, responding to the urban environment whilst protecting significant vegetation. There is no recognised neighbourhood character for this part of Forrest and, as such, lots are generally designed to address the natural constraints of the site. VCAT was previously not persuaded that '*neighbourhood character*' was a sufficient reason to refuse the application (PP74/2010-1), noting that the topography of the land meant that not all lots and subsequent dwellings would be visible from adjoining properties or the Colac-Forrest Road. The land is distant from the township of Forrest and the adjoining lots to the south are largely consistent in size to the lots proposed under this application.



Both the *Rural Living Strategy* and the *Forrest Structure Plan* identify the application site as a preferred location for limited expansion, whilst acknowledging that the site is subject to constraints. The *Forrest Structure Plan* also acknowledges that there is a theoretical supply of 9 lots on this site. It is considered that the proposed density would be consistent with policy advice for this part of Forrest, with proposed lot areas and configurations positively responding to the neighbourhood character of the immediate and surrounding area. The land is identified in strategic studies and policy to be the preferred location for limited expansion and has been included in an appropriate zone. However, it is considered that, whilst the *principle* of the proposed lot areas and configuration could be considered acceptable, this is governed by policy framework which cautions against approving development until the erosion, effluent disposal, drainage and bushfire risks have been adequately resolved.

### Bushfire Management Overlay (BMO)

The current planning application was submitted to Council on 19 October 2017. Planning Scheme Amendment VC148 was introduced on 31 July 2018 and included changes to the Victoria Planning Provisions (VPP) and all planning schemes arising from the Victorian Government's Smart Planning program. With regard to the obligations under the Bushfire Management Overlay, the applicant prepared a Bushfire Management Statement (BMS) dated June 2014 (revised September 2014 under Amendment VC109 and October 2017 under Amendment VC132) with an updated Bushfire Management Plan (BMP) dated 14 June 2018.

The *Forrest Structure Plan* identifies Forrest as having a high risk from bushfire and it is acknowledged that dense vegetation borders the site to its south and southwest. It should also be noted that VCAT previously stated that the report submitted under PP74/2010 had not demonstrated compliance with the relevant provisions of the Bushfire Management Overlay.

Clause 44.06 (Bushfire Management Overlay) of the Planning Scheme is specific to bushfire and seeks to ensure that development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level. Clause 44.06-1 states that a planning permit is required to subdivide land. An application must meet the requirements of Clause 53.02 (Bushfire Planning) and must address the requirements of Clause 53.02-4 (Bushfire Protection Objectives).

Clause 53.02-4.4 (Bushfire Planning - Subdivision Objectives) seeks to provide lots that are capable of being developed in accordance with the objectives of Clause 53.02 and to specify at the subdivision stage future bushfire protection measures. The bushfire attack level must correspond to the defensible space provided in accordance with Table 2 to Clause 53.02-5 and this must be noted on the building envelope. Clause 53.02-5 - Table 2 '*Defendable Space construction*' specifies a minimum future construction standard of Bushfire Attack Level (BAL) 29.

The applicant has provided a bushfire plan to demonstrate that lots would be capable of meeting defensible space requirements in accordance with Column C – BAL 29 of Table 2 to Clause 53.02-5, and also the approved measure AM5.2. Defendable space would be located wholly within the title boundaries of the land to which the proposal applies. The design proposes to share defensible space across boundaries within the subdivision. It is noted that the BMP acknowledges that vegetation removal is likely to be limited to the removal of tree branches less than 2 metres in height and separation of the canopy of existing trees.

With regard to '*Approved Measure*' AM2.2, the submitted report states that access and water supply to the allotments would be provided to meet the requirements of the CFA. The road reserve width is proposed at 16m, with roll top curves and pavement width of 8m horizontal clearance (and 4m vertical), with the court bowl designed to provide for turning of fire brigade vehicles to meet the specification of Austroad Design for an 8.8 metres Service Vehicle.

A copy of this application together with accompanying reports was referred to the CFA under Section 55 of the Act. The CFA has not objected to this application subject to the Bushfire Management Plan prepared by Rod Bright and Associates (version 7, dated 14/06/2018) being endorsed to form part of any permit issued. The Bushfire Management Plan must be included as an annexure to a legal agreement under Section 173 of the Act, which would be registered on the title of each lot, to give effect to requirements of the Planning Scheme.

In light of the above, it is considered that the proposal adequately addresses the requirements of Clause 44.06-1. It should be noted that under Clause 44.06-7, an application is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3)

and the review rights of section 82(1) of the Act, unless a schedule to this overlay specifies otherwise. The Schedule is silent on this matter.

#### Erosion

In response to the requirement of the Erosion Management Overlay, the applicant has provided a Geotechnical Assessment by 2020 Engineering Solutions (reference ES1448.2, dated 31/03/14, and revised on 18/12/17 and 16/01/18). The submitted report concludes that the proposal should be allowed as the calculated risk is within the 'acceptable range' as specified in the schedule to the EMO1. The report references the application plans and includes the required Form A which confirms that the land can meet the acceptable risk criteria. This is considered to meet the requirements of EMO1 and to be acceptable.

#### Clause 52.29 – Subdivision Adjacent to, and Access to, the Road Zone Category 1 (RDZ1)

Under Clause 52.29, a permit is required to subdivide land adjacent to a road in a RDZ1, and to create or alter access to a RDZ1. It has previously been raised by objectors that traffic generated by future development would have limited sightlines onto Colac-Forrest Road. VCAT considered this matter under PP74/2010 and noted at the time that other nearby properties already have access points onto this road, which experiences light traffic levels, and, as such, this was not a sufficient reason to refuse the application. Under the current application, the proposal has been considered by VicRoads, which raised no objection subject to permit conditions should this application be allowed by VCAT.

#### Clause 56 - Subdivision

In response to the requirements of Clause 32.05-2 (Township Zone), a detailed assessment was undertaken against the objectives and standards of the relevant clauses for 3-15 lots. Detailed consideration of clause 56.07-3 (Waste Water Management Objective) and clause 56.07-4 (Urban Runoff Management Objectives) has been undertaken within the body of this report.

#### Wastewater - Land Capability

Clause 56.07-3 (Waste Water Management Objective) seeks to ensure the provision of a wastewater system that is adequate for the maintenance of public health and the management of effluent in an environmentally friendly manner. In support of this application, the applicant has advised that wastewater systems would be provided to the satisfaction of Council in accordance with current EPA standards and in accordance with the LCAs submitted with the application.

The proximity of the ephemeral waterway, which runs from the subject site through the rear part of Nos. 34, 40 and 50 Turner Drive, and the requirement for effluent disposal envelopes on each of the proposed lots, particularly the southernmost lots, is a matter which must be fully addressed by this application. At the time of the earlier VCAT Hearing, the VCAT member undertook a site inspection during September 2013, noting that the ephemeral waterway comprised *"a fast flowing waterway some 0.3-metre-wide, ankle deep, with the ground of the adjoining 2 to 3 metres on each side very wet. It was also noted at the time that the topsoil of the review site and the adjoining lots was also very wet"*.

It would be poor planning to allow the subject land to be subdivided into lots and then find they are incapable of accommodating dwellings with septic tanks. As VCAT noted, this is not an issue that can be taken on trust and deferred to a later stage of development.

The proximity of the effluent disposal envelopes to the ephemeral waterway was a matter of concern raised by VCAT. The Tribunal Member noted that the southern lots would have effluent disposal envelopes 6m from the property boundaries and 30m from the watercourse and, as such, these were not capable of providing treatment areas with adequate separation distances as required by the Code.

