



PLANNING COMMITTEE MEETING

AGENDA

Wednesday 7 December 2022

at 4:00 PM

COPACC

95 - 97 Gellibrand Street, Colac



COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

Wednesday 7 December 2022

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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 7 December 2022 at 4:00 PM.

<u>AGENDA</u>

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.

RECORDING AND PUBLICATION OF MEETINGS

Please note: All Planning Committee meetings are live streamed and recorded when the meeting is held either at COPACC or online. When meetings are held in other locations, Council will endeavour to make an audio recording of the meeting for community access. Matters identified as confidential items in the Agenda will not be live streamed or recorded regardless of venue or mode.

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

As soon as practicable following each open Council and Planning Committee meeting, the live stream recording will be accessible on Council's website. Recordings are also taken to facilitate the preparation of the minutes of open Council and Planning Committee meetings and to ensure their accuracy. Recordings will be retained by Council for a period of four years.

As stated in the Governance Rules, 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 Planning Meeting.

This meeting will be livestreamed to the public via Council's YouTube channel (search Colac Otway Shire Council at <u>www.youtube.com</u>).

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 12 October 2022.

RECOMMENDATION

That the Planning Committee confirm the minutes of the Planning Committee meeting held on 12 October 2022.

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

Development Plan (DPO5) - Amended - 6230 and 6280 Great Ocean Road Apollo Bay - Consideration of Submissions

| ADDRESS AND PROPERTY DETAILS | 6230 and 6280 Great Ocean Road, Apollo Bay | | | |
|---------------------------------|--|----------------------------|------------------------|--|
| PROPOSAL | Development Plan | | | |
| OFFICER | Ravi Ayyagari | CHIEF EXECUTIVE OFFICER | Anne Howard | |
| DIVISION | Executive | | | |
| ATTACHMENTS | 1. Overall Develop | ment Plan - Version 37 [ł | 8.1.1 - 1 page] | |

1. LOCATION PLAN / AERIAL PHOTO

LOCATION PLAN



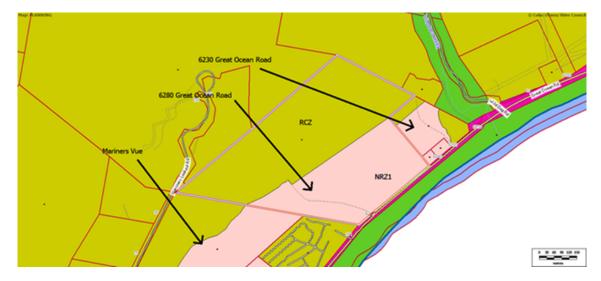


Figure 1 – Location of site to north of town (from submitted Flora and Fauna Assessment (Biosis, 6/1/20)

Figure 2 – 6230 and 6280 Great Ocean Road, and adjacent land at 30 and 40 Marriners Lookout Road (Mariners Vue – the DPO4 land)



AERIAL PHOTO

Figure 3 – Aerial Image

2. RECOMMENDATION

That Council:

- 1. Acknowledges the submissions received in response to the informal public notice undertaken for the Development Plan for 6230 and 6280 Great Ocean Road, Apollo Bay.
- 2. Thanks the submitters for their informal input.
- **3.** Resolves to consider all written submissions and verbal presentations made in respect of submissions at a future meeting to consider adoption of the Development Plan.

3. PROPOSAL

Background

In 2015, a draft Development Plan was submitted to Council for 6280 and 6230 Great Ocean Road, Apollo Bay, prepared under Schedule 5 to the Development Plan Overlay (DPO5) in the Colac Otway Planning Scheme. The applicant subsequently lodged an appeal to the Victorian Civil and Administrative Tribunal (VCAT) against the failure of Council to make a decision on the Development Plan (version 28) under consideration at that time within a reasonable timeframe.

A two-day Hearing was held on 7 and 8 May 2018, after which VCAT affirmed the resolution of Council not to support the Development Plan and refused the application. Guidance was provided in the VCAT Order about which matters the Tribunal considered had been appropriately addressed, and which aspects of the Development Plan needed to be further addressed.

This briefing report considers submissions made to the current version of the staged Development Plan (v.37) for the land. It should be noted that there is no statutory process for submissions relating to Development Plans, and any submissions received have no statutory weight, e.g., in terms of the ability to appeal a decision to VCAT on planning grounds. Notwithstanding this, it is Council's practice to undertake informal public notice to help inform its decision-making.

A report on the merits of the Development Plan will be put to the next available Council Meeting.

Proposal

The subject land comprises two lots, at 6230 and 6280 Great Ocean Road, Apollo Bay. The Development Plan proposes 144 residential lots, with a minimum lot size of 450sqm, an average lot size of 626sqm and 1.54ha of public open space towards the west and south along the Great Ocean Road frontage. Landscape buffers would be incorporated along the Great Ocean Road frontage. Drainage reserves would be provided on the northern and south-eastern parts of the subject site, as well as extending across the public open space. There would only be a single access from Great Ocean Road into the subject site.

4. SUBJECT LAND & SURROUNDINGS

The land at 6280 Great Ocean Road, which has an area of 36.6 hectares, is largely vacant with the exception of sheep farming, one dwelling and some sporadic vegetation.



Figure 4 – 6280 Great Ocean Road



Figure 5 – 6230 Great Ocean Road

Only the land in the Neighbourhood Residential Zone (NRZ1) is proposed for subdivision into residential lots. This part of the land, which was rezoned under Amendment C74 to the Colac Otway Planning Scheme in November 2014, has an area of 17.4 hectares.

In terms of the surrounding area:

• Abutting 6280 Great Ocean Road to the south is 40 Marriners Lookout Road, which is expected to be subdivided into residential lots in the future. A Development Plan has been approved for

that land under Schedule 4 to the Development Plan Overlay (DPO4), with a planning permit issued for staged subdivision into 132 residential lots. This site also abuts the Pisces Caravan Park to the south.

- To the east of the site is the Great Ocean Road and Apollo Bay beach.
- To the north east of the site are 6230 Great Ocean Road (also covered by DPO5), 6250 Great Ocean Road (Apollo Bay Museum) and 6240 Great Ocean Road. In addition, there are two dwellings on large blocks (6232 and 6234 Great Ocean Road) to the north.
- To the north west of the land at 6280 Great Ocean Road are large rural land holdings and a lookout at the peak of Marriners Lookout Road. The nearest dwelling to the site on this boundary is at least 150 metres away.

5. KEY INFORMATION

Exhibition and submissions

Whilst there is no statutory public notification process for development plans, in accordance with Council's standard practice it was decided that an informal process of notification would be undertaken to help inform Council's decision.

The Development Plan was therefore exhibited between 24 September 2020 and 21 October 2020 to adjoining and surrounding landowners and occupiers. The Development Plan was also advertised in The Apollo Bay News Sheet on 24 September 2020.

A total of 26 submissions were received in response to the public notice. Two (2) were in support of the Development Plan and twenty-four (24) either raised concerns, objected or provided suggestions. Key points raised in the submissions are outlined below.

Submissions in favour of the proposal considered, amongst other things, that "development is appropriate for the neighbourhood residential zoning", "the development plan has addressed environmental and drainage concerns", that "neighbourhood zone plan allows for such a development and concerns about lot sizes fronting the GOR have been satisfactorily addressed", and that it is a "plan that would enhance and keep the character of the Great Ocean Road and is appropriate and well balanced that fits in well if not better than recent developments along the Great Ocean Road including Apollo Bay".

The main reasons for objecting to the Development Plan relate to:

- The size of the proposed development (including number of lots, block sizes);
- Being insensitive to the entry to Apollo Bay by creating a cluttered development;
- The visual impact of the proposal;
- The fact that there is an abundance of houses in Apollo Bay;
- Concerns about stormwater and the volume of water that would be generated, with reference to impact on public land and beach;
- Concerns about access, including the fact there would only be one;
- Absence of footpath along Great Ocean Road for pedestrian traffic;

- Proposal would create extra burden on town power supply where there are existing outages already;
- Concerns over the absence of a right turning lane on Great Ocean Road into the subdivision;
- The fact that the proposed development could create parking congestion during an emergency;
- Lack of landslip control measures.

In addition, some submitters raised concerns and posed questions for Council's consideration with regards to the proposal. These include querying if there would be adequate fire protection in the first stage given it would be without water supply; if the Council or developer seeks to extend the length of the 50km/h speed zone on the Great Ocean Road to encompass the new development to ensure the safety of pedestrians; and if the development would affect the sustainability of water supply, stormwater and sewerage treatment for all development. One submitter raised concerns over the timeline for stages which would impact on the maintenance, protection and management of the land, and also questioned the safety and durability of the deceleration lanes proposed to be constructed. One submitter requested that Council impose a condition requiring a 4m strip of vegetation to be provided between their property and the subject land to create a natural buffer and recommended less lots were provided by increasing the lot size to be in keeping with the surrounding environment.

Some submitters also provided suggestions, which included undertaking planting within the area zoned RCZ; an easement for a road within the subject site for future-proofing as Great Ocean Road could be subject to beach erosion and flooding in the future; a separate on-road bicycle lane or off-road bicycle path (or shared path) be considered to allow for choice in the mode of travel safely into the township; that management of costs for the common lands for open space, bushfire management, landslip controls area and drainage reserves be held by a body corporate and initially funded by a bond from the developer. A planning consultant acting on behalf of one submitter suggested that section 173 agreement be registered on the titles of each lot that no further subdivision should happen; and siting a perimeter road external to the lots abutting RCZ to create a visual and physical buffer, which would also act as CFA access road similar to Mariners Vue subdivision.

Four agency submissions were received – from the Department of Transport, Barwon Water, CFA and CCMA. All the agencies provided 'in-principle' agreement to the amended Development Plan.

6. OFFICER DIRECT OR INDIRECT INTEREST

No officer declared an interest under the Local Government Act 2020 in the preparation of this report.

Development Summary

| , , | | |
|---------------------------------|----------|-------|
| Area of Site (approx) | 40.775ha | |
| Area of Lots (144 lots) | 9.0066ha | |
| Minimum Lot Size | 472m² | |
| Average Lot Size | 626m² | |
| Net Developable Area (NDA) | 12.546ha | |
| Area of Encumbered Open Space | 3.314ha | 26.5% |
| Area of Unencumbered Open Space | 1.539ha | 12.3% |

| Open Space per Stage | NDA | OS Requirement (10% of NDA) | OS to be delivered | OS different per stage |
|----------------------|----------|--------------------------------|-----------------------|---------------------------|
| Stage 1 | 4.027ha | 0.403ha | 0.504ha | 0.102ha |
| Stage 2 | 2.771ha | 0.277ha | 1.035ha | 0.758ha |
| Stage 3 | 2.373ha | 0.237ha | 0.00ha | -0.237ha |
| Stage 4 | 3.376ha | 0.338ha | 0.000ha | -0.338ha |
| Total | 12.546ha | 1.255ha | 1.539ha | 0.284ha |



LEGEND Site boundary Internal title boundaries Existing contours (1m interval)

40m contour

Road reserve

Lots

Fire buffer

Neighbourhood residential zone boundary as provided by DELWP Existing shoreline walking trail

Main pedestrian circulation

Drainage reserve

Open space reserve

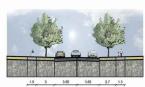
Building exclusion zone (above 40m contour)

(defendable space to forest)

Tree reserve/ Landscape buffer



Typical Section - Local Access Street Adjacent to Open Space (NTS)



Typical Section - Local Access Street (NTS)

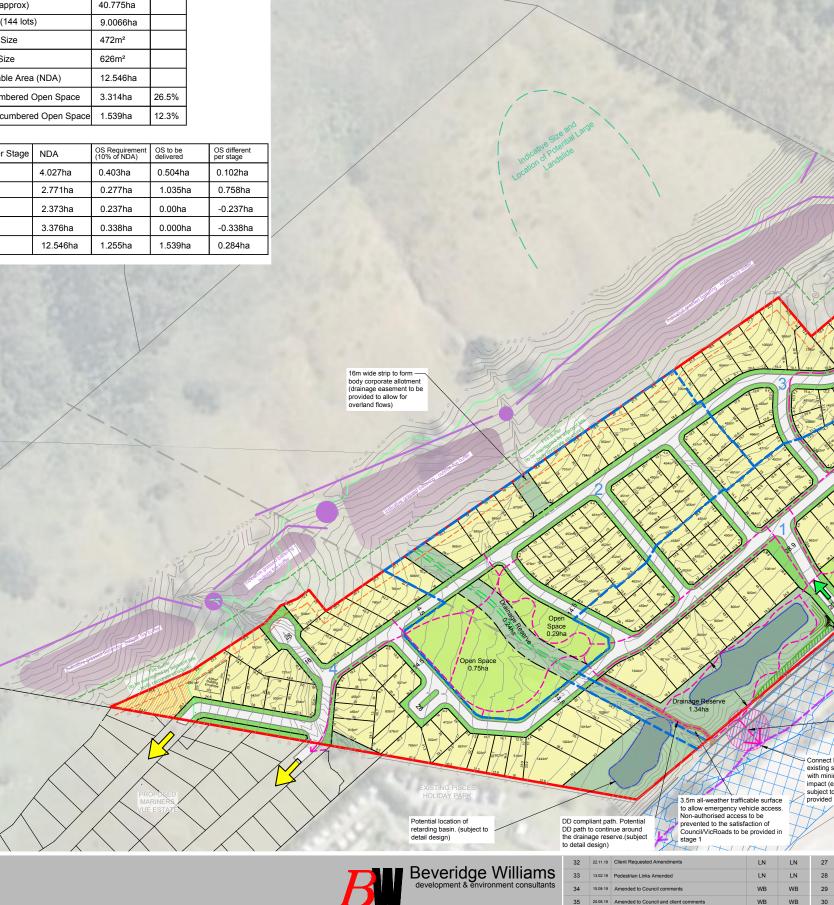
- This plan is subject to council approval

- otes : This plan is subject to council approval All roads are 16m in width unless noted otherwise Title boundaries are approximate only and subject to title re-establishment All dimensions and areas are subject to survey and final computations The majority of the Aborginal Archaeology work has been undertaken. Additional work is required prior to finalising the Cultural Heritage Plan. Accessive stores to the site is subject to Council / Vicroads approval Road pavement is indicative only and subject to dengineering design Drainage areas are approximate only and subject to detailed engineering design Contour interval 1m "To assuage Council's concerns that the remaining Open Space may be delayed by the long-term leasehold that exists on the land on which much of the open space is situated, the developer will provide a signed agreement with the Leaseholder of the land, allowing the development, if and when required by Council (in this case, with Stage 2 of the development, if and when required by Council (in the subdivision of the land and the transfer of title of the reserve to Council."

Overall Development Plan

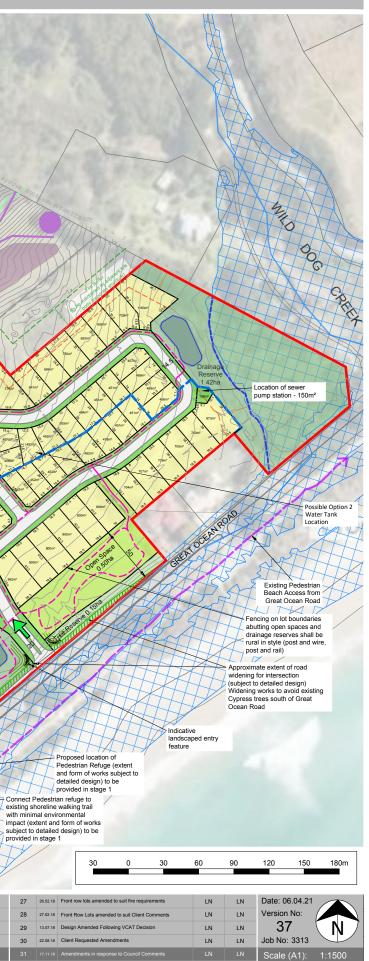
The Beach, Apollo Bay

Australian Tourism Investments Number 5



ourne ph : 03 9524 88

Attachment 8.1.1 Overall Development Plan - Version 37



K: JOBS DATA/3313 - 6280 GREAT OCEAN ROAD APOLLO BAY\ LAN/00/CAD/3313 OVERALL DEVELOPMENT PLAN.DWG



Item: 8.2

PP223/2022-1 - 1140 Irrewillipe Road, Barongarook West -Use and Development of Land for Dwelling

| ADDRESS AND PROPERTY DETAILS | 1140 Irrewillipe Roa Barongarook West Lot 1 TP118801, V/F: 9826/929 | d, APPLICATION NUMBER | PP223/2022-1 | | |
|--|---|----------------------------|---|--|--|
| PROPOSAL | Use and Developme | nt of Land for a Dwell | ling | | |
| PERMIT TRIGGERS | Clause 35.07-1 – Farming Zone – Use of the land for a dwelling Clause 35.07-4 – Farming Zone – Building and works associated with a Section 2 (permit required) use, and within specified setbacks Clause 42.03-2 – SLO1 – Buildings and works | | | | |
| TRIGGER FOR DETERMINATION BY COMMITTEE | Officer recommend in the Farming Zone | | application for a dwelling | | |
| ZONE | Farming Zone (FZ) | OVERLAYS | Significant Landscape Overlay, Schedule 1 (SLO1) - 100% | | |
| | | | Vegetation Protection Overlay, Schedule 1 (VPO1) - 100% | | |
| | | | Erosion Management Overlay, Schedule 1 (EMO1) - 74.6% | | |
| COVENANTS | None | | | | |
| CULTURAL HERITAGE | The site is not within | n an area of cultural h | eritage sensitivity | | |
| OFFICER | Ravi Ayyagari | CHIEF EXECUTIVE OFFICER | Anne Howard | | |
| DIVISION | Executive | | | | |

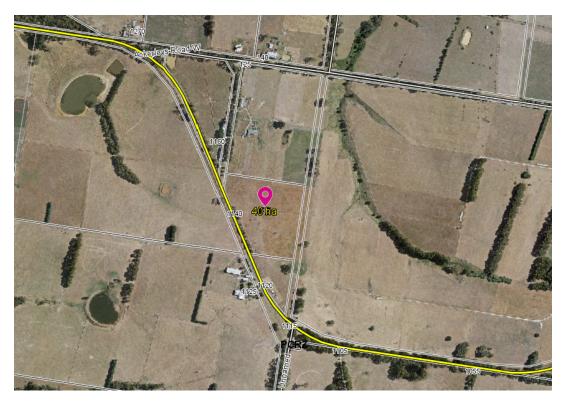
| ATTACHMENTS | 1. | Application Documents [8.2.1 - 36 pages] |
|-------------|-----|---|
| | 2. | Dwelling Plans [8.2.2 - 5 pages] |
| | 3. | Maps of Area Analysis [8.2.3 - 2 pages] |
| | 4. | Area Analysis information - (relates to maps) [8.2.4 - 3 pages] |
| | 5. | Agriculture Victoria Response [8.2.5 - 8 pages] |
| | 6. | Former VCAT Decision - Swanson v Colac Otway July 2009 |
| | | [8.2.6 - 7 pages] |
| | 7. | Former VCAT Decision - Heaysman Pty Ltd v Colac Otway |
| | | March 2013 [8.2.7 - 9 pages] |
| | 8. | Former VCAT Decision - Kennedy v Baw Baw July 2022 [8.2.8 - |
| | | 22 pages] |
| | 9. | Former VCAT Decision - Strachan v Latrobe January 2022 [8.2.9 |
| | | - 25 pages] |
| | 10. | Draft Permit Conditions (Not Officer Recommendation) [8.2.10 |
| | | - 3 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 Construction of One Agricultural Building at 1140 Irrewillipe Road, Barongarook West (Lot 1 TP: 118801U V/F: 9826/929 Parish of Irrewillipe) for the following reasons:

- 1. The proposed dwelling is contrary to clauses 02.03-4 (Natural Resource Management), 02.04 (Strategic Framework Plans), 14.01-15 and 14.01-1L (Protection of Agricultural Land) and 16.01-3S (Rural Residential Development) of the Colac Otway Planning Scheme, which seek to protect high quality agricultural land and 'Farmland of Strategic Significance', and to limit rural residential development unless an application adequately demonstrates that a dwelling is genuinely required to carry out a long term agricultural activity having regard to the size of the lot, and the intensity and ongoing nature of the proposed agricultural activity.
- 2. The proposed use and development of a dwelling on the 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, given that:
 - a) It has not been adequately demonstrated that a dwelling would enhance agricultural production based upon the land unit described in the application.
 - b) The proposal has the potential to limit the operation and expansion of adjoining and nearby agriculture uses.
 - c) 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 proposed dwelling 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 also for the construction of an agricultural building.

A permit is required for the use and development of the dwelling due to the size of the 4.5ha lot being under the 40ha at which a dwelling is 'as of right' under the provisions of the Farming Zone (subject to setbacks). A permit is required for the agricultural building because it would be located within one of the specified setbacks that triggers the requirement for a planning permit under the provisions of the zone.

The dwelling, which would be 345sqm, would be sited 45.7m from western (road) boundary and 63.9m from the northern boundary of the site. The proposed dwelling would contain 4 bedrooms, 2 bathrooms, a kitchen/living area and a double garage. There would also be a verandah on the front of the dwelling.

The applicant has advised that the dwelling would be ancillary to a beef cattle breeding farm. The submitted Farm Management Plan advises that *"the Meat and Livestock stocking rate calculator suggests a productive capacity of the property of 6-7 cows with calves"* but states, in relation to the existing grazing land, that *"the farm holds 15 Murray Grey heifers and half of them calved last season"*. It acknowledges that this *"does mean the farm relies on bought-in fodder for feeding"*.

The Farm Management Plans also states:

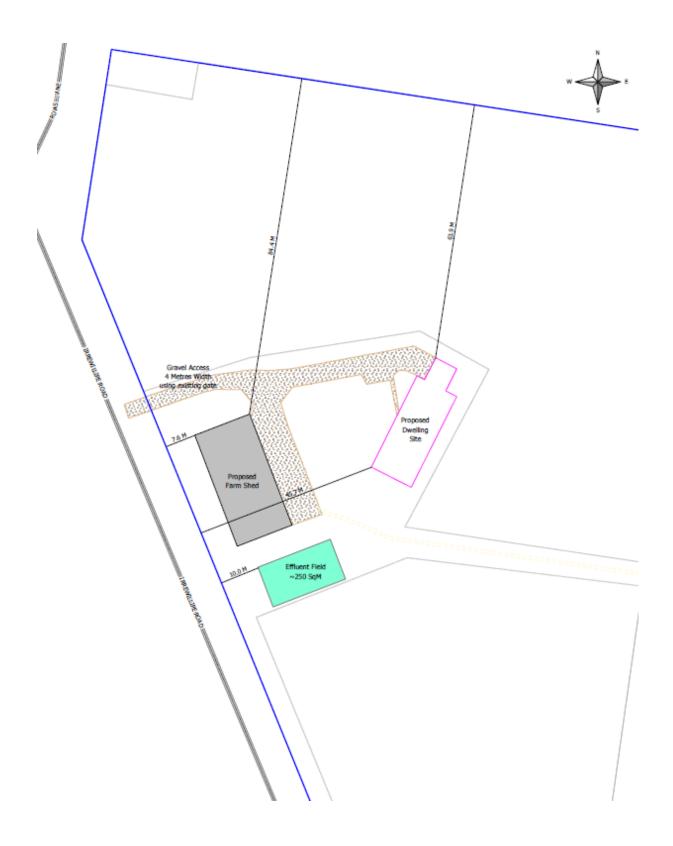
"Overall there can be a peak number of cows and calves on the site can be high as 25 at a time. The proponents own 15 Murray Grey heifers for breeding and lease a Simmental bull each year. This has produced 6-7 calves and the intent is to grow this to 15 calves. Calves are allowed to wean naturally off the mothers and ideally are held on the site for 12 months or until feed availability becomes an issue.

[The owner] is a stock driver and often acquires unwanted dairy calves which are also weaned on the site. This has been 4-6 each year and they are sold on at 3 months of age back to dairy farms or for beef production. This number can be readily increased to 10-20 each year when they are resident."

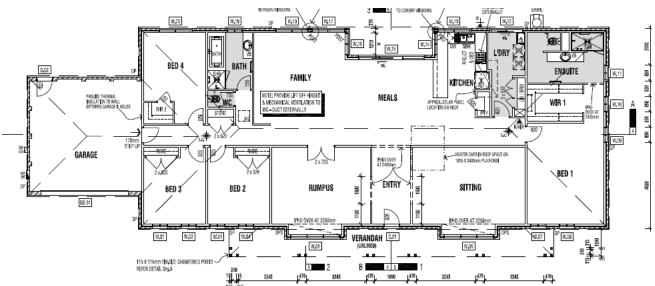
[Note: see also the comments from Agriculture Victoria in the assessment section of this report about the stocking rates cited by the applicant.]

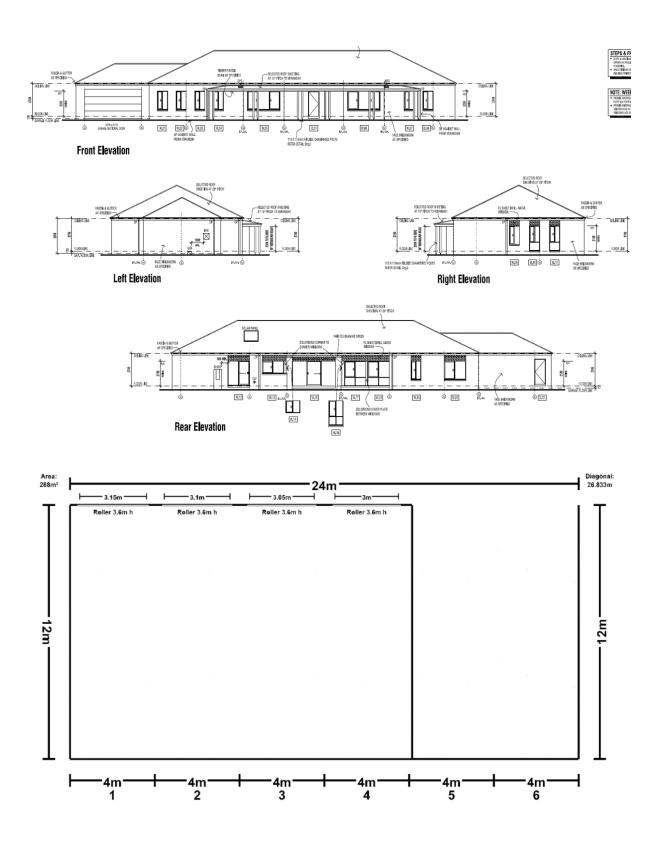
The application includes one large shed, which would be located only 7.6m from the road boundary to Irrewillipe Road. The shed would measure 24m x 12m (288m²), with a maximum height of 5.32m to the apex. This building would be within the specified setback of 20m from a road and therefore requires a planning permit under the setback provision.

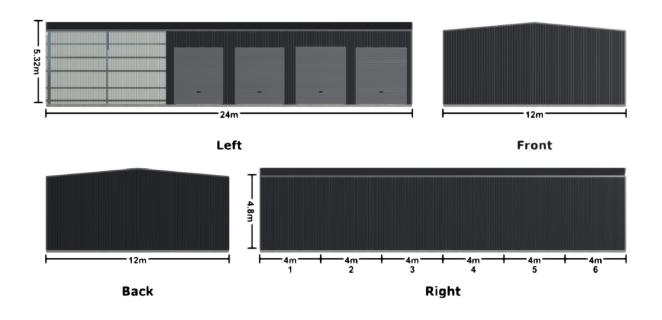
The dwelling outline is shown in pink on the plans below, with the shed a solid grey and the effluent disposal field in green:











4. SUBJECT LAND & SURROUNDINGS

The subject land, which has an area of 4.51 ha, is located within the Farming Zone. It is important to note that whilst the submitted Farm Management Plan states that the current owners *"bought the property 15 years ago when it was a residential zone and have been developing it up as their ideal farm"* this land has never been zoned for residential purposes. Prior to being changed to the Farming Zone, the land was in the Rural Zone.

The site has a frontage of 255.69m to Irrewillipe Road and is located on the eastern side of the road. The topography of the land is flat towards the front, with a gentle slope towards the rear. The subject site is mostly void of any significant vegetation, apart from some vegetation along the road boundary. The area outlined below in red is the perimeter of the subject site.



The nearest dwelling is located 175m to the north of the site of the proposed dwelling. That dwelling was allowed in March 2007 (PP353/2006), prior to Council adoption of the Rural Land Strategy.

Surrounding land is also within the Farming Zone and is primarily used for agricultural purposes, with some rural living lots.

Whilst there are existing dwellings on small lots in the area, as discussed in more detail later in this report, it is important to note that nearly all of the existing dwellings were constructed/permitted before 2007.

VCAT Findings

[Note – all VCAT decisions cited in this report, unless otherwise stated, are attached to the report.]

One of these VCAT decisions relates to the property immediately to the south of the subject land, at 1120 Irrewillipe Road. Planning application PP263/2008 sought a permit for the use of that land for a dwelling. Council refused to grant a permit and the applicant appealed to VCAT against Council's decision. In this case, of *Swanson v Colac Otway SC* [2009] VCAT 1513, the Tribunal upheld Council's decision and noted both the need to protect agricultural land and the importance of the Rural Land Strategy when considering applications submitted after the adoption of that policy document. The Tribunal Member made the following relevant comments at paragraphs 19 and 21:

- 19. Having regard to the strong and integrated framework provided in state and local planning policy and the zone provisions to protect rural areas of high agricultural value in particular, I agree with the responsible authority that this proposal is not consistent with the relevant policy framework. It is clear that the proposed dwelling is not reasonably required to support agricultural activity. Similarly, I agree with the responsible authority that parcel does not of itself justify a decision to allow a dwelling to be constructed on it. By contrast, if a dwelling is approved on the subject land, the opportunity to consolidate the land with an adjoining property to create a larger and more viable rural parcel will be permanently lost. I also recognise the potential for disturbance to residents of the dwelling from surrounding agricultural land use, that may ultimately pressure such agricultural use to self-regulate.
- 21. I acknowledge that a number of other dwellings already exist in the surrounding area. Some of these, such as the property directly opposite, are longstanding and were used directly in connection with farming enterprises. Other more recent approvals have demonstrated small scale hobby farm type uses will be carried out on the land. Some dwellings have been excised from larger lots pursuant to certain subdivision exemptions within the planning scheme of the day. What is clear is that any relatively recent approvals for the development of land as a dwelling pre-dated the Rural Land Strategy outlined above and now referenced in the planning scheme. In addition, there comes a point where the line has to be drawn somewhere. I consider that it would not be wise planning to exacerbate any dilution of land use that has occurred in this particular agricultural area. [emphasis added]

It is clear from the above VCAT Order that allowing a dwelling on a small lot in an area of high agricultural value is contrary to planning policy, and would result in the loss of opportunity for consolidation with adjoining property to create a larger and more viable agricultural enterprise (see relevant mapping below, in the section on planning scheme provisions). As noted, VCAT has also placed emphasis on the Rural Land Strategy, which Council adopted in September 2007.

Following the above decision, another planning application was submitted for the same property at 1120 Irrewillipe Road (ref. PP188/2011-1). This time the proposal was for the use and development of the land for a cattery and dwelling, with the application putting forward the case that the proposed cattery was an agricultural use that justified the proposed dwelling. This application was also refused by Council, on the grounds quoted below which were upheld by VCAT:

- 1. It has not been demonstrated that the dwelling is reasonably required for the operation of a bona fide agricultural activity to be conducted on the land.
- 2. The proposal does not provide an appropriate outcome against the purpose and decision guidelines of the Farming Zone.
- 3. The proposal does not accord with the State and Local Planning Policy Framework.
- 4. The proposal is not consistent with Council's Rural Land Strategy 2007.

In the review of Council's decision on this case, in *T J & A J Heaysman Pty Ltd v Colac Otway SC* [2013] VCAT 303, the Tribunal Member re-iterated the conclusions of the previous VCAT decision for the land noting, inter alia, the strong policy framework; the fact that *"approval of the dwelling, and the precedent value of such a decision, would have the potential to undermine the relative intactness of this significant agricultural area"*; and the fact that, *"while there are a number of other dwellings in the area, there comes a point where the line has to be drawn somewhere and it would not be wise for planning to exacerbate any dilution of land use that has occurred in this particular agricultural area"*.

The Tribunal Member noted in general terms that *"there has been an increase in demand for rural lifestyle properties"* and that *"proliferation of dwellings for lifestyle/hobby farm purposes in the Farming Zone will compromise the long term viability of farming in Colac Otway Shire"*. It is considered that the current pressure for rural living style properties on small lots in the Farming Zone is even higher than at that time, which is demonstrated both by the fact that there are four such applications on the current Planning Committee agenda and the fact there have been numerous such applications considered by Planning Committee over the past year or two.

The Tribunal Member stated, in relation to this neighbouring site and its surroundings:

"12. As detailed earlier, the review site and its surrounds are farmland that has been identified as being of high agricultural capability and of strategic significance to the Shire. I agree with the comments of the earlier Tribunal that there is a strong and integrated framework within the State and Local planning policy and the zone provisions to protect rural areas of high agricultural value, in particular.

13. A dwelling within the Farming Zone can represent an acceptable outcome if it is associated with an agricultural activity. In this instance, the Applicant proposes to operate a cattery on the land, and the dwelling is to be associated with this use. Animal boarding is nested within the land use category of 'Agriculture' pursuant to Clause 74. In principle, animal boarding can be an appropriate use within the rural zone such as this. It is important, however, that any proposal is accompanied by detailed information that demonstrates the appropriateness of the cattery use and its suitability to the site and context, and provides a degree of confidence that it is an on-going prospect given the largely permanent nature of the proposed dwelling. The scenario where the use is not on-going will give rise to a rural living outcome which is not acceptable here, for the reasons outlined by the earlier Tribunal....

17. The policy framework identifies this part of the Shire as being of strategic agricultural importance. One must proceed with caution in allowing a residential use to be established where it is not sufficiently demonstrated that it is in conjunction with an agricultural activity, for the reasons outlined in the earlier Tribunal decision."

In that VCAT case, whilst the proposal was for an agricultural use, the Tribunal Member was not persuaded that the application was a well-considered proposal for the land and found that Council was correct to have concerns about, and to refuse, the proposed use.

The agricultural use proposed by the current application, and the need for a dwelling is considered in the assessment section of this report below.

5. PLANNING SCHEME PROVISIONS

Planning Policy Framework

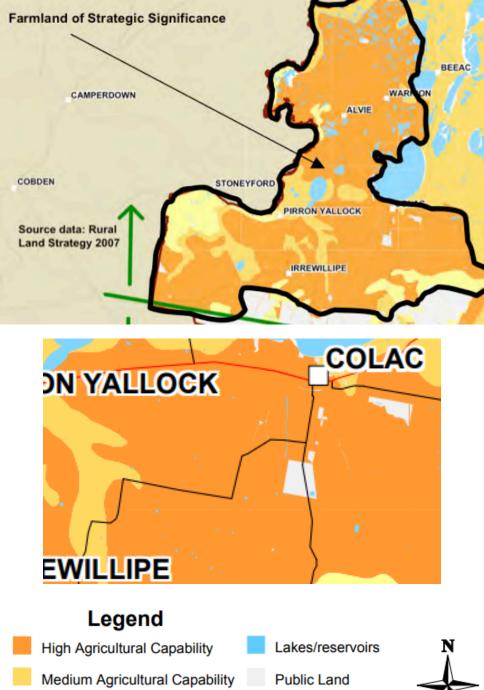
The Planning Policy Framework (PPF) seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development policies. The policies considered relevant to the application are identified below:

- 02.01 Context
- 02.02 Vision
- 02.03 Strategic Directions
- 02.04 Strategic Framework Plans
- 11.01-1S, 11.01-1R and 11.01-1L Settlement
- 12.05-2S and 12.05-2L Landscapes
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 14.01-2S and 14.01-2R Sustainable Agricultural Land Use
- 15.01-6S and 15.01-6L Design for Rural Areas
- 16.01-3S Rural Residential Development.

Clause 14.01-1S, which is a state planning policy relating to the protection of agricultural land, seeks to ensure that areas of productive agricultural land are identified and that productive farmland that is of strategic significance in the local or regional context is protected.

Whilst in this case, as discussed below, the land has high agricultural activity and is in Farmland of Strategic Importance, it should be noted that the Tribunal has taken the reference to 'productive farmland' and 'productive agricultural land' in clause 14.01-1S as including all land identified as having high, medium or low agricultural capability. As stated by the Tribunal Member in the matter of *Irrewarra Estate Ltd v Colac-Otway SC [2021]* VCAT 358 (which is attached to another report on this agenda: PP188/2022-1 – 255 Colac Ballarat Road, Irrewarra), *"read sensibly and harmoniously with all other relevant provisions of the planning scheme, the reference to 'productive farmland' and 'productive agricultural land' in clause 14.01-15 includes all land identified as having agricultural capability under clause 02.03-4 whether classified 'low', 'medium' or 'high'.*

Colac Otway Shire's *Rural Land Strategy* 2007 has identified Farmland of Strategic Significance and the high agricultural capability land for this Shire. The plan identified in Clause 02.04 (Strategic Framework Plans) shows the subject site within the 'Farmland of Strategic Significance'. The following plans, which include extracts from the *Rural Land Strategy*, show the subject land is Farmland of Strategic Importance, with high agricultural capability (the road layout in the second and third plans helps to identify the location of the subject site):



Low Agricultural Capability





Clause 02.03-4 (Natural Resource Management) seeks to ensure that natural resources are managed, inter alia, by protecting high quality agricultural land, limiting rural residential development that impacts viable agricultural land, and supporting farm consolidation and expansion.

Colac Otway Shire Rural Living Strategy

The subject site and the surrounding area were not identified as a potential rural living area within this strategic document. The clusters of development identified in the Barongarook area for rezoning were Bushbys Road, Robinson Road and Everett Crescent, none of which are near the subject land.

<u>Zone</u>

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. There is also a permit trigger if minimum setbacks are not met, as is the case for the proposed agricultural shed. The relevant setbacks are:

- 20m from a road whilst the dwelling would meet this requirement, the proposed shed would be within the specified setback, at 7.6m from the front boundary.
- 5m from any boundary both the proposed dwelling and agricultural shed would comply.
- 100m from any dwelling not in the same ownership both the proposed dwelling and agricultural shed would be more than 100m of the nearest dwelling to the north.

• 100m away from a waterway, wetland or designated flood plain – both the proposed dwelling and shed would comply.

Whilst the proximity of the agricultural shed to the front boundary is not ideal, on balance it is not considered that the encroachment into the specified setback would cause material detriment to the character of the area provided the vegetation along the road boundary was maintained and, if necessary, replaced. Whilst a larger setback from the road would be preferable, it is considered that this vegetation would provide some screening of the building.

The main issue in this case therefore relates to the principle of allowing the proposed dwelling on a small lot, having regard to the purpose of the Farming Zone and relevant planning policy.

Overlays

Vegetation Protection Overlay, Schedule 1 (VPO1) - Significant and Remnant Vegetation

The site is covered by Vegetation Protection Overlay, Schedule 1 (VPO1). A key purpose of this overlay is to protect areas of significant vegetation, to ensure that development minimises loss of vegetation, to preserve existing trees and other vegetation and to encourage the regeneration of native vegetation. A planning permit is not required under this overlay, as no vegetation is proposed to be removed as part of the proposal.

Significant Landscape Overlay, Schedule 1 (SLO1) - Valleys, Hills and Plains Landscape Precinct

The site is covered by Significant Landscape Overlay, Schedule 1 (SLO1) - Valleys, Hills and Plains Landscape Precinct. A key purpose of this overlay is to identify significant landscapes, and to conserve and enhance the character of significant landscapes. Applications under this overlay are required to demonstrate that all new buildings and works are designed and constructed to avoid contrasting shape, colour, size and mass. Structures are required to be sited and screened so that they become an integral part of the visual landscape rather than dominating it, with buildings and works on ridgelines, the slopes of scoria cones and inside craters avoided. In such cases, it must be demonstrated that there is no alternative suitable site, and that the buildings and works are essential. Under the provisions of this overlay, a planning permit is required under Clause 42.03-2 for buildings and works associated with the construction of the proposed dwelling and shed.

Erosion Management Overlay, Schedule 1 (EMO1)

The site is partly (74.6%) covered by the Erosion Management Overlay, Schedule 1 (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. No planning permit is required under this overlay, as both the proposed dwelling and agricultural shed would be located outside the extent of this overlay, as shown below:



Other relevant provisions

Nil.

Relevant Planning Scheme amendments

Not applicable.

6. REFERRALS

Internal Referrals

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

External Referrals

Notice of application was provided to Agriculture Victoria under Section 52 of the *Planning and Environment Act* 1987. Agriculture Victoria provided some comments, and recommendations if a permit is to be granted for the proposed use and development. This referral response is discussed below.

7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application in the form of a site notice and letters to adjoining landowners/occupiers. No objections were received.

8. OFFICER'S ASSESSMENT

The key issue for consideration in the determination of this application is whether the proposal is in accordance with planning policy for the Farming Zone, including whether appropriate justification has been provided to demonstrate that the proposed dwelling is reasonably required to support agricultural production on the land, presenting a substantial economic benefit to the land.

It is considered that the proposal is incompatible with the following clauses in the Colac Otway Planning Scheme:

- 02.03-4 Strategic Directions Natural Resource Management
- 02.04 Strategic Framework Plans
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 16.01-3S Rural Residential Development

The state planning policy, 'Protection of Agricultural Land' (Clause 14.01-1S) seeks to ensure, inter alia, that:

- Areas of productive agricultural land are identified.
- Productive farmland that is of strategic significance in the local or regional context is protected.
- Productive agricultural land is protected from unplanned loss due to permanent changes in land use.

- New housing development in rural areas is limited 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

As noted above, Colac Otway Shire's *Rural Land Strategy* 2007 has identified 'Farmland of Strategic Significance' and the high agricultural capability land for this Shire. This plan, located at Clause 02.04, shows this site within the 'Farmland of Strategic Significance'. Clause 02.03-4 states that:

Council seeks to manage its natural resources by:

- Protecting high quality agricultural land.
- Limiting rural residential development that impacts viable agricultural land.
- Supporting grazing and cropping farming practices as preferred land uses in areas designated as 'Farmland of Strategic Significance'.
- Supporting farm consolidation and expansion.
- Supporting agricultural diversity and sustainable forestry and timber industries.
- Supporting the growth and operations of existing timber processing.

Clause 16.01-3S (Rural Residential Development) includes the following as strategies:

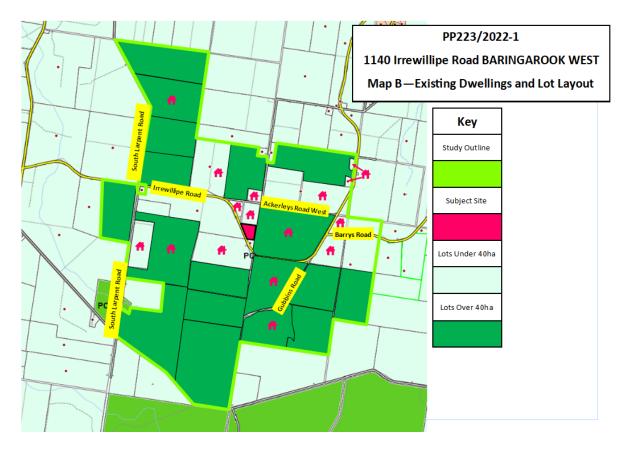
- Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.
- Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.
- Ensure land is not zoned for rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural resources.
- Discourage development of small lots in rural zones for residential use or other incompatible uses.

The subject lot was created in 1987 as part of a three lot subdivision, which created lots of 8.4ha, 4.5ha (being the subject site) and 1.288ha. These lots were previously separate Crown Allotments and, as such, no planning permit was required for the division of the parent title, and there was no opportunity for Council to consider relevant planning policy before the subject site was created as a separate lot. The subject land was therefore not a lot created by Council for the purposes of a dwelling.

As noted earlier in this report, Council's *Rural Land Strategy* (2007) identifies the subject land and surrounding area as being of 'high agricultural capability', and the broader area is considered to be 'Farmland of Strategic Significance', due to the economic benefit that flows from dairying and associated manufacturing. The area is to be protected from inappropriate development, such as dwellings, that has the potential to impact on agricultural production. Council and VCAT have taken a generally consistent approach over the years in terms of avoiding the proliferation of dwellings that are unrelated to agriculture in Farming Zones.

To understand the surrounding land pattern with regard to lot size and ownership, an analysis of the surrounding area is mapped below. It should be noted that the analysis area is a bounded by the green line and:

- It is 1320ha in area.
- The subject site is shown dark pink.
- 21 separate properties (based on ownership) are rated.
- 11 properties have a total land area greater than 40ha; 5 with dwellings.
- There are 42 lots within the study area.
- 18 lots are greater than 40ha, with five (5) dwellings on them.
- 24 lots are less than 40ha. (Note: This includes multiple parcels of land under separate titles owned by the same person that are combined into one big parcel.)
- There are 16 dwellings, 11 on lots of less than 40ha.
- Details of lot and property areas, landholdings and permits issued are attached to this report.



A concern to which regard must be had is that, just within the area above alone, there are 13 lots under 40ha without dwellings. Issuing a permit against planning policy would create a precedent for others to follow suit, contrary to VCAT decisions in the area and ultimately potentially losing a large swathe of 'Farmland of Strategic Significance' to rural living.

The *Rural Land Strategy* has acknowledged that, in order 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, as acknowledged in the VCAT decisions for the neighbouring land at 1120 Irrewillipe Road quoted above. 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 as farming land in other areas of the State becomes increasingly vulnerable to harsher climatic conditions.

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.

To help inform the decision-making on this planning application, comments were sought from Agriculture Victoria about the proposed agricultural use and the requirement for a dwelling on the land. In the recommendation section of the advice from Agriculture Victoria, it was stated:

"Agriculture Victoria considers that the proposed use of the land for grazing animal production could be carried out without a dwelling and that the refusal of the application appears supported by the VCAT decisions... [cited in its advice, and below]."

Details of the reasons Agriculture Victoria reached that position are outlined below.

Agriculture Victoria considered the nature of the proposed agricultural activity, noting that:

"The application states that the dwelling is ancillary to a beef cattle breeding farm. Beef cattle breeding may be considered Grazing animal production (GAP) is included under Agriculture and is considered a Section 1 Use, no permit required. <u>Grazing animal production' is defined as: land used for animal production where the animals' food is obtained by directly grazing, browsing or foraging plants growing on the land. [emphasis added]</u>

As noted in the proposal section earlier in this report, the Farm Management Plan specifically notes that, in this case, "the farm relies on bought-in fodder for feeding".

The response from Agriculture Victoria continued as follows:

"Agriculture Victoria notes that the use of land in the FZ for a calf rearing enterprise could be considered 'Intensive animal production', a Section 2 use, permit required, if not in association with a broader grazing based system. Intensive animal production is defined as: land used for animal production where the animals' food is imported from outside the immediate building enclosure, paddock or pen."

Despite noting there is a reliance on "bought-in fodder", permission has not been sought for intensive animal production on the land as part of the current application.

In terms of the agricultural use outlined in the Farm Management Plan, Agriculture Victoria calculated the carrying capacity across the available 4.1ha of the subject site and advised as follows:

"The calculated carrying capacity across the 4.1 ha is 90 DSE [dry sheep equivalent] (i.e. 22 DSE/ha multiplied 4.1 ha). Base on a pregnant heifers, lactating heifers and subsequent calves on average this equates to a carrying capacity of between 4-5 heifers and calves per year.

The available grazing area to achieve stated production does not make allowance for the suggested and but [sic] not defined fodder production area in the FMP.

Agriculture Victoria considers that the nominated stocking rate of 15 Murray Grey cows with calf would not be sustainable on the subject land. The imported feed required to maintain this stocking rate may be considered intensive animal production and given the constraints of the site lead to the potential for impacts to the environment and amenity." Agriculture Victoria also considered the water demand and availability for domestic and livestock use. It was noted that:

"...on average, 750 litres of water is used in a 3-4 bedroom dwelling per day. Based on these numbers, domestic use would require 273,750 litres of water per year. The proposed tank water in the first instance will need to meet the domestic needs of the dwelling.

The proposed roof area of the dwelling is 270m². The roof area of the shed was not included in the supporting documents. In an average rainfall year of 550 mm, approximately 148,500 litres of water would be harvested from the dwelling.

Cattle drinking water demand

Agriculture Victoria has estimated the annual cattle drinking water requirements for lactating cows to be up to:

- 182,500 litres based on stocking 5 cows on the property at any one time
- 547,500 litres based on stocking 15 cows on the property at any one time

The cattle drinking water requirements is based on data from the 2014 NSW DPI Prime Fact - Water requirements for sheep and cattle.

Agriculture Victoria considers that contingent on an average rainfall year the rain harvested from the buildings would only meet the domestic needs and not stock watering requirements."

Agriculture Victoria also noted the following:

- Colac Otway Planning Scheme zoning maps gazetted 29 July 1999 show the property was zoned Rural Zone which is now known as the Farming Zone.
- The subject land adjoins three (3) properties that all appear to be under grazing animal production and are able to be practically consolidated for agricultural expansion.
- The town of Colac is a 13 km drive from the subject property.
- Stock water is currently being carted to the site and any future supply relies on the construction of buildings to capture rainwater.
- Any regular ongoing calf rearing along with expected calf numbers are unclear.
- All development is expected to be completed within three years, however, it isn't clear what agricultural development is proposed to be completed prior to the dwelling use.
- The cattle yards onsite are proposed to be shifted into the north-west boundary corner of the property. (Agriculture Victoria noted that "based on the VCAT finding of Grigg v Towonga SC & Anor (Red Dot) [2013] VCAT 956, cattle yards are considered a building" for which permission should be sought is within a FZ setback.)
- Hay production levels aren't clear, although acknowledgement of reliance on the fodder importation is detailed.
- The fenced domestic area shown minus the farm shed along with its own access and curtilage gives a domestic envelope of 2400 m².

In addition, Agriculture Victoria cited a couple of VCAT decisions which it considers have some comparison to the current proposal, as outlined below.

In VCAT case Kennedy v Baw Baw SC [2022] VCAT 787, consideration was given to a proposal for a dwelling on a 3.9 hectare property in the Farming Zone. In this matter, Agriculture quoted the Tribunal Member as follows:

- 52. The scale of the agricultural [sic] is said to be more akin to a hobby farm and as such any dwelling would perform the function of supporting a rural lifestyle rather than being a necessity in the operation of a commercially viable business.
- 53. I am not persuaded the use of the land for a dwelling on a 3.9 hectare site is consistent with the provisions of the FZ and is necessary having regard to the nature of the farming use. The decision guidelines of the FZ require consideration of whether the dwelling will result in loss or fragmentation of productive agricultural land and the potential for the proposal to lead to a concentration or proliferation of dwellings.

It is noted that the consultant who prepared the Farm Management Plan for the current proposal is aware of these findings, having represented the applicant in that case.

Agricultural Victoria also cited another VCAT decision, *Strachan v Latrobe CC* [2022] VCAT 35, where VCAT ruled that there was no need for a dwelling associated with an agricultural use in the Farming Zone, which the Member considered was at a hobby scale. The applicant proposed a fattening and breeding enterprise using a mix of Highland and lowland Angus cattle. The Tribunal Member in that case stated the following:

- 32. A proposal to develop and use the land for a dwelling was the subject of an application to the Tribunal for review of a grant of a permit in 2012. It was put to the Tribunal in that matter that the permit applicant intended to run a beef herd with 10 weaner cattle being fattened on the site at any one time. The Tribunal set aside the Council's decision and a permit was not granted. The Tribunal found that the proposal was an attempt to have a rural living arrangement masked as an agricultural use within a Farming Zone.
- 58. I have not been persuaded that if the hobby farm operation is started, it will sustainably persist in the long term. The FMP makes no provision for what is to occur if the hobby farm operation ceases, after the dwelling is constructed. In my view, once the dwelling is constructed, there is real risk that if the proposed hobby farming activity commences, it will not be sustained. After the five year period referred to in condition 7, there is not a great deal of motivation for the agricultural activities to be sustained in the long term, particularly if a subsequent owner has no interest in rearing cattle. I consider that this is inconsistent with:
 - a. the purposes of the FZ2, which seek to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture and which encourage the use and development of land based on comprehensive and sustainable land management practices;
 - b. Clause 14.01-15 (Protection of agricultural land) which seeks to limit new housing development in rural areas by directing housing growth into existing settlements; discouraging development of isolated small lots in rural zones from use for dwellings.
 - c. Clause 16.01-3S (Rural residential development) which discourages development of small lots in rural zones for residential use and encourages consolidation of existing isolated small lots in rural areas.

In addition to the concerns already outlined above about the justification put forward for a dwelling on the current subject site, it is evident (as acknowledged in the above VCAT decision) that a smallscale agricultural activity can easily cease operation after a dwelling is constructed on a small lot in the Farming Zone. The resultant situation is an incompatible rural residential lot, with an inflated value, in the Farming Zone. At best, the result is an incompatible rural residential lot with associated hobby farm, and an inflated land value. Examples have previously been provided to Councillors of cases where Planning Committee has granted permits for dwellings on small lots in the Farming Zone against officer recommendation (justified on agricultural grounds by the applicant), only for those to be marketed at a significant price as rural lifestyle lots within weeks of the decision (e.g., at 2235 Birregurra Forrest Road, Forrest and 45 Glenn Street, Warrion). More recently, the applicant for the dwelling recently allowed at 640 Forrest Apollo Bay Road, Barramunga almost immediately submitted an application to reduce the size of the agricultural shed said to be required to support the agricultural activity on the land, despite not yet having materially commenced that activity. Obviously, the option of removing a dwelling from a small lot if the agricultural use ceases is unfeasible – it would be both unrealistically difficult and costly to remove a substantial permanent dwelling, with associated infrastructure, after construction.

Agriculture Victoria also noted that the proposed agricultural activity could be undertaken without the presence of a dwelling, but that regular visits would be required to ensure daily management of the property and animal welfare. The application states that the applicants live in Colac; the estimated trip based on the information provided is approximately 10 minutes' drive from the applicant's property. As such, it is not difficult to undertake regular site visits to ensure daily management of the property and animal welfare. Agricultural Victoria also noted that farm security could be maintained without the need for a dwelling on the site, with locked gates and security camera systems being options for security.

In summary, it is considered that 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 that the proposal is against the policy direction provided by the Colac Otway Planning Scheme and in VCAT decisions relating to a site the immediate vicinity of the subject land.

In response to the Decision Guidelines of the Farming Zone:

General issues

Whilst the applicant did not submit a Land Capability Assessment (LCA), Council's Health Protection Unit 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

It is not considered that the proposed small scale agricultural use described in this application justifies allowing a dwelling on the subject land, for the reasons outlined above.

Dwelling issues

With regard to the 'dwelling issues' it is considered that, for the reasons outlined in this report, allowing a dwelling on a lot of this size would be very difficult to justify on planning policy grounds. In this particular instance, the dwelling is not considered to be reasonably justified by the proposed small scale 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.

As noted earlier in this report, it is also considered that the proposed encroachment by the shed into a specified setback could have been allowed, given the extent of screening (though a greater setback would be preferable). However, as noted above, there is a fundamental conflict with planning policy and it is not considered that a permit could reasonably be granted for the proposed dwelling.

It is considered that the current proposal would not assist with the protection of productive agricultural land, but would present an incompatible permanent change in land use and the creation of a site which could be used, or disposed of, as a rural living lot separately to the surrounding agricultural land, ultimately potentially contributing to a proliferation of incompatible rural lifestyle dwellings on lots with limited, or no, association with agriculture.

In summary, it is considered that the current proposal would present an incompatible permanent change in land use and the creation of a rural living lot in Farmland of Strategic Significance, ultimately potentially contributing to a proliferation of incompatible rural lifestyle dwellings. The merits of this type of proposal have already been tested through VCAT decisions at the neighbouring site at 1120 Irrewillipe Road. In this case, it is considered that the proposal is incompatible with the following clauses in the Colac Otway Planning Scheme:

- 02.03-4 Strategic Directions Natural Resource Management
- 02.04 Strategic Framework Plans
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 16.01-3S Rural Residential Development.

The proposal is also considered contrary to the state planning policy, 'Protection of Agricultural Land' (Clause 14.01-1S) which seeks to ensure, inter alia, that:

- New housing development in rural areas is limited 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.

It is considered that the proposal does not provide an appropriate response to the purpose of the Farming Zone. As noted earlier in this report, whilst acknowledging the existence of rural living lots in this area, Tribunal Members concluded in 2009 and 2013 that a dwelling should not be allowed on the land immediately adjacent to the subject lot, noting that those dwellings pre-dated the *Rural Land Strategy* and stating, inter alia, that:

"...there comes a point where the line has to be drawn somewhere. I consider that it would not be wise planning to exacerbate any dilution of land use that has occurred in this particular agricultural area."

9. OFFICER DIRECT OR INDIRECT INTEREST

No officer declared an interest under the Local Government Act 2020 in the preparation of this report.

e classes listed under Clause 92 or the schedule to Clause 94,

| Colac Otway |
|-------------|

Planning Enquiries Phone: (03) 5232 9400 Email: inq@colacotway.vic.gov.au Web: www.colacotway.vic.gov.au

| YES | | NO |
|--------------|--------------|----------------|
| | | |
| Date Lodged: | 1 | 1 |
| | Date Lodged: | Date Lodged: / |

Application for a **Planning Permit**

If you need help to complete this form, read MORE INFORMATION at the back 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 concerns, please contact Council's planning department.
- A Questions marked with an asterisk (*) must be completed.
- A If the space provided on the form is insufficient, attach a separate sheet.
- Click for further information.

Office Use Only

Application Type

Clear Form

Is this a VicSmart application?*

| ullet |) No | () Yes | | | |
|-------|---------|------------|-----------|---------|---------|
| lf y | es, ple | ease spec | ify which | ch | |
| | | class or o | | | |
| A | If the | applicatio | on falls | into on | e of th |
| | it is a | VicSmar | t applic | ation. | |

Pre-application Meeting

| Has there been a pre-application meeting with a Council planning | • No | O Yes | If 'Yes', with whom?: | | |
|--|------|-------|-----------------------|--------------------|--|
| officer? | | | Date: | day / month / year | |

The Land 🚺

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

| Street Address * | Un | t No.: St. N | o.: 1140 | St. Name: | Irrewillipe Roa | ad |
|--|----|-----------------------|-------------|--------------|-----------------|-------------------|
| | Su | ourb/Locality: Barong | arook West | - 202 | | Postcode: 3249 |
| Formal Land Description * Complete either A or B. | A | Lot No.: 1 | Lodged Plan | Title Plan (| Plan of Subdivi | ision No.: 118801 |
| This information can be found on the certificate of title | OR | | | | | |
| If this application relates to more than one address, attach a separate sheet setting ou | В | Crown Allotment No.: | | | Section | No.: |
| any additional property details. | | Parish/Township Nam | ie: | | | |

35

The Proposal

A 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

| For what use, development or other matter do you require a permit? * | Use and development of land for a four-bedroom, single-storey dwelling ancillary to a beef cattle breeding farm and the development of associated farming infrastructure. |
|---|--|
| | |
| i Estimated cost of any development for which the permit is required * | Cost \$450,000 You may be required to verify this estimate. Insert '0' if no development is proposed. If he application is for land within metropolitan Melbourne (as defined in section 3 of the Planning and Environment Act 1987) and the estimated cost of he development exceeds \$1 million (adjusted annually by CPI) the Metropolitan Planning Levy must be paid to he State Revenue Office and a current levy certific e must be submitted with the application. Visit www.sro.vic.gov.au for information. |
| | |
| Existing Conditions | |
| 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. | Grazing Animal Production |
| | Provide a plan of the existing conditions. Photos are also helpful. |
| | |
| Title Information | |
| | Does the proposal breach, in any way, an encumbrance on title such as a restrictrive covenant, section 173 agreement or other obligation such as an easement or building envelope? |
| Encumbrances on title * | Yes (If 'yes' contact Council for advice on how to proceed before continuing with this application.) |
| | • No |
| | O 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. |

Application for a Planning Permit | Combined

36

Applicant and Owner Details

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

| Applicant * | Name: | | | | | | | | |
|---|---|--|-----------------------|-----------|-----------------------|-----------------------------|--|--|--|
| The person who wants the permit. | Title: Mr | First Name: | rname: | | | | | | |
| | Organisation (if | applicable): Enprove Pt | y Ltd | | | | | | |
| | Postal Address: If it is a P.O. Box, enter the details here: | | | | | | | | |
| | Unit No.: | Unit No.: St. No.: St. Name: | | | | | | | |
| | Suburb/Locality: | Warmambool | | S | tate: Vic | Postcode: 3280 | | | |
| Please provide at least one contact phone number * | Contact information for applicant OR contact person below | | | | | | | | |
| phone number | Business phone |) : | | | | | | | |
| | Mobile phone: | | | | | | | | |
| Where the preferred contact person for the application is different from | Contact person's Name: | details* | | | | Same as applicant | | | |
| the applicant, provide the details of that person. | Title: | First Name: | | Su | mame: | | | | |
| | Organisation (if a | pplicable): | | | | | | | |
| | Postal Address: | | - | | enter the details her | e: | | | |
| | Unit No.: | St. No.: | St. Na | me: | | | | | |
| | Suburb/Locality: | | | S | tate: | Postcode: | | | |
| Owner * | | | | | | Same as applicant | | | |
| The person or organisation | Name: | Tint Name | | | | | | | |
| who owns the land | Title: Mr First Name Sumame: | | | | | | | | |
| Where the owner is different from the applicant, provide the details of that | Organisation (if applicable): | | | | | | | | |
| person or organisation. | Postal Address: | St. No.: | enter the details her | e: | | | | | |
| | | | St. Na | | | | | | |
| | Suburb/Locality | | | | itate: | Postcode: | | | |
| | Owner's Signat | ure (Optional): | | | Date: 17/0 | | | | |
| | | day / month / year | | | | | | | |
| | | lanning department to dis ng permit checklist. | scuss the | e specifi | c requirements | for this application | | | |
| Declaration 💶 | | cil making the submitted a | | | | | | | |
| This form must be signed by the applicant * | | on, available to the gene requirements of Section 5 | | | | | | | |
| | Yes No | | | | | | | | |
| A | This consent is requested to address the requirements of Part 10A, Section 205(2) of the COVID-19 Omnibus (Emergency Measures) Act 2020 | | | | | | | | |
| | 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: 17/0 | 07/2022 | | | |
| | | | | | | lay / month / year | | | |
| A | Remember it is agai and cancellation of | nst the law to provide false the permit. | or mislea | ding info | rmation, which c | ould result in a heavy fine | | | |

| Checklist 🧾 | \checkmark | Filled in the form completely? |
|-------------|--------------|--|
| Have you: | | Paid or included the application fee? Most applications require a fee to be paid. Contact Council to determine the appropriate fee. |
| | Ø | 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) |
| | | If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it i issued by the State Revenue Office and then cannot be used). Failure to comply means the application is void |
| | \checkmark | Completed the relevant council planning permit checklist? |
| | \checkmark | Signed the declaration above? |

Need help with the Application?

If you need help to complete this form, read More Information at the end of this form.

For help with a VicSmart application see Applicant's Guide to Lodging a VicSmart Application at www.planning.vic.gov.au

General information about the planning process is available at www.planning.vic.gov.au

Assistance can also be obtained from Council's planning department.

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

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



The Land

Planning permits relate to the use and development of the land. It is important that accurate, clear and concise details of the land are provided with the application.

How is land identified?

Land is commonly identified by a street address, but sometimes this alone does not provide an accurate identification of the relevant parcel of land relating to an application. Make sure you also provide the formal land description - the lot and plan number or the crown, section and parish/township details (as applicable) for the subject site. This information is shown on the title.

See Example 1.

The Proposal

Why is it important to describe the proposal correctly?

The application requires a description of what you want to do with the land. You must descr be how the land will be used or developed as a result of the proposal. It is important that you understand the reasons why you need a permit in order to suitably describe the proposal. By providing an accurate description of the proposal, you will avoid unnecessary delays associated with amending the description at a later date.

A Planning schemes use specific definitions for d ferent types of use and development. Contact the Council planning office at an early stage in preparing your application to ensure that you use the appropriate terminology and provide the required details.

How do planning schemes affect proposals?

A planning scheme sets out policies and requirements for the use, development and protection of land. There is a planning scheme for every municipality in Victoria. Development of land includes the construction of a building, carrying out works, subdividing land or buildings and displaying signs.

Proposals must comply with the planning scheme provisions in accordance with Clause 61.05 of the planning scheme. Provisions may relate to the State Planning Policy Framework, the Local Planning Policy Framework, zones, overlays, particular and general provisions. You can access the planning scheme by either contacting Council's planning department or by visiting the Planning Schemes Online section of the department's website http://planning-schemes.delwp.vic.gov.au

A You can obtain a planning certificate to establish planning scheme details about your property. A planning certificate identifies the zone and overlays that apply to the land, but it does not identify all of the provisions of the planning scheme that may be relevant to your application. Planning certificates for land in metropolitan areas and most rural areas can be obtained by visiting <u>www.landata.vic.gov.au</u>. Contact your local Council to obtain a planning certificate in Central Goldfields Corangamite, Macedon Ranges and Greater Geelong. You can also use the free Planning Property Report to obtain the same information.

See Example 2.

Estimated cost of development

In most instances an application fee will be required. This fee must be paid when you lodge the application. The fee is set down by government regulations.

To help Council calculate the application fee, you must provide an accurate cost estimate of the proposed development. This cost does not include the costs of development that you could undertake without a permit or that are separate from the permit process. Development costs should be calculated at a normal industry rate for the type of construction you propose.

Council may ask you to justify your cost estimates. Costs are required solely to allow Council to calculate the permit application fee. Fees are exempt from GST.

A Costs for different types of development can be obtained from specialist publications such as Cordell Housing: Building Cost Guide or Rawlinsons: Australian Construction Handbook.

A Contact the Council to determine the appropriate fee. Go to <u>www.planning.vic.gov.au</u> to view a summary of fees in the Planning and Environment (Fees) Regulations.

Metropolitan Planning Levy refer Division 5A of Part 4 of the *Planning* and Environment Act 1987 (the Act). A planning permit application under section 47 or 96A of the Act for a development of land in metropolitan Melbourne as defined in section 3 of the Act may be a leviable application. If the cost of the development exceeds the threshold of \$1 million (adjusted annually by consumer price index) a levy certificate must be obtained from the State Revenue Office after payment of the levy. A valid levy certificate must be submitted to the responsible planning authority (usually council) with a leviable planning permit application. Refer to the State Revenue Office website at <u>www.sro.vic.gov.au</u> for more information. A leviable application submitted without a levy certificate is void

Existing Conditions

How should land be described?

You need to describe, in general terms, the way the land is used now, including the activities, buildings, structures and works that exist (e.g. single dwelling, 24 dwellings in a three-storey building, medical centre with three practitioners and 8 car parking spaces, vacant building, vacant land, grazing land, bush block).

Please attach to your application a plan of the existing conditions of the land. Check with the local Council for the quantity, scale and level of detail required. It is also helpful to include photographs of the existing conditions.

See Example 3.

Title Information

What is an encumbrance?

An 'encumbrance' is a formal obligation on the land, with the most common type being a 'mortgage'. Other common examples of encumbrances include:

- Restrictive Covenants: A 'restrictive covenant' is a written agreement between owners of land restricting the use or development of the land for the benefit of others, (eg. a limit of one dwelling or limits on type of building materials to be used).
- Section 173 Agreements: A 'section 173 agreement' is a contract between an owner of the land and the Council which sets out limitations on the use or development of the land.
- Easements: An 'easement' gives rights to other parties to use the land or provide for services or access on, under or above the surface of the land.
- Building Envelopes: A 'building envelope' defines the developmen boundaries for the land.

Aside from mortgages, the above encumbrances can potentially limit or even prevent certain types of proposals.

What documents should I check to find encumbrances?

Encumbrances are identified on the title (register search statement) under the header 'encumbrances, caveats and notices'. The actual details of an encumbrance are usually provided in a separate document (instrument) associated with the title. Sometimes encumbrances are also marked on the title diagram or plan, such as easements or building envelopes.

What about caveats and notices?

A 'caveat' is a record of a claim from a party to an interest in the land. Caveats are not normally relevant to planning applications as they typically relate to a purchaser, mortgagee or chargee claim, but can sometimes include claims to a covenant or easement on the land. These types of caveats may affect your proposal.

Other less common types of obligations may also be specified on title in the form of 'notices'. These may have an effect on your proposal, such as a notice that the building on the land is listed on the Heritage Register.

What happens if the proposal contravenes an encumbrance on title?

Encumbrances may affect or limit your proposal or prevent it from proceeding. Section 61(4) of the *Planning and Environment Act 1987* for example, prevents a Council from granting a permit if it would result in a breach of a registered restrictive covenant. If the proposal contravenes any encumbrance, contact the Council for advice on how to proceed.

You may be able to modify your proposal to respond to the issue. If not, separate procedures exist to change or remove the various types of encumbrances from the title. The procedures are generally quite involved and if the encumbrance relates to more than the subject property, the process will include notice to the affected party.

A You should seek advice from an appropriately qualified person, such as a solicitor, if you need to interpret the effect of an encumbrance or if you seek to amend or remove an encumbrance.

Why is title information required?

Title information confirms the location and dimensions of the land specified in the planning application and any obligations a fecting what can be done on or with the land.

As well as describing the land, a full copy of the title will include a diagram or plan of the land and will identify any encumbrances, caveats and notices.

What is a 'full' copy of the title?

The title information accompanying your application must include a 'register search statement' and the title diagram, which together make up the title.

In addition, any relevant associated title documents, known as 'instruments', must also be provided to make up a full copy of the title.

Check the title to see if any of the types of encumbrances, such as a restrictive covenant, section 173 agreement, easement or building envelope, are listed. If so, you must submit a copy of the document (instrument) describing that encumbrance. Mortgages do not need to be provided with planning applications.

A Some titles have not yet been converted by Land Registry into an electronic register search statement format. In these earlier types of titles, the diagram and encumbrances are often detailed on the actual title, rather than in separate plans or instruments.

Why is 'current' title information required?

It is important that you attach a current copy of the title for each individual parcel of land forming the subject site. 'Current' title information accurately provides all relevant and up-to-date information.

Some Councils require that title information must have been searched within a specified time frame. Contact the Council for advice on their requirements.

Copies of title documents can be obtained from Land Registry: Level 10, 570 Bourke Street, Melbourne; 03 8636 2010; www.landata.vic.gov.au – go direct to "titles & property certificates"

Applicant and Owner Details

This section provides information about the permit applicant, the owner of the land and the person who should be contacted about any matters concerning the permit application.

The applicant is the person or organisation that wants the permit. The applicant can, but need not, be the contact person.

In order to avoid any confusion, the Council will communicate only with the person who is also responsible for providing further details. The contact may be a professional adviser (e.g. architect or planner) engaged to prepare or manage the application. To ensure prompt communications, contact details should be given.

Check with council how they prefer to communicate with you about the application. If an email address is provided this may be the preferred method of communication between Council and the applicant/contact.

The owner of the land is the person or organisation who owns the land at the time the application is made. Where a parcel of land has been sold and an application made prior to settlement, the owner's details should be identified as those of the vendo. The owner can, but need not, be the contact or the applicant.

See Example 4.

Declaration

The declaration should be signed by the person who takes responsibility for the accuracy of all the information that is provided. This declaration is a signed statement that the information included with the application is true and correct at the time of lodgement.

The declaration can be signed by the applicant or owner. If the owner is not the applicant, the owner must either sign the application form or must be notified of the application which is acknowledged in the declaration

A Obtaining or attempting to obtain a permit by wilfully making or causing any false representation or declaration, either orally or in writing, is an offence under the *Planning and Environment Act 1987* and could result in a fine and/or cancellation of the permit

Checklist

What additional information should you provide to support the proposal?

You should provide sufficient supporting material with the application to describe the proposal in enough detail for the Council to make a decision. It is important that copies of all plans and information submitted with the application are leg ble.

There may be specific application requirements set out in the planning scheme for the use or development you propose. The application should demonstrate how these have been addressed or met.

The checklist is to help ensure that you have:

- · provided all the required information on the form
- · included payment of the application fee
- · attached all necessary supporting information and documents
- · completed the relevant Council planning permit checklist
- · signed the declaration on the last page of the application form

A The more complete the information you provide with your permit application, the sooner Council will be able to make a decision.

Need help with the Application?

If you have attended a pre-application meeting with a Council planner, fill in the name of the planner and the date, so that the person can be consulted about the application once it has been lodged.

Lodgement

The application must be lodged with the Council respons ble for the planning scheme in which the land affected by the application is located. In some cases the Minister for Planning or another body is the responsible authority instead of Council. Ask the Council if in doubt.

Check with Council how they prefer to have the application lodged. For example, they may have an online lodgement system, prefer email or want an electronic and hard copy. Check also how many copies of plans and the size of plans that may be required.

Contact details are listed in the lodgement section on the last page of the form.

Approval from other authorities: In addition to obtaining a planning permit, approvals or exemptions may be required from other authorities or Council departments. Depending on the nature of your proposal, these may include food or health registrations, building permits or approvals from water and other service authorities.

EXAMPLES

| | <i></i> | |
|-----------|--|---|
| Example 1 | The Land 🛄 | |
| | | and Address and any of the Consell and Descriptions |
| | Address of the land. Complete the St Street Address * | reet Address and one of the Formal Land Descriptions. |
| | Succession | Unit No.: 4 St. No.: 26 St. Name: Planmore Avenue |
| | | Suburb/Locality: HAWTHORN Postcode: 3122 |
| | Formal Land Description * | |
| | Complete either A or B. | A Lot No.: 2 OLodged Plan O Title Plan Ø Plan of Subdivision No.: LP93562 |
| | This information can be found on the certificate | OR |
| | of title. | B Crown Allotment No.: Section No.: |
| | If this application relates to more than one address, attach a separate sheet | Parish/Tounship Nama- |
| | setting out any additional property details. | Parish/Township Name: |
| | 11 12 12 12 12 12 12 12 12 12 12 12 12 1 | |
| Example 2 | For what use, development | |
| | or other matter do you require a permit?* | Construction of two, double-storey dwellings |
| | require a permit. | |
| | | and construction of two new crossovers. |
| | | |
| | | |
| | | |
| | | 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. |
| | | oi une inkely effect of une proposal. |
| F | | |
| Example 3 | Existing Conditions | |
| | Describe how the land is | |
| | used and developed now * For example, vacant, three | Single dwelling. |
| | dwellings, medical centre with | |
| | two practitioners, licensed restaurant with 80 seats, | |
| | grazing. | |
| | | provide a plan of the existing conditions. Photos are also helpful. |
| | 2 | |
| Example 4 | Applicant and Owner | Dataila |
| | Applicant and Owner | |
| | Provide details of the applicant and the | he owner of the land. |
| | Applicant * | Name: |
| | The person who wants the | Title: Mr First Name: Len Surname: Browning |
| | permit. | Organisation (if applicable): Responsible Developers P/L Postal Address: If it is a P.O. Box, enter the details here: |
| | | |
| | | Unit No.: 4 St. No.: 72 St. Name: Ardour Lane |
| | | Suburb/Locality: Wycheproof State: Vic Postcode: 3527 |
| | Please provide at least one | Contact information for applicant OR contact person below |
| | contact phone number * | Business phone: 9123 4567 Email: tcpl@bigpond.net.au |
| | | |
| | | Mobile phone: 0412 345 678 Fax: 9123 4567 |
| | Where the preferred contact person for the application is | Contact person's details* Same as applicant |
| | different from the applicant, | Name: Title: Mr First Name: Andrew Surname: Hodge |
| | provide the details of that person. | |
| | 5- | Organisation (if applicable): Town Planning Consultants Postal Address: If it is a P.O. Box, enter the details here: |
| | | Unit No.: St. No.: St. Name: PO Box 111 |
| | | |
| | | Suburb/Locality: Parkdale State: Vic Postcode: 3194 |
| | Owner * | Same as applicant 🗸 |
| | The person or organisation | Name: |
| | who owns the land | Title: First Name: Surname: |
| | Where the owner is different from the applicant, provide | Organisation (if applicable): |
| | the details of that person or organisation. | Postal Address: If it is a P.O. Box, enter the details here: |
| | organisauon. | Unit No.: St. No.: St. Name: |
| | | Suburb/Locality: State: Postcode: |
| | | Owner's Signature (Optional): Date: |
| | | day / month / year |



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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their orgoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Page 1 of 1 Land Act 1958

VOLUME 09826 FOLIO 929

Security no : 124098434286P Produced 20/06/2022 02:42 PM

LAND DESCRIPTION

Lot 1 on Title Plan 118801U (formerly known as part of Crown Allotment 23C Parish of Irrewillipe). PARENT TITLE Volume 09658 Folio 186 Created by instrument N053457N 23/09/1987

REGISTERED PROPRIETOR

Estate Fee Simple Joint Proprietors

AF408483N 17/10/2007

ENCUMBRANCES, CAVEATS AND NOTICES

of

MORTGAGE 17/10/2007 BENDIGO BANK 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 TP118801U 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: 1140 IRREWILLIPE ROAD BARONGAROOK WEST VIC 3249

ADMINISTRATIVE NOTICES

NIL

eCT Control 03500L BENDIGO AND ADELAIDE BANK LTD - SAFE CUSTODY Effective from 21/07/2017

DOCUMENT END



Imaged Document Cover Sheet

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| Document Type | Plan |
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The document is invalid if this cover sheet is removed or altered.

| TITLE P | LAN | | EDITION 1 | TP 118801U |
|--|-----------------|---|--|---|
| Location of Land | | 1 | 1 | Notations |
| Parish: Township: Section: Crown Allotment: Crown Portion: | IRREW 23C(PT | | | |
| Last Plan Reference Derived From: Depth Limitation: | | 26 FOL 929 | ANY REFERENCE TO MAP IN THIS TITLE PLAN | THE TEXT MEANS THE DIAGRAM SHOWN ON |
| Depth Limitation: | | | THIS TITLE PLAN | THE TEXT MEANS THE DIAGRAM SHOWN ON THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT COMPILED: 24-08-1999 VERIFIED: AD COMPILED: AD |
| LENGTHS ARE METRES | | Metres = 0.3048 x Feet Metres = 0.201168 x Links | | Sheet 1 of 1 sheets |

Farm Management Plan

1140 Irrewillipe Rd Barongarook West

Beef Cattle breeding and rearing and a Dwelling.

Report Prepared by

Enprove Pty Ltd

Report Date: 24th June 2022



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| Infrastructure and Business Management: Infrastructure Investment: Staffing: Development Timeline: Allowance for possible future expansion: Opportunity Cost: | |
| FINANCIAL PROJECTIONS: | |
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| SITE PHOTOS: | |

Plan Objective:

This Farm Management Plan is drawn to provide an assessment of current agricultural issues and identify future improvements that will benefit the agricultural production values of the property and identify the benefits of the proposed dwelling at 1140 Irrewillipe Road, Barongarook West.

This plan is for the improved use of the land for Murray Grey beef cattle breeding and beef cattle grow out at the property. The property is owned by and and the further agricultural improvements proposed will be completed contingent on the issuing of a planning permit for the construction of a dwelling.

Site Details:

| Address: | 1140 Irrewillipe Road, Barongarook West 3249 |
|--------------------------|---|
| Property Description(s): | Lot 1 TP118801 |
| Area: | 4.5 Hectares plus 0.4 Ha lease area |
| Local Authority : | Colac Otway |
| Zones / Overlays: | Farming Zone and Schedule to Farming Zone Erosion Management Overlay and Schedule 1 (Part) Significant Landscape Overlay and Schedule Designated Bushfire Prone Area |
| Current Use: | Grazing Animal Production (Beef) |

Proposal Overview:

This is the biggest little farm ever, the property is about 5 hectares (with a 99-year road lease) and holds enough cows for 15 hectares. This farm could be considered a model of how to produce beef cattle from a small property. The farm holds 15 Murray Grey heifers and half of them calved last season. The proponents also reared 12 calves from off-farm as well. It does mean the farm relies on bought-in fodder for feeding.

and bought the property 15 years ago when it was a residential zone and have been developing it up as their ideal farm. They are now in a position to complete all the works and find it has been rezoned to farming. Driving from Colac 3 or 4 times a day has worn thin and the loss of a calf during birthing season earlier this year hurt. Their passion and drive for farming are obvious and their sons are showing the same enthusiasm and they all should be farming.

and are taking the chance to improve their farm and investing in it. A new water supply network and access have recently been installed. A new farm shed to hold the fodder and equipment and new paddocks to improve grazing management will be constructed and they will also take this opportunity to improve the soil fertility, reduce the soil acidity and plant high-producing pasture.

The proposal land is 4.5 hectares and will retain an effective grazing area of about 4.5 hectares with the lease even after the development. The Meat and Livestock stocking rate calculator suggests a productive capacity of the property of 6-7 cows with calves but that rate has been smashed. Murray Greys are demonstrating they are efficient feeders needing less feed than the black cows.

A resident also means that animals can be monitored for health and welfare and rotated through the new paddocks to ensure maximum feed utilisation. Increased rotation allows paddocks greater recovery time between grazing. The improved beef prices will also allow increased use of imported feeds to increase production further.

Siting a dwelling on the property means that the property can be confidently improved, knowing that those improvements can be effectively utilised to increase production value. A resident also means that stock, particularly young calves, can be monitored for health and welfare and regularly rotated through the paddocks to ensure maximum feed utilisation.

After the initial development period, the agricultural return from the cattle produced on the property is expected to be \$40,000 a year in cattle and calf sales.

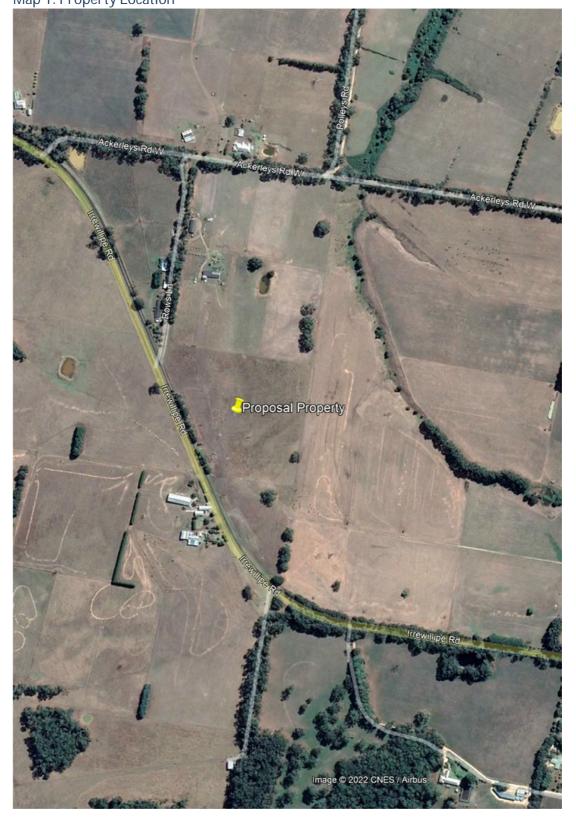
This enterprise is an excellent example of high-value grazing animal production on an undersized, disconnected lot within the Farming Zone.

The justifications for a dwelling on a small lot farm are the same as justifications for any farm. The management times and tasks can be similar:

- Biosecurity: New nationally mandated biosecurity requirements mean all visitors, vehicles and new stock to the property should be screened and, if necessary, disinfected. This needs to be monitored constantly.
- Monitor Animal welfare: (typical daily routine) listen and watch the stock for illness and lameness, identify downed stock and identify the issue, check for broken legs or injuries (calves are boisterous, and this happens often), birthing complications (any time of the day or night), milk fever or grass tetany (needs quick treatment or death will result), staggers, scours (scours in calves spreads in hours if the animal is not isolated and treated or culled), animals trapped in fences, gates, feeders bullying.
- As with any stock rearing, the requirement for someone to be nearby to monitor audible and visual signs of animal distress for animal health and welfare is very important.
- Birthing: Dystocia or breech are common enough; if undetected, the mother and calf will die within 24 hours. On this farm, a \$4,000 loss and the cost of a replacement mother.
- Road safety: stock escape, young stock are particularly good at this. Monitoring stock and identifying and relocating potential rogues will prevent this and may save a passing motorist's life.
- Daily Farm management routine: check water, check fences, feed stock, check pasture availability, fix things (say 10 hours a week for a resident without the corrective works).
- Agricultural Improvement: Remotely operated farms are always understocked and undermanaged as the above tasks cannot be completed in a timely manner. This activity level is nearly impossible to manage remotely; in winter, when it's dark more than 12 hours a day, this monitoring will not occur for over half the time.
- Pastoral use maximisation: Paddocks can be constantly monitored for growth rates, fertiliser requirement, pest attacks, growth rates, and animals relocated as required.

A dwelling on a farm is a lot more than a place where people reside. It has an essential and ancillary purpose as a farm office, administrative centre, meeting room, first aid shed, animal pharmacy, security and biosecurity checkpoint, tea room, toilet block and monitoring post for 24 hours a day 365 days a year business.

Property Maps: Map 1: Property Location



PO Box 817 Warrnambool Victoria 3280

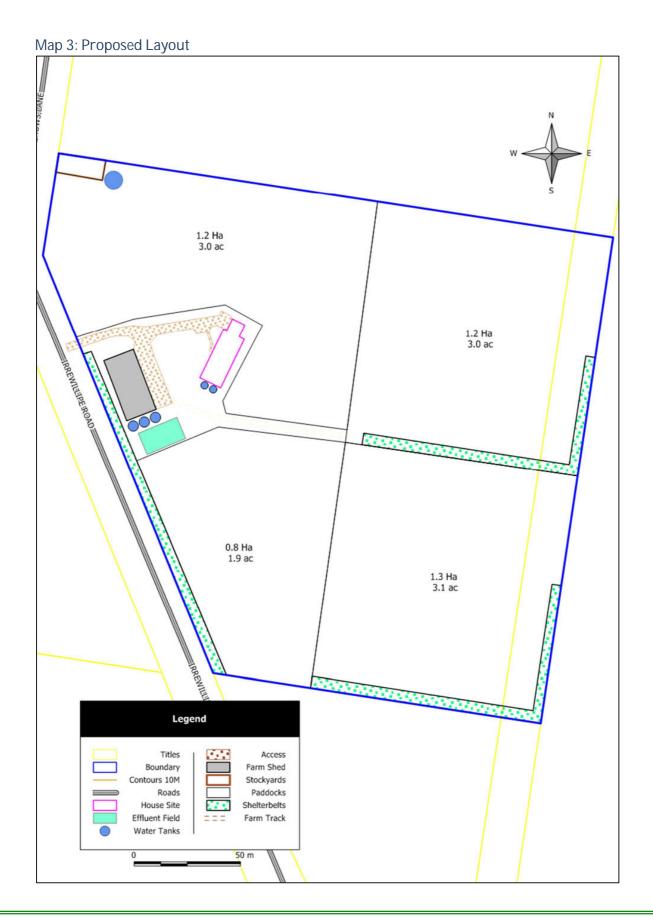


Map 2: Farm Map

EnProve Ag & Environment www.enprove.com.au

PO Box 817 Warrnambool Victoria 3280





EnProve Ag & Environment www.enprove.com.au

PO Box 817 Warrnambool Victoria 3280

phone: 0448 866 205

PO Box 817 Warrnambool Victoria 3280

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Source: https://mapshare.vic.gov.au/mapsharevic/

EnProve Ag & Environment www.enprove.com.au

phone: 0448 866 205

Farming Factors:

Site Topography:

The topography at the property is considered gentle undulation with a steeper bank through the middle of the property. The property rises from the east to the west with an elevation change of 20 metres. This gives an average gradient of 7% across the property, although distinctly steeper through the middle section. There are no other outstanding topographical features on the site.

Climate:

Barongarook West Climate statistics:

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Annual |
|---------------------|------|------|------|------|------|------|------|------|------|------|------|------|--------|
| Mean Max (°C) | 25.7 | 26.0 | 23.5 | 19.3 | 15.8 | 13.1 | 12.5 | 13.7 | 15.8 | 18.3 | 20.8 | 23.4 | 19.0 |
| Mean Min (°C) | 10.7 | 11.2 | 10.1 | 8.0 | 6.2 | 4.5 | 3.9 | 4.5 | 5.8 | 6.8 | 8.3 | 9.4 | 7.4 |
| Mean Rain (mm) | 38.4 | 37.8 | 48.3 | 63.7 | 75.6 | 89.5 | 84.7 | 94.4 | 84.3 | 78.2 | 54.3 | 47.0 | 798.4 |
| Median Rain (mm) | 32.5 | 29.0 | 39.6 | 58.7 | 72.9 | 93.2 | 78.6 | 93.1 | 84.8 | 73.6 | 49.3 | 38.5 | 802.6 |
| Mean Rain Days | 4.9 | 4.3 | 5.8 | 8.0 | 10.7 | 11.8 | 12.7 | 13.4 | 11.9 | 10.3 | 8.0 | 6.5 | 108.3 |

Data: BOM Station 090147 Colac, Rainfall BOM 90128 Tomahawk Creek

The climate is the typical temperate type of warm, dry summers and cool, wet winters. The climate is good for the chosen agricultural activity where plant growth is highly active over the spring and summer months and the rainfall is relatively consistent across the seasons.

Water Supply:

Water supply is an issue at the site and currently, the property relies on water being brought in by tanker and stored in a 25,000-litre water tank. The main supply for the stock will become water harvested from the dwelling and shed rooves. These rooves will be able to harvest 500,000 litres in an average rainfall year. There will also be 50,000 litres held in water tanks attached to the new dwelling.

The property is entitled to a domestic and stock water bore, and groundwater quality is poor (3500 - 7000 ppm salinity) and available at 30-50 metres and would only be suitable for adult stock.

Weed and Pest Management:

The property is not subject to any major noxious or declared environmental pest and weed issues.

The property will be subject to normal pastoral weed issues. Standard farm management methods such as sprays and/or physical removal will control any environmental and agricultural pests and weeds.

Soils:

The property land class is typical of the region, productive well-structured sandy loams over clay classed as duplex soil. The soils may be prone to waterlogging during wet periods and drying and cracking during dry periods but generally retain productivity.

Two soil tests were collected to determine soil fertility and quality: the bottom paddock is used for hay production and grazing, and the top paddock mostly grazing and the soils are different in each area.

| Top Paddock | |
|--------------|---|
| Кеу | The topsoil is rated as sandy loam. |
| Observations | Poor pH CaCl ₂ (4.6) indicates serious soil acidity. |
| | Good phosphorus levels (Olsen P 48.6 mg/Kg) |
| | Good potassium levels (202 mg/Kg) |
| | Fair sulphur levels (9.8 mg/Kg) |
| | Good Organic Carbon (3.9%) |
| | High nitrogen levels (seasonably variable) |
| | Trace elements are very low except iron (naturally high). Copper and boron are particularly low. |
| | Cation ratios are out of balance, exchangeable calcium is slightly low, potassium and magnesium |
| | are good and exchangeable aluminium is elevated. |
| | Good conductivity and exchangeable sodium levels indicate no sodicity or salinity issue. |
| | |
| Plans / | The major requirement here is to address the serious soil acidity and the low calcium levels. The |
| Applications | acidity will be causing the elevated aluminium which will be damaging production, aluminium is |
| | toxic to plants and reduces good rooting and encourages weeds. This paddock will not need any |
| | fertilisers for many years although soil testing should be conducted every few years to confirm |
| | this. |
| | At the time of testing, nitrogen was good although nitrogen may assist production during cooler |
| | months and boost production during springtime. One kilogram per hectare of elemental boron |
| | would also be beneficial to improve pasture quality. |
| | A trace element mix would improve pasture production, animal health, and growth, although |
| | trace elements can be fed to animals through supplementary feeding. |
| | |

| Bottom /Hay Pa | ddock |
|----------------|--|
| Кеу | The topsoil is rated as sandy clay loam. |
| Observations | Low soil pH CaCl ₂ (4.8) indicates soil acidity. |
| | Very low phosphorus levels (Olsen P 6.2 mg/Kg) |
| | Good potassium levels (155 mg/Kg) |
| | Good sulphur levels (17.4 mg/Kg) |
| | Good Organic Carbon (5.3 %) |
| | Good nitrogen levels (seasonably variable) |
| | Trace elements are low except iron. |
| | Good cation levels and ratios (indicating soil structure and balance issues), except exchangeable |
| | aluminium which is very high due to acidity. |
| | Low conductivity and exchangeable sodium in cations are indicating no salinity or sodicity issues. |
| Plans / | Hay paddocks typically remove nutrients more than grazing paddocks. As in the top paddock, |
| Applications | soil acidity is a major issue. Phosphorus is extremely detrimentally low and will be costing |
| | production and a phosphorus-bearing fertiliser is applied. |
| | As above nitrogen, boron and trace elements will also be beneficial. |
| | Being a hay paddock a fodder boosta type fertiliser should be applied during spring growth to |
| | maximise production. |
| | |

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| Lab | Soil | Test | Resu | ts: |
|-----|------|------|------|-----|
| | | | | |

| Customer: | Paul Groves | | Sample Date: | 17/03/22 |
|--------------------------------|-------------|-------------|----------------|------------|
| Sample Name | | Top Paddock | Bottom Paddock | |
| Lab Sample No. | | TDS22007 | TDS22007 | |
| Test Depth (cm) | | 0-10 | 0-10 | |
| Soil Colour | | Black | Black | |
| Gravel | | 0% | 0% | |
| | Unit | Level Found | Level Found | Good Range |
| pH Level (H ₂ O) | pH | 5.5 | 5.6 | 5.6 - 6.4 |
| pH Level (CaCl ₂) | pH | 4.6 | 4.8 | 5.0 - 6.0 |
| Aluminium (CaCl ₂) | mg/Kg | 3.0 | 4.8 | < 5.0 |
| Conductivity | dS/m | 0.15 | 0.17 | < 4.0 |
| Phosphorus Olsen | mg/Kg | 48.6 | 6.2 | 10 - 18 |
| Phosphorus Colwell | mg/Kg | 166 | 33 | 30 - 50 |
| Potassium Colwell | mg/Kg | 202 | 155 | 140 - 250 |
| Sulphur | mg/Kg | 9.8 | 17.4 | 10 - 20 |
| Organic Carbon | % | 3.9 | 5.3 | 3 - 6 |
| Ammonium Nitrogen | mg/Kg | 5 | 20 | 200 000 |
| Nitrate Nitrogen | mg/Kg | 61 | 5 | |
| | | | | |
| DTPA Copper | mg/Kg | 1.06 | 0.76 | > 1.5 |
| DTPA Iron | mg/Kg | 372 | 411 | 100 - 400 |
| DTPA Manganese | mg/Kg | 28 | 32 | > 20 |
| DTPA Zinc | mg/Kg | 11.8 | 2.2 | > 5 |
| Boron (Hot CaCl ₂) | mg/Kg | 0.6 | 0.6 | > 1.5 |
| | | | | |
| Cations | Unit | Level Found | Level Found | Good Range |
| Cation Exchange Capacity | meq/100g | 6.97 | 6.35 | 10 - 20 |
| Exchangeable Calcium | meq/100g | 4.66 | 3.15 | |
| | BSP % | 66.86 | 49.61 | 70 - 85 |
| Exchangeable Magnesium | meq/100g | 1.34 | 1.36 | |
| 54 2.04 | BSP % | 19.23 | 21.42 | 10 - 20 |
| Exchangeable Potassium | meq/100g | 0.39 | 0.39 | |
| | BSP % | 5.60 | 6.14 | 3 - 8 |
| Exchangeable Sodium | meq/100g | 0.16 | 0.54 | |
| | BSP % | 2.30 | 8.50 | < 5 |
| Exchangeable Aluminium | meq/100g | 0.42 | 0.91 | |
| | BSP % | 6.03 | 14.33 | < 2.0 |
| MIR Particle Sizing | Unit | Level Found | Level Found | |
| Sand | % | 68.21 | 65.76 | |
| Silt | % | 14.17 | 17.30 | |
| Clay | % | 17.63 | 16.94 | |
| Classification | | Sandy Loam | Sandy Loam | |

Laboratory Analysis CSBP Labs, Bibra Lake WA Detrimental levels highlighted.

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Pastoral Improvement:

Currently, the pastoral coverage is fair, although low yielding, with a well-established mix of perennial ryegrass, native pasture and clover. It has a higher than average number of agricultural weeds that need to be managed (weeds account for about 30 % of plant coverage). The estimation is that the property is currently producing 2.5 tonnes of dry matter per hectare per annum. Following the soil program and pastoral program should allow this level to be increased to a conservative 4 tonnes of dry matter per hectare. Each autumn, one paddock will be renovated until the property has a new pasture base.

For small lot beef grazing, a mixture of grass species is often the best way forwards. A selection of species that have activity at different times of the year can allow for the constant grazing required. It should also contain a high ryegrass content to allow hay production in springtime. A mixture of 70% perennial ryegrass (e.g. Vic rye and AR150), 15% fescue (or similar) and 15% clover is ideal. Check with the local seed supplier for the best mix and varieties for the area.

For hay production, the best strategy would be the control of undesirable plants, the ability to lock away a production area, and 100 kilograms of nitrogen fertiliser (or fodder boosta) applied during growth.

Another consideration could be using a summer crop (typically a brassica) that produces a very high plant weight but requires an annual sowing investment.

Improving pasture production is important as it will allow for stock to grow quickly and allow fodder production for feed out in the drier months. Fodder production areas will need to be secured to exclude stock during spring.

Livestock:

Overall there can be a peak number of cows and calves on the site can be high as 25 at a time. The proponents own 15 Murray Grey heifers for breeding and lease a Simmental bull each year. This has produced 6-7 calves and the intent is to grow this to 15 calves. Calves are allowed to wean naturally off the mothers and ideally are held on the site for 12 months or until feed availability becomes an issue.

is a stock driver and often acquires unwanted dairy calves which are also weaned on the site. This has been 4-6 each year and they are sold on at 3 months of age back to dairy farms or for beef production. This number can be readily increased to 10-20 each year when they are resident.

Staffing:

and will continue to run the farm and they have been running the farm for 15 years sometimes driving out from Colac 3-4 times a day, particularly during calving season. Their children have taken a strong interest and now they all run it between them.

As with these types of enterprises they contribute to the local economy by utilising local contractors for construction work, farm maintenance, transport industries and agricultural support industries.

Infrastructure and Business Management:

Infrastructure Investment:

Much of the required infrastructure for farming is already in place. The external fencing, stock water header tank, and access have been recently constructed and the stockyards will be relocated.

New internal fencing will be required, and a new stock movement laneway created. Two new watering troughs will also be required. A new farm shed will also be a big improvement, the hay and equipment sits under a tree

Currently, this investment rests on the approval of a dwelling. A resident in dwelling is considered necessary to monitor the well-being of calves which need to be fed regularly and are subject to diseases and illnesses which can kill them quickly.

An all-weather track has been constructed of extracted material to the house site to allow access in all weather conditions. Formed tracks will be constructed to the paddocks allowing suitable access.

Staffing:

The property will be managed by and and their family, who have many years of farm and cattle management experience.

As with these types of enterprises they contribute to the local economy by utilising local contractors for construction work, farm maintenance, transport industries and agricultural support industries.

Development Timeline:

This model is one of ongoing improvement. All proposed works are anticipated to be completed within three years of permit approval and the enterprise operating at full capacity in the same time frame.

Allowance for possible future expansion:

The proponents are not looking at significant growth beyond the proposed improvements, and the proposed beef cattle numbers are at a sustainable level for the property. The adjoining titles are all lifestyle and small farms with dwellings and are unlikely to be available to be integrated.

Opportunity Cost:

The use of the property is constrained by a lack of available water, the groundwater quality is poor and the proponents have been carting water for the stock. The property is best assessed alone as it is hemmed in by lifestyle lots and unlikely to be joined to another property. Grazing is the principal activity of the area, and the property is well suited to that, and this plan is about maximising that activity. The property's design doesn't preclude conversion to another type of higher returning farming like horticulture in the future, but there is no water supply available for that activity.

Financial Projections:

Infrastructure Investment / Maintenance

Net Return

This indicative budget is provided to demonstrate the expected returns; farming is subject to stock price variations and weather, which will increase or decrease returns quite dramatically.

The proposal calls for a total investment in agricultural productivity improvements of \$30,000 and the investment in a dwelling and shedding over \$400,000.

After the initial development period, the property could expect and agricultural revenue of over 39,250 per year.

| Income/Cost Item | Current | Year 1 | Year 2 | Year 3 | Year 4 + |
|---|----------|----------|----------|----------|----------|
| Yearling Sales (300 kgs @\$6.50 kg) | \$15,600 | \$19,500 | \$23,400 | \$29,250 | \$29,250 |
| Reared Calf Sales (3 months~ \$1200) | \$4,800 | \$7,200 | \$8,400 | \$12,000 | \$14,400 |
| Total Revenue | \$20,400 | \$26,700 | \$31,800 | \$41,250 | \$43,650 |
| | | | | | |
| Cattle Maintenance (Vet, meds, calf milk replacer etc.) | -\$2,000 | -\$2,400 | -\$2,800 | -\$3,200 | -\$3,600 |
| Feed / Fodder Costs ~\$150 T | -\$6,000 | -\$5,200 | -\$5,600 | -\$6,000 | -\$6,000 |
| Pasture/Fertility Costs | \$0 | -\$5,000 | -\$5,000 | -\$2,000 | -\$2,000 |
| Apportioned Rates, Insurances Utilities | -\$2,000 | -\$2,000 | -\$2,000 | -\$2,000 | -\$2,000 |

-\$10,000

\$400

-\$10,000

\$2,100

-\$2,000

\$14,400

-\$2,000

\$26,050

-\$2,000

\$28,050

Indicative Farm Budget (excluding dwelling, shedding and machinery costs and not adjusted for CPI):

Environmental Factors:

Natural Resource Management:

The property has no natural resource features, including waterways, remnant vegetation, bushland areas and landscape features.

Erosion and Compaction:

The property generally has a low erosion risk. It is gently sloping, has no high-velocity drainage channels and is well vegetated with pasture. The proposed activity is not an intensive one and does not require the use of heavy machines beyond a tractor. Most vehicle activity will be on formed tracks.

Groundwater:

Groundwater is at a depth of 20-40 metres and is a low risk of exposure to any form of nutrients infiltrating from the surface. Maintaining plant coverage will assist in keeping soil nutrient levels lower to minimise any risk further.

Drainage:

The property has no constructed drainage relying on soil infiltration and landfall towards the waterway for water clearance.

Fire Management:

Bushfire management and prevention are taken very seriously by the proponents. The land is in a designated bushfire-prone area and the land use itself will not contribute any fire risk to the area. Having this property well managed is continue to reduce that risk.

Firewater supply will need to be available in fireproof tanks provided for the proposed dwelling as required by shire and CFA.

Adverse impacts on adjacent land:

There is not expected to be any major change to the amenity of the adjacent land from the agricultural enterprise. Some animal odour or noise may be generated occasionally, but the same as any agricultural enterprise in a farming zone. Truck transport would need to access the property from time to time, but this would be less than once a week.

Allowance for possible future expansion:

There is limited scope for any major increase in the activity beyond the proposed productivity changes, primarily due to the significant land price pressures. The presence of lifestyle lots around the property and higher value agricultural activities means land prices are decidedly non-viable for a grazing activity.

Landscaping:

Two new shelterbelts will be planted on-site to provide shelter for stock and biodiversity habitat. These will be primarily large trees and will be selected from the council indigenous species list as attached at the rear. The selection will be dependent on availability and after consultation with the local suppliers.

Animal Welfare and Biosecurity:

Animal welfare, in this instance, will be very good. The practice of cattle breeding and calf rearing is almost entirely about animal welfare in that it closely monitors animals and provides constant and ongoing care. A list of best practice animal welfare guidelines is available from http://animalwelfarestandards.net.au/. This is a comprehensive, common-sense approach to caring for farm animals driven largely by the buyer's expectations and contagious disease control and prevention.

Biosecurity is about preventing and containing any disease and negative issues that could generally impact both the farm and agriculture.

Recommended by Meat and Livestock Authority (not compulsory) Procedures for Biosecurity

- The farm should have a documented Farm Biosecurity Plan
- All livestock movements onto the farm have known health status (e.g. Livestock Health Statement/Declaration or equivalent)
- All introduced livestock are inspected for signs of ill health or disease on arrival at the property and kept in isolation for a period
- Livestock are regularly inspected for ill health and disease, and appropriate action is undertaken.
- The risk of livestock straying onto or from the property is minimised.
- If an unusual disease, illness, or mortality is observed, there are systems to notify a veterinary practitioner or animal health officer.
- Where reasonable and practical, the movement of people, vehicles and equipment entering the property are controlled and, where possible, movements recorded.
- Any other procedures or practices that contribute to minimising the risk or spread of disease.

The property has the required Property Identification Code (PIC).

I certify that all the above statements are true and correct to the best of my abilities.

Agricultural and Environmental Consultant

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Site Photos:

Image 1: Looking east over the property from Irrewillipe Road



Image 2: Irrewillipe Road frontage.



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Image 3: Looking north over the property

Image 4: Looking north over the paddocks showing the steeper bank.



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Image 5: Looking south over the farm

Image 6: Looking south-west over the bottom paddocks.



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Image 7: New header tank and troughs

Image 8: Existing stockyards to be relocated



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'Naturally Progressive'

INDIGENOUS SPECIES LIST BARONGAROOK

| Botanical Name | Common name | Height width | Soil class | Erosion control | Comments |
|-------------------------------------|---------------------|--------------------|---------------|--------------------|---|
| Acacia mearnsii | Black wattle | 8-25x 6-10m | SL | | B. B/F S/G. Hardy. Shade tree, ferny foliage. Dry sites, sun-part shade. Moist, well drained-dry sites. Cream-yellow flowers Oct-Dec. (borer prone) Widespread coloniser |
| Acacia melanoxylon | Blackwood | 8-20x 5-12m | CSL | • | B, B/F, S/G. Spreading form dense foliage.Screen plant. Prefers deep moist soils. Pale creamy flowers July-Oct. 18, 30,201 Widespread coloniser |
| Acacia mucronata ssp. longifolia | Narrow-leaf Wattle | 2-6x 2-5m | SL | | B/F S/G. Erect/spreading. Open sites, screen plant. Drought resistant. Narrow leaf, cream flower spike. Aug-Oct. 45 |
| Acacia myrtifolia | Myrtle Wattle | 3-4x 3-4m | SCL | | B. B/F. Bushy/sparse shrub ascending branches. Young stems red/purple tinge. Pale green leaves. Moist sites. Cluster yellow flowers Jun-Dec. 16,48. |
| Acacia stricta | Hop Wattle | 2-5 x2-4 | CSL | • | B, B/F Slender, sparse shrub. Drought hardy. Quick grower. Dull grey-green foliage. Yellow flowers May- Oct. 45, 161 |
| Acacia verticillata | Prickly Moses | 1-5x 3-5m | CSL | • | B. B/F. Streams – damp shaded wet areas. Prickly low shrub to tree. Yellow flowers June-Dec. 45, 201, 161 Widespread coloniser |
| Acrotriche serrulata | Honey-pots | 30cmx .5-1m | CSL | | H/E. Slow grow dense g/cover. Damp-well drained sites. Spikey pale yellow tubular flower, honey fragrance. May-Oct. edible fruit. 16,21,48. |
| Allocasuarina cunninghamiana | River Sheoak | 12- 30m | CSL | • | Tall (pine like), stream sides, coast, slopes. Dark green fine foliage. Tiny cones |
| Allocasuarina glauca | Swamp Sheoak | 6-20m | CS | - 18 | Erect dull grey-green tree. Suits saline swamp sites. |
| Allocasuarina paludosa | Scrub Sheoak | 1-3m | CSL | | Woody, dense erect form. Smooth bark. Branchlets fine grey-green lealess. Poorly drained sites. Jan- Dec. 8,165. |
| Allococasuarina verticillata | Drooping Sheoak | 4-10x 5-6m | SL | • | B. Windbreak. Hardy drooping habit. Branchlets turn yellow -brown Apr-May. Coast scrub |
| Aotus ericoides | Common Aotus | .5-1.5x .5-1.5m | CSL | | B/F. Fast grow. bushy heath like. Tolerates wet/dry periods. Clusters small yellow & red pea flowers. Aug-Dec. 16,48. |
| Banksia marginata | Silver Banksia | 1-8x 1-5m | CSL | • | B/F. H/E. S/G. Heathlands, forests. Leaves toothed dark upper light lower. Honey coloured cylindrical flowers Feb-Jul. Screen plant. 161 |
| Blechnum nudum | Fishbone Water-fern | 100x 20cm | CSL | • | Tufted, hardy, quick grow. Light green spreading fronds. Older plants have short trunk. Wet & shade sites. 18,30,31,201 . |
| Blechnum wattsii | Hard Water-fern | 30- 125cm | SL | • | Hardy creeper/ground cover. Fronds once divided erect dark green, short. Wet areas. 18,30,31,201. |
| Bossiaea buxifolia | Matted Bossiaea | 50cmx g/cov | CSL | | Groundcover. Small broad leaves. Yellow pea flowers, brown marks. Sept-Feb. |
| Bursaria spinosa | Sweet Bursaria | 1-6x 2-3m | CSL | • | B. B/F/ H/E. Foliage plant, spines at leaf base. Cream fragrant flowers Dec-Mar. Purse shaped seed. EVC 45. |

SOILS: C= clay S = sandy L=Loamy $\begin{array}{ll} B = Birds & B/F = Butterflies \\ H/E = Honeyeaters & F = Frog & S/G = Sugar gliders \end{array}$

| | | | | | NGAROOK |
|--|---------------------------|-------------------|--------------|----------|---|
| Botanical name | Common name | Height & Width | | Fire | Erosion Comments |
| Cassinia aculeata | Dogwood | 2-4x 1-2m | class CSL | tolerant | control Bushy spreading shrub. Quick grow. Sml. White flowers, Nov-Mar, 45 |
| Coprosma quadrifida | Prickly Currant-bush | 2-4x 1-1.5m | CL | • | B. Hardy. Wet-damp-shade sites. Open erect spiny shrub. Cream tubular flowers Aug-Nov. Edible red berries. Nest site. 18 , 30 , 45 , 201 |
| Cyathea australis | Rough Tree-fern | 5-10x 30cm | CSL | • | Adaptable Shade, tolerate sun. Moist-dry sites. Rough trunk, finely divided dark green fronds from apex to 3m. 18, 30, 201 |
| Cyperus lucidus | Leafy Flat-sedge | 1-1.5x 1-1.3m | CSL | • | Robust tussock perenn. Wet sites, waterways. Sun/part shade. Leaves long narrow. Flower spikelets flat. Spr-Sum. |
| Deyeuxia quadriseta | Reed Bent-grass | 1m | CSL | • | Open tufted perenn. Leaves flat-slightly inrolled. Flower dense spike form. Sept-May. 16. |
| Dianella revoluta | Black-anther Flax lily | .3-1x. .5-2.5m | SL | | B/F . Tufted grass like leaves. Well drained sites/dry sites in shade. Blue star flowers yellow anthers. Blue fruit. 45 . |
| Dianella brevicaulis/revoluta | Short stalk flax lily | -50cm | CS | | B/F.Robust, tufted lily. Suit coastal sandy sites. Large coarse narrow leaves. Erect short stem with purple star flowers, purple fruit. |
| Dichondra repens | Kidney-weed | g/cov | SL | • | Creeping herb. Lawn substitute kidney shaped green leaves. Tiny cream/green flowers Sept-Dec. Widespread. |
| Dicksonia antarctica | Soft Tree-fern | 0-12x 1m | CSL | • | Tree fern fibrous trunk Crown widely spreading dark green fronds. Moist/wet slopes gullies. EVC 18,30,201 |
| Dillwynia glaberrima | Smooth Parrot-pea | 2m | SL | | Spread/erect. Wiry, twiggy form. Good drainage, part shade. Sml pointy leaves. Flowers yellow, red, dense clusters. Aug-Dec. 8,48. |
| Empodisma minus | Spreading Rope-rush | 2m | CSL | | Leafless climber – Stems green, thin, wiry. Suit damp-wet sites. Flower spikelets Aug-Mar. 8,16,17,48. |
| Epacris impressa var. impressa | Common Heath | 1x.6m | SL | | H/E. B/F. Floral emblem Victoria. Stiff prickly shrub. Suit well drained sites. Tubular flowers pink/white. May-Nov. 161 |
| Eucaluptus baxteri s.l. | Brown Stringybark | 15x30 m | SL | | B. S/G. Good shade/shelter tree. Stunted on poor soils Tolerates salt winds. Fibrous bark. Broad leaves. Wineglass capsules. 178 . |
| Eucalyptus willisii (South-western Victoria) | West Coast Peppermint | 15m | CSL | | B. Hardy. Smooth grey-white bark. Aromatic foliage. Leaves glossy, narrow. Flowers cream Sept-Nov. |
| Eucalyptus aromaphloia | Scentbark | 12-15x 7-12m | CSL | | B. Strongly branched – tall, thick rough scented bark. Prefer fertile soils. Leaves bluish-green. White flowers. Jan-Apr. 45. |
| Eucalyptus camaldulensis | Red Gum | 12- 45m | | • | H/E, S/G. Spreading tree, smooth bark upper. Moist/wet sites, aids with salinity. Cluster flowers cream-yellow 56, 125 |
| Eucalyptus cypellocarpa | Mountain Grey Gum | 10-40x 15m | CSL | • | B/F. H/E . Hardy upright tree dense canopy. Stunted dry soils. Flowers Feb-July. 201,30,45 . |
| Eucalyptus globulus | Southern Blue-gum | 25-40x 10-20m | CL | | H/E. Fast growing tall shelter tree. Smooth trunk. Cream flowers June-Nov. Ribbed silvery fruit Honey source. 30 , 45 |
| Eucalyptus obliqua | Messmate Stringybark | 5-30x 6-20m | CL | | B/F. H/E. Grey/brown fibrous bark. Shade/shelter tree. For large areas. Quick hardy grower. Sml. Cream flowers Jan-Mar. Wineglass fruit. 30 , 45 , 161 , 201 |
| Eucalyptus occidentalis | Swamp Yate | 10- 30m | CSL | | Spreading, crooked form, branching near base – tall tree. Smooth ribbon bark. Pale green-grey thick stiff leaves. |
| Eucalyptus ovata | Swamp Gum | 8-30x 5-20m | CL | • | H/E, S/G. Excellent in poorly drained soils. Grey white trunk. Creamy flowers May-Nov. 3,8,17,18,45,165. |
| Eucalyptus radiata ssp. radiata | Narrow-leaf Peppermint | 6-20x 6-15m | CSL | | B/F. H/E . Dense spreading crown, narrow aromatic leaves. Grey-brown bark. Shade. Tree. Oil. Flowers |

INDIGENOUS SPECIES LIST – BARONGAROOK

C = clayS= sandy L = loamy H/E = Honey eaters F = Frog S/G = Sugar gliders

| Common name | - | | Fire tolerant | Erosion Comments control |
|---------------------|---|--|---|--|
| | wiuui | class | | Oct-Jan.45 |
| Manna Gum | 10-40x | CSI | | B/F. H/E. S/G. suits forest, streams. Ribbon bark, |
| Marina Guin | | COL | | white trunk. Koala food. Fast grow, flowers often. 18, |
| | 0-1311 | | | 45, 201 |
| Charny Pallard | 10m | 091 | | Suit most sites. Pyramid shaped. Dense bight |
| Cherry Ballaru | TOIT | COL | | green/yellow-green triangular foliage. Flower spikes |
| | | | | greenish-yellow. Sep-May. |
| Thatah Saw sadaa | 1m | | | B/F. Tufted, robust. Leaves sharp edges, dropping |
| match Saw-Seuge | | | • | tips. Damp sites. Erect plume spikes dk. brown- |
| | | | | black. Sept-Feb. 16,53,83,198. |
| Red-fruit Saw-sedge | 2-3m | CSI | • | B. B/F. F . Hardy tussock. Suit moist sites, will |
| Red-Irun Saw-Seuge | 2 011 | OOL | - | tolerate dryer sites, sun/shade Spreading flowering |
| | | | | stems. Nest site. 8,16,17,198. |
| Coast saw sedge | -1m | CSI | • | B , B / F Robust tufted perenn. Saline sites. Slow flow |
| Coast saw souge | | 001 | - | streams.Long narrow arching leaves. Narrow erect |
| | | | | plume spikelets pale brown chaffy flowers. Sept-Nov |
| | | | | wetlands |
| Austral Cranoshill | 57 | | | Tufted scrambling perenn. Suit most sites. Hairy |
| Austral Cranesbill | - | | | lobed leaves Flowers in pairs, white-pink. Sept-Feb |
| | .0-1.50 | | | widespread |
| Common Boopwort | 30cm | 691 | | Erect perenn. Herb. Rough leaves, stems. Tiny |
| Common Raspwort | 30011 | COL | | green/red flowers. |
| | | | | Sept-Jan. 16,23,198. |
| | g/2011 | 1 | | Trailing carpet form. Suit damp sites. Sun/part |
| I railing Goodenia | | L | | |
| | .0-1111 | | | shade. Glossy flat, hairy leaves. Flower yellow Oct- |
| Llan Caadania | 1050 | 0 | | Dec. on long stem. 16,21. |
| Hop Goodenia | | CL | • | B/F. Hardy fast grow. Suit coastal-damp sites. |
| | 1-3m | | | Blackberry replacement. Leaves oval. Bright yellow |
| | 45 | 001 | | tubular flowers. Spr-sum. 45, 30, 201 |
| Austral Brooklime | 15cm | CSL | | Perenn. Herb. Wet sites, waterways. Soft leaves, |
| | 4.00 | 001 | | erect stem white/pink flowers. Oct-May.58,198. |
| Western furze hakea | -4m | CSL | | Stiff flat narrow dull green leaves. Dense clusters of |
| | | | | white tubular flowers. Sept-Oct. Woody capsule shar |
| Dural a conclusion | Climber | 001 | | point. |
| Purple coral pea | Cimper | CSL | | Vigorous, scrambling, twining plant. Branchlets to 2 |
| | | | | metres long, large leaves. Cluster purple pea flower. |
| | 5.4 | 001 | | Aug-Nov. |
| Common Hovea | .5-1M | CSL | | Slender form. Narrow leaves, dk. green pale and |
| | 0/2001 | 001 | | hairy underside. {Pale purple pea flowers. Jul-Nov. |
| Hairy Pennywort | G/COV | CSL | • | Mat forming herb. Flowers pale yellow late summer. |
| · | = - | | | hairy kidney shaped leaves. Widespread. |
| l assel rope rush | -50cm | CS | | Rhizome. Suit poor soils. Fine erect pale grey stems. |
| | | | | Flower spike with drooping and erect brown tassels. |
| | | | | Regular flowering. |
| Silvertop Wallaby- | | CSL | • | Spreading tufted perenn. Well drained sites, tolerate |
| grass | x1m | | | some wet. Fine green-bluish leaves. Spikelets straw |
| - | | | | colour, red tip. Oct-Jan. |
| Common Bottle- | .05- | CSL | | Perenn. Herb. Damp well drained sites. Leaves |
| daisy | .25cm | | | rosette on lower stem, Stalk hairy, mauve flowers. |
| - | | | | Spr-Sum. |
| Variable Sword- | -3m | CSL | • | Robust tufted perenn. large tussock. Broad leafy mid |
| sedae | | | | green. Arched flat stem. Flower spikelets cluster. |
| | | | | Damp sheltered sites. Sept-Feb.17,181. |
| Wrinkled buttons | 10-30 | CSL | | Slender short lived perenn. Narrow hairy leaves on |
| | cm | | | white cottony, stems. Yellow button florets. Dec-Jun. |
| Prickly Tea-tree | 1-4x | CSL | • | B. B/F. Hardy prickly shrub. Moist/dry sites. Screen |
| | 1-2m | | | plant. White flowers. Oct-Mar.45, 161 |
| Wooly tea tree | | 601 | | B/F Hardy. Dense form. Suit most sites. Screen plan |
| | | USL | | Grey-green hairy leaves. Flowers white, buds grey |
| | 1-3m | | | wooly. Sept-Dec. 53, 851, 56 |
| Common Board | 50cm | 601 | | |
| | SOCIU | COL | | Woody. Suit well drained sites, semi shade. Leaves |
| neath | | | | stiff, narrow drk. green, hairy. Flowers dense spikes, sml. Fragrant, white cup shape Jul-Dec. |
| | 1 | 1 | 1 | I STUL FLADTANT WHITE CUD SNADE JUI-DEC |
| | Manna Gum Cherry Ballard Thatch Saw-sedge Red-fruit Saw-sedge Coast saw sedge Coast saw sedge Austral Cranesbill Common Raspwort Trailing Goodenia Hop Goodenia Hop Goodenia Western furze hakea Purple coral pea Purple coral pea Common Hovea Hairy Pennywort Tassel rope rush Silvertop Wallaby- grass Common Bottle- daisy Variable Sword- | WidthManna Gum10-40x 8-15mCherry Ballard10mThatch Saw-sedge1mRed-fruit Saw-sedge2-3mCoast saw sedge-1mCoast saw sedge-1mAustral Cranesbill.5x .6-1.5mCommon Raspwort30cmTrailing Goodenia1-2.5x 1-3mHop Goodenia15cmWestern furze hakea-4mWestern furze hakea.5-1mCommon Hovea.5-1mHairy PennywortG/covSilvertop Wallaby- grass.3-1.5 x1mCommon Bottle- daisy.05- .25cmVariable Sword- sedge-3mWooly tea tree2-5x 1-3mCommon Beard-50cm | WidthclassManna Gum10-40x 8-15mCSL 8Cherry Ballard10mCSLThatch Saw-sedge1m1Red-fruit Saw-sedge2-3mCSLCoast saw sedge-1mCSLAustral Cranesbill.5x .6-1.5mCSLTrailing Goodeniag/cov .6-1mLHop Goodenia1-2.5x 1-3mCLMustral Brooklime15cmCSLWestern furze hakea-4mCSLPurple coral peaClimberCSLTassel rope rush.5-1mCSLSilvertop Wallaby- grass.3-1.5 x1mCSLVariable Sword- sedge.05- .25cmCSLWrinkled buttons10-30 .25cmCSLWrooly tea tree2-5x 1-3mCSLWooly tea tree2-5x 1-3mCSLCommon Beard-50cmCSLCommon Beard-50cmCSL <td>WidthclasstolerantManna Gum10-40x <math>8-15mCSL1Cherry Ballard10mCSL1Thatch Saw-sedge1mCSL9Red-fruit Saw-sedge2-3mCSL9Coast saw sedge-1mCSL9Austral Cranesbill.5x.6-1.5mCSL9Common Raspwort30cmCSL1Hop Goodeniag/cov.6-1mL1Hop Goodenia1-2.5x1-3mCL1Western furze hakea-4mCSL1Purple coral peaClimberCSL9Common Hovea.5-1mCSL1Hairy PennywortG/cov.5-1mCSL9Silvertop Wallaby-grass.3-1.5.25cmCSL9Variable Sword-sedge.0525cmCSL9Wrinkled buttons10-30.42mCSL9Wooly tea tree$2-5x$ 1-3mCSL9Wooly tea tree$2-5x$ 1-3mCSL9Common Beard-50cmCSL9</math></td> | WidthclasstolerantManna Gum10-40x $8-15mCSL1Cherry Ballard10mCSL1Thatch Saw-sedge1mCSL9Red-fruit Saw-sedge2-3mCSL9Coast saw sedge-1mCSL9Austral Cranesbill.5x.6-1.5mCSL9Common Raspwort30cmCSL1Hop Goodeniag/cov.6-1mL1Hop Goodenia1-2.5x1-3mCL1Western furze hakea-4mCSL1Purple coral peaClimberCSL9Common Hovea.5-1mCSL1Hairy PennywortG/cov.5-1mCSL9Silvertop Wallaby-grass.3-1.5.25cmCSL9Variable Sword-sedge.0525cmCSL9Wrinkled buttons10-30.42mCSL9Wooly tea tree2-5x1-3mCSL9Wooly tea tree2-5x1-3mCSL9Common Beard-50cmCSL9$ |

| Botanical name | INDIGE. Common name | Height & | | IST – BAROI Fire | NGAROOK Erosion Comments |
|--|----------------------------|-----------------------------|-------|---------------------|---|
| Laura dua Cilifanna ia | | Width | class | tolerant | control |
| Lomandra filiformis | Wattle Mat-rush | 15-30x 15- 20cm | CS | | B/F. Hardy tufted perenn. Damp well drained – dry shady sites. Long, narrow leaves. Fine branched flower stems, sml yellow-brown flowers. Oct-Nov. 16,45,48. |
| Lomandra longifolia | Mat-rush | 1x1m | SL | • | B/F Hardy. Agapanthus replacement. Salt tolerant. Large arching tussock, grass like strap leaves. Scented yellow flower spikes. Sept-Dec. 45 |
| Lomandra longifolia ssp. longifolia | Spiny-headed Mat- rush | 30cm- 1mx 60cm- 1m | SL | • | B/F. Hardy, perenn. Sun/semi shade. Moist-dry sites. Erect-arching foliage. Spikes perfumed cream flowers, orange berries. Aug-Dec. 16,21,45 . |
| Lomandra multiflora ssp. multiflora | Many-flowered Mat- rush | .25 g/cov | S | • | B/F. Tufted perenn. Well drained sites. Long narrow leaves. Flowers sml. Yellow brown around stem. May-Dec. 16,21,45. |
| Melaleuca decussata | Totem Poles | 4m | CS | | Suit damp-wet sites. Foliage blue-green blunt leaves. Cluster pale purple bottle brush flowers. Nov-Feb. Salt tolerant. Can be invasive. |
| Melaleuca halmaturorum | Salt Paperbark | 1-4x 1-2m | CSL | • | B. B/F. Hardy prickly shrub. Moist/dry sites. Screen plant. White flowers. Oct-Mar.45, 161 |
| Melaleuca halmaturorum | Salt Paperbark | 7m | CSL | | Dense yellow-green blunt leaves. Cream bottle brush flowers. Sep-Nov. Paperbark. |
| Melaleuca lanceolata | Moonah | 1-8m | CSL | | B. Bushy, spreading form Dense narrow grey leaves. White bottle brush flowers. Dec-Feb. Round woody capsules. Coast scrub. |
| Melaleuca squarrosa | Scented Paperbark | 3-10x 2-6m | CSL | • | B/F. H/E. Erect dense form – open sites. Tall in gullies. Low nutrient –wet sites. Shelter tree. Leaves dark green. Clusters cream bottle brush flowers. Oct-Jan. 17,165. |
| Melaluca ericifolia | Swamp Paperbark | 7m | CSL | | B. Dense narrow yellow-green foliage. Cream bottle brush flowers. Sep-Nov. Woody capsules. Can be invasive. |
| Microlaena stipoides var. stipoides | Weeping Grass | 80x 60cm | CSL | • | B/F . Slender, tufted perenn. Graceful arching stems. Leaves narrow, flat. Flower spikes narrow, delicate. Tolerate shade, grazing. Lawn susbstitute. 3,22,23 . |
| Olearia lirata | Snow Daisy bush | 1-5x 1-3m | SL | | B/F. Open shrub. Well drained shaded sites. Quick growing. Snow white daisy flowers. Spring. 30, 45, 201 |
| Olearia ramulosa | Twiggy Daisy bush | 7m | CSL | | Dense narrow yellow-green foliage. Cream bottle brush flowers. Sep-Nov. Woody capsules. Can be invasive. |
| Oxalis corniculata s.l. | Yellow Wood-sorrel | -15cm | CSL | | B/F. Creeping hairy perren. herb., 3 Heart shaped leaflets. Yellow flowers, single or grouped. Oct-Apr widespread. |
| Ozothamnus ferrugineus | Tree Everlasting | 2-6x 1-3m | SL | • | Dense, fast growing. Gnarled trunk. Moist drained sites. Dark grey-green narrow leaves. Dense cream flower heads. Nov-Feb. 45 |
| Persoonia juniperina | Prickly Geebung | .3-1x .68m | | | H/E. Erect/round form. Well drained –sandy sites. Fine prickly leaves. Yellow tubular flowers Dec- Mar.178. |
| Phragmites australis | Common Reed | 1-3m | CSL | • | Vigorous, bamboo like form, wet areas. Flower plume spike Nov-May. Cut back. Widespread. |
| Pimelea biflora | Matted Rice flower | 5cm G/cover | CSL | | B/F Mat forming. Dense foliage, small red-brown tubular flowers paired at branch tip. Dec-Jan. |
| Pimelea linifolia | Slender Rice-flower | 30-60x 15- 30cm | CSL | | B/F. Well drained sites. Part shade/sun - Grey/green foliage, clusters flowers white pink tinge. Spr-Aut. Widespread . |
| Platylobium formosum | Handsome Flat pea | 1x1.5m | CSL | | Hardy spreading/upright shrub. Heart shaped leaves. Yellow & red pea flowers Oct-Dec. 16,48 . |
| Poa labillardierei | Common Tussock- grass | 50- 130cm | CL | • | B. B/F. Dense tussock slender green/purple leaves, year long green. Suit wet sites. Flowers Oct-Feb18, 45 |
| Poa tenera | Slender Tussock grass | 20- 50cm | CSL | • | B/F . Spreading tufted grass. Bright green soft leaves. Flower spikelets open form. |

INDIGENOUS SPECIES LIST – BARONGAROOK

| Botanical name | Common name | Height & | & soil | Fire | Erosion Comments |
|--------------------------------|---------------------|------------------|--------|----------|--|
| | | Width | class | tolerant | control |
| Polystichum proliferum | Mother Shield-fern | 1-1.5x 1-1.5m | CSL | • | Oct-Jan. 18, 45. Clumping fern, forms colonies. Fronds arching 1.5cm. Suit gullies/forest slopes. 18,30,201. |
| Pomaderris aspera | Hazel Pomaderris | 3-12x 2-4m | SL | | B. B/F. Slender leafy shrub. Suit damp fertile soils, shade. Creamy green flowers. Oct-Dec. Nest site. 18, 30, 201 |
| Pratia pendunculata | Matted pratia | 5cm g/cov | CSL | | B/F. Perenn. herb. Small oval leaves along creeping stems. White/purple fan-like flowers on slender stem Nov-Feb. |
| Pteridium esculentum | Austral Bracken | 50cmx 1.5m | CSL | • | Hardy. Damp sites. Fronds very divided, leathery, dark green. Widespread. |
| Pterostylis longifolia s.l. | Tall Greenhood | 15- 80cm | CSL | | Suit damp open areas. Several long narrow leaves. Flower stem 1-20 green hood like gaping flowers. |
| Pterostylis melagramma | Tall Greenhood | 60cm | | | Rosette leaves. Moist sheltered sites. Flower Jul-Sep. |
| Selaginella uliginosa | Swamp Selaginella | 5- 25cm | CSL | • | Perenn. colonies. Damp sites. Stems branching, erect, leafy. 8 wetlands. |
| Stellaria pungens | Prickly Starwort | G/Cov | CSL | | Spreading unitidy perenn. Damp well drained sites. Hairy tangled stems. Leaves prickly br. green sml. flowers white star Oct-Dec. 23. |
| Stylidium graminifolium | Grass Trigger-plant | .26x .23m | CSL | | Suits most sites. Long grass leaves slender stem. Pink flower spike. Insects trigger pollination. Aug- Nov. 3,16,45 . |
| Tetrarrhena juncea | Forest Wire-grass | Climb – 8m | S | • | B/F. Long trailing or climber rough stems. Damp/wet/sun areas. Mauve flower spikes Nov-Apr. 30,45,201. |
| Tetratheca ciliata | Pink-bells | 50cm | CSL | | Sml leaves around slender hairy erect stem. Flowers drooping pink. Jul-Dec. 16,48 . |
| Themeda triandra | Kangaroo grass | 80x 0.3cm | CSL | • | B/F Perenn. dense tussock. Suit most sites. Leaves green,brown,blue. Slender flower stem. Dense clusters shiny brown spikelets. Sept-Feb. 132,55. |
| Veronica calycina | Hairy Speedwell | 5-45 cm | | | Perenn. Leaves rounded serrated. Hairy stems. Flowers Pale blue-lilac. Spr&Sum. |
| Viola hederacea | Ivy-leaf Violet | G/Cov | CL | • | Forms dense mat – Suit damp/wet/shade sites. Flowers purple & white. Widespread. |
| Xanthorrhoea australis | Austral Grass-tree | 1-3m | SL | | B/F,H/E . Slow grow perenn. Well drained sunny sites. Thick woody trunk. Grassy tuft of leaves. Flower spike long, mass tiny cream fragrant flower after fire. Jul-Dec. 8,16,48. |

INDIGENOUS SPECIES LIST – BARONGAROOK

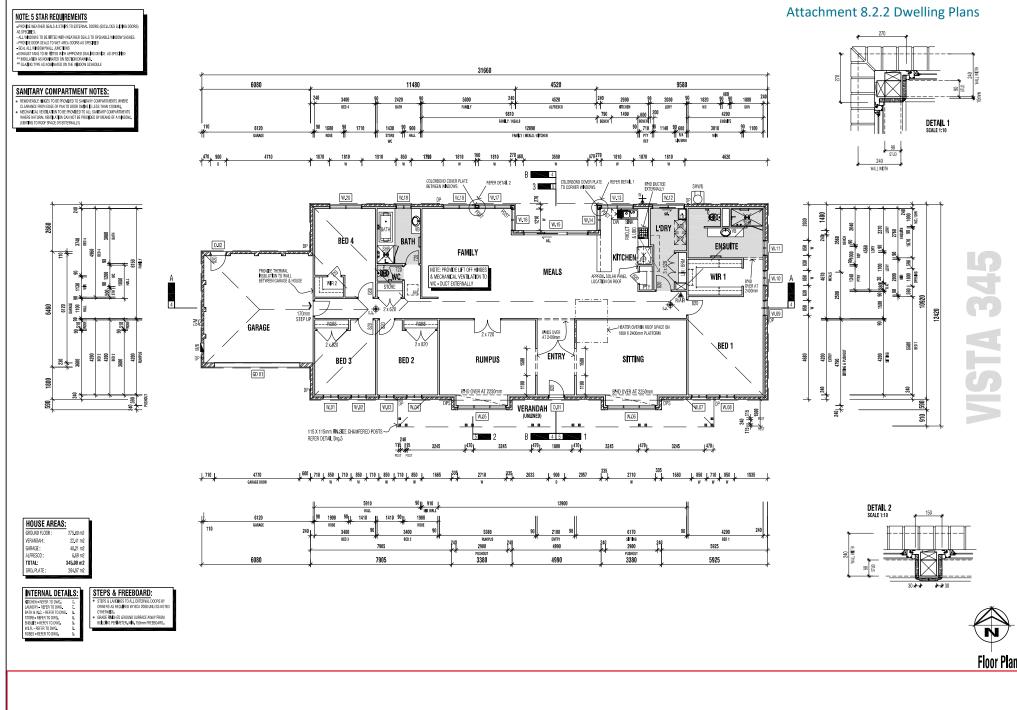
Soils: C = clay S = sandy L = loamy

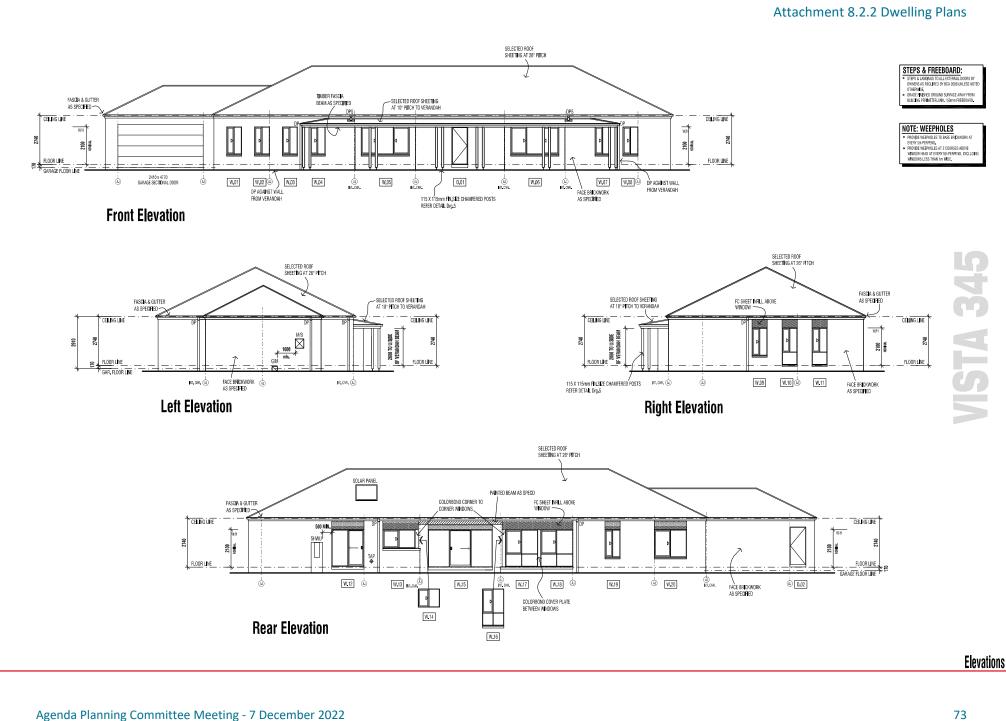
B = Birds B/F = ButterfliesH/E = Honey eaters F = Frog S/G = Sugar gliders



1140 Irrewillipe Road Barongarook West Site and Separations Map

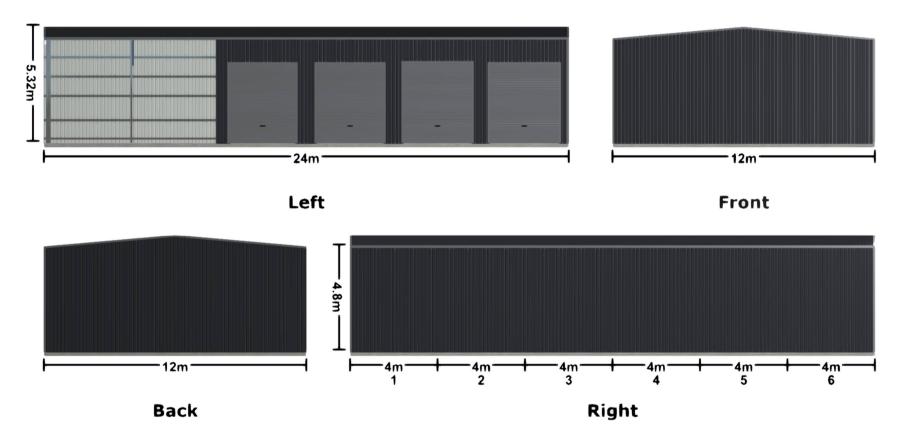
Mercator Lon: 143°31'37" E Lat: 38°25'28" S Printed at: 17/07/2022





Shed Drawings 1140 Irrewillipe Road Barongarook West

Elevations

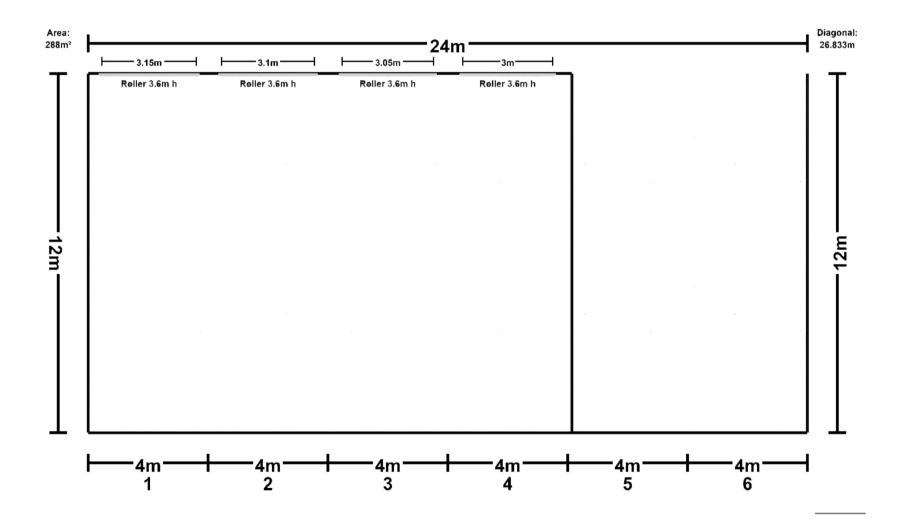


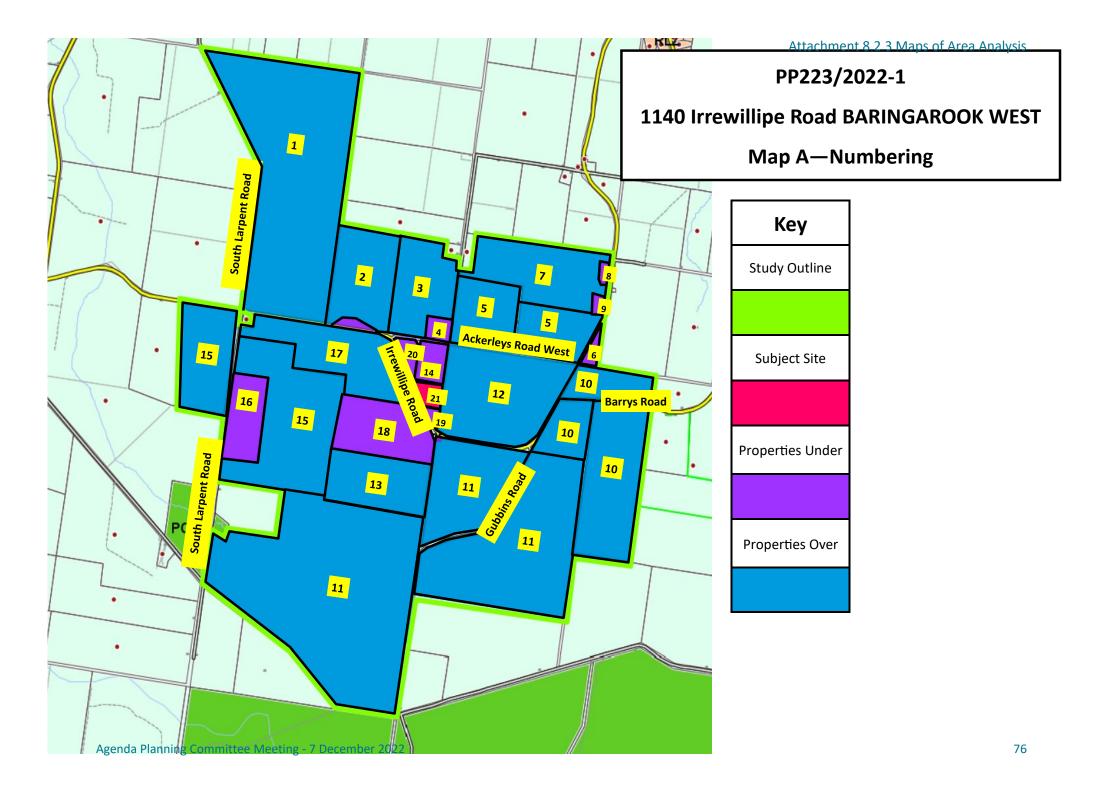
Building Colours as shown

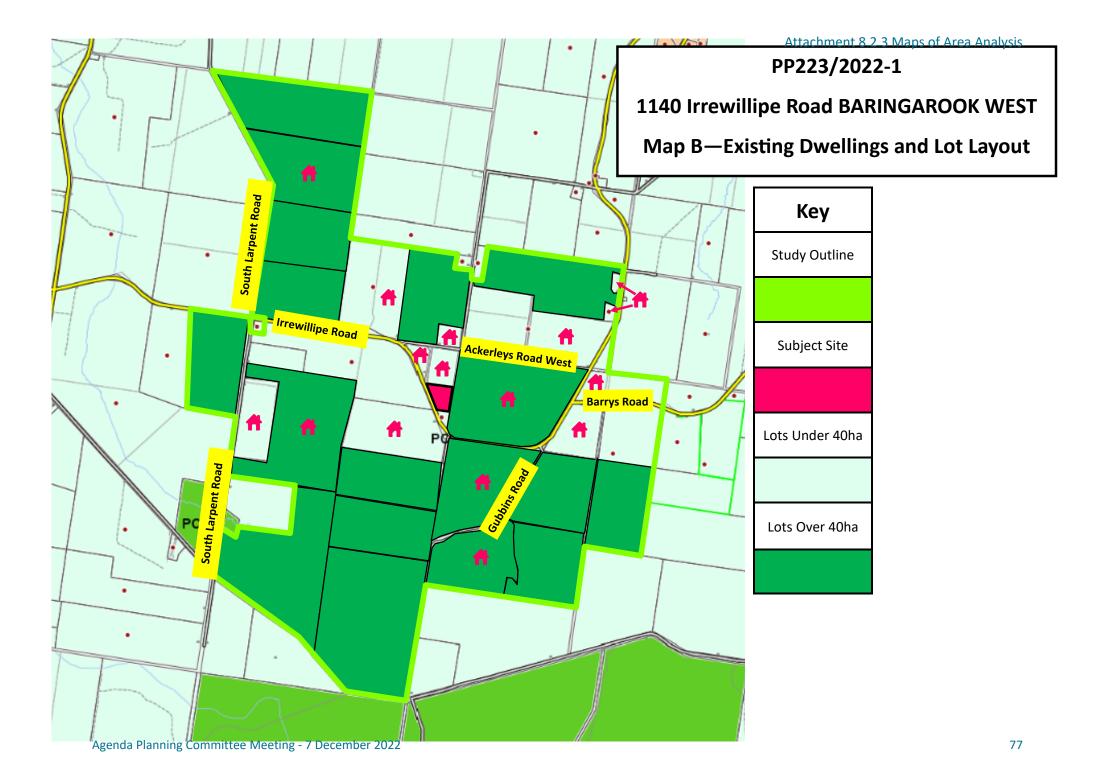
24 Metres length X 12 Metres width

Shed Drawings 1140 Irrewillipe Road Barongarook West

Floor Plan







Attachment 8.2.4 Area Analysis information - (relates to maps)

PP223/2022-1 - 1140 Irrewillipe Road BARONGAROOK WEST - Area Analysis - Map Legend

| | _ | | | | | | | | | | | | |
|------------|---|----------------------------|-----------------------------|----------------------------|---------------------------------|-------------------------------------|------------------------------|---|-------------------------|------------------------------|--|--|-------------|
| Map Ref | Address | Parcels per Property | Parcel / Lot description | Parcel / Lot Size in Ha | Total Property Area in Ha | Buildings | Permit Ref | Development | Decision | Date | | | |
| 1 | 255 South Larpent Road | 4 | 1\TP823597 1\TP371360 | 60.3 55.2 | 197.2 | Shedding Dwelling & Buildings | PP171/2006-1 | Removal Of Vegetation | Permit Issue | d 3/08/2006 | | | |
| 1 | BARONGAROOK WEST | 4 | 1\TP539493 1\TP401890 | 40.8 40.8 | 137.2 | Vacant Vacant | PP353/1999-1 | Removal Of Vegetation For Access | Refusal | 25/10/1999 | | | |
| | | | 1\LP221562 | 22.9 | | Vacant | PP211/2000-1 | Construction Of Dwelling | Permit Issue | d 14/08/2000 | | | |
| | 1270 Irrewillipe Road | | | | | | PP172/2002-1 | Construction Of A Garage | Permit Issue | d 24/04/2002 | | | |
| 2 | BARONGAROOK WEST | 2 | 2\LP221562 | 22.3 | 45.2 | 45.2 Dwelling & Buildings | PP88/2015-1 | Construction of Fiberglass Swimming Pool and Safety Barrier | Permit Issue | d 25/05/2015 | | | |
| 3 | 65 Polleys Road BARONGAROOK WEST | 1 | 2\LP221564 | 40.9 | 40.9 | Shedding | PP363/2009-1 | Land Fill | Permit Not Required | 7/01/2010 | | | |
| 4 | 140 Ackerleys Road West BARONGAROOK WEST | 1 | 1\LP145879 | 4 | 4 | Dwelling & Buildings | PP62/2010-1 PP293/2021-1 | Extension To Existing Dwelling Building and Works Comprising Construction of a Outbuilding | - | | | | |
| | | | 16F\PP2079 | 20.3 | | Vacant | | 0 | | | | | |
| 5 | 950 Irrewillipe Road | 3 | 16G\PP2079 | 12.5 | 62.4 | Vacant | PP338/2002-1 | Construction Of A Piggery | Permit Issue | d 3/02/2003 | | | |
| | BARONGAROOK WEST | BARONGAROOK WEST | BARONGAROOK WEST | BARONGAROOK WEST | 5 | 1\TP815337 | 29.7 | 02.1 | Dwelling & Buildings | 11330,2002 1 | | | u 370272003 |
| 6 | 895 Irrewillipe Road BARONGAROOK WEST | 1 | 16J\PP2079 | 2.9 | 2.9 | Vacant | | | | | | | |
| 7 | 870 Irrewillipe Road BARONGAROOK WEST | 1 | 2\PS708118 | 54.4 | 54.4 | Shedding | | | | | | | |
| 8 | 860 Irrewillipe Road BARONGAROOK WEST | 1 | 1\PS609250 | 1.4 | 1.4 | Dwelling | | | | | | | |
| 9 | 880 Irrewillipe Road BARONGAROOK WEST | 1 | 1\PS528466 | 1.7 | 1.7 | Dwelling | PP217/2003-1 PP115/2007-1 | Realignment Of Boundaries Two Lot Re-Subdivision | | d 31/07/2003 d 23/05/2007 | | | |

| | | | | | | A the aleve of | to a lange land with information | ve (veletes to veges) |
|----|---|------------|-------|-------|-------------------------|--|--|--|
| | 400 Barrys Road BARONGAROOK WEST | 2\TP643654 | 11.5 | | Vacant | PP232/2016-1 | Construction of a Telecommunications Facility | Permit Issued 27/01/2017 |
| | | 6\TP643654 | 28 | | Vacant | ··· ··· | (35m Monopole) and Associated works | |
| | 410 Barrys Road | 5\TP643654 | 40.9 | | Vacant | | Building and Works | |
| 10 | BARONGAROOK WEST 6 | 4\TP643654 | 0.5 | 106.2 | Vacant | PP218/2019-1 | Comprising Construction of an I Agricultural Building | Permit Issued 28/11/2019 |
| | | 7\TP643654 | 19.1 | | Dwelling & Buildings | | | |
| | 415 Barrys Road BARONGAROOK WEST | 3\TP643654 | 6.2 | | Dwelling & Buildings | | | |
| | | 1\TP220589 | 42.1 | 413.5 | Shedding | | Two Lot Subdivision & | |
| | 30 Gubbins Road | 1\TP329009 | 54 | 413.5 | Dwelling & Buildings | PP133/2000-1 | Creation Of Road Reserve | Permit Issued 9/08/2000 |
| | BARONGAROOK WEST | 2\PS443884 | 42.6 | 413.5 | Vacant | PP457/2002-1 | Construction Of A Dwelling | Permit Issued 16/12/2002 |
| | | 24C\PP2776 | 107.1 | 413.5 | Shedding | FF43772002-1 | construction of A Dwennig | 1 cmint 1550cu 10/ 12/ 2002 |
| 11 | 7 | 24B\PP2776 | 41 | 413.5 | Vacant | PP48/2015-1 | Buildings and works comprising construction of | Permit Issued 28/04/2015 |
| | 1055 Irrewillipe Road BARONGAROOK WEST | 1\TP533150 | 85.8 | 413.5 | Vacant | 1140/2010 1 | replacement agricultural shed | |
| | 1105 Irrewillipe Road BARONGAROOK WEST | 1\PS443884 | 41 | 413.5 | Dwelling | | | |
| 12 | 960 Irrewillipe Road 1 BARONGAROOK WEST | 1\TP219407 | 78.1 | 78.1 | Dwelling & Buildings | PP289/2010-1 | Buildings and Works for the purpose of constructing additions to an existing dwelling | Permit Issued 16/12/2010 |
| 13 | 1115 Irrewillipe Road BARONGAROOK WEST 1 | 24\PP2776 | 41.4 | 41.4 | Shedding | | | |
| 14 | 125 Ackerleys Road West BARONGAROOK WEST | 23B\PP2776 | 8.2 | 8.2 | Dwelling & Buildings | PP353/2006-1 PP353/2006-2 PP353/2006-3 PP353/2006-4 PP221/2016-1 | Dwelling Buildings and Works Comprising Extension to | 30/03/2007 Permit Issued 07/03/2011 28/05/2012 19/04/2013 Permit Issued 23/12/2016 |
| | | | | | | | | |

| | | | | | | | Attachmer | nt 8.2.4 Area Analysis informa t | ion - (relate : | s to maps) | |
|----|--|-----|------------|------------|-------|-------------------------|--|--|----------------------------|---|--|
| 15 | 415 South Larpent Road BARONGAROOK WEST | oad | 3 | 1\TP836861 | 79.6 | 131.5 | Dwelling & Buildings | | , | `` | |
| | | 3 | 1\TP890678 | 41.7 | 131.5 | Vacant | | | | | |
| | | | 1\TP836878 | 10.3 | | Vacant | | | | | |
| | | | 1\TP232060 | 21.4 | | Dwelling & Buildings | PP216/1995-1 | Machinery Shed | Permit Issue | ed 20/06/1995 | |
| 16 | 435 South Larpent Road BARONGAROOK WEST | 2 | 1\TP383286 | 1.2 | 22.7 | Vacant | PP54/2007-1 | Building And Works To Construct A New Dwelling And Shed (Existing Dwelling (Cabin) to be removed from site) | Permit Issue | ed 18/09/2007 | |
| 17 | 1195 Irrewillipe Road | 2 | 2\LP135533 | 29.6 | 59.5 | Vacant | | | | | |
| 17 | BARONGAROOK WEST | 2 | 1\TP118804 | 29.9 | 55.5 | Vacant | | | | | |
| 18 | 1125 Irrewillipe Road BARONGAROOK WEST | 1 | 1\TP118803 | 39 | 39 | Dwelling & Buildings | PP8/2007-1 PP257/2021-1 | Dam Repairs & Removal Of 32 Mature Cypress Trees And 8 Mature Pine Trees Extension and Alteration of Dwelling and Associated Works | Permit Issue | ed 31/01/2007 ed 22/10/2021 | |
| 19 | 1120 Irrewillipe Road BARONGAROOK WEST | 1 | 1\TP118802 | 1.3 | 1.3 | Vacant | PP263/2008-1 PP188/2011-1 PP178/2021-1 | Construction of a dwelling Use & Development of a Dwelling & an Animal Boarding Facility (Cattery) and associated works Buildings and Works Comprising Construction of ar Agricultural Building | | 29/01/2009 24/07/2012 ed 23/09/2021 | |
| 20 | 1160 Irrewillipe Road BARONGAROOK WEST | 1 | 1\TP106872 | 4 | 4 | Dwelling & Buildings | | | | | |
| 21 | 1140 Irrewillipe Road BARONGAROOK WEST | 1 | 1\TP118801 | 4.5 | 4.5 | Vacant | | | | | |

16 Dwellings in study area

OFFICIAL



Agriculture Victoria

Department of Jobs, Precincts and Regions

21 September 2022

Planning Unit Colac Otway Shire PO Box 283 Colac VIC 3250

Email: ing@colacotway.vic.gov.au

Dear

| RE: | Planning permit application: PP223/2022-1, Use and development of land for dwelling |
|-----------|---|
| Land at: | 1140 Irrewillipe Road BARONGAROOK WEST |
| Your Ref: | PP223/2022-1 |

Thank you for the opportunity to provide comment pursuant to a notice of application under Section 52 of the *Planning and Environment Act, 1987*.

Council has referred the application to Agriculture Victoria seeking any comment on the application.

The advice provided in this letter relates to:

- 1. Planning context
- 2. Application review.
- 3. Strategic objectives and protection of agricultural land

1. Planning context

The subject land is zoned Farming Zone (FZ), Clause 35.07 of the Colac Otway Planning Scheme, and is affected by:

- Significant Landscape Overlay (SLO) Schedule 1 (SLO1)
- Vegetation Protection Overlay (VPO) Schedule 1 (VPO1)
- Erosion Management Overlay (EMO) Schedule 1 (EMO1)

The purpose of the Farming Zone includes:

- 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.

Agriculture Victoria notes the subject land is 4.507 hectare in area, described as Lot 1 on TP118801 and contains no encumbrances, caveats and notices.

Within the Schedule to Clause 35.07 Farming Zone (FZ), land of less than 40 hectares, requires a permit for a dwelling as a Section 2 Use.

The application states that the dwelling is ancillary to a beef cattle breeding farm. Beef cattle breeding may be considered Grazing animal production (GAP) is included under Agriculture and is considered a Section 1 Use, no permit required. Grazing animal production' is defined as: *land used for animal production where the animals' food is obtained by directly grazing, browsing or foraging plants growing on the land*.

Agriculture Victoria notes that the use of land in the FZ for a calf rearing enterprise could be considered 'Intensive animal production', a Section 2 use, permit required, if not in association with a broader grazing based system. Intensive animal production is defined as: *land used for animal production where the animals' food is imported from outside the immediate building enclosure, paddock or pen.*

Agriculture Victoria notes the application form details the proposal as 'Use and development of land for a four-bedroom, single-storey dwelling ancillary to a beef cattle breeding farm and the development of associated farming infrastructure'. It is assumed the proposed shed plans also form part of the application to be considered. However, it is unclear if the proposed relocation of the cattle yards to a position that is within the prescribed FZ setback triggers are forming part of Council's permit application consideration. Based on the VCAT finding of Grigg v Towonga SC & Anor (Red Dot) [2013] VCAT 956, cattle yards are considered a building.

2. Application review.

Farm Management Plan, 1140 Irrewillipe Rd, Barongarook West, Beef Cattle breeding and rearing and a Dwelling, Prepared by Dean Suckling Enprove Pty Ltd, Dated 24 June 2022, states:

- This plan is for the improved use of the land for Murray Grey beef cattle breeding and beef cattle grow out at the property. The property is owned by and and the further agricultural improvements proposed will be completed contingent on the issuing of a planning permit for the construction of a dwelling. (Page 3)
- The farm holds 15 Murray Grey heifers and half of them calved last season. The proponents also reared 12 calves from off-farm as well. It does mean the farm relies on bought-in fodder for feeding. (Page 4)
- A new water supply network and access have recently been installed. A new farm shed to hold the fodder and equipment and new paddocks to improve grazing management will be constructed and they will also take this opportunity to improve the soil fertility, reduce the soil acidity and plant high-producing pasture. (Page 4)
- The Meat and Livestock stocking rate calculator suggests a productive capacity of the property of 6-7 cows with calves but that rate has been smashed. Murray Greys are demonstrating they are efficient feeders needing less feed than the black cows. (Page 4)
- After the initial development period, the agricultural return from the cattle produced on the property is expected to be \$40,000 a year in cattle and calf sales. (Page 4)
- This enterprise is an excellent example of high-value grazing animal production on an undersized, disconnected lot within the Farming Zone. (Page 4)
- Page 7 includes Map 2: Farm Map which details:
 - Four proposed paddocks
 - Three proposed shelterbelts
 - Stockyards
 - Fenced domestic area around both buildings
 - Accessways to buildings and paddock access
 - o Five water tanks.
- Water supply is an issue at the site and currently, the property relies on water being brought in by tanker and stored in a 25,000-litre water tank. The main supply for the

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stock will become water harvested from the dwelling and shed rooves. These rooves will be able to harvest 500,000 litres in an average rainfall year. There will also be 50,000 litres held in water tanks attached to the new dwelling. (Page 10)

- Currently, the pastoral coverage is fair, although low yielding, with a well-established mix of perennial ryegrass, native pasture and clover. It has a higher than average number of agricultural weeds that need to be managed (weeds account for about 30 % of plant coverage). The estimation is that the property is currently producing 2.5 tonnes of dry matter per hectare per annum. Following the soil program and pastoral program should allow this level to be increased to a conservative 4 tonnes of dry matter per hectare. Each autumn, one paddock will be renovated until the property has a new pasture base. (Page 13)
- Overall there can be a peak number of cows and calves on the site can be high as 25 at a time. The proponents own 15 Murray Grey heifers for breeding and lease a Simmental bull each year. This has produced 6-7 calves and the intent is to grow this to 15 calves. Calves are allowed to wean naturally off the mothers and ideally are held on the site for 12 months or until feed availability becomes an issue. (Page 13)
- is a stock driver and often acquires unwanted dairy calves which are also weaned on the site. This has been 4-6 each year and they are sold on at 3 months of age back to dairy farms or for beef production. This number can be readily increased to 10-20 each year when they are resident. (Page 13)
- All proposed works are anticipated to be completed within three years of permit approval and the enterprise operating at full capacity in the same time frame. (Page 14)
- The adjoining titles are all lifestyle and small farms with dwellings and are unlikely to be available to be integrated. (Page 14)
- The property is best assessed alone as it is hemmed in by lifestyle lots and unlikely to be joined to another property. Grazing is the principal activity of the area, and the property is well suited to that, and this plan is about maximising that activity. (Page 14)

Proposed dwelling plans not titled or dated, 2 pages, detail:

• Four elevations and a floor plan that includes 2 bathrooms, 4 bedrooms plus a rumpus and second sitting area.

Proposed shed plans 2 pages titled 1140 Irrewillipe Road Barongarook West, undated, detail:

• Four elevations and a floor plan detailing a 24 m (L) x 12 m (W) x 5.32 m (H), with 4 enclosed bays and two open.

Site and Separation Map, 1140 Irrewillipe Road Barongarook West, Dated 17 July 2022, details:

- Proposed shed setback 7.6 m from Irrewillipe Road reserve
- Proposed dwelling setback 45.7 m Irrewillipe Road reserve
- A 250 m² effluent field
- A proposed fenced area to surround both proposed building and accessways.

3. Strategic objectives and protection of agricultural lands.

The following clauses of the Colac Otway Planning Scheme are relevant to this application;

- Clause 14.01-1S Protection of agricultural land, objective: To protect the state's agricultural base by preserving productive farmland, and strategies to:
 - Protect productive agricultural land from unplanned loss due to permanent changes in land use.
 - Prevent inappropriately dispersed urban activities in rural areas.

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- Limit new housing development in rural areas by:
 - Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses.
- Clause 14.01-1L Protection of agricultural land
 - Strategies:
 - Minimise ad hoc development of unserviced old and inappropriate subdivisions.
 - Policy guidelines: consider as relevant:
 - The use of an agreement under Section 173 of the Act to prevent the further subdivision of the land and the construction of a dwelling on any lot created other than in accordance with the minimum lot size in the zone.
- Clause 14.02-1S Catchment planning and management:
 - Objective To assist the protection and restoration of catchments, waterways, estuaries, bays, water bodies, groundwater, and the marine environment.
- Clause 16.01-3S Rural residential development, strategies to:
 - Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.
 - Discourage development of small lots in rural zones for residential use or other incompatible uses.

Conclusion

Colac Otway Shire Council as the responsible authority will have to make a determination as to whether the application for the use and development of the dwelling provides for enhanced agricultural potential and the productive capacity of the land, and generally meets to purpose and objectives of the Colac Otway Planning Scheme.

Agriculture Victoria notes the following:

- Colac Otway Planning Scheme zoning maps gazetted 29 July 1999 show the property was zoned Rural Zone which is now known as the Farming Zone.
- The subject land adjoins three (3) properties that all appear to be under grazing animal production and are able to be practically consolidated for agricultural expansion.
- The town of Colac is a 13 km drive from the subject property.
- Stock water is currently being carted to the site and any future supply relies on the construction of buildings to capture rainwater.
- Any regular ongoing calf rearing along with expected calf numbers are unclear.
- All development is expected to be completed within three years, however, it isn't clear what agricultural development is proposed to be completed prior to the dwelling use.
- The cattle yards onsite are proposed to be shifted into the north-west boundary corner of the property.
- Hay production levels aren't clear, although acknowledgement of reliance on the fodder importation is detailed.
- The fenced domestic area shown minus the farm shed along with its own access and curtilage gives a domestic envelope of 2400 m².

Victorian Civil and Administrative Tribunal (VCAT)

Agriculture Victoria has considered the following Victorian Civil and Administrative Tribunal (VCAT) decisions relating to the use of the land for a dwelling, the proposed scale of agricultural production, along with the purpose of the Farming Zone.

VCAT case Kennedy v Baw Baw SC [2022] VCAT 787 considered the justification of a dwelling on a 3.9 hectare property in the Farming Zone. In this matter Member Wickramasinghe stated the following:

- 52. The scale of the agricultural is said to be more akin to a hobby farm and as such any dwelling would perform the function of supporting a rural lifestyle rather than being a necessity in the operation of a commercially viable business.
- 53. I am not persuaded the use of the land for a dwelling on a 3.9 hectare site is consistent with the provisions of the FZ and is necessary having regard to the nature of the farming use. The decision guidelines of the FZ require consideration of whether the dwelling will result in loss or fragmentation of productive agricultural land and the potential for the proposal to lead to a concentration or proliferation of dwellings.

In VCAT decision Strachan v Latrobe CC [2022] VCAT 35 the need for a dwelling in association with agriculture in the Farming Zone at a hobby scale was considered by the member. In this matter Member Halliday stated the following:

- 32. A proposal to develop and use the land for a dwelling was the subject of an application to the Tribunal for review of a grant of a permit in 2012. It was put to the Tribunal in that matter that the permit applicant intended to run a beef herd with 10 weaner cattle being fattened on the site at any one time. The Tribunal set aside the Council's decision and a permit was not granted.¹ The Tribunal found that the proposal was an attempt to have a rural living arrangement masked as an agricultural use within a Farming Zone.
- 58. I have not been persuaded that if the hobby farm operation is started, it will sustainably persist in the long term. The FMP makes no provision for what is to occur if the hobby farm operation ceases, after the dwelling is constructed. In my view, once the dwelling is constructed, there is real risk that if the proposed hobby farming activity commences, it will not be sustained. After the five year period referred to in condition 7, there is not a great deal of motivation for the agricultural activities to be sustained in the long term, particularly if a subsequent owner has no interest in rearing cattle. I consider that this is inconsistent with:
 - a. the purposes of the FZ2, which seek to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture and which encourage the use and development of land based on comprehensive and sustainable land management practices;
 - b. Clause 14.01-1S (Protection of agricultural land) which seeks to limit new housing development in rural areas by directing housing growth into existing settlements; discouraging development of isolated small lots in rural zones from use for dwellings.
 - c. Clause 16.01-3S (Rural residential development) which discourages development of small lots in rural zones for residential use and encourages consolidation of existing isolated small lots in rural areas.

Agriculture Victoria considers that:

• The land use for animal grazing can be undertaken without the presence of a dwelling, but regular visits would be required to ensure daily management of the property and animal welfare were maintained.

5

- Farm security can be maintained without the need for a dwelling on site. Locked gates and security camera systems are available to achieve security.
- The proposed cattle yard location has the potential to create land use conflict as two existing dwellings would be located 50 m and 140 m away.

Carrying Capacity

A 50 kg wether (castrated male sheep) maintained at constant weight has a dry sheep equivalent (DSE) rating of 1.0 DSE. Animals requiring more feed have a higher rating and animals requiring less feed have a lower rating. The DSE rating of all classes of livestock is based on the feed requirements of the animals and can be used to assess the carrying capacity of a farm. The Farm Management Plan notes there will be:

- 4.1 ha available for rotational grazing by 15 Murray Grey heifers, fenced into 4 paddocks
- Recently produced 6-7 calves with intent to grow this to 15 calves.

Agriculture Victoria considers that the subject property's 802 mm average annual rainfall and good pasture management could produce a sustainable carrying capacity of 22 DSE/ha which establishes the scale of the proposed sheep grazing and breeding enterprise. Agriculture Victoria has assessed the carrying capacity for cattle grazing on the 4.1 ha of available land.

The calculated carrying capacity across the 4.1 ha is 90 DSE (i.e. 22 DSE/ha multiplied 4.1 ha). Base on a pregnant heifers, lactating heifers and subsequent calves on average this equates to a carrying capacity of between 4-5 heifers and calves per year.

The available grazing area to achieve stated production does not make allowance for the suggested and but not defined fodder production area in the FMP.

Agriculture Victoria considers that the nominated stocking rate of 15 Murray Grey cows with calf would not be sustainable on the subject land. The imported feed required to maintain this stocking rate may be considered intensive animal production and given the constraints of the site lead to the potential for impacts to the environment and amenity.

Water demand and availability

Page 10 of the Farm Management Plan states that rainfall runoff from the house and shed will supply water tanks with a combined capacity of 75,000 litres and there will be approximately 500,000 litres harvested in an average rainfall year.

Domestic water demand

On average 750 litres of water is used in a 3-4 bedroom dwelling per day. Based on these numbers, domestic use would require 273,750 litres of water per year. The proposed tank water in the first instance will need to meet the domestic needs of the dwelling.

The proposed roof area of the dwelling is 270 m². The roof area of the shed was not included in the supporting documents. In an average rainfall year of 550 mm, approximately 148,500 litres of water would be harvested from the dwelling.

Cattle drinking water demand

Agriculture Victoria has estimated the annual cattle drinking water requirements for lactating cows to be up to:

- 182,500 litres based on stocking 5 cows on the property at any one time
- 547,500 litres based on stocking 15 cows on the property at any one time

The cattle drinking water requirements is based on data from the 2014 NSW DPI Prime Fact - Water requirements for sheep and cattle.

Agriculture Victoria considers that contingent on an average rainfall year the rain harvested from the buildings would only meet the domestic needs and not stock watering requirements.

Recommendation

Agriculture Victoria considers that the proposed use of the land for grazing animal production could be carried out without a dwelling and that the refusal of the application appears supported by the VCAT decisions cited above.

If Council considers that the proposal meets the strategic objectives of the Colac Otway Planning Scheme, and Council determines a permit for a dwelling in association with a grazing animal production was to be approved, Agriculture Victoria makes the following recommendations:

- That any permit issued that allows the use and development of a dwelling in the Farming Zone is in association with the primary use of the land for agricultural production, protects against the potential for further subdivision of the land and ensures the ancillary use of a dwelling does not compromise farming activity in the area.
- That the domestic development be contained within a 2000 m² envelope or as approved and designed to minimise domestic use and maximise and maintain the use of the land for agriculture, to be shown on any approved plan as part of any permit issued.
- That the primary and secondary wastewater areas for the dwelling be appropriately buffered and fenced to exclude stock, in accordance with any land capability report recommendations.
- That prior to the use and development of any approved dwelling the associated infrastructure required for the grazing animal production land use as set out in any approved farm management plan must be completed to the satisfaction of the responsible authority.
- That conditions be placed on the permit to protect agricultural land through a binding agreement on title which ensures:
 - The development and continued use of a dwelling in the Farming Zone has been permitted on the basis that the dwelling is reasonably required for the operation of the agricultural activity conducted on the land in accordance with an endorsed business plan or approved alternative, and the dwelling will only be used on that basis.
 - The dwellings must not be subdivided from the lot in the future, and the lot must not be subdivided to increase the number of lots, by excision or otherwise.
 - That the owner acknowledges and accepts the possibility of nuisance from adjoining agricultural operations including animal production, spray drift, agricultural machinery use, pumps and associated hours of operation necessary for agricultural production.

This letter of advice is provided to Council to assist their assessment of the above planning permit amendment application and any requirement in seeking further information from the applicant as part of its assessment process. The information provided should be considered as advisory in nature to inform Council's determination as the Responsible Authority.

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Please provide a copy of the outcome for our records.

Please contact me if you require any further clarification.