Furthermore it was noted that, given the sensitive location of this site, to rely on a note on a permit to advise prospective purchasers that there may be problems complying with the EPA Code was unacceptable. The Member was also concerned that as the site drained to the south and west, increased runoff caused by additional hard surfaces would adversely affect the adjoining land. He was concerned that the effluent envelopes for lots 1-5 would be unduly close to the ephemeral stream and its waters, and therefore adjoining land could become contaminated. He also considered that lots 1-5, being located on the steeper sloping land nearest to the watercourse, would have effluent envelopes to their southern side and would therefore be incapable of retaining the wastewaters on the lot. VCAT noted that the LCAs as submitted lacked detail and should include:

- Contour lines
- Precise location of the waterway
- Nearby Roadknight Creek
- Depth to groundwater in winter
- Condition of adjoining properties
- Location of associated infrastructure.
- Types of primary and secondary wastewater systems that might be appropriate given the soils, slope and groundwater conditions identified.

VCAT also considered that, given the generally high levels of rainfall and the poor quality soils, there was reasonable doubt as to whether the LCAs reflect the usual conditions for the land.

In the current application, the applicant has provided separate Land Capability Assessments for lots 1-8 (Reference AGR Geosciences Pty Ltd, 17E179LCA\_Lot1, Lot 2 etc. revised 08/12/2017). The submitted LCAs include contour lines, the precise location of the waterway and Roadknight Creek, the depth of winter groundwater, the location of associated infrastructure, and the types of primary and secondary wastewater systems that might be appropriate. It is noted that the condition of adjoining properties is not included, although Council's Health Protection Unit noted that this is not a requirement in the EPA Code. Lots 1-5 (on the steeper sloping land nearest to the watercourse) still show building envelopes for the dwellings at their north end (on the higher land) and wastewater envelopes at the southern end, being in fairly close proximity to the ephemeral waterway. The current application (PP253/2017-1) increases the proposed separation of the effluent disposal areas from the ephemeral waterway from 30m to 35m.

Since 2013, the Environment Protection Authority (EPA) has amended publication *Code of Practice – Onsite Wastewater Management*. The Code provides guidance to local government on determining the suitability for onsite wastewater management and further sets the requirements for Land Capability Assessments. A fundamental change in the current Code compared to the Code in place in 2013 is the ability for setback distances of land application systems from waterways to be reduced by 50% under certain circumstances.

Council's Health Protection Unit has considered the Land Capability Assessment reports submitted for each lot and notes that these have been prepared to achieve a minimum standard in compliance with EPA 'Code of Practice - Onsite Wastewater Management' (Publication 891.4) and the Australian Standard 1547:2012. Whilst the minimum standard would be met, the EPA Code acknowledges that wastewater systems, even when properly designed, can still pose a public health risk:

*“Even when onsite wastewater management systems are properly designed, installed and maintained, potential environmental and public health risks always exist. The consequences*

*of failing onsite treatment and land application systems are diverse and depend on the type of treatment system, the characteristics of the site and the wastewater, the sensitivity of the surrounding environment and proximity of neighbouring households and land use.” [EPA Code of Practice -Onsite Wastewater Management (891.4)].*

From the Australian Bureau of Meteorology, Council’s Health Protection Unit has also confirmed that Forrest has significantly higher average rainfall than the rest of Victoria. This variable alone has the potential to cause the ground to become saturated during the wetter months, resulting in effluent disposal fields working under stress. The Health Protection Unit noted that the Forrest township has a high level of failing septic tanks due to poor soil drainage and, as such, considers that the proposed number of lots coupled with high rainfall and small lot sizes is too high density for the site.

*“While this Code primarily refers to single allotments, the cumulative impact of all wastewaters within a subdivision, a commercial precinct or a township should be taken into account when assessing the capability of a lot to absorb treated effluent without negatively impacting its surroundings.” EPA Code of Practice - Onsite Wastewater Management (Publication 891.4).*

Council’s Health Protection Unit considers that the density of lots proposed under this application may result in a risk to public health, environment and beneficial uses from cumulative detrimental effects. Further consideration should be given to increased setbacks and advanced treatment of wastewater and/or increased lot sizes to reduce the possible cumulative impacts of the proposal. On the basis of the above, it is considered that the proposal fails to provide a wastewater system for the lots that that would be adequate for the maintenance of public health and the management of effluent in an environmentally friendly manner. On this basis, Council’s Health Protection Unit objects to the proposal.

Some objectors have expressed the view that consideration should also be given to the proposed Barwon Water Wastewater Investigation for Forrest which seeks to service all properties within the town boundaries as outlined in the *Forrest Structure Plan*. This project is under current investigation and has not been completed, with the outcome unknown. Even when a preferred system design is adopted by Council and Barwon Water, there will be a period of time where funding will need to be secured from Government. It is argued by objectors that, given the complexities of this site, determination of this application should be deferred until such time as the Barwon Water Wastewater Investigation has been considered further. However, Council has an obligation under the *Planning and Environment Act* to make a determination on the current application and cannot delay its decision based on the potential for alternative wastewater treatment options in Forrest to be considered. Council must form a view on the current application based on today’s circumstances. If a permit is issued by VCAT, the decision on whether to proceed and invest in the subdivision, whilst waiting for a decision on the current project and funding of the preferred design, would rest with the landowner. Should a form of reticulated sewerage become available during or post subdivision, the landowner will need to respond accordingly at that time.

#### Stormwater Management

Clause 56.07-4 (Urban Run-off Management Objectives) seeks, inter alia, to minimise damage to properties and inconvenience to residents from urban runoff, and to ensure that the street operates adequately during major storm events and provides for public safety. The clause also seeks to minimise increases in stormwater runoff, and protect the environmental values and physical characteristics of receiving waters from degradation by urban runoff. As part of the applicant’s submission, and in direct response to the VCAT Order, the applicant has provided a Stormwater Management Plan prepared by Peter Berry & Associates.



VCAT previously considered that the area's high rainfall, in conjunction with the topography of the land and the presence of an ephemeral waterway, requires a schematic drainage design to accompany any future application for subdivision. The Tribunal Member also previously noted that a future drainage scheme was not required to provide all the technical details, but should provide comfort to the responsible authority and neighbours that the matter can be resolved. Council's Infrastructure Unit has requested the applicant provide a written response about how stormwater runoff and water sensitive urban design (WSUD) issues would be addressed. In response to this, the applicant has provided a Stormwater Drainage Response by Peter Berry & Associates Pty Ltd noting that:

*"The Unmade Road on the western boundary is in fact private property over which our Client has been granted rights to install an underground drainage pipe to connect with the table drain in Turner Drive. Given this restriction, it is intended that the pipe network within the development be designed as a 1 in 100 year system."*