Regards

Agriculture Victoria Planning and Advisory Service Agriculture Victoria Department of Jobs, Precincts and Regions 62-68 Ovens Street, Wangaratta, Victoria, 3677 M: | E:

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P535/2009 PERMIT APPLICATION NO. PP263/08

CATCHWORDS

Section 77 *Planning and Environment Act* 1987, review of refusal to grant a planning permit, Colac Otway Planning Scheme, Farming Zone, proposed use of land as a dwelling, inconsistent with planning policy

| APPLICANT | Douglas Swanson |
|-----------------------|--|
| RESPONSIBLE AUTHORITY | Colac-Otway Shire Council |
| SUBJECT LAND | 1120 Irrewillipie Road, BARONGAROOK WEST |
| WHERE HELD | Melbourne |
| BEFORE | Dalia Cook, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 16 July 2009 |
| DATE OF ORDER | 31 July 2009 |
| CITATION | Swanson v Colac-Otway SC [2009] VCAT 1513 |

ORDER

- 1 The decision of the Responsible Authority is affirmed.
- 2 In permit application PP263/08 no permit is granted.

Dalia Cook Member

APPEARANCES:

For Applicant

Mr Douglas Swanson in person, assisted by Ms Carole Swanson For Responsible Authority

Ms Helen Evans, Town Planner, assisted by Ms Anne Sorenson

VCAT Reference No. P535/2009

REASONS

Background

- 1 This application was made by the permit applicant seeking review of the responsible authority's decision to refuse to grant a planning permit for the use and development of the subject land as a dwelling.¹
- 2 The responsible authority refused the application on the grounds that the application did not accord with relevant state and local planning policy and the objectives of the Farming Zone.
- 3 The applicant's statement of grounds allege, in summary, that the subject land is too small to be used for productive and viable farming in its own right, that the land is suitable for a dwelling and that the environmental qualities of the land would not be affected.

Zoning and planning policy

- 4 The subject land is located in the Farming Zone of the Colac Otway Planning Scheme (planning scheme). The land is included in the Significant Landscape Overlay (Schedule 1), Vegetation Protection Overlay (Schedule 1) and Erosion Management Overlay (Schedule 1).
- 5 A planning permit is required for:
 - the use of the land for a dwelling pursuant to clause 35.07-2
 - construction of a dwelling pursuant to clause 35.07-4
 - construction of a building under the Significant Landscape Overlay provisions of clause 42.03-2
 - construction of a building under the Erosion Management Overlay provisions of clause 44.01-1.

Subject land, surrounds and the proposal

- 6 The subject land is a triangular shaped lot of 1.288 hectares. It is sited between Irrewillipe Road, a government road to the south and vacant land to the east. The subject land is cleared with the exception of one mature gum tree, and is used for grazing.
- 7 Until recently the subject land formed part of a broader parcel of land that was carved into three separate titles – one of approximately 8.4 hectares, another approximately 4.5 hectares and the subject land. It is relevant to note that, being separate Crown Allotments, no planning permit was required for the subdivision of the parent title, so relevant issues of planning policy were unable to be considered by the responsible authority before the subject land was created as a separate lot. By contrast, the Farming Zone

VCAT Reference No. P535/2009

¹ The application was made under section 77 of the *Planning and Environment Act* 1987.

provides a minimum subdivision area of 40 hectares when a planning permit is required.

- 8 Planning approval is also required for the use and development of land for a dwelling where the lot size is less than 40 hectares.
- 9 The application proposes a single storey, detached dwelling set back a minimum of 35 metres from Irrewillipe Road and 20 metres from adjoining land to the east.

Consideration of the application

- 10 The responsible authority conceded that, were it not for the more fundamental issue of the appropriateness of the proposed use of the land for a dwelling, the proposed development would have been acceptable.²
- 11 I can appreciate the attractiveness of the subject land and its rural setting for a dwelling. I can also understand why the sale of this compact lot as a separate parcel may have induced an expectation in the purchasers that it would be suited to a dwelling.
- 12 The key issue raised by this application is the acceptability of approving a dwelling in the Farming Zone on a small lot which forms part of an area of high agricultural value. I am aware that in recent years, this Tribunal has taken a generally consistent line in terms of avoiding the proliferation of dwellings in Farming Zones.³
- 13 The impacts of approving such a use on this particular lot may seem benign from some perspectives. However, strategic planning inherently requires the foresight of being able to visualise the impact of this proposal on broader planning objectives for the area, particularly if it makes similar applications on nearby land more feasible or attractive.
- 14 Relevant purposes of the Farming Zone include:
 - To provide for the use of land for agriculture.
 - To encourage the retention of productive agricultural land.
 - To ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of the land for agriculture.
- 15 The responsible authority's Municipal Strategic Statement (MSS)⁴ specifically directs that rural living should be directed to nominated areas, principally within the southern edge of Colac. The subject land is distant from this area and falls clearly outside it.

² Specifically, it considered that the size and style of the dwelling would be acceptable, it would be well set back from roads and boundaries, muted colours are proposed, the dwelling could be appropriately screened by planting and no vegetation removal is proposed. A satisfactory geotechnical report was also provided by the permit applicant in response to the Erosion Management Overlay provisions.

See, for example, *Ryan v Moyne Shire Council* [2008] VCAT 612, a decision of Member O'Leary and my decision in *Daylesford Design Studio v Hepburn Shire Council* [2008] 2128.
 Promulti providenci and emended by Amendment C55.

⁴ Recently reviewed and amended by Amendment C55.

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16 The responsible authority placed weight on its Rural Land Strategy at the hearing, being a document adopted by it in September 2007 and which is now a reference document in the planning scheme. This identifies that rural land traditionally used for farming is under pressure to be used for lifestyle purposes. This impacts on the price of rural land⁵ and inhibits farm growth, amongst other direct and indirect impacts. It also has the potential for conflict between residential land use and adjoining rural land use, with potential to undermine the integrity of agricultural areas. This is translated in clear terms in clause 21.05 of the MSS⁶ which provides:

Proliferation of dwellings for lifestyle/hobby farm purposes in the Farming Zone will compromise the long term viability of framing in the Colac Otway Shire.

The clear evidence of farming amalgamations and the need to increase farm sizes to remain economically viable indicates that policy and provisions relating to dwellings and small lot subdivisions in rural areas will require a strict interpretation of the Farming Zone provisions to ensure incompatible land uses (including dwellings) do not negatively impact on the ability to farm.

- 17 The Rural Land Strategy identifies the subject land and surrounding area as being of "High Agricultural Capability", being generally suited to a range of more intensive agricultural use. In addition, the broader area is considered "Farmland of State Significance" due to the economic benefit that flows from dairying and associated manufacturing.
- 18 Decision guidelines provided at clause 35.07-6 of the Farming Zone related to dwellings address what I consider to be key issues, and I propose to apply the facts before me to each guideline:
 - Whether the dwelling will result in the loss or fragmentation of productive agricultural land not directly, although there is nothing to prevent the subject land from being used for grazing for a small number of animals in its current state;
 - Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land no;
 - Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation there is clear potential for this to occur, particularly if the dairy directly opposite is re-commissioned;

⁵ This is evidenced by the sale prices for the three lots which included the subject land. The responsible authority advised that the 98 hectare parcel was purchased at 84% of the average sale price per hectare with farm improvements. The 4.5 hectare parcel was purchased at 226% of the average sale price per hectare with no improvements. By contrast, the subject land was purchased at 405% of the actual average sale price per hectare with no improvements.

⁶ Pertaining to Economic Development – Agriculture.

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- Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses it would be lost as a potential expanded lot for consolidated use with adjoining land; and
- The potential for the 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 – decisions of this nature have the potential to act as a precedent for land owners and the responsible authority, and such an outcome is conceivable in this area. This is especially problematic if new titles for smaller lots may be created from Crown Allotments without the need for a planning permit for subdivision.
- 19 Having regard to the strong and integrated framework provided in state and local planning policy and the zone provisions to protect rural areas of high agricultural value in particular, I agree with the responsible authority that this proposal is not consistent with the relevant policy framework. It is clear that the proposed dwelling is not reasonably required to support agricultural activity. Similarly, I agree with the responsible authority that just because the lot is not of itself a productive rural parcel does not of itself justify a decision to allow a dwelling to be constructed on it. By contrast, if a dwelling is approved on the subject land, the opportunity to consolidate the land with an adjoining property to create a larger and more viable rural parcel will be permanently lost. I also recognise the potential for disturbance to residents of the dwelling from surrounding agricultural land use, that may ultimately pressure such agricultural use to self-regulate.
- 20 While this is an application for the construction of a single dwelling, viewed holistically, I consider that its approval and the precedent value of such a decision would have the potential to undermine the relative intactness of this significant agricultural area. As a State, Victoria is becoming more attuned to these potential impacts and action has recently been taken by the Minister for Planning to restrict or prohibit small lot subdivisions and the use of land for dwellings on small lots in the municipalities of Mildura and South Gippsland.⁷
- I acknowledge that a number of other dwellings already exist in the surrounding area. Some of these, such as the property directly opposite, are longstanding and were used directly in connection with farming enterprises. Other more recent approvals have demonstrated small scale hobby farm type uses will be carried out on the land. Some dwellings have been excised from larger lots pursuant to certain subdivision exemptions within the planning scheme of the day. What is clear is that any relatively recent approvals for the development of land as a dwelling pre-dated the Rural Land Strategy outlined above and now referenced in the planning scheme. In addition, there comes a point where the line has to be drawn somewhere.

⁷ Via Amendment C48 to the South Gippsland Planning Scheme, gazetted on 29 May 2009 and Amendment C58 to the Mildura Planning Scheme, gazetted on 29 May 2009.

VCAT Reference No. P535/2009

I consider that it would not be wise planning to exacerbate any dilution of land use that has occurred in this particular agricultural area.

- 22 Looking at the other side of the ledger of "net community benefit" as is directed by clause 11 of the planning scheme, I consider there is little planning merit in favour of the application other than that it provides for a single additional accommodation opportunity for the particular applicants. It also provides a 'ready solution' to the dilemma of what this compact parcel of land could be used for and would avoid potential personal hardship. However, I am not persuaded that any of these reasons should tip the balance in favour of granting a permit.⁸
- 23 For the reasons I have outlined above, I will affirm the decision of the responsible authority.

Dalia Cook Member

⁸ While there is also a likely financial impact on the applicant personally as a result of this decision, it is not something I have been able to give any weight to, having regard to the need to confine my decision to relevant planning considerations.

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VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2791/2012 PERMIT APPLICATION NO. PP1188/2011-1

CATCHWORDS

Section 77 of the *Planning & Environment Act* 1987; Colac Otway Planning Scheme; Farming Zone; Dwelling and cattery; Policy; Information.

| APPLICANT | T J & A J Heaysman Pty Ltd |
|-----------------------|--|
| RESPONSIBLE AUTHORITY | Colac Otway Shire Council |
| SUBJECT LAND | 1120 Irrewillipe Road, Barongarook West |
| WHERE HELD | Melbourne |
| BEFORE | Bill Sibonis, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 4 February 2013 |
| DATE OF ORDER | 18 March 2013 |
| CITATION | T J & A J Heaysman Pty Ltd v Colac Otway SC [2013] VCAT 303 |

ORDER

1 The decision of the Responsible Authority in relation to permit application no. PP118/2011-1 is affirmed. No permit is granted.

Bill Sibonis Member

APPEARANCES

| For T J & A J Heaysman Pty Ltd | Mr T Heaysman of Hotondo Homes. |
|------------------------------------|---|
| For Colac-Otway Shire Council | Ms H Evans, Town Planner. |
| | INFORMATION |
| Description of Proposal | Development and use of the land for a cattery and a dwelling. The cattery is intended to house up to 40 cats at any one time. Initially, the cattery will be operated by the owners, with staff being employed if viable to do so. The dwelling is proposed to be used in association with the cattery. It is two-storey and is to accommodate 4 bedrooms, kitchen/living area, and double garage. |
| Nature of Proceeding | Application under Section 77 of the <i>Planning and Environment Act</i> 1987. |
| Zone and Overlays | Farming Zone (FZ). |
| | Significant Landscape Overlay – Schedule 1, Valleys, Hills and Plains Landscape Precinct (SLO1). |
| | Erosion Management Overlay – Schedule 1, Land susceptible to landslip and erosion (EMO1). |
| | Vegetation Protection Overlay, Schedule 1, Significant and Remnant Vegetation (VPO1). |
| Permit Requirements | Cl. 31.02 & Cl. 35.07-1 (use of land in the FZ for dwelling and animal boarding). |
| | Cl. 35.07-4 (construction of a building and the construction and carrying out of works in association with a Section 2 use in FZ). |
| | Cl. 42.03-2 (construction of a building and the construction and carrying out of works on land in SLO1). |
| | Cl. 44.01-1 (construction of a building and the construction and carrying out of works on land in EMO1). |
| Key Scheme policies and provisions | Cl. 11.05-3, 12.04-2, 14.01, 21, 35.07, 42.03, 44.01 and 65. |

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| Land Description | The review site is an irregular allotment on the north- east side of Irrewillipe Road. It has a frontage of 217 metres and an overall area of 1.288 hectares. The land is vacant farmland and is presently used for cattle grazing. |
|-------------------|---|
| Cases Referred To | Swanson v Colac-Otway SC [2009] VCAT 1513 |

REASONS¹

What is this proceeding about?

- 1 In August 2011, an application was made to the Colac Otway Shire Council for a permit to use and develop the land at 1120 Irrewillipe Road, Barongarook West, for a dwelling and animal boarding (cattery). The Council refused to grant a permit on the grounds that it is not consistent with relevant State and Local policy and does not achieve the objectives of the Farming Zone. This is an Application for a review of that decision.
- 2 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions presented with regard to the applicable policies and provisions of the Colac Otway Planning Scheme, I have decided to affirm the Council's decision. My reasons follow.

What has the Tribunal previously said about the use of the review site for a dwelling?

- 3 A previous application for the use and development of the land for a dwelling was the subject of an Application to the Tribunal for a review of the Council's refusal to grant a permit². In affirming the Council's decision, the Tribunal made a number of observations and findings in respect of residential land use within this Farming Zone. These are summarised below, as they provide useful background to my consideration of this proposal:
 - The strong and integrated policy framework and the zone provisions seek to protect rural areas of high agricultural value.
 - The proposed dwelling was not reasonably required to support agricultural activity.
 - Just because the lot of itself is not a productive rural parcel does not justify a decision to allow a dwelling to be constructed on it. By contrast, if a dwelling was constructed, the opportunity to consolidate the land with an adjoining property to create a larger and more viable rural parcel would be permanently lost. The potential for disturbance to residents of the proposed new dwelling from surrounding agricultural land use was also recognised.
 - Approval of the dwelling, and the precedent value of such a decision, would have the potential to undermine the relative intactness of this significant agricultural area.

I have considered all submissions presented by the parties although I do not recite all of the contents in these reasons.
 2 Summer and Color Other Color (2000) NCAT 1512

Swanson v Colac Otway SC [2009] VCAT 1513

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• While there are a number of other dwellings in the area, there comes a point where the line has to be drawn somewhere and it would not be wise for planning to exacerbate any dilution of land use that has occurred in this particular agricultural area.

What is the relevant planning context?

4 The objective of Clause 14.01 is to protect productive agricultural land which is of strategic significance in the local or regional context. A related strategy is to ensure the State's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use. A further strategy details a series of factors that must be considered when assessing proposals to subdivide or develop agricultural land. Amongst these are:

The desirability and impacts of removing the land from primary production, given its agricultural productivity.

The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to the viability of infrastructure for such production.

The compatibility between the proposed or likely development and the existing uses of the surrounding land.

5 According to the Municipal Strategic Statement (MSS)³, the Council's Rural Land Strategy identifies agriculture as one of the greatest economic contributors to the Shire, with dairy and beef industries the most significant in terms of land use and economic contribution to the Shire. The MSS states that some key issues identified in the Rural Land Strategy include:

> Farm consolidation and expansion is evident and is considered fundamental to the long term protection of the agricultural base of the Shire.

Future rural land use in the Colac Otway Shire is likely to comprise a few large farms, some medium family farms and an increasing number of small or part-time farms.

There has been an increase in demand for rural lifestyle properties.

The diversity of land uses resulting from change in rural land use may bring conflict between agriculture and other land uses.

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 clear evidence of farm amalgamations and the need to increase farm sizes to remain economically viable indicates that policy and provisions relating to dwellings and small lot subdivisions in rural

³ Clause 21.05-1 Economic Development

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areas will require a strict interpretation of the Farming Zone provisions to ensure incompatible land uses (including dwellings) do not negatively impact on the ability to farm.

- 6 The objectives of Clause 21.05-1 seek to retain areas of farmland of strategic significance and other high quality agricultural land for agricultural use. The development of dwellings that are unrelated to farming is discouraged, and a further objective is to ensure that incompatible land uses (including dwellings) do not negatively impact on the ability to farm.
- 7 There are a number of related strategies that are relevant to this Application. These include ensuring dwellings on agricultural land are ancillary to the agricultural use of the land and facilitate sustainable rural production. Development which will provide economic and social benefits while not adversely affecting farmland of strategic significance is supported. Farmland of strategic significance and other high quality agricultural land for sustainable agriculture use and development is to be protected. A strict interpretation of the Farming Zone provisions is to be applied to ensure that incompatible land uses (including dwellings) do not negatively impact on the ability to farm⁴.
- 8 In addition to implementing the planning policy frameworks, the purpose of the Farming Zone⁵ includes:
 - providing for the use of land for agriculture;
 - encouraging the retention of productive agricultural land; and
 - ensuring that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture.
- 9 Where the development and use of a dwelling is proposed, one of relevant decision guidelines at Clause 35.07-6 is whether the dwelling is reasonably required for the operation of the agricultural activity on the land.
- 10 The Council's adopted Rural Land Strategy⁶ identifies the review site and surrounding land as being of 'High Agricultural Capability'. Under the Strategy, the broader area is considered to be 'Farmland of Strategic Importance' due to the economic benefit that flows from dairying and associated manufacturing.
- 11 There is clearly a strong policy basis within the Planning Scheme for protecting agricultural land of strategic significance and ensuring that this land is used for productive agriculture to contribute to the Shire's economy. An apparent, and consistent, word of caution is sounded in respect of allowing dwellings within farming areas, having regard to their impact on agricultural activity. Indeed, policy discourages the development of

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⁴ Cl. 21.05-1

⁵ Cl. 35.07

The Rural Land Strategy is a reference document in the Planning Scheme (Clause 21.07)

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dwellings which are unrelated to farming; and seeks to ensure that dwellings on agricultural land are ancillary to the agricultural use of the land.

Should a permit be granted for this proposal?

- 12 As detailed earlier, the review site and its surrounds are farmland that has been identified as being of high agricultural capability and of strategic significance to the Shire. I agree with the comments of the earlier Tribunal that there is a strong and integrated framework within the State and Local planning policy and the zone provisions to protect rural areas of high agricultural value, in particular. The previous proposal sought to establish a dwelling on the land. It was not to be in connection with any agricultural activity. I agree with the Tribunal's findings in that case, that the use of the land for a dwelling in those circumstances should not be approved.
- 13 A dwelling within the Farming Zone can represent an acceptable outcome if it is associated with an agricultural activity. In this instance, the Applicant proposes to operate a cattery on the land, and the dwelling is to be associated with this use. Animal boarding is nested within the land use category of 'Agriculture' pursuant to Clause 74. In principle, animal boarding can be an appropriate use within the rural zone such as this. It is important, however, that any proposal is accompanied by detailed information that demonstrates the appropriateness of the cattery use and its suitability to the site and context, and provides a degree of confidence that it is an on-going prospect given the largely permanent nature of the proposed dwelling. The scenario where the use is not on-going will give rise to a rural living outcome which is not acceptable here, for the reasons outlined by the earlier Tribunal.
- 14 The Council is of the view that the cattery is not a 'bona fide agricultural activity' and is being used as a means of justifying what would otherwise be a rural living outcome, as was sought in the previous unsuccessful application. As I understand it, the Council's reservations are at least based in part on the following:
 - The site's history where the same owners pursued an application through the Council, and ultimately unsuccessfully through the Tribunal, to construct a dwelling on the land.
 - Deficiencies in the supporting information, such as the failure of both the Geotechnical Assessment of the land dated 15 September 2008, and a Land Capability Assessment dated 10 March 2011, both prepared by 2020 Engineering Solutions to address the proposed cattery⁷. Mention was also made of the Applicant's

The first of these assessments describes the proposal as "construction of a brick veneer, on slab, concrete dwelling". The second assessment describes the proposal as "construction of a 3 bedroom dwelling". I note that the plans forming part of this application show a two-storey, brick veneer, four-bedroom dwelling. It is not clear what implications, if any, arise from this for these assessments.

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alleged failure to address the decision guidelines of the Farming Zone.

- The proposal is for a dwelling in association with a permit-required use that does not presently exist on the land, and which is not an agricultural use that is as-of-right in the Farming Zone. In the Council's view, given the small scale of the agricultural activity (cattery), the dwelling will be the predominant use of the land and it appears that the cattery use is being provided as justification for a dwelling on the land.
- 15 I note that, upon receiving the application, the Council issued a detailed request for further information pursuant to Section 54 of the *Planning and Environment Act* 1987. The requested information included:
 - A site plan drawn to scale showing the location of the proposed vehicular access, identifying the proposed dwelling and shed and the distance between the buildings.
 - Detailed floor plan for the proposed cattery drawn to scale.
 - Elevation plans for the proposed cattery, as only end elevations were provided.
 - Substantiation of the need for a cattery in the region.
 - Information on how waste from the proposed cattery would be disposed/treated, as this is not addressed in the submitted land capability assessment.
 - Demonstration of the how the proposal would comply with the Code of Practice for the Operation of Boarding Establishments.
 - Details of the proposed cattery business, such as staff numbers and traffic movements.
- 16 In my view, in the circumstances where it is intended that the cattery would be the primary land use, with the dwelling being necessary to support this use, this information would have formed part of the planning application. To an extent, I can understand the Council's concerns that the cattery is being proposed as a means of overcoming the policy constraints arising from the discouragement of dwellings in farming areas, in order to establish a rural living use on the land.
- 17 The policy framework identifies this part of the Shire as being of strategic agricultural importance. One must proceed with caution in allowing a residential use to be established where it is not sufficiently demonstrated that it is in conjunction with an agricultural activity, for the reasons outlined in the earlier Tribunal decision.
- 18 I have not been persuaded that this is a well-considered proposal for the land. In my view, the Council is correct to have concerns regarding the

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cattery use, based on the information that has been provided. An example of a key shortcoming in this respect is the failure to consider this use as part of the land capability assessment. The Applicants' approach to this application is somewhat fragmented and piecemeal, and has played a significant role in giving rise to the concerns regarding the legitimacy of the cattery use.

- 19 If the Applicants wish to establish a cattery on this land, a well-prepared and comprehensive proposal needs to be submitted to the Council for consideration. This should include properly drawn plans (including the site plan, all floor plans and elevations), all relevant operational details, a land capability assessment, and details of waste disposal arrangements, amongst all the other information that Council requested as part of its consideration of this application. The application should include an assessment of the proposal against the relevant Planning Scheme policies and provisions, and explain how it addresses the concerns expressed by the earlier Tribunal in respect of a dwelling use on this land.
- 20 For these reasons, my conclusion is that the Council's decision should be affirmed and no permit granted.

Bill Sibonis Member

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VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11242/2021 PERMIT APPLICATION NO.PLA0233/20

CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987;* Baw Baw Planning Scheme. Farming Zone; Use of land for dwelling and construction of buildings and works. Land subject to inundation; Nature of proposed agricultural activity in conjunction with dwelling; Flood hazard.

| APPLICANT | Edmund and Francesca Kennedy |
|-----------------------|--|
| RESPONSIBLE AUTHORITY | Baw Baw Shire Council |
| REFERRAL AUTHORITY | West Gippsland Catchment Management Authority |
| SUBJECT LAND | 1 Rhodes Road, DARNUM VIC 3822 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 23 March 2022 |
| DATE OF ORDER | 12 July 2022 |
| CITATION | Kennedy v Baw Baw SC [2022] VCAT 787 |

ORDER

- 1 Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* the name of the applicant is amended to be:
 - Edmund and Francesca Kennedy.

No permit granted

- 2 In application P11242/2021 the decision of the responsible authority is affirmed.
- 3 In planning permit application PLA0233/20 no permit is granted.

Shiran Wickramasinghe **Member**

APPEARANCES

| For applicant | Ben Mckenna, town planner of CS Town Planning Services | | | |
|---------------------------|---|--|--|--|
| | He called the following witnesses:Mr Warwick Bishop, senior principal engineer of Water Technology | | | |
| | Mr Dean Suckling, agricultural and environmental consultant of EnProve – Ag & Environment | | | |
| For responsible authority | Ms J Power, consultant planner | | | |
| For referral authority | Mr A Dunn, Executive Manager Statutory Planning of West Gippsland Catchment Management Authority | | | |

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INFORMATION

| Description of proposal | Use and development of a dwelling and development of an agricultural shed and associated works |
|------------------------------------|--|
| Nature of proceeding | Application under section 77 of the <i>Planning and</i> <i>Environment Act 1987</i> – to review the refusal to grant a permit. |
| Planning scheme | Baw Baw Planning Scheme (Planning Scheme) |
| Zone and overlays | Farming Zone (FZ) |
| | Land Subject to Inundation Overlay (LSIO) |
| | Development Contribution Plan Overlay (DCPO1) |
| Permit requirements | Clause 35.07-1, permit is required for the use of a dwelling on a lot less than 40 hectares in area. Clause 35.07-4, permit is required to construct a building or to construct or carry out works associated with a section 2 use. Clause 44.04, permit required to construct a building to construct or carry out works. |
| Key scheme policies and provisions | 02, 13.01, 13.03-1S, 14.01-1S, 14.01-1L, 14.01-2S, 35.07, 44.04 and 65.01 |

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| Land description | The site is located at the eastern side of Rhodes Road, on the corner of Silbys Road and north of the Gippsland Railway reserve and Princess Freeway. |
|---------------------|---|
| | The site is approximately 3.9 hectares in size, with road frontage of 108 metres to Rhodes Road and 247 metres to Silbys Road. There is a natural dam near the south eastern corner of the property. |
| | There are two existing access points to the property, and these are to be retained. The access point on Rhodes Road is to be upgraded as the main entrance to the property. Silbys Road and Rhodes Road are well-formed gravel roads with no footways or street lighting. |
| | Land directly adjoining the site to the east is agricultural land used for grazing. Land abutting to the north is a lot of approximately 4.3 hectares that has been developed with a dwelling with the remainder of the land used for agricultural purposes. The broader area comprises of lots in the Farming Zone that vary in size from 4 hectares to 21 hectares. The majority of these lots have a dwelling on the land. |
| Tribunal inspection | An unaccompanied site inspection was conducted on 17 June 2022. |

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REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

1 This is an application for a review of the Baw Baw Shire Council's refusal to grant a permit for the use and development of the land with a dwelling and development of an agricultural shed and associated works. The dwelling is to be located in proximity to the north-east corner of the site, set back 8.0 metres from the north and eastern boundary respectively. The dwelling is single storey comprising four bedrooms, two bathrooms and a double garage.



Source: Council submission

- 2 The application was referred to West Gippsland Catchment Management Authority (**WGCMA**) pursuant to section 55 of the Planning and Environment Act 1987 (the Act). The WGCMA, as a recommending referral authority under the LSIO, objected to the application on the following grounds:
 - 1. The proposal is not consistent with the objective of the Planning Policy Framework (PPF) Clause 13.01-1S - Natural hazards and climate change - to minimise the impacts of natural hazards and adapt to the impacts of climate change through risk-based planning.

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¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

- 2. The proposal is not consistent with the objective of the Planning Policy Framework (PPF), Clause 13.03-1S - Floodplain management to assist the protection of life, property and community infrastructure from flood hazard; the natural flood carrying capacity of rivers, streams and floodways; the flood storage function of floodplains and waterways; and floodplain areas of environmental significance or of importance to river health.
- The proposal is not consistent with the objectives of the Local Planning Policy Framework (LPPF), Clause 21.06-4 – Objective 1 – To ensure development proposals demonstrate a positive contribution to the environment in terms of soil stability, erosion, flood and drainage management and the retention of native vegetation.
- 4. The proposal is not consistent with the purpose of the Land Subject Inundation Overlay, Clause 44.04, which seeks 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.
- 5. The proposal is not consistent with the Principles and Objectives from the West Gippsland Catchment Management Authority's Flood Guidelines, 'Guidelines for development in floodprone areas' (2013).
- 6. The proposal is not consistent with the decision guidelines in the Victorian Planning Provision Practice Note PNP11 'Applying for a Planning Permit Under the Flood Provisions A guide for councils, referral authorities and applicants', in that:
 - a. It is not consistent with the Planning Policy Framework (PPF).
 - b. It is not consistent with the Local Planning Policy Framework (LPPF).
 - c. It is likely to result in danger to the life, health and safety of the occupants due to flooding of the site.
 - d. It relies on low-level access to and from the site.
 - e. It is likely to increase the burden on emergency services and the risk to emergency personnel.
- 3 Council's grounds of refusal relate to the proposal being inconsistent relevant clauses under the State and Local Planning Policy Framework including, Clause 13.01-1S - Natural hazards and climate change, Clause 13.03-1S - Floodplain management, Clause 14.01-1 – Protection of Agricultural Land, Clause 14.01-2 – Sustainable Agricultural Land Use, Clause 16.02-1 – Rural Residential Development, Clause 21.06-4 – Natural Resource Base Clause 21.06-6 – Farmland and Soil Quality, Clause 22.01 – Rural Zones Policy.

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Further, the proposal was considered to be inconsistent with the Rural Zones Policy, the purpose of the LSIO, the Principles and Objectives of the West Gippsland Catchment Management Authority's Flood Guidelines, 'Guidelines for development in flood prone areas' (2013) and the decision guidelines in the Victoria Planning Provision Practice Note PNP11 'Applying for a Planning Permit Under the Flood Provisions – A guide for councils, referral authorities and applicants'.

WHAT ARE THE KEY ISSUES?

- 5 The key issues to be considered in this proceeding for review are:
 - Is the proposal an acceptable response to planning policy and floodplain management?
 - Is the dwelling reasonably required to support the farming activity?
- 6 Having considered the submissions and evidence with regard to the relevant policies and provisions of the Planning Scheme, assisted by my inspection, I have determined to affirm Council's decision and not grant a permit. My reasons are as follows.

WHAT IS THE RELEVANT PLANNING CONTEXT?

- 7 The Planning Scheme was revised through Amendment C139bawb and VC216 after the Tribunal hearing. consideration of this application. An interim order was subsequently issued on 15 June 2022 requesting submissions from the parties regarding the implications of the amendments in relation to this proceeding. Parties including the applicant advised Amendment C139bawb comprised a policy neutral translation of the Planning Scheme's policy framework with no loss of policy direction and that VC216 does not impact the proposal.
- 8 The amendments are relevant to consideration of this matter as Council's reasons for refusal of the proposal refer to clause 21.06-4, 21.06-6 and 22.01 as it was prior to the approval of Amendment C139bawb. These clauses have been transferred with some change in formatting to clause 2.03-3, 14.01-1L, 14.01-2L-01. In this context my decision must be made based on the Planning Scheme as it exists at the time of the decision.²
- 9 The review site is zoned FZ where the purpose is:
 - To implement the Municipal Planning Strategy and the Planning Policy Framework.
 - To provide for the use of land for agriculture.
 - To encourage the retention of productive agricultural land.

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² Unger v City of Malvern (1979) VR 259

- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision; and
- To provide for the use and development of land for the specific purposes identified in schedule to this zone.
- 10 Clause 35.07-6 of the FZ includes the following relevant decision guidelines:

General Guidelines

- The Municipal Planning Strategy and the Planning Policy Framework.
- Any Regional Catchment Strategy and associated plan applying to the land.
- The capability of the land to accommodate the proposed use or development, including the disposal of effluent.
- How the use or development relates to sustainable land management.
- Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.

Agricultural issues and the impacts from non-agricultural uses

- Whether the use or development will support and enhance agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- The capacity of the site to sustain the agricultural use.
- Any integrated land management plan prepared for the site.

Accommodation issues

- Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
- Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.
- Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.

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- The potential for the 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.
- 11 Pursuant to clause 44.04 the purpose of the LSIO are:
 - To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
 - To identify flood prone land in a riverine or coastal area affected by the 1 in 100 (1 per cent Annual Exceedance Probability) year flood or any other area determined by the floodplain management authority.
 - To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
 - To minimise the potential flood risk to life, health and safety associated with development.
 - To reflect any declaration under Division 4 of Part 10 of the *Water Act, 1989* where a declaration has been made.
 - To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
 - To ensure that development maintains or improves river and wetland health, waterway protection and floodplain health.
- 12 Relevant decision guidelines at clause 44.04-8 include:
 - The Municipal Planning Strategy and the Planning Policy Framework.
 - Any local floodplain development plan.
 - Any comments from the relevant floodplain management authority.
 - The existing use and development of the land.
 - Whether the proposed use or development could be located on floodfree land or land with a lesser flood hazard outside this overlay.
 - Alternative design or flood proofing responses.
 - The susceptibility of the development to flooding and flood damage.
 - The potential flood risk to life, health and safety associated with the development. Flood risk factors to consider include:
 - The frequency, duration, extent, depth and velocity of flooding of the site and accessway.

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- The flood warning time available.
- The danger to the occupants of the development, other floodplain residents and emergency personnel if the site or accessway is flooded.
- 13 Clause 13.03-1S Floodplain management has the objective:
 - To assist the protection of:
 - Life, property and community infrastructure from flood hazard, including coastal inundation, riverine and overland flows.
 - The natural flood carrying capacity of rivers, streams and floodways.
 - The flood storage function of floodplains and waterways.
 - Floodplain areas of environmental significance or of importance to river, wetland or coastal health.

Relevant strategies include:

- Identify land affected by flooding, including land inundated by the 1 in 100 year flood event (1 per cent Annual Exceedance Probability) or as determined by the floodplain management authority in planning schemes.
- Avoid intensifying the impact of flooding through inappropriately located use and development.
- 14 The objective of Clause 14.01-1S Protection of Agricultural Land is "To protect the state's agricultural base by preserving productive farmland". Strategies listed to achieve this objective include:
 - Identify areas of productive agricultural land, including land for primary production and intensive agriculture.
 - Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.
 - Protect productive farmland that is of strategic significance in the local or regional context.
 - Protect productive agricultural land from unplanned loss due to permanent changes in land use.
 - Prevent inappropriately dispersed urban activities in rural areas.
 - Protect strategically important agricultural and primary production land from incompatible uses.
 - Limit new housing development in rural areas by:

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- Directing housing growth into existing settlements.
- Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses.
- In considering a proposal to use, subdivide or develop agricultural land, consider the:
 - Desirability and impacts of removing the land from primary production, given its agricultural productivity.
 - Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.
 - Compatibility between the proposed or likely development and the existing use of the surrounding land.
 - The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.
 - o Land capability.
- Balance the potential off-site effects of a use or development proposal (such a degradation of soil or water quality and land salinisation) against the benefits of the proposal.
- 15 Clause 14.01-1L, Dwellings and subdivision in rural areas includes the following relevant objective:
 - To ensure that the development of dwellings and subdivision, including the creation of small lots for existing dwellings, minimises the loss of productive agricultural land and does not prejudice activities associated with agricultural production.
- 16 Relevant strategies and policy guidelines at clause 14.01-1L include:

Strategies

- Discourage the development of a dwelling on land that is used for small-scale grazing animal production unless there are special management requirements relating to the grazing of stock.
- Discourage the development of a dwelling unless it is required for a commercial farming purpose or for an approved tourism business to the satisfaction of the Responsible Authority.
- Discourage dwellings on lots where wastewater cannot be retained and treated within the lot.
- Limit the area associated with a dwelling and ancillary buildings and facilities so that the area for agriculture or rural purposes is maximised.

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• Encourage consolidation of vacant lots within the property (being lots in the same ownership which adjoin each other or are separated only by a stream, stream reserve, or unmade or unused government road or rail reserve) on which the dwelling is proposed.

Policy guidelines

Consider as relevant:

- A business plan or farm management plan clearly demonstrates that a dwelling is required for a commercial farming purpose (including small scale grazing animal production) or an approved tourism business on the land.
- Limiting a dwelling and ancillary buildings and facilities, to within a 2000 square metre envelope.
- Setting dwellings back at least 100 metres from a neighbouring dwelling or a farming activity node.
- An agreement under Section 173 of the Act, that ensures that the lot cannot be subdivided to create an additional lot and cannot be used for any further dwelling.
- That a proposal for a new dwelling adjacent to two or more existing dwellings constitutes a 'concentration' or 'proliferation' of dwellings in the area when considering the Dwelling Decision guidelines under clause 35.07.
- 17 Clause 14.01-2S Sustainable agricultural land use states the policy objective as being *'To encourage sustainable agricultural land use'*. Relevant Strategies include:
 - Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources;
 - Support the development of innovative and sustainable approaches to agricultural and associated rural land use practices
- 18 Clause 02-03-1 in relation to Settlement recognises Baw Baw is influenced by its proximity to Melbourne and its access to pristine natural areas, agriculture and lifestyle opportunities. As a peri-urban municipality, within 100 kilometres of Melbourne's CBD, it offers attractive lifestyle choices in urban and rural settings. Due to its location Baw Baw has been experiencing some of the highest growth rates in Victoria and faces growth pressures.

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19 Darnum is identified under the heading Small towns and rural settlements – Limited growth that says the following:

> Darnum provides a 'country town' lifestyle with a variety of lot sizes for residents. Due to a lack of infrastructure, future growth will be limited to taking up land within the Township Zone rather than expanding beyond.

- 20 Clause 02.03-3 in relation to 'Natural Resource Management' recognises that most rural land in Baw Baw is highly suitable for both intensive horticultural and broadacre pasture based farming due to its fertile soils, high rainfall, temperate climate, varied topography and proximity to markets. Therefore a majority of the Shire's agricultural land is said to be able to support a wide range of agricultural enterprises to a high production level.
- 21 Relevant strategic directions for 'Natural Resource Planning at clause 02.03-3 include:
 - Maintain the integrity of the land resource and its protection from unplanned urban and residential encroachment.
 - Protect and develop the Shire's resources relating to dairying, horticulture, grazing, timber production, tourism and high quality water.
 - Protect agricultural uses by minimising land use conflicts between agricultural and sensitive uses.
 - Restrict dwellings and small lots that would result in the loss of productive agricultural land or that prejudice agricultural production.
- 22 Clause 65.01 provides the following relevant matters to be considered before deciding on an application.
 - 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.
 - The effect on the amenity of the area.
 - The proximity of the land to any public land.
 - Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
 - Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.

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• 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.

PLANNING SCHEME AMENDMENT C144 – BAW BAW FLOOD MAPPING UPDATE

- I was advised Council has prepared Amendment C144 to the Planning Scheme. The amendment proposes to update flood maps for the Floodway Overlay (FO) and LSIO throughout the municipality. The relevant maps are said to reflect new flood information held by the WGCMA and Melbourne Water. The amendment would delete the current FO and LSIO maps and replace them with the updated mapping. The amendment was undergoing exhibition at the time of the hearing and scheduled to conclude on 6 May 2022. Council submitted the amendment is considered to be seriously entertained.
- 24 Given the stage it has reached in the process, the amendment cannot be considered to be a seriously entertained planning proposal. Any submissions received are yet to be considered by a panel and the amendment has not been adopted by Council and submitted to the Minister for Planning for approval.

IS THE PROPOSAL AN ACCEPTABLE RESPONSE TO PLANNING POLICY AND FLOODPLAIN MANAGEMENT?

- 25 The site is located in a LSIO and it is common ground the site is subject to flooding. With respect to floodplain management Council in its grounds of refusal says the proposal is inconsistent with a number of State and Local policies and the provisions of the LSIO.
- 26 The WGCMA acknowledges there is a sufficient flood-free building envelope on the site, however they oppose the proposal having regard to the depth of flooding over the proposed vehicle egress and evacuation route from the site via the driveway to Rhodes Road. The extent of flooding is said to represent an extreme flood hazard which could be avoided by the relocation of the driveway.
- 27 In support of this submission the WGCMA refer to flood modelling undertaken that indicates during a 1 in a 100 year flood level³ (1:100 year ARI⁴ flood event). The site is said to be affected as follows:
 - The low-lying parts of the subject site are flooded, including areas in addition to what is currently covered by the LSIO.
 - The 1% AEP flood level at the property is 93.8m AHD.

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Flood modelling of the Moe River and tributaries completed by the WGCMA for the catchment upstream of the Princess Highway at Yarragon in 2017.
 Annual Recurrence Interval.

- Flood depth over the southern portion of the property is likely to reach 2.9 metres during a 1% AEP flood event.
- The northeast corner of the property, at the site of the proposed dwelling, is likely to remain flood free in a 1% AEP flood.
- Rhodes Road and Silbys Road, and the proposed driveway to Rhodes Road are subject to flooding during a 1% AEP flood event.
- The 1% AEP flood depth on the proposed driveway to Rhodes Road is likely to reach 2.7 metres.
- 1% AEP flood depth on Rhodes Road and Silbys Road are likely to reach 2.5 and 2.6 metres respectively
- Flood velocity on Rhodes Road is likely to reach 0.7m/s during a 1% AEP flood event.
- Silbys Road at the south eastern corner of the property is not likely to be subject to inundation from the Moe River.
- 28 The WGCMA says the proposed dwelling would rely on low level access and safe access would not be possible during a 1% AEP flood event. This would pose a risk to life of both any future occupants of the proposed dwelling and emergency personnel, as safe access could not be provided.
- 29 The WGCMA provided the diagrams shown below that show the extent and depth of flooding of the property and Rhodes Road when the 1% AEP flood level is 93.8m AHD.



Extent of Flooding

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Depth of Flooding

- 30 The WGCMA however goes on to say it would support the proposed development if an alternative driveway route was proposed, that followed the eastern property boundary and connected directly to Silbys Road. It should be noted the applicant opposed any upgrade of the driveway to Silbys Road and the proposal does not include an alternative driveway route along the east boundary as suggested by the WGCMA.
- 31 The applicant submits the Council and the WGCMA have taken an 'in principle' position based on an isolated view of the flood risk and ignored the broader context of the site which can allow for egress at a flood level of 93.8m AHD. The applicant in support of the proposal states:

It is our contention that Council and GWCMA [sic] have taken an 'in principal' [sic] position based on an isolated view of the flood risk and ignored the broader context of the site which can allow for egress at a flood level of 93.8m AHD.

The proposed development includes an access way affected by the Land Subject to Inundation Overlay. The proposed dwelling is not affected by the Land Subject to Inundation Overlay.

It is our contention that Council and GWCMA's [sic] concerns have been overstated, and while there is a risk to human life, the proposal does present an acceptable outcome when a balanced assessment of the planning controls and site context is undertaken.

It is our contention that the proposed dwelling falls within the realm of acceptable risk. Councils [sic] position calls for an absence of risk but this is at odds with what the overlay and the state policy framework states.

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While floods can occur rapidly and their effects present potential catastrophic consequences, this site could be easily and quickly evacuated. The risk to human life is somewhat mitigated by advanced warning of the risk of flooding and any potential flood emergency, compared to a situation where there is little or no warning of an impending threat to human life.

- 32 Having considered all relevant matters I am not persuaded by the applicant's submissions and expert evidence. There are relevant policies and decision guidelines that seek to protect life and property from flood hazard and seek site development to minimise risk to life from natural hazards such as flood. In this context access to the site is a relevant matter to consider in determining whether or not to grant a permit. I find this application is not supported by the policies in the Planning Scheme and the purpose of the LSIO and the relevant decision guidelines which require the avoidance of developments in areas where access is subject to flooding.
- 33 Relevantly the purpose of the LSIO seeks to minimise the potential of flood risk to life, health and safety⁵, whilst the decision guidelines require consideration of matters relating to the potential flood risk to life, health and safety, the susceptibility of the development to flooding and alternative design or flood proofing responses⁶. Further, clause 65.01 of the Planning Scheme requires consideration of consideration of the degree of flood associated with a location of the land and the use or development so as to minimise any such hazard.
- 34 The WGCMA '*Flood Guidelines Guidelines for development in flood prone areas*' (2020) (the **Guidelines**) include objectives relevant to the application.

Objective 2: Site Access states that "Development must not be located where the depth and flow of floodwaters along the access to or from the property is hazardous"

- 35 Further, the Guidelines state that where flood depth during a 1% AEP flood event is likely to exceed 0.3 metres over the development site or 0.3 metres over the vehicle route from the property, a proposal for a new single dwelling on land not zoned for residential purposes is not supported as it would increase the amount of people and property exposed to the flood hazard.
- 36 Decision guidelines at clause 44.04-8 state any comments of the relevant floodplain management authority are a relevant consideration when determining an application. The WGCMA flood modelling shows the flood depth on the driveways to Rhodes Road and Silbys Road is likely to reach 2.7 metres. This modelling clearly demonstrates that in a 1% AEP flood

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⁵ At clause 44.04

⁶ At clause 44.04-8

event the depth of floodwaters will exceed the safe depth of no greater than 0.3 metres.

- 37 Mr Bishop in his evidence stated that based on the current plan, the development does not comply with WGCMA's safety requirements. However his evidence was that risk can be mitigated through the implementation of a flood risk management plan for the site.
- 38 He stated the risk to residents could be managed as the dwelling is above flood the level. He acknowledged that access to the site would potentially be cut-off, however the residents could stay safely on site (and within the dwelling), even during prolonged isolation, with the necessary level of provisions.
- 39 He also recommended the proposed development should allow for an emergency raised egress route to Silbys Road or have access to an inflatable watercraft as has previously been considered appropriate by the Tribunal as a last resort form of contingency in *No. 8 River Street Pty Ltd v Stonnington CC* [2019] VCAT 2058 (*No. 8 River Street Pty Ltd*).
- 40 I am not persuaded by Mr Bishop's evidence. I find that creating an outcome that exposes occupants of the proposed dwelling to flood risk where the only means of access to the site is subject to significant flood hazard is unacceptable and contrary to the Planning Scheme policies and provisions that seek to protect life and property from flood hazard. Further, with respect to his recommendation of an emergency raised access route from the site I note this does not form part of the proposal and therefore has not been considered or assessed by either the Council or the WGCMA. In such circumstances, it would not be appropriate to consider this potential option in determining the application. Regarding his reference to the use of inflatable watercraft, I was not made aware of the facts or circumstances of the No. 8 River Street Pty Ltd case which led to the Tribunal to identify such a solution as potentially being acceptable, or how comparable they are to what is before me. I have no basis to conclude that such a response is acceptable in the circumstances of this proposal.
- 41 The potential risk created by a flood event is exacerbated by the lack of flood warning available in this location. Mr Dunn submitted that the nearest surface water gauge is approximately 4km downstream of the property, known as Moe River @ Darnum (226209). There is no gauge upstream of the property and while observed river height data can be viewed on the Bureau of Meteorology webpage during a flood event, the Bureau of Meteorology does not provide a flood warning prediction service for the Moe River. The lack of a warning system further creates an unacceptable potential flood risk to life and safety associated with development.

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- 42 Whilst the dwelling is to be sited above the flood level, occupants will have no 'formal' warning of a potential flood event and may be unable to leave the site, leaving them isolated in a flood event. I do not consider a proposal that creates this outcome that has the potential to create a flood risk to life, health and safety by stranding residents on site and creating a circumstance where residents may try to navigate flood water to be orderly planning. In addition, it creates an unnecessary and unacceptable risk to emergency personnel who may be called upon the evacuate the stranded occupants.
- 43 Further, I do not find that the potential alternative access through adjoining properties as suggested by Mr McKenna to be sufficiently developed to be contemplated as part of this proposal. There is no evidence of a formal agreement to allow access, no easement of way and I was not advised of any gates that would allow easy access over adjoining private property.
- 44 Mr McKenna made submissions there are other nearby sites occupied by dwellings that experience the similar flood risk and the site, if undeveloped, will remain 'orphaned'. I do not find these submissions justify supporting a proposal that has the potential to put additional people at risk during a flood event in circumstances where that risk cannot be acceptably managed, which is the case here. Further, I note the site has existed since 1968. In that context it is not clear to me what is meant by the term 'orphaned' if a permit is not granted.
- 45 Having regard to the above I do not consider the proposal that is opposed by the relevant floodplain management authority and inconsistent with the purpose of the LSIO that seeks to minimise the potential flood risk to life, health and safety associated with development to be acceptable.

IS THE DWELLING REASONABLY REQUIRED TO SUPPORT THE FARMING ACTIVITY?

- 46 The provisions of the FZ require a permit for use of land for a dwelling where the lot is less than 40 hectares. The purpose of the zone and the decision guidelines set out matters that must be considered in deciding if a permit should be granted. These include reference to State and local policies.
- 47 The applicant says the proposal that includes a dwelling, an agricultural shed to house farm machinery, 60 chickens, paddock fencing to preserve wetland areas and allow rotational grazing of 10 sheep meets the requirement of the zone.
- 48 The applicant also submitted that while the site is not zoned primarily for residential purposes, more weight should be given to the context of the site as 75% of surrounding lots (the properties bordered by Rhodes, Silbys, Parkinsons and Darnum Parks Roads) have a dwelling on the land and are generally used for grazing as shown in the diagram below.

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Source: Applicants submission.

49 In support of the application for the dwelling pursuant to policy guidelines at clause 14.01-1L, a farm management plan was submitted with an indicative budget to show expected net return from the farming activity as shown below.

| Income/Cost Item | Year 1 | Year 2 | Year 3 | Year 4 | Year 5+ |
|---|--------|--------|--------|--------|---------|
| Market Garden | 0 | 15,000 | 15,000 | 15,000 | 15,000 |
| Dorper Sales (10 per year) | 0 | 2,800 | 2,800 | 2,800 | 2,800 |
| Egg Sales (6 Dozen per day) | 6,000 | 13,100 | 13,100 | 13,100 | 13,100 |
| | | | | | |
| Market Garden Costs | -1,200 | -1,200 | -1,200 | -1,200 | -1,200 |
| Lamb Purchases | -1,000 | -1,000 | -1,000 | -1,000 | -1,000 |
| Chicken Costs | | | | | |
| Pasture Costs | -500 | -500 | -500 | -500 | -500 |
| Apportioned Rates, Insurances Utilities | -2,000 | -2,000 | -2,000 | -2,000 | -2,000 |
| Infrastructure Maintenance | -2,000 | -2,000 | -2,000 | -2,000 | -2,000 |
| | | | | | |
| Net Return | -700 | 24,200 | 24,200 | 24,200 | 24,200 |

Indicative Budget (excluding dwelling and land costs, not CPI-adjusted):

Source: Farm Management Plan (EnProv Ag & Environment)

50 Further, in his evidence, Mr Suckling stated the following:

The proposed enterprise's estimated amount of annual work is 800-1000 hours per year (~15 hours per week). Chickens and eggs require 1-2 hours per day, every day. The land management could be expected to be 3-4 hours per week (grass and weed control, tree management, maintenance etc.). This amount of time for a single paddock is not viable for a large farmer.

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- 51 The Council opposes the proposal and says the proposed use and development of the site is inconsistent with the PPF and the Municipal Planning Strategy as it would detrimentally impact agricultural land and the flow and storage of floodwaters. It says the proposed dwelling is being sought to enable the applicant to reside on the property and manage a relatively small number of chickens, sheep and grow a market garden.
- 52 The submitted farm management plan is said to be optimistic in relation to the potential success of the yields and the earning potential of the proposed operations. The scale of the agricultural is said to be more akin to a hobby farm and as such any dwelling would perform the function of supporting a rural lifestyle rather than being a necessity in the operation of a commercially viable business.
- 53 I am not persuaded the use of the land for a dwelling on a 3.9 hectare site is consistent with the provisions of the FZ and is necessary having regard to the nature of the farming use. The decision guidelines of the FZ require consideration of whether the dwelling will result in loss or fragmentation of productive agricultural land and the potential for the proposal to lead to a concentration or proliferation of dwellings. I find the use and development of the site will result in an unacceptable loss of productive agricultural land as the dwelling will occupy land that is not affected by flooding on a site where less than half its area is usable during the wet season.
- 54 I am not satisfied that any particular management requirements have been identified to substantiate a continual presence on the site in the form of a dwelling. I agree with Council the 15 hours of work per week associated to the agricultural use of tending 10 sheep, 60 chickens and a market garden do not require a 24 hour a day, 7 day a week presence on the site.
- 55 As stated in Mr Suckling's evidence the site is currently owned by a larger farmer and it has been used for a farming purpose previously. In this context the fact the current owner is not using the land to "any great effect" as suggested by Mr Suckling does not justify the construction of a dwelling on the site in association with proposed small scale agricultural use. There is not sufficient nexus between the proposed dwelling use and the farming activity to support the proposal having regard to the relevant strategy at clause 14.01-1L that discourages development of a dwelling unless it is required for a commercial farming purpose. A further strategy is to discourage the development of a dwelling on land that is used for smallscale grazing animal production unless there are special management requirements relating to the grazing of stock. No special management requirements have been demonstrated here.

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56 It therefore follows that I am not persuaded by submissions that the size of the site and use of other land in this area must result in the site being developed with a dwelling. The site can still be put to some productive use whether on its own or by incorporation into a larger property holding. The size of the site should not raise expectations that it is suitable only for a rural lifestyle dwelling.

CONCLUSION

57 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Shiran Wickramasinghe **Member**

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VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P803/2021 PERMIT APPLICATION NO. 2020/259

CATCHWORDS

Section 82 of the *Planning and Environment Act 1987*; Latrobe Planning Scheme; Farming Zone – Schedule 2; Bushfire Management Overlay; dwelling

| APPLICANT | Stuart Strachan |
|-----------------------|--|
| RESPONSIBLE AUTHORITY | Latrobe City Council |
| RESPONDENT | Ronald and Rae Manestar |
| REFERRAL AUTHORITIES | AusNet Services |
| | CFA |
| | Department of Jobs, Precincts and Regions - Traralgon |
| SUBJECT LAND | 94 Neaves Road CALLIGNEE VIC 3844 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 6 September, 11 & 12 October 2021 |
| DATE OF ORDER | 14 January 2022 |
| CITATION | Strachan v Latrobe CC [2022] VCAT 35 |

ORDER

No permit granted

- 1 In application P803/2021 the decision of the responsible authority is set aside.
- 2 In planning permit application 2020/259 no permit is granted.

Juliette Halliday Member

APPEARANCES

| For Stuart Strachan | Mr Strachan appeared in person. | |
|-----------------------------|---|--|
| For Latrobe City Council | Ms Mimi Marcus, lawyer, Marcus Lane Group. She called the following witness: | |
| | • Mr Stuart McGurn, Director, Urbis Pty Ltd | |
| For Ronald and Rae Manestar | Mr Tim Radisich, town planner, Associated Town Planning Consultants | |

INFORMATION

| Description of proposal | To use and develop the land for a dwelling and outbuilding. |
|-------------------------|---|
| Nature of proceeding | Application under section 82 of the <i>Planning and</i> <i>Environment Act 1987</i> – to review the decision to grant a permit. |
| Planning scheme | Latrobe Planning Scheme |
| Zone and overlays | Farming Zone, Schedule 2 (FZ2) |
| | Bushfire Management Overlay (BMO) |
| Permit requirements | Clause 35.07-1 to use the land for a dwelling in the FZ2 |
| | Clause 35.07-4 buildings and works associated with the construction of a dwelling in the FZ2 |
| | Clause 44.06-2 to construct a building and carry out works associated with accommodation in the BMO |
| Land description | The land is on the east side of Neaves Road, approximately 25 kilometres south of Traralgon. It is generally rectangular in shape with a frontage to Neaves Road of approximately 107.88 metres, a depth of approximately 294.96 metres and an area of approximately 3.145 hectares. It is encumbered by an 11 metre electricity easement running diagonally through the centre of the land. The land has a fall of approximately 40 metres from north-west to south-east. The land is vacant except for a structure in the north-east area of the land. A dam on the southern boundary is shared with the adjoining property to the south. There are stands of vegetation in the south-west part of the land; along the northern boundary and there is a small patch of vegetation in the eastern part of the land. Vehicular access is available to the land via an unsealed crossover located to the north of the Neaves Road frontage. |

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Tribunal inspection

An unaccompanied inspection of the land, and parts of the property at 95 Neaves Road, Callignee (including the shed and stock runs) was undertaken after the hearing.

P803/2021

REASONS¹

BACKGROUND

- 1 The application is brought by Stuart Strachan (**applicant**) under s 82 of the *Planning and Environment Act 1987* (**Act**) seeking a review of the decision of the Latrobe City Council to grant a permit for the land at 94 Neaves Road, Callignee (**land**).
- 2 The proposal is to use and develop the land for the purpose of a dwelling and outbuilding. Ronald and Rae Manestar (**permit applicants**) propose a miniature cattle hobby farm with a cattle yard, a loading race and vegetable growing.
- 3 The applicant submits that the proposal is inconsistent with policies and provisions in the Latrobe Planning Scheme (**Scheme**) regarding agriculture and rural dwellings in the Farming Zone; rural residential development and rural living (amongst other things).
- 4 The Council submits that:
 - a. The proposal is appropriate having regard to the zoning of the land and the relevant policy context;
 - b. The proposal can be carried out in a sustainable manner with good land management practices; and
 - c. The bushfire risk to the land can be properly managed.
- 5 The permit applicants submit that the proposal is consistent with the State and local planning policies; that it is an appropriate use of the land; that it is consistent with the purposes of the FZ2 and the BMO (amongst other things).
- 6 Having considered the submissions of the parties, the evidence of the permit applicant, and having inspected the land and its surrounds, I conclude that the proposal does not achieve an acceptable planning outcome. My reasons follow.

SITE CONTEXT AND PROPOSAL

- 7 The land is described at page 3 of this decision. The adjoining and nearby properties are described as follows:
 - a. To the north (known as 164 Neaves Road) is land with a dwelling and outbuilding that is used for farming purposes. Further north, the land at 226 Neaves Road is also developed as a dwelling with associated outbuildings and it is used for farming purposes;

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

- b. To the south at 90 Neaves Road is land used for farming which has a dwelling, outbuilding and a swimming pool. The two lots further to the south at 60 and 50 Neaves Road are both used for farming, with the land at 50 Neaves Road containing a dwelling;
- c. To the west (across Neaves Road, which is an unpaved road) is 95 Neaves Road which is the applicant's land. It is used for sheep, beef and horticultural production and is improved with a dwelling; a shed; stockyards; sheep runs and other farming equipment;
- d. To the east is a large parcel of land that is used for farming purposes.
- 8 More broadly, the land is located approximately two kilometres south of the Callignee Hall, cricket ground and car park which I understand from the permit applicant's submissions were reconstructed after existing infrastructure in Callignee was destroyed in the 2009 bushfires. There are extensive tree plantations located to the south and south-east of the land. The Tarra Bulga National Park is located approximately 7 kilometres to the south of the land.
- 9 The site and surrounds are shown in the aerial photograph at Figure 1 below.



Figure 1

- 10 It is proposed to construct a two-storey dwelling with an associated outbuilding, the key features of which are as follows:
 - a. The proposed dwelling:
 - i. has three bedrooms; two bathrooms; an open plan kitchen, dining and living area; a retreat and a carport with balcony above;

- ii. has an overall height of 6.2 metres and a total floor space of 154.68 square metres;
- iii. will have a Colourbond roof (Shale Grey colour) and Colourbond wall cladding (Ironstone colour);
- iv. is proposed to be set back 30 metres from the western boundary; 40 metres from the northern boundary and 55.95 metres from the southern boundary;
- b. The proposed outbuilding will have a height of approximately
 4.183 metres; a total floor space of 36 square metres (being 6 metres in length and width) and will have a Colourbond roof and wall cladding.
- 11 Other works proposed include:
 - a. A new sealed crossover from Neaves Road located 46 metres from the southern boundary;
 - b. New vehicular access to the proposed garage;
 - c. Two, 10, 000 litre water tanks located on the eastern side of the outbuilding;
 - d. A stock yard in front of the house; loading race and additional fences.
- 12 An extract from the plans showing the western elevation of the proposed dwelling (facing Neaves Road) is at Figure 2 below.

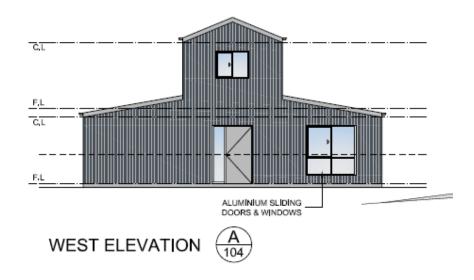


Figure 2

13 The permit applicant's submission states that they propose a boutique fattening and breeding enterprise using a mix of Highland and Lowland Angus cattle. The permit applicant's submission states that:

- a. the aim is to produce around five to eight young steers each year, fatten them on the property to be butchered at 12-18 months for personal consumption and to be sold to a local butcher and to grow vegetables;
- b. there is very high demand in this area with few beef producers supplying small cuts to commercial outlets.
- 14 A Farm Management Plan (**FMP**)² was submitted with the permit application which I have considered in reaching my conclusions in this matter.

STRATEGIC CONTEXT

15 The land is located within the FZ2 and is affected by the BMO. The purposes of the FZ2 include the following:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To provide for the use of land for agriculture.

To encourage the retention of productive agricultural land.

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

•••

To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

- 16 In the FZ2, a permit is required:
 - a. To use the land for a dwelling because the size of the lot is less than the area specified in the schedule to the zone which is 40 hectares. The application must meet the requirements of clause 35.07-2 regarding vehicular access; wastewater management; water and electricity supply; and
 - b. For the building and works associated with the use of the land for a dwelling under clause 35.07-4.
- 17 The purposes of the BMO are as follows:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.

To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.

² Farm Management Plan for Ron and Rae Manestar, 94 Neaves Road, Callignee prepared by Ag-Challenge Consulting Pty Ltd dated 27 September 2020.

To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

- 18 A permit is required to construct the dwelling under the BMO. An application under the BMO must be accompanied by a bushfire hazard site assessment; a bushfire hazard landscape assessment; a bushfire management statement and it must meet the requirements of Clause 53.02.
- 19 The purposes of Clause 53.02 include implementing the Municipal Planning Strategy and the Planning Policy Framework and ensuring that the location, design and construction of development appropriately responds to the bushfire hazard.
- 20 The *Latrobe City Municipal Bushfire Management Plan 2018* (Latrobe City Council, 2018) is referred to at Clause 13.02-1L Planning in the Bushfire Management Overlay and is a background document referred to at Clause 72.08 of the Scheme.
- 21 The application was referred to the Country Fire Authority (**CFA**) who had no objection to the application, subject to the inclusion of a condition on any permit issued requiring endorsement of a bushfire management plan.
- 22 Relevant policies in the Scheme include the following:
 - a. Clause 02.03-4 (Agriculture) which states that highly fragmented rural areas provide opportunities for rural residential living, tourism, niche rural industry and small scale farming, and which seeks to facilitate non-agricultural related use and development that respects existing settlement patterns, landscape, amenity and adjacent land uses in highly fragmented rural areas (Farming Zone Schedule 2) (amongst other things):
 - b. Clause 13.01-1S (Natural hazards and climate change) which seeks to direct population growth to low risk locations (amongst other things);
 - c. Clause 13.02-1S (Bushfire planning) which seeks to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life through strategies which (amongst other things) seek to give priority to human life by:
 - i. Prioritising the protection of human life over all other policy considerations; and
 - ii. Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire;
 - d. Clause 13.02-1L (Planning in the Bushfire Management Overlay) which has the strategy to set back development in the FZ2 from any bushfire hazard to achieve a bushfire attack level (**BAL**)

construction standard no higher than BAL-29, unless there are significant siting constraints, where land is affected by the BMO;

- e. Clause 14.01-1S (Protection of agricultural land) which seeks to protect the state's agricultural base by preserving productive farmland through strategies such as limiting new housing development in rural areas by directing housing growth into existing settlements and discouraging development of isolated small lots in the rural zones from use for dwellings and encouraging consolidation of existing isolated small lots in rural areas (amongst other strategies);
- f. Clause 14.01-1L (Dwelling in the Farming Zone Schedule 2)) which supports the development of land only if:
 - i. No detriment is likely to result to adjoining agricultural activities:
 - ii. It will result in improved land management; all wastewater can be retained onsite and any risk from bushfire is reduced to an acceptable level and any bushfire protection measures can be implemented;
- g. Clause 14.01-1L-1PAL (Protection of agricultural land) applies to land in the Farming Zone and contains strategies which seek to ensure that the siting of a building does not compromise the operation of nearby commercial agricultural enterprises, including impacts on noise, odour, sight lines and infrastructure and livestock movements (amongst others). This policy discourages accommodation within 100 metres of any agricultural production infrastructure; any activity node (such as stock yards and intensive animal production;
- h. Clauses 15.01-6S (Design for rural areas) which seeks to ensure that development respects valued areas of rural character through strategies such as ensuring that the siting, scale and appearance of development protects and enhances rural character (amongst other things);
- i. Clause 15.01-6L (Design for rural areas) which encourages buildings to locate away from ridgelines and hilltops and to be designed so that they blend into the landscape;
- j. Clause 16.01-1S (Housing supply) which seeks to facilitate welllocated integrated and diverse housing that meets community needs;
- k. Clause 16.01-3S (Rural residential development) that seeks to identify land suitable for rural residential development through strategies which include managing development in rural areas to protect agriculture and avoid inappropriate rural residential development; discouraging development of small lots in rural zones

for residential use; and encouraging consolidation of existing isolated small lots in rural areas (amongst others);

- 1. Clause 16.01-3L (Rural residential development) which encourages rural living where there will be minimal negative environmental impact or conflict with commercial agriculture and which supports rural living in low bushfire risk locations or where bushfire risk can be reduced to an acceptable level (amongst other strategies).
- 23 Relevantly, Clause 71.02-3 (Integrated decision making) 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. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

...

24 The Council's submissions set out details of two recent amendments to the Scheme, as discussed below.

Amendment C105

- 25 On 21 November 2019, Amendment C105 was introduced into the Scheme. Relevantly, I understand from the submissions of the parties that Amendment C105:
 - a. Introduced two new schedules to the Farming Zone being Schedule 1 Commercial Agriculture and Schedule 2 Mixed Use Farming;
 - b. Changed the zoning of the land from the Farming Zone to the FZ2;
 - c. Introduced new policies into the Scheme at Clause 22.02 including a policy regarding 'Rural Dwelling and Subdivision in the Farming Zone' (subsequently reformatted to Clause 14.01-1L 'Dwelling in the Farming Zone Schedule 2');
 - d. Introduced the *Live Work Latrobe Housing Strategy*³ (Housing Strategy) and the *Live Work Latrobe Rural Land Use Strategy*⁴ (RLU Strategy) as 'Background documents' in the schedule to Clause 72.08 of the Scheme.
- 26 The Housing Strategy includes the settlement of Callignee (not including the land which is the subject of this application) as a 'rural living precinct, which is described as 'a cluster of housing located on smaller than average rural sized allotments within non-urban zones'⁵ (amongst other things).

³ Latrobe City Council. MacroPlan Dimasi, RMCG and Planisphere, May 2019.

Latrobe City Council, C105 MacroPlan Dimasi, RMCG and Planisphere, May 2019).
 Housing Strategy at page 19.

- 27 Amongst other things, the RLU Strategy:
 - a. Has, as its purpose the provision of a framework to support rural and agricultural enterprise as well as providing opportunities for rural living;
 - b. Has, as a strategic objective the protection of productive agricultural land⁶;
 - c. Includes Callignee within a 'mixed farming' area on the 'Live Work Latrobe Strategy Map' and on the 'Rural Framework Plan';
 - d. Identifies land in Callignee as 'Class 2' agricultural land with 'good' agricultural capability and moderate limitations to agricultural productivity (where 'Class 1 is the highest level of productive agricultural land and 'Class 5' is very poor agricultural land);⁷
 - e. Recommends that the FZ2 should be applied to locations where smaller scale mixed farming is undertaken;
 - f. Indicates that the FZ2 seeks to recognise areas where rural land use is a mix of commercial agriculture, hobby farming and rural residential;
 - g. Has an objective to introduce schedules to the Farming Zone that will identify areas where land use on Schedule 2 is mixed farming being a mix of commercial and niche agriculture, large scale hobby farms and rural lifestyle; and
 - h. Indicates that land in the FZ2 will play an important part in providing a transition between urban centres and commercial agriculture and forestry, protecting the rural landscape, providing opportunities for rural tourism; maintaining separation between industrial and sensitive land uses and promoting efficient development of zoned Rural Living estates.
- 28 Whilst the RLU Strategy indicates that a more flexible approach will be adopted with respect to allowing dwellings in the FZ2, it also recognises that the extent of rural residential development is not considered justification for unfettered dwelling development, as this will compromise efficient development of zoned Rural Living estates and established commercial agricultural enterprises.⁸
- 29 The RLU Strategy is a 'Background document' under the Schedule to Clause 72.08 of the Scheme. It does not form part of the Scheme. It is referred to at Clause 14.01-1L (Dwelling in the Farming Zone Schedule 2) to be considered 'as relevant'. In reaching my conclusions in this matter I

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⁶ RLU Strategy at p 18.

⁷ RLU Strategy at pages 26-27.

⁸ Rural Land Use Strategy at p 87.

have considered the RLU Strategy, which serves as background to understanding the provisions in the Scheme.

30 Although I do not set them out here, I have considered the comments of the Panel regarding Amendment C105 to the Scheme that were referred to in the submissions of the Council and the permit applicant.

Amendment C122

31 On 28 May 2021, Amendment C122 was introduced into the Scheme. Relevantly, it replaced the Municipal Strategic Statement and the Local Planning Policy Framework at clauses 21 and 22 with a Municipal Planning Strategy, local policies within the Planning Policy Framework and revised local schedules to zones and overlays (amongst other things), consistent with the structure introduced by Amendment VC148.

PREVIOUS TRIBUNAL DECISION

- 32 A proposal to develop and use the land for a dwelling was the subject of an application to the Tribunal for review of a grant of a permit in 2012. It was put to the Tribunal in that matter that the permit applicant intended to run a beef herd with 10 weaner cattle being fattened on the site at any one time. The Tribunal set aside the Council's decision and a permit was not granted.⁹ The Tribunal found that the proposal was an attempt to have a rural living arrangement masked as an agricultural use within a Farming Zone. It said that Callignee provides areas zoned rural living for those rural living purposes. The Tribunal was not persuaded that the proposed dwelling was reasonably required as part of the proposal presented, it failed to meet the purposes of the Farming Zone.
- 33 The Tribunal has established principles to determine how a proposal responds to a previous decision. Relevant factors to consider when reviewing an application that is similar to a proposal that has been the subject of previous Tribunal findings are:
 - a. significant changes in the application itself;
 - b. changes in the circumstances of the land and its surrounds;
 - c. changes in planning policy; and/or
 - d. changes in the interpretation of the facts or law relevant to the Tribunal's consideration.¹⁰
- 34 In *Sprut v Stonnington CC^{11}* the Tribunal distinguished between a 'classic repeat appeal' and a 'correcting' repeat appeal that is, where the Tribunal has refused an earlier application but indicated a modified form of

⁹ Strachan v Latrobe CC [2012] VCAT 414.

¹⁰ *K* & *B* Reichert v City of Banyule & Ors (Appeal No. 1996/38819); Zumpano v Banyule City Council [2016] VSC 420.

¹¹ [2012] VCAT 1675.

development or changes that might be acceptable, and the repeat appeal comprises a genuine attempt to address those issues.¹² Relevant to my consideration is what was said in *Sprut* regarding the Tribunal's role in repeat appeals:

...irrespective of whether the repeat appeal is in the nature of a 'classic' or 'correcting' repeat appeal, the role of the Tribunal is not to determine whether the proposal before it would have satisfied the earlier (and perhaps differently constituted) Tribunal, nor to summarily determine the matter solely by reference to the *Reichert* principles. This is a sometimes misunderstood notion. As *Amoco* itself indicated, the role of the Tribunal is to still consider the new application before it on its merits but, in doing so, to give great weight to the Tribunal's decision on the earlier application having regard to the usual principles that have evolved for this purpose.¹³

- 35 I must decide the application on its merits and give appropriate weight to the previous decision of the Tribunal in doing so.
- 36 I now turn to my findings regarding the key issues in relation to this matter.

KEY ISSUES

- 37 In my view the key issues for consideration in this application are:
 - a. Is the proposal appropriate having regard to the relevant policies and provisions in the Scheme?
 - b. Is the risk to human life from bushfire acceptable?

IS THE PROPOSAL APPROPRIATE HAVING REGARD TO THE RELEVANT POLICIES AND PROVISIONS IN THE SCHEME?

- 38 Amongst other things, the applicant submits that:
 - a. If the purpose of the proposed beef raising enterprise is to justify a dwelling then it is likely to become a rural living use, and the provision of a dwelling will remove the land from agricultural use, which is likely to occur when the land is sold;
 - b. The provision of a dwelling on the land will compromise its use for agriculture and a hobby farm does not require a dwelling. The inability of the permit applicants to reside on site does not restrict the use of the land for a hobby farm;
 - c. The development should be located in a Rural Living Zone as farming is incidental to the dwelling rather than the prime activity;
 - d. The land is classed as 'Class 2' in Swan and Volum,¹⁴ and it should be preserved as it is the most valuable agricultural production land

¹² Ibid at [16].

¹³ Ibid at [18].

Assessment of Agricultural Quality of Land in Gippsland (Ian R Swan and Andrew G Volum, August 1984) which is a Background document under the schedule to Clause 72.08 of the Scheme.

in Latrobe City. Quality agricultural land such as this should be protected from dwelling development;

- e. The land is surrounded by productive commercial farms, with the exception of the two lots to the south;
- f. The proposal is for a residential use adjacent to commercial farms and it will adversely affect the use of surrounding land for agriculture. The proposed dwelling is about 70 metres from the stockyards, shearing shed and agricultural infrastructure on the property to the west at 95 Neaves Road associated with fat lamb production. This is likely to cause conflict between occupiers of the proposed dwelling due to agricultural activities on the land to the west; and
- g. The amenity of the existing dwelling to the west will be affected by the proposed stockyards, which will be located about 53 metres from the existing dwelling.
- 39 In essence, the Council submits that:
 - a. The strategic context (both zoning and policy) has significantly changed since 2012;
 - b. The proposal achieves a high level of compliance with the policy framework including the Farming Zone, and the activities proposed are consistent with the nuanced zoning now applying;
 - c. The design and siting of the proposed dwelling is sensitive to the location and will not detrimentally impact the character of the area and it is one of the very few small allotments on Neaves Road not having a dwelling;
 - d. The proposal meets the specific guidance provided in Clause 14.01-1L; and
 - e. Permanent occupancy is required to adequately manage the business and the land is suited to breeding and fattening of small beef cattle and vegetable production.
- 40 It is Mr McGurn's evidence that there have been significant zoning and policy changes since 2012 such that the proposal is now an acceptable proposition for the land, and that the proposal achieves a high level of compliance with the policy framework. He notes that the land is well removed from larger agricultural enterprises located in Schedule 1 to the Farming Zone and there will be negligible impact on existing agricultural activities within the vicinity of the land. Mr McGurn also gave evidence that:
 - a. The proposal performs well against the policy at Clause 14.01-1L (Dwelling in the Farming Zone Schedule 2) and the decision guidelines in the Farming Zone;

- b. The closest property with agricultural use is at 95 Neaves Road. This property is used for beef farming and will not be impacted by the proposed dwelling on the small rural lot, noting that the proposed dwelling is well separated from this site and the activities carried out;
- c. The design and siting of the dwelling is sensitive to the location and will not detrimentally impact on the character of the area, and all wastewater can be retained on site;
- d. The use of the land can be carried out in a sustainable manner with good land management practices, and the proposal will assist in improved land management; and
- e. The land, and number of the sites surrounding it are fragmented in terms of ownership, small in size and not capable of developing significantly broad or intensive scale rural businesses. The activities proposed are consistent with this categorisation.
- 41 Amongst other things, the permit applicants submit that:
 - a. The decision guidelines in the Farming Zone no longer require consideration of 'whether the dwelling is reasonably required for the operation of the agricultural activity on the land';
 - b. The thrust of Municipal Planning Strategy and the Planning Policy Framework recognises that some highly fragmented rural areas (within the FZ2) provide opportunities for rural residential living and can support small scale farming;
 - c. The land can support sustainable agriculture and a dwelling will enhance the agricultural use and farm management;
 - d. The proposed dwelling will better enable the review site to be used for an agricultural activity and it will not adversely affect the operation of adjoining and nearby agricultural uses;
 - e. All wastewater can be retained on site;
 - f. The proposed dwelling has been sited to avoid adverse impacts on surrounding agricultural uses;
 - g. A dwelling on the land will result in improved land management and will contribute to the management and sustainability of the proposed agricultural activity;
 - h. The proposed dwelling will not conflict with commercial agriculture. The amenity of the land is not likely to be impacted by agricultural land uses, and the agricultural activity at 95 Neaves Road is not an intensive use of the land nor a high amenity impact activity. It appears that activities associated with this agricultural

use may be conducted in the road reserve, outside the property boundary of 95 Neaves Road;¹⁵ and

- i. The land is in a highly fragmented rural area where mixed use farming, niche or hobby farming may be supported alongside rural living, and there is specific policy support for the establishment of a dwelling on the land.
- 42 I recognise that there have been changes to the Farming Zone to apply Schedule 2 of the Farming Zone to the land (as well as other relevant changes to policies in the Scheme) since 2012, and I have carefully considered these changes in reaching my conclusions in this matter.
- 43 Amongst other technical requirements, Schedule 2 to the Farming Zone contains technical requirements regarding the minimum subdivision area (40 hectares) and the minimum area for which no permit is required to use land for a dwelling (40 hectares). There is nothing else in Schedule 2 to the Farming Zone which provides criteria for consideration regarding the issue of whether the use of land for a dwelling is appropriate in the FZ2. In this context and having regard to the decision guidelines in the FZ2. In this consistent with the purposes of the FZ2 and the relevant policies in the Scheme for the reasons discussed below.
- 44 The proposed dwelling is located within approximately 70 metres of agricultural infrastructure at the nearby property at 95 Neaves Road, which includes an existing stockyard (located behind several shipping containers); stock runs, and a shed.
- 45 According to Mr Strachan's submissions, the shed and stockyards and associated agricultural infrastructure on his property are used fortnightly (on average) for activities including sheep shearing, crutching, sheep drenching, fixing the hooves of the sheep and treating fly infestations associated with the management of approximately 110 sheep.
- 46 The RLU Strategy indicates that a more flexible approach will be adopted with respect to allowing dwellings in the FZ2. However, this should not be to the detriment of the existing farming practices of adjoining and nearby properties. I have not been persuaded that the proposal is consistent with the purpose of the FZ2 which seeks to ensure that non-agricultural uses (including dwellings) do not adversely affect the use of land for agriculture.
- 47 I consider that the proposed dwelling is very likely to be affected by the agricultural activities occurring on the nearby land at 95 Neaves Road which I have described above, and that the location of the dwelling within approximately 100 metres of the existing agricultural operations is not

¹⁵ I observe that the question of whether activities at 95 Neaves Road are carried out on land within the road reserve is not a matter that is before me in this application and I make no finding about it.

compatible with the existing use of the land at 95 Neaves Road for sheep farming, for the reasons discussed below.

- 48 When non rural, sensitive land uses such as dwellings are established in rural areas, issues can arise due to noise, dust and hours of operation where there is an interface between a dwelling and agricultural uses. In the face of complaints about these issues, there can be pressure for restrictions on farm use.
- 49 Although the agricultural activities on the nearby land at 95 Neaves Road occur on a fortnightly basis (on average), I consider that complaints from the occupants of the proposed dwelling are likely to arise due to the noise, odours, dust and the hours of operation associated with approximately 110 sheep being kept and managed within approximately 100 metres of the proposed dwelling during the day (and occasionally overnight in the stockyards).
- 50 I consider that the proposed dwelling has not been located to minimise the potential for conflict with the existing agricultural activities at 95 Neaves Road. The location of the proposed dwelling within approximately 100 metres of the existing agricultural operations at 95 Neaves Road has the potential to limit or inhibit the operation of the existing sheep farming activities because there is a risk of conflict with the occupants of the proposed dwelling, primarily due to the impacts of noise, odour, dust and hours of operation associated with the sheep farming activities at 95 Neaves Road.
- 51 The proximity of the proposed dwelling to the existing agricultural activities at 95 Neaves Road is inconsistent with:
 - a. The policy at clause 14.01-1L (Dwelling in the Farming Zone Schedule 2) which supports the use and development of dwelling only if no detriment is likely to result to adjoining agricultural activities;
 - b. The strategy at Clause 14.01-1L (Protection of agricultural land) which seeks to ensure that the siting of a building does not compromise the operation of nearby commercial agricultural enterprises, including impacts on noise, odour and livestock movements;
 - c. The policy guideline at Clause 14.01-1L (Protection of agricultural land) which seeks to discourage accommodation within 100 metres of any agricultural production infrastructure and any activity node such as stock yards; and
 - d. Clause 16.01-3L (Rural residential development) which encourages rural living where there will be minimal impact or conflict with commercial agriculture.
- 52 Even though the permit applicants are aware that these types of off-site amenity impacts (being the noise, odour, hours of operation and dust

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associated with approximately 110 sheep) are part of a rural land use, there is no guarantee that future owners will share the same attitude and will not complain about the amenity impacts of about 110 sheep located within 100 metres of the dwelling as I have described above.

- 53 The Council submits that the FMP concludes that the land is well suited to the breeding and fattening of small beef cattle and producing vegetables once it is rehabilitated in accordance with the recommendations set out in the FMP. The timing of the agricultural undertakings referred to in the FMP is relevant to the question of whether the proposed dwelling is consistent with the purposes of the FZ2, which seek to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture and which encourage the use and development of land based on comprehensive and sustainable land management practices.
- 54 In terms of the timing of the agricultural activities associated with the hobby farm, conditions 7 and 8 in the notice of decision require:
 - a. the FMP to be endorsed and to form part of a permit, and to be implemented and maintained for five years after the initial occupation of the dwelling (condition 7); and
 - b. the owner/occupier to demonstrate commencement of the FMP before occupation of the dwelling (or such other time as approved in writing by the responsible authority) (condition 8).
- 55 The FMP contains a 'loose timeframe' for each major agricultural undertaking, which includes stock being brought on to the property after the construction of the house is complete and 'someone is on the property 24/7' (which I understand to mean permanently living in the dwelling). In a practical sense, this means that it is possible that after the house is constructed, an occupant could live in the dwelling for a period of time that is less than '24/7' and reside somewhere else for some of the time and arguably there would then be no requirement to bring any stock onto the land at all. Alternatively, permission can be granted by the Council for the extension of the time to demonstrate 'commencement of' the FMP (condition 8).
- 56 At the hearing during a discussion regarding condition 7, the permit applicants representative indicated that condition 7 could be amended so that it could apply 'in perpetuity' (not just for five years). The Council submitted that condition 7 is not necessary but that it would accept its imposition. Council's position is that five years is acceptable and that the Council does not want to have to monitor compliance with the condition after 5 years.
- 57 I have not been persuaded by the submissions of the permit applicants or the Council that the requirements at conditions 7 and 8 regarding the FMP will be effective in ensuring the proposed hobby farm associated with the dwelling will be sustained in the long term for the following reasons:

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- a. Condition 7 purports to limit the time within which the endorsed FMP is to be maintained and implemented to five years, because the Council does not want to bear the time and costs associated with monitoring and enforcing compliance with condition 7 after five years;
- b. The FMP does not make it clear what will happen if the agricultural use ceases after the house is constructed. Is the use of the land for a dwelling to cease?;
- c. I accept the Council's submission that it is not reasonable for the Council to incur the time and expense of monitoring and enforcing compliance with condition 7 if it is required to be implemented on an ongoing basis;
- d. Even if the permit was granted with a requirement for the FMP to be implemented for five years, the likelihood that the agricultural activities will cease (if they ever commence) increases at the end of the five year period. Although there will be an endorsed FMP under the permit, in my view there is not a great deal of motivation for the agricultural activities to be sustained in the long term if the owner is aware that the Council does not wish to monitor or enforce compliance with condition 7 beyond five years. In that case, the agricultural use may cease.
- 58 On this basis, I have not been persuaded that if the hobby farm operation is started, it will sustainably persist in the long term. The FMP makes no provision for what is to occur if the hobby farm operation ceases, after the dwelling is constructed. In my view, once the dwelling is constructed, there is real risk that if the proposed hobby farming activity commences, it will not be sustained. After the five year period referred to in condition 7, there is not a great deal of motivation for the agricultural activities to be sustained in the long term, particularly if a subsequent owner has no interest in rearing cattle. I consider that this is inconsistent with:
 - a. the purposes of the FZ2, which seek to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture and which encourage the use and development of land based on comprehensive and sustainable land management practices;
 - b. Clause 14.01-1S (Protection of agricultural land) which seeks to limit new housing development in rural areas by directing housing growth into existing settlements; discouraging development of isolated small lots in rural zones from use for dwellings;
 - c. Clause 16.01-3S (Rural residential development) which discourages development of small lots in rural zones for residential use and encourages consolidation of existing isolated small lots in rural areas; and

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- d. The efficient development of zoned Rural Living estates and established commercial agricultural enterprises, which are issues that are raised in the RLU Strategy.
- 59 The Tribunal's decision in *Jordan v Baw Baw Shire*¹⁶ was relied upon by the permit applicants in support of their position. I distinguish this case on the facts. The land in that matter was located approximately 615 metres south from the edge of the township of Longwarry. In that matter no issue was raised regarding the impact of the proposed dwelling on existing agricultural activities, and the land was not affected by the BMO.
- 60 On balance, I have not been persuaded that the proposed dwelling is appropriate having regard to the relevant policies and provisions in the Scheme.

IS THE RISK TO HUMAN LIFE FROM BUSHFIRE ACCEPTABLE?

- 61 Mr Strachan made submissions regarding bushfire risk. I am unable to consider these submissions because an application under the BMO is exempt from third party review rights under Clause 44.06-7 of the Scheme.
- 62 At the hearing of this matter, I raised a number of issues with the permit applicants and the Council regarding whether the risk to human life from bushfire associated with the proposal is acceptable. The permit applicants and the Council made submissions regarding bushfire risk at the hearing. I set out my findings in this regard below.
- 63 Amongst other things, the permit applicants submit that:
 - a. A Bushfire Report and statement has been prepared which addresses the requirements of Clause 53.02. The Statement specifies a BAL-29, with a larger defendable space area to BAL-12.5 standards. A 10,000 litre water tank is provided for firefighting, in addition to a water tank for the dwelling;
 - b. The CFA has consented to the grant of the permit subject to mandatory conditions requiring the Bushfire Management Plan to be endorsed as part of the permit;
 - c. The proposal prioritises the protection of human life through the response to the bushfire hazard landscape assessment and the bushfire hazard site assessment detailed in the Bushfire Management Plan which shows that the risk to life and property from bushfire can be reduced to an acceptable level; and
 - d. Egress is available from the land via Neaves Road to Callignee and then to Traralgon South and beyond that to Traralgon. Leaving early in the event of a bushfire is fundamental. A reasonable person would make the call to leave the land well before a fire gets bad.

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¹⁶ [2021] VCAT 903.

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- 64 Information that was submitted with the permit application included a Bushfire Planning Report and Statement (**BPRS**).¹⁷
- 65 The bushfire hazard site assessment in the BPRS describes the vegetation within 150 metres of the proposed dwelling as grassland to the north, east and west of the site and a small section of woodland to the south-east:
- 66 In summary, the bushfire hazard landscape assessment in the BPRS:
 - a. describes the bushfire hazard in the general locality more than 150 metres from the site as including:
 - i. a mixture of woodland, forest and grassland with areas of densely vegetated forest to the east, south and west, including the Tarra Bulga National Park to the south; and
 - ii. grassland to the north;
 - b. States that the land has previously experienced landscape scale fire scenarios, including the 2009 Black Saturday bushfires, which also affected an extensive area to the north, south, east and west of the land;
 - c. Indicates that the land is in a high risk area due to previous bushfire history and its location in close proximity to surrounding National Park areas;
 - d. Indicates that the grazing areas to the north would ensure that there would be some protection for the residents to evacuate in the case of a bushfire;
 - e. Indicates that the worst case scenario is a bushfire approaching from the north-west which could destroy the majority of vegetation and dwellings in the area and there is a possibility that the fire may block egress from the site;
 - f. States that with early warning, the road to the north of the property is the quickest and safest route to exit the heavily landscaped area surrounding the land, and that early evacuation is advised for all residents in the area;
 - g. A grassfire may approach the site which may approach from the north and cut egress from the site;
 - h. Fires can be expected to approach from the north-west and south-west, where there is dense vegetation;
 - i. There are no nearby designated Neighbourhood Safer Places, however the site is within 11 kilometres of Traralgon South;
 - j. No private bushfire shelter is proposed;

¹⁷ Prepared by Latrobe Valley Drafting dated October 2020.

- k. The dwelling is to be constructed to a rating of BAL-29, and will have a larger defendable space to BAL-12.5 standard to ensure that the dwelling will be protected at a higher standard;
- 67 The BPRS indicates that the site is considered to be 'Landscape Type 3' which is defined as:

The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site.

Bushfire can approach from more than one aspect.

The site is located in an area that is not managed in a minimum fuel condition.

Access to an appropriate place that provides shelter from bush fire is not certain. $^{18}\,$

- 68 The Council submits that:
 - a. Any risk from bushfire is reduced to an acceptable level and bushfire measures can be implemented;
 - b. The proposed dwelling will be constructed to a BAL rating of BAL-29, and will benefit from a larger defendable space to BAL-12.5 standard; and
 - c. The BPRS demonstrates that appropriate bushfire measures can be implemented to manage bushfire risk.
- 69 It is Mr McGurn's evidence that any risk from bushfire is reduced to an acceptable level and any bushfire measures can be implemented. A Bushfire Management Assessment has been carried out and demonstrates that appropriate bushfire measures can be implemented to appropriately manage bushfire risk.
- 70 The BPRS states that with early warning, the road to the north of the property is the quickest and safest way to exit the heavily landscaped area surrounding the land, and early evacuation is advised. The alternative route to the south is through bush, plantation forest and the Tarra Bulga National Park which I understand from the submissions of the parties is not safe egress in the event of a bushfire.
- 71 Egress from the land for evacuation purposes is available to the north via Neaves Road, past the Callignee Hall and on to the Traralgon-Balook Road which heads north-west towards Traralgon South, and then continuing north on to Traralgon. Part of this egress route adjoins the Traralgon South Flora and Fauna Reserve. The egress route from the site towards Traralgon South heads north and north-west, and the worst-case scenario for the land is a bushfire approaching from the north-west. The BPRS states that a bushfire approaching from the north-west could block egress from the site and

¹⁸ Planning Permit Applications Bushfire Management Overlay, Technical Guide, September 2017, Department of Land Water and Environment.

destroy the majority of vegetation and dwellings in the area. There is no information before me that safe access is available to an area assessed as having a BAL-Low rating.

- 72 My inspection of the land confirms that egress from the land to Traralgon South involves travelling along roads which have fringing vegetation located within a landscape which is heavily vegetated in sections.
- 73 It is well-understood that evacuation under threatening bushfire conditions can involve thick smoke and potentially fire spotting in advance of the main fire front. This can present a danger to human life during evacuation. Evacuation on the roads to the north and north-west of the land could expose evacuees to an approaching bushfire from the north-west and to risks from poor road conditions due to smoke and blocked road egress from trees fallen across the road.
- 74 I acknowledge that in this case, there is technical compliance with the defendable space requirements and other measures referred to within Clause 53.02 and the policy at Clause 13.02-1L to achieve a BAL construction standard of BAL-29. However, the purposes of the BMO and the provisions of Clause 53.02 require consideration of the risk to life and property from bushfire; of whether development is appropriate having regard to the nature of the bushfire risk arising from the surrounding landscape, and of whether the risk from the broader landscape can be mitigated to an acceptable level.
- 75 Based on the facts and circumstances of this matter, I have not been persuaded that the risk to life and property from the bushfire risk from the broader landscape can be mitigated to an acceptable level due to the vulnerability of occupants of the land to bushfire unless early evacuation is taken. This is particularly the case on days where there is a risk of the worst-case bushfire scenario, being a fire approaching from the north-west which could block egress from the land and destroy the majority of vegetation and dwellings in the area.
- 76 Based on the material before me, I am not satisfied that the reference in the BPRS to a nearby paddock where residents could take refuge would provide an area where human life could be protected from bushfire, particularly from the worst-case bushfire scenario described in the BPRS.
- 77 Based on the facts and circumstances of this matter, I consider that the landscape and egress conditions present a high safety risk to human life and property from circumstances such as poor driving conditions due to smoke caused by an approaching bushfire (which in the worst-case scenario will approach from the north-west) and the risk of fallen trees blocking egress and preventing evacuation from the land. On this basis, I find that the use of the land for a dwelling is not consistent with policies at Clause 13.02-1S of the Scheme which seek to:
 - a. give priority to the protection of human life by:

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- i. prioritising the protection of human life over all other policy considerations; and
- ii. directing population growth to low risk locations and ensuring the availability of, and safe access to areas where human life can be better protected from the effects of bushfire.

REPSONSE TO THE PREVIOUS TRIBUNAL DECISION

- 78 In terms of the response of the proposal to the Tribunal's previous decision, I have considered the following matters:
 - a. The permit application itself is broadly similar to that which was considered by the Tribunal in the previous decision;
 - b. There have not been material changes in the circumstances of the land and the surrounds since the previous decision that I have been made aware of;
 - c. There have been material changes to the zone which affects the land and the relevant planning policies in the Scheme since the previous decision. I have set these out in my reasons and I have given them significant weight in reaching my conclusion in this matter; and
 - d. Apart from the material changes to the zone affecting the land and the relevant planning policies referred to above, I have not been made aware of any changes in the interpretation of the facts or law relevant to my consideration.
- 79 Whilst I have given some weight to the previous decision, I have placed significant weight on the provisions of the Scheme as they apply to the land now, which are materially different to those which applied when the Tribunal made the previous decision. Based on the facts and circumstances of this matter, I have concluded that the proposal is not appropriate having regard to the relevant policies and provisions in the Scheme, and that it does not reduce the risk to human life from bushfire to an acceptable level.

CONCLUSION

80 For the reasons given above, the decision of the responsible authority is set aside. No permit is granted.

Juliette Halliday Member

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<u>PP223/2022-1 – 1140 IRREWILLIPE ROAD, BARONGARROK WEST</u> <u>Draft Conditions (Not Officer Recommendation)</u>

That Council resolves to Grant a Permit for the Use and Development of the Land for a Dwelling and Construction of One Agricultural Building at 1140 Irrewillipe Road, Barongarook West (Lot 1 TP 118801U, V/F 9826/929), subject to the following conditions:

Amended Plans

- 1. Prior to commencement of the use and/or development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans, which must be drawn to scale with dimensions, must be generally in accordance with the plans submitted with the application, but modified to include:
 - a) Details of the cattle yards onsite proposed to be shifted into the north-west corner of the site

Endorsed Plans

2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

Dwelling Infrastructure

- 3. Prior to the initial occupation of the dwelling hereby permitted, the following must be provided to the satisfaction of the Responsible Authority:
 - a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
 - b) The dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.
 - c) 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.
 - d) The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

Agricultural Infrastructure

4. Prior to the commencement of the construction of the dwelling, the infrastructure required for the agricultural use as set out in the submitted Farm Management Plan and shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority.

Access

- 5. Prior to the commencement of development, unless otherwise agreed in writing by the Responsible Authority, vehicular access from the roadway to the property boundary must be constructed to the satisfaction of the Responsible Authority.
- 6. Prior to the initial occupation of the dwelling hereby permitted, the driveway must be constructed to an all-weather standard and with a minimum width of 3 metres, to the satisfaction of the Responsible Authority.

Drainage

- 7. All runoff from stormwater, including overflow from water storage, must be taken to a legal point of discharge to the satisfaction of the Responsible Authority.
- 8. The site must be developed and managed to ensure there is no stormwater pollution through the contamination of runoff by chemicals, sediments, wastes or pollutants in accordance with 'Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control' (EPA) at any time during construction or operation, to the satisfaction of the Responsible Authority.

Wastewater

- 9. An onsite wastewater management system must be constructed concurrently with the dwelling hereby permitted, so that all liquid waste is at all times contained within the curtilage of the lot. The design and installation of any wastewater disposal system for any building on the land must comply with 'Code of Practice Onsite Wastewater Management', July 2016 (EPA Publication No. 891.4, or as amended), to the satisfaction of the Responsible Authority.
- 10. Primary and secondary wastewater areas for the dwelling must be appropriately buffered and fenced to exclude stock, in accordance with any Land Capability Assessment recommendations.

Landscaping

- 11. Prior to the commencement of development, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions. The plan must show:
 - a) a survey (including botanical names) of all existing vegetation on the road frontage boundary to be retained and/or removed
 - b) a planting schedule of proposed trees, shrubs and ground covers along the road frontage boundary, if any, including botanical names, common names, sizes at maturity, and quantities of each plant

All species selected must be to the satisfaction of the Responsible Authority.

12. Prior to the initial occupation of the dwelling hereby, or by such later date as is approved by the Responsible Authority in writing, any landscaping works shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must thereafter be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

Expiry

- 13. This permit will expire if one of the following circumstances applies:
 - a) The development is not commenced within three years of the date of this permit.
 - b) The development is not completed, and use is not commenced, within five years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act* 1987, an application may be made to the Responsible Authority to extend the periods referred to in this condition.

Notes:

- 1. This permit does not authorise the commencement of any building works. Prior to the commencement of development, it will also be necessary to obtain building permits for the proposed buildings.
- 2. Prior to preparing drainage plans, a legal point of discharge (LPoD) must be obtained in accordance with Building Regulation 133. A copy of the LPOD, which incurs a fee in accordance with the Building Regulations, must be submitted with the engineering plans.
- 3. A works within road reserve permit is required prior to any works being undertaken on Council managed road reserves within the Colac Otway Shire.
- 4. At least seven (7) days before any works start, an Asset Protection Permit must be obtained from Council. Council infrastructure must be maintained in a safe condition during the construction period. Any damage caused by these works to Council assets must be reinstated to the satisfaction of the Council prior to the completion of works.
- 5. A separate application to install an onsite wastewater management system must be submitted and approved by Council's Health Protection Unit prior to the commencement of works. The Health Protection Unit requests that a Land Capability Assessment by a suitably qualified person be submitted for approval at the onsite wastewater permit application stage, unless otherwise agreed in writing.



Item: 8.3

PP101/2020-1 - 979 Corangamite Lake Road, Cororooke -Use and Development of Land for Dwelling

| ADDRESS AND PROPERTY DETAILS | 979 Corangamite Lake Road, Coragulac | APPLICATION NUMBER | PP101/2020-1 | |
|--|--|-----------------------|--|--|
| | Lots 1, 2 and 3 TP663499W (V/F: 8213/973) | | | |
| PROPOSAL | Use and Development of Land for a Dwelling | | | |
| PERMIT TRIGGERS | Clause 35.07-1 - Farming Zone – Use of the land for a dwelling, for a store and associated works | | | |
| | Clause 35.07-4 - Farming Zone – Building and works associated with a Section 2 (permit required) use; within specified setbacks; and within 500m of the nearest title boundary of land on which a work authority has been granted under the <i>Mineral Resources</i> (Sustainable Development) Act 1990. | | | |
| | Clause 42.01-2 – ESO2 – Buildings and works | | | |
| | Clause 42.03-2 – SLO1 – Buildings and works | | | |
| TRIGGER FOR DETERMINATION BY COMMITTEE | Officer recommendation for refusal of an application for a dwelling in the Farming Zone | | | |
| ZONE | Farming Zone (FZ) | OVERLAYS | Environmental Significance Overlay, Schedule 2 (ESO2) | |
| | | | Significant Landscape Overlay, Schedule 1 (SLO1) | |
| | | | Part Land Subject to Inundation Overlay, Schedule 1 (LSIO) - 4.42% | |
| COVENANTS | None. | | | |
| | Note: right of carriagew access the subject site. | ay exists over 97 | 7 Corangamite Lake Road to | |

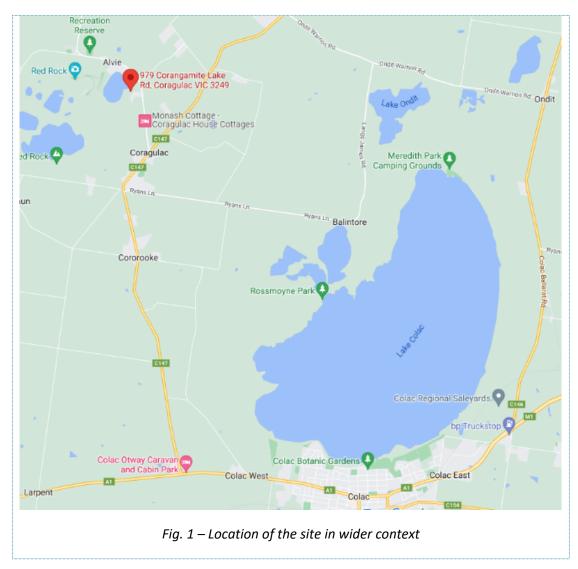
Item: 8.3

PP101/2020-1 - 979 Corangamite Lake Road, Cororooke -Use and Development of Land for Dwelling

| CULTURAL HERITAGE | The subject site is in an area of cultural heritage sensitivity; however, construction of a single dwelling is not a high impact activity under the <i>Aboriginal Heritage Regulations 2018</i> . With regards to use of land for a store (for purposes associated with the applicant's business, rather than ancillary to the dwelling), the land has already been subject to significant ground disturbance. As such, it is considered that the proposal would fall within the exemption under Regulation 58(4) which states, inter alia, that if the whole of the activity area for an activity requiring statutory authorisation has been subject to significant ground disturbance, that activity is not a high impact activity. | | |
|----------------------|---|--|--|
| OFFICER | Ravi Ayyagari CHIEF Anne Howard EXECUTIVE OFFICER | | |
| DIVISION | Executive | | |
| ATTACHMENTS | Plans [8.3.1 - 6 pages] Application Documents [8.3.2 - 14 pages] Draft Permit Conditions (Not Officer Recommendation) [8.3.3 - 4 pages] | | |

1. LOCATION PLAN / AERIAL PHOTO

LOCATION PLAN



AERIAL PHOTO

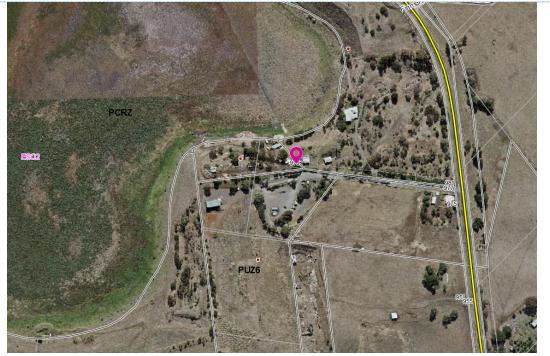


Fig. 2 – Aerial image of the site and surroundings



Fig. 3 - Subject site and surrounding uses

2. RECOMMENDATION

That Council resolves to refuse to grant a permit for the use and development of the land at 979 Corangamite Lake Road, Cororooke (Lots 1, 2 and 3 TP663499W - V/F: 8213/973) for a dwelling, a store and associated works including the retention of a retaining wall, on the following grounds:

- 1. Evidence has not been submitted to demonstrate that the land can be safely developed with a dwelling, having regard to the proximity of the building that is proposed to be converted and extended to a closed landfill site and an operating green waste and materials recovery facility, and the lack of information about potential contamination of the land. As such, the proposal is contrary to clauses 13.04-15 (Contaminated and Potentially Contaminated Land), 13.07-15 and 13.07-1L (Land Use Compatibility) and 65.01 (Approval of an Application or Plan) of the Colac Otway Planning Scheme.
- 2. The proposed use and development of a dwelling is contrary to clauses 02.03-4 (Natural Resource Management), 02.04 (Strategic Framework Plans), 14.01-15 and 14.01-11 (Protection of Agricultural Land) and 16.01-35 (Rural Residential Development) of the planning scheme, which seek to limit new housing development in rural areas by directing housing growth into existing settlements, and to limit rural residential development unless an application adequately demonstrates that a dwelling is genuinely required to carry out a long term agricultural activity having regard to the size of the lot, and the intensity and ongoing nature of the proposed agricultural activity.
- 3. The proposed use and development of a dwelling on the 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, given that:
 - a) It has not been demonstrated that the site is suitable for the use or development, or that the proposal is compatible with adjoining and nearby land uses.
 - b) It has not been demonstrated how the use or development relates to sustainable land management.
 - c) It has not been demonstrated that a dwelling would enhance agricultural production based upon the land unit described in the application.
 - d) It has not been 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.
- 4. The proposed dwelling 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.
- 5. The proposed use of a reflective material on a site clearly visible from Red Rock Lookout would be detrimental to the character of the area, contrary to the decision guidelines of the Farming Zone in Clause 35.07 and to the objectives of Significant Landscape Overlay, Schedule 1 which seeks to ensure development has regard to character of an area.

3. PROPOSAL

Planning permission is sought for the use and development of the land for a dwelling and a store, and associated works including the retention of a retaining wall.

A planning permit is required for the use and development of the dwelling due to the size of the lot being under 40ha, with an additional permit trigger for the dwelling due to its proposed location within 5m of a site boundary and within 100m of land designated as a floodplain. A planning permit is also required because the proposed dwelling would be within 500m of the nearest title boundary of land on which a work authority has been granted under the *Mineral Resources (Sustainable Development) Act 1990* (i.e., the quarry at 955 Corangamite Lake Road shown in figure 3 above, which is operated by the applicant).

It is also proposed to construct a shed, which would be used for the storage of trucks, trailers, an excavator and other items associated with the applicant's quarry business. This building would not be ancillary to the proposed dwelling and is classed as a 'store' under the land use definitions at Clause 73.03 (Land Use Terms) of the planning scheme, i.e.: *"Land used to store goods, machinery, or vehicles."*

Proposed Dwelling

It is proposed to convert an existing building on the site, which was previously used as a ski shack, into the dwelling. The proposed dwelling footprint would extend over an existing detached building to the east of the ski shack, which was previously used as a bathroom and toilet. A local builder working with the applicant has advised that this would entail the following substantial works:

"Remove existing roof structure and south wall.

Remove concrete slab and engage new footing, intermediate beams and concrete slab, including a 3m wide extension to the southern side of the dwelling.

New timber wall frames will be built

The roof will be skillion (pent roof) truss structure pitched at 3deg with timber battens and zinc trimdeck roofing, spouting and roof flashings will be Woodland Grey.

External timber walls will be wrapped in sisolation [sic] foil and clad in Woodland Grey corrugated iron.

Sliding aluminium windows and a combination of cedar and aluminium sliding doors will be fitted R6.5 insulwool batts will be fitted to the ceiling, with 10mm plasterboard ceilings Walls will be fitted with R 2.5 batts clad also in plasterboard."

The builder also provided a letter stating that the ski shack building previously contained kitchen facilities, a bedroom, bathroom and toilet (this is included as part of the application documents in an attachment to this report). It should be noted that there are no Council records showing that planning permission was ever granted for accommodation within the ski shack.

The applicant proposes to undertake extensions to the building, comprising an extension to the rear of the building as part of the living area, a verandah on the north side of the proposed dwelling and a garage/workshop on the western side. The proposed dwelling would have a total area of 208.6sqm.

In addition, the applicant proposes to construct a new shed measuring 22.5m x 15m, with a maximum height of 6.42m to the apex. As noted above, this shed would be used to store the applicant's trucks, trailers, an excavator and other items which he uses for his quarry business. These are currently spread across the site, as seen in the pictures below.

The proposed dwelling would be sited a minimum of 4.75m from the eastern site boundary and 35.5m from the southern boundary. The proposed shed would be located 30m from the western boundary and 12m from the southern boundary.

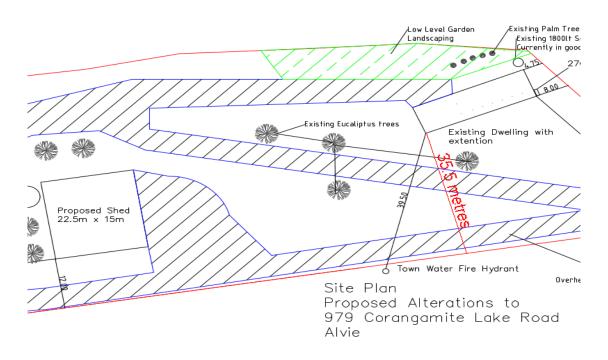
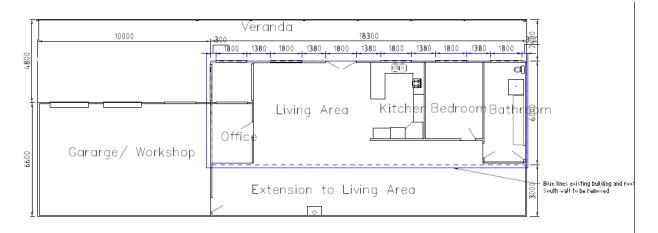
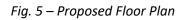
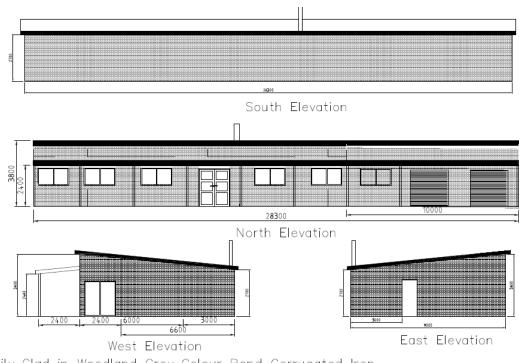


Fig. 4 – Applicant's Site Plan







*Horizontaily Clad in Woodland Grey Colour Bond Corrugated Iron *Roof Zinc Trimdeck *Sliding Aluminium Windows *Combination of Cedar and Aluminium Sliding Windows

Fig. 6 – Proposed Elevations

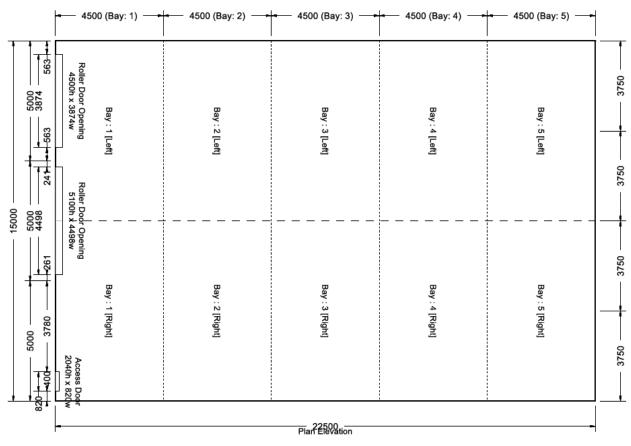
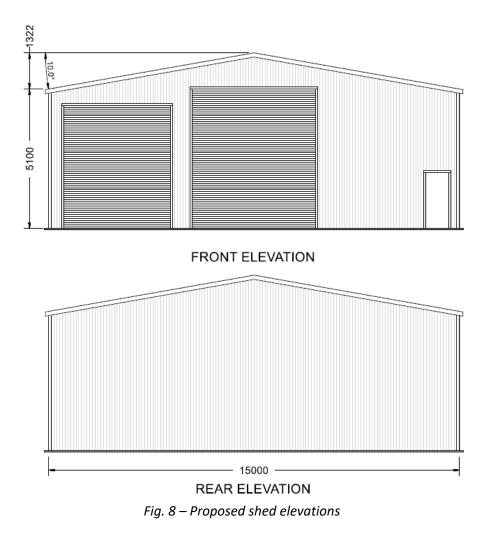
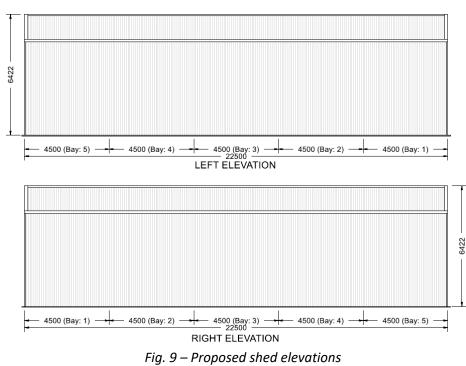


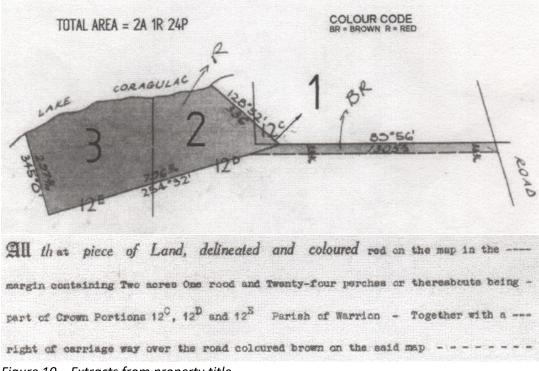
Fig. 7 – Proposed Floor Plan of Shed





4. SUBJECT LAND & SURROUNDINGS

The site is located within the Farming Zone and is known as 979 Corangamite Lake Road. It is covered by Environmental Significance Overlay, Schedule 2 (ESO2), Significant Landscape Overlay, Schedule 1 (SLO1) and partially covered by Land Subject to Inundation Overlay (LSIO) (4.42%).



The site comprises three parcels of land, i.e., Lots 1, 2 and 3 on Title Plan 663499W, as shown below:

Figure 10 – Extracts from property title

The site, which is located on the western side of Corangamite Lake Road, is accessed via a right of way easement on 977 Corangamite Lake Road (shown marked 'BR' on the extract from the Title Plan above). The subject site is elevated near its southern boundary but slopes relatively steeply down towards the northern boundary. There are currently vehicles, trailers, an excavator and other items stored in the open across the site.

As stated earlier, the site contains a building which was previously used as a ski shack when there were water activities at Lake Coragulac. This is located in the lower, northern part of the site. Whilst the applicant stated that the previous owner lived in this building until the applicant purchased the property in 2018, neither Council's rating database nor its planning records show the presence of any lawful dwelling on this land.

The land adjoins Lake Coragulac to the north, which is in the Public Conservation and Recreation Zone (PCRZ). There are properties in the Farming Zone to the east and west, with the former containing a dwelling. Council's green waste and materials recovery facility is located to the south of the subject land. There is also a quarry in close proximity to the south of the subject site, at 955 Corangamite Lake Road (Work Authority WA249). This quarry is currently owned by the applicant, who has verbally advised that it is only used on an occasional basis. The proposed dwelling would be located approximately 160m from the quarry site boundary.

The site is visible from the Red Rock Lookout as shown in one of the photographs below.



Fig. 11 – View of materials on site near the southern boundary



Fig. 12 – *View from the elevated section of the site of the existing building proposed to be converted to a dwelling, with Lake Coragulac (dried up) in the background*



Fig. 13 – Existing building proposed to be converted to a dwelling



Fig. 14 – *View of the existing detached building (previously used as bathroom and toilet) adjacent to the former ski shack*



Figs. 15 and 16 – Vehicles and other items on site



Fig. 17 – Excavator (small) on site



Fig. 18 – View of the site from Red Rock hill top lookout

5. PLANNING SCHEME PROVISIONS

Planning Policy Framework

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:

- 02.01 Context
- 02.02 Vision
- 02.03 Strategic Directions
- 02.04 Strategic Framework Plans
- 11.01-1S, 11.01-1R and 11.01-1L Settlement
- 12.05-2S and 12.05-2L Landscapes
- 13.04-1S Contaminated and Potentially Contaminated Land
- 13.07-1S and 13.07-1L Land Use Compatibility
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 14.01-2S and 14.01-2R Sustainable Agricultural Land Use
- 14.02-15 Catchment Planning and Management
- 15.01-6S and 15.01-6L Design for Rural Areas
- 16.01-3S Rural Residential Development

As stated above, the site is located near a closed landfill site, Council's operating green waste and materials recovery facility and also to a quarry. Matters such as the potential for the land to be contaminated, and land use compatibility issues (including risk from landfill gas to any future sensitive use, such as a dwelling) must therefore be considered prior to such a use or development being allowed.

Clause 13.04-1S (Contaminated and Potentially Contaminated Land) seeks to ensure that contaminated and potentially contaminated land is used and developed safely. Strategies include ensuring that contaminated or potentially contaminated land is or will be suitable for the proposed use, prior to the commencement of any use or development, and protecting a sensitive use (including residential use), from the effects of contamination. [emphasis added] The policy guideline in this clause is as follows:

"Consider as relevant the potential for contamination to impact the proposed use or development through an assessment that is proportionate to the risk, including:

- An assessment in accordance with the National Environment Protection (Assessment of Site Contamination) Measure (National Environment Protection Council, 1999)
- A preliminary risk screen assessment or environmental audit under Part 8.3 of the *Environment Protection Act 2017.*"

Clause 13.07-1S (Land Use Compatibility) seeks to:

- Ensure that use or development of land is compatible with adjoining and nearby land uses.
- Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.
- Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
- Protect existing commercial, industrial and other uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.

Clause 14.01-1-1S (Sustainable Agricultural Land Use), which is a state-wide planning policy relating to the protection of agricultural land, seeks to limit new housing development in rural areas by discouraging the development of isolated small lots in the rural zones with dwellings or other incompatible uses. Clause 14.01-1L, which is the related local policy, seeks to discourage dwellings on lots that do not meet the minimum lot area of the zone unless it is required for an intensive agricultural activity on the land or to achieve the environmental protection of the land.

Colac Otway Shire Rural Living Strategy

The subject site and the surrounding area are not identified as a potential rural living area within this strategic document. The Strategy noted, inter alia, in relation to Coragulac:

 "The settlement is located on the Warrion aquifer. Any future development must minimise groundwater usage and demonstrate that effluent management and disposal will not negatively impact on groundwater quality.

Rural residential development along Corangamite Lake Road/Ryans Lane:

- Given the extent of existing development, fragmented ownership patterns and the lack of obvious constraints, it is recommended that this precinct be rezoned to Low Density Residential.
- It is considered that the proposed rezoning better reflects existing development patterns and will ensure that a clear distinction is drawn between productive agricultural land and residential development.
- The proposed rezoning will strengthen the community and alleviate demand in the region for rural residential development which cannot currently be met by existing land supply in other town's of the Shire other than Colac."



Figure 19 – Extract from the Colac Otway Shire Rural Living Strategy

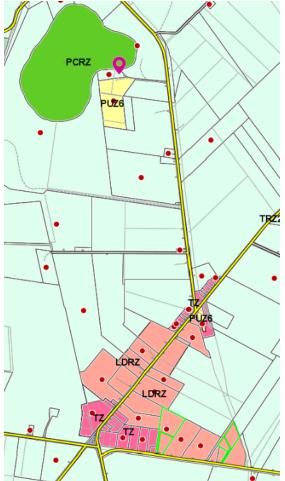


Figure 20 – Subject site (pink pin) in relation to area shown in figure 17 at southern end of image)

The subject site does not lie within the area identified for re-zoning nor in the long-term investigation area. Whilst the constraints of the site - including the surrounding uses, topography and size are acknowledged - it is important land in the wider area is preserved for farming purposes given it is identified as Farmland of Strategic Significance in the *Rural Land Strategy* 2007.

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 store, and under Clause 35.07-4 a permit is required for building and works associated with a dwelling on a lot less than 40ha. There is also a permit trigger if minimum setbacks are not met, as is the case for the proposed dwelling. The relevant setbacks are:

- 20m from a road there is no road abutting, or within 20m of, the subject site.
- 5m from any boundary whilst the proposed shed would not encroach into the specified setback, the proposed dwelling would be within the setback.
- 100m from any dwelling not in the same ownership both the proposed dwelling and the shed would be more than 100m from the nearest dwelling to the north-west.
- 100m away from a waterway, wetland or designated floodplain both the proposed dwelling and shed would be within 100m of Lake Coragulac and land designated as LSIO.

It is not considered that the encroachment into these specified setbacks would cause material detriment to the character of the area. Any views of the proposed dwelling and shed from the road would be restricted. With regards to closeness to Lake Coragulac and the extent of the LSIO, the application was referred to the CCMA which, whilst raising a concern about the increase in the footprint of the building, raised no concerns about flooding and did not object. Notes were recommended for inclusion on any permit issued.

In addition, there is a permit trigger for a building or works associated with accommodation located within 500 metres of the nearest title boundary of land on which a work authority has been applied for or granted under the *Mineral Resources (Sustainable Development) Act 1990*. This is discussed in the assessment section below

The main issues in this case relate to the principle of allowing the proposed dwelling close to the industrial uses (with landfill, quarries and materials recycling etc. all being types of industry) and also the acceptability of allowing the proposed dwelling on a small lot, having regard to the purpose of the Farming Zone and relevant planning policy.

Overlays

Environmental Significance Overlay, Schedule 2 (ESO2) - Lakes, Wetlands and Watercourses

The site is covered by Environmental Significance Overlay, Schedule 2 (ESO2) – Lakes, Wetlands and Watercourses. This overlay recognises that lakes, wetlands and watercourses are a significant environmental resource that should be protected from inappropriate development. The key objectives of this overlay are, inter alia, to protect the quality of water entering lakes, watercourses and wetlands; to prevent erosion of banks, streambeds and adjoining land and the siltation of watercourses, drains and other features; and to consider the intensity of the development of environmentally sensitive land. Under Clause 42.01-2, a planning permit is required for buildings and works associated both with the proposed dwelling and the store.

Under the provisions of this overlay, a planning permit must be referred under Section 55 of the *Planning and Environment Act 1987* (the Act) to the Department of Environment, Land, Water and Planning (DELWP). No response has been received from DELWP to date.

Significant Landscape Overlay, Schedule 1 (SLO1) - Valleys, Hills and Plains Landscape Precinct

The site is covered by Significant Landscape Overlay, Schedule 1 (SLO1) - Valleys, Hills and Plains Landscape Precinct. A key purpose of this overlay is to identify significant landscapes, and to conserve and enhance the character of significant landscapes. Applications under this overlay are required to demonstrate that all new buildings and works are designed and constructed to avoid contrasting shape, colour, size and mass. Structures are required to be sited and screened so that they become an integral part of the visual landscape rather than dominating it, with buildings and works on ridgelines, the slopes of scoria cones and inside craters avoided. It must be demonstrated that there is no alternative suitable site, and that the buildings and works are essential. Under the provisions of this overlay, a planning permit is required under Clause 42.03-2 for buildings and works associated with the construction of the proposed dwelling and shed.

As noted above, the site is visible from Red Rock Lookout and it would be important, in the event a permit is issued against officer recommendation, that any development can become *"an integral; part of the visual landscape"* and that suitable muted, non-reflective materials are used (rather than, as proposed, using zincalume on any building).

Land Subject to Inundation Overlay, Schedule 1 (LSIO1) - Valleys, Hills and Plains Landscape Precinct Only a small portion of the site (4.42%) is within the LSIO, as shown below. A key purpose of this overlay is to identify flood prone land in a riverine or coastal area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority; to minimise the potential flood risk to life, health and safety associated with development; and to protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.

None of the works proposed would be in the area covered by the LSIO. Should fencing be proposed within this area in the future, it would be necessary to establish whether or not it would meet the exemptions listed in the schedule to the LSIO.

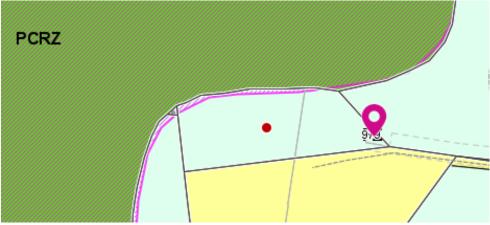


Figure 21 – Extent of LSIO shown hatched

Other relevant provisions

Clause 65.01 (Approval of an Application or Plan) of the Victoria Planning Provisions (VPP) requires a responsible authority, before deciding on a permit application or approval of a plan, to consider as appropriate "any significant effects the environment, <u>including the contamination of land</u>, may have on the use or development" [emphasis added]. It also requires consideration, as appropriate, of "the effect on the environment, human health and amenity of the area", as well as "the orderly planning of the area".

Relevant Planning Scheme amendment

Not applicable

Other Relevant Documents

There are a number of other important documents that provide guidance on assessing proposals where there may be land use conflicts or land contamination. These include:

- Planning Practice Note 30, 'Potentially Contaminated Land' (July 2021). The purpose of this practice note, inter alia, is to provide guidance for planners and applicants on:
 - How to identify potentially contaminated land
 - The appropriate level of assessment of contamination in different circumstances
 - Appropriate conditions on planning permits

This practice note provides advice about the role of the planning system and applies to situations where a planning approval or control applies.

- Planning Practice Note 92 'Managing Buffers for Land Use Compatibility' (March 2021). The purpose of this practice note is to provide guidance on:
 - planning for land use compatibility and the Planning Policy Framework
 - requirements in planning provisions relating to the management of buffers, including:
 - clause 53.10 Uses and activities with potential adverse impacts; and
 - clause 44.08 Buffer Area Overlay

This practice note flags that many industrial and other land uses have the potential to produce off-site impacts, such as noise, dust, odour and hazardous air pollutants. It notes that these impacts are particularly concerning where sensitive uses may be exposed. PPN92 notes that even 'state of the art' facilities are not always able to eliminate the potential for unintended off-site impacts.

The practice note defines sensitive uses as *"land uses considered to be sensitive to emissions from industry and other uses due to their impact on amenity, human health and safety"*, with dwellings included as an example.

- EPA Publication No. 1518 'Recommended Separation Distances for Industrial Residual Air Emissions' (17 March 2013). This is included under Clause 13.07-1S (Land Use Compatibility) for consideration as a policy document. The document provides guidance on what land uses require separation, the types of land uses that are suitable as interface land uses and informs strategic land use planning decisions and consideration of planning permit applications.
- EPA Publication No. 1642: Assessing Planning Proposals Within the Buffer of a Landfill' (16 October 2017). This document is intended to assist planning and responsible authorities under the *Planning and Environment Act 1987* assess planning permit applications and planning scheme amendments that would lead to development within the buffer of an operating or closed landfill.
- EPA Publication No. 788.3 'Siting, Design, Operation and Rehabilitation of Landfills' (August 2015).

6. REFERRALS

Internal Referrals

The application was referred internally to Council's Infrastructure Department and Health Protection Unit. No objections were raised by either. The Infrastructure Department requires permit conditions to be imposed in the event that a planning permit is issued. The Health Protection Unit did not require any conditions to be imposed, on the basis that the building was previously a one-bedroom building and there would be no change to the nominal rooms as a result of the current proposal. The applicant was also referred to Council's Coordinator Landfill Rehabilitation, given the proximity of the site to Council's green waste and materials recovery facility.

External Referrals

The application was referred externally to DELWP under section 55 of the Act, but no response has been received.

The Corangamite Catchment Management Authority (CCMA) was also notified of the application under section 52 of the Act, given the site's proximity to Lake Coragulac. The CCMA noted that lake levels started declining in 1998 and it has been almost empty for the past 20 years. It advised that the water table has dropped considerably in the Red Rock Complex in recent decades, leaving the volcanic lakes such as Coragulac Lake empty. In light of this, the CCMA advised that it does not have any requirements in relation to flooding. However, the CCMA also stated:

"....The Authority notes that an Environmental Significance Overlay – Schedule 2 exists over the entire lot in recognition of the need to protect environmentally significant lakes and wetlands from inappropriate development. The existing building is located within 5 metres of the top of bank of the lake. The decision guidelines of the ESO2 overlay requires (amongst others), consideration of the ability to provide a vegetated buffer of a width of at least 50 metres around lakes or watercourses where no development will take place.

The Authority recognizes the existing building and would not object to the renovation of the building if the Responsible Authority considers it appropriate to allow the building to be used as a dwelling. However, the Authority would recommend that the building envelope be restricted to its current footprint. Increasing the size of the existing development appears to be in conflict with the intent of the ESO2 overlay.

In light of the above information and pursuant to Section 56 of the Planning and Environment Act 1987, the Authority does not object to the granting of a permit, and makes the following comments for Council's consideration:

NOTE:

- 1. The Authority recommend that the building envelope be restricted to its current footprint to protect the lake environment from further development.
- 2. Lake Coragulac has been designated as a waterway under the Water Act 1989. As such, any development within 30 metres of the waterway will require a Works on Waterways Permit from the Corangamite Catchment Management Authority. A permit application can be submitted from the CCMA website at:

https://ccma.vic.gov.au/waterways/flood-advice-works-on-waterways/#workswaterways."

Notice of application was also provided to the Environment Protection Authority (EPA) and Department of Jobs, Precincts and Regions (DJPR) under Section 52 of the Act. The DJPR confirmed it does not object to grant the permit, subject to consideration of EPA Publication No. 1518 (Recommended Separation Distances for Industrial Residual Air Emissions – Guideline) before making a decision.

The EPA has raised concerns about the proximity of the proposal to industrial land uses and provided some comments for Council's consideration. These are discussed in detail below.

7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application in the form of a site notice and letters to adjoining landowners/occupiers. No objections were received.

8. OFFICER'S ASSESSMENT

The key issues for consideration in the determination of this application are whether the proposal is in accordance with land use compatibility planning policies, given the site is in close proximity to industrial land uses; whether sufficient information has been provided to determine there would be no risk from site contamination to the proposed dwelling; and whether the proposal is in accordance with relevant planning policies for the Farming Zone. Amongst the main issues to take into account are the proximity of the proposed dwelling to a closed landfill site and to an operating green waste and materials recycling facility, and the potential for issues such as gas migration and land contamination to be a risk to the occupants of the proposed dwelling. A dwelling is a sensitive use and particular care must be taken to ensure residences are appropriately sited and any risks are properly understood before a planning permit is issued.

Ensuring land use compatibility is fundamental to the objectives of planning in Victoria. Where separation between incompatible uses is not considered as part of the planning process, land use conflict can occur and there can be risk to residential properties.

It is considered that the current proposal does not comply with the following clauses in the Colac Otway Planning Scheme:

- 02.03-4 Strategic Directions Natural Resource Management
- 02.04 Strategic Framework Plans
- 13.04-1S Contaminated and Potentially Contaminated Land
- 13.07-1S and 13.07-1L Land Use Compatibility
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 16.01-3S Rural Residential Development

The EPA has raised concerns about the proximity of the proposal to industrial land uses and provided comments relating to the following for Council's consideration:

- Potential Amenity Impacts
- Proximity to Landfill
- Potentially Contaminated Land
- Stormwater Management

The following assessment has had regard to relevant planning scheme provisions, EPA's publications and Planning Practice Notes, and the information required under these to satisfy both EPA and Council concerns. Despite a number of requests, the applicant has not provided the required information to establish that this site could safely be developed with a dwelling. Whilst it is noted that, as stated in EPA Publication No. 1518, there are no statutory obligations on an industry to supply information about its operations to third parties in respect to separation distances, and the agent of change (i.e. the applicant) is responsible for providing the evidence that demonstrates that a proposed use or development would be acceptable, Council has offered to provide any relevant information that would assist an environmental professional engaged by the applicant to undertake a Preliminary Site Investigation (PSI), as discussed below.

The EPA noted that residential encroachment and intensification near critical industrial facilities could have significant impacts on the health and amenity of future residents, as well as the viability of these industries. As stated earlier, the subject site is adjacent to an operating green waste and materials facility to the south and the EPA has stated that, in its experience, these facilities are high-risk activities. The EPA advised that potential risks include management of waste material, waste stockpiling and operational risks associated with odour, dust and noise. In addition, it is noted that the works authority boundary of the quarry (WA249) is approximately 160m to the south of the proposed dwelling.

The EPA has advised Council to consider its Publication No. 1518 'Recommended Separation Distances for Industrial Residual Air Emissions' *when* assessing the compatibility of the proposed development as per Clause 13.07-1S (Land Use Compatibility) of the planning scheme. EPA publication 1518 provides advice on recommended separation distances between industrial land uses that emit odour or dust, and sensitive land uses.

| Industry | Definition | Recommended | Comments |
|-----------|----------------------------|----------------------------|-------------------------------|
| type | | separation distance (m) | |
| Quarry | Quarrying, crushing, | Without blasting – 250m | DJPR confirmed the quarry |
| | screening, stockpiling and | With blasting – 500m | at 955 Corangamite Lake |
| | conveying of rock | | Road does not involve |
| | | | blasting. As such, the |
| | | | recommended separation |
| | | | distance is 250m. |
| Landfill | Landfills used for the | For closed landfills | Council's Coordinator |
| | discharge or deposit of | If landfill accepted solid | Landfill Rehabilitation |
| | solid wastes (including | inert waste – 200m | advised that the landfill has |
| | solid industrial wastes) | | not accepted waste since |
| | onto land, except | If landfill accepted | 2011. The site received |
| | premises with solely land | municipal (putrescible) | putrescible waste until |
| | discharges or deposits, | waste – 500m | 1997, after which solid inert |
| | used only for the | | wastes were accepted up |
| | discharge or deposit of | | until 2011. |
| | mining wastes, and in | | |
| | accordance with the | | Given that the landfill site |
| | Extractive Industries | | accepted putrescible waste |
| | Development Act 1995 or | | in the past, it is considered |
| | the Mineral Resources | | that the recommended |
| | (Sustainable | | separation distance is |
| Matariala | Development) Act 1990 | | 500m. |
| Materials | Collecting, dismantling, | Case by case | In this case, the separation |
| recovery | treating, processing, | | distance to be determined |
| and | storing, recycling, or | | to the satisfaction of the |
| recycling | selling used or surplus | | EPA. |
| facility | materials | l | |

The EPA noted that, even with good pollution technology and practice, there may still be unintended emissions affecting sensitive land uses beyond the boundary of the source premises.

Section 9 of EPA Publication No. 1518 includes information regarding variations from a recommended separation distance. This section states that, where a variation from the recommended separation distance is sought, approval should not be given by the planning authority or other responsible authority until the relevant land use separation issues have been resolved to the satisfaction of the EPA. It notes that "in most cases, the party seeking variation from the recommended separation distance will be the proponent of the proposed land use change, and that proponent will be seeking to reduce the separation distance". Section 9.1 of this publication states that it should be the responsibility of the 'agent of change' (being the applicant) to provide evidence to the planning authorities or other responsible authorities that a variation from the recommended separation distances is appropriate. In this case the applicant was advised that a variation from the recommended separation distances could be sought and that it is the responsibility of the applicant to provide evidence to the Council to support a variation from the recommended separation distance. The applicant did not formally seek a variation from the recommended separation distance in the application and also did not address the land use separation issues to the satisfaction of the EPA or planning officers. As such, it is considered that Council does not have adequate information to allow the use and development of the subject land for a dwelling.

Table 4 under section 9.2 of publication 1518 lists the criteria that must be considered during the assessment of a site-specific variation to the recommended separation distances. Section 9.2 states that:

"Separation distances seek to mitigate the consequences of IRAEs [industrial residual air emissions]. Any proposal to vary from a recommended separation distance should detail why the consequences of IRAEs are such that variation from the recommended separation distances is justified. Table 4 provides a guide to the criteria that must be considered during the assessment of site-specific variation to the recommended separation distances. Consideration of these criteria is a prerequisite for site-specific variation, but not a guarantee that a variation is justified. Additional information may be required in many cases, including sufficiently detailed data to enable dispersion modelling.

| Criteria | Explanation |
|----------------------------------|--|
| Transitioning of the industry | Existing industry has formally indicated that it will transition out of an area and over a specified timeframe. |
| Plant equipment and operation | The industrial plant and equipment have an exceptionally high standard of emission control technology. |
| Environmental risk assessment | An environmental risk assessment of IRAEs has been completed that demonstrates a variation is justified. |
| Size of the plant | The plant is significantly smaller or larger than comparable industries. |
| Topography or meteorology | There are exceptional topographic or meteorological characteristics which will affect dispersion of IRAEs. |
| Likelihood of IRAEs | Particular IRAEs are either highly likely or highly unlikely to occur. |

Figure 22 – Table 4 from EPA Publication No, 1518

Despite a number of requests being made, the applicant has not provided any information to address the site-specific criteria for Council and the EPA to determine if a site-specific variation can be considered as part of the proposed development.

The EPA also noted that residential encroachment and intensification near a critical industry can impact on the viability of that operation. It must be noted that, when there is an inadequate

separation distance between an industry and sensitive land uses, subsequent remedial action to alleviate off-site effects may be uneconomical or impractical.

Proximity to Landfill

As stated above, as well as currently operating as a green waste and materials recovery facility, the site at 977 Corangamite Lake Road is a closed landfill. The application does not address the proximity of the subject land to either.

The EPA has drawn Council's attention to EPA Publication No. 1642 'Assessing Planning Proposals within the Buffer of a Landfill' which provides information and advice on assessing planning permit applications that would result in development within the buffer of an operating or closed landfill. More specifically, it advises on the level of assessment a planning or responsible authority should require to inform its decision, and recommends a staged, risk-based approach.

For closed landfills, buffers are used to manage the risk of landfill gas. Buffers separate landfills and 'sensitive land uses' and are used to manage the risk of landfill gas from operating closed landfills and amenity impacts from operating landfills, including odour, noise, dust and litter. EPA Publication No. 1642 states that, in the context of landfill gas, any building or structure is considered sensitive, because of the risk of explosion or asphyxiation. (Councillors may recall the case where a methane gas leak from a disused landfill site in Cranbourne in 2008 led to a requirement for millions to be paid in compensation by Casey Council and the Environment Protection Authority.)

EPA Publication No. 788.3 'Siting, Design, Operation and Rehabilitation of Landfills' states, also notes the importance of buffer distances:

"Appropriate buffer distance must be maintained between the landfill and sensitive land uses (receptors) to protect those receptors from any impacts resulting from a failure of landfill design or management or abnormal weather conditions. These failures might constitute discharge from the site of potentially explosive landfill gas, offensive odours, noise, litter and dust. Features that could be adversely affected by landfilling operations include surface waters, buildings and structures.... Buffer areas are not an alternative to providing appropriate management practices, but provide for contingencies that may arise with typical management practices."

Section 4.3 of EPA Publication No. 1642 and section 8 of EPA Publication No. 788.3 provide guidance for measuring buffers for closed landfills. These documents state that buffers should be measured from the sensitive land use to the edge of the nearest landfill cell. Council's Coordinator Landfill Rehabilitation has advised that the landfill cell boundaries are not certain, as the site was not constructed according to EPA Best Practice Environmental Management (BPEM) at the time of landfill. However, the Coordinator also advised that, as a component of rehabilitation preparation, Council will be undertaking an extent of waste geotechnical assessment to identify the location, depth and types of waste in each cell, which is scheduled for the 2023/24 financial year. Given the landfill cell location is uncertain, the boundary of the landfill premises should be used, which is the common property between the subject site and 977 Corangamite Lake Road. Given the landfill site previously accepted putrescible waste, it is considered that there should be a buffer distance of 500m from the common property line between the subject site and 977 Corangamite Lake Road.

It is known that there is landfill in the southern section of 977 Corangamite Lake Road (Lot 1 TP338721), though it is to be established whether there is landfill within the northern section now

occupied by the green waste and material recovery facility. The Coordinator Landfill Rehabilitation has advised that there have been anecdotal accounts that some waste has been found near the materials recovery facility.

The proposed shed would be located only 12m from the northern boundary of 977 Corangamite Lake Road and the dwelling would be only 35.5m from that boundary. As noted above, whilst the landfill site is closed, the dwelling would be 160m from the known area of landfill within 977 Corangamite Lake Road. It is understood that closed landfills can potentially discharge landfill gas for more than 30 years after they last accept waste, which was in 2011. EPA Publication No. 788.3 notes that:

"8.2.1 Buffers and measurement

The post-closure buffers are set to manage landfill gas impacts, including the risk of explosion and/or asphyxiation. Landfill gas potential risks remain for at least 30 years post-closure.

Buffers are measured from the sensitive land use to the edge of the closest cell. All cells, including closed cells, need to be considered in calculating buffers. For sites that cannot demonstrate the above, the premises boundary is the point of measurement.

For old landfill sites, the original plans for the development of the landfill - or, in their absence, the relevant property titles - should be used to determine the original boundary of the landfill premises.

8.2.2 Buffer distances and encroachment

Proposed developments and any works within the recommended landfill buffer can pose a safety risk by potentially providing preferential pathways for landfill gas migration, or providing an environment where landfill gases can accumulate to dangerous levels. All buildings and structures should be considered, including:

- buildings and structures used for sensitive or non-sensitive uses
- change of use..,

Responsible planning authorities need to be provided with sufficient information by the proponent to satisfy them that the proposed new development or rezoning will not be adversely impacted by its proximity to the landfill site."

Section 6 of EPA Publication No. 1642 provides guidelines for a standardised, risk-based approach for the planning or responsible authority to determine the appropriate level of assessment for landfill gas risks. Section 6.2 suggest that a four-step approach is required to determine the level of information required to be submitted as part of an application for a sensitive use. An overall score determines the level of information, which is based on the proposal type, landfill age, landfill type and landfill age. Whilst Council's Coordinator Landfill Rehabilitation advised that the age of the landfill is not known, it is considered that the overall score would fall between 9-25 and the level of assessment required would be a landfill gas risk assessment to be submitted as part of the application. [The scoring is based on: 1-8 – no further assessment required; 9-25 – landfill gas risk assessment required; 26-45 – section 53v audit required.] The flowchart below shows the recommended approach to the assessment of the risk of landfill gas impacts.

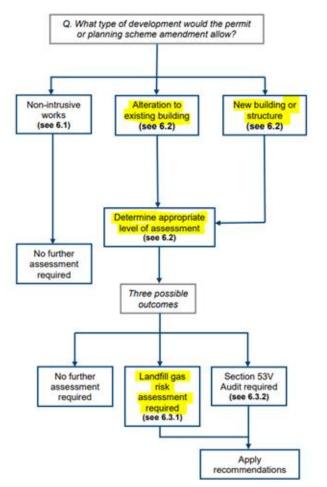


Fig. 23 – Overview of recommended approach to assess the risk of landfill gas impacts

The applicant did not submit this assessment for Council or EPA's consideration, to determine if the proposed development would be acceptable within the buffer of the landfill site.

It is noted that the most recent monitoring report from January 2022, which provided details of methane and carbon dioxide concentrations at each Landfill Gas Bore found that there has been exceedance of the EPA Action Levels in Carbon Dioxide levels at certain locations. The monitoring data from 2018-2021 and the January 2022 monitoring event, confirms that current landfill gas levels are at concentrations that are not elevated and have been consistent over the past four years.

Given the absence of a landfill gas risk assessment for the proposed development and its risk to exposure to landfill gas, it is considered that the proposed location of the dwelling would not be appropriate and, as such, the proposed development should not be allowed. If Councillors decide to allow the proposal against officer recommendation, it is considered imperative that a condition be imposed to require a landfill gas risk assessment prior to commencement of use of the land for residential purposes.

The information below is an excerpt from section 6.3 of EPA publication 1642, which provides details on landfill gas risk assessment.

Who can conduct a landfill gas risk assessment?

A landfill gas risk assessment should be conducted by a professional environmental consultant with demonstrated experience in conducting landfill gas risk assessments for developments near landfills. <u>The planning permit applicant or planning scheme proponent</u> <u>should engage this person</u>. [emphasis added]

What is a landfill gas risk assessment?

A landfill gas risk assessment should include:

- 1. a conceptual site model, based on the characteristics of the landfill and proposal and the likely pathways of gas migration and exposure at the proposed development site.
- 2. sufficient environmental monitoring from the proposal site to inform the assessment and enable the environmental risks to be characterised (magnitude and likelihood of hazard)
- 3. an assessment of the environmental risk posed by the landfill to the proposed development site in accordance with a recommended methodology (see below)
- 4. site-specific recommendations for further action (including mitigation measures for the buildings and structure at the proposed development site if necessary).

What is the landfill gas risk assessment process?

EPA recommends that landfill gas risk assessments follow the methodology in either:

- Assessing risks posed by hazardous ground gases to buildings (Construction Industry Research and Information Association (CIRIA), Publication 665:2007); or
- Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings (British Standard 8485:2015).

These two publications propose essentially the same methodology using different terminology.

What are the potential outcomes of a landfill gas risk assessment? A landfill gas risk assessment should recommend:

- 1. what, if any, mitigation measures are required
- 2. what, if any, further assessment is required (such as monitoring or the need to complete a section 53V Audit).

How long does a landfill gas risk assessment take?

A landfill gas risk assessment will typically take 1 - 24 months (as outlined in the relevant standards CIRIA Publication 665:2007). The time required will depend on the type and frequency of environmental monitoring required to inform the assessment.

Potentially Contaminated Land

The site is in proximity to land uses where high potential for contamination activities exists/existed:

- Adjacent to closed landfill site.
- Adjacent to green waste and materials recycling station.
- Quarry to the south. Mining and extractive industries have high potential for contamination.

Because of the presence of the landfill and materials recycling close to the site, there is potential for contamination of the subject land. As noted earlier in this report, Clause 13.04-1S (Contaminated and Potentially Contaminated Land) seeks to ensure that contaminated or potentially contaminated land is or will be suitable for the proposed use, prior to the commencement of any use or development.

It must be noted that the planning authority (Council in this instance) must adhere to the requirements of Planning Practice Note 'Potentially Contaminated Land' (PPN30) and State Environment Protection Policy 'Prevention and Management of Potentially Contaminated Land'.

Consistent with the obligations under section 60 of the *Planning and Environment Act* 1987, Council is required to consider any significant effects the environment may have on the proposed use or development, or the use or development may have on the environment. This places a clear obligation on Council as the Responsible Authority to satisfy itself that the land is suitable for the intended use.

Planning Practice Note 30 'Potentially Contaminated Land' provides guidance, including how to identify if land is potentially contaminated. It notes that potentially contaminated land is defined in Ministerial Direction No.1 'Potentially Contaminated Land' and Clause 73.01 (General Terms) of the Victoria Planning Provisions (VPP) as land:

- a) used or known to have been used for industry or mining;
- b) used or known to have been used for the storage of chemicals, gas, waste or liquid fuel (other than minor above-ground storage that is ancillary to another use of the land); or
- *c)* where a known past or present activity or event (occurring on <u>or off the land</u>) may have caused contamination on the land. [emphasis added]

Among the land uses listed as having high potential for contamination are "landfill sites/waste depots" and "materials recycling and transfer stations".

PPN30 states that if insufficient information is available, Council may need to request further information from the applicant:

"When should additional information be required from the applicant?

If there is insufficient information to determine the current and historical uses of land and its surrounds following the review of information sources in Table 1, a site history review (as described in Appendix 2) may be commissioned to gather further information. The site history review may be obtained through a request to the proponent or applicant under s54 of the Planning and Environment Act 1987. A request for a site history review must be made prior to a decision on a planning scheme amendment or permit application, to ensure that a determination on whether land is potentially contaminated can be reached. If the review of the current and historical use of the land and surrounds shows a history of non-contaminating activities and there is no other evidence or suspicion for contamination, further investigation is not required."

Council has requested the applicant to provide this information. However, no information has been received to help it to understand whether or not the subject land is contaminated.

Table 2 of PPN30 notes that landfill sites and materials recycling and transfer stations are land uses with high potential to contaminate land; as such there is a potential risk of off-site contamination or

polluted groundwater migration. The EPA suggested Council may therefore wish to request that the applicant undertake a Preliminary Site investigation (PSI). It advised that the PSI should gather sufficient information on the history of the site, which can then be assessed against the land uses or activities which might indicate potential contamination and ultimately should contain sufficient information for Council to determine the need for an environmental audit. The PSI should also include any possible sources of off-site contamination from neighbouring land uses, both current and historical. The EPA advised, in line with relevant guidance documents, that the PSI should be prepared by an environmental professional with qualifications to the satisfaction of the responsible authority and be compliant with the provisions for a Preliminary Site Investigations in Schedule B2 of the *National Environment Protection (Assessment of Site Contamination Measure 1999)* (as amended 2013). PPN30 states:

"When does the environmental audit system apply to a planning permit application?

For permit applications relating to land that has been identified as potentially contaminated, the responsible authority <u>must</u> seek appropriate environmental assessment....

Where a proposal involves both buildings and works and establishment of a sensitive use, the environmental audit requirement must be met prior to whichever of these commences first.

Where EAO requirements do not apply, s 60 of the Planning and Environment Act 1987, and clauses 65 and 13.04-15 of the VPP provide a basis for the responsible authority to consider the effect of potential contamination on a proposed use or development. At the time of the decision, the responsible authority <u>must</u> determine whether the land is potentially contaminated and identify the appropriate level of assessment." [emphasis added]

The applicant was advised on a couple of occasions that a PSI should be undertaken to establish if the subject site is contaminated. Whilst the applicant did not provide a PSI, he advised that the Council would have the information given it contracts a consultant to undertake groundwater and gas monitoring on the adjacent site. The applicant was advised that Council could help provide any relevant information to their environmental professional when undertaking a PSI, but that it is the applicant's (as the agent of change, proposing a sensitive use on the subject land) responsibility to satisfy Council that the subject site is free from contamination, as shown in the extract below from PPN30 outlining the roles and responsibilities of parties. This information has not been part of the application.

Appendix 3: Roles and responsibilities in managing contaminated and potentially contaminated land

Applicants, proponents, landowners and occupants

- Provide adequate information on the existing or potential for contamination to have future adverse
 effects, to enable a planning or responsible authority to make an informed decision, including through
 undertaking required environmental investigations, and comply with requirements of the planning
 scheme and planning approvals.
- Comply with contaminated land duties under the *Environment Protection Act 2017*, including the duty to notify and duty to manage contaminated land.

Planning and Responsible Authorities

Administering the planning scheme

A responsible authority must consider the potential for land to be contaminated when proposing land use changes (including changes to permitted land uses or through rezoning proposals) and when assessing planning permit applications and ensure that the site is suitable for its proposed use.

Enforcement of planning scheme

Where a responsible authority becomes aware that an occupier is failing to comply with requirements set out in the planning scheme or planning permit, enforcement procedures under the *Planning and Environment Act 1987* are available. These may include planning infringement notices, enforcement orders or prosecution through the Magistrates Court.

Outside remit

Managing risks from contaminated land where no planning approval or control applies, for example, risks to an existing or as-of-right use.

Figure 24 – Extract from Planning Practice Note 30 'Potentially Contaminated Land'

Should Council decide to allow the proposal, a condition would need to be imposed requiring that, prior to the commencement of any works, a PSI must be undertaken and submitted to the Council to determine if the site is contaminated. If the PSI states that the site is contaminated then an environmental audit would need to be undertaken, which would also list any remediation works. PPN30 states that requiring an environmental audit as a condition of a permit may be acceptable if the responsible authority is satisfied that the land can be made suitable for its proposed use or development. In this case, it is considered that there is not sufficient information available to say whether the site is contaminated or not; what level of contamination there may be; and that, if contaminated, that the land could be made suitable for a dwelling.

Stormwater Management

The subject site is located adjacent to Lake Coragulac. Any construction activity should follow best practice guidelines in order to prevent the discharge of sediments and other pollutants to the stormwater system and waterways. Council's Infrastructure Department has reviewed the proposal and recommended conditions requiring best practice stormwater management in accordance with 'Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control' (EPA) and also that any runoff from the development be taken to a legal point of discharge.

Farming Zone

The subject site currently is not used for any significant agricultural activity, being used mostly to store vehicles, trailers, excavators and other items which it is understood are generally used in association with the applicant's quarry business, as seen in the photographs above. The activities on the site came to Council's attention as part of a complaint.

The applicant has stated that the subject site is not of sufficient size for it to be used for productive farming of any nature and that the proposed dwelling would not have any effect on the loss or fragmentation of productive agricultural land. Whilst this may the case, it should be noted that Clause 14.01-1S seeks to limit any new housing development in rural areas by discouraging development of isolated small lots in the rural zones from use for dwellings. Clause 14.01-1L also discourages dwellings on lots that do not meet the minimum lot area of the zone unless it is required for an intensive agricultural activity on the land. The application does not propose any intensive agricultural activity. It is considered that the application provided by the Colac Otway Planning Scheme.

In response to the decision guidelines of the Farming Zone:

General issues

Whilst the applicant did not submit a Land Capability Assessment (LCA), Council's Health Protection Unit did not raise any objection to the proposal on the basis that the existing building had one bedroom and there would be no increase to bedrooms/nominal rooms as part of the proposal. On that basis, there is no requirement to upgrade the existing septic system.

However, planning officers have some concerns about the lawfulness of any previous residential use of the ski shack, and the potential issue of effluent disposal near the lake (noting also the CCMA's comments regarding the potential conflict with ESO2 through the extension of the existing building). A septic tank has been shown on the plans, which the applicant states is operating satisfactorily, but no further detail of wastewater management is known.

Agricultural issues and the impacts from non-agricultural uses

As noted earlier in this report, the subject site is not currently used for any agriculture purposes of note and, given the undulating topography and existing use of the land, it is unlikely the site possesses any agricultural values. It is acknowledged that the subject site is located adjacent to a closed landfill site and an operating materials recovery and recycling facility, and considered that any use of land for agriculture would be unviable.

Dwelling issues

With regard to 'dwelling issues' it is considered that, for the reasons outlined in this report, allowing a dwelling on such a small site cannot be justified on planning policy grounds.

The concerns about the proximity to a closed landfill site, and an operating green waste and materials recovery facility, have been discussed in detail earlier in this report. Concerns about allowing a sensitive use close to those industries, with the inherent risk potentially posed by gas migration and contamination (which have not been satisfactorily addressed by the applicant in the application) are central to the officer recommendation to refuse this application.

As stated above, the subject site is also located approximately 160m from the quarry located to the south of the site at 955 Corangamite Lake Road. Under the provisions of the Farming Zone, there is a requirement to consider the potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust and vibration from an existing extractive industry operation if a dwelling is located within 500 metres of the nearest title boundary of land on which a work authority has been granted under the *Mineral Resources (Sustainable Development) Act 1990.*

EPA Publication No. 1518 recommends a separation distance of 500m from a quarry within which there is blasting, and a separation of 250m from a quarry without blasting. As noted above, there is a separation distance of 160m between the building it is proposed to convert to a dwelling and the quarry at 955 Corangamite Lake Road, which is operated by the applicant. Given the small scale of this quarry; the fact there is no blasting; the siting of the proposed dwelling at a low-level down by the lake; and the fact that vehicles from the quarry would not pass the proposed dwelling, it is not considered that the quarry would materially impact on the dwelling.

Environmental issues

The proposed dwelling would be sited close to the top of bank of the lake, whilst the proposed shed would be located on the higher part of the site. The applicant proposes to use the existing septic system. Council's Infrastructure Department has recommended conditions to ensure stormwater would be appropriately managed.

As noted above, planning officers have some concern that, whilst it is claimed that the ski shack had a bedroom, there is no evidence that this was lawful from a planning perspective. There is related some concern about effluent disposal on the site, with limited information provided with the application (which states there is an existing functioning septic tank on the site). It is considered that further clarification of the existing situation should be sought in the event a planning permit is issued.

Design and siting issues

Whilst the proposed dwelling would be located on the lower area of the subject site adjacent to the lake, there would be a clear line of sight of the proposed dwelling from the Red Rock hilltop lookout, as shown below. The proposed shed would be located on a higher part of the site and would be even more prominent when viewed from the lookout.

It is noted that the site currently appears untidy, but also noted that the lawfulness of the on-site storage has not been demonstrated (e.g., through a Certificate of Compliance application). Whilst, if the storage use is lawful, there could be a potential argument that a shed would help improve the site's appearance (with a requirement for storage to be within the shed), this argument does not hold for the proposed dwelling.

It is accepted that the ski shack building exists, though it is considered that the description of works provided by the applicant indicates that the existing building would largely be demolished and rebuilt. Given the visibility of the site from Red Rock Lookout and the location of the subject land within a Significant Landscape Overlay, it is recommended that, in the event a planning permit is issued against officer recommendation, the use of muted, non-reflective materials is required (and the proposed use of zincalume is not agreed).



Figure 25 – View of site from Red Rock Lookout

Significant Landscape Overlay, Schedule 1 (SLO1) - Valleys, Hills and Plains Landscape Precinct The landscape character objective under this overlay seeks to protect landscape features including volcanic cones and significant views within the Shire. As stated above, the proposed buildings would be visible from the Red Rock hilltop lookout. As also discussed above, in the event a planning permit is issued against officer recommendation, it is recommended that appropriate materials be used to minimise the impact of development on the landscape. The submission and approval of an appropriate landscaping scheme, to mitigate the impact of the proposed development, should also be required.

Environmental Significance Overlay, Schedule 2 (ESO2) - Lakes, Wetlands and Watercourses The CCMA has reviewed the proposal and commented as follows:

The Authority understands the application relates to renovations and extension to an existing building to turn it into a habitable dwelling. The extension will involve a 44 square metre veranda on the north side (lake side) of the building, a 66 square metre garage workshop on the west side of the building and a 3m wide extension on the south side of the building.

Flood information available to the Authority comes from the Victorian Flood Data Transfer Project, pre-2000, and is considered coarse in nature. It indicates an approximate 1% AEP flood level of 121.4 metres AHD. LiDAR land elevation data indicates the existing dwelling site is at approximately 123.7 to 124.2 metres AHD and is therefore not expected to be impacted by lake flooding for flood events up to the 1% AEP flood event. Please note this assessment is approximate only.

The lake has in the past held water, as evidenced by the development of the water-skiing club facilities. However, lake levels started declining in 1998 and has been almost empty for the past 20 years. The water table has dropped considerably in the Red Rock Complex in recent

decades, leaving the volcanic lakes such as Coragulac Lake empty. It is questionable whether lake flooding is therefore likely to be an issue into the future.

In light of the above, the Authority would not have any requirements in relation to flooding.

The Authority notes that an Environmental Significance Overlay – Schedule 2 exists over the entire lot in recognition of the need to protect environmentally significant lakes and wetlands from inappropriate development. The existing building is located within 5 metres of the top of bank of the lake. The decision guidelines of the ESO2 overlay requires (amongst others), consideration of the ability to provide a vegetated buffer of a width of at least 50 metres around lakes or watercourses where no development will take place.

The Authority recognizes the existing building and would not object to the renovation of the building if the Responsible Authority considers it appropriate to allow the building to be used as a dwelling. However, the Authority would recommend that the building envelope be restricted to its current footprint. Increasing the size of the existing development appears to be in conflict with the intent of the ESO2 overlay.

In light of the above information and pursuant to Section 56 of the Planning and Environment Act 1987, the Authority does not object to the granting of a permit...":

It is noted that the CCMA recommended that the building envelope be restricted to its current footprint to protect the lake environment from further development and, whilst raising no objection, the CCMA noted that increasing the size of the existing development appears to be in conflict with the intent of the ESO2 overlay. The CCMA noted that a Works of Waterway Permit would be required for any works within 30m of the waterway.

Other Matters

The applicant has constructed a retaining wall to the rear of the existing building, as shown in the photograph below. It is considered that retrospective planning permission is required for the construction of this wall, as it is considered it constitutes buildings and works within SLO1. Should Councillors resolve to allow the proposed dwelling against officer recommendation, it is considered that a condition should be imposed to ensure that a suitably qualified engineer check the stability of this wall prior to the commencement of the dwelling use. Any required remediation works would also need be undertaken before the residential use commenced.



Figure 26 – Existing retaining wall

As stated earlier in the report, the subject site consists of three parcels of land on one title. If Council proposes to issue a permit for the proposed development, it is recommended that a condition be imposed requiring the consolidation of all three parcels.

Summary

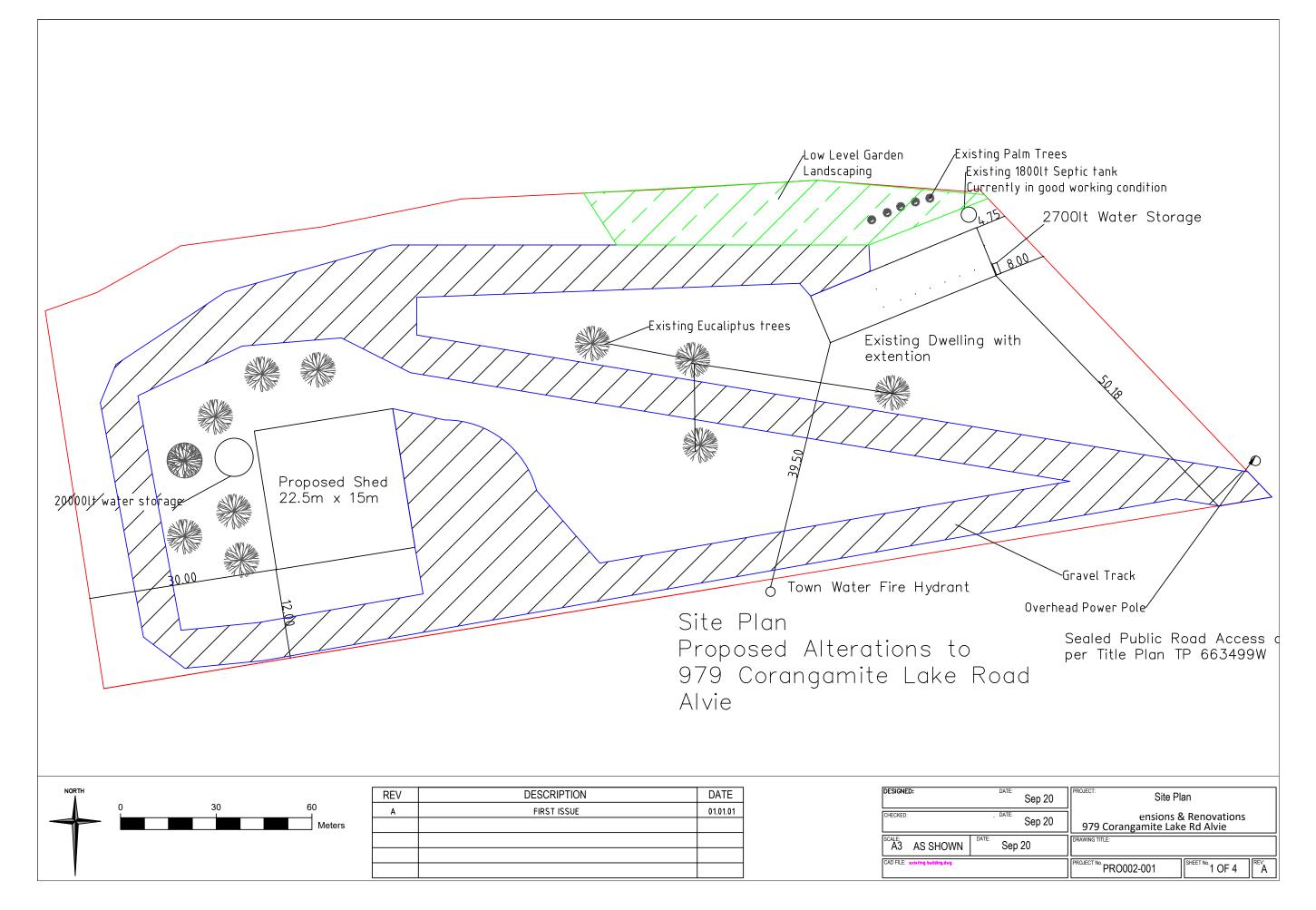
In summary, it is considered that allowing a dwelling in close proximity to a closed landfill and operating green waste and materials recovery facility would be contrary to planning policy and guidance, and to EPA guidance. Evidence has not been submitted that demonstrates that allowing the proposed sensitive use would be acceptable, in terms of the potential risks to the health and amenity of the residents of the subject site, as well as the continued viability of the operating industry.

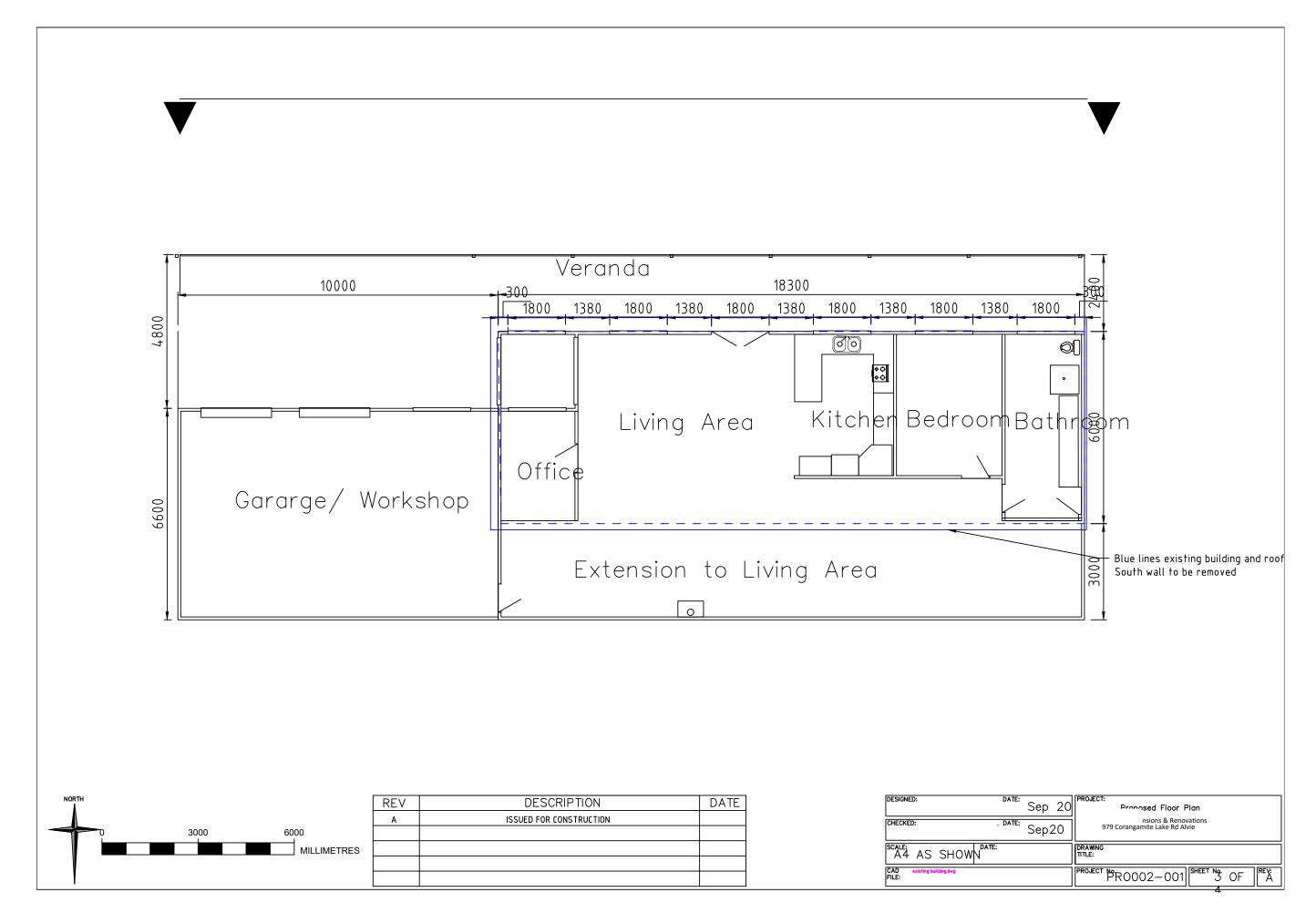
The applicant, as the agent of change (proposing a sensitive use close to the closed landfill site and the operating green waste and materials recovery facility), has not demonstrated that a permit should or could reasonably be issued, having regard to matters such as contamination and risk of landfill gas migration.

The proposal is also contrary to planning policies which seek to discourage the development of isolated small lots in rural zones from use for dwellings.