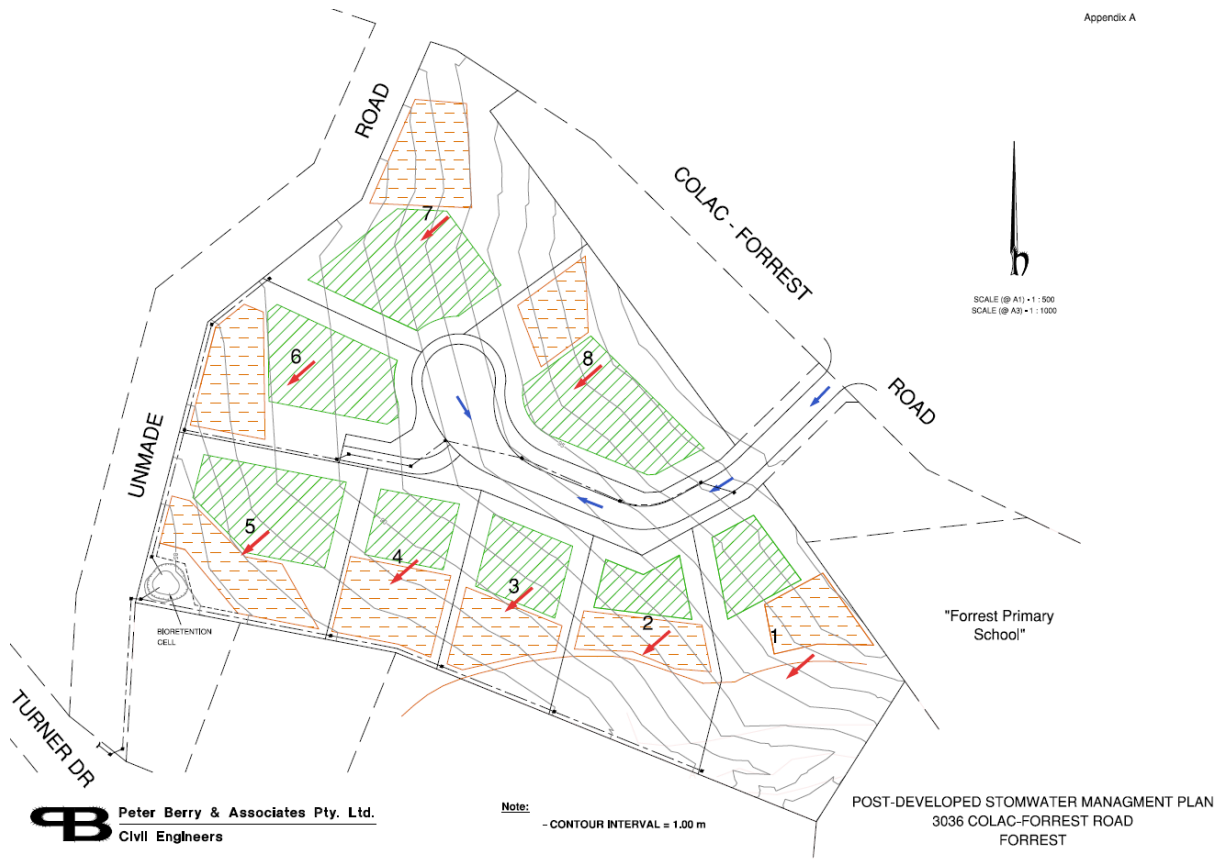
The report adds that runoff from hardstand surfaces, which was the subject of concern by VCAT, the Responsible Authority and objectors, would be directed by swales to pits and the underground drainage network.

With regard to the Water Sensitive Urban Design (WSUD) requirements, the report advises that in the absence of reticulated sewer, it is proposed to divert the 1 in 3-month rainfall runoff to a bio-retention cell within the south-west corner of proposed Lot 5. Given the proximity of the effluent beds in Lots 1 to 5 to the southern boundary, the applicant advises that shallow side boundary swales, approximately 300mm deep, would convey the building envelope runoff to the pipe drainage in the rear of the property.

The report adds that *"water tanks will be a feature of the development on each lot and that their overflow would be carried down the west boundary swale to pits located on the drainage line"*.

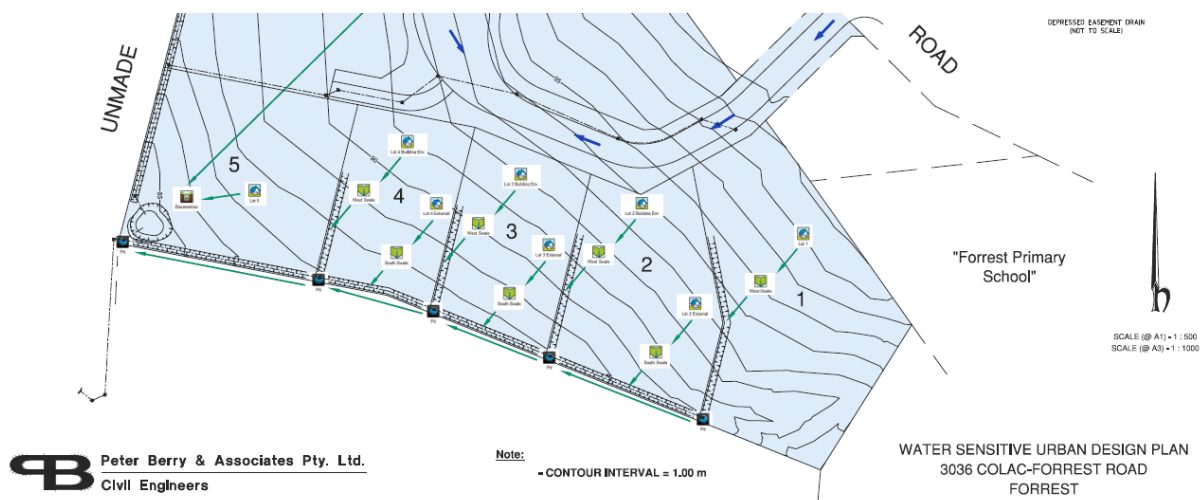
Council's adopted Infrastructure Design Manual (IDM) standardises Council's requirements for the design and development of municipal infrastructure. Council uses the IDM to define the infrastructure requirements of new developments, including roads, drains, and footpaths. Council's Infrastructure Department has assessed this application having regard to the adopted Infrastructure Design Manual and has raised a number of concerns about stormwater management associated with the proposal.

To address the WSUD requirements, the applicant has proposed a bio-retention cell in the south west corner of proposed Lot 5. A bio-retention cell is a landscaped depression that captures and treats stormwater runoff. The size and design of the bio-retention cell depends upon the area it drains and the type of soil in which the cell is placed. Stormwater is directed into the cell by pipes, swales, or curb openings. The depression temporarily captures and holds the first flush, usually the runoff from one-inch of runoff water from an impermeable area. Trees and shrubs selected to grow in the bio-retention cell must be water tolerant. Bio-retention cells can be installed in a variety of soil types from clayey to sandy soils.



The report by Peter Berry & Associates has proposed a bio-retention cell to capture the rainfall runoff from the internal road and the access to lots 4, 5, 6, 7 and 8. The report notes that Lot 5 would also be treated in this location, with runoff being directed to the pit immediately upstream of the bio-retention cell.

The report by Peter Berry & Associates notes that, given the proximity of the effluent beds in Lots 1 to 5 to the southern boundary, it was decided that shallow side boundary swales, approximately 300mm deep would convey the building envelope runoff to the pipe drainage in the rear of the property as shown below.



Council's Infrastructure Unit considered that the cost on Council to 'reset' the bio-retention cell would be large. It is not considered that Council should bear this cost and the applicant has not advised how this maintenance cost would be funded. Council does not want to enter into a special charge scheme in the future as this would be onerous if there are other options that could be presented by the applicant.