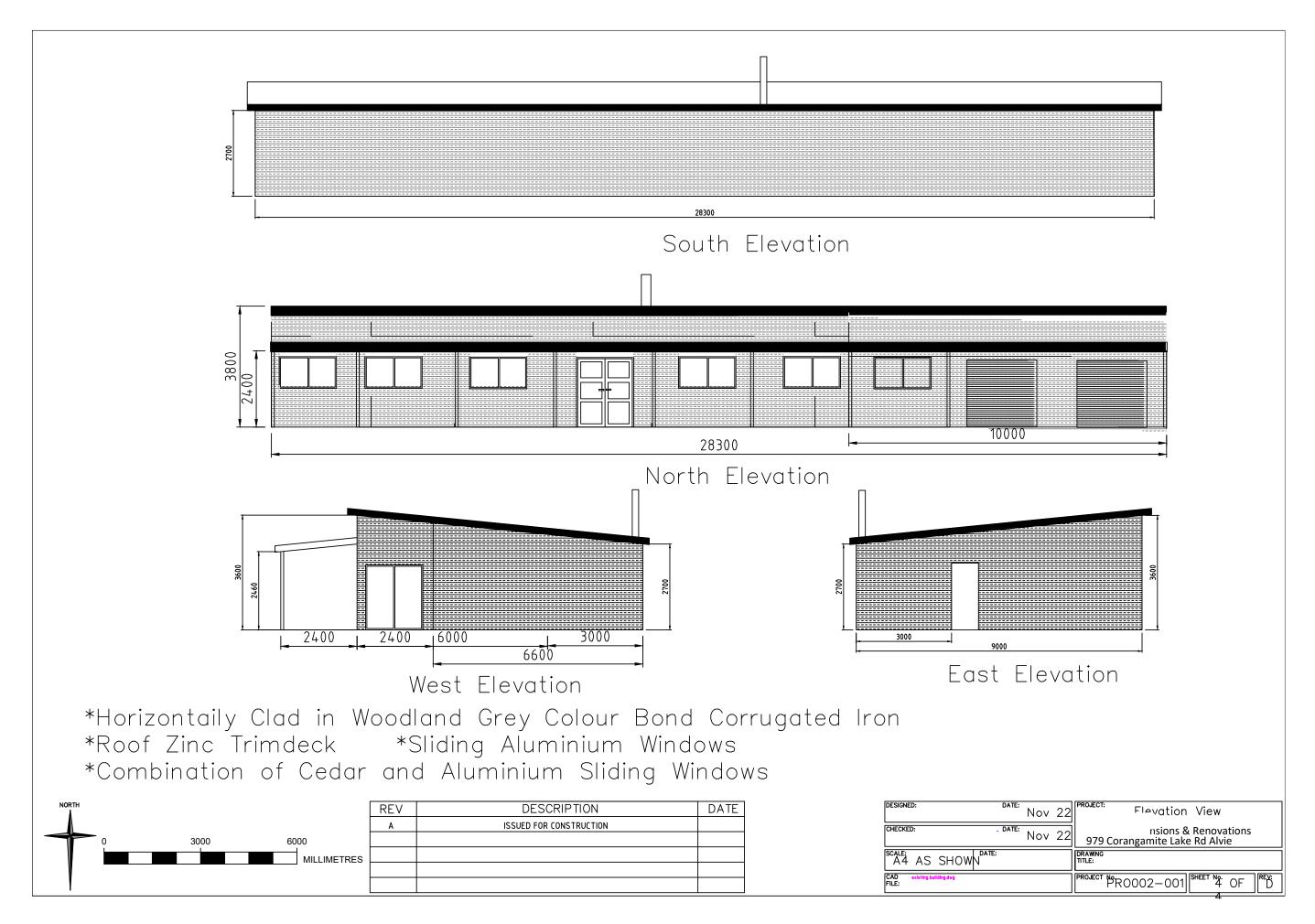
9. OFFICER DIRECT OR INDIRECT INTEREST

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





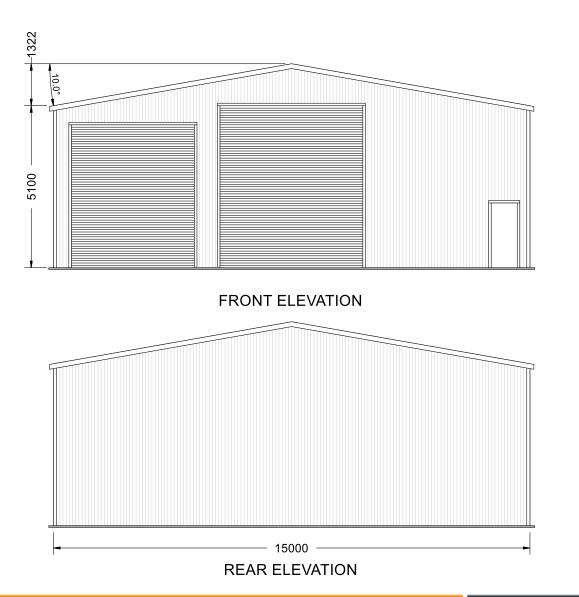
Attachment 8.3.1 Plans

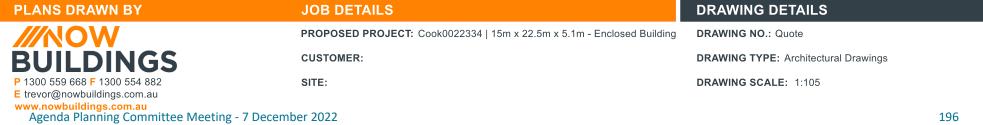


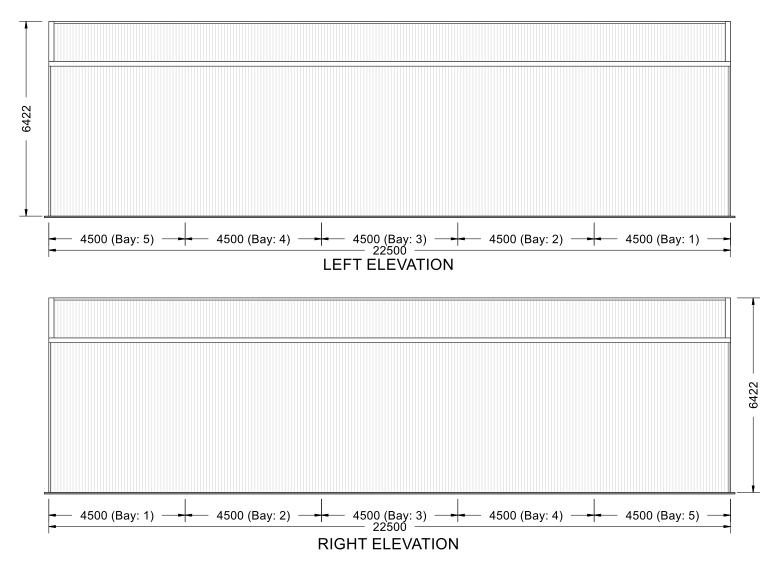
Attachment 8.3.1 Plans

| | 4500 (Bay: 1)• | - - 4500 (Bay: 2) ──- | ┿╾─── 4500 (Bay: 3) ──► | ╡ | - - ── 4500 (Bay: 5) ──- | |
|----------------------|--|-------------------------------|------------------------------|-----------------|----------------------------------|--------|
| 50000 3874 563 | Bay : 1 [Left] Roller Door Opening 4500h x 3874w | Bay : 2 [Left] | Bay : 3 [Left] | Bay : 4 [Left] | Bay : 5 [Left] | 3750 |
| | Roller Door Opening 5100h X 4498w | | | | | 3750 - |
| 5000 | ng | Bay : 2 [Right] | Bay : 3 [Right] | Bay : 4 [Right] | Bay : 5 [Right] | 0 3750 |
| 820++ 400+ | Access Door 2040h x 820w | | Plan 22500 Plan Elevation | | | 3750 |

Attachment 8.3.1 Plans







| PLANS DRAWN BY | JOB DETAILS | DRAWING DETAILS | |
|---|--|---|-----|
| WOW | PROPOSED PROJECT: Cook0022334 15m x 22.5m x 5.1m - Enclosed Building | DRAWING NO.: Quote | |
| BUILDINGS | CUSTOMER: | DRAWING TYPE: Architectural Drawings | |
| P 1300 559 668 F 1300 554 882 E trevor@nowbuildings.com.au | SITE: | DRAWING SCALE: 1:110 | |
| www.nowbuildings.com.au Agenda Planning Committee Meeting - 7 Decemb | per 2022 | | 197 |

D20/94910

| | Office Use Only | | | | 3 |
|--|---|--|---|---|--|
| | VicSmart? | | | YES | NO |
| | Specify class of Vics | Smart application: | | | |
| Colac Otway | Application No.: | | | Date Lodged: | 1 1 |
| S H I R E Planning Enquiries Phone: (03) 5232 9400 imail: inq@colacotway.vic.gov.au Veb: www.colacotway.vic.gov.au | Application for a Planning Permit If you need help to complete this form, read MORE INFORMATION at the back of this form. | | | | |
| | available for public the purpose of ena and Environment | c viewing, including elec abling consideration and Act 1987. If you have an | tronically, and copie d review as part of a ny concerns, please | and personal information es may be made for inter planning process under contact Council's plann | rested parties for the <i>Planning</i> |
| | • | ed with an asterisk (*) | | | |
| Clear Form | If the space provi Click for further inf | ided on the form is ins | sufficient, attach a | separate sheet. | |
| | | iormation. | | | |
| Application Type s this a VicSmart application?* | No Yes If yes, please specify v VicSmart class or clas | | | | |
| | A If the application falls into one of the classes listed under Clause 92 or the schedule to Clause 94, | | | | |
| | | ans into one of the class | ses listed under Clai | use 92 or the schedule to | o Clause 94, |
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| re-application Meeti | it is a VicSmart ap | oplication. | ses listed under Clar | use 92 or the schedule to | o Clause 94, |
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| as there been a re-application meeting ith a Council planning ficer? | ng | If 'Yes', with whom' | | | o Clause 94, |
| as there been a re-application meeting ith a Council planning ficer? | O No O Yes | If 'Yes', with whom' | ?: | | o Clause 94, |
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The Proposal

A 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

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

building permit to renervate building or dwelling on site, there For rectad outside new roof inon, new windows. change from forming to rural living. this dwelling has been here since 1954 and known as the ski shack on take coraqular there are Four other dwelling built after this property that are on small acceage, nex Door 981 lake coranganite road build in an old awarry owner tony mahorey and its Farming zone aswell. 🖉 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. A You may be required to verify this estimate. Cost \$ 30 000 Insert '0' if no development is proposed. If the application is for land within **metropolitan Melbourne** (as defined in section 3 of the *Planning and Environment Act 1987*) and the estimated cost of the development exceeds \$1 million (adjusted annually by CPI) the Metropolitan Planning Levy **must** be paid to the State Revenue Office and a current levy certific e **must** be submitted with the application. Visit www.sro.vic.gov.au for information.

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

Existing Conditions

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.

| one bed | noom o | welling | using | land Fo | r graving |
|--------------------|---------|------------------------------------|----------|-----------|-----------|
| goats or worth the | vite, p | arking " F dollars, nours, i | y trucks | and en | e por |
| security | atter | hours, i | ts a we | Il tree c | overed |
| 3.5 ACRE | block | 50 C | | | |

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

Title Information

Encumbrances on title *

Does the proposal breach, in any way, an encumbrance on title such as a restrictrive 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.)

O No

O 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.

Application for a Planning Permit | Combined

Agenda Planning Committee Meeting - 7 December 2022

| Applicant and Owner | Details 🔳 | | | 20 M | AY 2020 |
|--|-------------------------------|-----------------------|---------------|--|---------------------------|
| Provide details of the applicant and the | ne owner of the land | i. | | | |
| Applicant * | Name: | | STREET, | | |
| The person who wants the permit. | Title: mR | First Name: | | Surname: | |
| | Organisation (if a | applicable); | | | |
| | Postal Address: | | If it is a | P.O. Box, enter the details h | nere: |
| | Unit No.: | St. No.: | St. N | lame: | |
| | Suburb/Locality: | | | State: | Postcode: |
| Please provide at least one contact | Contact information | on for applicant OR c | ontact pers | on below | |
| phone number * | Business phone | 12 | | Email: | |
| | Mobile phone: | | | Fax: | |
| Where the preferred contact person for the application is different from | Contact person's Name: | details* | | | Same as applicant |
| the applicant, provide the details of that person. | Title: mR | First Name: | | Surname: | |
| | Organisation (if a | pplicable): | | | |
| | Postal Address: | | If it is a | P.O. Box, enter the details h | nere: |
| | Unit No.: | St. No.: | St. N | lame: | |
| | Suburb/Locality: | | | State: | Postcode |
| Owner * | | | | | |
| The person or organisation | Name: | | | | Same as applicant |
| who owns the land | Title: MR | First Name: | | Surname: | |
| Where the owner is different from the | Organisation (if applicable): | | | | |
| applicant, provide the details of that person or organisation. | Postal Address: | A STATE STATE | If it is a | P.O. Box, enter the details I | here: |
| | Unit No.: | St. No. | St. N | Name | |
| | Suburb/Locality: | | | State: | Postcode: |
| | Owner's Signatu | ure (Optional): | | Date:// | 6/5/2020 |
| | | | | | day / month / year |
| Information | Contact Councilia a | looping department t | e die ouee th | | to for his application of |
| | obtain a planning pe | | o discuss li | he specific requirement | ts for this application a |
| Is the required information provided? | O Yes O No | | | | |
| Declaration 1 | | | | | |
| This form must be signed by the a | pplicant * | | | | |
| Remember it is against the law to provide false or misleading information, which could result in a | | | | nformation in this applic tified of the permit app | |
| | | | | HE THE REAL PROPERTY AND | |

| D20/94910 | AC OTWAS SHIRE | 160 ¹¹¹ | Attachment 8.3.2 Application Documents |
|-----------|----------------------------|---------------------------------------|---|
| Checklis | t 🖬 2020 🖬 t | Filled in the form completely? | |
| Have you: | and a second second second | Paid or included the application fee? | Most applications require a fee to be paid. Contact Council |

| 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) |
| If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it i issued by the State Revenue Office and then cannot be used). Failure to comply means the application is void |
| Completed the relevant council planning permit checklist? |
| Signed the declaration above? |
| |

Need help with the Application?

If you need help to complete this form, read More Information at the end of this form.

For help with a VicSmart application see Applicant's Guide to Lodging a VicSmart Application at www.planning.vic.gov.au

General information about the planning process is available at www.planning.vic.gov.au

Assistance can also be obtained from Council's planning department.

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: ing@colacotway.vic.gov.au

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

Agenda Planning Committee Meeting - 7 December 2022



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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958 Page 1 of 1

VOLUME 08213 FOLIO 973

Security no : 124086887463J Produced 01/12/2020 03:06 PM

LAND DESCRIPTION

Lots 1,2 and 3 on Title Plan 663499W. PARENT TITLE Volume 06021 Folio 121 Created by instrument A684929 10/02/1959

REGISTERED PROPRIETOR

Estate Fee Simple Sole Proprietor

AR056106A 24/05/2018

ENCUMBRANCES, CAVEATS AND NOTICES

of

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 TP663499W FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

DOCUMENT END

.

| TITLE PLAN | | EDITION 1 | TP 663499W |
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Attachment 8.3.2 Application Documents One 01. ENCUMBRANCES REFERED 1 11625 Assiant Regimer of Feb ruary UT ETHI 1511.13E **the** JC right of carriage way over the road coloured brown day of ROAD thousand nine hundred and firty-nine. 160 correction 3249 Quany have ENTRY PRINT Tenth 1934 2.14 821.15 :1 303:482. THE MENSIAGNEN IS ARE IN LUMB -0 SLATA AL Dated the 1 36 1, 24 = 04 1 56 F CORA FLILAC RC 5.H.S. 204

Reference: Planning permit application PP101/2020-1

Subject land: 979 Corangamite Lake road, Alvie 3249

Proposal: Development of land, comprising a change of use to a dwelling.

I write in relation to the letter received requesting more information by statutory planner.

The general points that this document responds to are:-

1. The building permits being sought are a Planning Permit and a Building Permit.

The building permit will be sought to renovate and extend the existing ski shack into a dwelling. A plant storage shed is proposed to be built over time, 22.5m x 15m @, 5.1m-6.0m high.

The subject land is Rural Farming Land and I'm applying to have the existing ski shack, changed to Class 1A single dwelling.

Scope of Works

The dwelling will consist of a single bedroom, office, entry with a double car garage and household workshop. The proposed dwelling area is 164.7sq.m. the garage workshop area is 66sq m and verandah is 44 sq m.

A new verandah will be built on the north side of the existing dwelling.

To renovate the existing building.

Remove existing roof structure and south wall

Remove concrete slab and engage new footing, intermediate beams and concrete slab., including a 3m wide extension to the southern side of the dwelling.

New timber wall frames will be built as per attached floor plan and installed to AS Building code

The roof will be skillion (pent roof) truss structure pitched at 3deg with timber battens and zinc trimdeck roofing, spouting and roof flashings will be Woodland Grey.

External timber walls will be wrapped in sisolation foil and clad in Woodland Grey corrugated iron.

Sliding aluminium windows and a combination of cedar and aluminium sliding doors will be fitted

R6.5 insulwool batts will be fitted to the ceiling, with 10mm plasterboard ceilings

Walls will be fitted with R 2.5 batts clad also in plasterboard.

All electrical, plumbing and wet area works will be in accordance with Australian Standards and comply with the Building Code.

Painting to all internal and external surfaces.

The machinery shed will be a steel frame structure with colourbond cladding to the walls in Woodland Grey.

The roof will be zincalum.

Storm water will be directed into a 20,000 litre tank to be used for watering and to serve as a fire fighting supply.

2. The rest of the land will be used for:-

- Storage of equipment in shed.
- Grazing of small animals like goats.
- Planting of native vegetation
- Large grass lawn area.

Please find attached:-

3.Copies of the plans for the dwelling

- Existing floor plan
- <u>Proposed floor plan</u>
- <u>Elevation plan</u>
- Site plan including landscaping

4. Farming zone

The existing dwelling has town water and an electicity connection. Please refer to the attached bills for both.

Access is referred to in point 7.

The sewage is an existing septic tank, 1800lts in good working order.

The property has a public fire hydrant situated within 60m of the dwelling.

An existing bore will also provide water for improving and developing vegetation to screen the site and dwelling in general. A sprinkler system will be installed to help keep the site green during the fire season.

5. In regards to providing a written statement in reference to Clause 35.07.5

Re Clause 35.07.05

Statement that the proposal is in line with the Planning and Environment Act.

I propose that the works and development which will be undertaken will be an improvement to the property in general.

The piece of land isn't of a significant size for it to be used for productive farming of any nature.

The soil quality is rated poor as is the evident around the Waste Disposal Centre and nearby properties. The land comprises of mainly scoria wombat.

There are currently three neighbourhood properties whose land adjoins the lake area. I propose to keep the landscape and the natural environment in keeping with those properties.

6. I have provided a copy of the Title Plan as requested in point 6

7. Legal access

Legal access to the property is off Corangamite Lake Road, Alvie, the same road that services the Colac Otway Shire's Waste Disposal Centre. The road is bitumen sealed. The property is accessed through a locked boundary gate on the north side of the Waste Disposal Centre. The same side road is shared by neighbours whose house is located on the north (RHS) of the road. The house on the south east corner of the road is owned by

Attached is a copy of the Title which identifies the road as "Quarry Road, Coragulac, also Public access road."

8. Overlays. Significant landscape overlay, valleys, hills and planes precinct.

- a. The building doesn't have any contrasting shapes as it is basically an oblong shape.
- b. The colours proposed as listed are Woodland grey walls for the dwelling and shed with zinc roofing. The size of either dwelling is not seen as excessive.

c. In relation to how essential the building works are, the response is that I am aiming to enhance the site by restoring and improving the historic ski shack.All works are proposed to blend in with the landscape.In regards to the reference that the building is located on a higher elevation, the building is actually located on the lower section of the north side cutting.

9. Waste water disposal. Land Capacity Assessment (LCA)

re Disposal of waste water, the existing septic tank is currently connected also to waste water from the ski shack.

I have had discussions with from the Colac Otway Shire's Health Department who advised me that the existing 1,800 litre septic is adequate for a single bedroom dwelling. asked if the septic was working well at the present and I assured his that it was.

informed me during our discussion on Monday 28th September @ 3.15pm that I would not need to apply for a septic tank permit.

In conclusion the above information has been collated and research in reference to other land holders and operating facilities e.g. the waste disposal centre next door and is proposed to not conflict with any of the Shire Planning Act. Please read this document with the letter sent to

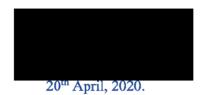
Deputy Municipal Building Surveyor, 20th April, 2020, a copy of this is attached.

For any further discussion or clarification please email

List of documents attached

- Existing floor plan
- Proposed floor plan
- Elevation plan
- Site plan
- Title plan
- Plan (Document TP 663499W)
- Certificate of title
- Original plan
- Copy of power account
- Copy of Barwon Water account

Domestic and Commercial builder DBU9393 CBU 6398 ABN 49630830583



Attention: Deputy Municipal Building Surveyor Re: unlawful use of a Public Assembly Building as a dwelling at 979 Corangamite Lake Road, Coragulac.

has engaged me to communicate on his behalf regarding The above matter.

Firstly, I would like to convey the fact that is fully prepared to comply with the Building Regulation and obtain a building permit to renovate the building as a class 1A facility. He will apply for a Planning Permit if required.

is willing to engage the services of Building Surveyor as an independent consultant to assist with guidance and permit.

The original building consisted of a kitchen, bedroom, bathroom, and toilet with town water and power connected. The applicant wants to keep the building to the existing dimensions. The desired renovation is to create a single bedroom dwelling complete with ensuite bathroom, laundry, kitchen and living area. The roof pitch will remain the same.

I have inspected the wall and roof structure and found it to be a solid hardwood (O.B.H) structure with most members rating F17 or better. Deflection is an absolute minimum with solid engagement of plate to stud. The roof is also solid and well engaged.

As I was the builder for the double storey house next door and have been building for 50 years, mainly in this area I have a full comprehension of the landscape and environment of this area.

It is a unique environment with the existing structure perched on the east side of the Red Rock Reserve and on the south east edge of the former lake (the lake has not had water in it for many years).

The reason why occupation of the building as a Class 1A dwelling should be considered are as follows;

- There are four existing dwellings that have been built around the Coragulac Lake area and go right to the lake boundary. This was the first one built in 1954.
- The small parcel of land (3.5 acres) would not be of use for farming purposes. The land would be cared for if someone was living there. proposes a garden, planting trees and generally caring for the Lake and the surrounding environment. He has already sprayed thistles, repaired fences and cleared rotten trees.
- Converting the building into a dwelling would save a historic landmark. The building had been unused and left neglected for many years. If left for a further period it would become another local eyesore for the tourists and locals who frequent Red Rock, much the same as the old Mobil service station on the left-hand side of the highway when entering Colac from the east.
- quarry business operates from a property located only 500m away and by living nearby he is providing security for his assets. These include truck, excavators and other general machinery.

In closing, I wish to point out that is a person of great character and heavily involved in this community. He is a life long volunteer of the Cororooke Fire Brigade, the Cororooke Hall Committee, the Alvie Football club and many other services in this district that requires assistance.

is looking forward to working through this situation with representative of the Colac Otway Shire to achieve the best outcome,

Regards

Domestic and Commercial builder DBU9393 CBU 6398 ABN 49630830583



RE: 975 Corangamite Lake Road, Alvie, 3249.

Dear

Firstly, thanks for the site visit which has clarified a few issues.

has engaged an engineer to provide computations for the retainer wall.

I have followed up regarding the 'impact of landfill gas on the proposed dwelling and potential contamination.' I have spoken with from the EPA who confirmed the report provided was a Statutory report and the EPA wasn't seeking any action and had no objections to the building.

, an agricultural/environmental consulting engineer confirmed that the information required is already available to you, as the Colac Otway Shire already contracts a company to undertake ground water and gas monitoring on the site.

I contacted Council employee, who confirmed she would provide you with these reports. Can you please confirm that you have received them?

Do you require any further information on that issue ?

Once has the engineer computations, we can send you the final response to the outstanding issues that you have listed.

Regards

<u>PP101/2020-1 – 979 CORANGAMITE LAKE ROAD, CORAGULAC</u> <u>Draft Conditions (Not Officer Recommendation)</u>

That Council resolves to Grant a Permit for the Use and Development of the Land for a Dwelling and Store at 979 Corangamite Lake Road, Coragulac (Lots 1, 2 and 3 TP 663499W, V/F 8213/973), subject to the following conditions:

Amended Plans

- 1. Prior to the commencement of use and/or development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans, which must be drawn to scale with dimensions, must be generally in accordance with the plans submitted with the application, but modified to show:
 - a) The deletion of zincalume from the proposal, with the use of muted, non-reflective materials only shown on the plans

Endorsed Plans

2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

Consolidation

3. Prior to the initial occupation of the dwelling hereby permitted, unless an alternate timeframe is agreed in writing by the Responsible Authority, Lots 1, 2 and 3 TP 663499W, V/F 8213/973 must be consolidated under the provisions of the *Subdivision Act* 1988 to the satisfaction of the Responsible Authority, and a copy of the title following consolidation must be submitted to the Responsible Authority.

Dwelling Infrastructure

- 4. Prior to the initial occupation of the dwelling hereby permitted, the following must be provided to the satisfaction of the Responsible Authority:
 - a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
 - b) The dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.
 - c) 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.
 - d) The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

Access

5. Prior to the initial occupation of the dwelling, the driveway must be constructed to an allweather standard and with a minimum width of 3 metres, to the satisfaction of the Responsible Authority.

Drainage

- 6. All runoff from stormwater, including overflow from water storage, must be taken to a legal point of discharge to the satisfaction of the Responsible Authority.
- 7. The site must be developed and managed to ensure there is no stormwater pollution through the contamination of runoff by chemicals, sediments, wastes or pollutants in accordance with 'Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control' (EPA) at any time during construction or operation, to the satisfaction of the Responsible Authority.

Retaining Wall

8. Prior to the initial occupation of the dwelling hereby permitted, the permit holder must engage a suitably qualified engineer to assess the condition and stability of the existing retaining wall to the rear of the dwelling, and to prepare a report on the condition of that wall. The report, which must include details of the existing condition of the wall and recommendations to address construction issues (if any), must be submitted to the Responsible Authority. The permit holder must implement any recommendations in the report prior to the initial occupation of the dwelling, unless otherwise approved in writing by the Responsible Authority.

Landfill Gas Risk Assessment

- 9. Prior to the commencement of works, the permit holder must to the satisfaction of the Responsible Authority:
 - a) engage a professional environmental consultant with demonstrated experience in the assessment of landfill gas risks to conduct an assessment of the potential for landfill gas to impact on the development and prepare and submit to the Responsible Authority the scope of the proposed risk assessment.
 - b) upon approval of the scope of the risk assessment by the Responsible Authority, have the consultant conduct the risk assessment and prepare a report to be submitted to the Responsible Authority which contains the consultant's opinion as to any potential risk associated with landfill gas beneath the land and any recommendations for the management or monitoring of the gas. The consultant must provide an opinion on whether an audit is required under the *Environment Protection Act*.
 - c) implement any recommendations of the risk assessment report.
 - d) if the risk assessment report recommends an audit under the *Environment Protection Act*:
 - i. engage an environmental auditor appointed under the *Environment Protection Act* to prepare and submit to the satisfaction of the Responsible Authority a scope of the proposed audit which includes consideration of both landfill gas and odour risk.
 - ii. have the environmental auditor conduct an audit under the *Environment Protection Act* in accordance with the agreed scope.
 - iii. implement any recommendations of the audit report.
 - e) if the risk assessment report or audit report requires ongoing management or monitoring, the owner must enter into an agreement under section 173 of the *Planning*

and Environment Act 1987 with the Responsible Authority requiring the implementation of any ongoing requirements.

The owner/operator under this permit must pay the reasonable costs of the preparation, execution and registration of the section 173 agreement.

Contamination

10. Prior to the commencement of works, the permit holder must engage a suitably qualified environmental consultant to undertake a Preliminary Site Investigation. The Preliminary Site Investigation must be submitted to the Responsible Authority prior to any works being undertaken on site.

The permit holder must implement any recommendations of the Preliminary Site Investigation.

The Preliminary Site Investigation must recommend if an environmental audit is required to be completed. If an environmental audit is required it must be undertaken in accordance with the requirements of condition 9 of this permit.

- 11. Prior to the commencement of works, if required by the Preliminary Site investigation undertaken in accordance with condition 9 of this permit, the permit holder must provide:
 - a) An environmental audit statement under Part 8.3, Division 3 of the *Environment Protection Act* 2017 which states that the site is suitable for the use and development allowed by this permit; or
 - b) An environmental audit statement under Part 8.3, Division 3 of the Environment Protection Act 2017 which states that the site is suitable for the use and development allowed by this permit if the recommendations made in the statement are complied with.
- 12. If an environmental audit statement is required, all recommendations of that statement must be complied with to the satisfaction of the Responsible Authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental consultant or other suitable person acceptable to the Responsible Authority.

Compliance sign off must be in accordance with any requirements in the environmental audit statement recommendations regarding verification of works.

On-site Storage

13. All equipment, goods, or motor vehicles used in conjunction with the occupation of a resident of the dwelling on the site must be kept in the store hereby permitted. No external storage of such items may occur externally on the site.

Landscaping

- 14. Prior to the commencement of development, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan, which must be drawn to scale with dimensions, must show:
 - a) a survey (including botanical names) of all existing vegetation to be retained and/or removed

- b) details of surface finishes of pathways and driveways
- c) a planting schedule of proposed trees, shrubs and ground covers, including botanical names, common names, sizes at maturity, and quantities of each plant, to mitigate the visual impact of the proposed development from Red Rock outlook.

An in-ground irrigation system is to be provided to all landscaped areas.

All species selected must be to the satisfaction of the Responsible Authority.

15. Prior to the initial occupation of the dwelling hereby permitted, or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must thereafter be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

Expiry

16. This permit will expire if one of the following circumstances applies:

- a) The development is not commenced within three years of the date of this permit.
- b) The development is not completed, and use is not commenced, within five years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act* 1987, an application may be made to the Responsible Authority to extend the periods referred to in this condition.

Notes:

- 1. This permit does not authorise the commencement of any building works. Prior to the commencement of development, it will also be necessary to obtain building permits for the proposed buildings.
- 2. At least seven (7) days before any works start, an Asset Protection Permit must be obtained from Council. Council infrastructure must be maintained in a safe condition during the construction period. Any damage caused by these works to Council assets must be reinstated to the satisfaction of the Council prior to the completion of works.

<u>CCMA</u>

- 3. The Authority recommends that the building envelope be restricted to its current footprint to protect the lake environment from further development.
- 4. Lake Coragulac has been designated as a waterway under the Water Act 1989. As such, any development within 30 metres of the waterway will require a Works on Waterways Permit from the Corangamite Catchment Management Authority. A permit application can be submitted from the CCMA website at https://ccma.vic.gov.au/waterways/flood-advice-works-on-waterways/#workswaterways



Item: 8.4

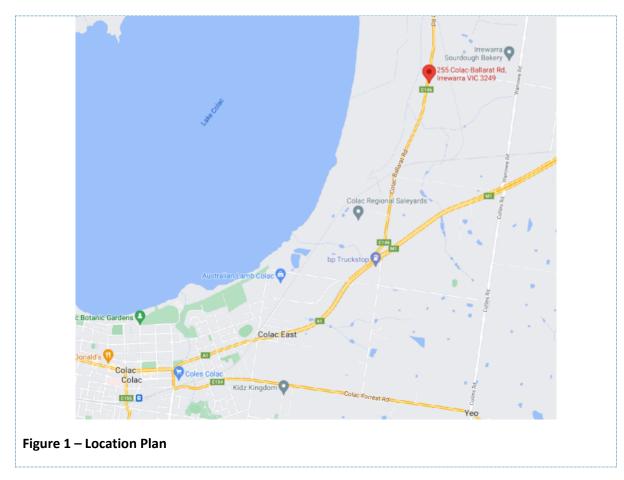
PP188/2021-1 - 255 Colac Ballarat Road, Irrewarra - Use and Development of a Dwelling

| ADDRESS AND PROPERTY DETAILS | 255 Colac Ballarat Road, Irrewarra Lot 2 TP863303 V/F: 6847/270 Parish of Irrewarra | APPLICATION NUMBER | PP188/2021-1 |
|--|---|-------------------------------|--|
| PROPOSAL | Use and Development o | f a Dwelling | |
| PERMIT TRIGGERS | Clause 35.07-1 - Farming Clause 35.07-4 - Farming Section 2 (permit require | Zone – Building a | e land for a dwelling. Ind works associated with a |
| TRIGGER FOR DETERMINATION BY COMMITTEE | Officer recommendation in the Farming Zone | n for refusal of an | application for a dwelling |
| ZONE | Farming Zone (FZ) Adjacent Transport Zone 2 (TRZ2) | OVERLAYS | None |
| COVENANTS | Crown Grant relating to easement (Note – there are two lo 6847/270) | | g rights, and a drainage ots 1 and 2 TP863303 V/F: |
| CULTURAL HERITAGE | | pact activity unde | age sensitivity. A single er the <i>Aboriginal Heritage</i> anagement Plan (CHMP) is |
| OFFICER | Louise Lunn (consultant) | CHIEF EXECUTIVE OFFICER | Anne Howard |
| DIVISION | Executive | | |
| ATTACHMENTS | Application Form [Title Information [Site Plan [8.4.3 - 2 | 8.4.2 - 3 pages] | |

- 4. Dwelling Plans [8.4.4 8 pages]
- Irrewarra Estate Ltd v Colac Otway VCAT Decision [8.4.5 30 pages]
- Draft Permit Conditions (Not Officer Recommendation) [8.4.6 2 pages]
- 7. Applicant's Planning Report [8.4.7 20 pages]
- 8. Map A Property Numbering [8.4.8 1 page]
- 9. Map B Existing Dwellings and Lot Layout [8.4.9 1 page]
- 10. Area Analysis information [8.4.10 13 pages]

1. LOCATION PLAN / AERIAL PHOTO

LOCATION PLAN





AERIAL PHOTOS





Figure 4 – Subject Lot

2. RECOMMENDATION

That the Planning Committee resolves to Refuse to Grant a Permit for the Use and Development of the Land for a Dwelling at 255 Colac Ballarat Road, Irrewarra (Lot 2 TP863303, V/F 6847/270 Parish of Irrewarra), on the following grounds:

- 1. The proposal is contrary to clauses 02.03-1 (Settlement), 02.03-4 (Natural Resource Management), 02.04 (Strategic Framework Plans), 14.01-15 and 14.01-1L (Protection of Agricultural Land) and 16.01-35 (Rural Residential Development) of the Colac Otway Planning Scheme, which seek to protect high quality agricultural land and to limit rural residential development unless an application adequately demonstrates that a dwelling is genuinely required to carry out a long term agricultural activity having regard to the size of the lot, and the 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) It has not been demonstrated that a dwelling would enhance agricultural production based upon the land unit described in the application.

- *b)* The proposal has the potential to limit the operation and expansion of adjoining and nearby agriculture uses.
- c) 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 Lot 2 TP863303 for a dwelling. There are two lots on the title - Lot 1, which has an area of 30.44 ha, and Lot 2 (the subject lot) which has an area of 10.0614 ha, giving an overall area of approximately 40.5 ha.

The subject lot, Lot 2, is within that part of the shire in which the minimum area for which no planning permit is required to use land for a dwelling is 80 ha. A permit is therefore required in this case for the proposed use of the land, with the lot being around 70ha less than the size at which a dwelling would be 'as of right'.

Lot 1 is within the area in which the minimum area for which no permit is required to use land for a dwelling is 40 ha (see plans below):







Figure 5 – Minimum lot sizes for a dwelling to be 'as of right'

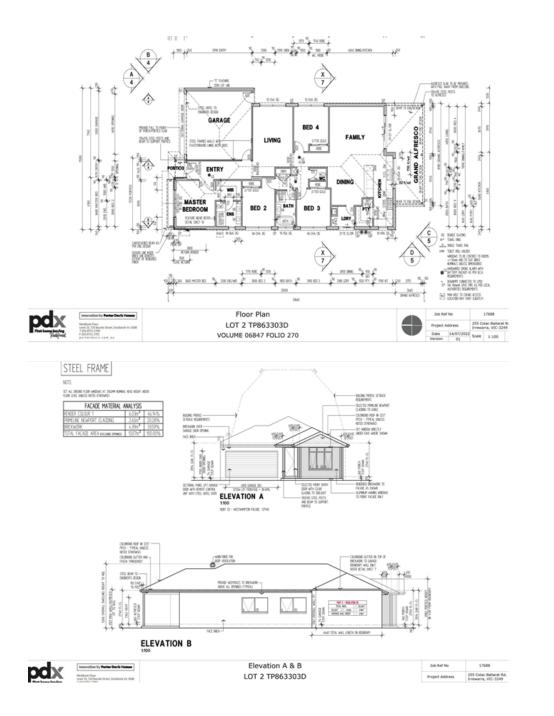
The proposed dwelling would be sited 100.5 metres from the Irrewarra School Road property boundary to the north and 112.24 metres from the Colac-Ballarat Road boundary to the west. The dwelling would be single-storey and contain three bedrooms, an open plan family/kitchen/dining area, a separate living room, a garage and an alfresco area. A 6 metre wide driveway is proposed from Irrewarra School Road to the dwelling.

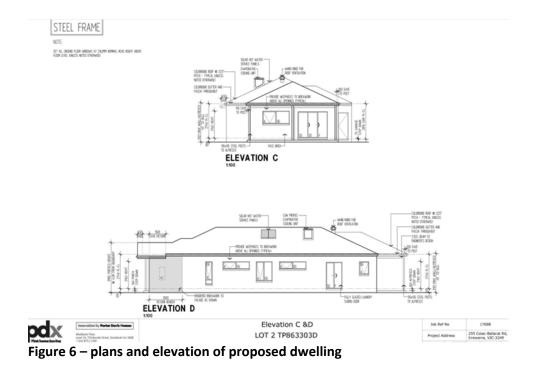
The applicant has advised that the preferred house location is based on the fact there is a sandy loam bank that provides an elevated position on the generally undulating site. The submitted Planning Report states that Lot 2 is the most suitable site, having the highest point on a sand/loam bank. In addition, the report states that potable water connection and an electricity pit are available to Lot 2, making it the more favourable of the two lots to develop.

The Planning Report notes that the site is currently vacant land, with limited vegetation and minimal farming activities. No Farm Management Plan was submitted with the application. It is therefore unclear the extent, if any, to which Lot 2 would be used for agricultural purposes. The Planning Report notes:

"Considering the current events of Colac-Otway Council permitting the construction of dwelling on a Farmland at 45 Glenn Street, Warrion (15Ha) and 321 Larpent Rd, Cororooke; we approach the Council for the same (Refer Appendix 4 for the Newspaper Article) as the subject land currently has minimal agricultural activities."

The newspaper article in question, entitled *"Go-ahead for farmland builds"* reported on the Planning Committee's decisions to allow dwellings on small lots at the above-mentioned sites in the Farming Zone, against officer recommendation.





4. SUBJECT LAND & SURROUNDINGS

The subject land is located within the Farming Zone and is known as 255 Colac Ballarat Road, Irrewarra. The land comprises Lot 1 and Lot 2 on TP863303D, which are separated by the Colac-Ballarat Road. The dwelling is proposed on Lot 2. [Note: The owner does not wish to consolidate the two lots, which the Titles Office has confirmed could be transferred separately.] A third lot in the same ownership (Lot 1 TP837025, V/F: 8738/818, which is on a separate title) runs along the eastern boundary of Lot 2 TP863303D.

Lot 1 has an area of 30.44 hectares and Lot 2 has an area of 10.06 hectares, giving an overall site area of 40.5 hectares.

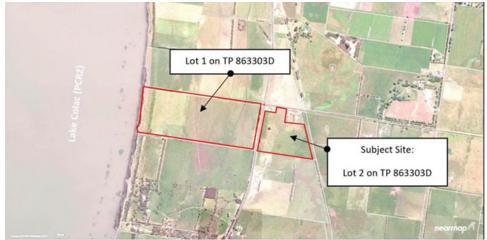


Figure 7 - Lot 1 and Lot on TP 863303D (extracted from the submitted town planning report)

The site is located approximately 7.2 kilometres to the north east of Colac Post Office in Murray Street, Colac, and a similar distance from the Colac train station. The vacant site is generally devoid of any vegetation.

Lot 2 has a frontage of 87.11 metres to Irrewarra School Road, which runs in an east/west direction to the north of the site. To the north of Irrewarra School Road is grazing land.

No. 2 Irrewarra School Road, abutting the subject lot to the north-west, has a site area of 3,184 square metres. It is developed with a single-storey dwelling, which appears to have been constructed prior to 1994. Lot 2 adjoins this site along its eastern and southern boundaries.

No. 20 Irrewarra School Road, to the north-east, is developed with a former teacher's residence to which Heritage Overlay HO202 applies. This site has an area of approximately 1.22 hectares. Council has no record of when this dwelling was constructed. Lot 2 adjoins this site along its western and southern boundaries.

No. 230 Colac Ballarat Road, to the south, comprises two lots of 22.9 ha and 2 ha (Lots 1 and 2 PS641521), giving an overall site area of 24.9 ha. A dwelling has been constructed on Lot 1 PS641521. It is not known when this was constructed, but it appears that it was some time ago as a permit was issued to extend the dwelling in 2006. To the south is grazing land.

Lot 1 on TP863303D (i.e., one of the lots on the title of the subject land) is located on the west of Colac Ballarat Road, opposite the subject lot. This site is used for grazing. The western boundary of Lot 1 adjoins Lake Colac, which is zoned Public Conservation and Resource Zone (PCRZ).

The plans below show properties and lots less than, and greater than, 40ha in area. As noted above, land on the east side of Colac Ballarat Road (which includes the subject land) is in that part of the shire where the minimum lot area for a dwelling to be 'as of right' is 80ha, whilst the minimum lot size on the west side of the road is 40ha.

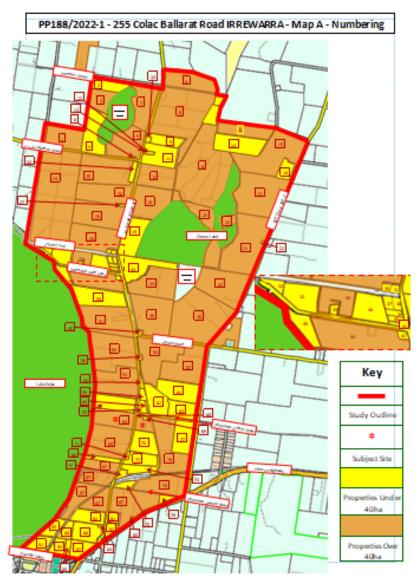


Figure 8 – Properties under and over 40 ha

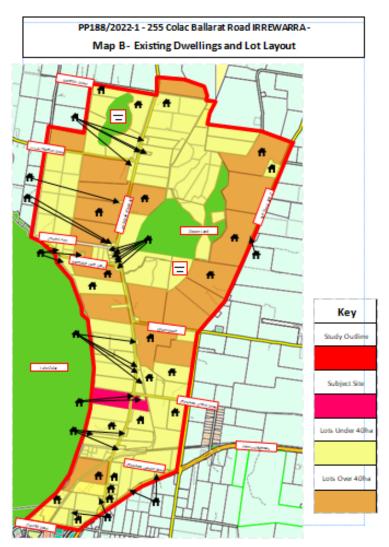


Figure 9 - Existing dwellings – to be read in conjunction with Map A and the excel spreadsheet titled 'Area Analysis'

The following information is extracted from the attached excel spreadsheet entitled Area Analysis and accompanying Map A and Map B, providing information about existing dwellings in proximity to the subject site:

- of the 53 houses identified, 42 dwellings appear to have been constructed prior to 1994 which is when Council's records system commenced
- 21 of the 42 dwellings occupy properties with areas of 2ha or less, with the average property area being approximately 1ha
- a cluster of lots less than 2ha developed with a dwelling is located in proximity to the intersection of Coads Road and Colac Ballarat Road to the north west of the site
- of the eight applications approved for dwellings on FZ land, property sizes are generally larger with areas of 42ha, 31.4ha, 52ha and 25.8ha.

The subject site has an area of 10.06 ha and, in conjunction with Lot 1, is able to continue to make a contribution to agriculture within the shire.

Previous permit that applied to the subject site

A planning permit for the 'Use and Development of a Dwelling Including Construction of Outbuilding and Creation of Access to a Road in a Road Zone Category 1' at 255 Colac Ballarat Road, Irrewarra ((Lots 1 and 2 TP863303D and Lot 1 TP837025)) was issued by Council on 16 January 2019 but has since expired (ref. PP250/2017-1).

PP250/2017 allowed:

- the construction of a single-storey brick dwelling occupying an area of 182 square metres, set back 75 metres from Colac Ballarat Road and 160 metres from Irrewarra School Road; a minimum of 142 metres from side and rear boundaries; and 150 metres from the nearest dwelling
- vehicle access from Colac Ballarat Road

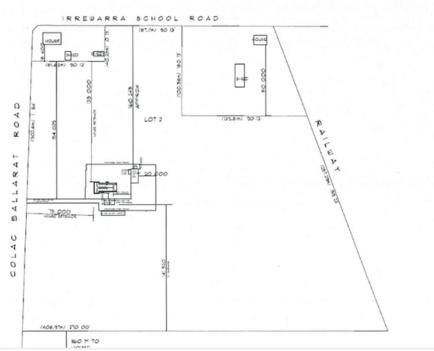


Figure 9 - siting of dwelling approved under PP250/2017

A condition of the permit required consolidation of Lot 1 (30.09 ha) and Lot 2 (10.38 ha) on TP863303 and the adjoining lot to the east, Lot 1 on TP8370215 (1.3ha). These lots were in the same ownership when the application was lodged, and are all now in the ownership of the current landowner. The applicant for PP250/2017-1 provided written consent to this requirement.

The officer report supported the construction of the proposed dwelling on Lot 2 of TP863303 given:

- it would minimise any visibility of the dwelling from the sensitive Colac Lake environs that may have been an issue if the dwelling were proposed to be constructed on the larger Lot 1
- it would maintain the larger landholding at Lot 1 for agricultural pursuits
- the three lots were to be consolidated

The officer report noted that:

"If the lots were in separate ownership, it would be reasonable to consider a dwelling on the larger lot which is marginally below the minimum lot size [being in the area with a minimum 40ha lot size], rather than allowing the construction of a dwelling on a lot that is significantly less than the minimum lot size [within the 80ha area]. However, given that the lots are in the same ownership, it makes more sense to construct the dwelling on the smaller parcel of land to the east of Colac Ballarat Road whilst maintaining the larger parcel of land to the west of the road for farming purposes. It is also preferable to locate the dwelling further from Lake Colac to minimise the visual impact of the dwelling on the open landscape and views of the lake. In support of the application, the applicant has agreed to the consolidation of all lots in the same ownership either side of Colac Ballarat Road. This would eliminate the potential for any future dwelling on the larger parcel to the west of Colac Ballarat Road. It would also enable the land to be better utilised and managed, and make a greater contribution to beef cattle production in this part of the Shire."

A Farm Management Plan, dated 31 May 2017, detailed an improvement programme for Lots 1 and 2 on TP863303. The report noted that the land as a whole could sustain running a herd of 50 cows, 15 heifer replacements and 3-4 bulls.

The current owner has advised Council that he is not willing to consolidate Lots 1 and 2 on TP863303 and Lot 1 of TP837025 under PP188-2022-1, given that he considers:

- Lot 2 has an adequate size on which to build a dwelling
- he seeks to retain the right to sell Lot 1 of TP837025
- the application should not be dependent on consolidating a 1.3ha site [l.e., Lot 1 of TP837025 to the east] in order to acquire planning permission

The current application, PP188-2022-1, materially varies from the issued permit PP250/2017-1 given that:

- the applicant will not accept a condition requiring consolidation of the three lots, ensuring the proposed dwelling would remain tied to agricultural land, as occurred in the earlier application
- there is no Farm Management Plan nor explanation as to how Lot 2 would contribute to agriculture within the Shire
- in essence, the current proposal is for a dwelling on a rural living lot. (The applicant has verbally indicated on several occasions the intention of renting out the property initially before ultimately potentially moving to it.)

5. PLANNING SCHEME PROVISIONS

Planning Policy Framework

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 clauses considered relevant to the application are identified below:

- 02.01 Context
- 02.02 Vision
- 02.03 Strategic Directions
- 02.04 Strategic Framework Plans
- 11.01-1S, 11.01-1R and 11.01-1L Settlement

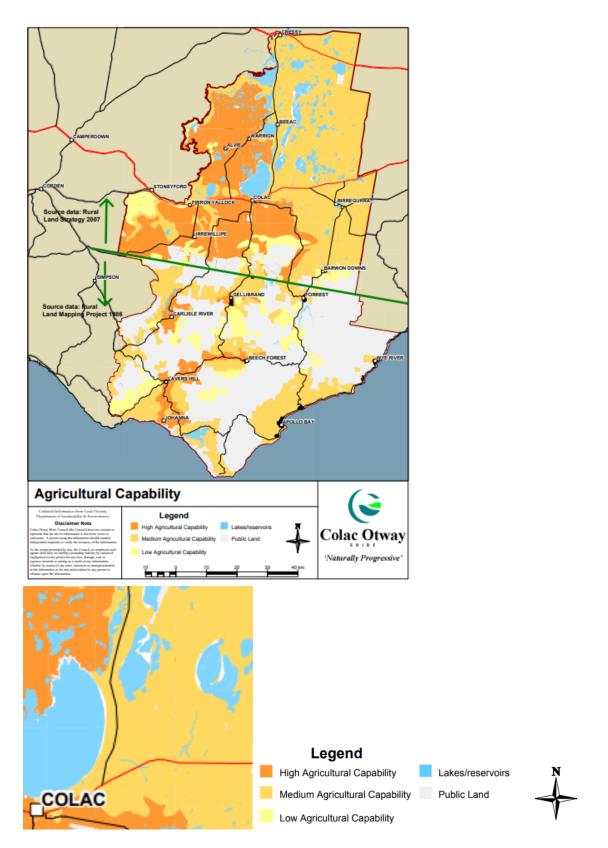
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 14.01-2S and 14.01-2R Sustainable Agricultural Land Use
- 15.01-6S and 15.01-6L Design for Rural Areas
- 16.01-3S Rural Residential Development
- 35.07 Farming Zone

The site sits in a farming area some distance outside the Colac town boundary, as identified in the Colac Framework Plan at clause 02.04. The site has not been nominated for rezoning within that Framework Plan.

Clause 14.01-1S (Protection of Agricultural Land) has the objective of protecting the state's agricultural base by preserving productive farmland.

Colac Otway Shire's *Rural Land Strategy* 2007, a background document under the schedule to clause 72.08 (Background Documents), identifies the agricultural capability of farmland within the shire categorising agricultural land as being of 'high', 'medium' or 'low' agricultural capability. Farmland of Strategic Significance correlates with the high agricultural capability land for the shire.

The subject site is located to the east of land identified in the Colac Otway Shire Strategic Plan Framework Plan as being 'Farmland of Strategic Significance' (Clause 02.04). The land is in an area of medium agricultural capability, as shown in the extract from the *Rural Land Strategy* below:





In the matter of *Irrewarra Estate Ltd v Colac-Otway SC [2021]* VCAT 358, the Victorian Civil and Administrative Tribunal (VCAT) was required to review the Planning Committee's approval of an application for the subdivision of an 80.95 hectare lot at 260 Warrowie Road into two lots, comprising

proposed Lot 1 with an area of 1.62 hectares and Lot 2 with an area of 79.33 hectares. A dwelling occupied proposed Lot 1. [A copy of the VCAT Order is attached to this report.]

Whilst the facts of that case (which was for the subdivision of FZ land) differ from the current application, the Tribunal's interpretation of planning scheme provisions that address agricultural issues, especially the weight to attach to agricultural land capability, informs officers' recommended grounds of refusal for the current proposal. The Tribunal in the *Irrewarra Estate* case noted that:

"97. A reading of the relevant provisions of the planning scheme...as a whole supports the following conclusions

- a. Agriculture is a key economic contributor to the shire and agricultural land within the shire affords different agricultural opportunities categorised by the agricultural capability of soil in different geographical areas.
- b. The three distinct geographical areas that offer different agricultural opportunities are
 - i. the north-west which is categorised as an area of "Farmland of Strategic Significance" having a 'high' agricultural capability;
 - *ii.* the north-east, within which the land is situated, which is categorised as having 'medium' agricultural capability;
 - iii. the south which is variously categorised as 'low', 'medium' and 'high' agricultural capability.
- c. Read sensibly and harmoniously with all other relevant provisions of the planning scheme, the reference to 'productive farmland' and 'productive agricultural land' in clause 14.01-1S includes all land identified as having agricultural capability under clause 02.03-4 whether classified 'low', 'medium' or 'high'.
- d. Similarly, the reference to 'arable land' and 'viable agricultural land' in clause 02.02-4 includes all land identified as having agricultural capability under clause 02.03-4 whether classified 'low', 'medium' or 'high'.
- e. Further, the reference to 'productive agricultural land' in the purpose statement for the Farming Zone includes all land identified as having agricultural capability under clause 02.03-4 whether classified 'low', 'medium' or 'high'. This conclusion is supported by the specific policy application of clause 14.01-1L to all land in the Farming Zone, Rural Conservation Zone and Rural Activity Zone.
- f. <u>There is no basis to interpret the terms 'productive farmland', 'productive</u> <u>agricultural land', 'arable land' or 'viable agricultural land', where they appear in</u> <u>clause 14.01-15, clause 02.03-4 or clause 35.07 as limited only to land identified as</u> <u>'Farmland of Strategic Significance' under the Strategic Framework Plans in clause</u> <u>02.04</u>. [emphasis added] To the contrary, clause 14.01-15 includes specific strategies applicable only to farmland of strategic significance by direct reference to the strategic significance of such farmland, differentiating this type of farming land from agricultural land of other descriptions.
- g. A specific strategy of clause 14.01-1L Protection of agricultural land, is to ensure that small lot subdivisions or excisions facilitate rural production and do not

prejudice surrounding rural activities. The requirement of this strategy is two-fold and both are required to be achieved.

h. The decision guidelines in clause 35.07-6 apply to the extent relevant to the nature of the planning application. Those guidelines appearing under the heading "Dwelling issues" are only triggered where there is an application to use land for a dwelling. Clause 35.07-5 makes this clear when requiring such an application to include a written statement which explains how the proposed dwelling responds to the decision guidelines for dwellings in the zone....."

Council has adopted the approach outlined by the Tribunal in the *Irrewarra Estate case* when assessing agricultural land. That is, Council acknowledges that Lot 2 makes a contribution to farming land, being a major economic generator within the shire, regardless of its identified capability. As noted above, State planning policy at clause 14.01-1S requires the responsible authority *"to protect the state's agricultural base by preserving productive farmland"*.

Colac Otway Shire Rural Living Strategy

The subject site and the surrounding area are not identified as a potential rural living area within the *Rural Living Strategy*, adopted by Council in December 2011. The Strategy identified that the further expansion of a township would result in a net loss of productive agricultural land and recommended that settlement boundaries around all Township Zoned land be introduced to provide a defined boundary to restrict future residential growth and development. This would also ensure that a clear distinction is drawn between productive agricultural land and established residential development. The subject site not within a township boundary.

<u>Zone</u>

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.

Overlays

No overlays affect this site.

Other relevant provisions

Nil

Relevant Planning Scheme amendments

Nil

6. REFERRALS

Internal Referrals

The application was referred internally to Council's Health Protection Unit and Infrastructure Department.

The applicant seeks to rely on a Land Capability Assessment (LCA) prepared for PP250/2017-1. The Health Protection Unit had no objection, subject to Council reserving the right to request a new LCA at the permit to install application stage. This matter could be addressed by way of a condition, if a permit were to be issued.

The Infrastructure Department raised no objection to the proposal, subject to conditions being included on any permit issued.

External Referrals

No external referrals were required.

7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application in the form of a site notice and letters to adjoining landowners/occupiers. No objections were received.

8. OFFICER'S ASSESSMENT

The key issue for consideration in the determination of this application is whether the proposal is in accordance with planning policy for the Farming Zone, including whether justification has been provided to demonstrate that the proposed dwelling is reasonably required to support agricultural production on the land.

In this case, it is considered that the proposal is contrary to the following clauses in the Colac Otway Planning Scheme:

- 02.01 Context
- 02.03-4 Strategic Directions Natural Resource Management
- 02.04 Strategic Framework Plans
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 16.01-3S Rural Residential Development
- 35.07 Farming Zone

Clause 02.01 (Context) notes that *"agriculture is a key economic contributor to the Colac Otway Shire with the dairy and beef industries the most significant in terms of land use and economic contribution"*.

Clause 14.01-1S (Protection of Agricultural Land) applies to all land in the Farming Zone. It seeks *"to protect the state's agricultural base by preserving productive farmland"*.

Strategies designed to assist in the achievement of that objective include the following (whilst all are of material to the assessment of the current application, some have been flagged as having particular relevance to the current proposal):

- Identify areas of productive agricultural land, including land for primary production and intensive agriculture.
- Consider state, regional and local issues and characteristic when assessing agricultural quality and productivity.
- Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.
- Protect productive farmland that is of strategic significance in the local or regional context.

- Prevent inappropriately dispersed urban activities in rural areas.
- 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.
 - <u>Encouraging consolidation of existing isolated small lots in rural zones</u>. [emphasis added]
- Identify areas of productive agricultural land by consulting with the Department of Economic Development, Jobs, Transport and Resources and using available information.
- In considering a proposal to use, subdivide or develop agricultural land, consider the:
 - Desirability and impacts of removing the land from primary production, given its agricultural productivity.
 - <u>Impacts on the continuation of primary production on adjacent land, with particular</u> regard to land values and the viability of infrastructure for such production.
 - <u>Compatibility between the proposed or likely development and the existing use of the</u> <u>surrounding land</u>. [emphasis added]
 - The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.
 - Land capability.
- Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.
- Give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land.
- Balance the potential off-site effects of a use or development proposal (such as degradation of soil or water quality and land salinisation) against the benefits of the proposal.

Clause 14.01-1L (Protection of Agricultural Land) applies to all land in the Farming Zone. Relevant strategies include:

- Discourage dwellings that do not meet the minimum lot area of the zone or relevant schedule unless it is required for an intensive agricultural activity on the land or to achieve the environmental protection of the land.
- Avoid localised concentration of dwellings in agricultural areas. [emphasis added]
- Ensure that small lot subdivisions or excisions facilitate sustainable rural production and do not prejudice surrounding rural activities.

Council seeks to manage its natural resources by:

- Protecting high quality agricultural land.
- Limiting rural residential development that impacts viable agricultural land.
- Supporting grazing and cropping farming practices as preferred land uses in areas designated as 'Farmland of Strategic Significance'.
- <u>Supporting farm consolidation and expansion</u>.
- Supporting agricultural diversity and sustainable forestry and timber industries.
- Supporting the growth and operations of existing timber processing. [emphasis added]

Clause 14.01-1L (Policy Guidelines) include the following:

Consider as relevant:

- Whether any small lot containing a dwelling and associated infrastructure should be at least 0.4 hectare and no more than 2 hectares in area.
- Providing setbacks around the existing dwelling from lot boundaries to limit likely impacts of adjacent agricultural activity.
- The use of an agreement under Section 173 of the Act to prevent the further subdivision of the land and the construction of a dwelling on any lot created other than in accordance with the minimum lot size.

In the matter of *Irrewarra Estate*, the Tribunal interpreted the above scheme provisions to apply to all Farming Zone land regardless of whether the land capability was identified as 'low', 'medium' or 'high' given the State planning imperative, captured at clause 14.01-1S, to protect the State's agricultural base. That interpretation provides that all identified agricultural land within the municipality, not just 'Farmland of Strategic Significance', needs to be considered and assessed against the provisions of clauses 02.04, 14.01-1S, 14. 14.01-1L, 14.01-2S and 14.01-2R, 16.01-3S and 35.07. That approach has been adopted in the assessment of this application.

No assessment or evidence was provided, nor argument put, that the subject land is not suitable for agriculture. In the absence of this information Council is required to assess the application against the relevant provisions, detailed throughout this report, of the planning scheme.

Clause 16.01-3S (Rural Residential Development) relevantly includes the following as strategies:

- Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.
- Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.
- Ensure land is not zoned for rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural resources.
- Discourage development of small lots in rural zones for residential use or other incompatible uses.

The application is for the construction of a dwelling on a small lot in the Farming Zone. No information was provided with the application to demonstrate that the balance of the lot would be used for agricultural purposes, and the applicant has also categorically stated that the consolidation of Lots 1 and 2 on title would not be agreed. The application site is not located in a part of the shire in which rezoning is proposed or to which a housing strategy applies. The location of the dwelling mid-site would further undermine the continuing use of the subject lot for agriculture.

Clause 35.07 Farming Zone applies to the site. The purpose of this zone includes:

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

• To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

Clause 35.07-5 states that an application to use a lot for a dwelling must be accompanied by a written statement which explains how the proposed dwelling responds to the decision guidelines for dwellings in the zone. Relevant decision guidelines are detailed at clause 35.07-6 and include:

General issues

The municipal planning strategy and planning policy framework

These matters have been addressed earlier in this report and generally relate to clauses 02.01, 02.04, 14.01-15, 14. 14.01-1L, 14.01-2S and 14.01-2R, 16.01-3S and 35.07. The planning scheme indicates a clear direction that agricultural land should be protected and retained for agricultural pursuits. It is considered that the proposal, which would result in the creation of a rural lifestyle lot, is contrary to these policies.

It is noted that the fact the site is in an area where the minimum lot size on which a dwelling is 'as of right' is 80ha has effectively been ignored in the submitted application. Not only has no justification been submitted for allowing a dwelling on a lot around 70ha less than the specified area for a dwelling to be 'as of right', but it has been explicitly stated that the owner would not entertain consolidating Lots 1 and 2 on title.

The capability of the land to accommodate the proposed use or development, including the disposal of effluent

Setting aside the fundamental conflict with planning policy, it is acknowledged that the 10.8ha site could physically accommodate the dwelling. Council's Health Protection Unit has confirmed that the Land Capability Assessment submitted with PP2150/2017 can be considered for the current application.

The submitted town planning report advises that an electricity pit is located on Irrewarra School Road, to which the proposed dwelling would connect if a planning permit is issued.

How the use or development relates to sustainable land management

No Land Management Plan was provided with the application. The applicant advised that "the proposal makes efficient use of the land, by accommodating a dwelling on the land. The residents will be able to maintain this lot which has previously been difficult to manage".

In addition, no Farm Management Plan was provided with the application. No claim has been made that the site is not suitable for agriculture, or evidence submitted to support that position.

The application fails to acknowledge the impact of the proposed residential use on agricultural land and the importance of agriculture to the Colac Otway Shire economy.

Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.

The dwellings on the adjoining lots, at Nos. 2 and 20 Irrewarra School Road, were constructed before the gazettal of the new format planning scheme. Whilst those dwellings influence the site context, the current scheme requires consideration of the broader issues of the impact of residential uses in the Farming Zone.

As detailed earlier in this report, many of the existing dwellings in the area appear to have been constructed prior to 1994, when Council records commenced. It is a possibility that planning

permission was not required for these dwellings. In any event, planning controls in place at that time differed from the current planning scheme provisions.

As discussed in a separate report on this agenda for a proposed dwelling on a small lot in the Farming Zone at 1140 Irrewillipe Road, Barongarook West (ref. PP223/2022-1), dwellings that pre-date the *Rural Land Strategy* 2007 need to be differentiated from any dwellings allowed after that strategy was adopted. Dwellings that pre-date the *Rural Living Strategy* cannot be considered a precedent for allowing additional dwellings on small lots in the Farming Zone – any new applications need to be considered against current planning policy. VCAT decisions that are quoted and attached to the Irrewillipe Road report, which note the strengthening of planning policy on rural dwellings following the adoption of the *Rural Land Strategy*, are equally relevant to this case.

How the use and development make use of existing infrastructure and services The road network is in place, as is electricity.

Neither the site or adjoining properties are proposed to be rezoned for residential use given the distance from Colac and the acknowledged fact the area comprises agricultural land.

Accommodation issues

The submitted town planning report fails to adequately respond to clause 35.07-6 decision guidelines that require consideration as to how the non-agricultural use and development would support and enhance agricultural production, and the extent to which it would remove land from agricultural production. The town planning report generally relies on the fact that the site is of a size that could accommodate a dwelling; that its wastewater and effluent requirements could be addressed on site; and its location in relation to Colac.

The report states that the proposed use and development would not impact on agricultural activity given the existence of dwellings in proximity to the site. The report, however, fails to address the fact that land surrounding the site is in the Farming Zone and that those dwellings predate the current planning regime that the Council has a statutory obligation to apply.

Whether the dwelling will result in the loss or fragmentation of productive agricultural land

The *Rural Land Strategy* 2007 identifies the site to be of medium agricultural capability. When assessing the proposal, it is appropriate to have regard to the interpretation of agricultural land detailed by the Tribunal in the matter of *Irrewarra Estate Ltd v Colac-Otway SC [2021*]. All agricultural land must be considered in light of the relevant planning scheme provisions.

If a planning permit was issued, the application would result in the further loss or fragmentation of agricultural land given:

- the proposed siting of the dwelling would fail to minimise the potential loss of agricultural land from Lot 2.
- the proposal would effectively remove at least half the site, or 5 ha, from use for agricultural purposes.
- the proposal would reduce the ability of adjoining farming properties to consolidate the lot into existing farming operations.
- unlike the previous permit issued, there would be no ongoing formal tie between Lots 1 and 2 TP863303D, and Lot 1 TP837025. Whilst the previously permitted dwelling would have been associated with agricultural activities on a wider landholding, the current proposal would essentially create a rural living lot.

It is noted that the applicant has acknowledged that a key justification being put forward for the proposed dwelling is that the Planning Committee has recently allowed a number of dwellings on small lots in the Farming Zone, despite being advised by planning officers that the proposals were contrary to current planning policy as set out in the planning scheme. The applicant stated in the submitted application that:

"Considering the current events of Colac-Otway Council permitting the construction of dwelling on a Farmland at 45 Glenn Street, Warrion (15Ha) and 321 Larpent Rd, Cororooke; we approach the council for the same...as the subject land currently has minimal agricultural activities."

The approval of a dwelling on a lot size significantly less (by around 70ha) than that prescribed under the schedule to the Farming Zone would undermine the purpose and objectives of that control and the planning policy framework.

The tyranny of small decisions is a concept whereby "any decision to stop further incremental changes beyond the current situation can appear unduly arbitrary, given that each step introduces only a small and seemingly inconsequential change from the preceding situation. By itself, of course, each decision may seem relatively inconsequential but, in combination, a series of small changes will eventually amount to something of considerable substance". (Southern Capital Corporation Pty Ltd v Port Phillip CC [1999] VCAT 130 (30 June 1999).

A decision to grant planning permission on a 10 ha site, in an area where a minimum of 80ha is required for a dwelling to be of right, is a case in point. The loss of 10 ha of agricultural land from the Farming Zone may sound incidental. However, each such decision erodes the integrity of the zone and what it seeks to achieve.

In this case, part of the applicant's argument is that there are other dwellings in the area and that one additional dwelling would *"have no impact and does not trigger the concentration or proliferation of dwellings in the area"* and *"there are agricultural activities occurring being predominantly grazing, the addition of one dwelling will not impact on this agriculture"*.

As noted, most dwellings in the area pre-date the Council's Rural Land Strategy and cannot be taken as a precedent for the current proposal. Allowing dwellings on small lots in the Farming Zone based on ad hoc decisions on planning applications, rather than as a result of a strategic approach implemented through policy in the planning scheme, is a clear case where "a series of small changes will eventually amount to something of considerable substance". Council currently appears to be receiving an increasing number of applications for dwellings on small lots in the Farming Zone, as is evidenced by the number of cases coming to Planning Committee in the past year or two, and this trend is likely to continue unless policy is implemented in accordance with the current planning scheme.

Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation Farming uses occur on adjacent and nearby land. It is reasonable to expect that the dwelling may, at times, be adversely affected by agricultural activities.

Will the dwelling adversely affect the operation and expansion of adjoining and nearby agricultural uses.

The site can contribute to agricultural production within the shire either as part of Lot 1 and Lot 2 of TP863303D or consolidated with adjoining farming land. The construction of a dwelling, and the loss

of at least 5ha due to its siting, would adversely affect the operation and expansion of adjoining and nearby agricultural uses.

The site has been identified as being of medium agricultural quality. The value of that site should not be downplayed given that it has been deemed to be of medium capability. The decision of *Irrewarra Estate Ltd v Colac-Otway SC* states that the relevant agricultural provisions must be considered in the light of the fact that it has been deemed Farming Zone land, rather than the specific capabilities of that land.

The site is not an isolated parcel of agricultural land that could not be consolidated with other farming land, nor is it of such a small scale that it could not contribute to the broader Farming Zone. Surrounding sites are clearly being used for agricultural purposes. The site is proximate to Lot 1 and could be incorporated into agricultural pursuits on that site or on adjoining properties.

Potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of land for agriculture

Approval of the applicant would create a concentration of three dwellings located on Irrewarra School Road and would potentially remove Lot 2 from agricultural production.

Further matters

The applicant noted that planning permission has recently been granted by Council for dwellings in the Farming Zone on sites that have less than the prescribed minimum site area.

In the two matters to which the applicant refers, the Planning Committee resolved to issue permits against officer recommendation. It is considered that, in both cases, the proposals were contrary to planning policy in the current planning scheme.

As Councillors have already been advised, the land at 45 Glenn Street, Warrion was put up for sale for \$675,000 as a rural lifestyle property almost immediately after the decision to grant a permit was issued. A similar situation occurred with 2235 Birregurra Forrest Road, Forrest after Planning Committee resolved to issue a permit against officer recommendation. Based on information on a real estate website, that property sold for \$760,000 in February 2021.

In all three cases cited above, the applications included information on proposed agricultural uses to try to justify a dwelling on the land. The current application, PP188/2021-1, fails to provide any detail of an intended agricultural pursuit on the land, nor was any Farm Management Plan provided with the application.

The applicant has also made verbal reference on a couple of occasions to a dwelling allowed at 70 Irrewarra Road to the east, which he considers relevant to consideration of his proposal. In that case, the proposal was for the use and development of the land for a <u>replacement</u> dwelling (ref. PP278/2016-1). The aerial images below from 2014 show the dwelling existing at that time:



In summary, given the size of the Lot 2 and the proposed siting of the dwelling, it is clear that without consolidation as proposed under PP250/2017-1, to ensure ongoing ties between the dwelling and a wider agricultural landholding, any potential agricultural activity on the subject land would only comprise a hobby farm. It is considered that the proposal to construct a dwelling on the subject land, with the lot capable of use and/or disposable as a rural living property, is contrary to planning policy for the Farming Zone.

9. OFFICER DIRECT OR INDIRECT INTEREST

No officer declared an interest under the Local Government Act 2020 in the preparation of this report.

| 1- | Office Use Only | | |
|---------|--|--------------|------|
| | VicSmart? | YES | NO 🖸 |
| C | Specify class of VicSmart application: | | |
| c Otway | Application No.: | Date Lodged: | 1 1 |

Planning Enquiries Phone: (03) 5232 9400 Email: ing@colacotway.vic.gov.au Web: www.colacotway.vic.gov.au

Application for a **Planning Permit**

If you need help to complete this form, read MORE INFORMATION at the back 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 concerns, please contact Council's planning department.
- A Questions marked with an asterisk (*) must be completed.
- A If the space provided on the form is insufficient, attach a separate sheet.
- III Click for further information.

Application Type

Clear Form

Is this a VicSmart application?*

No
 Yes

If yes, please specify which
VicSmart class or classes

If the application fails into one of the classes listed under Clause 92 or the schedule to Clause 94,
it is a VicSmart application.

Pre-application Meeting

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

| NORT VIELD / TOXA | THE REPORT OF THE REPORT OF THE | |
|----------------------------|---------------------------------|--|
| O No O Ye | If 'Yes', with whom?: | |
| | Date: | day / month / year |
| hall the second states and | | the descent of the second seco |

The Land 🔳

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

| Street Address * | Uni | Init No.: St. No.: 255 St. Name: Colac-Ballarat Rd | | | | | |
|---|-----|--|----------------|--------------|-------|----------------|-------------|
| | Sul | ourb/Locality: rr | rewarra | | | Pos | tcode:3249 |
| Formal Land Description * Complete either A or B. | A | Lot No.: 1 & 2 | 2 OLodged Plan | O Title Plan | OPlan | of Subdivision | No.:863303D |
| This information can be found on the certificate of title | OR | | | | | | |
| If this application relates to more than one address, attach a separate sheet setting out | В | Crown Allotmer | nt No:: | | | Section No.: | |
| any additional property details. | | Parish/Townshi | ip Name: | | | Contract Net | |

| The Proposal | the detter to the information required to approach a application |
|---|--|
| You must give full details of your Insufficient or unclear information | r proposal and attach the information required to assess the application. n will delay your application |
| For what use, development or other matter do you require a permit? * | Use and Development of a dwelling. |
| | |
| | |
| | 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 \$ 450.000 You may be required to verify this estimate. Insert '0' if no development is proposed. If the application is for land within metropolitan Melbourne (as defined in section 3 of the Planning and Environment Act 1987, and the estimated cost of the development exceeds \$1 million (adjusted annually by CPi) the Metropolitan Planning Levy must be paid to the State Revenue Office and a currant levy certific e must be submitted with the application. Vicit www.sro.vio.gov.au for information. |
| Existing Conditions | |
| 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. | Vacant land |
| | Provide a plan of the existing conditions. Photos are also helpful. |
| Title Information II | |
| Title Information 🔟 | Does the proposal breach, in any way, an encumbrance on title such as a restrictrive 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.) |
| | O 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, know as 'instruments', for example, restrictive covenants. |

Application for a Planning Permit | Combined

Applicant and Owner Details

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.



Is the required information provided?

Declaration 🔳

This form must be signed by the applicant *

Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist.



I consent to Council making the submitted application, including any personal information contained within the application, available to the general public for inspection on its website, to address the public notification requirements of Section 52 of the Planning and Environment Act 1987.



This consent is requested to address the requirements of Part 10A, Section 205(2) of the COVID-19 Omnibus (Emergency Measures) Act 2020

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

| 22/166113 | Attachment 8.4.1 Application Form |
|-------------|---|
| Checklist 🔟 | Filled in the form completely? |
| Have you: | 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) |
| | If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it i resued by the State Revenue Office and then cannot be used). Failure to comply means the application is void |
| | Completed the relevant council planning permit checklist? |
| | Signed the declaration above? |

Need help with the Application?

If you need help to complete this form, read More Information at the end of this form.

For help with a VicSmart application see Applicant's Guide to Lodging a VicSmart Application at www.planning.vic.gov.au

General information about the planning process is available at www.planning.vic.gov.au

Assistance can also be obtained from Council's planning department.

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: ing@colacotway.vic.gov.au

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



Attachment 8.4.2 Title Information

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past, present and emerging.

| REGISTER SEARCH STATEMENT | ' (Title Search) | Transfer of | Page 1 of 1 |
|---------------------------|------------------|-------------|-------------|
| Land Act 1958 | | | |

VOLUME 06847 FOLIO 270

Security no : 124098449116U Produced 21/06/2022 09:41 AM

CROWN GRANT

LAND DESCRIPTION

Lots 1 and 2 on Title Plan 863303D.

REGISTERED PROPRIETOR

Estate Fee Simple Joint Proprietors

both of

AV620239B 12/05/2022

ENCUMBRANCES, CAVEATS AND NOTICES

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.

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 TP863303D FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

| NUMBER AV613392H AV620239B | 1-1 | CONV TRANS | | & N | NOM | ECT | то | | STATUS Completed Registered | DATE 10/05/2022 12/05/2022 |
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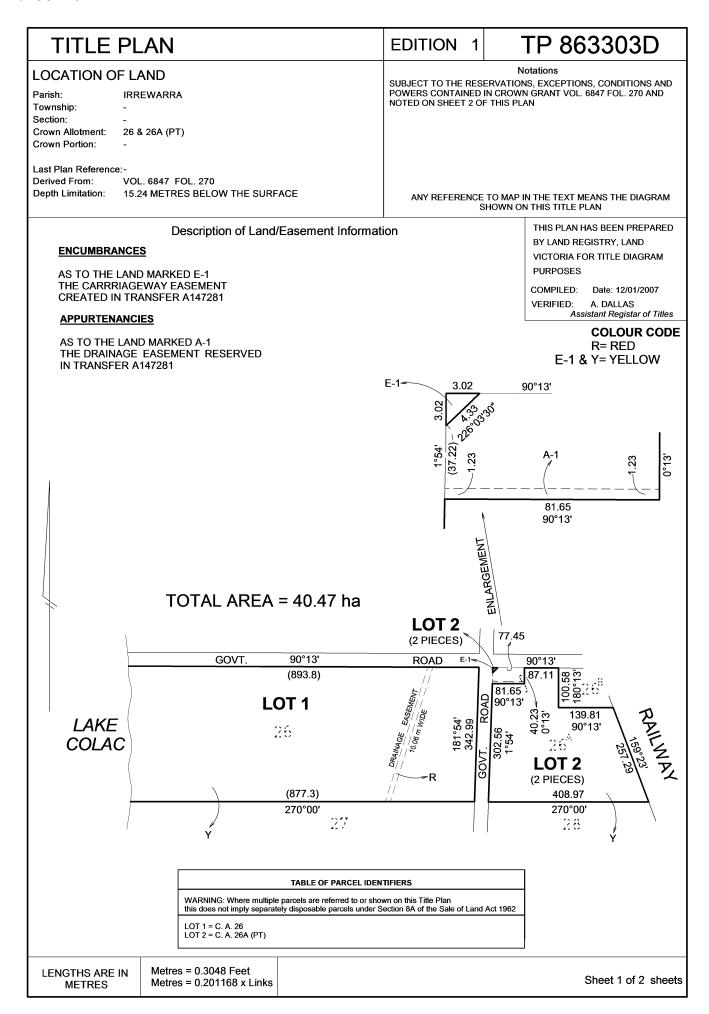
Additional information: (not part of the Register Search Statement)

ADMINISTRATIVE NOTICES

NIL

eCT Control 22163U CLARKE & BARWOOD Effective from 12/05/2022

DOCUMENT END



LENGTHS ARE IN

METRES

containing in twenty-six^A and twenty-six Allotments being less OF more one hundred acres three roods and eleven perches

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wit D. PROVIDED nevertheless that the shall be entitled to sink wells for water and to the use and enjoyment of any wells or springs of water upon or within the boundaries of the said land for any and for 3.8 liberty and mine to extract and remove therefrom any such gold silver and minerals and to search for and work dispose of and carry away the said gold silver and minerals lying in upon or under the land hereby granted and for the purposes aforesaid to sink shafts make drives erect necessary to getting of the said gold silver and minerals and the working of all mines seams lodes and deposits containing such gold silver and minerals minerals authority for Us Our heirs and successors and Our and their licensees agents and servants at any time or times hereafter to enter upon the said land and to search and AND reserving to Us Our heirs and successors free Excerring nevertheless unto Us Our heirs and successors all gold and silver and are mining and with all other incidents that therein colored in the margin of these presents and necessary or usual in in the Mines Act 1928 in upon or under or within the boundaries of the land hereby granted may be map drawn held the land without limitation as to depth machinery and to carry on any works and do any other things which the and abuttals thereof in and gold silver and minerals as aforesaid with the measurements he purposes as though for the therein for delineated used uodn grantee defined all pe

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Sheet 2 of 2 Sheets

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D22/160113 timestamp 21/06/2022 09:41 Page 2 of 2

TITLE PLAN

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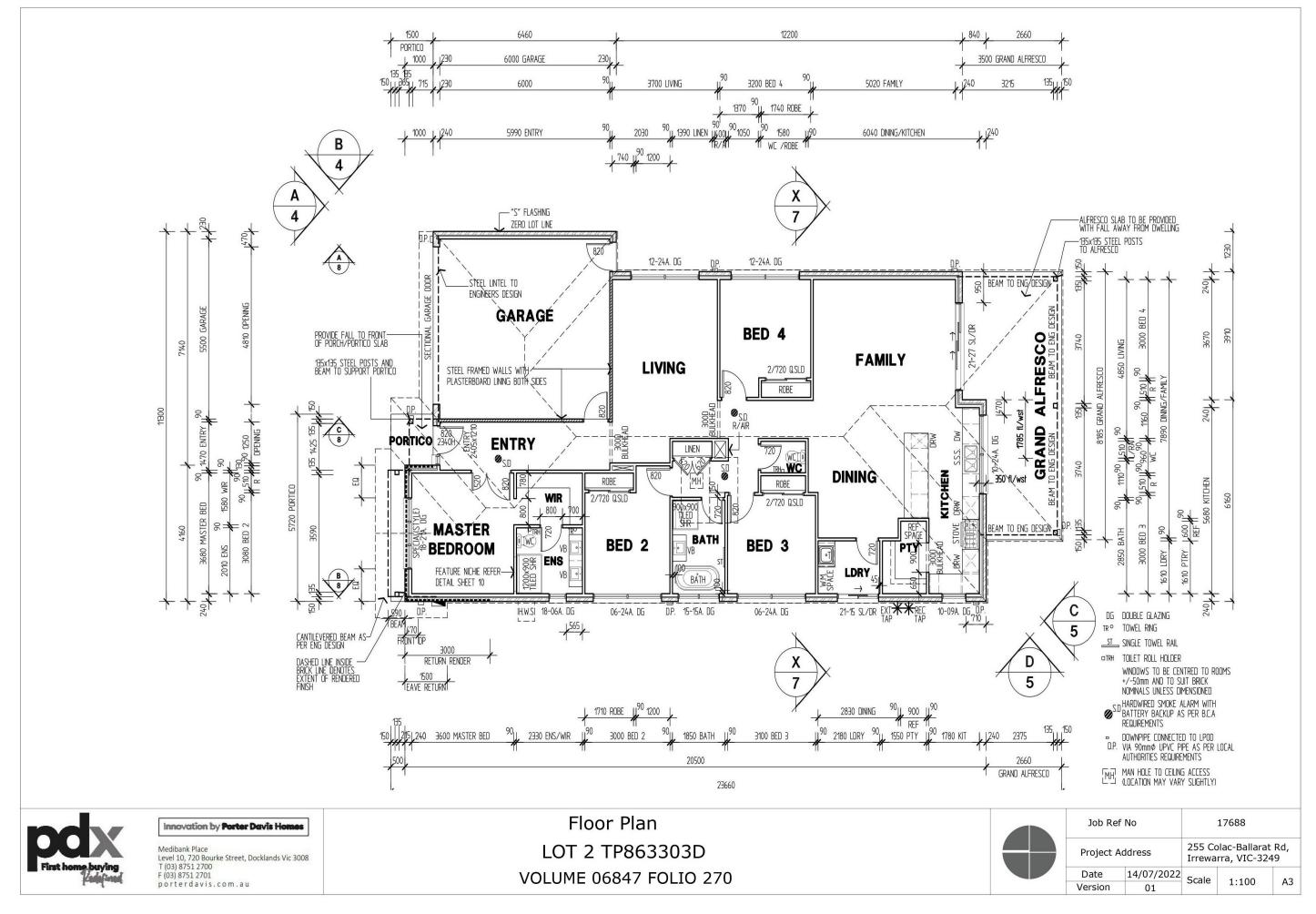
Attachment 8.4.3 Site Plan





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Attachment 8.4.3 Site Plan



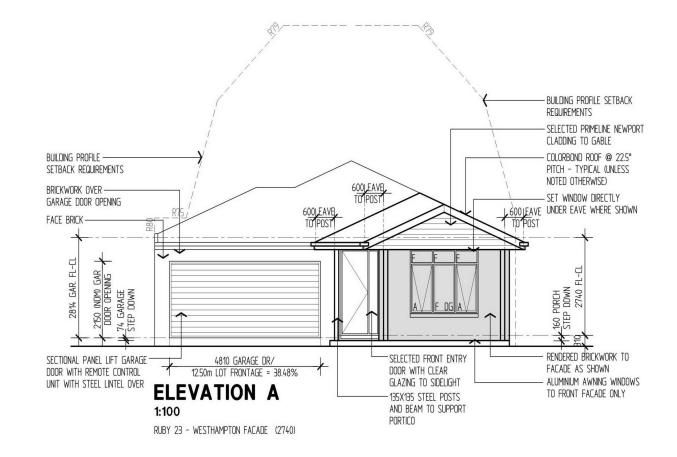
Attachment 8.4.4 Dwelling Plans

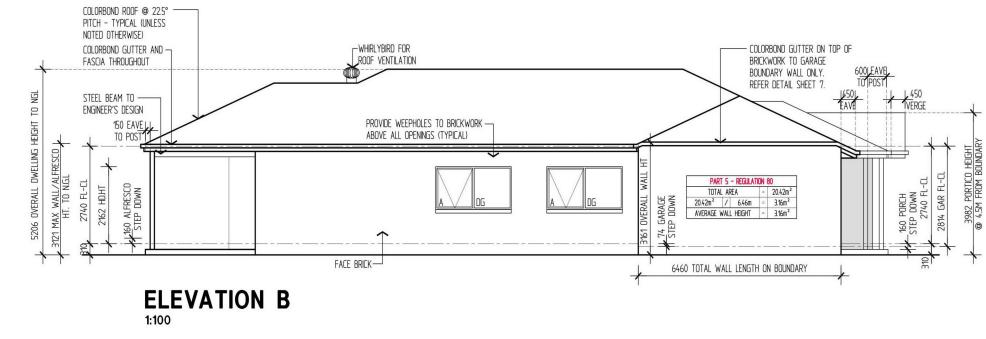


NOTE:

Set all ground floor windows at 2162mm nominal head height above floor level (UNLESS NOTED otherwise)

| FACADE MATERIAL ANALYSIS | | | | | | | |
|--|--------------------|---------|--|--|--|--|--|
| RENDER COLOUR 1 | 6.03m² | 46.14% | | | | | |
| PRIMELINE NEWPORT CLADDING | 2.65m [°] | 20.28% | | | | | |
| BRICKWORK | 4.39m² | 33.59% | | | | | |
| TOTAL FACADE AREA (excluding openings) | 13.07m² | 100.00% | | | | | |

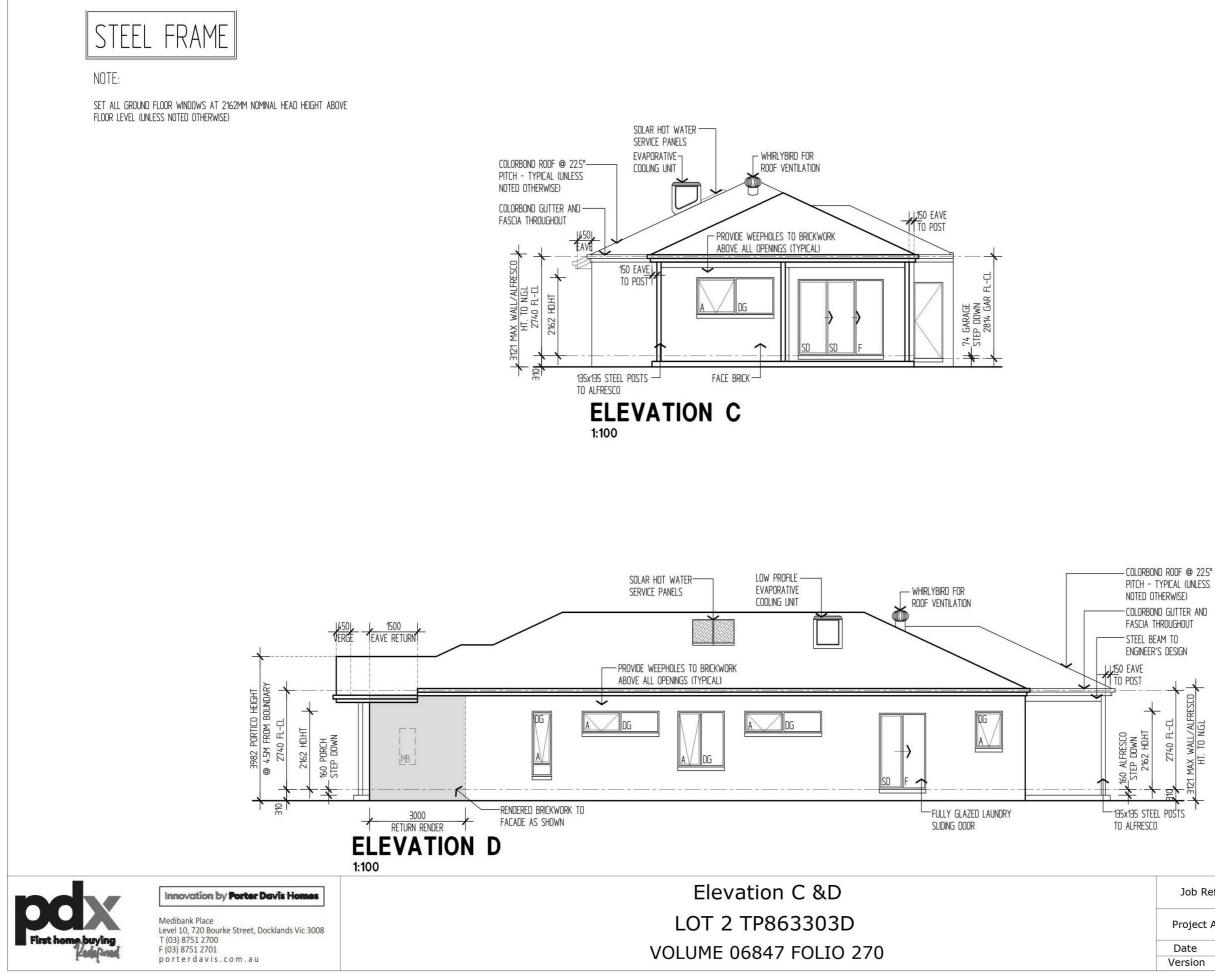






Innovation by Porter Davis Homes Medibank Place Level 10, 720 Bourke Street, Docklands Vic 3008 T (03) 8751 2700 F (03) 8751 2701 p or t er d a v i s . c o m . a u Elevation A & B LOT 2 TP863303D VOLUME 06847 FOLIO 270

| Job Ret | f No | 17688 | | | |
|-----------|------------|--|-------|----|--|
| Project A | ddress | 255 Colac-Ballarat Rd Irrewarra, VIC-3249 | | | |
| Date | 14/07/2022 | Scale | 1 100 | | |
| Version | 01 | Scale | 1:100 | A3 | |