Council's Infrastructure Unit has also expressed concerns about the nominated discharge to be directed to the bio-retention area having regard to the IDM. It was noted that by choosing to treat only a portion of the discharge, the percentage removal to be applied to the treated volume would necessarily rise, to a level that Council's Infrastructure Department believes would be mathematically unachievable. In addition, it was noted that only 1 of the proposed 6 swale drains would provide a gradient within recommended limits as provided by the IDM. To minimise the slope of the drains to achieve this requirement would require significant excavation, altering the existing landform substantially.

Grassed swales proposed would have side slopes of 1 in 4, which is contrary to IDM. The Infrastructure Department noted that the applicant has not considered a potential wetland solution to the problem in lieu of the bio-retention cell, as this would result in the removal of Lot 5. The Infrastructure Department advised that bio-retention/raingarden systems are generally avoided throughout the shire, due to the stringent maintenance requirements.

It has been accepted by VCAT that site drainage to the south and west, coupled with increased runoff caused by additional hard surfaces, would adversely affect the adjoining land and may result in adjoining land becoming contaminated. It is noted that the report by Peter Berry & Associates fails to show the ephemeral water course on the stormwater management plan, and there seems to be a conflict between the proposed location of the drain on Lot 1 and the location of the ephemeral watercourse.

Council's Infrastructure Department also noted that effluent fields are required to be a minimum of 3 metres offset from drainage channels and currently there are effluent fields proposed 3 metres offset from property boundaries, meaning this would not be not achievable as drainage channels are approximately 3 metres wide. Effluent fields are required to be 30 metres minimum offset from dams (bio-retention cell) meaning Lot 5 is not likely to be viable no matter where the bio-retention is proposed. It is considered that relying on property owners to maintain swales or contact Council if something is wrong suggests that there is a high likelihood of stormwater outputs not achieving the required stormwater parameters following the 24-month maintenance period. Swales should be in reserves to be in Council's favour; not the individual lot owners.

The applicant has proposed a stormwater outlet to be on Turner Drive where the road has currently degraded due to the stormwater overflow. Whilst overall the subdivision would not be increasing outflow, there would be increased outflow at the stormwater outlet to Turner Drive.

In addition, the Infrastructure Department noted that the court bowl on the plan proposes a radius of 16 metres which would not comply with IDM Section 12.3.4 'Road Geometry' as a court bowl sufficient to allow for service vehicles to turn. For a tandem axle service vehicle (e.g. CFA truck) to perform a U-turn without reversing would require a minimum court bowl width of approx. 27m. This is a matter that Council would request be rectified through compliance with a permit condition, in the event VCAT allows the proposed subdivision.

It is noted that Clause 53.18 (Stormwater Management in Urban Development) seeks to ensure that stormwater in urban development, including retention and reuse, is managed to mitigate the impacts of stormwater on the environment, property and public safety, and to provide cooling, local habitat and amenity benefits. However, this provision does not apply to an application lodged with Council before the approval date of Amendment VC154, which was gazetted on 26/10/2018. The application was lodged with Council on 19 October 2017 and therefore the requirements of Clause 53.18 are not relevant.

#### Clause 52.17 – Native Vegetation Removal

This proposal includes the removal of 15 trees from the land, (these trees are identified on plan and within the Biodiversity Impact Assessment Report). This proposal seeks the creation of five lots which would be less than 4000sqm and, as such, there is potential in the future for native vegetation removal to be undertaken without the requirement for a planning permit under Clause 52.17.

With regard to vegetation loss from the site, the applicant has provided an updated '*Biodiversity Assessment Report*' (received 30/05/18) which identifies a '*Moderate Risk-based pathway*'. This report identifies the removal of 15 *scattered* trees from the parent lot. Council's Environment Unit considers the submitted report to be unacceptable, as this report was undertaken nearly 9 years ago. A site inspection on 02 April 2019 indicated that the trees on the site are substantially larger than acknowledged back in 2010.

Council's Environment Unit considers that there are inconsistencies between the '*Vegetation Existing Conditions and Net Gain Assessment Report*' dated 12 June 2010, prepared by Mark Trengrove Ecological Services, and the '*Plan of the Proposed Subdivision & Building and Effluent Envelopes*' (Updated 20 July 2018), which identifies the trees deemed lost and requiring assessment and offsetting in terms of the number of trees requiring removal (T13 and 14).

Council's Environment Unit notes that trees on site have grown substantially in the intervening years; some have even been lost due to storm damage; and some trees have not been considered or included in the native vegetation loss calculations. In addition, trees not accounted for are those that would be deemed to be lost due to the construction of the proposed access and road within the subdivision, the proximity to wastewater effluent fields and incursion into the Tree Protection Zone, and locations along proposed fence lines and lot boundaries (9 trees - T3, T18, T19, T20, T21, T40, T42 and 2 trees within the road reserve that are not numbered to date or in the 2010 report).

It is acknowledged that three '*suckering*' exotic trees, located adjacent to the road entrance are proposed to be removed to facilitate access to the land. Planning approval is not required for the removal of the three trees in the road reserve as the exemption listed under Clause 52.17 could be applied, i.e. "*native vegetation that is to be removed, destroyed, or lopped to the minimum extent necessary to enable the construction or maintenance of a vehicle access across a road reserve from a property boundary to a public road*".

As mentioned earlier in this report, DELWP was notified of this application and no objection was raised subject to recommended conditions. However, the DELWP correspondence received was contradictory and unclear regarding the process of the native vegetation removal requirements, including which version of the regulations should be applied and which version of the guidelines to follow, and whether the application needs to be accompanied by approval to utilise transitional provisions of 52.17 (and what this means in terms of the level of biodiversity assessment and native vegetation removal assessment required). Council therefore sought clarification from DELWP regarding the native vegetation removal assessment and documentation required. DELWP responded

to Council on 10 April 2019 advising that, whilst additional information would have been preferable with the application at the time, DELWP does not object to the proposal as:

- *They are only notified under S52 of the Planning and Environment Act, so only broad advice was provided regarding potential implications of native vegetation removal on site and along the Colac-Forrest road frontage.*
- *The applicant has designed the subdivision and building/effluent envelopes to avoid impacts to native vegetation, with offsets triggered largely by consequential losses rather than direct removal, with most of these trees likely to be retained across the new properties.*
- *General offsets are triggered, which can be readily obtained on the Credit Register.*

DELWP acknowledged that its response of 5 December 2018 contained incorrect and contradictory advice to that which had been previously provided to Council and the proponent. As a result of DELWP reviewing its response of 5 December 2018, and based on the above, DELWP confirmed it does not object to the granting of the planning permit subject to conditions being included on any permit issued.

Council's Environment Unit is of the view that, based on the information provided, the native vegetation removal cannot be assessed adequately and concerns are raised with the application on this basis.

#### Public Open Space Contribution and Subdivision

Under the schedule to Clause 53.01, the contribution to the Council for public open space is 5% of the value of all land in the subdivision (*being all other areas excluding FZ, RAZ and RCZ land*). An appropriate permit condition would be recommended should VCAT allow the proposed subdivision.

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

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



## Application for Planning Permit for a Subdivision

Supplied by	Katy Bright
Submitted Date	19/10/2017
Modified by	Katy Bright (Rod Bright and Associates Pty Ltd)
Modified Date	14/03/2018

### Application Details

Application Type	Planning Permit for a Subdivision Version 2
Applicant Reference Number	07-20C
Application name or Estate name	Newlands Pastoral Co.
Responsible Authority Name	Colac Otway Shire
Responsible Authority Reference Number(s)	PP253/2017-1
SPEAR Reference Number	S111042V
Application Status	Permit Decision Pending
Planning Permit Issue Date	NA
Planning Permit Expiry Date	NA

### The Land

Primary Parcel	3036 COLAC-FORREST ROAD, FORREST VIC 3236 Lot 2/Plan PS622698 SPI 2\PS622698 CPN 25226
<b>Zone:</b>	32.05 Township
<b>Overlay:</b>	44.01 Erosion Management 44.06 Wildfire Management

### The Proposal

Plan Number	(Not Supplied)
Number of lots	8
Proposal Description	Eight (8) lot subdivision, including creation of access to Road Zone Category 1 Road
Estimated cost of the development for which a permit is required \$	0

### Existing Conditions

Existing Conditions Description	Land currently used for grazing
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: <a href="mailto:rodbright@iprimus.com.au">rodbright@iprimus.com.au</a>
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**Applicant**

**Applicant**

Newlands Pastoral Company Pty Ltd  
PO Box 85 Winchelsea, VIC, 3241 Australia  
Mobile Phone: 0408 522 878

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**Owner**

**Owner**

(Owner details as per Applicant Contact)

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**Declaration**

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

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

**Authorised by**

**Organisation**

Katy Bright


Rod Bright and Associates Pty Ltd

**PLAN OF PROPOSED SUBDIVISION & BUILDING AND EFFLUENT ENVELOPES**  
**CROWN ALLOTMENTS 5J(P†), 5J1 & 5X(P†)**  
**SECTION A**  
**PARISH OF YAUGHER**  
**COUNTY OF POLWARTH**  
**RE: NEWLANDS PASTORAL CO.**  
**SCALE 1:1250** (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

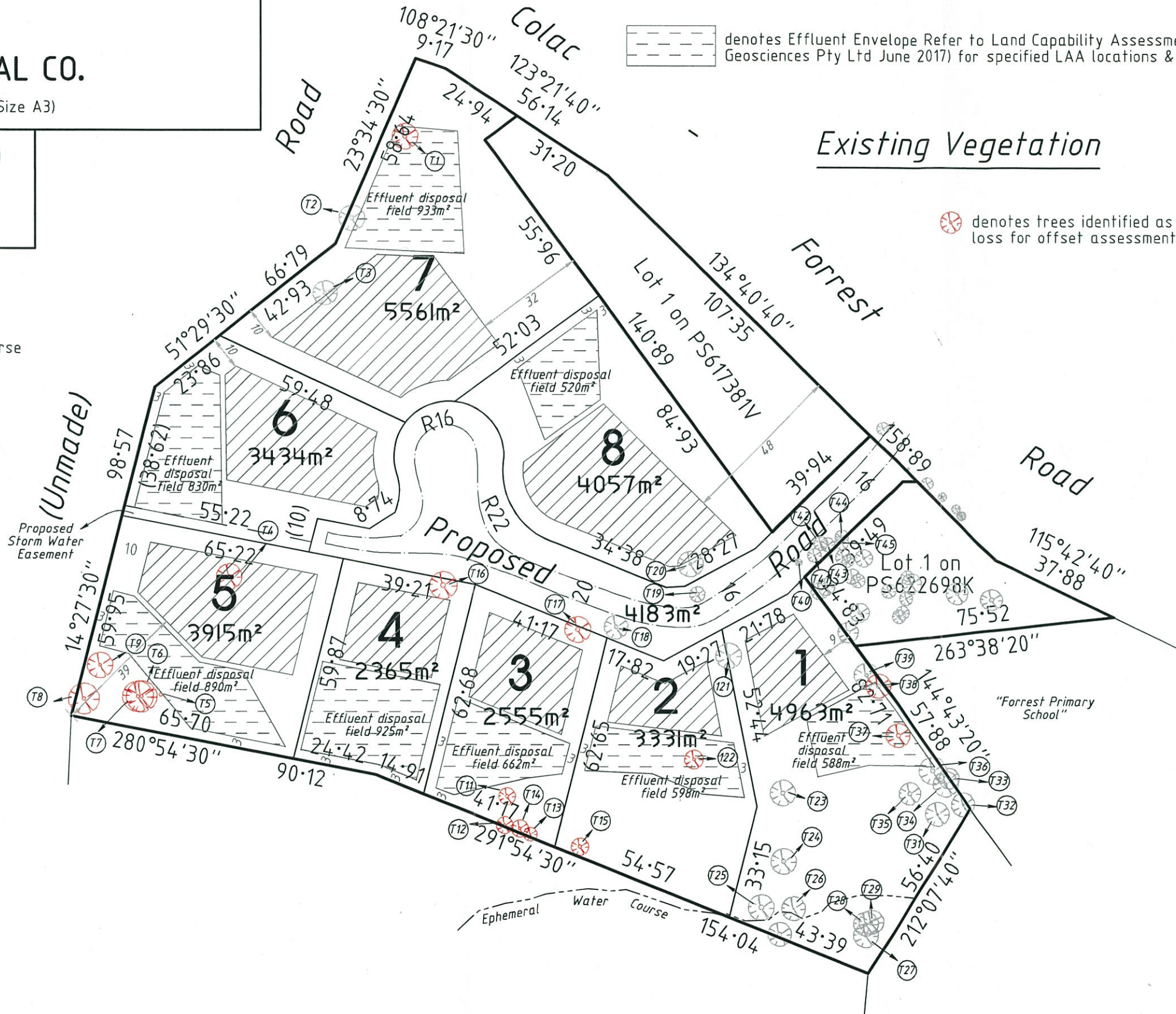
NOTE:  
 Certain dimensions shown hereon are subject to survey.  
 Certain areas shown hereon are subject to survey.  
 Land contained within C/T Vol. 11174 Fol. 481, being Lot 2 on PS622698K

 denotes Dwelling Envelope with 6 metre setback from road boundary and side boundaries unless otherwise shown on the Plan. Outbuildings excepted.

 denotes Effluent Envelope Refer to Land Capability Assessments (AGR, Geosciences Pty Ltd June 2017) for specified LAA locations & dimensions.

**LEGEND**

-  Tree
-  Ephemeral water course



Existing Vegetation

 denotes trees identified as potential loss for offset assessment.



REF. 07-20C

Updated 20th July 2018.  
 Trees identified as potential loss for offset assessment.



**DEFENDABLE SPACE Vegetation Management Requirements**

1. Grass must be short cropped and maintained during the declared fire danger period.
2. All leaves and vegetation debris must be removed at regular intervals during the declared fire danger period.
3. Within 10 metres of a building, flammable objects must not be located close to the vulnerable parts of the building.
4. Plants greater than 10cm in height must not be placed within 3 metres of a window or glass feature of the building.
5. Shrubs must not be located under the canopy of trees.
6. Individual and clumps of shrubs must not exceed 5 square metres in area and must be separated by at least 5 metres.
7. Trees must not overhang or touch any elements of the building.
8. The canopy of trees must be separated by at least 5 metres.
9. There must be a clearance of at least 2 metres between the lowest tree branches and ground level.

Unless otherwise agreed in writing by the responsible authority.