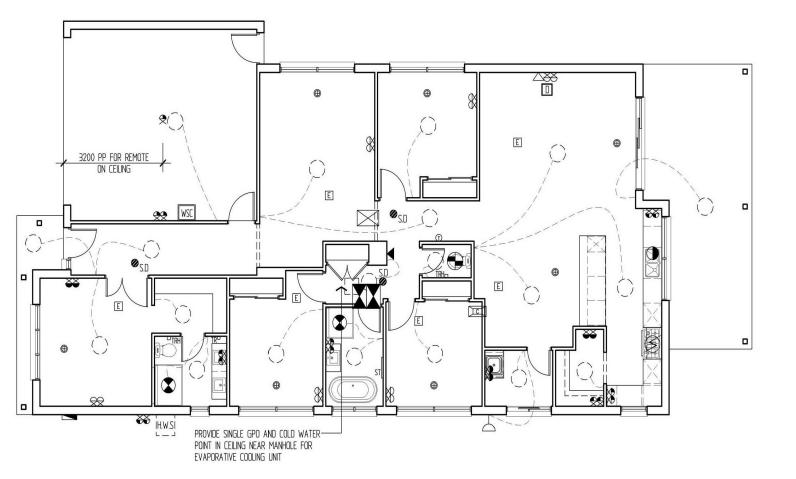


| Job Ref | No | 17688 | | | |
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| Project Ad | ldress | | lac-Ballarat rra, VIC-32 | | |
| Date | 14/07/2022 | Scale | 1.100 | | |
| Version | 01 | Scale | 1:100 | A3 | |

STEEL FRAME

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|-------------|------------------------------|--------------|---|------|---|
| \bigcirc | CEILING LIGHT BATTEN HOLDER | \mathbb{X} | CEILING FAN | 1200 | 1200 Fluoro - Double |
| \boxtimes | LOW VOLTAGE DOWNLIGHT | \times | Ceiling fan with light | 0- | WALL LIGHT BATTEN HOLDER |
| \otimes | DRAFT-PROOF DOWNLIGHT | D | PARA FLOOD LIGHT - SINGLE | Х | DIMMER LIGHT SWITCH |
| | External light point | da | PARA FLOOD LIGHT - DOUBLE | | Ceiling exhaust fan (self-sealing) |
| 00 | HEATER/FAN & LIGHT - 2 GLOBE | 600 | 600 Fluoro - Single | | ceiling exhaust fan Switched With light (Self-Sealing) |
| 000 | HEATER/FAN & LIGHT - 4 GLOBE | 600 | 600 FLUORO - DOUBLE | | |

| PO | WER LEGEND | ∞ | DOUBLE GPO - 300mm |
|------------|--------------------------------|--------------------|------------------------------------|
| \$ | SINGLE GPO - 300mm | * | DOUBLE GPO - 1100mm |
| ۶ | SINGLE GPO - 1100mm | * | DOUBLE GPO - 1350mm |
| \$ | SINGLE GPO - 1350mm | \bigtriangledown | Television point |
| ₽wp | Single GPO - External | Ô | Capped Gas Point |
| \bigcirc | Single GPO - FOR Dishwasher | ø ^{S.D} | SMOKE DETECTOR |
| ۲ | SINGLE GPO - FOR MICROWAVE | | METER BOX |
| S R | Single GPO - FOR Security Sys. | \$ | SECURITY SYSTEM KEYPAD LOCATION |
| S | UBO & RHOOD CONNECTIONS | Т | Telephone point |



PRELIMINARY PLAN ONLY -

Electrical Layout LOT 2 TP863303D VOLUME 06847 FOLIO 270





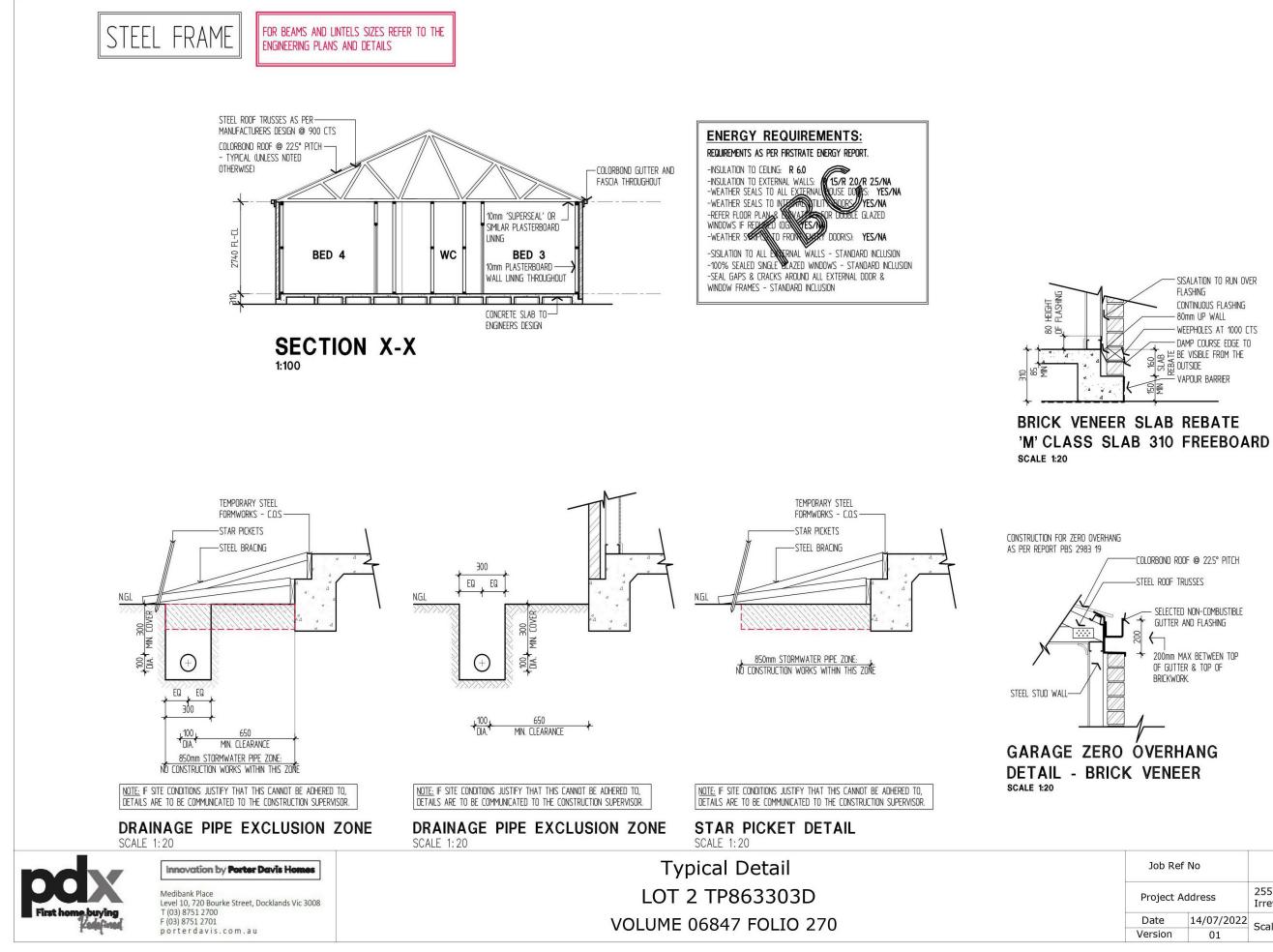
Innovation by **Porter Davis Homes**

Medibank Place Level 10, 720 Bourke Street, Docklands Vic 3008 T (03) 8751 2700 F (03) 8751 2701 p o r t e r d a v i s . c o m . a u

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| Ū | | RMOSTAT | | 1 | | |
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| E | SOLA | .ING UNIT AR PANELS FOR HOT PROX SIZE & LOCATIO | | | | |
| _ | | NOTE: | | | | |
| | | LL ELECTRICAL & SE | RVICE POINTS | | | |
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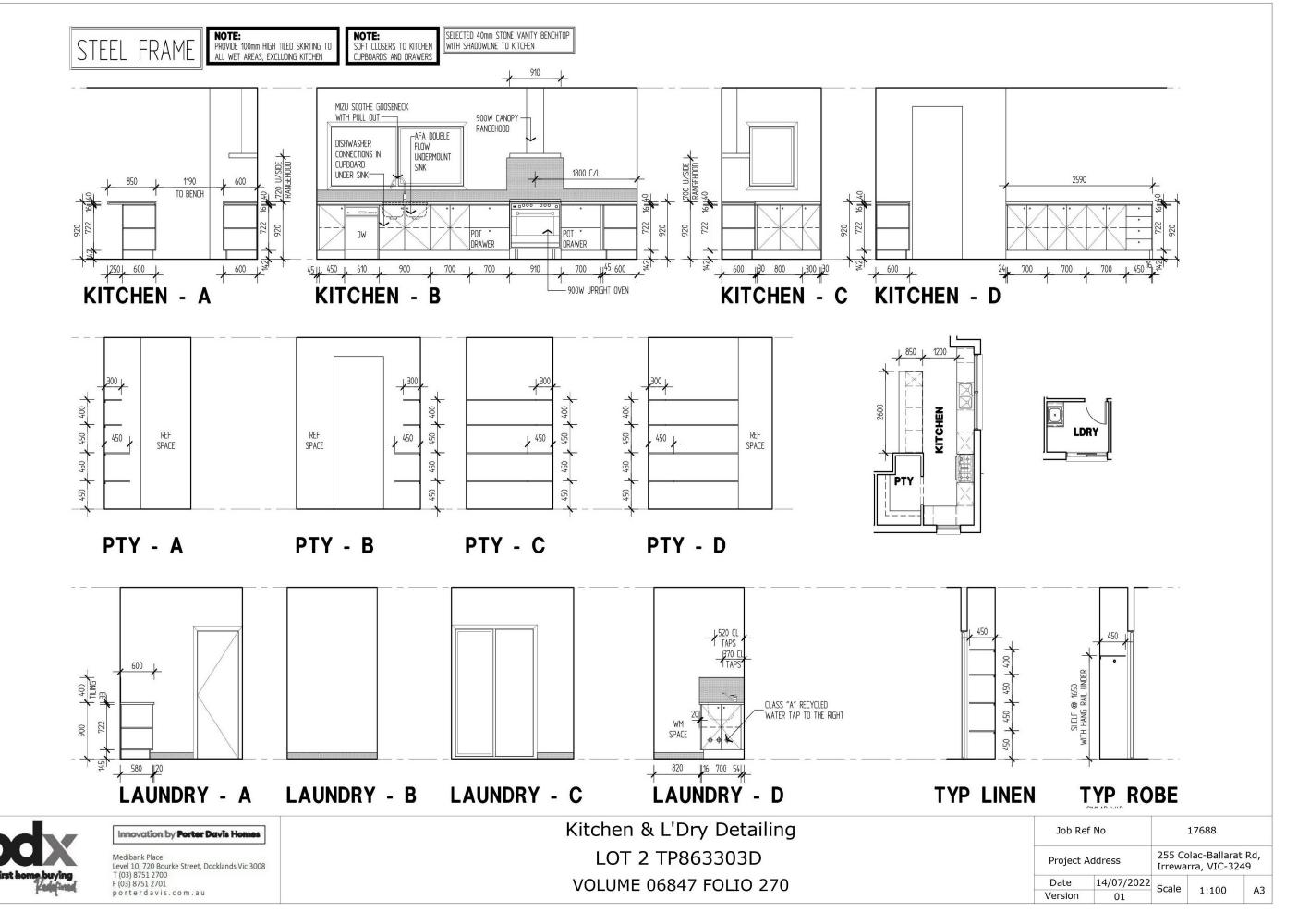
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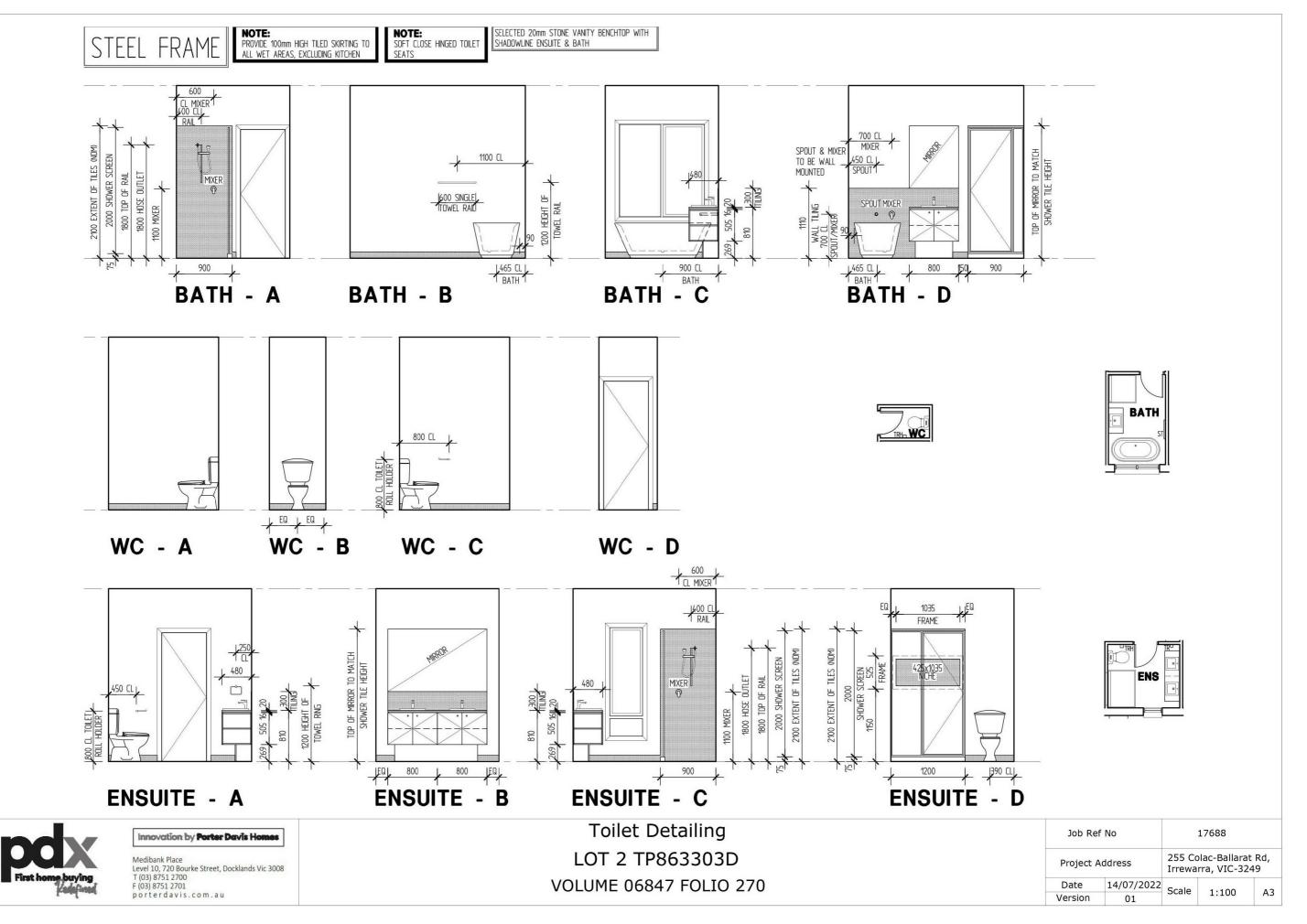
| Job Ref No | | 17688 255 Colac-Ballarat Rd, Irrewarra, VIC-3249 | | |
|------------|------------|--|---------|----|
| Project A | | | | |
| Date | 14/07/2022 | Scale | 4 4 0 0 | |
| Version | 01 | Scale | 1:100 | A3 |

CONTINUOUS FLASHING WEEPHOLES AT 1000 CTS - DAMP COURSE EDGE TO



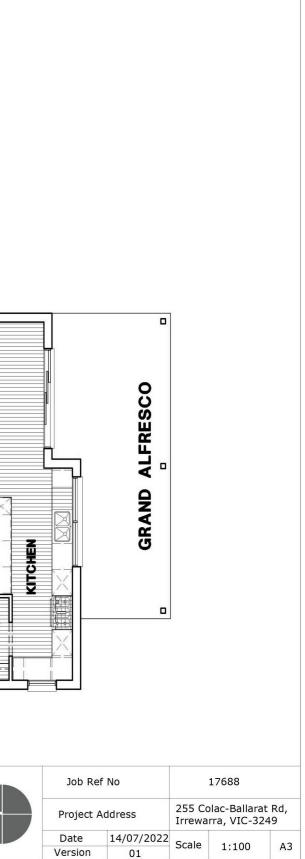
Attachment 8.4.4 Dwelling Plans

D22/166113



Attachment 8.4.4 Dwelling Plans

| Innovation by Porter Davis Homes Flooring Layout Medibank Place LOT 2 TP863303D Level 10, 720 Bourke Street, Docklands Vic 3008 LOT 2 TP863303D f(03) 8751 2701 VOLUME 06847 FOLIO 270 | STEEL FRAME Note: Alter parterns are indicative of f.course of stoce only for a statution type. Any of the stepulah tunderlay in ited of stoce only only only only on the statution type. BELECTED TILES SELECTED TIMBER FLOORING SELECTED TIMBER FLOORING | GARAGE BED 4 FAMILY FORICO ENTRY WIR BED 2 BED 3 UNING BED 3 UNING FORICO FAMILY | |
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| | First home buying F(a) 8751 2700 F(a) 8751 2701 | Flooring Layout LOT 2 TP863303D | |



VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P401/2020 PERMIT APPLICATION NO. PP142/2019

CATCHWORDS

Section 82 of the *Planning and Environment Act* 1987; Two lot subdivision to excise a dwelling; Colac-Otway Planning Scheme; Farming Zone.

| APPLICANT | Irrewarra Estate Pty Ltd |
|-----------------------|--|
| RESPONSIBLE AUTHORITY | Colac-Otway Shire Council |
| RESPONDENTS | Luke C Buchanan and Michelle E Buchanan |
| SUBJECT LAND | 260 Warrowie Road IRREWARRA VIC 3249 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 9 February 2021 |
| DATE OF ORDER | 16 April 2021 |
| CITATION | Irrewarra Estate Ltd v Colac-Otway SC [2021] VCAT 358 |

ORDER

No permit granted

- 1 In application P401/2020, the decision of the responsible authority is set aside.
- 2 In planning permit application PP142/2019, no permit is granted.

Picha Djohan Member

APPEARANCES

| For applicant | David King, solicitor, Kings Lawyers |
|---------------------------|--|
| For responsible authority | Louise Lunn, town planner, Louise Lunn Planning |
| For respondents | Neil Haydon, solicitor, Neil Haydon & Associates Pty Ltd |

VCAT Reference No.P401/2020

INFORMATION

| Description of proposal | Two lot subdivision to excise a dwelling |
|------------------------------|---|
| Nature of proceeding | Application under section 82 of the <i>Planning and</i> <i>Environment Act</i> 1987 |
| Planning scheme | Colac-Otway Planning Scheme |
| Zone and overlays | Farming Zone |
| | Airport Environs Overlay Schedule 2 (AEO2) |
| Permit requirements | Clause 35.0-3 |
| Relevant scheme policies and | Clause 14.01.1L |
| provisions | Clause 14.01.1S |
| | Clause 21.05-1 |
| Land description | The land is located on the east side of Warrowie Road, Irrewarra approximately 2 km north of the Princes Highway. It has an area of 80.9 hectares and is currently used for grazing cattle. There is a dwelling and a number of outhouses/sheds on the land. |

VCAT Reference No.P401/2020

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 The respondents are the owners of 260 Warrowie Road, Irrewarra (**the land**) which is included in the Farming Zone under the Colac-Otway Planning Scheme (**the planning scheme**). The land has a total area of 80.948 hectares and the respondents seek to subdivide the land into two lots. Proposed lot 1 has an area of 1.618 hectares and proposed lot 2 has an area of 79.33 hectares.
- 2 Council approved the proposal against the recommendation of its town planning officer. Council's proposed conditions include a condition requiring that the respondents enter into a s.173 agreement with Council to ensure that proposed Lot 2 cannot be improved by the construction of a dwelling house.
- 3 The applicant seeks a review of Council's decision, for the following general reasons
 - a. there is a threshold jurisdictional issue that must first be addressed to determine whether the proposed subdivision is permitted or prohibited under the planning scheme; and
 - b. otherwise, the proposal is not consistent with the purposes of the Farming Zone and the Planning Policy Framework, and would not lead to a sustainable outcome in the community's benefit.
- 4 The threshold jurisdictional issue is said to arise from the requirements of clause 35.07-3 of the planning scheme which, amongst other things, requires a minimum lot area for land in the Farming Zone of 80 hectares unless one of three specified circumstances apply. The applicant asserted that none of the required circumstances apply and as a result, the proposed subdivision is prohibited under the planning scheme.
- 5 For the reasons that follow, I have determined that the respondent's application to subdivide the land
 - a. is not prohibited; and
 - b. is refused.

BACKGROUND AND EVIDENCE

6 On 28 June 2019, Council received a planning application from the respondents to subdivide the land. The following extract from the planning

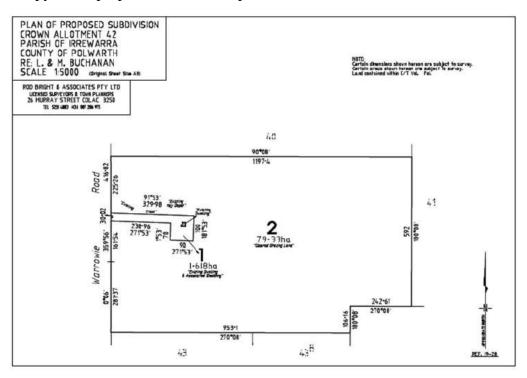
¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

VCAT Reference No.P401/2020

application documentation² encapsulates the ambitions of the respondents in respect to the land.

The application seeks approval to excise the existing dwelling, garden and associated shedding on approximately 1.618 hectares, leaving approximately 79.33 hectares of cleared grazing land. The proposed Lot 1 will contain the existing dwelling, associated shedding, garden and cleared grazing land. The proposed Lot 2 is predominantly cleared grazing land. These boundaries are negotiable should council have a preferred layout. The design is based on best utilising the farm layout which is roughly consistent as when it was farmed by the Calverts in the 1800s. It is proposed to keep the existing farm access to the farm, instead providing amply (sic) space to develop a prestigious new access to this grand old dwelling and also sufficient space around the dwelling to enable landscaping to reflects its era and our 'squattocracies' heritage.

7 A copy of the proposed subdivision plan is set out below.



Source: Notice of Decision dated 13 February 2020.

- 8 In the supporting letter accompanying the planning application³, it is stated that–
 - a. the land was purchased from the estate of Mr F J Higgins in 2018 and prior to that Mr Higgins had lived there all his life;

Letter from Rod Bright & Associates Pty Ltd to Council dated 27 June 2019.
 Ibid.

- b. the respondents had employed building contractors to "at least make this old building water tight and safe from the elements. It not being their primary residence or forming part of their core business though, we advise these works are for maintenance only, and it is unlikely that the funds will be sufficient to restore the dwelling to its former glory."
- 9 The intentions of the respondents in respect to the restoration of the existing dwelling have changed since the lodging of the planning application with Council. Confirmation that the respondents intentions have changed since lodging the planning application in June 2019 is found in the written submissions for the respondents that states that "the respondent has undertaken a program of both internal and external repairs and restoration works to bring the dwelling back to its former status."⁴
- 10 The supporting letter accompanying the planning application to Council also includes a series of photographs of the external parts of the house and some internal parts of the house including a photograph of part of what appears to be the kitchen of the house with a old style stove visible.



⁴ Paragraph 9 of the written submissions on behalf of the respondents dated 2 February 2021. See also [4].

VCAT Reference No.P401/2020

Page 6 of 30



- 11 In correspondence to Council in August 2019, it was asserted on behalf of the respondents,⁵ that–
 - a. the respondents purchased the land in July 2018;
 - b. the dwelling was superfluous to the respondents' needs and since purchase by the respondents the dwelling "*has been empty enabling the respondents to employ builders for restoration*";
 - c. the father of one of the respondents "occassionally stayed in the dwelling, especially during spring harvest, while helping his son run the agricultural business";
 - d. there is an existing working septic system for the dwelling;
 - e. power is connected to the dwelling and an invoice for electricity used for the period 29 January 2019 to 24 April 2019 is attached;
 - f. fixed telecommunications to the land is not available but that is a matter of choice given the availability of mobile services.
- 12 The electricity invoice provided shows a daily average kilowatt usage for that period (0.46 kW) that is significantly less than the daily average comparison rate for a one person household (8 kW) in the general area of the land. The daily consumption rate for the dwelling given for that period is '0'. I interpret this to mean that whilst there appears to be some draw on the electricity supply on a daily basis, it is so low that as a comparison rate it is assigned a value of '0'. The invoice amount given for the previous billing period is similarly low in respect to actual usage charges (when the amount is adjusted for the supply fee).

⁵ Letter from Rod Bright & Associates Pty Ltd to Council dated 2 August 2019.

VCAT Reference No.P401/2020

- 13 In September 2019, Council health protection officers undertook a site inspection of the existing house. It was concluded by those officers that the existing septic system on the land was a 'legacy system' and was not functioning as the house plumbing was not connected to the septic tank (in addition to cracked and broken pipes). Council officers noted that the dwelling was undergoing renovation at the time of the September 2019 inspection. Furthermore, photographs of the external house connection to the septic system taken in July 2019 and September 2019 confirm that the house was not connected to the septic system at those times.⁶
- 14 In correspondence to Council in October 2019,⁷ it is asserted on behalf of the respondents (amongst other things) that–
 - a. Mr Higgins resided in the dwelling until the time of his death in July 2018;⁸
 - b. there is a lease agreement which has existed since November 2018 for the use of the dwelling as a residence. (A copy of which was not included with that letter.)
- 15 At the hearing, the respondents relied on two residential tenancy agreements under the *Residential Tenancies Act* 1997, copies of which were included as annexures to the written submissions of the respondents.⁹ These agreements were not provided to Council (or the applicant) prior to the delivery of written submissions in this proceeding. Both agreements are between the respondents (as landlord) and Charles Peter Buchanan.
- 16 The first tenancy agreement (dated 22 November 2018) was for the fixed period of 1 December 2018 to 30 November 2019. The rental was recorded as \$150.00 per week or work in kind.
- 17 The second tenancy agreement (dated 30 November 2019) was for the fixed period of 1 December 2019 to 30 November 2021 at the same rental as in the previous term.
- 18 The respondents also relied on the statutory declaration of Charles Peter Buchanan executed on 4 February 2021. As declared in that declaration, Charles Buchanan is the father of Luke Buchanan, one of the respondents.
- 19 Charles Buchanan also declared that
 - a. he undertakes farm and agricultural work for the respondents on an intermittent basis throughout the year;¹⁰

⁶ Page 14, Planning Agenda Item 8.1 - Meeting for 12 February 2020.

⁷ Letter from Rod Bright & Associates Pty Ltd to Council dated 10 October 2019.

⁸ This assertion is not consistent with previous claims on behalf of the respondents that Mr Higgins resided in the dwelling until his death in January 2018.

Attachments B and C respectively to the written submissions on behalf of the respondents dated 2 February 2021.
 A+ [2]

¹⁰ At [2].

- b. he entered into a residential tenancy agreement with the respondents to use and occupy the dwelling on 22 November 2018 for the period 1 December 2018 to 30 November 2019;¹¹
- c. he entered into a residential tenancy agreement with the respondents to use and occupy the dwelling on 30 November 2019 for the period 1 December 2019 to 30 November 2021;¹²
- d. he has regularly used the dwelling to reside in when assisting with farmwork (for up to three months in spring);¹³
- e. he has undertaken renovation works on the dwelling that required him to reside within the dwelling for the purpose of arranging trades and undertaking supervision;¹⁴ and
- f. since 1 December 2018, the dwelling "contains a functional kitchen (sink and food preparation facilities), bathroom (shower and wash basin) and toilet."¹⁵
- 20 At the commencement of the hearing, Mr King informed me that the applicant did not accept the contents of Mr Buchanan's statutory declaration and he would have taken the opportunity to cross-examine Mr Buchanan on the contents of his declaration. Despite this, Mr Buchanan was not made available by the respondents for cross-examination. Consequently, I informed Mr Haydon that the weight to be given by me to the contents of Mr Buchanan's statutory declaration may be adversely affected by the lack of opportunity to test the contents of Mr Buchanan's statutory declaration.
- 21 A copy of a title search for the land was not included in any of the material relied upon by any of the parties, but as it was generally accepted by all the parties that the respondents 'purchased the land' on 23 July 2018, I am prepared to proceed on the basis that the respondents became the registered owners of the land on 23 July 2018.
- 22 No evidence has been provided to me to establish the dates of occupation of the dwelling by Mr Higgins. I have set out above the assertions made on behalf of the respondents in correspondence to Council regarding Mr Higgins occupation of the dwelling. For the purposes of deciding the planning application, Council accepted those assertions because "*Council's records do not contradict this.*"¹⁶ In its written submissions, Council submitted that Council's rate notice for the land 'indicated' that Mr Higgin's death occurred on 24 January 2018. A copy of that rate notice does not form part of the material before me.

¹¹ At [3].

¹² At [4]. ¹³ At [8]

¹³ At [8].

¹⁴ At [9]. ¹⁵ At [10].

¹⁶ Page 15, Planning Agenda Item 8.1 - Meeting for 12 February 2020.

IS THERE A THRESHHOLD ISSUE?

- 23 Clause 35.07 Farming Zone, sets out those provisions that specifically deal with the use and development of land within the Farming Zone.
- 24 Clause 35.07-1 contains the Table of Uses for the Farming Zone. A 'Dwelling' (other than a 'Bed and breakfast') is listed as a 'Section 1' use in the Table of Uses and accordingly does not require a permit if the following specified conditions are met-

Must be the only dwelling on the lot.

The lot must be at least the area specified in a schedule to this zone. If no area is specified, the lot must be at least 40 hectares.

- 25 Pursuant to clause 35.07-3, a permit is required to subdivide land in the Farming Zone. Each resultant lot must be at least the area for the land specified in the schedule to the zone, which, on the facts of this matter is 80 hectares. There are three circumstances in which a permit may be granted to create smaller lots. Those circumstances are where–
 - a. the subdivision is to create a lot for an existing dwelling. The subdivision must be a two lot subdivision.
 - b. the subdivision is the re-subdivision of existing lots and the number of lots is not increased.
 - c. the subdivision is by a public authority or utility service provider to create a lot for a utility installation.
- 26 The respondents seek to subdivide the land into two lots that are not at least 80 hectares to create a lot for an 'existing dwelling'.
- 27 The existing structure in question physically presents, from the photographs relied upon by the respondents, as a 'house'. I will adopt the term 'house' hereinafter to refer to the structure, the subject of consideration, to avoid using the term 'dwelling' or 'existing dwelling'.
- 28 The applicant's submissions on this issue were framed along these lines
 - a. The house on the land, cannot be properly classified as an 'existing dwelling' for the purposes of clause 35.07-3 of the planning scheme because although physically it is a house (albeit in a state of disrepair), the structure has not been used as a dwelling for a number of years and does not enjoy existing use rights.
 - b. Because the house on the land is not an 'existing dwelling', the proposed subdivision is prohibited.
- 29 I find that as a matter of construction of clause 35.07-3 as follows.
 - a. The requirement that each lot must be at least the area for the land specified in the schedule to the Farming Zone is a mandatory requirement that an application for subdivision must comply with in order for a permit to be granted. This is the inescapable

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conclusion from the use of the words "Each lot must be a least the area specified for the land in a schedule to this zone."

- b. A permit may be granted to create lots smaller than the area specified for the land in the schedule to the Farming Zone, at the discretion of the decision maker, only if one of the three circumstances set out in clause 35.07-3 are met. The grant of a permit to create smaller lots is permissive because a permit "*may*" be granted "*if*" certain circumstances are satisfied. Where one of the three circustances set out in clause 35.07-3 is met, the decision maker still retains a discretion whether to grant a permit to create smaller lots and as a result, no expectation of approval arises simply because one of the three circumstances is satisfactorily shown to exist.
- c. An application for subdivision that seeks to create lots that do not meet the mandatory minimum lot size is one that cannot be approved unless, the factual circumstances of the application fall within one of the three exemptions and the decision maker, in its discretion, decides to approve the application because the decision maker is satisfied that approval will result in an acceptable planning outcome.
- 30 After consideration of clause 35.07 and the facts of this matter, I find that there are two threshold issues to be determined–
 - a. What is the meaning of 'existing dwelling' as that phrase is used in clause 35.07-3?
 - b. Whether the house on the land is an 'existing dwelling" for the purposes of clause 35.07-3.

What is an 'existing dwelling' for the purposes of clause 35.07-3?

31 The applicant submitted that what is meant by the phrase 'existing dwelling' was comprehensively examined by Deputy President Gibson in *Gerdes v Hepburn SC (Red Dot)* [2010] VCAT 268 and relies on the following extract from the Red Dot Summary of that decision–

I find that the reference to "an existing dwelling" in this context is a reference to use for the purpose of an existing dwelling where the term "dwelling" refers to a use, not a type of structure. Consequently, the exemption does not apply.

32 The contents of a 'Red Dot Summary' do not form part of a decision or reasons for decision¹⁷. It is therefore unadvisable to rely upon the contents of such a summary (or part of one) to underpin submissions regarding the construction of a clause in a different planning scheme. As made clear in the quoted part of the summary above, the finding made was one made within a particular context.

¹⁷ This is made clear on the face of the summary page to the decision.

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33 In Gerdes, it was common ground before the Tribunal that an existing right to use the land for the purpose of a dwelling had expired because the use had stopped for a continuous period of two years.¹⁸ In the Rural Conservation Zone under the Hepburn Planning Scheme, a dwelling was a Section 2 use requiring a permit and the permit applicant in that matter had applied for a planning permit to use the 'existing dwelling' as a dwelling under clause 35.06-1 of the Hepburn Planning Scheme. The responsible authority in that matter took the position that as the applicant proposed to extensively renovate the existing structure, an application for buildings and works under clause 35.06-5 of the Rural Conservation Zone would also be required because in the Rural Conservation Zone a permit was required to construct or carry out a building or works associated with a Section 2 use. The applicant in *Gerdes* argued that the structure was an existing dwelling that had been on the land for a long period of time, and as a result, the proposed renovation works fell within an exemption in clause 35.060-5 that provided that the requirement to obtain a permit for development and works does not apply to-

> An alteration or extension to an existing dwelling provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres.

Any area specified must be more than 50 square metres.

- 34 The Tribunal in *Gerdes* was therefore concerned with the meaning of the phrase 'an existing dwelling' in the context where the relevant buildings and works were associated with a Section 2 use, being a 'dwelling' and the reference to 'an existing dwelling' in the context of clause 35.06 was to be read as a reference to *"use for the purpose of an existing dwelling where the term "dwelling" refers to a use, not a type of structure. "19*
- 35 The context in which the words "existing dwelling" appear in clause 35.07-3 of the planning scheme in this matter is different to the context in which those same words appeared in the Hepburn Planning Scheme and considered by the Tribunal in *Gerdes*.
- 36 The High Court in *Project Blue Sky Inc v Australian Broadcasting Authority* said²⁰–
 - [69] The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all of the statute. The meaning of the provision must be determined "by reference to the language of the instrument viewed as a whole". In *Commissioner for Railways (NSW) v Agalianos,* Dixon CJ pointed out that "the context, the genral purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed". Thus, the process of construction must

¹⁸ *Gerdes v Hepburn SC (Red Dot)* [2010] VCAT 268 at [5].

¹⁹ Ibid at [15].

²⁰ (1998) 194 CLR 355. Footnotes from the original text have been omitted.

always begin by examining the context of the provision that is being construed.

- [70] A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court "to determine which is the leading provision and the subordinate provision, and which must give way to the other". Only by determining the hierarchy of provisions will it be possible in many cases to give each provision meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.
- [71] Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision. In *The Commonwealth v Baume* Griffith CJ cited *Rv Berchet* to support the proposition that it was a "known rule in the interpretation of Statutes that such a sense is to be made upon the hoe as that no clause, sentence, or owrd shall prove superfluous, void, insignificant, if by any other construction they may all be made useful or pertinent."
- 37 Further as explained by Gibbs CJ in *Cooper Brookes (Wollongong) Pty Ltd* v Federal Commissioner of Taxation (1981) 147 CLR 297 at 304-5²¹–

It is an elementary and fundamental principle that the object of the court, in interpreting a statute, "is to see what is the intention expressed by the words used": River Wear Commissioners v Adamson. It is only by considering the meaning of the words used by the legislation that the court can ascertain its intention. And it is not unduly pendatic to begin with the assumption that words mean what they say: cf Cody v JH Nelson Pty Ltd. Of course, no part of a statute can be considered in isolation from its context- the whole must be considered. If, when the section in question is read as part of the whole instrument, its meaning is clear and unambiguous, generally speaking "nothing remains but to give effect to the unqualified, words': Metropolitan Gas Co v Federated Gas Employees' Industrial Union. There are cases where the result of giving words their ordinary meaning may be so irrational that the court is forced to the conclusion that the draftsman has made a mistake, and the canons of construction are not so rigid as to prevent a realistic solution in such a case: see per Lord Reid in Connaught Fur Trimmings Ltd v Cramas Properties Ltd...However, if the language of a statutory provision is clear and unambiguous, and is consistent and harmonious with the other provisions of the enactment, and can be intelligibly applied to the

²¹ Footnotes from original text have been omitted.

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subject matter with which it deals, it must be given it ordinary and grammatical meaning, even if it leads to a result that is inconvenient or unjust. To say this is not to insist on too literal an interpretation, or to deny that the court should seek the real intention of the legislature.

- 38 The same principles which apply to statutory construction apply to the construction of planning documents.
- 39 Following the established approach of the High Court to the construction of statutory provisions it is appropriate to consider first whether the words 'existing dwelling' have been assigned a special meaning in the planning scheme.
- 40 'Existing dwelling' is not defined in the planning scheme, however the term 'dwelling' is a defined land use under clause 73.03 of the planning scheme.
- 41 Clause 73.03 defines the term 'dwelling' as-

| Dwelling | A building used as a self-contained | Bed and breakfast | Accommodation |
|----------|-------------------------------------|-------------------|---------------|
| | residence which must include: | Caretaker's house | |
| | a) a kitchen sink; | | |
| | b) food preparation facilities; | | |
| | c) a bath or shower; and | | |
| | d) a toilet and wash basin. | | |
| | It includes outbuildings and works | | |
| | normal to a dwelling. | | |

- 42 It is clear from that definition that there is a distinction made between the structure (that is the 'building) and the use to which the structure is put. It is only when a building with the identified required facilities is used as a self contained residence does it constitute a 'dwelling' for the purposes of the planning scheme.
- 43 Clause 35.07-3 is the provision in the planning scheme that triggers the requirement for a permit to subdivide land within the Farming Zone. There is no general requirement that subdivision must be associated with particular use in order for a permit to be granted. However, the set of circumstances in which a permit may be granted to create lots smaller than the mandatory minimum size is deliberately confined. The planning policy underpinning clause 35.07-3 is not to create lots smaller than the required mandatory minimum area other than in the exceptional circumstances identified.
- 44 The use of land in the Farming Zone for the purposes of a 'dwelling' is a Section 1 use, not requiring a permit, where the following conditions are met–

Must be the only dwelling on the land

The lot must be at least the area specified in a schedule to this zone. If no area is specified, the lot must be at least 40 hectares.

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Must meet the requirements of Clause 35.07-2.

- 45 Where the Section 1 conditions cannot be met, the use of land as a 'dwelling' is a Section 2 use requiring a permit and must meet the requirements of clause 35.07-2.
- 46 Clause 35.07-2 in turn sets out the specific requirements for a lot used for a dwelling.
- 47 If it is accepted that the planning policy underpinning clause 35.07-3 is not to create lots smaller than the required mandatory minimum area other than in certain exceptional circumstances, then applying the planning scheme definition to the word 'dwelling' as it appears in clause 35.07-3 can be intelligibly applied in its context and produces a clear and consistent outcome that is harmonious with the achievement of that goal.
- 48 Further, to permit a smaller lot to be created merely because there exists on the relevant land a structure that could be used as dwelling but is not so used at the time of subdivision would not produce an outcome that is consistent with the stated purposes for the Farming Zone.
- 49 For the above reasons, I find that for the purposes of clause 35.07-3, a permit may be granted to create a smaller lot than the area specified for the land where the subdivision–
 - a. is for two lots only; and
 - b. creates a lot which contains an existing building being used as a dwelling.

Is the house an 'existing dwelling' for the purposes of clause 35.07-3?

- 50 The respondents submitted that the house on the land is circa 1910 and that, although not protected by a heritage overlay, it has some historic significance at a local level.
- 51 The applicant conceded that the house was once used as a dwelling, and in times past, contained all definitional attributes of a dwelling contained in clause 73.03 of the planning scheme. However, the applicant also submitted that the house had fallen into a state of disrepair such that it was no longer habitable and did not contain the working or functioning facilities to meet the definitional attributes of a dwelling. The applicant's position is predicated on the use of the house for residential purposes sufficient to establish existing use rights as a dwelling.
- 52 The respondents acknowledged that the house fell into a state of disrepair prior to their acquisition of the land on 23 July 2018, however the respondents dispute that existing use rights associated with the house have expired through non-occupation of the house relying on
 - a. the acquisition of the land from the estate of Mr Higgins on 23 July 2018;
 - b. Mr Higgin's occupation of the house until his death in Janary 2018;

- c. the residential lease agreements between the respondents and Mr Charles Buchanan.
- 53 I note the direction provided in clause 63.02 of the planning scheme-

If a use of land is being characterised to assess the extent of any existing use right, the use is to be characterised by the purpose of the actual use at the relevant date, subject to any conditions or restrictions applying to the use at that date, and not by the classification in the table to Clause 73.03 or in Section 1, 2 or 3 of any zone.

- 54 The direction in clause 63.02 focuses attention on what is the real and substantial purpose of the use in question at the relevant date.
- 55 It was asserted in correspondence from the respondents' agent to Council throughout the planning application process that Mr Higgins, the previous owner of the land, resided in the house until his death in January 2018. The written submissions on behalf of the respondents repeated this assertion. Council appears to accept the assertion because its records do not contain anything to the contrary. No independent enquiry appears to have been made by Council as to the history of occupation of the house. Given the state of disrepair of the house, confirmed by a site inspection by Council officers, further enquiry by Council would have been prudent.
- 56 Belatedly, there is reliance by Council on the contents of a rates notice for the land (which was not tendered at the hearing) as evidence of Mr Higgins place of residence at the date of his death. As the rates notice is not before me, I am not assisted by Council in this regard.
- 57 Applying clause 63.02 as liberally as possible to the material before me, I am prepared to accept, despite the state of disrepair of the house which was likely to have existed prior to July 2018, that Mr Higgins used the house as a dwelling until sometime in January 2018.
- 58 The relevant remaining question that then needs to be answered is whether those rights are continuing or have expired.
- 59 Clause 63.06 of the planning scheme provides-

An existing use right expires if either:

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.

In the case of a use which is seasonal in nature, the use does not take place for 2 years in succession.

- 60 Dealing first with the applicant's submission that the house had fallen into such a state of disrepair that it could not have been used as a dwelling for the 2 years prior to the relevant date. There is some support for the applicant's submission in this regard.
- 61 Attachment A of the respondents' written submissions comprise 4 photographs of the exterior of the house, which upon comparison with the

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earlier photographs accompanying the planning application show an improvement to the state of the exterior of the house since acquisiton by the respondents. There are no photographs before me of the interior of the house post acquisition by the respondents.

- 62 The statutory declaration of Mr Charles Buchanan dated 4 February 2021 includes the following conclusionary statement in paragraph 10–
 - 10. Whilst the dwelling continues to be upgraded and renovated, and since the time when Agreement No.1 commenced, the dwelling contains a functional kitchen (sink and food preparation facilities), bathroom (shower and wash basin) and toilet.
- 63 The statutory declaration does not contain any photographs of the 'functional kitchen' or the bathroom and toilet. Mr Charles Buchanan declares ²² that the functional kitchen, bathroom and toilet have been in existence since the time when Agreement No.1 commenced, that is, as at and from, 1 December 2018. This statement is at odds with contents of the Council officer report, particularly regarding the lack of connection between the house plumbing and the septic system as displayed in the photographs dated July 2019 and September 2019 included in the Council officer report. These two photographs show that (as was concluded by Council officers inspecting the land in September 2019) there was no connection between the house and the existing septic system. As Charles Buchanan was not available for cross-examination, or to answer any questions of the Tribunal, how the waste water and other effluent generated from Mr Buchanan's occupation of the house was effectively and responsibly collected and disposed was unexplained by the respondents.
- 64 The relevant chronology (post Mr Higgins occupation of the house) able to be ascertained from the material before me is as follows–
 - a. Late January 2018 to 23 July 2018 house is vacant;
 - b. 24 July 2018 30 November 2018 intermittent use of house by Charles Buchanan to assist with agricultural activities on the land;
 - c. 1 December 2018 –9 February 2021²³ use of house by Charles Buchanan to assist with farm work and organising trades for the renovation of the house.
- 65 Acknowledging the direction in clause 63.02, the use of land for the purpose of a dwelling fundmentally involves use of the relevant structure as a place of 'residence' or a place in which to 'reside'.
- 66 The Macquarie Dictionary²⁴ includes the following relevant definitions–

²² At [10] of his statutory declaration.

²³ Date of the hearing in this proceeding.

²⁴ Macquarie Dictionary Online – definitions downloaded on 31 March 2021.

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- 67 The Full Federal Court in *Marana v Commissioner of Taxation* (2004) 141 FCR 299²⁵ concluded after an extensive review that the dictionary meanings considered there²⁶ concluded–
 - [26] Clearly, both 'reside' and 'residence' have the connotation of permanent, or at least long term commitment to dwelling in a particular place.
- 68 I adopt the approach of the Full Federal Court in *Marana's* case and find that the use of a structure as a dwelling must involve either the permanent or long term commitment to the occupation or habitation of the structure. Whether or not a structure is used either permanently or on a long term basis, as a residence, is a question of fact to be determined on the evidence and material before the decision maker.
- 69 I find that the intermittent use of the house by Mr Charles Buchanan in the period 24 July 2018 to 30 November 2018 does not constitute the use of the house as a dwelling. This is because Mr Buchanan's intermittent use of the house whilst doing farm work for his relatives does not exhibit a permanent or long term commitment to residing in a particular place. At best, it speaks of ad hoc temporary occupation whilst the house is otherwise unoccupied.
- 70 I find therefore that the use of the house as a dwelling stopped during the period of late January 2018 to 30 November 2018.
- 71 After careful consideration of the contents of Mr Buchanan's statutory declaration and the residential tenancy agreements attached to the respondents' written submissions, I accept, that the house has been used as a dwelling in the period 1 December 2018 to 9 February 2021. I do not come to this conclusion lightly, particularly given the the limited description of the use of the house by Mr Buchanan contained in his

²⁵ At [26].

In which the Full Federal Court considered the definitions for 'residence' and 'reside' in the Macquarie Dictionary (as well as the Oxford Dictionary and the Shorter Oxford Dictionary).

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statutory declaration and the inability to further question him regarding the functionality of the kitchen and other amenities within the house during the first tenancy agreement. I accept however that the residential tenancy agreements provide some evidence of a long term commitment, albeit it not a full time commitment, to dwelling in a particular place.

- 72 As a result, I am satisfied that the existing use of the house as a dwelling has not expired under clause 63.06 of the planning scheme because the use of the house as a dwelling has not stopped for a continuous period of 2 years, and has not stopped for two or more periods which together total 2 years in any period of 3 years. Consequently, the Tribunal may grant a permit for the subdivision sought by the respondents.
- 73 In concluding this part of the reasons, I feel compelled to make the observation that the evidence provided by the parties was predominantly vague, general and of limited probative value. For the most part, the material and submissions before me contained mere assertions not supported by evidence (either documentary or by witness statements regarding the existence of relevant facts). The limitations of this material has made the task of fact finding in this matter, difficult.
- 74 Notwithstanding s. 98(1)(b) of the Act, which provides that the Tribunal is not bound by the rules of evidence (except to the extent that it adopts those rules), parties that seek to persuade the Tribunal of a particular outcome on an issue in a proceeding should provide the Tribunal with evidence that can rationally affect the assessment of the probability of the existence of a fact in issue. Mere assertions, speculation, or analogies contained in correspondence or Council reports do not amount to probative evidence.

SHOULD THE SUBDIVISION BE APPROVED?

- 75 This part of the reasons examines the relevant planning provisions applying to the planning application and the appropriateness of the subdivision in light of those provisions.
- 76 The purposes of the Farming Zone are-

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To provide for the use of land for agriculture.

To encourage the retention of productive agricultural land.

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

To encourage the retention of employment and population to support rural communities.

To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

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

- 77 Apart from the minimum subdivision area of 80 hectares and limitations on earthworks, the schedule to the Farming Zone does not impose any further requirements in respect to the use or development of the land.
- 78 Clause 35.07-6 contain the decision guidelines (in addition to the decision guidelines in clause 65) applicable to use or development of land within the Farming Zone. These guidelines require that, the responsible authority must consider, as appropriate, the following matters–

General issues

- The Municipal Planning Strategy and the Planning Policy Framework.
- Any Regional Catchment Strategy and associated plan applying to the land.
- The capability of the land to accommodate the proposed use or development, including the disposal of effluent.
- How the use or development relates to sustainable land management.
- Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.
- How the use and development makes use of existing infrastructure and services.

Agricultural issues and the impacts from non-agricultural uses

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- The capacity of the site to sustain the agricultural use.
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.
- Any integrated land management plan prepared for the site.

Dwelling issues

- Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
- Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.

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- Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
- The potential for the 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.

Environmental issues

- The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.
- The impact of the use or development on the flora and fauna on the site and its surrounds.
- The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.
- The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.
- 79 The parts of the Municipal Planning Strategy and the Planning Policy Framwork relevant to this application include–
 - a. Clause 02.03-4 Natural Resource Management;
 - b. Clause 02.04 Strategic Framework Plans;
 - c. Clause 14.01-1S Protection of agricultural land (general); and
 - d. Clause 14.01-1L Protection of agricultural land (applying to land in the Farming Zone, Rural Conservation Zone and Rural Activity Zone).
- 80 Clause 02.03-4 Natural Resource Management, acknowledges the protection of agricultural industries to the economic and social well being of the Shire. This policy specifically–
 - a. states that the need to protect 'arable land' will intensify as the Shire's significant landscapes will attract people seeking a rural/coastal lifestyle; and
 - b. identifies that rural land traditionally used for farming is increasingly being used for lifestyle purposes with resultant problems such as increasing property values inhibiting farm growth, servicing and provision of infrastructure, conflict with adjoining land uses and the potential to undermine the protection of the agricultural base of the Shire.
- 81 Under this policy the stated objectives of the management of natural resources by the responsible authority are-

Protecting high quality agricultural land

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Limiting rural and residential development that impacts viable agricultural land.

Supporting grazing and cropping farming practices as preferred land uses in areas designated and 'Farmland of Strategic Significance'.

Supporting farm consolidation and expansion.

Supporting agricultural diversity and sustainable forestry and timber industries.

Supporting the growth and operations of existing timber processing.

- 82 Under clause 02.04 Strategic Framework Plans, the land is not included as 'Farmland of Strategic Significance' as detailed on the Colac Otway Shire Strategic Framework Plan map. The land is included in the north-eastern area of the Shire and is identified as having 'medium' agricultural capability with primary use for the production of beef.²⁷
- 83 The single objective of clause 14.01-1S Protection of agricultural land, is to protect the state's agricultural base by preserving productive farmland. A range of strategies are listed towards attainment of that objective–

Identify areas of productive agricultural land, including land for primary production and intensive agriculture.

Consider state, regional and local, issues and characteristics when assessing agricultural quality and productivity.

Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.

Protect productive farmland that is of strategic significance in the local or regional context. Protect productive agricultural land from unplanned loss due to permanent changes in land use. Prevent inappropriately dispersed urban activities in rural areas. 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.

Identify areas of productive agricultural land by consulting with the Department of Economic Development, Jobs, Transport and Resources and using available information.

In considering a proposal to use, subdivide or develop agricultural land, consider the:

²⁷ See clause 2.03-4, Natural Resource Management at page 4 of 5.

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- Desirability and impacts of removing the land from primary production, given its agricultural productivity.
- Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.
- Compatibility between the proposed or likely development and the existing use of the surrounding land.
- The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.
- Land capability.

Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.

Give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land.

Balance the potential off-site effects of a use or development proposal (such as degradation of soil or water quality and land salinisation) against the benefits of the proposal.

84 Clause 14.01-1L – Protection of agricultural land applies to all land in the Farming Zone, the Rural Conservation Zone and the Rural Activity Zone. The specific strategies for the protection of agricultural in these zones are–

Minimise ad hoc development of unserviced old and inappropriate subdivisions.

Ensure that lots resulting from subdivision are of a sufficient size to benefit agricultural production or environmental protection.

Discourage dwellings on lots that do not meet the minimum lot area of the zone or relevant schedule unless it is required for an intensive agricultural activity on the land or to achieve the environmental protection of the land.

Avoid localised concentration of dwellings in agricultural areas.

Discourage the realignment of boundaries that will create small lots for existing dwellings unless the re-subdivision contributes to the restructure and/or consolidation of agricultural holdings into larger farming units.

Ensure that small lot subdivisions or excisions facilitate sustainable rural production and do not prejudice surrounding rural activities.

Discourage boundary realignments if they rely on land that was previously a road reserve, utility lot, crown land or are of insufficient size to support a dwelling.

Support a mix of uses in the Rural Activity Zone on land west of Apollo Bay and in the Otway Ranges including:

Agriculture. Tourist and recreational activities.

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Group accommodation with tourist or recreational activities (including backpacker accommodations, camping and caravan park, cabins, etc).

Restaurants in association with tourist facilities or recreational activities.

Policy guidelines

Consider as relevant:

Whether any small lot containing a dwelling and associated infrastructure should be at least 0.4 hectare and no more than 2 hectares in area.

Providing setbacks around the existing dwelling from lot boundaries to limit likely impacts of adjacent agricultural activity.

The use of an agreement under Section 173 of the Act to prevent the further subdivision of the land and the construction of a dwelling on any lot created other than in accordance with the minimum lot size in the zone.

- 85 The parties also referred to the Colac-Otway Shire Rural Land Strategy (RMMG) 2007 and the Colac Otway Rural Living Strategy (CPG Australia, 2011) that are both identified as background documents in the schedule to clause 72.08 of the planning scheme.
- 86 The Colac-Otway Shire Rural Land Strategy (RMMG) 2007 identifies the land as having medium agricultural capability which makes the land suitable to less intensive agricultural industries such as grazing and cropping.²⁸

THE POSITION OF THE PARTIES

- 87 Council supports the proposed subdivision, subject to conditions, against the recommendation of its planning officer to refuse the application.
- 88 Council's position is that as proposed Lot 1 (incorporating the existing dwelling) will have an area of approximately 1.6 hectares, the loss of this area of land will not impact on the existing grazing activity on the balance of the land (particularly if a s.173 agreement is entered into prohibiting the use and development of Lot 2 for a dwelling).
- 89 Council also relied on the fact that the land is not identified as being 'Farmland of Strategic Significance' and submitted that the subdivision will not result in fragmentation of farming land. In addition, it was submitted by the responsible authority that "Council was not convinced that the loss of 1.168 hectares will be detrimental to the operation of agricultural pursuits on the site or on surrounding farms. The Planning Department provided no evidence to suggest how the removal of 1.168 hectares will negatively impact on the operation of the existing farm or that on adjoining farms."²⁹

²⁸ At page 26.

²⁹ The written submissions of the responsible authority received 2 February 2021 at page 15; [46].

- 90 Critical of the applicant's submission that the excision of the house and creation of Lot 1 may impact on agricultural land values, Council submitted that the applicant *"had provided no evidence to substantiate this claim."*³⁰
- 91 In respect to the decision guidelines applicable to applications involving land in the Farming Zone, Council submitted that–
 - a. the setbacks for Lot 1 ranging from 24 to 53 metres from the dwelling to the adjoining land together with additional tree plantings within Lot 1 will minimise any adverse amenity impacts on the occupants of the house;
 - b. occupants of the house "need to acknowledge that the dwelling is located within a FZ and the implications of (sic) associated with this zone as opposed, for example to General Residential Zone";³¹
 - c. as the existing farming activities consist or broad acre grazing land and it is anticipated that this activity will continue, the amenity impacts will not be similar to those created by other farming activities such as harvesting or intensive animal husbandry.
- 92 On behalf of the respondents it was submitted that
 - a. the respondents are genuine long term farmers of the area, and owners of adjacent land, who wish to facilitate their agricultural expansion, increased agricultural production and long-term sustainability of agricultural activities, seek to unburden themselves of the responsibility associated with owning the house;
 - b. there are relatively low amenity impacts associated with the agricultural activities in the surrounding land;
 - c. by imposing a restriction preventing further subdivision of Lot 2 or its development and use for a dwelling, the market values for farmland will be kept in check; and
 - d. the subdivision will not unreasonably remove a significant amount of medium capability farmland.
- 93 Particular reliance was placed by both Council and the respondents to the following strategy in clause 14.01.1L–

Ensure that small lot subdivision or excisions facilitate sustainable rural production and do not prejudice surrounding rural activities.

- 94 Further, on the exercise of discretion, I was directed to the following passage from *Great Southern Plantations Limited v Colac Otway* SC³²–
 - 28 In exercising discretion whether to grant a permit for a house lot excision in a rural zone and in applying its policy, the responsible authority should be considering the question of whether it will

³⁰ Ibid at page 16; [54].

³¹ The written submissions of the responsible authority received 2 February 2021 at page 16; [52].

³² [2006] VCAT 468 at [28].

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adversely affect surrounding rural production activities, rather than simply taking the view that small lots with dwellings are ipso facto undesirable. It is not the small lots themselves that are a problem but what they lead to. If the consequences of creating a small lot subdivision will not adversely impact on the objectives of the policy, then there is no point in applying the policy in a proscriptive way. Policies should always be applied with an eye to their objectives and the mischief they seek to address.

- 29 The council's existing policy appears to be quite adequate in framing its objectives and the policies to be applied when exercising the discretion. The issues raised by a rigorous application of the policy require critical analysis and may lead to different outcomes when applied to different sets of facts. This is not a fault of the policy rather it is a product of correctly using a policy to guide decision making. Policies are not rules and do not automatically deliver answers. They are intended to guide the genuine exercise of a discretion in the interests of achieving the policy objective.
- 95 In addition to submitting that approval of the subdivision would be contrary to the purposes of the Farming Zone and the outcomes sought under clause 14.01-1L and clause 14.01-1S, the applicant submitted that the creation of a residential lot within the middle of the farming zone with no real connection to farming practices has a very real potential to adversely affect the future occupiers of the dwelling and other nearby farming enterprises because of the incompatibility of the two uses.

FINDINGS

- 96 Addressing first the reliance by the respondents on the extract above from the Tribunal's decision in *Great Southern Plantations Limited v Colac Otway SC*, I note that that decision predates amendment C46 that introduced the Farming Zone and Rural Conservation Zone into the planning scheme after a comprehensive review triggered by concern that the existing rural zones did not adequately recognise the importance of agriculture leading to increased land use conflicts by allowing a range of non-agricultural uses to establish in rural areas.³³ My findings below are based on my consideration of the planning scheme as I find it at the date of this decision.
- 97 A reading of the relevant provisions of the planning scheme (extracted above) as a whole supports the following conclusions:
 - a. Agriculture is a key economic contributor to the shire and agricultural land within the shire affords different agricultural opportunities categorised by the agricultural capability of soil in different geographical areas.³⁴

³³ See page 1 of Colac Otway Planning Scheme Amendment C46 Explanatory Report.

³⁴ Rural Land Strategy (2007).

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- b. The three distinct geographical areas³⁵ that offer different agricultural opportunities are
 - i. the north-west which is categorised as an area of "Farmland of Strategic Significance" having a 'high' agricultural capability;
 - ii. the north-east, within which the land is situated, which is categorised as having 'medium' agricultural capability;
 - iii. the south which is variously categorised as 'low', 'medium' and 'high' agricultural capability.
- c. Read sensibly and harmoniously with all other relevant provisions of the planning scheme, the reference to 'productive farmland' and 'productive agricultural land' in clause 14.01-1S includes all land identified as having agricultural capability under clause 02.03-4 whether classified 'low', 'medium' or 'high'.
- d. Similarly, the reference to 'arable land' and 'viable agricultural land' in clause 02.02-4 includes all land identified as having agricultural capability under clause 02.03-4 whether classified 'low', 'medium' or 'high'.
- e. Further, the reference to 'productive agricultural land' in the purpose statement³⁶ for the Farming Zone includes all land identified as having agricultural capability under clause 02.03-4 whether classified 'low', 'medium' or 'high'. This conclusion is supported by the specific policy application of clause 14.01-1L to all land in the Farming Zone, Rural Conservation Zone and Rural Activity Zone.
- f. There is no basis to interpret the terms 'productive farmland', 'productive agricultural land', 'arable land' or 'viable agricultural land', where they appear in clause 14.01-1S, clause 02.03-4 or clause 35.07 as limited only to land identified as 'Farmland of Stragetic Significance' under the Strategic Framework Plans in clause 02.04. To the contrary, clause 14.01-1S includes specific strategies applicable only to farmland of strategic significance by direct reference to the strategic significance of such farmland, differentiating this type of farming land from agricultural land of other descriptions.
- g. A specific strategy of clause 14.01-1L Protection of agricultural land, is to ensure that small lot subdivisions or excisions facilitate rural production and do not prejudice surrounding rural activities. The requirement of this strategy is two-fold and both are required to be achieved.

³⁵ See clause 02.03-4.

³⁶ Clause 35.07 – see 3rd paragraph under 'Purpose'.

- h. The decision guidelines in clause 35.07-6 apply to the extent relevant to the nature of the planning application. Those guidelines appearing under the heading "Dwelling issues" are only triggered where there is an application to use land for a dwelling. Clause 35.07-5 makes this clear when requiring such an application to include a written statement which explains how the the proposed dwelling responds to the decision guidelines for dwellings in the zone. These guidelines do not apply to the present application as it does not involve an application to use land for a dwelling, only to subdivide the land.
- i. As the present application is only for the subdivision of the land, the relevant decision guidelines under clause 35.07-6 are those guidelines appearing under the headings "General issues", "Agricultural issues and impacts from non-agricultural uses", and to the extent relevant on the facts "Environmental Issues".
- 98 Applying my findings on the interpretation of the planning scheme provisions to this application, I further find:
 - a. I am not satisfied of the capability of the land to accommodate the disposal of effluent. That is an issue left wanting by the state of the evidence on behalf of the respondents. There are a number of inconsistent statements throughout the material before me that warranted that the matter be directly and properly addressed by the respondents. In the original planning application it was stated on behalf of the respondents that there was an existing working septic system, yet the inspection by Council officers in September 2019 revealed the contrary. My previous reservations about Mr Charles Buchanan's statement regarding the functionality of the kitchen, bathroom and toilet in light of the outcome of the inspection by Council officers in September 2019 are also relevant in this regard.
 - b. I am satisfied that given the topography of the land that appropriate access infrastructure to proposed Lot 1 could be constructed subject to reasonable permit conditions.
 - c. The subject land is productive agricultural land to which 14.01-1S applies and seeks to avoid the subdivision of productive agricultural land from diminishing the long term productive capacity of the land. I am not satisfied on the material before me that the excision of proposed Lot 1 containing the existing dwelling will not diminish the long term productive capacity of the land. In my view, as the strategy is directed specifically to the effects of subdivision on productive agricultural land, its object is directed to the effect of the subdivision on something other than merely the agricultural capacity of the soil on the land. As proposed Lot 1 will effectively be an isolated island of land within a balance lot of less than 80 hectares I am of the view that the creation of Lot 1 could

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make Lot 2 less desirable for agricultural use by anyone other than the respondents.

- d. The proposed subdivision will not support or enhance agricultural production. The improved financial circumstances of the respondents upon the sale of proposed Lot 1 is not a relevant planning matter to be taken into consideration and in any event, I am not satisfied on the general assertion made to me that the sale of proposed Lot 1 will necessarily lead to enhanced agricultural production. The respondents will be free to do as they please, as is their right, with the proceeds of the sale of Lot 1.
- e. The proposed subdivision will not facilitate sustainable rural production. No cogent evidence or argument has been put before me that demonstrates how the creation and sale of proposed Lot 1 will facilitate sustainable rural production apart from the general assertion (which I have rejected)that the proceeds of the sale of proposed Lot 1 will be reinvested into farming of the area by the respondents.
- f. Approval of the proposed subdivision would create a rural lifestyle lot in the Farming Zone which is an outcome not preferred under the planning scheme. While the proposed subdivision will not adversely affect soil quality, it will remove an area of land (proposed Lot 1) permanently from agricultural production and while that area of land is relatively small, its removal constitutes the fragmentation of agricultural land sought to be avoided. Further, there is the potential for the use of proposed Lot 1 as a rural lifestyle block, or predominantly for the use of the dwelling, to limit the operation of nearby agricultural uses. I am not satisfied, given the particular and unavoidable shape and depth of proposed Lot 1, that there would not arise conflict regarding amenity issues between the owners/occupiers of proposed Lot 1 and the continued use of proposed Lot 2 and other nearby land used for agricultural purposes.
- g. On the respondents' own case, they are long term committed farmers in the area that have purchased land that contains a dwelling that is surplus to their needs and for which they do not wish to carry the responsibility of owning and maintaining into the future. No evidence was put before that but for the proposed subdivision, the land would not continue to be put to agricultural use by the respondents.
- h. Finally, while the use of a s. 173 agreement as a permit condition may go some way to ensuring that a dwelling would not be constructed on proposed Lot 2 (and indirectly restraining any increase in property values as a result of the subdivision) such a

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mechanisam does not cure or alleviate the noncompliances with the policy and strategic considerations above.

CONCLUSION

99 For the reasons given above, I am not satisfied that the grant of a permit to subdivide the land as proposed will result in an acceptable planning outcome. The decision of the responsible authority is set aside. No permit is granted.

Picha Djohan Member

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PP188/2022-1 – 255 COLAC BALLARAT ROAD, IRREWARRA Draft Conditions (Not Officer Recommendation)

That Council resolves to Grant a Permit for the Use and Development of the Land for a Dwelling at 255 Colac Ballarat Road, Irrewarra (Lot 2 TP863303, V/F: 6847/270), subject to the following conditions:

Endorsed Plans

1. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

Dwelling Infrastructure

- 2. Prior to the initial occupation of the dwelling hereby permitted, the following must be provided to the satisfaction of the Responsible Authority:
 - a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
 - b) The dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.
 - c) 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.
 - d) The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

Access

- 3. Prior to the commencement of development, unless otherwise agreed in writing by the Responsible Authority, vehicular access from the roadway to the property boundary must be constructed to the satisfaction of the Responsible Authority.
- 4. Prior to the initial occupation of the dwelling hereby permitted, the driveway must be constructed to an all-weather standard and with a minimum width of 3 metres, to the satisfaction of the Responsible Authority.

Stormwater

- 5. All runoff from stormwater, including overflow from water storage, must be taken to a legal point of discharge to the satisfaction of the Responsible Authority.
- 6. The site must be developed and managed to ensure there is no stormwater pollution through the contamination of runoff by chemicals, sediments, wastes or pollutants in accordance with 'Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control' (EPA) at any time during construction or operation, to the satisfaction of the Responsible Authority.

Wastewater

7. An onsite wastewater management system must be constructed concurrently with the dwelling hereby permitted, so that all liquid waste is at all times contained within the curtilage of the lot. The design and installation of any wastewater disposal system for any building on the land must

comply with 'Code of Practice - Onsite Wastewater Management', July 2016 (EPA Publication No. 891.4, or as amended), to the satisfaction of the Responsible Authority.

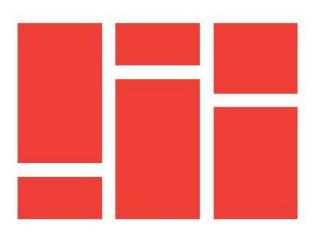
Expiry

- 8. This permit will expire if one of the following circumstances applies:
 - a) The development is not commenced within three years of the date of this permit.
 - b) The development is not completed, and the use is not commenced, within five years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act* 1987, an application may be made to the Responsible Authority to extend the periods referred to in this condition.

Notes:

- 1. This permit does not authorise the commencement of any building works. Prior to the commencement of development, it will also be necessary to obtain a building permit for the dwelling.
- 2. Prior to preparing drainage plans, a legal point of discharge (LPoD) must be obtained in accordance with Building Regulation 133. A copy of the LPOD, which incurs a fee in accordance with the Building Regulations, must be submitted with the engineering plans.
- 3. A works within road reserve permit is required prior to any works being undertaken on Council managed road reserves within the Colac Otway Shire.
- 4. At least seven (7) days before any works start, an Asset Protection Permit must be obtained from Council. Council infrastructure must be maintained in a safe condition during the construction period. Any damage caused by these works to Council assets must be reinstated to the satisfaction of the Council prior to the completion of works.
- 5. A separate application to install an onsite wastewater management system must be submitted and approved by Council's Health Protection Unit prior to the commencement of works. The Health Protection Unit reserves the right to request that a new Land Capability Assessment by a suitably qualified person be submitted for approval at the onsite wastewater permit application stage, unless otherwise agreed in writing.



PLANNING REPORT

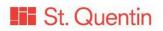
USE AND DEVELOPMENT OF LAND FOR A DWELLING

LOT 2 TP863303D

255 COLAC-BALLARAT ROAD,

IRREWARRA

JULY 2022



51 Little Fyans Street South Geelong. PO Box 919 South Geelong 3220 P. 5201 1811



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1. Introduction

St Quentin has been instructed to prepare this planning report in relation to the use and development of a dwelling at Lot 2 on Title plan 863303D at 255 Colac-Ballarat Road, Irrewarra - 3249.

The purpose of this report is to detail the proposal and its context, outline its consistency with the relevant strategic framework and statutory controls, and in doing so explain why the proposal is worthy of Council's support and approval.

This report is supported by and should be read in conjunction with the following supporting documentation:

Appendix 1: Copy of the title

Appendix 2: Site Plan

Appendix 3: Development Plans

Appendix 4: Newspaper Article

2. Key Considerations

The key considerations for Council to assess within this planning application are as follows:

Use/Development

- Lot 1 and Lot 2 TP863303 had been permitted for Use and Development of a dwelling including construction of outbuilding and creation of access to a road in a Road Category 1 in the permit PP-250/2017-1 on 15 February 2019. Later, the permit has expired failing to commence the development within two years of issue of the permit.
- The subject site is at 255 Colac-Ballarat Road (*Lot 2 of TP863303*) was an original WW1 soldier's settler's block granted in the year 1922. It was a fully operational dairy farm with the house and dairy buildings on Lot 2.
- The applicant wishes to acquire a planning permit to construct a house on the same site as the original soldier settler's house. It is also the most suitable site being the highest point on a sand/loam bank.
- Lot 2 TP863303D is 11.38Ha in size and was created in 2007. Lot 2 is part of the same title as Lot 1 and the Total area is 40.47Ha. Lot 2 is available in two pieces, one containing the E-1 (The carriage way Easement) and located to the corner of Colac-Ballarat Rd and Irrewarra School Rd and Lot 1 contains the area across the Colac-Ballarat Rd towards West.
- The subject site has access to service infrastructure such as potable mains water and electricity. Lot 2 has a frontage of 87.11m approximately to all-weather Irrewarra School Rd towards North and has enough space to accommodate emergency vehicles. The subject site can be connected to electricity lines on Irrewarra School Rd. The site has access to the reticulated potable water also located on Irrewarra School Rd.
- Under the Colac-Otway planning scheme, a permit is required to construct a dwelling under 40Ha, the rule derived from the Victorian guidelines designed to protect the viable agricultural lands.
 Considering the current events of Colac-Otway Council permitting the construction of dwelling on a Farmland at 45 Glenn Street, Warrion (15Ha) and 321 Larpent Rd, Cororooke; we approach the council for the same (Refer Appendix 4 for the Newpaper Article) as the subject land currently has minimal agricultural activities.
- The subject site is only 4.4km from the edge of Colac Township. An additional house in this location will increase the demand for services in Colac.
- There are farm dwellings on the majority of surrounding lots, so one additional dwelling will have negligible impact on the agricultural integrity of the area.
- There is no significant native vegetation found on the site. The proposal does not require removal of any vegetation within the site context.
- The proposed development at Lot 2 on Title plan 863303 on 255 Colac-Ballarat Road will create a new residential building. The dimensions of the building envelope of the proposed structure are 15m x 10m and has been designed and positioned so that it is provisioned with sufficient vehicular access by means of a driveway and garage. There are no other structure present within the site to be retained. The proposed development will be approximately 209.48m2 in area comprising three bedrooms. The proposed dwelling has a sufficient side, front (100.50m from the Irrewarra School Rd), and rear setbacks. The proposed dwelling in the farming zone does not impact the neighbourhood context and agricultural activity in that area.



3. Setting

3.1. Subject Site

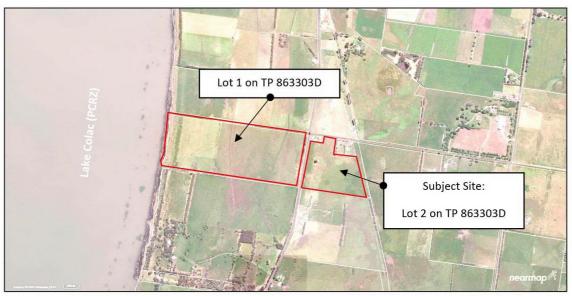


Figure 1: Subject site is in the Farming zone, as seen in the image, the Lot 1 & Lot 2 is separated by the Colac-Ballarat Rd, yet they remain under the same title plan 863303D.

| Street Address: | 255 Colac-Ballarat Road, Irrewarra VIC-3249 |
|-------------------------------|---|
| Title Details: | Lot 1 and Lot 2 on Title plan 863303D |
| Restrictions/Covenants: | Nil. |
| Land Size: | 40.47Ha (Including Lot 1 & Lot 2) Lot 2 (11.38 Ha) |
| Zone: | Farming Zone (FZ) |
| Overlays: | Floodway Overlay- Schedule 1 (FO1) |
| Other Regulatory Constraints: | Nil. |
| Key Site Features: | Lot 2 on Title plan 863303D at Colac-Ballarat Road is in the Farming zone (FZ), most of the lots around the subject site have minimal agricultural activities. The subject site is currently a vacant land with least vegetation and minimal farming activities. A carriageway easement (E-1) is present at the corner of Colac-Ballarat Rd and Irrewarra School Rd. Lot 2 is the most suitable site being the highest point on a sand/loam bank. Potable water connection and electricity pit is also available to the lot 2, making it the most favourable piece of land for proposed construction of a dwelling. |

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3.2. Surrounding Context



Figure 2: Surrounding Context The golden star in the Figure shows the neighbouring lots with residential dwelling on them.

| North: | Directly to the North of the subject land is grazing land. The land enclosed by the Subject Site to the North is No. 20 Irrewarra School Rd, former teacher's Residence which is of Heritage and Cultural Sensitivity (Right corner) (Refer figure:3) and No.2 Irrewarra School Rd contains a dwelling to the left corner of the Lot 2 (corner Lot to Colac/Ballarat Rd and Irrewarra School Rd). |
|--------|--|
| South: | To the exact South of subject land is grazing land. At Lot.2 PS641521 is a three-bedroom dwelling with approximately 185m frontage to Colac- Ballarat Rd. This property includes a swimming pool and an outbuilding ancillary to the existing dwelling. |
| East: | To the immediate east of the subject land exists Allot.33, is grazing land about 28Ha in area, fronting Colac-Ballarat Rd. This property contains a four-bedroom dwelling towards the eastern boundary of the property and accessed through the long driveway from the Irrewarra School Rd. |
| West: | To the immediate West of the subject land is Colac-Ballarat Road (TRZ2) and Lot 1 of same title across the Road. To the further West of the Subject land exists the large Colac Lake which is a Public Conservation and Reserve Zone (PCRZ). Lake Colac is the largest natural freshwater lake in Victoria and is popular for fishing, water activities and other recreation along its shoreline. |

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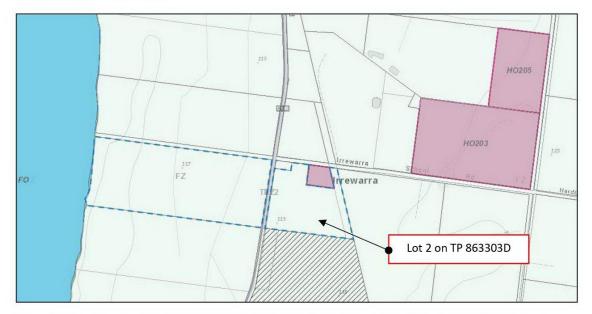


Figure 3: Other Overlays. The Subject site is abutted by the TRZ2 (Colac-Ballarat Road) to the West. It encloses a small part of land which has heritage overlay (HO202). Other land subject to Heritage Overlay is in close proximity to the Subject Site.

4. Proposal

4.1. Proposal Description

The proposal is a construction of Three-Bedroom dwelling at Lot 2 on Title plan 863303D at Colac-Ballarat Rd, Irrewarra. The Lot will contain a Three-Bedroom single dwelling unit up on it with the double garage to the North with 100.50m set back from the Irrewarra School Rd and the proposed dwelling is set back by 112m from the Colac-Ballarat Rd (TRZ1) to the West of the subject site. The site will be accessed through the Irrewarra School Rd to the North of the Subject Land.

The overall area of the Lot 2 is 11.38 Ha, the subject site has a frontage of 87.11m to the Irrewarra School Rd. A crossover will be required for access from the Irrewarra School Rd to the North. The cross-over and driveway will be constructed in accordance with VicRoads Standard (*VicRoads standard Drawing 2066A- Typical Rural Driveway Access to Residential Properties Type C*).

The subject site is accessible to the potable water from Irrewarra School Rd. Electricity is available to the subject site from the Irrewarra School Rd.

| Use | Development | Subdivision | Other |
|---|---|-------------|-------|
| Clause 35.07-1 A dwelling is a Section 2 Use as the subject site is less than 80ha as prescribed in the schedule to 35.07. | Clause 35.07-4-Buildings and works Under the clause 35.07- 4 -Building and works, a permit is required to construct a dwelling on the Subject Land. | N/A | N/A |

4.2. Permit Triggers

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5. Strategic Context and Response

The key planning, land use and development policies relevant to the consideration and assessment of the proposal are as follows.

5.1. Planning Policy Framework

Clause 11.01-15 Settlement

Objective

To promote the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements.

Relevant Strategies

- Develop sustainable communities through a settlement framework offering convenient access to jobs, services, infrastructure, and community facilities.
- Ensure regions and their settlements are planned in accordance with their relevant regional growth plan.
- Guide the structure, functioning and character of each settlement considering municipal and regional contexts and frameworks.
- Create and reinforce settlement boundaries.
- Provide for growth in population and development of facilities and services across a regional or subregional network.
- Ensure land that may be required for future urban expansion is not compromised.

Clause 11.01-1R Settlement - Geelong G21

<u>Strategies</u>

- Support the growth of Bannockburn, Colac, Drysdale/Clifton Springs, Lara, Leopold, Ocean Grove and Torquay/Jan Juc as district towns by building on existing and planned infrastructure and focussing growth along key road and rail networks.
- Plan for Colac and Winchelsea as new targeted growth nodes.
- Reinforce the role of district towns in providing services to surrounding areas.
- Maintain a significant settlement break between the region and Melbourne.
- Provide for settlement breaks between towns to maintain their unique identities.
- Require a settlement boundary for all towns.
- Protect critical agricultural land by directing growth to towns.

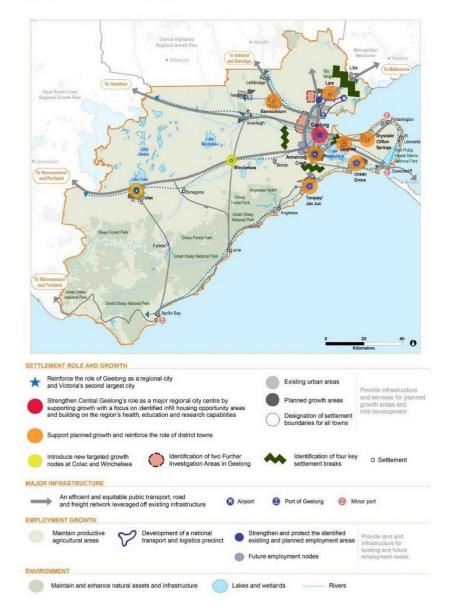


Figure 4: Geelong G21 Regional Growth Plan

Clause 15.01-6S Design for rural areas

Objective

To ensure development respects valued areas of rural character.

Strategies

- Ensure that the siting, scale and appearance of development protects and enhances rural character.
- Protect the visual amenity of valued rural landscapes and character areas along township approaches and sensitive tourist routes by ensuring new development is sympathetically located.
- Site and design development to minimise visual impacts on surrounding natural scenery and landscape features including ridgelines, hill tops, waterways, lakes, and wetlands.

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Response to Planning Policy Framework

The proposal is consistent with Planning Policy Framework- Cl.11.01-1S Settlement, Cl.11.01-1R Settlement-Geelong 21, Cl. 15.01-6S Design for Rural areas. The subject site has convenient access to the infrastructure, public transport, and community facilities. Relevant regional growth plan and the municipal and regional contexts and Frameworks should be taken in to account for the proposal and thus, the proposal satisfies and is in consistent with the relevant policies.

5.2. Local Planning Policy Framework

Clause 11.01-1L Settlement -Colac Otway

- Provide fully serviced residential land to meet the needs of the population.
- Encourage residential development in existing zoned and serviced areas to make effective use of existing infrastructure.
- Avoid an oversupply of residential zoned land.
- Encourage townships to have a definite visual edge, delineating the boundary between urban development and the natural landscape beyond.
- Encourage development of smaller townships that contributes to their economic development, acknowledges, and responds to environmental constraints and protects the broader landscapes within which these towns are located.

Clause 12.03-1L River Corridors, waterways, lakes, and wetlands

Strategies

- Protect Lake Colac from environmental degradation by limiting adjacent development.
- Encourage the use of constructed wetlands as a means of storing floodwater, improving water quality and adding to natural habitats.

Clause 14.01-1L Protection of agricultural land

Policy application

This policy applies to all land in the Farming Zone, Rural Conservation Zone and Rural Activity Zone.

Strategies

- Discourage dwellings on lots that do not meet the minimum lot area of the zone or relevant schedule unless it is required for an intensive agricultural activity on the land or to achieve the environmental protection of the land.
- Avoid localised concentration of dwellings in agricultural areas.
- Discourage the realignment of boundaries that will create small lots for existing dwellings unless the re-subdivision contributes to the restructure and/or consolidation of agricultural holdings into larger farming units.
- Ensure that small lot subdivisions or excisions facilitate sustainable rural production and do not prejudice surround rural activities.
- Discourage boundary realignments if they rely on land that was previously a road reserve, utility lot, crown land or are of insufficient size to support a dwelling.
- Support a mix of uses in the Rural Activity Zone on land west of Apollo Bay and in the Otway, Ranges including:
 - o Agriculture.

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- Tourist and recreational activities.
- Group accommodation with tourist or recreational activities (including backpacker accommodations, camping and caravan park, cabins, etc).
- o Restaurants in association with tourist facilities or recreational activities.

Clause 16.01-1L Colac Housing Supply

Objective

- To encourage housing and residential subdivision in Colac that delivers a variety of lot sizes and configurations, and housing types, to cater for Colac's aging population and demographic and to capitalise on opportunities for infill development.

Strategies

- Encourage medium density development in the Colac CBD, within 400 metres of any other activity centre, and around areas of public open space.
- Encourage the provision of apartments in the Colac CBD to facilitate a wider range of accommodation options.
- Encourage a range of lot sizes and configurations for different housing types in Colac's growth areas.

Response to Local Planning Policy Framework

The proposal is consistent with Local Planning Policy Framework Cl.11.01-1L-Colac Urban Growth, Cl.12.03-1L-River Corridors, waterways, lakes, and wetlands. The subject land is partially serviced land and is close enough to Colac Township that it has a small part to play in the overall housing delivery of Colac. The proposal will protect and enhance landscape and environment values and will not cause any detrimental effect on the lake Colac considering its close proximity to the subject land. The subject land though located in the Farming Zone removes minimal land from the productive agricultural area. The surrounding farmland has numerous houses scattered throughout. Overall, the proposal is consistent with the relevant strategies of the local Planning Policy Framework and is a good fit for residential development.

6. Statutory Context and Response

6.1. Farming Zone

The subject site is contained within the Farming Zone (FZ).

The purpose of the zone is:

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

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Under **Clause 35.07-1 (Table of uses)** a permit is required to construct a dwelling in the Lot and meet the requirements mentioned in the **Clause 35.07-2**

Clause 35.07-4- Buildings and works

A permit is required to construct or carry out buildings and works of a dwelling and must meet the requirements of **Clause 35.07-2**.