**NOTE: DEFENDABLE SPACE VEGETATION MANAGEMENT REQUIREMENTS APPLY TO THE ENTIRE SITE.**

**Outbuilding Construction Requirements (Outbuildings attached or within 10m of a dwelling)**

The proposed outbuilding is separated from the adjacent building by a wall that extends to the underside of a non-combustible roof covering and:

- has a FRL of not less than 60/60/60 for loadbearing walls and -/60/60 for non-load bearing walls when tested from the attached structure side, or
- is of masonry, earth wall or masonry-veneer construction with the masonry leaf of not less than 90 millimetres in thickness.

Any openings in the wall shall be protected in accordance with the following:

- i. Doorways - by FLR -/60/30 self-closing fire doors
- ii. Windows - by FLR -/60/- fire windows permanently fixed in the closed position
- iii. Other openings - by construction with a FLR of not less than -/60/-

Note: Control and construction joints, subfloor vents, weepholes and penetrations for pipes and conduits need not comply with item iii.

**Water Supply Requirements**

A 10,000 litre static water supply must be provided to each lot in the subdivision for fire fighting and property protection.

Fire authority fittings and access must be provided as follows:

- Be readily identifiable from the building or appropriate identification signage to the satisfaction of the responsible authority.
- Be located within 60 metres of the outer edge of the approved building.
- The outlet/s of the water tank must be within 4 metres of the accessway and unobstructed.
- Incorporate a separate ball or gate valve (British Standard Pipe (BSP65mm) and coupling (64 mm CFA 3 thread per inch male fitting).
- Any pipework and fittings must be a minimum of 65mm (excluding the CFA coupling).

Unless otherwise agreed in writing by the relevant fire authority, the water supply must:

- Be stored in above ground water tank constructed of concrete or metal.
- Have all fixed above ground water pipes and fittings required for fire fighting purposes made of corrosive resistant metal.
- Include a separate outlet for occupant use.

**Access Requirements**

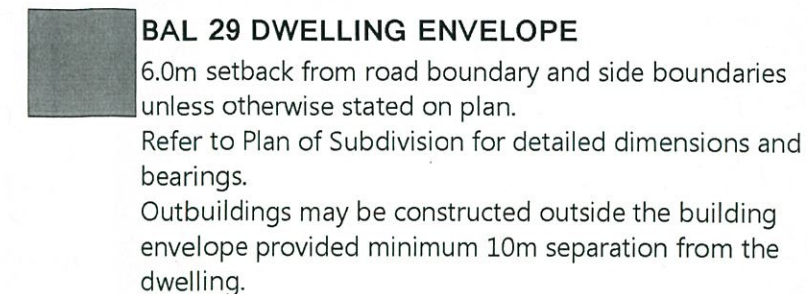
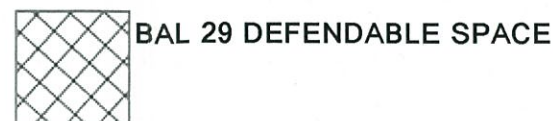
Fire authority vehicles should be able to get within 4 metres of the water supply outlet for lots with a length of access of less than 30 metres.

Access for fire fighting purposes must meet the following requirements:

- Curves must have a minimum inner radius of 10m.
- The average grade must be no more than 1 in 7 (14.4 per cent) (8.1 degrees) with a maximum of no more than 1 in 5 (20 per cent) (11.3 degrees) for no more than 50m.
- Have a minimum trafficable width of 3.5m of all-weather construction.
- Be clear of encroachments for at least 0.5m on each side and 4m above the accessway.
- Dips must have no more than a 1 in 8 (12.5 per cent) (7.1 degrees) entry and exit angle.

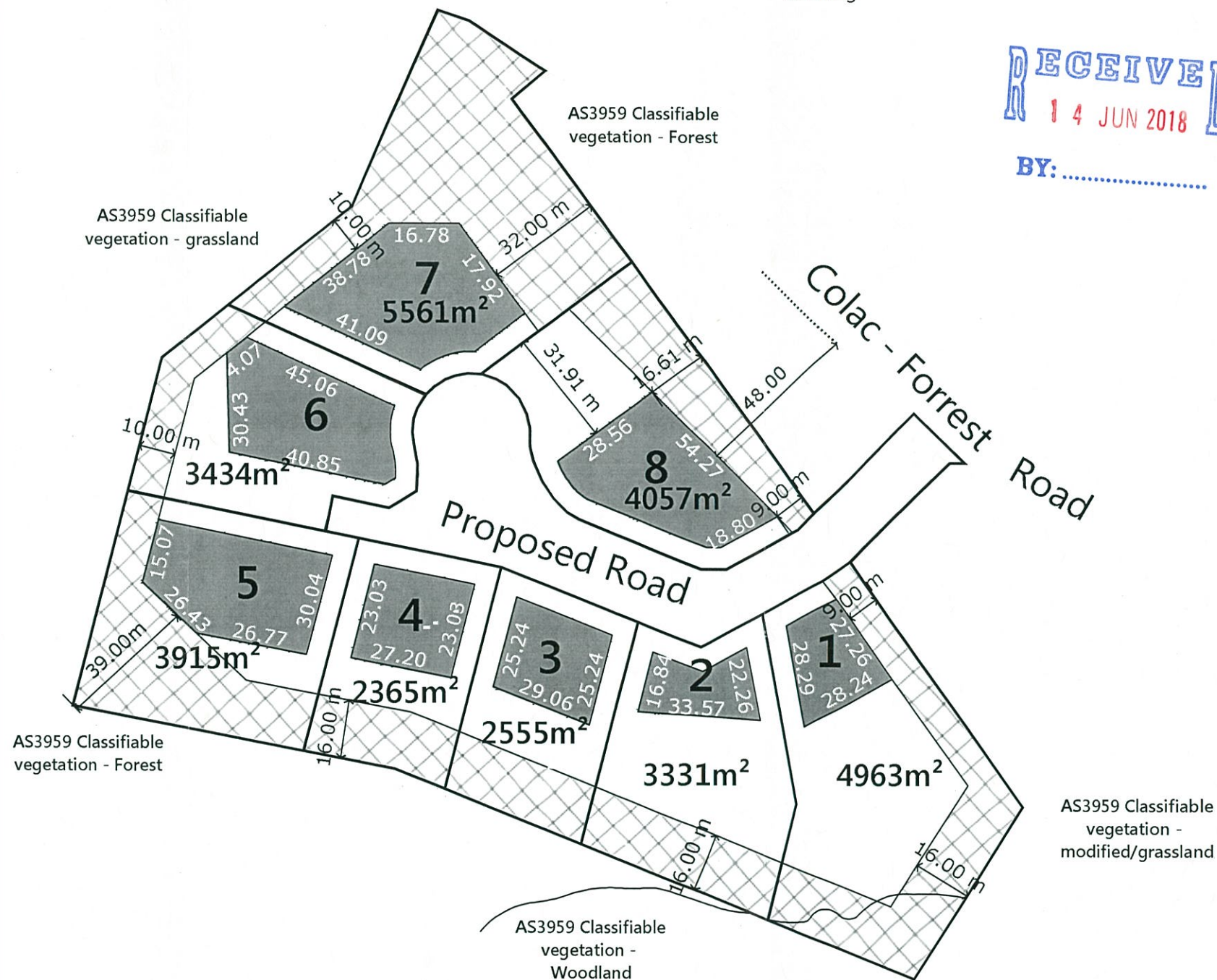
**NOTES FOR COMPLIANCE WITH AS3959 CONSTRUCTION OF BUILDINGS IN BUSHFIRE-PRONE AREAS.**

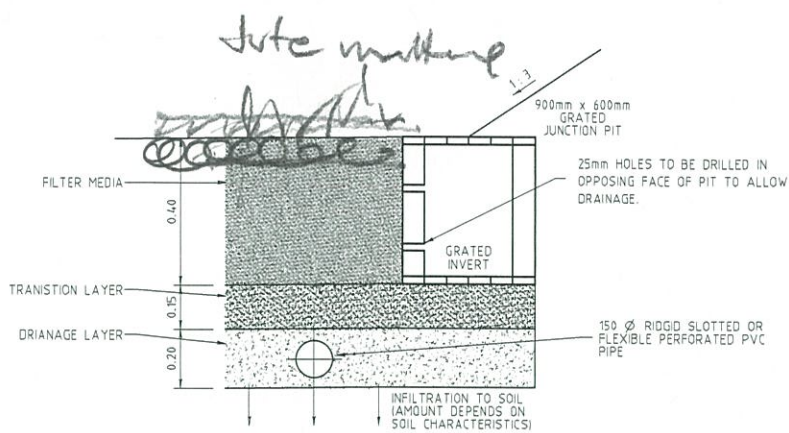
Effectiveness of defendable space for the dwelling assumes construction of the dwelling to the relevant BAL shown on this plan and under AS3959-2009. Compliance of the proposed design with relevant construction elements of AS3959-2009 has not been assessed and does not form part of this Bushfire Management Statement. Responsibility for ensuring compliance with AS3959 remains with the appointed registered Building Surveyor.



**RECEIVED**  
14 JUN 2018

BY: .....

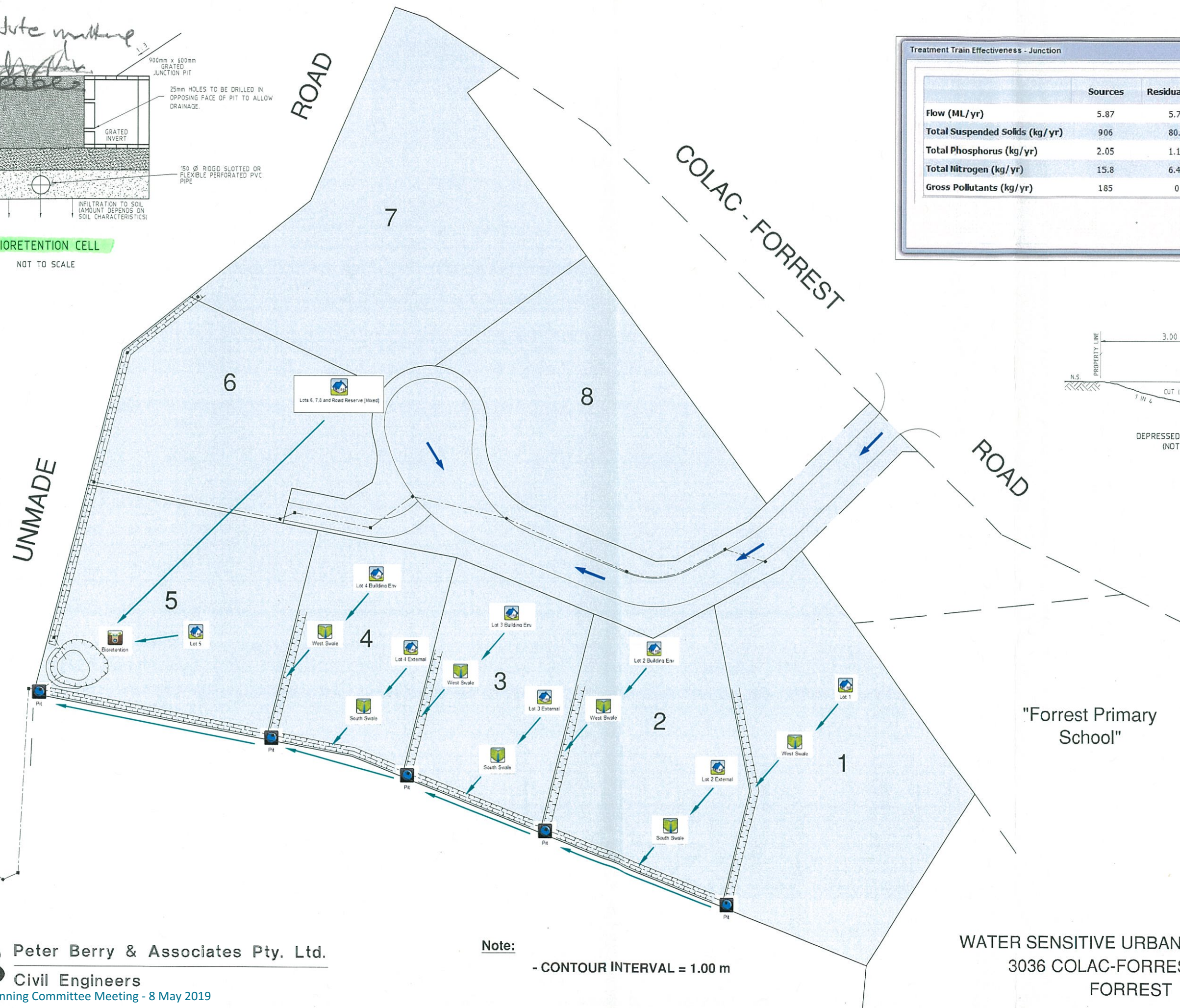
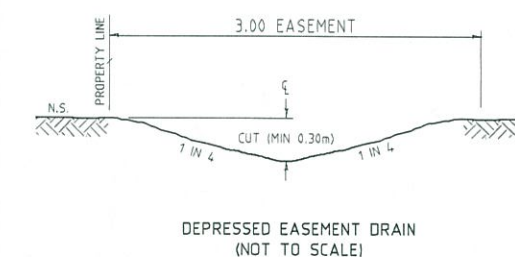