Clause 35.07-2- Use of land for a dwelling

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.
- Each dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available all wastewater from each dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.
- The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for firefighting purposes.
- The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

Response

The proposed dwelling has a frontage of 87.11m to all-weather Irrewarra School Rd and has enough space to accommodate emergency vehicles. The subject site will be connected to distribution substation located on the Irrewarra School Rd to access the reticulated electricity. The site will be connected to the reticulated potable water from the Water mains running along the Irrewarra School Rd (Preferrable) and Colac-Ballarat Road. The Subject site has no access to reticulated sewerage system, but the site is large enough to contain an effluent disposal area to accommodate sub-irrigation system or ETA beds in accordance with regulations under Environment Protection Act 2017.

Clause 35.07-6 Decision Guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

| Decision Guidelines | Response |
|--|---|
| General | |
| The Municipal Planning Strategy and the Planning Policy Framework. | The proposal is consistent with Municipal Planning Strategy and the Planning Policy Framework Please refer section 5 of this report. |
| Any Regional Catchment Strategy and associated plan applying to the land | The proposed dwelling is consistent with the purposes of the zone by ensuring the proposed dwelling will not adversely affect the use of land for agriculture. |

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| The capability of the land to accommodate the proposed use or development, including the disposal of effluent. | The subject site, comprising an overall site area of 11.38 Ha will have a capacity to accommodate the proposed dwelling (209.49m ²). The Site will have enough area to accommodate a sub-irrigation system or the ETA beds to suffice the effluent disposal area requirement. |
|--|--|
| How the use or development relates to sustainable land management. | The proposal makes efficient use of the land, by accommodating a dwelling on the land. The residents will be able to maintain this lot which has previously been difficult to manage. |
| Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses | The subject site is considered an appropriate location for the proposed use and development of a dwelling and is compatible with adjoining and nearby agricultural land uses. |
| How the use and development make use of existing infrastructure and services. | The Subject Site is well positioned on the Colac- Ballarat Rd (C146) to the West intersected by the Irrewarra School Rd to the North. The subject site makes use of the well-connected road and Rail infrastructure. The Site is 6.2kms away from the Colac Railway station. The site is also accessible to the other available services with exception to the Reticulated sewerage system. |
| Agricultural issues and the impacts from non- agricultural uses. | |
| Whether the use or development will support and enhance agricultural production. | The proposed dwelling does not impact agriculture. The lot in the North-East corner of the subject site consists of a Heritage building. The lot in the North- Western corner of the subject land consists of a residential development. Towards the South, there is a small linear lot (dedicated to residential development along the Colac-Ballarat Rd. The four lots between the Irrewarra School Rd and the Railway track has a residential development on them along the Colac-Ballarat Rd. This means the proposal will not impact the agricultural production. |
| Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production. | The proposed use and development are entirely appropriate in the farming zone in this context. The land will be used for agriculture but also house the owner of the land. This would not impact the operations of any nearby agricultural uses leading to removal of agriculturally productive land and appropriate measures will be taken to preserve soil quality. |

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| The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses. | The lots in proximity to the subject site that is used for agriculture is 715 m towards South 2 kms towards East (LP200871). The proposed house will not affect the expansion of this agricultural use. |
|--|--|
| The capacity of the site to sustain the agricultural use. | The site is only 11.38 Ha. This area of lot is not viable for productive agricultural use. |
| The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure. | The proposal is not expected to adversely impact on soil quality, access to water and rural infrastructure. |
| Any integrated land management plan prepared for the site | Not Applicable. An integrated land management plan has not been prepared for the site. |
| Whether Rural worker accommodation is necessary having regard to: The nature and scale of the agricultural use. The accessibility to residential areas and existing accommodation, and the remoteness of the location. | Not Applicable. |
| The duration of the use of the land for Rural worker accommodation. | Not Applicable. |
| Accommodation issues | |
| Whether the dwelling will result in the loss or fragmentation of productive agricultural land | The subject site and the proposed dwelling are negligible in the context of the farming zone. therefore, the proposed dwelling will not result in any loss or fragmentation of productive agricultural land. |
| Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic, and hours of operation. | The nearest cropping land (LP200871) is 700m away from the subject site. It seems there is a low chance of being affected by the agricultural activities. |

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| Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses. | There are numerous small allotments and houses in the immediate vicinity. There are agricultural activities occurring being predominantly grazing, the addition of one dwelling will not impact on this agriculture. | |
|--|---|--|
| The potential for the 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. | There are already four dwellings fronting Colac- Ballarat Rd in this Farming Zone between Irrewarra School Rd and Railway Track (i.e., in the span of 1.4Kms). One additional dwelling will have no impact and does not trigger the concentration or proliferation of dwellings in the area. | |
| The potential for accommodation to be adversely affected by noise and shadow flicker impacts if it is located within one kilometre from the nearest title boundary of land subject to: A permit for a wind energy facility; or An application for a permit for a wind energy facility; or An incorporated document approving a wind energy facility; or A proposed wind energy facility for which an action has been taken under section 8(1), 8(2), 8(3) or 8(4) of the Environment Effects Act 1978. | Not Applicable. No existence of site with the permit for wind energy facility or an application for a permit or proposed wind energy facility in 1 km radium from the subject site. | |
| The potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust, and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990. | Not Applicable. No existence of extractive industry operation within 500 metres from the nearest title boundary. | |
| Environmental issues | | |
| The impact of the proposal on the natural physical features and resources of the area, in particularly on soil and water quality. | The proposed construction of the dwelling will not result in any significant soil erosion and salinity impacts provided appropriate measures are implemented and maintained at the site. | |
| The impact of the use or development on the flora and fauna on the site and its surrounds | The proposed use and development will not have any unreasonable impact on any identified biodiversity values. | |
| The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land | There is a zero to negligible amount of vegetation required to be removed from the site for the | |

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| including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area. | construction of dwelling and precautionary measures are to be undertaken to limit impacts on both in relation to native vegetation and significant species. |
|---|---|
| The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation | The subject site will have enough area dedicated to accommodating effluent disposal in the absence of reticulate sewerage system. |
| Design and Siting issues | |
| The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land | The proposed construction of a dwelling is sited with frontage to Irrewarra School Rd where all the other dwellings in the area are located in proximity. This will help to avoid any impacts on surrounding agricultural use and reduce the loss of productive agricultural land. |
| The impact of the siting, design, height, bulk, colours, and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts | The proposed dwelling is sited with appropriate setbacks from the site boundary. The height (5.2m) of the proposed dwelling will match the height of the dwellings in the adjacent sites. The colours, material of the building would not cause any potential visual and landscape impact on the surrounding area. |
| The impact on the character and appearance of the area or features of architectural, historic, or scientific significance or of natural scenic beauty or importance. | The subject land is on the Farming Zone (FZ). There are several dwellings in the adjacent and nearby lands with sheds and associated out buildings. The proposed dwelling will not impact the appearance and characteristics of the area or of any significant feature of the surrounding. |
| The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications, and sewerage facilities. | Irrewarra School Rd abuts the site to the North, which provides primary access to the site. The proposed development will make use of available water, electricity, and tele-communication facilities available at the Irrewarra School Rd. The subject land will not have access to the reticulated sewerage system. |
| Whether the use and development will require traffic management measures. | The proposal has been designed and sited to ensure appropriate transport routes are available. The proposed dwelling seemed to have a zero to negligible impact to the other road users and does not require a traffic management measures. |
| The need to locate and design buildings used for accommodation to avoid or reduce noise and shadow flicker impacts from the operation of a wind | Not Applicable |

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| energy facility if it is located within one kilometre | |
|---|-----------------|
| from the nearest title boundary of land subject to: A permit for a wind energy facility; or An application for a permit for a wind energy facility; or An incorporated document approving a wind energy facility; or A proposed wind energy facility for which an action has been taken under section 8(1), 8(2), 8(3) or 8(4) of the Environment Effects Act 1978. | |
| The need to locate and design buildings used for accommodation to avoid or reduce the impact from vehicular traffic, noise, blasting, dust, and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990. | Not applicable. |

6.2. Overlays

Clause 44.03 Floodway Overlay (FO)

The lot 1 and Lot 2 of the TP 863303 and Lot 1 of TP 837025 are not directly affected by the Flood Overlay.

The Subject land is located along the Colac Lake. The proposed dwelling will be located on the Lot 2 of TP863303 on the other side of the Colac- Ballarat Rd, which is approximately 890m away from the Colac Lake and the Flood Overlay. It Looks like the Flood overlay does not have any impact directly or indirectly on the Lot 2 where the dwelling is proposed.

6.3. Particular Provisions

Not Applicable.

7. Decision Guidelines

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

Clause 65.01 Approval of An Application of Plan

| Decision Guidelines | Response |
|---|---|
| The matters set out in section 60 of the Act. | The proposal is consistent with the matters set out in section 60 of the act. |

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| Any significant effects the environment, including the contamination of land, may have on the use or development. | The prevailing use of surrounding land is that of hobby farms and grazing field for livestock which are unlikely to have any significant impacts on the status of the proposed dwelling or the subject land. |
|--|---|
| The Municipal Planning Strategy and the Planning Policy Framework. | The Proposal is generally consistent with the Municipal planning strategy and planning policy framework. |
| The purpose of the zone, overlay or other provision. | The proposal satisfies the purpose of the zone as mentioned in the Colac-Otway planning scheme. |
| Any matter required to be considered in the zone, overlay or other provision. | See section 2 for key consideration related to this proposal. Relevant supporting documents and information associated with these considerations can be found in the appendices of this report. |
| The orderly planning of the area. | The proposed dwelling is consistent with the size of the subject site. |
| The effect on the environment, human health, and amenity of the area. | The proposed dwelling will have a negligible influence upon local environment, or the human health and amenity of the area. The surrounding region is sparsely populated and much of the natural environment has been sequestered to specific areas for agricultural purposes. |
| The proximity of the land to any public land. | The proposed dwelling will have no impact up on any public land. Colac Lake is approximately 900m away from the proposed dwelling, there are negligible chances for the proposed use to impact on it. |
| Factors likely to cause or contribute to land degradation, salinity or reduce water quality | There are no known factors related to the proposed construction of dwelling that could lead to the degradation of land and water quality nor its salinity. |
| Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site. | The proposed dwelling can meet all the requirement to maintain and improve the quality of stormwater within the premises via appropriate condition. |
| The extent and character of native vegetation and the likelihood of its destruction. | The site is sparsely vegetated with weeds and there is not any significant native vegetation found within the site. |
| Whether native vegetation is to be or can be protected, planted, or allowed to regenerate. | Not Applicable- No native vegetation within the subject site. |

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| 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. | No hazards known to affect this site. |
|--|---|
| The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts. | N/A-The Facility within the subject land does not require any loading or unloading and thus does not impact the traffic flow and road safety. |

8. Conclusion

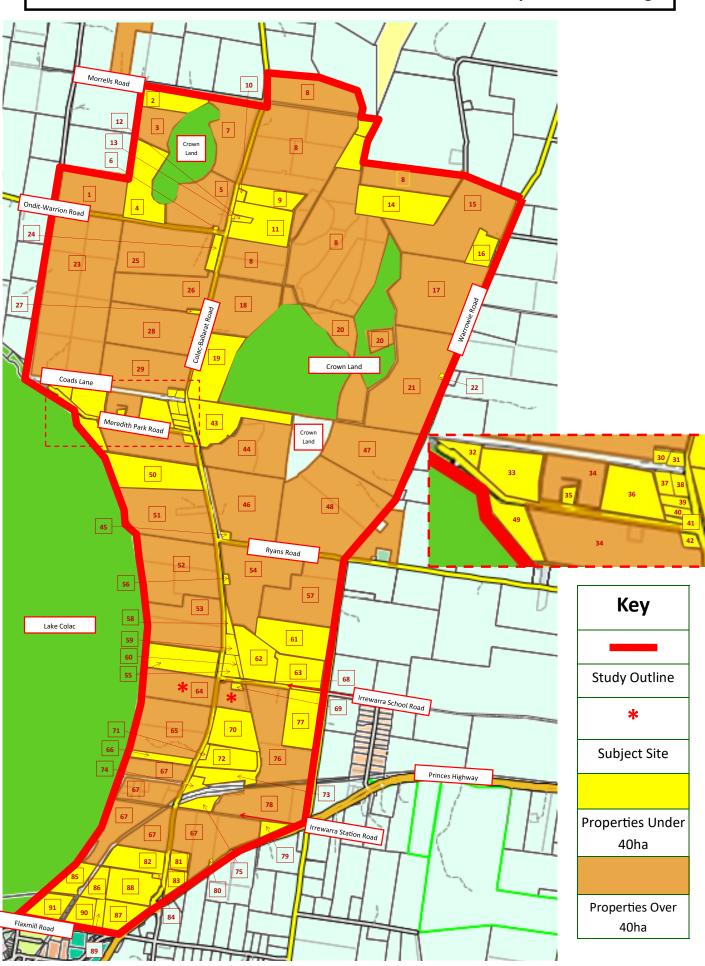
As this report demonstrates, the proposed use and development for a dwelling constitutes an appropriate response to the physical context of the subject site and surrounds, supports and implements the applicable strategic directions of the Planning Policy Framework and meets the objectives and requirements of the key statutory controls.

The planning permit is required under the provisions of Farming Zone Clause 35.07-4-Buildings and works, Clause 35.07-1 (Table of uses) for a residential development. The proposal also meets the requirements specified under clause 35.07-1 (Use of land as dwelling).

The Flood overlay (FO) does not show on the subject site directly or indirectly. Thus, the land is less likely to be impacted by flooding from the Lake Colac.

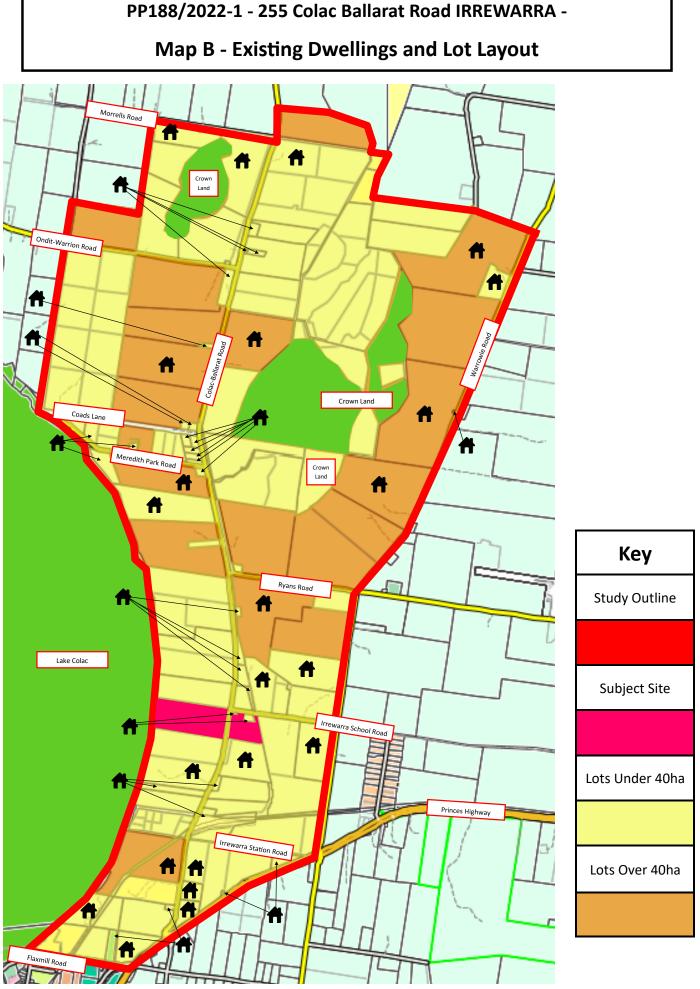
Overall, we consider the proposal has achieved an appropriate outcome. For these reasons, we submit that the responsible authority would be justified in reaching a conclusion that the proposal is worthy of support and approval.

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PP188/2022-1 - 255 Colac Ballarat Road IRREWARRA - Map A - Numbering

Agenda Planning Committee Meeting - 7 December 2022



Agenda Planning Committee Meeting - 7 December 2022

| Map Ref | Address | Parcels per property | Parcel / Lot description | Parcel / Lot Size in Ha | Total Property Area in Ha | Buildings | Permit Ref | Development | Decision | Date |
|------------|----------------------------------|-------------------------|--|---|------------------------------|--|--------------|------------------------------------|----------|---------|
| 1 | 170 Ondit Warrion Road ONDIT | 1 | 6\LP8005 | 40.9 | 40.9 | Sheds | | | | |
| 2 | 105 Morrells Road ONDIT | 2 | 1\TP852651 5\TP887718 | 19.3 0.01 | 19.31 | House and Sheds Vacant | | | | |
| 3 | 170 Morrells Road ONDIT | 2 | 1\TP555226 | 20.4 | 58.1 | Sheds | | | | |
| 4 | 110 Ondit Warrion Road ONDIT | 1 | 7\LP8005 | 37 | 37 | Shed | | | | |
| 5 | 20 Ondit Warrion Road ONDIT | 2 | 10\LP8005 1\TP668395 | 38.5 3.6 | 42.1 | House and Sheds | PP166/2017-1 | Use and Development of Dwelling | PID | 6/11/17 |
| 6 | 10 Ondit Warrion Road ONDIT | 1 | 1\TP371773 | 0.4 | 0.4 | Memorial | | | | |
| 7 | 925 Colac Ballarat Road ONDIT | 3 | 2\TP602045 1\TP602045 9\LP8005 | 0 3.5 38.8 | 42.3 | Vacant | | | | |
| | | | 2\LP208429 3\TP241624 2\LP202817 2\LP121961 3\TP218012 17D\PP3353 17C\PP3353 5\TP218012 | 40.5 17.7 30.8 17.8 26.2 4.2 3.7 8.7 | | Vacant Vacant Vacant Vacant Vacant Vacant Vacant Vacant | | | | |
| 8 | 960 Colac Ballarat Road ONDIT | 22 | 6\TP218012 2\TP241624 1\TP241624 7\TP218012 1\TP218012 | 15.5 4.8 20.4 7.1 22.4 | 361.1 | Vacant Vacant Vacant Vacant Shed | | | | |

PP188/2022-1 - 255 Colac Ballarat Road IRREWARRA - Area Analysis - Map Legend

| | | | 3\TP887718 4\TP887718 17E\PP3353 2\TP887718 1\LP121961 1\LP208420 4\TP218012 1\TP887718 2\TP218012 | 21.3 21.1 14.3 22.8 17.8 19.8 0.1 22.8 1.3 | | Vacant Vacant Vacant Vacant Vacant Vacant Vacant House and Sheds Vacant | | | | |
|----|----------------------------------|---|--|--|------|---|------------------------------|---|--------------|----------------------|
| 9 | 900 Colac Ballarat Road ONDIT | 1 | 2\LP208420 | 13.5 | 13.5 | Vacant | | | | |
| 10 | 880 Colac Ballarat Road ONDIT | 1 | 1\LP148830 | 2 | 2 | House and Sheds | PP450/1999-1 | Construction Of Shed/Garage | PID | 6/01/00 |
| 11 | 830 Colac Ballarat Road ONDIT | 1 | 1\LP113928 | 31.4 | 31.4 | Vacant | PP127/2020-1 | Use and Development of a Dwelling, Including Two Outbuildings, and Cre | PID | 3/12/20 |
| 12 | 840 Colac Ballarat Road ONDIT | 1 | 2\LP113928 | 1.8 | 1.8 | House and Shed | | | | |
| 13 | 846 Colac Ballarat Road ONDIT | 1 | 3\LP113928 | 0.1 | 0.1 | House and Sheds | | | | |
| 14 | 75 Bullivant Road IRREWARRA | 1 | 1\LP141826 | 34.8 | 34.8 | Sheds | PP313/2011-1 PP82/2007-1 | Use & development of the land for a dwelling & shed Construction Of Dwelling, Stabels And Shed | REFU LAPS | 10/09/12 6/07/07 |
| 15 | 745 Warrowie Road IRREWARRA | 1 | 1\PS603676 | 83.4 | 83.4 | House and Sheds | PP10/2011-1 | Two (2) lot subdivision - excision of dwelling | WDRAW | 15/02/11 |
| | | | | | | | PP132/1999-1 | Extensions To Dairy | PID | 6/05/99 |
| 16 | 735 Warrowie Road | 1 | 2\PS603676 | 11 | 11 | House and Sheds | PP296/2006-1 | Four (4) Lot Re-Subdivision | PID | 16/02/07 |
| | IRREWARRA | _ | | | | | PP296/2006-2 PP296/2006-3 | Amendment - Subdivision Amendment - Subdivision | PID PID | 29/08/07 29/02/08 |

| | | | | | | | PP296/2006-4 | Amendment - Subdivision | PID | 9/05/08 |
|----|----------------------------------|----|--|---|------|--------------------------|--------------|---|-------|----------|
| 17 | 599 Warrowie Road IRREWARRA | 1 | 3\PS603676 | 85.9 | 85.9 | Sheds | | | | |
| | | | | | | | PP100/2006-1 | Development Of A Verandah | PID | 30/03/06 |
| 18 | 700 Colac Ballarat Road ONDIT | 1 | 13\PP3353 | 49.5 | 49.5 | House and Sheds | PP244/2018-1 | Extension to Existing Dwelling including Verandah Extension | WDRAW | 4/12/18 |
| | | | | | | | PP273/2018-1 | Extension to Dwelling and Construction of Outbuilding, and Agricultural Shed | PID | 21/03/19 |
| 19 | 640 Colac Ballarat Road ONDIT | 1 | 10\PP3353 | 36 | 36 | Sheds | | | | |
| 20 | 770 Colac Ballarat Road ONDIT | 7 | 1\TP297885 6\TP297885 4\TP297885 3\TP297885 7\TP297885 5\TP297885 2\TP297885 | 2.7 7 0.2 1.9 17.6 18.4 0.5 | 48.3 | Vacant | | | | |
| 21 | 563 Warrowie Road IRREWARRA | 1 | 163\PP3660 | 90.7 | 90.7 | House and Plant Farm | PP63/1994-1 | For the Use and Development of the Site as a Wholesale Nursery on the site | PID | 22/12/94 |
| 22 | 565 Warrowie Road IRREWARRA | 1 | 163A\PP3660 | 0.2 | 0.2 | House and Sheds | PP302/2005-1 | Two (2) Lot Re-Subdivision | WDRAW | 23/01/06 |
| | | 13 | 4\TP839308 | 20.3 | | Vacant | PP283/1995-1 | Extractive Industry | PID | 20/01/97 |
| | | 13 | 1\TP118548 | 19.9 | | Vacant | PP283/1995-2 | Extractive Industry | PID | 1/09/21 |
| | | 13 | 3\TP839308 | 20.3 | | Vacant | PP319/1995-1 | And Butroscible Maste | REFU | 16/02/95 |
| | | 13 | B~6\PP3353 | 19.9 | | Sileus dilu Machinany | PP67/1998-1 | Consolidation | PID | 14/04/98 |

| | | 13 | B~7\PP3353 | 19.9 | | Vacant | PP98/2006-1 | Upgrading Of Existing Crushing And Screening Plant | PID | 20/07/06 |
|----|----------------------------------|----|------------|------|-------|-----------------|--------------|--|------|----------|
| | | 13 | 6D\PP3353 | 1.2 | | Vacant | PP230/2007-1 | Extension To Extraction Area Of Quarry | PID | 14/04/08 |
| 23 | 75 Potters Road ONDIT | 13 | 6C\PP3353 | 0.3 | 163.2 | Vacant | PP230/2007-2 | Extension To Extraction Area Of Quarry | PID | 6/05/08 |
| | | 13 | A~6\PP3353 | 19.9 | | Vacant | PP230/2007-3 | Extrative Industry - Addition of a dewatering screen to the existing p | PID | 10/09/08 |
| | | 13 | 2\TP118548 | 0.3 | | Vacant | PP21/2021-1 | Extension to Area of Extractive Industry (Stages 5 and 6), Associated | PID | 1/09/21 |
| | | 13 | 5\TP839308 | 20.3 | | Vacant | | | | |
| | | 13 | 1\TP839308 | 0.3 | | Vacant | | | | |
| | | 13 | 2\TP839308 | 0.3 | | Vacant | | | | |
| | | 13 | 6\TP839308 | 20.3 | | Vacant | | | | |
| 24 | 795 Colac Ballarat Road ONDIT | 1 | 1\TP376102 | 5.6 | 5.6 | House and Sheds | PP47/2019-1 | Use and Development of the Land for Domestic Animal Boarding, Ancillar | PID | 19/11/19 |
| 25 | 25 Ondit Warrion Road ONDIT | 1 | 11\LP8005 | 64.4 | 64.4 | Sheds | | | | |
| 26 | 755 Colac Ballarat Road ONDIT | 1 | 2\LP120368 | 46.2 | 46.2 | Hay Shed | | | | |
| 27 | 725 Colac Ballarat Road ONDIT | 1 | 1\LP120368 | 0.9 | 0.9 | House and Shed | | | | |
| | | | | | | | PP118/2006-1 | Two (2) Lot Re-Subdivision Of Existing Lots | REFU | 3/08/06 |
| | 695 Colac Ballarat | 2 | 1\TP372746 | 1.8 | | Vacant | PP33/2010-1 | Development Of A Farm Shed, Two (2) Water Tanks & Horse Exercise Yard | PID | 21/05/10 |

| 28 | Road ONDIT | | | | 56.6 | | PP201/2010-1 | Change of use - commercial use of equestrian centre | PID | 25/10/10 |
|----|----------------------------------|---|------------|------|------|-----------------|--------------|--|-----|----------|
| | | 2 | 13\LP8005 | 54.8 | | House and Sheds | PP67/2011-1 | Addition to Existing Dwelling | PID | 18/04/11 |
| | | | | | | | PP67/2011-2 | Addition to Existing Dwelling - Amendment | PID | 12/09/11 |
| 29 | 645 Colac Ballarat Road ONDIT | 1 | 2\PS313476 | 52.2 | 52.2 | Shed | PP193/2015-1 | Buildings and Works Comprising Construction of an Agricultural | PID | 25/11/15 |
| 30 | 20 Coads Lane ONDIT | 1 | 1\PS313476 | 1.1 | 1.1 | House and Sheds | | Buildings and Works comprising the construction of an outbuilding (she | PID | 15/12/12 |
| | | | | | | | PP245/2005-1 | Extension To Dwelling | PID | 12/09/05 |
| 31 | 10 Coads Lane ONDIT | 1 | 2\LP136290 | 1 | 1 | House | | | | |
| 32 | 190 Meredith Park Road ONDIT | 1 | 1\TP613312 | 3.3 | 3.3 | Vacant | | | | |
| | 130 Meredith Park | | 1\TP872764 | 4.1 | | Vacant | | | | |
| 33 | Road ONDIT | 3 | 2\TP872764 | 4.1 | 12.3 | Shed | | | | |
| | | | 1\TP243221 | 4.1 | | House and Shed | | | | |
| | | | 1\PS543642 | 48.5 | | Vacant | PP189/2012-1 | Construction of shed ancillary to existing dwelling | PID | 22/10/12 |
| | 35 Meredith Park Road | | | | | | PP203/2003-1 | Two (2) Lot Subdivision & Realignment Of Boundaries | PID | 5/11/03 |
| 34 | IRREWARRA | 2 | | | 49.7 | | | Two (2) Lot Resubdivision & | | |
| | | | | | | | PP294/2004-1 | Use And Development Of The Land For A Sail | PID | 22/08/05 |
| | | | 1\PS531690 | 1.2 | | House and Sheds | | Buildings and Works | | |
| | | | | | | | PP212/2016-1 | Comprising Extension to Dwelling | PID | 1/11/16 |

| 35 | 90 Meredith Park Road ONDIT | 1 | G1~9\PP2775 | 1.3 | 1.3 | House and Sheds | PP175/2011-1 | Construct a hay shed one metre from the west boundary | PID | 15/11/11 |
|----|----------------------------------|---|--|---------------|------|-----------------|--------------|---|------|----------|
| 36 | 30 Meredith Park Road ONDIT | 3 | 1\TP384337 2\TP384337 3\TP384337 | 3.9 4 4 | 11.9 | Vacant | | | | |
| 37 | 15 Coads Lane ONDIT | 1 | 1\LP212619 | 1.4 | 1.4 | House and Sheds | PP7/2016-1 | Buildings and Works Comprising Construction of Shed | PID | 11/02/16 |
| | | | | | | | PP46/2005-1 | Construction of a Shed/Carport | PID | 21/03/05 |
| 38 | 5 Coads Lane ONDIT | 1 | 2\LP212619 | 1.4 | 1.4 | House and Sheds | PP188/2009-1 | Construction of a Verandah & Deck | PID | 17/08/09 |
| | | | | | | | PP67/2018-1 | Building and Works Comprising Construction of Agricultural Shed | PID | 22/06/18 |
| 39 | 595 Colac Ballarat Road ONDIT | 1 | CP168316 | 1.2 | 1.2 | House and Sheds | | | | |
| | 593 Colac Ballarat | | | | | | PP202/2005-1 | Use And Development Of A Relocated Dwelling Amendment To Permit - | PID | 3/08/05 |
| 40 | Road ONDIT | 1 | 1\TP605294 | 1.2 | 1.2 | House and Sheds | PP202/2005-2 | Addition To Relocated Dwelling | PID | 8/03/06 |
| | | | | | | | PP136/2006-1 | Development Of A Shed | PID | 4/07/06 |
| 41 | 10 Meredith Park Road ONDIT | 1 | 1\TP755607 | 1.2 | 1.2 | House and Sheds | | | | |
| | | | | | | | PP57/2008-1 | Use and Development of Dwelling and Garage | PID | 20/08/08 |
| | | | | | | | PP57/2008-2 | Use and development of dwelling and shed - Amendment | LAPS | 6/05/09 |

| 42 | 5 Meredith Park Road IRREWARRA | 1 | 2\PS531690 | 1.4 | 1.4 | House and Sheds | PP57/2008-3 | Use and Development of the Land for a Dwelling, Shed and Ancillary Man | PID | 20/11/13 |
|----|--------------------------------------|---|-------------------------------------|----------------------|-------|----------------------------|--------------|--|------|----------|
| | | | | | | | PP271/2007-1 | Construction Of A Dwelling | LAPS | 17/01/08 |
| | | | | | | | PP205/2018-1 | Building and Works Comprising Construction of an Outbuilding | PID | 9/10/18 |
| 43 | 606 Colac Ballarat Road ONDIT | 1 | 16\PP2775 | 30.7 | 30.7 | Vacant | | | | |
| | 530 Colac Ballarat | | 14B\PP2775 | 25.3 | | | PP317/2010-1 | Construction of a hay shed (retrospective) | PID | 17/03/11 |
| 44 | Road IRREWARRA | 2 | 1\TP837907 | 27.5 | 52.8 | Shed | PP208/2020-1 | Use and Development of a Dwelling and Outbuilding and Alteration of Ac | PID | 3/08/21 |
| 45 | 5 Ryans Road IRREWARRA | 1 | 14A\PP2775 | 1.1 | 1.1 | CFA Station | | | | |
| 46 | 480 Colac Ballarat Road IRREWARRA | 1 | 1\TP810592 | 64.9 | 64.9 | Vacant | | | | |
| 47 | 435 Warrowie Road IRREWARRA | 1 | 1\TP908015 | 65.6 | 65.6 | House and Sheds | | | | |
| 48 | 395 Warrowie Road IRREWARRA | 2 | 1\TP810588 1\TP810833 | 43.9 66.7 | 110.6 | Sheds Vacant | PP88/1999-1 | Renovations and Extensions To Existing Dairy | PID | 19/03/99 |
| 49 | 165 Meredith Park Road IRREWARRA | 1 | 2\PS543642 | 6.7 | 6.7 | House and Sheds | | | | |
| 50 | 535 Colac Ballarat Road IRREWARRA | 1 | 18\PP2775 | 39.3 | 39.3 | House and Sheds | | | | |
| 51 | 495 Colac Ballarat Road IRREWARRA | 2 | 20A\PP2775 19\PP2775 | 3 58.6 | 61.6 | Vacant Sheds | | | | |
| 52 | 415 Colac Ballarat Road IRREWARRA | 3 | 21\PP2775 1\TP10768 22\PP2775 | 31.3 19.5 17.9 | 68.7 | Vacant Vacant Vacant | | | | |

| | | 1 | 2\TP746982 | 22.5 | 51.3 | Vacant | PP189/2014-1 | Construction of Farm Shed and Reduce Setback from Road Zone Category 1 | PID | 25/11/14 |
|----|---------------------------------------|---|-------------------------|--------------|------|--------------------|------------------------------|---|------------|----------------------|
| 53 | 325 Colac Ballarat Road IRREWARRA | 2 | 2\TP746982 | 28.8 | 51.5 | Sheds | PP98/2022-1 | Creation and Alteration of Accesses to a Road in a Transport Zone 2 | PID | 21/07/22 |
| | | | | | | | PP32/2018-1 | Building and Works Comprising Construction and Extension of Agricultur | PID | 26/04/18 |
| 54 | 20 Ryans Road IRREWARRA | 1 | 2\PS510562 | 61.2 | 61.2 | House and Sheds | PP161/2002-1 PP147/2005-1 | Two (2) Lot Subdivision Two (2) Lot Subdivision | PID PID | 13/06/02 18/08/05 |
| 55 | 295 Colac Ballarat Road IRREWARRA | 2 | PC367532 25\PP2775 | 5.9 26.5 | 32.4 | Vacant | | | | |
| | | | | | | | PP161/2002-1 | Two (2) Lot Subdivision Use & Development of a | PID | 13/06/02 |
| 56 | 430 Colac Ballarat Road IRREWARRA | 1 | 1\PS510562 | 1.1 | 1.1 | House and Shed | PP273/2005-1 | Shed | PID | 14/11/05 |
| | 56 | | | | | | PP273/2005-2 | Amendment To Permit - Change Setback On North Boundary | PID | 10/03/06 |
| 57 | 355 Warrowie Road IRREWARRA | 3 | 39A\PP2775 37\PP2775 | 11.8 45.8 | 57.6 | Vacant Hay Shed | | | | |
| 58 | 350 Colac Ballarat Road IRREWARRA | 1 | 2\PS538549 | 2.6 | 2.6 | House and Shed | PP147/2005-1 PP103/2009-1 | Two (2) Lot Subdivision Earthworks Associated with a Motor Racing Track Ancillary | PID PID | 18/08/05 23/12/09 |
| 59 | 320 Colac Ballarat Road IRREWARRA | 1 | CP168226 | 3.5 | 3.5 | House and Shed | PP187/2009-1 | to a Dwelling Construction of a Five (5) Bay Shed | PID | 20/08/09 |
| 60 | 25 Irrewarra School Road IRREWARRA | 1 | 1\TP369905 | 1.1 | 1.1 | House and Shed | | | | |
| | | | | | | | PP347/2005-1 | Extension To Existing Dwelling | PID | 18/01/06 |
| | | | | | | | | | | |

| 61 | 205 Warrowie Road IRREWARRA | 1 | 36\PP2775 | 33.1 | 33.1 | House and Sheds | PP258/2008-1 PP175/2010-1 | Construction of a Hay Shed Extension to a shed Buildings and Works | PID PID | 20/01/09 8/07/10 |
|----|--|---|--------------------------|--------------|------|--------------------------|------------------------------|---|------------|---------------------|
| | | | | | | | PP234/2016-1 | Comprising Construction of Roofed Patio Area | PID | 20/10/16 |
| | | | 1\TP562787 | 17.8 | | House and Sheds | PP9/2012-1 | Demolition of a carport & construction of a garage | PID | 7/02/12 |
| 62 | 29 Irrewarra School Road IRREWARRA | 3 | 3\TP562787 | 1 | 25.8 | Vacant | PP250/2017-1 | Use and Development of a Dwelling including Construction of Outbuilding | PID | 15/02/19 |
| | | | 2\TP562787 | 7 | | Vacant | | | | |
| | | | 2\TP249861 | 0.1 | | Vacant | PP286/1999-1 | Bakery, Vineyard, Milk Processing & Residence | PID | 22/10/99 |
| 63 | 63 85 Irrewarra School Road IRREWARRA | 3 | 1\TP249861 | 22.8 | 23.2 | Industry | PP302/2015-1 | Buildings and Works Comprising Construction of Additional Bakery Build | REFU | 13/04/16 |
| | | | 2015\PP2775 | 0.3 | | Vacant | | | | |
| 64 | 255 Colac Ballarat | 2 | 2\TP863303 | 10.1 | 41.0 | Vacant | PP188/2022-1 | Use and Development of a Dwelling | | |
| 64 | Road IRREWARRA | 3 | 1\TP837025 1\TP863303 | 1.3 30.5 | 41.9 | Vacant Vacant | | | | |
| 65 | 195 Colac Ballarat Road IRREWARRA | 2 | 2\TP748713 CP160938 | 28.5 28.3 | 56.8 | Vacant House and Shed | PP243/2004-1 | Two (2) Lot Subdivision (Excision Of A Dwelling) | PID | 14/10/04 |
| 66 | 175 Colac Ballarat Road IRREWARRA | 1 | 2\LP123314 | 5.8 | 5.8 | House and Sheds | PP95/2004-1 | Extension To Existing Dwelling & Construction Of A Carport & Shed | PID | 20/07/04 |
| | | | | | | | PP295/2010-1 | Construction of a shed | PID | 26/11/10 |
| | | | 3\PS816281 | 20.2 | | Vacant | | | | |
| | | | 31\PP2775 | 16.4 | | Vacant | | | | |
| | | | 1\TP422057 | 1.2 | | Vacant | | | | |
| | | | 1\TP550137 2\TP550137 | 1.2 1.2 | | Vacant Vacant | | | | |
| | | | • • • • • • | | | | | | | |

| 67 | 100 Colac Ballarat Road IRREWARRA | 14 | 1\TP672900 1\TP548910 2\TP548910 2\TP413287 3\TP548910 1\TP413287 3\LP9517 4\PS816281 CP162907 | 2.2 1.2 1.2 1.2 1.2 6.9 13.1 19 42.9 | 129.1 | Vacant Vacant Vacant Vacant Vacant Vacant House and Shed Vacant House and Shed | | | | |
|----|---------------------------------------|----|--|--|---------------|--|--------------|--|---------------------------------------|----------|
| 68 | 2 Irrewarra School Road IRREWARRA | 1 | 1\TP411500 | 0.3 | 0.3 | House and Shed | PP248/2021-1 | Buildings and Works Comprising Construction of Extension to Outbuildin | PID | 16/09/21 |
| | | | | | | | PP40/2012-1 | Construction of a shed | PID | 30/04/12 |
| | 20 Irrewarra School Road IRREWARRA | 1 | 26B\PP2775 | 1.2 | | House and Sheds | PP62/1998-1 | 12 Greyhound Kennels | PID | 9/04/98 |
| 69 | | | | | 1.2 | | PP284/2009-1 | Additions to Existing Dwelling | PID | 23/12/09 |
| | | | | | | | PP101/2012-1 | Extension to existing shed to create storage | PID | 29/05/12 |
| | 230 Colac Ballarat Road IRREWARRA | 2 | 2\PS641521 | 22.9 | | Vacant | PP175/2006-1 | Extension To Dwelling & Development Of Garage | PID | 4/08/06 |
| 70 | | | 2 | 22.9 | 24.9 | | PP195/1996-1 | Construction Of A Machinery Shed | WDRAW | 11/03/97 |
| 70 | | | | | | | PP243/2004-1 | Two (2) Lot Subdivision (Excision Of A Dwelling) | PID | 14/10/04 |
| | | | 1\PS641521 | 2 | | House and Sheds | PP306/2010-1 | Subdivision - Realignment of Boundary | PID | 26/11/10 |
| 71 | 190 Colac Ballarat Road IRREWARRA | 1 | 1\PS346247 | 1.6 | 1.6 | House and Sheds | PP226/1995-1 | Transfer and Consolidation Two (2) Lot Subdivision | PID | 26/07/95 |
| /1 | | | I I(F3340247 | 1 (83540247 | (F3340247 1.0 | 1.0 | | PP249/2000-1 | Construction Of Free Standing Shed | PID |

| 72 | 180 Colac Ballarat Road IRREWARRA | 1 | 2\PS346247 | 16.6 | 16.6 | Shed | PP226/1995-1 | Transfer and Consolidation Two (2) Lot Subdivision | PID | 26/07/95 |
|----|---|---|---------------------------|-------------|------|--------------------------|--------------|--|-----|----------|
| 73 | 160 Colac Ballarat Road IRREWARRA | 2 | 1\TP116833 2\LP200871 | 2.3 11.5 | 13.8 | Vacant | | | | |
| 74 | 150 Colac Ballarat Road IRREWARRA | 2 | 1\LP200871 11\TP954854 | 1.7 7.4 | 9.1 | House and Sheds Sheds | | | | |
| | 5 Irrewarra Station Road IRREWARRA | | 1\TP954703 | 1.3 | | Vacant | PP60/2011-1 | Buildings and Works comprising the construction of a storage shed | PID | 19/04/11 |
| 75 | | 3 | 1\PS804999 | 6.8 | 8.1 | House and Sheds | PP60/2011-2 | Buildings and Works comprising the construction of a storage shed - Am | PID | 3/05/11 |
| | 70 | | 22/ 002775 | 20.7 | | Charle | PP155/2014-1 | Two (2) Lot Re-Subdivision | PID | 18/11/14 |
| 76 | 70 Irrewarra School Road IRREWARRA | 2 | 33\PP2775 32\PP2775 | 28.7 29 | 57.7 | Sheds Sheds | PP278/2016-1 | Use and Development of the Land for a Replacement | PID | 30/10/17 |
| 77 | 100 Irrewarra School Road IRREWARRA | 1 | 34\PP2775 | 28.8 | 28.8 | House and Shed | PP267/2014-1 | Construction of a replacement Dwelling and Shed | PID | 4/02/15 |
| 78 | 105 Irrewarra Station Road IRREWARRA | 2 | 1\PS816281 2\PS804999 | 9.7 31 | 40.7 | Vacant Shed | PP155/2014-1 | Two (2) Lot Re-Subdivision | PID | 18/11/14 |
| | 6110 Princes Highway IRREWARRA | | | | | House and Shed | PP154/2006-1 | Use & Development Of Dwelling & Shed | PID | 17/07/06 |
| 79 | | | 2\PS816281 | 4.2 | 4.2 | | PP228/2013-1 | Buildings and Works Comprising Construction of Outbuilding Building and Works | PID | 21/11/13 |
| | | | | | | | PP77/2019-1 | Comprising Construction of Agricultural Building | PID | 15/05/19 |
| 80 | 6190 Princes Highway IRREWARRA | 1 | 5\PS816281 | 0.2 | 0.2 | House | | | | |

| 81 | 50 Colac Ballarat Road IRREWARRA | 1 | 1\LP132605 | 5.8 | 5.8 | House and Sheds | | | | |
|----|--------------------------------------|---|------------|------|------|--------------------|--------------|---|-----|----------|
| | | | | | | | PP203/2012-1 | Buildings and Works comprising the construction of a roof over an exis Removal of Native | PIC | 14/01/13 |
| 82 | 55 Colac Ballarat Road IRREWARRA | 1 | 1\TP872590 | 19.3 | 19.3 | Saleyards | PP58/2018-1 | Vegetation and Associated Works | PID | 3/05/18 |
| | | | | | | | PP58/2018-2 | Removal of Native Vegetation and Associated Works | PID | 11/05/18 |
| | | | | | | | PP89/2013-1 | Removal of 3 Native Trees | PID | 18/07/13 |
| 83 | 40 Colac Ballarat Road IRREWARRA | 1 | 6\PS816281 | 6.4 | 6.4 | Depot and House | PP61/2000-1 | Business Transport Depot | PID | 7/04/00 |
| 84 | 35 Colac Ballarat Road COLAC EAST | 1 | 1\PS314955 | 0.9 | 0.9 | House and Shed | PP180/1995-1 | Erection Of A Sign | PID | 6/06/95 |
| 85 | 60 Flaxmill Road COLAC EAST | 1 | PC363816 | 11.7 | 11.7 | House and Sheds | PP77/1999-1 | Construction Of Caretakers Residence & Shed | PID | 3/05/99 |
| | | | | | | | PP234/2007-1 | Two (2) Lot Subdivision | | 21/12/07 |
| 86 | 6 Flaxmill Road COLAC EAST | 1 | 1\TP740692 | 9.3 | 9.3 | Vacant | | | | |
| 87 | 2 Flaxmill Road COLAC EAST | 1 | 8\PS816281 | 13.2 | 13.2 | House and Sheds | PP146/2003-1 | Construction Of Dwelling & Machinery Shed | PID | 30/05/03 |
| 88 | 25 Colac Ballarat Road COLAC EAST | 1 | 7\PS816281 | 23.2 | 23.2 | Shed | | | | |
| 89 | 10 Flaxmill Road COLAC EAST | 1 | 1\TP218328 | 4 | 4 | House and Sheds | PP128/2016-1 | Buildings and Works Comprising Construction of Outbuilding | PID | 27/07/16 |
| 90 | 20 Flaxmill Road COLAC EAST | 1 | 1\TP676054 | 11.4 | 11.4 | Vacant | | | | |
| | | | | | | | PP10/2009-1 | Trimming of Trees | PID | 23/04/09 |
| | 1-33 Treatment Works | | 1\TP532228 | 8.9 | | Treatment Facility | PP14/2011-1 | Construction of carport | PID | 17/03/11 |
| 01 | Pood | า | | | 1/ 2 | | PP173/2019-1 | Native Vegetation Removal | PNR | 7/10/19 |

Attachment 8.4.10 Area Analysis information

| 21 | COLAC EAST | ۷ | 1\TP235031 | 5.4 | 14.3 | Vacant | PP224/2016-1 PP362/2001-1 | Construction of a Shed Sewerage Treatment Plant Upgrade | PID PID | 19/12/16 22/02/02 |
|----|------------|----|------------|-----|------|--------|------------------------------|--|------------|----------------------|
| | Dwellings: | 53 | | | | Key | PIC WDRAW PNR | Permit Issued Delegate Permit Issued Counil Application Withdrawn Permit Not Required Application Lapsed | | |



Item: 8.5

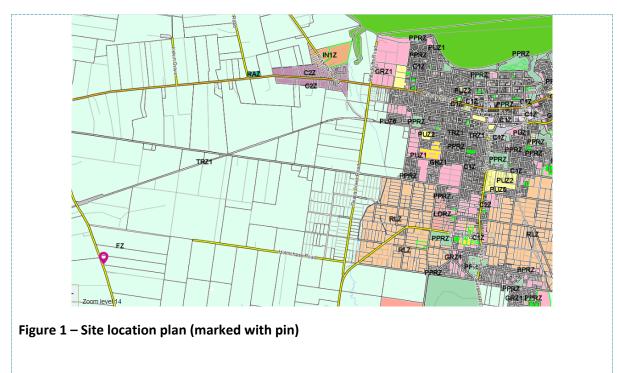
PP70/2022-1 - 1075 Larpent Road, Larpent - Use and Development of Dwelling

| ADDRESS AND PROPERTY DETAILS | 1075 Larpent Road, Larpent | APPLICATION PP70/20 NUMBER |)22-1 |
|--|--|--|--------------------------------------|
| | Lot 1 PS 024858, | | |
| | V/F: 07795/142 | | |
| | Use and Development | of a Dwelling | |
| PERMIT TRIGGERS | Clause 35.07-1 - Farmir | g Zone – Use of the land for | a dwelling. |
| | Clause 35.07-4 - Farmir Section 2 (permit requi | g Zone – Building and works red) use | associated with a |
| TRIGGER FOR DETERMINATION BY COMMITTEE | Officer recommendati dwelling in the Farmin | on for the refusal of an appli g Zone | cation for a |
| ZONE | Farming Zone (FZ) | OVERLAYS None | |
| COVENANTS | None | | |
| CULTURAL HERITAGE | heritage sensitivity. The distance to the west o | of the site is within an area e proposed dwelling would f this area. A single dwelling and a cultural heritage mana ot required. | be located some is not considered |
| OFFICER | Louise Lunn (consultant) | CHIEF Anne H EXECUTIVE OFFICER | oward |
| DIVISION | Executive | | |
| ATTACHMENTS | e , | | |

- 5. Proposed Farm Management Plan (FMP) [8.5.5 16 pages]
- 6. Dwelling Plans [8.5.6 5 pages]
- 7. Agriculture Victoria Referral Response [8.5.7 8 pages]
- 8. Area Analysis (Refer to maps in report) [8.5.8 3 pages]
- 9. Draft Permit Conditions (Not Officer Recommendation) [8.5.9 2 pages]

1. LOCATION PLAN / AERIAL PHOTO

LOCATION PLAN



AERIAL PHOTO



Figure 2 – aerial image of site and surrounds

2. RECOMMENDATION

That the Planning Committee resolves to Refuse to Grant a Permit for the Use and Development of the Land at 1075 Larpent Road, Larpent (Lot 1 PS024858 V/F: 07795/142) for a Dwelling, on the following grounds:

- 1. The proposal is contrary to clauses 02.03-1 (Settlement), 02.03-4 (Natural Resource Management), 02.04 (Strategic Framework Plans), 14.01-1S and 14.01-1L (Protection of Agricultural Land) and 16.01-3S (Rural Residential Development) of the Colac Otway Planning Scheme, which seek to protect high quality agricultural land and to limit rural residential development unless an application adequately demonstrates that a dwelling is genuinely required to carry out a long term agricultural activity having regard to the size of the lot, and the 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) It has not been adequately demonstrated that a dwelling would enhance agricultural production based upon the land unit described in the application.

- *b)* The proposal has the potential to limit the operation and expansion of adjoining and nearby agriculture uses.
- c) 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 1075 Larpent Road, Larpent for a dwelling. An agricultural building is also proposed, which the applicant has advised would be used to store a tractor and other farm equipment, sundry materials and supplies, and to provide a workshop for repairs of equipment. A planning permit is not required for the agricultural building, which would not encroach into the specified setbacks of the Farming Zone.

The applicants also own land at 95 and 116 Middletons Road (the latter containing a dwelling), and at 145 Phalps Road, Larpent.

Proposed use and development of a dwelling

The proposed dwelling would be sited 300 metres from Larpent Road and 40 metres from the northern boundary shared with 1055 Larpent Road.

Access exists in the north-west corner of the site, with a new access proposed in the south-west corner.

The proposed four-bedroom, single storey brick dwelling would be serviced by an on-site septic system and reticulated power, with potable water via rainwater tanks and dam for stock.

The submitted Planning Report notes that "the dwelling is required to allow a full time presence on the land to facilitate the establishment of a beef breeding enterprise, along with improvements to the land and removal of weeds and rabbits".

The report states that:

"The owners intend to establish a beef breeding enterprise on the site, which will involve the consent [sic] monitoring, feeding, watering and caring for animals, particularly during breeding and calving, with some calves requiring on-going feeding. The inclusion of a dwelling on the land would allow the owners to undertake the necessary improvements to the land, including additional infrastructure, and to provide fulltime care of the cattle once the business is fully established on the land.

The report further states that:

"The construction of a dwelling on the land is required to support and improve the agricultural activities conducted, including the introduction of a cattle breeding enterprise and will ensure continued improvements to the land and longevity of the agricultural activities undertaken."

A Farm Management Plan was submitted which states, inter alia:

"The land is currently being farmed by [the applicants] as a grazing support block for their dairy farming enterprise and beef operation. They plan to continue operating their property as 'Grazing animal production' as defined in the planning scheme and operate a Speck Park Cattle Stud.

To maintain high animal welfare standards, it would be beneficial if there was a dwelling on the property to allow for management oversight. A full-time presence is in the long-term best interests for the grazing operation."

The Farm Management Plan at page 11 describes the proposed agricultural use as follows:

"The enterprise will focus on a cow and calf operation, self-replacing and selling all weaner cattle at a store sale."

The Farm Management Plan states that the applicants would run 20-25 cows (1cow/ha) to be joined and then calved down in one calving interval. Cows would carry calves until they are the correct weight and then they would be sold at the weaner store sale. [See also comments below from Agriculture Victoria regarding the potential stocking rates referenced in the Farm Management Plan.]

According to the Farm Management Plan, the purpose of the dwelling is "to allow them to reside at the property and keep a close eye on their cattle enterprise, managing water feed and animal husbandry to the highest standard".

The Farm Management Plan estimates the financial return at \$15,368 net per annum.

The submitted Planning Report emphasises that breeding is central to the application for a dwelling on site.

Soil type and pasture species, detailed at parts 3, 4 and 5 of the Farm Management Plan, generally confirms the high capability of the site detailed in the *Rural Land Strategy* 2007 and captured in clause 02.04 as the site is 'Farmland of Strategic Significance'.

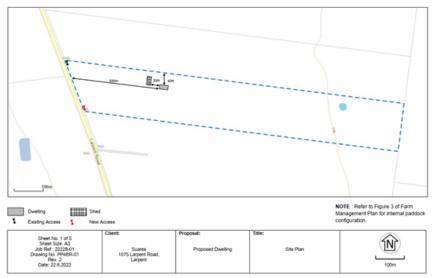


Figure 3 - proposed dwelling and agricultural building locations

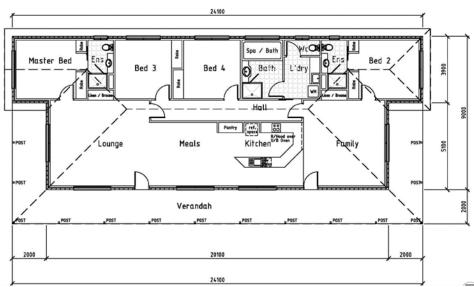


Figure 4 - proposed dwelling floorplan

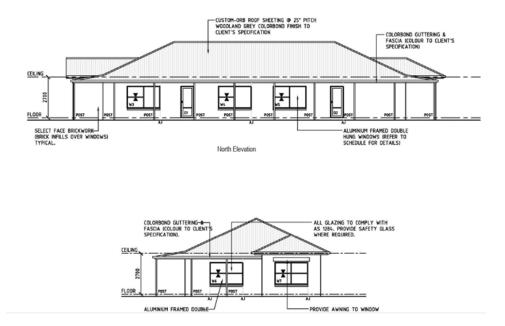


Figure 5 - north and west elevations of proposed dwelling

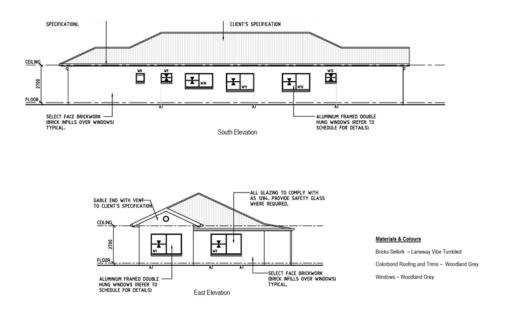


Figure 6 – south and east elevations of proposed dwelling

4. SUBJECT LAND & SURROUNDINGS

The subject site is located on the eastern side of Larpent Road, approximately 900 metres north of Underwoods Road.

The site is regular in shape with a frontage of 195 metres to Larpent Road and a depth of approximately 1, 420 metres, providing an overall site area of 20.2 ha.

Elliminyt is approximately eight kilometres by road to the east of the subject site.

As noted above, the site is in 'Farmland of Strategic Significance' and the land is of high agricultural capability (see 'Planning Scheme Provisions' section of this report for relevant extracts from the planning scheme and the *Rural Land Strategy* 2007). Surrounding land is also within the Farming Zone and is 'Farmland of Strategic Significance'.

The Farm Management Plan indicates that the subject site is currently being used for grazing.

No. 1055 Larpent Road, to the north, has an area of 21.5 ha. There is no dwelling on that site. No. 1105 Larpent Road is to the south and appears to be in two parcels (36.2ha and 12.1ha), with a combined area of 48.3 ha. This property has a dwelling located on the 36.2ha lot.

The neighbouring sites are currently being farmed.



Figure 7 - Map A showing lots less than, and greater than, 40ha

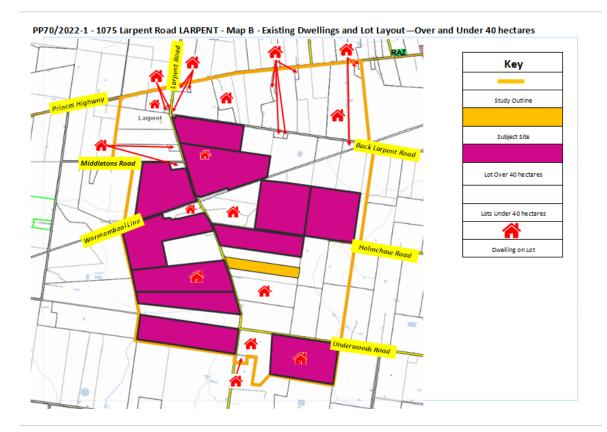


Figure 8 - Map B – Existing dwellings and lot sizes

Map A and Map B are required to be read in conjunction with the excel spreadsheet titled 1075 Larpent Road, Larpent, Area Analysis.

Based on the above documents, the following is noted:

 Council has no record of a permit being issued for dwellings identified in those maps. Council records go back to 1994. In other words, no permits have been issued for a dwelling under the current planning regime.

As noted in other reports for dwellings on small lots in the Farming Zone on this Planning Committee agenda, it is necessary to differentiate between dwellings constructed prior to the adoption of the *Rural Land Strategy* 2007 and those allowed since that strategy - together with the *Rural Living Strategy* 2011 – which both tightened and clarified planning policy on dwellings in rural zones. The report on this agenda relating to 1140 Irrewillipe Road includes discussion on this topic and citations from a number of relevant VCAT decisions (which are also attached to that report); those have not been repeated in detail here to avoid constant repetition throughout the four reports relating to proposals for dwellings on small lots in the Farming Zone on this Planning Committee agenda. However, the commentary in those reports and in the VCAT decisions is also relevant to this application.

- Of the 48 dwellings identified:
 - 3 dwellings are located on lots that exceed the 40ha
 - 4 dwellings are located on lots less than the 40ha (average of 31.85ha), but the average property size of which the lot is part is 65 ha.
 - 15 dwellings are located on lot sizes of 2.6 ha or less, with 8 dwellings on lots less than 1 ha
- The following operational farms are located in close proximity to the site:
 - No. 1105 Larpent Road, immediately to the south, is a 48.3ha grazing farm
 - Nos. 1070 Larpent Road (110.8 ha) and 1110 Larpent Road (109.7 ha) located on the west side of Larpent Road
 - Nos. 985 Larpent Road (47.1ha), 231 Back Larpent Road (206.9 ha) and 1035 Larpent Road (45.6ha) are to the north of 1035 Larpent Road

Approving the use and development of the site for a dwelling as proposed would remove approximately 2ha of the 20ha lot from agricultural use. The *Rural Land Strategy* noted that farms are becoming larger, whilst fewer in number. The consolidation of smaller lots, such as the subject site, into existing working farms would retain the viability of the agricultural land as anticipated in clause 14.01-1S.

Clause 02.04 (Strategic Framework Plan) locates the site in that part of the Shire categorised as being farmland of strategic significance. That classification was the result of extensive research that culminated in the Colac Otway Shire *Rural Land Strategy* (RMCG, 2007), a background reference document in the schedule to clause 72.08 of the planning scheme (see 'Planning Scheme Provisions' section below for further discussion).

Neither the submitted Planning Report nor the Farm Management Plan make references to the status of the farming land, the site context, or the *Rural Land Strategy*.

5. PLANNING SCHEME PROVISIONS

Planning Policy Framework

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 clauses considered relevant to the application are identified below:

- 02.01 Context
- 02.02 Vision
- 02.03 Strategic Directions
- 02.04 Strategic Framework Plans
- 11.01-1S, 11.01-1R and 11.01-1L Settlement
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 14.01-2S and 14.01-2R Sustainable Agricultural Land Use
- 15.01-6S and 15.01-6L Design for Rural Areas
- 16.01-3S Rural Residential Development

Colac Otway Shire's Rural Land Strategy 2007

Colac Otway Shire's *Rural Land Strategy* 2007, a background document under the schedule to clause 72.08 (Background Documents), identifies the agricultural capability of farmland within the shire categorising agricultural land as 'high', 'medium' or 'low' agricultural capability. Farmland of Strategic Significance correlates with the high agricultural capability land for the shire.

The site is in Farmland of Strategic Significance and is land of high agricultural capability.

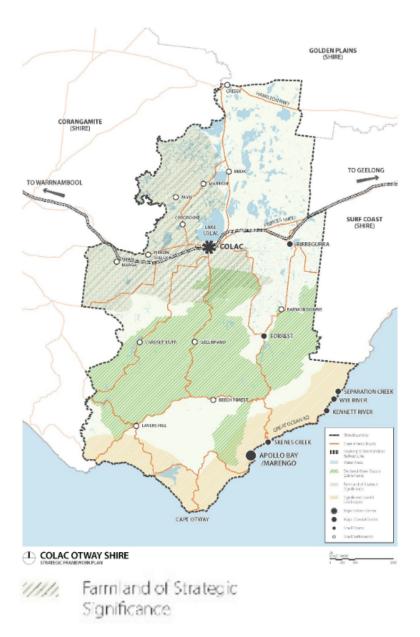


Figure 9 - Clause 02.04 Colac-Otway Strategic Framework Plan

It should be noted, as discussed in the separate report on 255 Colac Ballarat Road, Irrewarra - elsewhere on this agenda – that a recent VCAT case observed that *"read sensibly and harmoniously with all other relevant provisions of the planning scheme, the reference to 'productive farmland' and 'productive agricultural land' in clause 14.01-1S includes all land identified as having agricultural capability under clause 02.03-4 whether classified 'low', 'medium' or 'high'"*. [Irrewarra Estate Ltd v Colac-Otway SC [2021] VCAT 358]

The Rural Land Strategy notes, amongst other things, that:

- agriculture is one of the greatest economic contributors to the Shire with the dairy and beef industries the most significant in terms of land use and economic contribution to the Shire
- there has been an increase in demand for rural lifestyle properties
- the diversity of land uses resulting from change in rural land use may bring conflict between agriculture and land uses

• 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 Rural Land Strategy recommended that the Shire consider the following:

- *"Identify candidate areas for rural residential development and consider the introduction of the Rural Living Zone focusing on areas with moderate to low agricultural capability, immediately adjacent to townships and that meet the requirements of Ministers Direction 6;*
- Consider appropriate dwelling and subdivision provisions for rural areas of the Shire that ensures a strict interpretation of the Farming Zone provisions to ensure incompatible land uses (including dwellings) do not negatively impact on the ability to farm. This will include use of the schedule to the Farming Zone to introduce appropriate minimum subdivision area and an appropriate minimum area for which no permit is required for a dwelling.
- Introduce the Rural Activity Zone to selected areas, which better provide for uses and development, which are compatible with agriculture and the environmental and landscape characteristics of the area with a focus on areas with moderate to low agricultural capability and in close proximity to the coast to provide for tourism. (page 2)"

The Rural Land Strategy observed a general increase in average farm size and decline in total farm numbers throughout the shire which reflected a state-wide trend.

Part 6.1 - Agricultural Capability - defines land of high agricultural capability as follows:

Land of high agricultural capability is generally suited to a wider range of agricultural uses than land of medium and low agricultural capability. Land of high agricultural capability can generally support more intensive uses e.g., dairying, horticulture, whereas land of medium agricultural capability is more suited to less intensive industries such as grazing and cropping and low agricultural capability land has few options other than grazing.

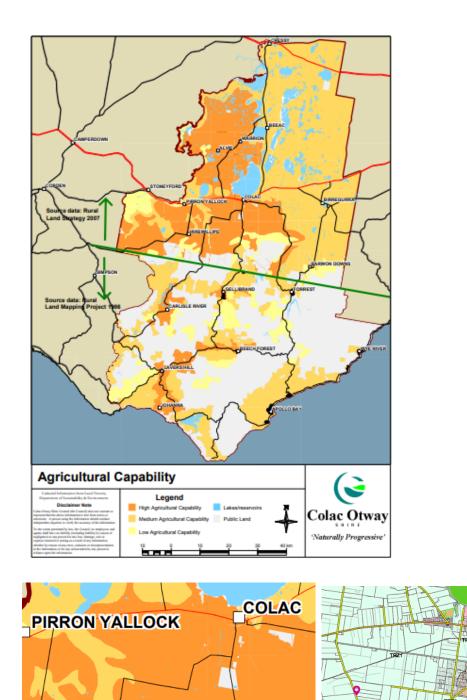


Figure 11 Rural Land Strategy 6.1- Agricultural Capability (page 28)

The Rural Land Strategy notes that:

"The clear evidence of farm amalgamations and the need to increase farm sizes to remain economically viable indicates that policy and provisions relating to dwellings and small lot subdivisions in rural areas will require a strict interpretation of the Farming Zone provisions to ensure incompatible land uses (including dwellings) do not negatively impact on the ability to farm". [emphasis added]

The *Rural Land Strategy* identified potential Rural Living candidate areas which were considered further in the *Rural Living Strategy*.

Colac Otway Shire Rural Living Strategy

The subject site and the surrounding area are not identified as a potential rural living area within the *Rural Living Strategy*, adopted by Council in December 2011. The Strategy identified that the further expansion of a township would result in a net loss of productive agricultural land and recommended that settlement boundaries around all Township zoned land be introduced to provide a defined boundary to restrict future residential growth and development. This would also ensure that a clear distinction is drawn between productive agricultural land and established residential development. The subject site is far outside of any township boundary.

<u>Zone</u>

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.

Overlays

No overlays affect this site.

Other relevant provisions

Nil

Relevant Planning Scheme amendments

Nil

6. REFERRALS

Internal Referrals

The application was referred internally to Council's Health Unit and Infrastructure Department. Neither raised any objection to the proposal subject to conditions being imposed in the event a planning permit is issued. The Health Protection Unit advised that a Land Capability Assessment is not required for the planning application.

External Referrals

No external referrals were required.

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.

Concerns raised related to the following:

- construction of a dwelling on site given the proximity of the property to other farming properties owned by the applicants.
- placement of the proposed dwelling and shed, and their visibility when viewed from the objector's windows

It is considered that given the location of the proposed dwelling relative to the dwelling on the objector's property, views across the landscape should not be impacted significantly, and it is considered the siting of buildings would be sufficient from property boundaries.

8. OFFICER'S ASSESSMENT

The key issue for consideration in the determination of this application is whether the proposal is in accordance with planning policy for the Farming Zone, including whether justification has been provided to demonstrate that the proposed dwelling is reasonably required to support agricultural production on the land.

In this case, it is considered that the proposal is incompatible with the following clauses in the Colac Otway Planning Scheme:

- 02.01 Context
- 02.03-4 Strategic Directions Natural Resource Management
- 02.04 Strategic Framework Plans
- 14.01-1S and 14.01-1L Protection of Agricultural Land
- 16.01-35 Rural Residential Development
- Clause 35.07 Farming Zone

The subject site comes within a part of the Shire categorised as being 'Farmland of Strategic Significance', as detailed at Figure 9 above.

Clause 14.01-1S (Protection of Agricultural Land) applies to all land in the Farming Zone. It seeks *"to protect the state's agricultural base by preserving productive farmland"*. Strategies designed to assist in the achievement of that objective include, inter alia, to:

- Protect productive farmland that is of strategic significance in the local or regional context.
- Prevent inappropriately dispersed urban activities in rural areas.
- 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.
- In considering a proposal to use, subdivide or develop agricultural land, consider the:
 - Desirability and impacts of removing the land from primary production, given its agricultural productivity.
 - Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.
 - Compatibility between the proposed or likely development and the existing use of the surrounding land.

Clause 14.01-1L (Protection of Agricultural Land) is a local policy that applies to all land in the Farming Zone. Relevant strategies include:

- "Discourage dwellings that do not meet the minimum lot area of the zone or relevant schedule unless it is required for an intensive agricultural activity on the land or to achieve the environmental protection of the land.
- Avoid localised concentration of dwellings in agricultural areas.
- Ensure that small lot subdivisions or excisions facilitate sustainable rural production and do not prejudice surrounding rural activities".

Council seeks to manage its natural resources by:

- Protecting high quality agricultural land.
- Limiting rural residential development that impacts viable agricultural land.
- Supporting grazing and cropping farming practices as preferred land uses in areas designated as 'Farmland of Strategic Significance'.
- Supporting farm consolidation and expansion.

Clause 16.01-3S (Rural Residential Development) includes the following as strategies:

- *"Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.*
- Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.
- Ensure land is not zoned for rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural resources.
- Discourage development of small lots in rural zones for residential use or other incompatible uses".

The *Rural Land Strategy*, a background reference document under the schedule to clause 72.08, undertook a thorough assessment of agricultural land capability within the shire and the implications of residential encroachments into such land.

As noted above, the subject site is within that part of the shire identified as being Farmland of Strategic Significance. Neither the submitted Planning Report nor the Farm Management Plan acknowledges or addresses this issue. The planning scheme very clearly, via the Colac Otway Shire Strategic Framework Plan and reference to the Rural Land Strategy, identifies the most significant farming land in the shire. Agriculture is a key economic contributor to the shire with dairy and beef industries the most significant in terms of land use and economic contribution (clause 02.01).

The Farm Management Plan states that the subject site would continue to operate for agricultural purposes, being "grazing animal production". Clause 73.03 defines this activity as being:

"Land used for animal production where the animals' food is obtained by directly grazing, browsing or foraging plants grown on the land."

Based on the Farm Management Plan, the subject site currently provides for the grazing of cattle. The Farm Management Plan does not provide adequate explanation as to why a dwelling is required on site to continue a use that is currently occurring.

The permit applicants have properties at 95 and 115 Middletons Road, Larpent, and 145 Phalps Road, Larpent. The property at 115 Middletons Road is developed with a dwelling. That property is

approximately 2.6 kilometres from the subject site, as shown below. The 145 Phalps Road property is approximately 4.5km from the subject site.



Council requested that the applicant respond to the possibility of managing the proposed/existing agricultural activity on the subject land from the nearby dwelling at 115 Middletons Road. The following response was received:

"This is what is currently occurring, however it is becoming increasingly difficult and untenable. Our clients have been unable to secure permanent assistance in operating the dairy due to a shortage in available farm labour, and subsequent difficulty in securing suitable accommodation. Having to travel to the subject site on a regular basis, including hauling machinery and sundry equipment each time is time consuming and problematic. [It is assumed the same argument could be made for farming the land at 145 Phalps Road.]

Our clients have been building a herd of beef cattle, specializing in the Speckle Park breed, concurrently with building up the dairy herd and running the dairy operation, with the intention of using the subject site as the primary location for the breeding operation of the beef herd while utilising land in Horden Vale to grow out and fatten the cattle. Due to animal welfare and security reasons, our clients believe it is essential that they are able to live on the subject site in order to provide appropriate care of their livestock. This is supported by the Farm Management Plan prepared for the site. The dairy operation, and its established infrastructure, would remain at Middletons Road." [See also comments below from Agriculture Victoria regarding the proposed stocking rates and the need for a dwelling.]

Neither the Planning Report nor the Fam Management Plan explain what is unique about the proposed breeding regime that warrants Council overlooking the very clear state and local planning policies that seek to ensure that farmland of strategic significance is not compromised by sections 2 (permit required) uses, such as dwellings, without adequate justification. It is not considered that such justification has been provided in this matter.

The application was referred to Agriculture Victoria, as an objective body that provides advice to all Councils on planning applications for agricultural related proposals, for guidance on whether the proposal could be considered a viable agricultural operation on the land requiring a dwelling.

Agriculture Victoria cited relevant planning policy and noted the following:

- *"The subject land is surrounded by properties that all appear to be under cropping and or grazing animal production and are able to be practically consolidated for agricultural expansion.*
- The town of Colac is approximately 5 km from the subject property.
- The justification of the dwelling is to support grazing animal production.
- The owners of the subject land have multiple land holdings within two (2) kilometres of the subject land including 115 Middletons Road Larpent, containing a dwelling and dairy farm, comprising two (2) parcels which both appear to have been subject to dwelling excisions (3 in total).
- The site plan would appear to locate the proposed dwelling within the grazing paddocks.
- The proposal does not provide detail as to the noted infrastructure improvements, shelter belt plantings, access, and cattle handling, feeding and watering infrastructure, including cattle yards".

In its response Agriculture Victoria cited VCAT cases that are also quoted elsewhere on this agenda, in the report for 1140 Irrewillipe Road (with full copies of the VCAT Orders also attached to that report). In VCAT cases *Kennedy v Baw Baw SC* [2022] VCAT 787 and *Strachan v Latrobe CC* [2022] VCAT 35, consideration was given to proposals for dwellings on small lots in the Farming Zone. Concerns were expressed by the Tribunal Members about any proposed dwelling performing the function of supporting a rural lifestyle rather than being a necessity in the operation of a commercially viable business, and about proposals being attempts to have a rural living arrangement masked as an agricultural use within a Farming Zone. Amongst other policies, the Tribunal Members drew attention to Clause 14.01-15 (Protection of Agricultural Land) which seeks to limit new housing development in rural areas by directing housing growth into existing settlements and discouraging the development of isolated small lots in rural zones from use for dwellings. In addition, the Members noted that Clause 16.01-35 (Rural Residential Development) discourages development of small lots in rural zones for residential use and encourages consolidation of existing isolated small lots in rural areas. Agriculture Victoria considers that the findings of the Tribunal in those cases are also relevant to this case.

Agriculture Victoria stated that it considers that:

- *"Grazing animal production requires regular supervision to ensure animal health and welfare but can be carried out without the requirement for a dwelling.*
- The financial returns of the FMPR noting that the proposed Speckle Park cattle stud is to be based on a herd of 22 breeding cows may not be achievable:
 - FMPR Figure 3. Proposed future property layout (not to scale) appears to show approximately 16.5 hectares of total land area available for animal production (The available grazing land is estimated by removing the area used for domestic purposes, proposed laneways and shelter belt plantings).
 - The annual average rainfall is noted as 727 mm.
 - The sustainable carrying capacity of the land with good pasture management; (727 mm 250 mm)/25 = 19 DSE/ha.
 - 19 DSE x 16.5 ha = 313.5 Total DSE.
 - A cow with calf at 600 kg body weight = 18.6 DSE (this is a conservative estimate as Speckle Park mature cows range in weight from 600 850 kgs).
 - 313.5 DSE/18.6 DSE = 17 cows with calf.
- The above shows that the nominated stocking rate of 22 cows with calf would not be sustainable on the subject land.

- The proposal does not appear to effectively establish a domestic building envelope to minimise the domestic use of the land and, ensure maximising and maintaining the use of the land for agriculture.
- That without the establishment of a domestic building envelop there is a risk of further loss to available productive land over time.
- The area set aside for the domestic envelope, including the dwelling, should include any domestic outbuildings, yards, pool, garden, primary and secondary wastewater envelopes etc. and access way.
- A land capability assessment would be required to validate the location and area required for domestic wastewater treatment and disposal and therefore the extent of the domestic envelope.
- That the primary and secondary wastewater areas for the dwelling should be appropriately buffered and fenced to exclude stock, in accordance with any land capability report recommendations.
- The approval of a dwelling would have the potential to set a precedent for further dwellings in the surrounding area given the pattern of small lots without dwellings which appear to be currently used for broad scale agriculture. This is particularly relevant with the owners of the subject land owning three (3) other small lots in that area.
- The location given the proximity to urban centres and services, if the proposal was approved, it is likely that the approval of a dwelling will lead to the potential for viable holdings being reduced to hobby farm or lifestyle blocks, a divergence from productive farming and the purpose of the Farming Zone.
- The approval of a dwelling on the currently vacant land would permanently remove the ability of the land to be incorporated into surrounding agricultural enterprises and has the potential to limit the operation and expansion of adjoining and nearby agricultural uses.
- The proposal would have the potential to create land use conflict issues with surrounding agricultural properties.
- The proposal has the potential to result in a permanent loss of productive agricultural land in the Farming Zone".

In the recommendation in its referral response, Agriculture Victoria stated that it considers:

"...that the proposal's justification for a dwelling in the Farming Zone would appear contrary to the purpose of the zone and the strategic objectives of the Colac Otway Planning Scheme, with particular reference to Clause 14.01-1S Protection of agricultural land, Clause 16.01-3S Rural residential development and Clause 02.03-4, where land potentially used for lifestyle purposes; is causing problems associated with increasing property values inhibiting farm growth, servicing, provision of infrastructure and conflict with adjoining land uses and has the potential to undermine the protection of the agricultural base of the Shire.

The refusal of the application appears to be supported by the VCAT decisions cited above."

Officers note the concerns Agriculture Victoria expressed about the stocking rates cited in the Farm Management Plan and agree with the position that the construction of a dwelling would lead to the loss of productive farmland that is of strategic significance in the regional context, with no justifiable explanation as to why that should be considered acceptable. Of note is the fact that the applicant

already has a dwelling close to the subject land, from which it is currently managing farming activity on the land.

Large lot holdings are a feature of the area surrounding the subject site. As identified by the Rural Land Strategy, the number of farms is decreasing; however the size of existing farms is increasing. This consolidation of farms is generally dependent on the land value reflecting its agricultural nature rather than 'hobby farm' status. The concern is as dwellings are constructed on lots smaller than the prescribed 'as of right' size, the land value of those properties increase making the potential consolidation unviable.

Clause 14.01-1L (Protection of Agricultural Land) <u>discourages dwellings on lots that do not meet the</u> <u>minimum lot area of the zone and relevant schedule unless it is required for an intensive agricultural</u> <u>activity on the land or to achieve the environmental protection of the land.</u> [emphasis added]

No evidence was provided to suggest that the subject site is degraded and a dwelling is required to achieve the environmental protection of the land.

Clause 73.03 defines intensive animal production as:

"Land used for animal production where the animals' food is importance from outside the immediate building, enclosure, paddock or pen.

It does not include:

- An abattoir or sale yard; or
- Grazing animal production, pig farm, poultry farm or poultry hatchery"

Included within the use of intensive animal production are cattle feedlots and intensive dairy farms.

The Farm Management Plan states that the proposed agricultural use is that of grazing animal production, a use which is clearly excluded from being categorised as intensive agricultural activity.

Therefore, the dwelling is not required to either provide for the environmental protection of the land nor is it required for an intensive agricultural activity.

The location of the subject site relative to other farming operations was detailed earlier in this assessment. Approval of the application has the potential to impact on the continuation of primary production on adjacent lots via increasing land values and potentially impacting on the compatibility of the various uses.

Clause 35.07-5 states that an application to use a lot for a dwelling must be accompanied by a written statement which explains how the proposed dwelling responds to the decision guidelines for dwellings in the zone. Relevant decision guidelines are detailed at clause 35.07-6 and include:

General issues

The municipal planning strategy and planning policy framework

These matters have been addressed earlier in this submission and generally relate to clauses 02.01, 02.04, 14.01-1S, 14. 14.01-1L, 14.01-2S and 14.01-2R, 16.01-3S and 35.07. The planning scheme gives a clear direction that agricultural land should be protected and retained for agricultural pursuits.

The capability of the land to accommodate the proposed use or development, including the disposal of effluent

The 20.22ha site could physically accommodate the dwelling. Council's Health Protection Unit advised that a Land Capability Assessment was not required for the planning application.

The submitted Planning Report noted that the site would be connected to mains power with a portable water supply. A septic tank would be provided for the treatment and disposal of effluent. The location of this effluent system has not been noted on the plans, but this matter could be addressed by way of a condition if a permit was to be issued.

Similarly, no details were provided on the site plan about the location of any proposed water tanks. Again, this is a matter that could be addressed by a condition in the event a permit was issued.

How the use or development relates to sustainable land management The submitted Planning Report states that:

"A permanent on-site presence is necessary to carry out ongoing improvements to the land along with land management activities such as weed removal, vermin and pest control and the like. The dwelling and cattle breeding activity will allow the land to be more efficiently maintained and improved over time."

The Farm Management Plan at Part 3 (Soil Type and Pasture Species) indicates that the land is currently very well-maintained noting that:

"There is a very good ground cover across the farm, and this has been managed appropriately to minimise competing weed species, reduce soil degradation and retain sub-soil moisture."

On balance, it is considered that the Farm Management Plan indicates that the subject site currently employs sustainable land management techniques.

Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses

As discussed above, surrounding land use is agricultural land categorised as 'farmland of strategic significance' in clause 02.04. It is not considered that the proposed dwelling would be an appropriate use or development on this small Farming Zone lot for the reasons outlined earlier in this report.

How the use and development make use of existing infrastructure and services The road network is in place.

Agricultural issues and the impacts from non -agricultural uses

- The Farm Management Plan notes that grazing animal production would continue occurring on site. As previously discussed, this existing use has occurred without a dwelling on site and, in the opinion of Agriculture Victoria, could continue to do so. No substantive case has been argued that warrants the use and construction on a lot substantially less than the minimum 40ha prescribed for a dwelling to be 'as of right' in this part of the Farming Zone.
- The construction of a dwelling would remove part of the site from agricultural production.
- The use and development have the potential to limit the operation and expansion of adjoining and nearby agricultural uses given the impact on land value with a dwelling and the potential for conflict in the varying uses.
- The site currently sustains the grazing of cattle on site. This use would continue.
- The agricultural qualities of the land would appear high based on the assessment undertaken in the Farm Management Plan.

• The applicants have a dwelling nearby at 115 Middletons Road and the potential to provide rural worker accommodation on that land to help manage the applicant's wider landholding has not been discussed within the planning application.

Accommodation issues

<u>Whether the dwelling will result in the loss or fragmentation of productive agricultural land</u> The *Rural Land Strategy* 2007 identifies the site as being within part of the shire identified as being 'farmland of strategic significance'.

If approved the application would result in the further loss or fragmentation of agricultural land for the reasons detailed earlier in this assessment, and would reduce the ability of adjoining farming properties to consolidate the lot into existing farming operations.

The Planning Report states that:

"It is considered the proposal will not lead to a concentration or proliferation of dwellings in the area as a review of LASSI aerial photography indicates there are several dwellings in the vicinity, some of which are on lots less than 40 hectares in area. The area therefore already contains numerous dwellings with multiple road frontages."

An extensive review of existing dwellings in proximity to the review site was undertaken as part of the assessment of this application, as detailed in the attached Maps A and B and associated excel spread sheet. A summary of the data from these documents was outlined earlier in the report.

It should be noted that it does not appear that Council has granted a planning permit for the use and development of a dwelling on a lot less than the minimum 40ha within the surrounding area since prior to 1994.

The approval of a dwelling on a lot size significantly less than that prescribed under schedule to the Farming Zone would undermine the purpose and objectives of that control and the planning policy framework.

The tyranny of small decisions is a concept whereby "any decision to stop further incremental changes beyond the current situation can appear unduly arbitrary, given that each step introduces only a small and seemingly inconsequential change from the preceding situation. By itself, of course, each decision may seem relatively inconsequential but, in combination, a series of small changes will eventually amount to something of considerable substance". (Southern Capital Corporation Pty Ltd v Port Phillip CC [1999] VCAT 130 (30 June 1999).

Granting a planning permit on a 20.22 ha site where a minimum of 40 ha is required for a dwelling to be of right, is a case in point. The construction of a dwelling on a lot less than the prescribed size may sound incidental. However, each such decision erodes the integrity of the zone and what it seeks to achieve. The planning scheme is very clear that agricultural land should be protected.

Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation Farming uses occur on adjacent and nearby land. It is reasonable to expect that the dwelling may, at times, be adversely affected by agricultural activities.

Will the dwelling adversely affect the operation and expansion of adjoining and nearby agricultural uses?

This matter was addressed earlier in this assessment.

Potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of land for agriculture

Each time a permit is granted for a dwelling on a small lot in the Farming Zone, in the absence of a convincing argument for such a use and development, it potentially makes the next application for a similar development that much harder to resist and, hence, a proliferation of dwellings may occur. Since permits have been issued for dwellings on small lots in rural areas against officer recommendation over the past year or two, there has started to be an influx of such applications. This is in part evidenced by the fact that there are four such proposals on the current Planning Committee agenda, with numerous other such applications recently considered by Planning Committee (as well as those that have been allowed under delegation when circumstances were considered by officers to warrant a grant of a permit, having regard to the planning policy context and the circumstances of the site in question).

Conclusion

Section 60 of the *Planning and Environment Act* 1987 details those matters that the responsible authority must consider when assessing an application. This includes, at section 60(1)(a), the relevant planning scheme.

A key theme throughout the relevant policies is the identification and retention of productive farmland. It is considered that in this case the applicant has failed to adequately address all criteria to justify a departure from this fundamental principle.

9. OFFICER DIRECT OR INDIRECT INTEREST

No officer declared an interest under the Local Government Act 2020 in the preparation of this report.

| | Office Use Only | | | | | | |
|---|---|--------------------------|------------------------|-------------------------|-------------------|--|--|
| | VicSmart? | | | YES | NO | | |
| | Specify class of VicSmar | t application: | | | | | |
| Coloc Otwork | Application No.: | | | Date Lodged: | / / | | |
| Colac Otway | | | | | | | |
| SHIRE | | _ | | _ | | | |
| Planning Enquiries | Application | n for a F | Planni | ng Per | mit | | |
| Phone: (03) 5232 9400 Email: ing@colacotway.vic.gov.au | Application for a Planning Permit | | | | | | |
| Web: www.colacotway.vic.gov.au | Any material submitted | | | | | | |
| | available for public view | wing, including election | ronically, and copies | may be made for intere | ested parties for | | |
| | the purpose of enabling and Environment Act 1 | | | | | | |
| | A Questions marked wi | th an asterisk (*) m | ust be completed. | | | | |
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| Clear Form | Click for further information. | | | | | | |
| | | | | | | | |
| Application Type | O No O Yes | | | | | | |
| Is this a VicSmart application?* | If yes, please specify which VicSmart class or classes:. | | | | | | |
| | If the application falls in it is a VicSmart applica | nto one of the classe | es listed under Claus | e 92 or the schedule to | Clause 94, | | |
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| Pre-application Meeti | | | | | | | |
| Has there been a | | | | | | | |
| pre-application meeting | O No O Yes If | 'Yes', with whom?: | : | | | | |
| with a Council planning officer? | | ate: | | law (month (waar | | | |
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| | | | | | | | |
| The Land 🔟 | | | | | | | |
| Address of the land. Complete the S | treet Address and one of th | e Formal Land De | scriptions. | | | | |
| Street Address * | Unit No.: St. N | lo.:1075 | St. Name: Larp | ent Road | | | |
| | Suburb/Locality: Larper | nt | | Postcode | | | |
| Formal Land Description * | | - | | | | | |
| Complete either A or B. | A Lot No.:1 | Lodged Plan | Title Plan OPlar | of Subdivision No.: | 24858 | | |
| This information can be found on the certificate of title | OR | | | | | | |
| If this application relates to more than one | B Crown Allotment No.: | | | Section No.: | | | |

address, attach a separate sheet setting out any additional property details.