**BIORETENTION CELL**

NOT TO SCALE

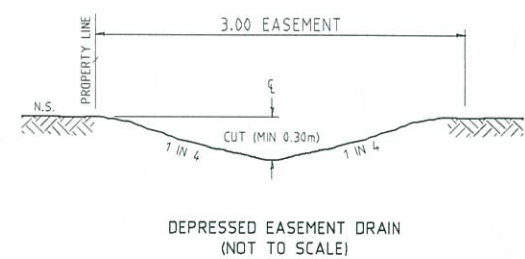
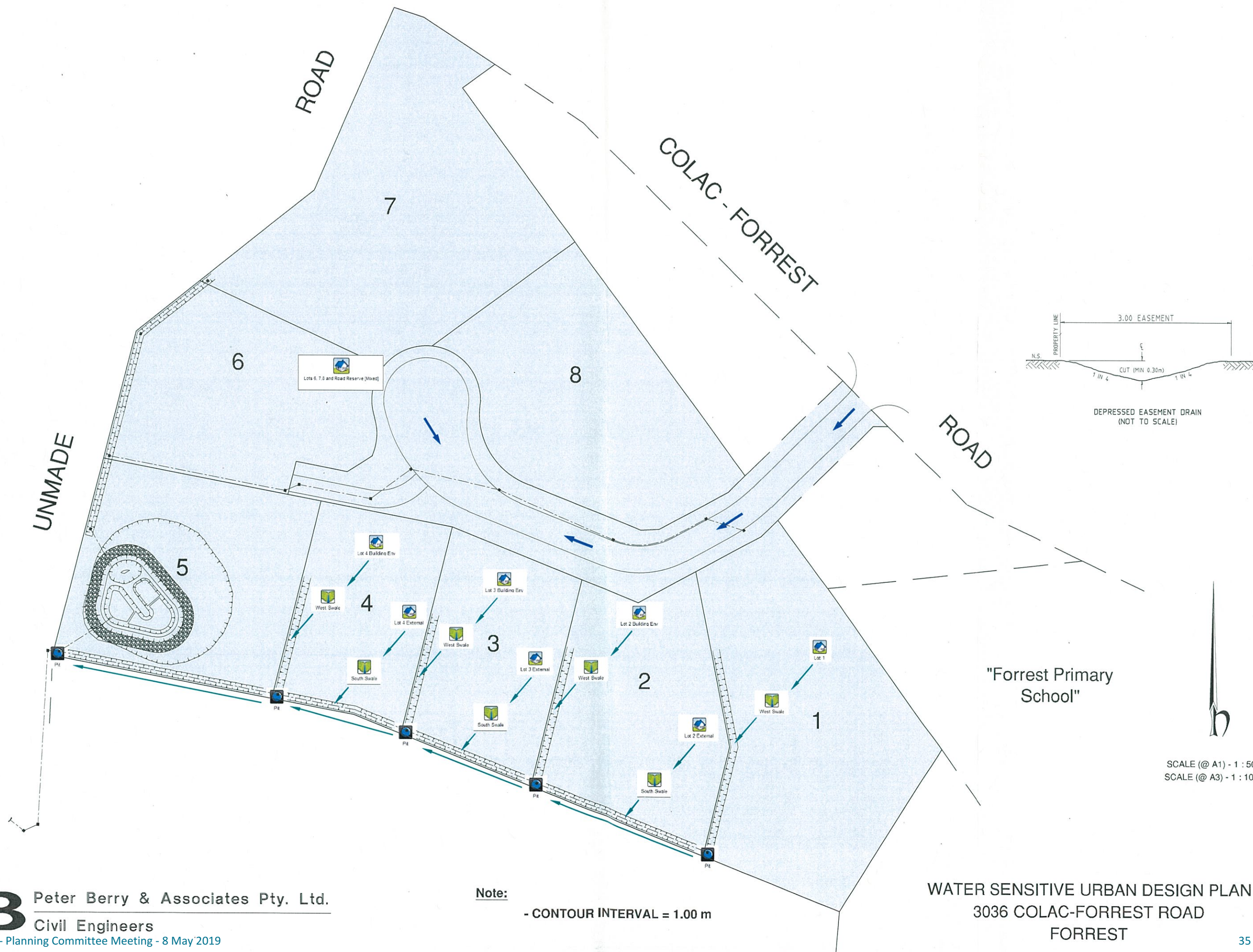
	Sources	Residual Load	% Reduction
Flow (ML/yr)	5.87	5.76	1.9
Total Suspended Solids (kg/yr)	906	80.5	91.1
Total Phosphorus (kg/yr)	2.05	1.11	45.6
Total Nitrogen (kg/yr)	15.8	6.41	59.4
Gross Pollutants (kg/yr)	185	0	100



"Forrest Primary School"

SCALE (@ A1) - 1 : 500  
SCALE (@ A3) - 1 : 1000

Note:  
- CONTOUR INTERVAL = 1.00 m



"Forrest Primary School"

SCALE (@ A1) - 1 : 500  
SCALE (@ A3) - 1 : 1000

Note:  
- CONTOUR INTERVAL = 1.00 m



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

Page 1 of 1

VOLUME 11174 FOLIO 481

Security no : 124068616493J  
Produced 16/10/2017 03:22 pm

**LAND DESCRIPTION**

Lot 2 on Plan of Subdivision 622698K.  
PARENT TITLE Volume 11153 Folio 269  
Created by instrument PS622698K 01/12/2009

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Sole Proprietor  
NEWLANDS PASTORAL COMPANY PTY LTD of 157 MAUDE STREET SHEPPARTON VIC 3630  
PS622698K 01/12/2009

**ENCUMBRANCES, CAVEATS AND NOTICES**

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 PS622698K 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: 3036 COLAC-FORREST ROAD FORREST VIC 3236

DOCUMENT END



# Imaged Document Cover Sheet

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Document Type	<b>plan</b>
Document Identification	<b>PS622698K</b>
Number of Pages (excluding this cover sheet)	<b>2</b>
Document Assembled	<b>16/10/2017 15:22</b>

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**PS622698K**



<b>PLAN OF SUBDIVISION</b>	STAGE NO	LRS use only <b>EDITION 1</b>	
----------------------------	----------	----------------------------------	--

**Location of Land**

Parish: of Yaugher  
 Township: \_\_\_\_\_  
 Section: A  
 Crown Allotment: 5J (Pt), 5J1 (Pt) & 5X (Pt)  
 Crown Portion: \_\_\_\_\_  
 Title References: Vol.11153 Fol.269

Last Plan Reference: Lot 2 on PS617381V  
 Postal Address: Colac - Forrest Road,  
(at line of subdivision) Forrest 3236  
 MGA94 Co-ordinates: E 736 400  
(at approx. centre of plan) N 5 733 600 Zone 54

**Council Certification and Endorsement**

Council Name: Colac Otway Shire Council Ref: 292/08

- This plan is certified under section 6 of the Subdivision Act 1988.
- ~~This plan is certified under section 11(7) of the Subdivision Act 1988.~~  
~~Date of original certification under section 6 / /~~
- This is a statement of compliance issued under section 21 of the Subdivision Act 1988.

**Open Space**

(i) A requirement for public open space under section 18 Subdivision Act 1988 has / has not been made

(ii) ~~The requirement has been satisfied.~~

(iii) ~~The requirement is to be satisfied in stage~~

Council Delegate *[Signature]*  
 Council seal  
 Date 18/11/09  
 Re-certified under section 11(7) of the Subdivision Act 1988  
 Council Delegate  
 Council seal  
 Date / /

**Vesting of Roads or Reserves**

Identifier	Council/Body/Person
NIL	NIL

**Notations**

**Staging** This is / is not a staged subdivision  
 Planning Permit No. PP195/08

**Depth Limitation:**  
 15.24 metres below the surface applies to Crown Allotments 5J (Part) and 5X (Part).  
 15 metres below the surface applies to Crown Allotment 5J1.

Survey:- This plan is ~~is not~~ based on survey  
 This survey has been connected to permanent marks no(s). 34 & 72  
 In proclaimed Survey Area no.

**Easement Information**

**Legend:** E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement or other Encumbrance  
 A - Appurtenant Easement R - Encumbering Easement (Road)

Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	Water Supply	See Diag.	PS617381V	Barwon Region Water Corporation

LRS use only  
 Statement of Compliance / Exemption Statement

Received:   
 Date 23/11/2009

LRS use only  
 PLAN REGISTERED  
 TIME 12.04PM  
 DATE 01/12/2009  
**GARY M ROBERTSON**  
 Assistant Registrar of Titles  
 SHEET 1 OF 2 SHEETS

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

LICENSED SURVEYOR (PRINT) ANTHONY EDWARD BRIGHT

Signature *[Signature]* DATE 26/2/2009  
 REF 07-20/B VERSION 3

Signature *[Signature]*  
 DATE 18/11/09  
 COUNCIL DELEGATE SIGNATURE  
 Original sheet size A3