Parish/Township Name:

The Proposal

A 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

| | For what use development | |
|------------------------|--|---|
| | For what use, development or other matter do you require a permit? * | Development and use of a dwelling and shedding. |
| | | |
| | | 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. |
| | | |
| | | Cost \$485,000 You may be required to verify this estimate. Insert '0' if no development is proposed. |
| i | Estimated cost of any development for which the permit is required * | Insert of it no development is proposed. If the application is for land within metropolitan Melbourne (as defined in section 3 of the <i>Planning and Environment Act 1987</i>) and the estimated cost of the development exceeds \$1 million (adjusted annually by CPI) the Metropolitan Planning Levy must be paid to the State Revenue Office and a current levy certific e must be submitted with the application. Visit <u>www.sro.vic.gov.au</u> for information. |
| Exi | sting Conditions 💶 | |
| | cribe how the land is | |
| For e dwel pract | d and developed now * example, vacant, three lings, medical centre with two itioners, licensed restaurant 80 seats, grazing. | Vacant. |
| | | Provide a plan of the existing conditions. Photos are also helpful. |
| | | |
| Tit | e Information 🚺 | Does the proposal breach, in any way, an encumbrance on title such as a restrictrive covenant, section 173 agreement or other obligation such as an easement or building envelope? |
| Enc | umbrances on title * | Yes (If 'yes' contact Council for advice on how to proceed before continuing with this application.) |
| | | |
| | | 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. |
| | | |

Application for a Planning Permit | Combined

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.

| Information requirements Is the required information provided? | Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist. |
|---|--|
| Declaration I | I consent to Council making the submitted application, including any personal information contained within the application, available to the general public for inspection on its website, to address the public notification requirements of Section 52 of the Planning and Environment Act 1987. |

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

Application for a Planning Permit | Combined



valid at the time and in the form obtained from the LANDATA REGD TM System. None of the State of Victoria, its agents or contractors, accepts responsibility for any subsequent publication or reproduction of the information.

The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

| REGISTER | SEARCH | STATEMENT | (Title | Search) | Transfer | of | Page 1 of 1 |
|----------|--------|-----------|--------|---------|----------|----|-------------|
| Land Act | 1958 | | | | | | |

VOLUME 07795 FOLIO 142

Security no : 124096164138R Produced 16/03/2022 01:02 PM

LAND DESCRIPTION

Lot 1 on Plan of Subdivision 024858. PARENT TITLE Volume 07457 Folio 084 Created by instrument 2365980 15/02/1951

REGISTERED PROPRIETOR

Estate Fee Simple Joint Proprietors

both of AS674375P 01/11/2019

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AS674376M 01/11/2019 RABOBANK AUSTRALIA 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 or imaged folio set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE LP024858 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: 1075 LARPENT ROAD LARPENT VIC 3249

DOCUMENT END

Attachment 8.5.2 Title Information 248

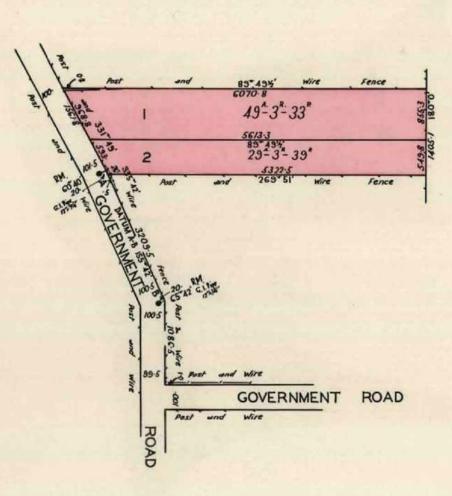


100 A 100

PLAN OF SUBDIVISION PART OF CROWN PORTION A SECTION 30 PARISH OF NALANGIL COUNTY OF POLWARTH

LINKS 1000 500 0 500 1000 1500 2000 METRES 200 100 0 100 200 300 400

| Road widths are NOT to . | scale |
|--------------------------|-------|
|--------------------------|-------|



| LINKS 549.8 593.0 855.3 968.8 1086.5 1405.1 1561.8 3209.5 5322.5 5613.3 6070.8 | 119.293 172.059 194.892 218.569 282.661 314.184 645.649 1070.717 |
|---|---|
| A R P | HECTARES |
| 29 3 39. | 0 12.1380 |
| 49 3 33. | 0 20.2166 |

24858-

| CERTIFICATE OF TITLE V. 745 | 7 <u>F. 084</u> |
|--------------------------------------|-----------------|
| | |
| FOR TITLE REFERENCE SEE PARCELS I | |
| NALANGIL | 2 |
| ODGED BY CUNNINGHAM & | LARKINS |
| DEALING No. 5265890 | DATE 15 / 2 /51 |
| ECLARED BY A.C. THOMS | |
| | ON_20/6/50 |
| | |
| | |
| DATE OF CONSENT | |
| PLAN MAY BE LODGED 22/ | 12 / 52 |
| PLAN APPROVED. DATE | |

| | DATE | |
|------------|----------|--|
| | CHECKED | |
| POSTED | CHECKED | |
| 7110/76-PL | | |
| | 1412 | |



now





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Dwelling

| Contact Infor | mation | Document Inf | Document Information | | | |
|--|---------------------|----------------|--------------------------------------|--|--|--|
| TGM Group Pty | | Prepared for | Prepared for | | | |
| (a Cardno Company) ABN 11 125 568 461 | | Proposal Name | Development and Use of a Dwelling | | | |
| Level 1 27-31 Myers Street | | Job Reference | 22228-01 | | | |
| Geelong VIC 3220 Australia | | Date | 31 March 2022 | | | |
| www.cardno.com www.stantec.com | | Version Number | 1 | | | |
| Phone +61 3 52 Fax +61 3 52 | | | | | | |
| Author(s) | | | | | | |
| Name | Joanne Preece | Date | 31 March 2022 | | | |
| Job Title | Senior Town Planner | | | | | |
| Approved By | , | | | | | |
| Name | Andrew Grey | Date Approved | 31 March 2022 | | | |
| Job Title | Senior Town Planner | | | | | |
| Document Hi | story | | | | | |

| 0 | 15.3.2022 | Review | Joanne Preece | Andrew Grey |
|---|-----------|------------------------|---------------|-------------|
| 1 | 31.3.2022 | Lodgement with Council | Joanne Preece | Andrew Grey |

22228-01 | 31 March 2022

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Dwelling

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Attachments

Attachment 1 Copy of Title

Attachment 2 Development Plans

Dwelling

1 Introduction

Cardno, now Stantec, has been engaged by to submit a Planning Permit Application on their behalf for the development and use of a dwelling at 1075 Larpent Road, Larpent.

2 Permit Triggers

A permit is required for the above proposal under the following provisions of the Planning Scheme :

| > | Farming Zone | 35.07-1 | Use of a Dwelling |
|---|--------------|---------|------------------------------------|
| | | 35-07-4 | Construction of Buildings or Works |

3 Subject Site and Context

The subject site is located on the eastern side of Larpent Road, approximately 900 metres north of Underwoods Road and approximately 2.5 kilometres west of Elliminyt. The site consists of one Title, Vol. 7795 Fol. 142, Lot 1 on Lodged Plan 24858. The site is regular in shape with a frontage of approximately 195 metres to Larpent Road, a depth along its northern boundary of approximately 1,420 metres with an overall area of approximately 20.2 hectares.



Locality Plan - VicPlan

The site is currently vacant of structures, and is used for cropping, with an existing dam to the east of the site, adjacent to the northern property boundary. Agricultural activities on parcels of varying sizes are undertaken on surrounding land, with some parcels containing dwellings and outbuilding.

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Aerial of Site - LASSI

The subject site and all surrounding land are included within the Farming Zone. The site is not affected by any overlays, however portions of land to the east are included within the Land Subject to Inundation Overlay.

Larpent Road is constructed with a bitumen seal, gravel shoulders and open drains. Electricity is available above ground on the western side of Larpent Road.

4 Proposal

The application is for the development and use of a single storey dwelling and shedding association with agricultural activities to be undertaken on the site. The dwelling will be sited approximately 300 metres from Larpent Road and 40 metres from the northern boundary. A 28 metre by 9 metre shed will be located approximately 30 metres west of the dwelling.

The dwelling will contain 4 bedrooms, open plan kitchen, living and dining with a second living area. The dwelling has been designed with traditional 'farmhouse' elements in mind including a wraparound verandah on three sides. Materials to be used include face brickwork, Colorbond roofing with timber verandah posts. The dwelling will be serviced by an on-site septic system, reticulated power, portable water via rainwater tanks and dam for stock. The dwelling and shed will be located in an area of the property that has previously been cropped, resulting in no native vegetation or grass removal. Vehicle access to the site will be via an existing access to Larpent Road. Refer to the attached development plans for further details.

The dwelling is required to allow a full time presence on the land to facilitate the establishment of a beef breeding enterprise, along with improvements to the land and removal of weeds and rabbits.

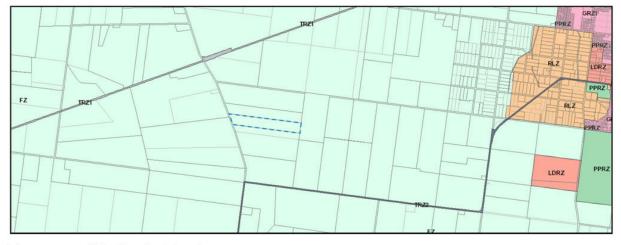
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The owners intend to establish a beef breeding enterprise on the site, which will involve the consent monitoring, feeding, watering and caring for animals, particularly during breeding and calving, with some calves requiring on-going feeding. The inclusion of a dwelling on the land would allow the owners to undertake the necessary improvements to the land, including additional infrastructure, and to provide fulltime care of the cattle once the business is fully established on the land.

5 Planning Controls

5.1 Zoning

The subject site is situated within the Farming Zone.



The purpose of the Farming Zone is:

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

Comment: The proposal is consistent with the purpose of the Farming Zone as it will provide a fulltime permanent presence on-site to allow for ongoing enhancements to land quality and agricultural production, along with the establishment of a cattle breeding enterprise, improvements to the land and the eradication of weeds, vermin and pest animals. Relevant policy provisions are addressed in Section 9 of this report.

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The proposal will not adversely affect the agricultural viability of the land or that of surrounding land for agricultural activities due to the size of the subject site and that of surrounding parcels. The dwelling is of an appropriate size and appropriately sited so as to result in minimal loss of agricultural land. The dwelling will be serviced via mains power and portable water.

5.2 Use

The use is defined as a 'Dwelling' which is included within the broader definition of 'Accommodation'. A dwelling is a Section 2, permit required use under the table of uses to Clause 35.07-1 as the land is less than the 40 hectares in area as specified in the schedule to the zone.

Under the provisions of Clause 35.07-2, 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.
- Each dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available all wastewater from each dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.
- > 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.

Comment : Access to the site will be via Larpent Road, which contains a bitumen surface. The site will be connected to mains power with a portable water supply, while a septic system will be provided for the treatment and disposal of effluent.

5.2.1 Crop Raising

As previously advised, the land will continue to be used for agricultural activities. 'Crop raising' is defined as "Land used to propagate, cultivate or harvest plants, including cereals, flowers, fruit, seeds, trees, turf, and vegetables", which is included within the broader definition of 'Agriculture'.

Comment : Agriculture, crop raising, is a Section 1, permit not required use in the Farming Zone.

5.2.2 Animal Husbandry

As previously advised, the owner also intends to breed cattle from the land. 'Animal husbandry' is defined as "Land used to keep, breed, board, or train animals, including birds", which is included within the broader definition of 'Agriculture'.

Comment : Agriculture, animal husbandry, is a Section 1, permit not required use in the Farming Zone.

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Dwelling

5.3 Buildings and Works

Under the provisions of Clause 35.07-4 of the Planning Scheme, a permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 35.07-1. Further, any building must be setback from any road or boundary as specified in the schedule to the zone, with the minimum setback from a dwelling not in the same ownership specified as 100 metres, 20 metres from a road and 5 metres from any other boundary.

Comment: This permit will facilitate the construction of the dwelling and shedding under the provisions of Clause 35.07-4 for a building associated with a use in Section 2 of Clause 35.07-1. The proposed dwelling will be in excess of 200 metres from the dwelling to the south which is not in the same ownership, setback approximately 300 metres from Larpent Road and in excess of 40 metres from all remaining title boundaries.

5.4 Decision Guidelines

Under the provisions of Clause 35.07-6, before deciding on an application to construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the Responsible Authority must consider, as appropriate:

General Issues

- > The Municipal Planning Strategy and the Planning Policy Framework.
- > Any Regional Catchment Strategy and associated plan applying to the land.
- > The capability of the land to accommodate the proposed use or development, including the disposal of effluent.
- > How the use or development relates to sustainable land management.
- Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.
- > How the use and development makes use of existing infrastructure and services.

Comment : Refer to Section 9 of this report for details of the proposal's compliance with relevant planning policies. The inclusion of a dwelling on the land will provide a fulltime permanent presence on-site resulting in improvements to land quality, including the ongoing eradication of weeds and vermin, and the establishment of a cattle breeding enterprise. The dwelling will be serviced via an individual septic system.

It is considered the proposed dwelling will positively improve and enhance the agricultural activity currently conducted from the land and is unlikely to affect the rural use of any surrounding land, the majority of which undertake similar agricultural activities with many also containing dwellings.

Agricultural issues and the impacts from non-agricultural uses

- > Whether the use or development will support and enhance agricultural production.
- Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.

- > The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- > The capacity of the site to sustain the agricultural use.
- > The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.
- > Any integrated land management plan prepared for the site.
- > Whether Rural worker accommodation is necessary having regard to:
 - The nature and scale of the agricultural use.
 - The accessibility to residential areas and existing accommodation, and the remoteness of the location.
- > The duration of the use of the land for Rural worker accommodation.

Comment: The proposed dwelling will enable improvements and enhancements to the existing agricultural activity conducted from the land, along with the establishment of new activities and environmental improvements, eradication of weeds and vermin. A permanent on-site presence is necessary to carry out ongoing improvements to the land along with land management activities such as weed removal, vermin and pest control and the like. The dwelling and cattle breeding activity will allow the land to be more efficiently maintained and improved over time. Due to the siting of the dwelling, it is considered there will be minimal reduction to the amount of land available for agricultural activities.

As discussed above, it is not envisaged the dwelling would limit the operation or expansion of any nearby rural use. Surrounding land is currently used for a variety of agricultural activities on established individual titles, some of which also contain dwellings and outbuildings.

Based on land size and location of existing dwellings in the vicinity, it is considered the establishment of a dwelling on the site will not limit the operation or expansion of adjoining and nearby agricultural uses, nor will it permanently remove the land from agricultural production. The construction of a dwelling on the land is required to support and improve the agricultural activities conducted, including the introduction of a cattle breeding enterprise and will ensue continued improvements to the land and longevity of the agricultural activities undertaken. Similarly, it is not envisaged that the proposed dwelling will have any negative impact on the natural or physical qualities of the subject site due to its siting and the single storey nature of the proposed dwelling and will allow for ongoing environmental improvements to the land.

Accommodation Issues

- > Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
- > Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.
- Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
- > The potential for the 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.
- The potential for an accommodation use to be adversely affected by noise and shadow flicker impacts if it is located within one kilometre from the nearest title boundary of land subject to :

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- A permit for a wind energy facility; or
- An application for a permit for a wind energy facility; or
- An incorporated document approving a wind energy facility; or
- A proposed wind energy facility for which an action has been taken under section 8(1), 8(2), 8(3) or 8(4) of the Environment Effects Act 1978.

Comment: The proposed dwelling will not result in the loss or fragmentation of productive agricultural land. The lot is already established with an agricultural use, with surrounding parcels also containing dwellings, therefore the proposal is considered to be consistent with the established surrounding lots and land use patterns. The inclusion of a dwelling on the land will enable the continuation and enhancement of existing and new rural activities on the land.

The dwelling will be appropriately sited allowing for the remainder of the land to be used for agricultural purposes and is required to support improvements to the existing and proposed new activities to be undertaken. The breeding program proposed will require a dwelling on the property, which would allow stock monitoring to ensure best practice animal health welfare practices and ensure adequate feed and water is always available. This is particularly true for the calving season, where the animals are at the greatest risk, and stock death is most common.

It is considered the agricultural value of the land will be improved and enhanced through these actions and activities. As discussed above, the dwelling will not adversely affect the operation or expansion of nearby properties due to land size and ownership. It is proposed to improve and enhance the existing activities conducted from the land and introduce new enterprises, which will have no adverse impact on surrounding rural properties.

It is considered the proposed dwelling will not negatively affect, or be negatively affected by noise, dust or smell emissions from surrounding properties. Similarly, the dwelling will have no negative effects on the natural physical features or resources of the area due to its siting, with no native vegetation removal required. All effluent will be treated and contained on-site resulting in no adverse off-site impacts.

It is considered the proposal will not lead to a concentration or proliferation of dwellings in the area as a review of LASSI aerial photography indicates there are several dwellings in the vicinity, some of which are on lots less than 40 hectares in area. The area therefore already contains numerous dwellings with multiple road frontages.

The site is not located within one kilometre of the nearest title boundary to land subject to a permit for a wind energy facility or an application for a permit for a wind energy facility or an incorporated document approving a wind energy facility.

Environmental Issues

- > The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.
- > The impact of the use and development on the flora and fauna on the site and its surrounds.

- The need to protect and enhance biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge areas.
- > The location of on-site effluent disposal areas to minimize the impact of nutrient loads on waterways and native vegetation.

Comment : Changes to the natural features of the site will be minimal. The area proposed for the dwelling contains no native trees, and is covered in a mixture of grasses and weeds. All effluent will be contained and treated on site via a new septic tank system without any adverse impacts on the environment or surrounding properties. Having a permanent presence on the land will also be beneficial in controlling and eradicating pests and vermin and allow for environmental improvements to the land. It is therefore considered that the inclusion of a dwelling with a permanent presence on the site will be beneficial to the overall agricultural characteristics of the area by introducing improved and new rural activities to the land.

Design and Siting Issues

- > The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.
- > The impact of the siting, design, height, bulk, colours and materials to be used on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimize any adverse impacts.
- > The impact of the character an appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.
- > The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.
- > Whether the use and development will require traffic management measures.
- > The need to locate and design buildings used for accommodation to avoid or reduce noise and shadow flicker impacts from the operation of a wind energy facility if it is located within one kilometre from the nearest title boundary of land subject to:
 - A permit for a wind energy facility; or
 - An application for a permit for a wind energy facility; or
 - An incorporated document approving a wind energy facility; or
 - A proposed wind energy facility for which an action has been taken under section 8(1), 8(2), 8(3) or 8(4) of the *Environment Effects Act 1978*.

Comment : The dwelling will be sited approximately 300 metres from Larpent Road and 40 metres from the northern title boundary. The dwelling will be single storey with a pitched roof and constructed of materials appropriate for this rural setting. The proposal will have access to infrastructure including road networks, mains power, portable water along with an on-site septic disposal system. The site is not located within one kilometre of the nearest title boundary to land subject to a permit for a wind energy facility or an application for a permit for a wind energy facility.

6 Overlays

The site is not affected by any Overlays.

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Dwelling

7 Particular Provisions

7.1 Carparking

Under the provisions of Clause 52.06.2, a dwelling must provide 2 carparking spaces to each 3 or more bedroom dwelling.

Comment : A 28 metre by 9 metre shed is proposed as part of this application, providing for the parking of at least 2 vehicles, consistent with the requirements of this Clause.

7.2 Native Vegetation

Under the provisions of Clause 52.17-1, a permit is required to remove, destroy or lop native vegetation, including dead native vegetation.

Comment : No native vegetation will require removal in order to facilitate the development as proposed, therefore the provisions of this Clause are not applicable in this instance.

8 Decision Guidelines

Under the provisions of Clause 65.01, before deciding on an application or approval of a plan, the responsible authority must also consider the following relevant decision guidelines :

- > 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.
- > The effect on the amenity of the area.
- > The proximity of the land to any public land.
- > Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- > The extent and character of native vegetation and the likelihood of its destruction.
- > Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- > 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 adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.

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Comment : In addition to the comments contained elsewhere in this report, the following points are provided to demonstrate compliance with the above relevant decision guidelines :

- The proposal is considered to be consistent with relevant planning policies as outlined in Section 9 below.
- The inclusion of a dwelling on the land will allow for planned and sustained improvements to agricultural activities conducted on the land, including the newly established cattle breeding enterprise.
- > A permanent presence on the land will also assist in the long-term eradication of weeds and vermin and result in improvements to the environmental qualities of the land, which are rural outcomes that is entirely consistent with the purpose of the Farming Zone.
- The construction of a dwelling is necessary to facilitate improvements to the land and ensure the longevity and continued improvements to agricultural activities, including animal welfare.
- The proposal is an appropriate outcome for this site in the context of the sites size and shape, its proximity of other similar enterprises which is considered to be an appropriate planning outcome in this instance as it will facilitate the long-term continuation of the rural activities from the land, entirely consistent with purpose of the Farming Zone and orderly planning of the area.
- The construction of a dwelling will have no adverse impact on the use or amenity of surrounding sites or features, due to its siting and vast setback from the road and nearby dwellings.
- The use of a dwelling is considered to be compatible with activities conducted on surrounding properties, many of which also contain dwellings, as the subject site is similar in area to nearby surrounding parcels which contain dwellings. The introduction of a dwelling on this site is consistent with the pattern of development in the vicinity and will not adversely impact agricultural activities conducted in the area.
- There will be no significant change to the natural features of the site, with the construction of the dwelling not resulting in the removal of any native vegetation, with additional planting proposed.
- > All effluent will be contained and treated on site without any adverse environmental impact.

9 Policy Framework

It is considered the proposal is consistent with the relevant State, Regional and Local Planning Policies as outlined below:-

9.1 Municipal Planning Strategy

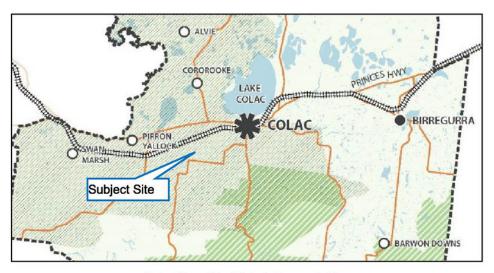
<u>02.03-3 – Environmental Risks and Amenity</u> – The Shire is affected by an array of environmental risks including landslips, bushfire, salinity, flooding, erosion and water quality. Landslips are a hazard in the southern half of the Shire associated with steep slopes and high rainfall, while salinity is an issue, particularly in the northern half of the Shire.

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<u>02.03-4 – Natural Resource Management</u> – The protection of agricultural industries is critical to the economic and social wellbeing of the Shire. Rural land traditionally used for farming is increasingly being used for lifestyle purposes. This is causing problems associated with increasing property values inhibiting farm growth, servicing, provision of infrastructure and conflict with adjoining land uses and has the potential to undermine the protection of the agricultural base of the Shire. Council seeks to manage its natural resources, as relevant, by :

- > Protecting high quality agricultural land.
- > Limiting rural residential development that impacts viable agricultural land.
- > Supporting farm consolidation and expansion.
- > Supporting agricultural diversity.

Comment : The land is not impacted by landslip, flooding or salinity issues, with the land within an area identified as 'Farmland of Strategic Significance' as indicated below, under Council's Strategic Framework Plan contained in Clause 02.04. The land is already established as a separate title with the agricultural activities conducted on the site to be intensified with the inclusion of a cattle breeding enterprise, consistent with Council's vision.



Colac Otway Shire Strategic Framework Plan

9.2 Planning Policy Framework

<u>**11.01-1S**</u> – Settlement – This policy aims to promote the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements. Relevant strategies to achieve this are to :

- > Develop sustainable communities through a settlement framework offering convenient access to jobs, services, infrastructure and community facilities.
- Provide for growth in population and development of facilities and services across a regional or subregional networks.

> Balancing strategic objectives to achieve improved land use and development outcomes at a regional, catchment and local level.

<u>**11.01-1L**</u> – **Settlement** – A relevant strategy of which is to encourage development of smaller townships that contributes to their economic development, acknowledges and responds to environmental constraints and protects the broader landscapes within which these towns are located.

<u>**13.02-1S**</u> – **Bushfire Planning** – This policy aims to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life. This policy must be applied to all planning and decision making under the *Planning and Environment Act 1987* relating to land which is within a designated bushfire prone area.

Strategies include giving priority to the protection of human life, identifying bushfire hazards and undertake appropriate risk assessment, planning to strengthen the resilience of settlements and communities and prioritise protection of human life.

In a bushfire prone area designated in accordance with regulations made under the Building Act 1993, bushfire risk should be considered when assessing planning applications for accommodation. When assessing a Planning Permit application for the above use and/or development :

- > Consider the risk of bushfire to people, property and community infrastructure.
- Require the implementation of appropriate bushfire protection measures to address the identified bushfire risk.
- Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.

Comment: It is considered the cattle breeding enterprise is appropriate for this location and will support and contribute to economic growth in the region and provide and ongoing source of additional stock for various markets. The subject site is identified as being within a Designated Bushfire Prone Area, however due to the cleared nature of the area and established road networks, risk to property and life would be minimal and manageable.

<u>13.05-1S – Noise Abatement</u> – Aims to assist the control of noise effects on sensitive land uses by ensuring that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.

<u>13.07-1S – Land Use Compatibility</u> – The objective of this policy is to protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts. Strategies to achieve this include :

> Ensuring that use or development of land is compatible with adjoining and nearby land uses.

^{22228-01 | 31} March 2022

- > Avoiding locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.
- > Avoiding or otherwise minimising adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
- Protecting existing commercial, industrial and other uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.

Comment: There are already established dwellings in the vicinity of the subject site and it is not envisaged that the use of a dwelling, as is being sought in this instance, will have any adverse impact in relation to noise effects on these existing land uses, nor it is considered activities conducted in the vicinity would have an adverse impact on the occupants of the site.

<u>**14.01-1S** – **Protection of Agricultural Land** – Aims to protect the state's agricultural base by preserving productive farmland.</u>

14.01-1L - Protection of Agricultural Land - Relevant strategies of which are to :

- > Minimise ad hoc development of unserviced old and inappropriate subdivisions.
- > Discourage dwellings on lots that do not meet the minimum lot area of the zone or relevant schedule unless it is required for an intensive agricultural activity on the land or to achieve the environmental protection of the land.
- > Avoid localised concentration of dwellings in agricultural areas.

14.01-2S - Sustainable Agricultural Land Use - Aims to encourage sustainable agricultural land use.

<u>14.01-2R – Agricultural Productivity - Geelong G21</u> – Strategy is to support new opportunities in farming and fisheries.

Comment : It is considered the proposal can be supported by the above policies as the land will remain used for agricultural purposes, with the addition of cattle breeding. The parcel is of a sufficient size to allow for the cohabitation of a dwelling alongside sustained farming activities.

<u>15.01-6S – Design for Rural Areas</u> – This policy aims to ensure development respects valued areas of rural character by :

- > Ensuring that the siting, scale and appearance of development protects and enhances rural character.
- Protecting the visual amenity of valued rural landscapes and character areas along township approaches and sensitive tourist routes by ensuring new development is sympathetically located.
- Siting and design development to minimise visual impacts on surrounding natural scenery and landscape features including ridgelines, hill tops, waterways, lakes and wetlands.

Dwelling

15.01-6L - Design for Rural Areas - Strategies are to :

- > Encourage development between townships to be sited away from main roads.
- > Use finishes and colours that complement those found naturally in the hinterland landscape.
- > Site buildings and structures away from geological features such as volcanic cones, craters and lakes.

Comment: The proposed dwelling will be in excess of 100 metres from a dwelling not in the same ownership, setback approximately 300 metres from Larpent Road and a minimum of 40 metres from all remaining title boundaries. The dwelling will be single storey with a pitched roof and constructed of materials appropriate for this rural setting. Shedding proposed is also considered to be appropriate for this rural setting and will provide for storage and housing of animals as necessary.

<u>15.03 – Heritage</u> – Contains policies relating to heritage conservation, 15.03-1S and aboriginal cultural heritage, 15.03-2S.

Comment : Under the Aboriginal Heritage Act, 2006, the eastern portion of the site is identified as being within an area of possible cultural heritage sensitivity, as indicated on the following map extract from the Department of Environment, Land, Water and Planning data base. However, the construction of a single dwelling on a lot is identified as an exempt activity under Regulation 9 of Division 2 of the Aboriginal Heritage Regulations, 2018, with the construction of a single dwelling on a lot not listed as a high impact activity under Regulation 48 of Division 5.



Areas of Possible Cultural Heritage Sensitivity

Subject Site

Dwelling

10 Conclusion

The proposal is considered to be consistent with the State and Local Planning Policy context in relation to the development and use of a dwelling to facilitate the expansion and intensification of agricultural activities in the Farming Zone.

The proposal is consistent with the purpose of the Farming Zone as it will provide a fulltime permanent presence on-site to allow for improvements to land quality and the establishment of a cattle breeding enterprise. The inclusion of a dwelling on the site will also allow for improvements to the land including the eradication of weeds and vermin. The proposal will not adversely affect the agricultural viability of the land or that of surrounding land for agricultural activities due to the continuation and intensification of agricultural activities proposed.

For the reasons outlined in this report, it is considered the use and development of a dwelling on the land is appropriate for this location and should be supported by Council.

Joanne Preece Senior Town Planner

22228-01 | 31 March 2022



now

Stantec

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Our Ref: 22228-01 Contact: Joanne Preece

30th June, 2022

Statutory Planning Department Colac Otway Shire P.O. Box 283 COLAC 3250

Attention :

Dear

Planning Application PP70/2022-1 – Dwelling and Shed – 1075 Larpent Road, Larpent

Reference is made to the above Planning Permit Application and to your correspondence of the 4th may, 2022 seeking additional information and now provide the following response to the matters raised :

 A Farm Management Plan prepared by the suitably qualified person/ organisation?

A Farm Management Plan prepared by Adam Jenkins, Brolga Co. Pty Ltd is attached for Council's consideration.

2. What are the other landholding by the owner in the area, other than the subject site and 115 Middletons Road?

It is unclear why Council is querying landownership as each application is assessed on its individual merits, in this instance a dwelling to support a cattle breeding enterprise. With the establishment and ongoing maintenance of infrastructure, feeding, welfare checks, supervision during calving and ensuring predators such as foxes are not present, is a time consuming and constant activity, which can only be fully undertaken if residing on the land. It is therefore considered the application has had regard to all relevant requirements and decision guidelines and be assessed on its individual merits in isolation from other family land holdings.

Australia • Belgium • Canada • Colombia • Ecuador • Germany • Indonesia • Kenya • Myanmar • New Zealand • Nigeria • Papua New Guinea • Peru • Philippines • Singapore • Timor-Leste • United Kingdom • United States • Operations in over 100 countries



3. What is the agricultural activity on 115 Middletons Road?

Dairy farm and cattle breeding.

4. A written advise on the possibility of managing the proposed/existing agricultural activity on the subject site from the dwelling at 115 Middletons Road?

This is what is currently occurring, however it is becoming increasingly difficult and untenable. Our Clients have been unable to secure permanent assistance in operating the dairy due to a shortage in available farm labour, and subsequent difficulty in securing suitable accommodation. Having to travel to the subject site on a regular basis, including hauling machinery and sundry equipment each time, is time consuming and problematic.

Our Clients have been building a herd of beef cattle, specializing in the Speckle Park breed, concurrently with building up the dairy herd and running the dairy operation, with the intension of using the subject site as the primary location for the breeding operation of the beef herd, while utilising land in Hordern Vale to grow out and fatten the cattle. Due to animal welfare and security reasons, our Clients believe it is essential they are able to live on the subject site in order to provide appropriate care of their livestock. This is supported by the Farm Management Plan prepared for the site. The dairy operation, and its established infrastructure, would remain at Middletons Road.

5. A site plan should include the existing/proposed access from the Larpent Road, and internal driveway?

Figure 3 of the Farm Management Plan shows the site to be divided into 5 separate paddocks, with the paddock to the north-west to contain the dwelling and shedding, and a laneway running the full length of the southern boundary. The site plan submitted with the application shows an existing single access point to the north of the Larpent Road frontage. The site plan has subsequently been amended to include a second access point, predominantly for stock movement purposes, to the south of the Larpent Road frontage.

6. Clarify the use of the proposed shed? What would be stored in it?

The shed will be used to store a tractor, and other farm equipment (seed drill/spreader etc), sundry materials and supplies, and a workshop for repairs of equipment.

7. Clarify why the shed needs to be as large as 252sqm?

Refer above.

8. What would be the colour of the roof and walls of the proposed shed? Please annotate the information on the plan.

Woodlands Grey, as roofing colour for dwelling. Plans have been revised to include these details.

30 June 2022



If you have any queries please do not hesitate to contact Joanne Preece on 5202 4652.

Yours sincerely, Cardno, now Stantec

Claire Bickerstaff Planning Manager Regional UPIL

Attachments - Farm Management Plan Brolga Co. Pty Ltd - 24.6.2022 Development Plans Rev. 2

30 June 2022

Farm Management Planning Report 1075 Larpent Road Larpent, Victoria

Prepared by Adam Jenkins Brolga Co Pty Ltd Date: 24th June 2022



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1. Overview

This is a Farm Management Plan for inclusion with the planning application PP70/2022-1 Colac Otway Shire for a dwelling and shed at 1075 Larpent Rd Larpent (Figure 1)

This land is currently being farmed by as a grazing support block for their dairy farming enterprise and beef operation. They plan to continue operating their property as *"Grazing animal production"* as defined in the planning scheme and operate a Speckle Park Cattle stud.

To maintain high animal welfare standards, it would be beneficial if there was a dwelling on the property to allow for management oversight. A full-time presence is in the long-term best interests for the grazing operation.

The land has no overlays and is currently and will continue to be used for agricultural purposes, "Grazing animal production". The property is classed as 'Farm Zone' and will be operated in the future in keeping with the objective of the Farm Zone as defined in land use below.

are highly respected farmers in the local area and have many years' experience and management expertise in running their main dairy property at :

are both highly regarded members of the community and the cattle and dairy industry. They have been recognised for their contributions to the industry and community through awards and leadership positions.

Dairy/ livestock farming is a complex business today and to supply raw milk and meat for processing the business must meet stringent industry guidelines and standards for food quality, animal welfare and environmental sustainability. This is all achieved by strong farm management experience which have built over many years throughout their farming careers and with best practice through continued education.

They currently manage their property in the local area to high standards, meeting all the above-mentioned criteria.





Boundary fence

Water tank 📒

2. Land Use Description

Land Use: The said property will be used for Agricultural purposes. as defined below. (Agriculture is a Section 1, however, permit not required in a Farming Zone).

Dam 🤇

Agriculture:

- 1. Grazing animal production defined as "animal production where the animal's food is obtained directly grazing or browsing plants grown on the land".
 - **Animal Husbandry** defined as" land used to keep, breed, board or train animals, including birds".
 - Animal Production defined as "land use to keep or breed animals for production of livestock, eggs, fibre, meat, milk or other animal production.
 - Crop Production defined as "land used for the propagation and cultivation and harvest of plants, cereals, flowers, seeds, trees, turf and vegetables.

1075 Larpent Road (Figure 1) is a 20.22ha rectangle block of farmland. The external boundary is approximately 172.2m (east), 194.9 (west), 1221.5m (north) and 1129.5m (south).

The slope is a gentle gradient from the northwest corner to the eastern boundary 148' to 140'.

There is no remnant vegetation or significant water ways, environmental overlays. There is slight water inundation on the far east end of the property, according to the Department of Environment, Land, Water and Planning maps dated May 2022. There is an existing cypress tree shelter belts (as can be seen in Figure 1) on the western and southwest corner as well as in the middle of the block on the south boundary running north.



All fencing is in excellent order and is secured by a 4-strand barbed wire fence with electric stand-off wire circulating the whole property. (See Picture 1)



Picture 1. Boundary Fencing

3. Soil Type and Pasture Species

The soil type is ideal for farming and is consistent with the local area.

The soil tests were sent off for analysis and completed by the certified laboratory at Nutrient Advantage Laboratory Services. The soil test was conducted by Webber and Chivell Fertilisers and the results are attached in Appendix 1

The farmland consists of soils classified as brown sandy loams. These are ideal farming soils and are consistent with southwest Victorian soils in being slightly acidic (pH 5). The key nutrients of Olsen Ps, Potassium, Sulphur and Organic carbon are slightly low, but consistent with its current use and similar for other southwest Victorian dairy support blocks. The current nutrient levels suggest there is minimal risk of nutrient run off or leaching into the subsoils. The management practice currently meets the requirements of the existing pasture base and feedbase for young dairy stock and dry stock management.

The pasture species (see Picture 1.2) below, consists of rye grass and clover. This is a suitable mixture of grass species for the current and future land uses. There is a very good ground cover across the farm, and this has been managed appropriately to minimise competing weed species, reduce soil degradation and retain sub-soil moisture.





Picture 2. Pasture

4. Water storage and water for livestock

Currently the farm relies on rainwater (Larpent 727mm yearly rainfall average) and run off to fill the existing dam (denoted by Figure 1). The water is moved via a windmill to a holding tank (denoted by in Figure 1.) on the property that has pipe and troughs attached. This system will be developed further is part of the whole farm plan in the future which consist of further paddock subdivision and troughs in each paddock. The water is good quality and suitable for grazing livestock.



5. Remnant vegetation and soil erosion management

There is no remnant vegetation on the property. However, under the whole farm plan the owners are will plant native shelter belts throughout the property. This will support further subdivision of paddocks and help provide natural habitats for birds and further benefits for shelter for livestock during the summer months and protection during the winter. Please see Figure 1.2 below for subdivision and shelter belts planning.

Soil erosion is not an issue on this property as there are no significant water ways or water flow that can cause erosion (as per VicPlan overlay map May 2022 Figure 2). That said, the property plan is to manage the runoff responsibly and t will provide the appropriate planting of native flora and fencing as part their whole farm plan around the dam area.

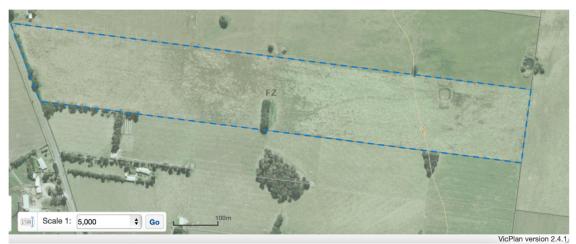


Figure 2. VicPlan map of property showing overlays and topography (sourced 16/6/2022)

6. Power source to the property

Currently there is no owner to the property. The power lines / access is available along the Larpent Road near the north-west corner.





7. Access laneways and stock movement

Figure 3 displays the access points to the property situated in the north west and southwest corners of Larpent Road. The property will also have a new laneway built and the property will be subdivided into 5 paddocks. The laneway, cattle yards and subdivision will allow the easy movement of livestock and allow the property to be managed efficiently. There is also a proposal to plant shelter belts along the new paddock subdivisions.

8. Vermin and Noxious Weeds Control

The property is currently managed according to agriculture Victoria's noxious weed and vermin control guidelines. All herbicides used on the property are registered and used as per AVMPA guidelines. The property is managed to the standards of the LPA accredited program for the registration of the property's Property Identification Code (PIC).

Spring and autumn are key times for managing weeds such as thistles and blackberry and any other introduced weeds species. Current grazing and property management activities minimises the use of chemicals and weed infestations. Vermin are minimal and are controlled under current state government guidelines.



9. Neighbouring land use

There are several similar sized properties with in the region. Neighbouring properties are used for similar purposes to the Suares and have grazing livestock. Properties to the north and south are operated by absentee owners.

is frequently at the property checking livestock and keeps a close eye on the neighbouring properties. Especially in key times such as fire risk season and extreme heat days.

It is expected that land use in the area will continue to be predominantly livestock grazing (Grazing Animal Production) properties (sheep and dairy/beef cattle), meaning that the use of the Suares property will be in keeping with the surrounding Farming area / zone.

10. Proposed buildings and sheds

have plans to build a dwelling and a farm shed. This will allow them to reside at the property and keep a close eye on their cattle enterprise, managing water, feed and animal husbandry to the highest standards.

The farm shed will be constructed near the dwelling and will be suitable in size to allow for storage of farm equipment (tractor, seed drill, spray equipment, etc.). There will also be a workshop included within the shed to allow for repairs and maintenance activities as well as storage of fodder (hay) if required.

The shed will also be a source of water collection, which will assist with the provision to livestock.

11. Property Management

will both be responsible for the day-to-day management of the property. Due to ongoing labour scarcity, and to ensure the best oversite to manage the property, it would be beneficial for to reside on the property. This would maintain the required oversight and high animal welfare standards the couple are known for.

are very capable farmers who have the skills and aptitude to run this property safely, profitably, and sustainably.

As mentioned above, the properties to the north and south have absent owners.

keep an eye out on these properties throughout the year. A dwelling on their property would be beneficial to their own enterprise whilst also maintaining oversight on the neighbouring properties in the high fire danger periods through summer and autumn.

In terms of management skills, they are well educated in property management, pasture production and animal husbandry and have attended many dairy industry events and



education activities. They continue to ensure they are update with the current best practice to ensure they are managing their enterprises to the highest standards.



12. Farm Management Plan

| Farm Enterprise | The property at 1075 Larpent Road Larpent will be operated as a cattle grazing enterprise as a Speckle Park beef stud. is well known in the genetics field and has many years of experience with livestock genetics. He will bring this expertise and skills to their stud enterprise. The enterprise will focus on a cow and calf operation, self-replacing and selling all weaner cattle at a store sale. The property will run 20-25 cows (1cow/ ha) to be joined and then calved down in one calving interval. Cows will carry calves until they are the correct weight and then sold at the weaner store sale. |
|-------------------|--|
| Financial returns | The Farm will be set up as a speckle park cattle stud. The returns below are based on a basic commercial herd. • 22 Breeding Cows • Self-replacing (4 calves per year) • Sale of 19 claves – 50% Male and 50% Female These figures are all based on estimates. Income: Sale Calves 19@200kg / \$6kg \$22,800 Less Expenses: Drenches 22 @ \$6 \$132 Fertiliser \$325/ha \$6,500 Sprays \$800 Total Expenses. \$7,432 Total Farm Working Surplus \$15,368 |



Farm management plan

1075 Larpent Road, Larpent

| Pasture Management | Fertiliser will be managed as per soil tests and recommendations (Appendix 1). The fertiliser will be applied in autumn and spring and managed against major weather events. Current management would recommend 2-3 Nitrogen applications @ 100kg/ha followed up with a 2 in 1 Super blend to ensure maintenance fertiliser is applied and maximising grass growth. | | |
|--|---|--|--|
| Soil test will be taken every 2 years and the fertiliser plan updated accordingly. | | | |
| | Rye grass and clover is the predominant pasture species and is a very consistent sword cover across the 20ha. This maybe topped up and oversewed in Autumn from time to time. | | |
| | The controlled grazing strategies that use is ideal livestock management. With the farm subdivided into 5 paddocks allows plenty of rest time between grazing's and maximises home grown feed. A conservative estimate of 6t/ha Dry matter (DM) to be grown across the farm. | | |
| | Spring surplus can be conserved if the district average of 0.40 cow per ha is achieved allowing 8 ha to be conserved. | | |
| Weed and Vermin Control | Autumn and Spring weed control is important, and the plan is to maintain a vigilance throughout the season and monitor thistles and blackberry populations. | | |
| | The program of chemicals will be used as noted in section 8. | | |
| | Foxes, mice, and other vermin will be controlled as per state legislation and Agriculture Victoria recommendations. | | |
| Nutrient management | Controlled grazing and correct time of fertiliser applications is important to minimise nutrient run off. Planting out the shelter belts and the areas around the dam will also minimise the nutrient run off and improve water quality. | | |
| | | | |

12

Brelga Ce

Farm management plan

1075 Larpent Road, Larpent

| | Cow manure can be a valuable resource and by using a set of harrows will work the manure into the pastures and again minimise runoff. |
|-------------------------|--|
| Infrastructure | A proposal for a new home and farm machinery shed. It is important to have good shedding for plant and machinery to minimise degrading farm equipment. |
| | Fencing is all in very good order with 4 barbed wire and an internal hot wire to ensure animals are kept on farm property. |
| Agricultural Outputs | The farm at 1075 Larpent Road, Larpent will be managed in accordance with the Ag Vic guidelines to minimise noise, odours, or disruption to neighbouring properties. |
| | Given the livestock operation will be a 'Grazing animal production' as defined above, cattle operation noise and odours are not expected to be an issue for the Suares property. |
| | Waste from the property will only be related to household waste and will be removed from the property accordingly. |



Farm management plan

1075 Larpent Road, Larpent

Appendix 1. Soil test results







SUMMARY REPORT

| Sample No | | Service Provider: Advisor/Contact: Phone: Purchase Order: 130399043 | Webber & Chivell Pty Ltd Andrea Roberts |
|--|------------|---|--|
| Paddock Name | | Outpaddock | |
| Sample Name | | Outpaddock 0 - 10 | |
| Sample Depth (cm) | | 20/05/2022 | |
| Sampling Date Test Code | | 20/05/2022 CT435 | |
| | | Soil | |
| Sample Type | 11.11 | | |
| Analyte Soil Colour | Unit | Result | |
| Soil Texture | | Sandy Loam | |
| | | 5.8 | |
| pH (1:5 Water) pH (1:5 CaCl2) | | 5.8 | |
| Electrical Conductivity (1:5 water) | dS/m | 0.07 | |
| Electrical Conductivity (Sat. Ext.) | dS/m | 0.7 | |
| Organic Carbon (W&B) | % | 2.7 | |
| Organic Matter (W&B * 1.72) | % | 4.7 | |
| Phosphorus (Olsen) | mg/kg | 8 | |
| Phosphorus (Colwell) | mg/kg | 21 | |
| Phosphorus Buffer Index | | 91 | |
| Phosphorus Environmental Risk Index | | 0.23 | |
| Potassium (Colwell) | mg/kg | 60 | |
| Sulphur (KCl40) | mg/kg | 11 | |
| Cation Exch. Cap. (CEC) | cmol(+)/kg | 7.5 | |
| Calcium (Amm-acet.) | cmol(+)/kg | 6.2 | |
| Magnesium (Amm-acet.) | cmol(+)/kg | 0.9 | |

Nutrient Advantage Laboratory Service Nutrient Advantage is trademark of Incitec Pivot Limited Incitec Pivot Limited - ABN 42 004 060 2648 8 South Road, Werribee VIC 3030 Page 1 of 2

) Brolga Co Call: 1800 803 453 Lab.feedback@incitecpivot.com.au www.nutrientadvantage.com.au







SUMMARY REPORT

| | | Service Provider: Webber & Chivell Pty Ltd Advisor/Contact: Andrea Roberts | |
|---------------------------|------------|--|--|
| | | Phone: Purchase Order: | |
| Sodium (Amm-acet.) | cmol(+)/kg | 0.26 | |
| Potassium (Amm-acet.) | cmol(+)/kg | 0.19 | |
| Aluminium (KCl) | cmol(+)/kg | <0.1 | |
| Aluminium % of Cations | % | <1.0 | |
| Grass Tetany Risk Index | | 0.03 | |
| Calcium % of Cations | % | 82.0 | |
| Magnesium % of Cations | % | 12.0 | |
| Sodium % of Cations (ESP) | % | 3.40 | |
| Potassium % of Cations | % | 2.60 | |
| Calcium/Magnesium Ratio | | 6.6 | |

The results in this report pertain only to the sample submitted. Analyses performed on soil dried at 40°C and ground to 2mm or less, excluding moisture tests, or as otherwise indicated. Analyses performed on plant dried at 70°C and ground to 1mm or less, excluding moisture tests, or as otherwise indicated. Water analyses performed on an 'as received' basis. Analytical results reported by the laboratory as 'less than' the level of reporting, will be deemed by NA Pro as being equivalent to the level of reporting for both calculation and interpretive purposes. This document shall not be reproduced except in full.

Disclaimer: Laboratory analyses and fertiliser recommendations are made in good faith, based on the best technical information available as at the date of this report. Incitec Pivot Limited, its officers, employees, consultants, Agents and Dealers do not accept any liability whatsoever arising from or in connection with the analytical results, interpretations and recommendations provided, and the client takes the analytical results, interpretations and recommendations on these terms. In respect of liability which cannot be excluded by law, Incitec Pivot's liability is restricted to the re-supply of the laboratory analysis or the cost of having the analysis re-supplied.

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Page 2 of 2



Appendix 2. Biography of the author

| Adam Jenkins | | | |
|-------------------|--|--|--|
| Director | | | |
| Brolga Co Pty Ltd | | | |
| Vietoria | | | |
| Victoria | | | |

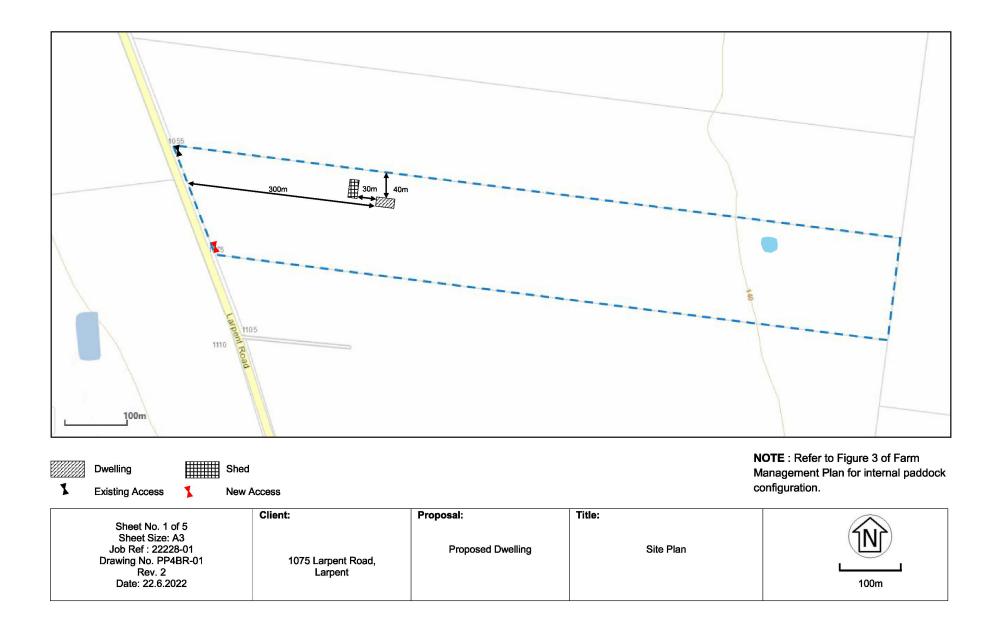
Bach.AgResEco, GradDipEdu, 2011 Nuffield Australian Farming Scholar

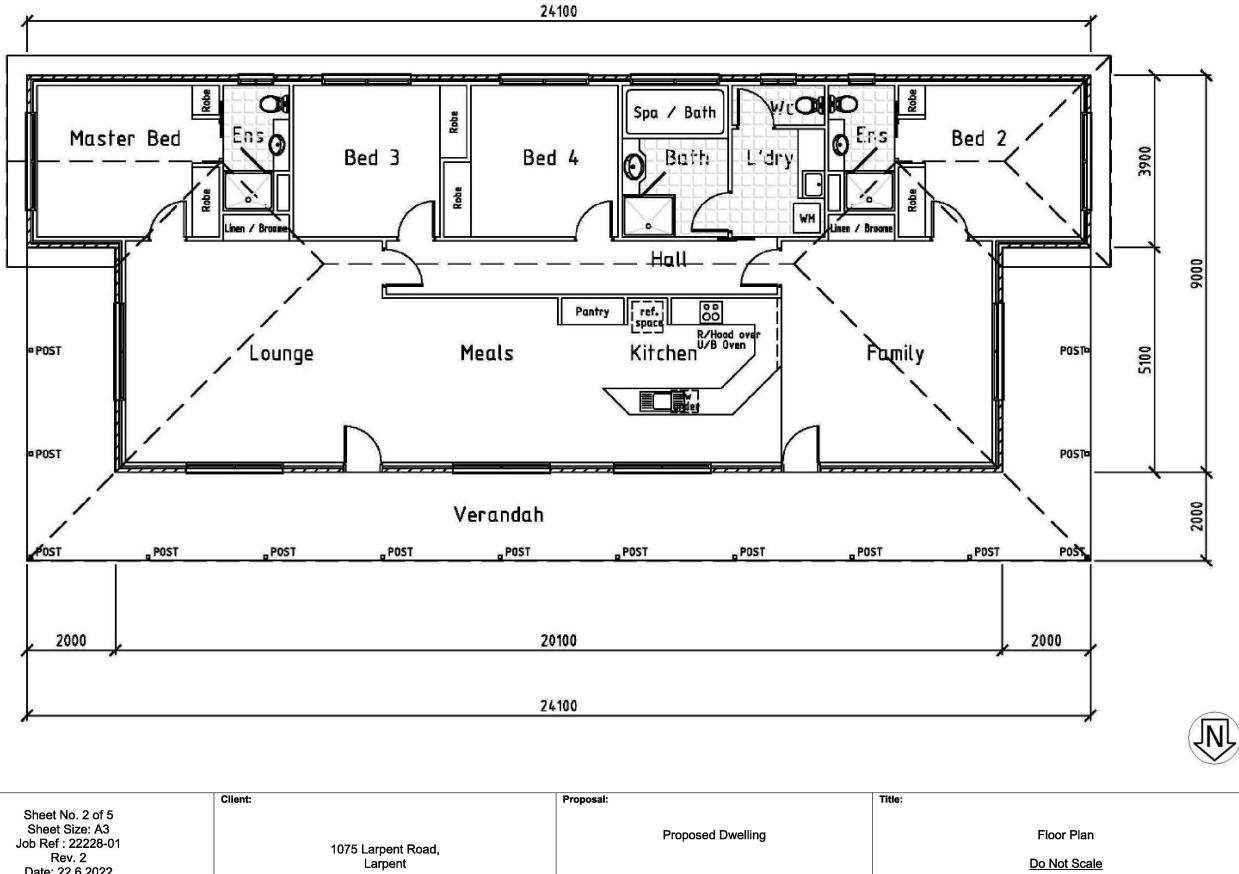
Adam has more than 25 years' experience working across agriculture including corporate agribusiness, Finance and banking, extension/education, industry leadership, Advocacy. He has also run his family farm for the past 17 years.

Adam has a strong understanding of agricultural industries, their communities and the challenges and opportunities that exist for Australian agriculture, now and in the future. He has a thorough understanding of the key drivers of success including governance, culture, strategic management, profit drivers, risk, people and the use of current innovation practices.

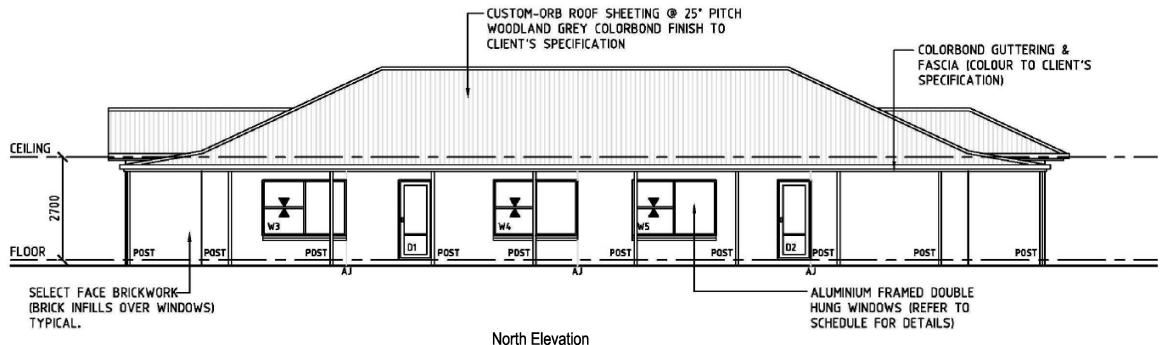
Adam has a vast network and has built strong relationships across the food and fibre supply chain both locally and internationally.

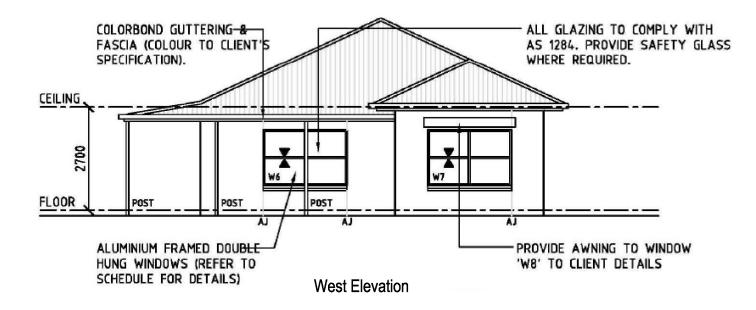






| | Client: | Proposal: | Title: |
|---|-------------------------------|-------------------|--------|
| Sheet No. 2 of 5 Sheet Size: A3 Job Ref : 22228-01 Rev. 2 Date: 22.6.2022 | 1075 Larpent Road, Larpent | Proposed Dwelling | |

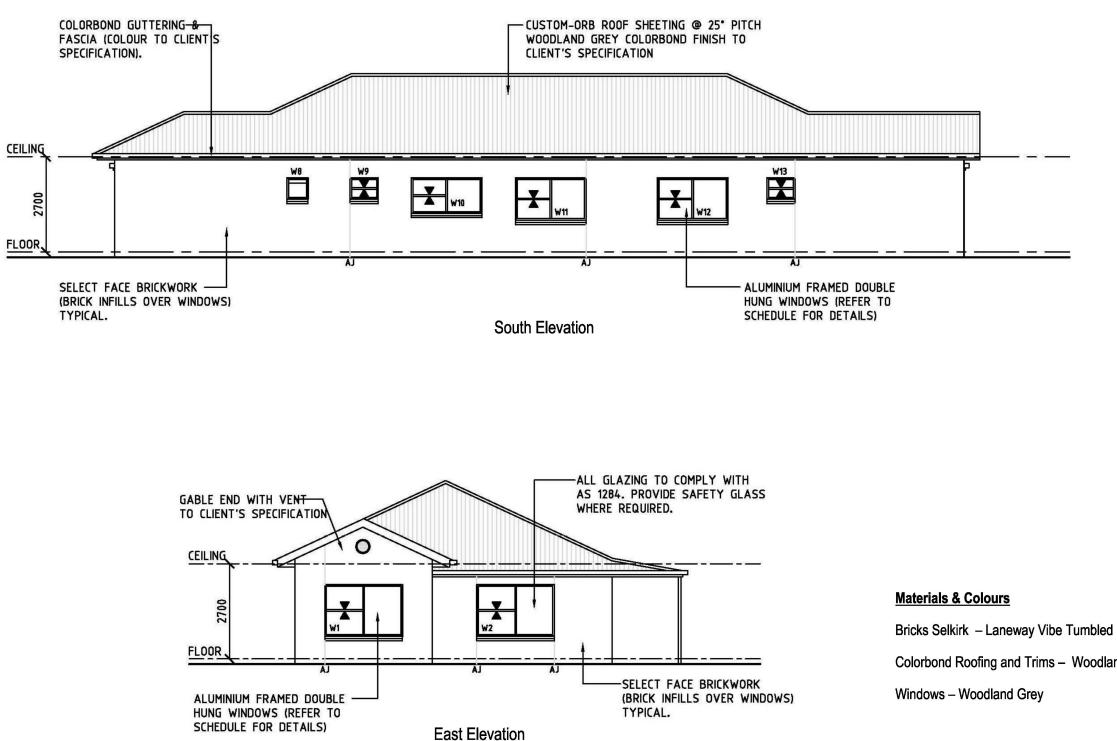




| | Client: | Proposal: | Title: |
|---|-------------------------------|-------------------|--------|
| Sheet No. 3 of 5 Sheet Size: A3 Job Ref : 22228-01 Rev. 2 Date: 22.6.2022 | 1075 Larpent Road, Larpent | Proposed Dwelling | |

Elevations (1)

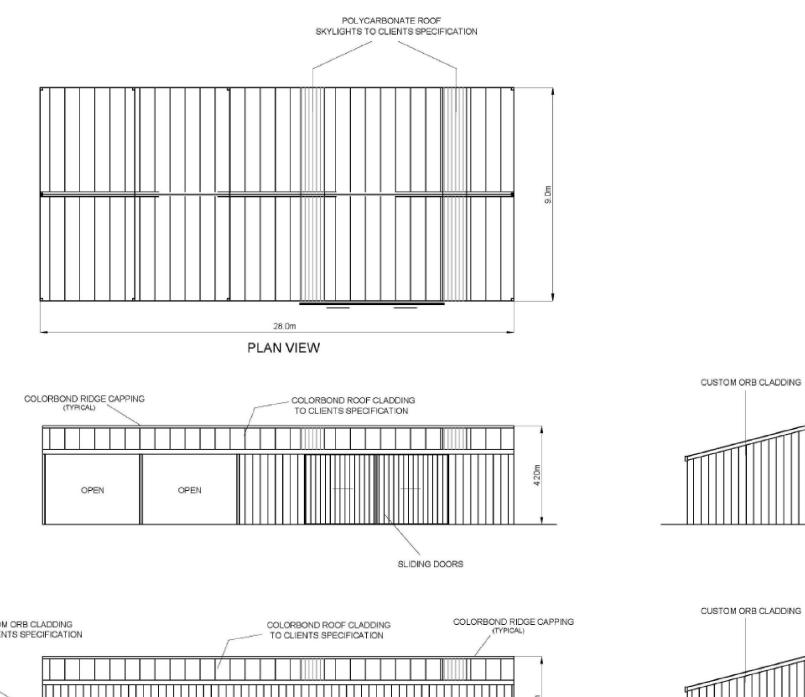
Do Not Scale

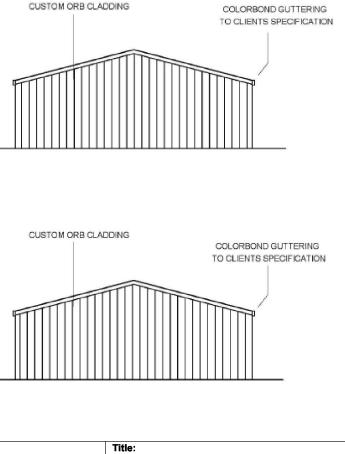


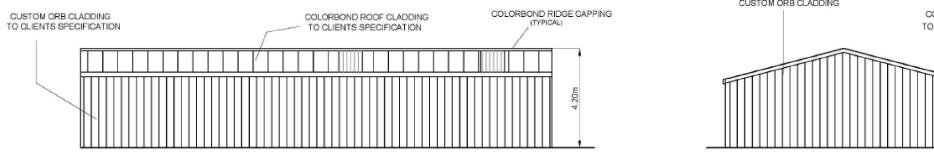
| | Client: | Proposal: | Title: |
|---|-------------------------------|-------------------|--------|
| Sheet No. 4 of 5 Sheet Size: A3 Job Ref : 22228-01 Rev. 2 Date: 22.6.2022 | 1075 Larpent Road, Larpent | Proposed Dwelling | |

Colorbond Roofing and Trims – Woodland Grey

Elevations (2) Do Not Scale







| | Client: | Proposal: | Title: |
|---|-------------------------------|----------------------------|--------|
| Sheet No. 5 of 5 Sheet Size: A3 Rev. 2 Date: 22.6.2022 | 1075 Larpent Road, Larpent | 9m x 28m Agricultural Shed | F |

Attachment 8.5.6 Dwelling Plans

Materials & Colours

Colorbond - Woodland Grey

Plan and Elevations

Do Not Scale



Agriculture Victoria

Department of Jobs, Precincts and Regions

16 November 2022

Planning Unit Colac Otway Shire PO Box 283 Colac VIC 3250

,

Email: ing@colacotway.vic.gov.au

Dear

| RE: | Planning permit application: PP70/2022-1, Construction of dwelling and outbuildings |
|-----------|---|
| Land at: | 1075 Larpent Road LARPENT |
| Your Ref: | PP70/2022-1 |

Thank you for the opportunity to provide comment pursuant to a notice of application under Section 52 of the *Planning and Environment Act, 1987*.

Council has referred the application to Agriculture Victoria seeking any comment on the application.

The advice provided in this letter relates to:

- 1. Planning context
- 2. Application review.
- 3. Strategic objectives and protection of agricultural land

1. Planning context

The subject land is zoned Farming Zone (FZ), Clause 35.07 of the Colac Otway Planning Scheme, and is affected by:

• Areas of Aboriginal Cultural Heritage Sensitivity.

The purpose of the Farming Zone includes:

- 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.

Agriculture Victoria notes the subject land is 20.23 hectare in area, described as Lot 1 on LP24858 which was created by instrument 2365980 on 15/02/1951 and contains no encumbrances, caveats or notices.

Within the Schedule to Clause 35.07 Farming Zone (FZ), The minimum area for which no permit is required to use land for a dwelling for land south of Princess Highway land west of

OFFICIAL

Ballarat Road is 40 hectares. The proposed dwelling on the subject land is considered a Section 2 Use, permit required.

Agriculture Victoria notes that the justification for the proposed dwelling is to support a beef cattle breeding operation. Beef cattle breeding based on Grazing animal production (GAP) is included under Agriculture and is considered a Section 1 Use, no permit required.

Grazing animal production is defined as: *land used for animal production where the animals' food is obtained by directly grazing, browsing or foraging plants growing on the land.*

2. Application review.

Council has referred the application to Agriculture Victoria requesting any comments on the application. Agriculture Victoria has considered the following documents:

Planning Report, 1075 Larpent Road Larpent, Development and Use of a Dwelling, prepared by Joanne Preece of Cardno now Stantec Pty Ltd, Ref No. 22228-01, dated 31 March 2022, states:

- Cardno, now Stantec, has been engaged by to submit a Planning Permit Application on their behalf for the development and use of a dwelling at 1075 Larpent Road, Larpent. (Page 1)
- The site is currently vacant of structures, and is used for cropping, with an existing dam to the east of the site, adjacent to the northern property boundary. (Page 1)
- The dwelling will contain 4 bedrooms, open plan kitchen, living and dining with a second living area. (Page 2)
- The dwelling is required to allow a full time presence on the land to facilitate the establishment of a beef breeding enterprise, along with improvements to the land and removal of weeds and rabbits. (Page 2)
- The owners intend to establish a beef breeding enterprise on the site, which will involve the consent monitoring, feeding, watering and caring for animals, particularly during breeding and calving, with some calves requiring on-going feeding. (Page 3)
- The inclusion of a dwelling on the land would allow the owners to undertake the necessary improvements to the land, including additional infrastructure, and to provide fulltime care of the cattle once the business is fully established on the land. (Page 3)

Further information response letter; *Planning Application PP70/2022-1 – Dwelling and Shed – 1075 Larpent Road, Larpent*, prepared by Claire Bickerstaff of Cardno now Stantec Pty Ltd, dated 30 June 2022, states:

- What are the other landholding by the owner in the area, other than the subject site and 115 Middletons Road? (Page 1)
- As Council would be aware,
 own land Middletons Road and
 Phalps Road, Larpent. (Page 1)
- Our Clients have been building a herd of beef cattle, specializing in the Speckle Park breed, concurrently with building up the dairy herd and running the dairy operation, with the intension of using the subject site as the primary location for the breeding operation of the beef herd, while utilising land in Hordern Vale to grow out and fatten the cattle. (Page 2)
- The dairy operation, and its established infrastructure, would remain at Middletons Road. (Page 2)

Farm Management Planning Report, 1075 Larpent Road Larpent Victoria (FMPR), prepared by Adam Jenkins of Brolga Co Pty Ltd, dated 24 June 2022, states:

• This is a Farm Management Plan for inclusion with the planning application PP70/2022-1 Colac Otway Shire for a dwelling and shed at 1075 Larpent Rd Larpent (Figure 1) for . (Page 3)

- This land is currently being farmed by the as a grazing support block for their dairy farming enterprise and beef operation. They plan to continue operating their property as "Grazing animal production" as defined in the planning scheme and operate a Speckle Park Cattle stud. (Page 3)
- are highly respected farmers in the local area and have many years' experience and management expertise in running their main dairy property at 115 Middleton's Road. (Page 3)
- The pasture species (see Picture 1.2) below, consists of rye grass and clover. This is a suitable mixture of grass species for the current and future land uses. There is a very good ground cover across the farm, and this has been managed appropriately to minimise competing weed species, reduce soil degradation and retain sub-soil moisture. (Page 5)
- Currently the farm relies on rainwater (Larpent 727mm yearly rainfall average) and run off to fill the existing dam. (Page 6)
- There is no remnant vegetation on the property. However, under the whole farm plan the owners are will plant native shelter belts throughout the property. (Page 7)
- The property will also have a new laneway built and the property will be subdivided into 5 paddocks. The laneway, cattle yards and subdivision will allow the easy movement of livestock and allow the property to be managed efficiently. There is also a proposal to plant shelter belts along the new paddock subdivisions. (Page 8)
- The have plans to build a dwelling and a farm shed. This will allow them to reside at the property and keep a close eye on their cattle enterprise, managing water, feed and animal husbandry to the highest standards. (Page 9)
- The farm shed will be constructed near the dwelling and will be suitable in size to allow for storage of farm equipment (tractor, seed drill, spray equipment, etc.). There will also be a workshop included within the shed to allow for repairs and maintenance activities as well as storage of fodder (hay) if required. (Page 9)
- The property will run 20-25 cows (1cow/ ha) to be joined and then calved down in one calving interval. Cows will carry calves until they are the correct weight and then sold at the weaner store sale. (Page 11)

Drawing No. PP4BR-01, Job Ref: 22228-01:

- Sheet No. 1 of 5; Site Plan:
 - Dwelling set back 300 m from Larpent Road and shed within 30 m.
 - Existing and new access points.
- Sheet No. 2, 3 & 4 of 5; Proposed Dwelling Floor Plan and Elevations.
 - 4 bedrooms.
 - No apparent office or vehicle parking.
- Sheet No. 5 of 5; 9 m x 28 m Agricultural Shed Plan and Elevations.

3. Strategic objectives and protection of agricultural lands.

The following clauses of the Colac Otway Planning Scheme are relevant to this application;

- Clause 02.03-4 Natural resource management:
 - Rural land traditionally used for farming is increasingly being used for lifestyle purposes. This is causing problems associated with increasing property values inhibiting farm growth, servicing, provision of infrastructure and conflict with adjoining land uses and has the potential to undermine the protection of the agricultural base of the Shire.
 - There are distinct areas that offer different agricultural land use opportunities in the Shire:

- The north-western area contains 'Farmland of Strategic Significance' that has 'high' agricultural capability due to soil type, climatic conditions and larger land parcels.
- Council seeks to manage its natural resources by:
 - Protecting high quality agricultural land.
 - Limiting rural residential development that impacts viable agricultural land.
- Clause 02.04 Strategic framework plans

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- Colac Otway Shire Strategic Framework Plan:
 - Larpent is in an area described as *Farmland of Strategic Significance*.
- Clause 14.01-1S Protection of agricultural land, objective: To protect the state's agricultural base by preserving productive farmland, and strategies to:
 - Protect productive agricultural land from unplanned loss due to permanent changes in land use.
 - Prevent inappropriately dispersed urban activities in rural areas.
 - Limit new housing development in rural areas by:
 - Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses.
 - In considering a proposal to use, subdivide or develop agricultural land, consider the:
 - Desirability and impacts of removing the land from primary production, given its agricultural productivity.
 - Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.
 - Compatibility between the proposed or likely development and the existing use of the surrounding land.
- Clause 14.01-1L Protection of agricultural land
 - Strategies:
 - Minimise ad hoc development of unserviced old and inappropriate subdivisions.
 - Discourage dwellings on lots that do not meet the minimum lot area of the zone or relevant schedule unless it is required for an intensive agricultural activity on the land or to achieve the environmental protection of the land.
 - Avoid localised concentration of dwellings in agricultural areas.
 - Policy guidelines: consider as relevant:
 - The use of an agreement under Section 173 of the Act to prevent the further subdivision of the land and the construction of a dwelling on any lot created other than in accordance with the minimum lot size in the zone.
- Clause 14.02-1S Catchment planning and management:
 - Objective To assist the protection and restoration of catchments, waterways, estuaries, bays, water bodies, groundwater, and the marine environment.
- Clause 16.01-3S Rural residential development, strategies to:
 - Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.
 - Discourage development of small lots in rural zones for residential use or other incompatible uses.

Conclusion

Colac Otway Shire Council as the responsible authority will have to make a determination as to whether the application for the use and development of the dwelling provides for enhanced agricultural potential and the productive capacity of the land, and generally meets to purpose and objectives of the Colac Otway Planning Scheme.

Agriculture Victoria notes the following:

- The subject land is surrounded by properties that all appear to be under cropping and or grazing animal production and are able to be practically consolidated for agricultural expansion.
- The town of Colac is approximately 5 km from the subject property.
- The justification of the dwelling is to support grazing animal production.
- The owners of the subject land have multiple land holdings within two (2) kilometres of the subject land including 115 Middletons Road Larpent, containing a dwelling and dairy farm, comprising two (2) parcels which both appear to have been subject to dwelling excisions (3 in total).
- The site plan would appear to locate the proposed dwelling within the grazing paddocks.
- The proposal does not provide detail as to the noted infrastructure improvements, shelter belt plantings, access, and cattle handling, feeding and watering infrastructure, including cattle yards.

Victorian Civil and Administrative Tribunal (VCAT)

Agriculture Victoria has considered the following Victorian Civil and Administrative Tribunal (VCAT) decisions relating to the use of the land for a dwelling, the proposed scale of agricultural production, along with the purpose of the Farming Zone.

VCAT case Kennedy v Baw Baw SC [2022] VCAT 787 considered the justification of a dwelling on a 3.9 hectare property in the Farming Zone. In this matter Member Wickramasinghe stated the following:

- 52. The scale of the agricultural is said to be more akin to a hobby farm and as such any dwelling would perform the function of supporting a rural lifestyle rather than being a necessity in the operation of a commercially viable business.
- 53. I am not persuaded the use of the land for a dwelling on a 3.9 hectare site is consistent with the provisions of the FZ and is necessary having regard to the nature of the farming use. The decision guidelines of the FZ require consideration of whether the dwelling will result in loss or fragmentation of productive agricultural land and the potential for the proposal to lead to a concentration or proliferation of dwellings.

In VCAT decision Strachan v Latrobe CC [2022] VCAT 35 the need for a dwelling in association with agriculture in the Farming Zone at a hobby scale was considered by the member. In this matter Member Halliday stated the following:

32. A proposal to develop and use the land for a dwelling was the subject of an application to the Tribunal for review of a grant of a permit in 2012. It was put to the Tribunal in that matter that the permit applicant intended to run a beef herd with 10 weaner cattle being fattened on the site at any one time. The Tribunal set aside the Council's decision and a permit was not granted.¹ The Tribunal found that the proposal

was an attempt to have a rural living arrangement masked as an agricultural use within a Farming Zone.

- 58. I have not been persuaded that if the hobby farm operation is started, it will sustainably persist in the long term. The FMP makes no provision for what is to occur if the hobby farm operation ceases, after the dwelling is constructed. In my view, once the dwelling is constructed, there is real risk that if the proposed hobby farming activity commences, it will not be sustained. After the five year period referred to in condition 7, there is not a great deal of motivation for the agricultural activities to be sustained in the long term, particularly if a subsequent owner has no interest in rearing cattle. I consider that this is inconsistent with:
 - a. the purposes of the FZ2, which seek to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture and which encourage the use and development of land based on comprehensive and sustainable land management practices;
 - b. Clause 14.01-1S (Protection of agricultural land) which seeks to limit new housing development in rural areas by directing housing growth into existing settlements; discouraging development of isolated small lots in rural zones from use for dwellings.
 - c. Clause 16.01-3S (Rural residential development) which discourages development of small lots in rural zones for residential use and encourages consolidation of existing isolated small lots in rural areas.

Agriculture Victoria considers that:

- Grazing animal production requires regular supervision to ensure animal health and welfare but can be carried out without the requirement for a dwelling.
- The financial returns of the FMPR noting that the proposed Speckle Park cattle stud is to be based on a herd of 22 breeding cows may not be achievable:
 - FMPR Figure 3. Proposed future property layout (not to scale) appears to show approximately 16.5 hectares of total land area available for animal production (The available grazing land is estimated by removing the area used for domestic purposes, proposed laneways and shelter belt plantings).
 - \circ $\,$ $\,$ The annual average rainfall is noted as 727 mm.
 - The sustainable carrying capacity of the land with good pasture management; (727 mm - 250 mm)/25 = 19 DSE/ha.
 - 19 DSE x 16.5 ha = 313.5 Total DSE.
 - A cow with calf at 600 kg body weight = 18.6 DSE (this is a conservative estimate as Speckle Park mature cows range in weight from 600 850 kgs).
 - \circ 313.5 DSE/18.6 DSE = 17 cows with calf.
- The above shows that the nominated stocking rate of 22 cows with calf would not be sustainable on the subject land.
- The proposal does not appear to effectively establish a domestic building envelope to minimise the domestic use of the land and, ensure maximising and maintaining the use of the land for agriculture.
- That without the establishment of a domestic building envelop there is a risk of further loss to available productive land over time.
- The area set aside for the domestic envelope, including the dwelling, should include any domestic outbuildings, yards, pool, garden, primary and secondary wastewater envelopes etc. and accessway.

- A land capability assessment would be required to validate the location and area required for domestic wastewater treatment and disposal and therefore the extent of the domestic envelope.
- That the primary and secondary wastewater areas for the dwelling should be appropriately buffered and fenced to exclude stock, in accordance with any land capability report recommendations.
- The approval of a dwelling would have the potential to set a precedent for further dwellings in the surrounding area given the pattern of small lots without dwellings which appear to be currently used for broad scale agriculture. This is particularly relevant with the owners of the subject land owning three (3) other small lots in that area.
- The location given the proximity to urban centres and services, if the proposal was approved, it is likely that the approval of a dwelling will lead to the potential for viable holdings being reduced to hobby farm or lifestyle blocks, a divergence from productive farming and the purpose of the Farming Zone.
- The approval of a dwelling on the currently vacant land would permanently remove the ability of the land to be incorporated into surrounding agricultural enterprises and has the potential to limit the operation and expansion of adjoining and nearby agricultural uses.
- The proposal would have the potential to create land use conflict issues with surrounding agricultural properties.
- The proposal has the potential to result in a permanent loss of productive agricultural land in the Farming Zone.

Recommendation

Agriculture Victoria considers that the proposal's justification for a dwelling in the Farming Zone would appear contrary to the purpose of the zone and the strategic objectives of the Colac Otway Planning Scheme, with particular reference to Clause 14.01-1S Protection of agricultural land, Clause 16.01-3S Rural residential development and Clause 02.03-4, where land potentially used for lifestyle purposes; *is causing problems associated with increasing property values inhibiting farm growth, servicing, provision of infrastructure and conflict with adjoining land uses and has the potential to undermine the protection of the agricultural base of the Shire.*

The refusal of the application appears to be supported by the VCAT decisions cited above.

If Council considers that the proposal meets the strategic objectives of the Colac Otway Planning Scheme, and Council determines a permit for a dwelling in association with a grazing animal production was to be approved, Agriculture Victoria makes the following recommendations:

- That any permit issued that allows the use and development of a dwelling in the Farming Zone is in association with the primary use of the land for agricultural production, protects against the potential for further subdivision of the land and ensures the ancillary use of a dwelling does not compromise farming activity in the area.
- That the domestic development be contained within a building envelope designed to minimise domestic use and maximise and maintain the use of the land for agriculture, to be shown on any approved plan as part of any permit issued.
- That the primary and secondary wastewater areas for the dwelling be appropriately buffered and fenced to exclude stock, in accordance with any land capability report recommendations.

- That prior to the use and development of any approved dwelling the associated infrastructure required for the grazing animal production land use as set out in any approved farm management plan must be completed to the satisfaction of the responsible authority.
- That conditions be placed on the permit to protect agricultural land through a binding agreement on title which ensures:
 - The development and continued use of a dwelling in the Farming Zone has been permitted on the basis that the dwelling is reasonably required for the operation of the agricultural activity conducted on the land in accordance with an endorsed business plan or approved alternative, and the dwelling will only be used on that basis.
 - The dwelling must not be subdivided from the lot in the future, and the lot must not be subdivided to increase the number of lots, by excision or otherwise.
 - That the owner acknowledges and accepts the possibility of nuisance from agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.

This letter of advice is provided to Council to assist their assessment of the above planning permit amendment application and any requirement in seeking further information from the applicant as part of its assessment process. The information provided should be considered as advisory in nature to inform Council's determination as the Responsible Authority.

Please provide a copy of the outcome for our records.

Please contact me if you require any further clarification.

Regards

Agriculture Victoria Planning and Advisory Service Biosecurity and Agriculture Services I Agriculture Victoria Department of Jobs, Precincts and Regions 255 Ferguson Road, Tatura, Victoria 3616 M: | E:

Attachment 8.5.8 Area Analysis (Refer to maps in report)

PP223/2022-1 - 1140 Irrewillipe Road BARONGAROOK WEST - Area Analysis - Map Legend

| Map Ref | Address | Parcels per Property | Parcel / Lot description | Parcel / Lot Size in Ha | Total Property Area in Ha | Buildings | Permit Ref | Development | Decision | Date |
|------------|---|----------------------------|-----------------------------|----------------------------|---------------------------------|-------------------------|------------------------------|--|------------------------|------------------------------|
| | | | 1\TP823597 | 60.3 | | Shedding | | | | |
| 1 | 255 South Larpent Road BARONGAROOK WEST | 4 | 1\TP371360 | 55.2 | 197.2 | Dwelling & Buildings | PP171/2006-1 | Removal Of Vegetation | Permit Issue | d 3/08/2006 |
| | | | 1\TP539493 | 40.8 | | Vacant | DD252 /4000 4 | Removal Of Vegetation For | | 25/40/4000 |
| | | | 1\TP401890 | 40.8 | | Vacant | PP353/1999-1 | Access | Refusal | 25/10/1999 |
| | 1270 Irrewillipe Road BARONGAROOK WEST | | 1\LP221562 | 22.9 | | Vacant | PP211/2000-1 | Construction Of Dwelling | Permit Issue | d 14/08/2000 |
| | | 2 | | 22.3 | 45.2 | Dwelling & Buildings | PP172/2002-1 | Construction Of A Garage | Permit Issue | d 24/04/2002 |
| 2 | | | 2\LP221562 | | | | PP88/2015-1 | Construction of Fiberglass Swimming Pool and Safety Barrier | Permit Issue | d 25/05/2015 |
| 3 | 65 Polleys Road BARONGAROOK WEST | 1 | 2\LP221564 | 40.9 | 40.9 | Shedding | PP363/2009-1 | Land Fill | Permit Not Required | 7/01/2010 |
| | 140 Ackerleys Road West BARONGAROOK WEST | 1 | 1\LP145879 | 4 | 4 | Dwelling & Buildings | PP62/2010-1 | Extension To Existing Dwelling | g Permit Issue | d 13/05/2010 |
| 4 | | | | | | | PP293/2021-1 | Building and Works Comprising Construction of ar Outbuilding | n Permit Issue | d 5/11/2021 |
| | 950 Irrewillipe Road BARONGAROOK WEST | 3 | 16F\PP2079 | 20.3 | 5 62.4 | Vacant Vacant | PP338/2002-1 | Construction Of A Piggery | | |
| 5 | | | 16G\PP2079 | 12.5 | | | | | Permit Issue | d 3/02/2003 |
| 3 | | | 1\TP815337 | 5337 29.7 | | Dwelling & Buildings | | | i ennie issue | a 3/ 02/ 2003 |
| 6 | 895 Irrewillipe Road BARONGAROOK WEST | 1 | 16J\PP2079 | 2.9 | 2.9 | Vacant | | | | |
| 7 | 870 Irrewillipe Road BARONGAROOK WEST | 1 | 2\PS708118 | 54.4 | 54.4 | Shedding | | | | |
| 8 | 860 Irrewillipe Road BARONGAROOK WEST | 1 | 1\PS609250 | 1.4 | 1.4 | Dwelling | | | | |
| 9 | 880 Irrewillipe Road BARONGAROOK WEST | 1 | 1\PS528466 | 1.7 | 1.7 | Dwelling | PP217/2003-1 PP115/2007-1 | Realignment Of Boundaries Two Lot Re-Subdivision | | d 31/07/2003 d 23/05/2007 |
| | | | | | | | | | | |

| | | | | | | | | for to more in more wt) |
|----|---|------------|-------|-------|-------------------------|--|--|--|
| 10 | 400 Barrys Road BARONGAROOK WEST | 2\TP643654 | 11.5 | 106.2 | Vacant | PP232/2016-1 | Construction of a Telecommunications Facility (35m Monopole) and Associated works | Permit Issued 27/01/2017 |
| | | 6\TP643654 | 28 | | Vacant | | | |
| | 410 Barrys Road | 5\TP643654 | 40.9 | | Vacant | PP218/2019-1 | Building and Works | |
| | BARONGAROOK WEST 6 | 4\TP643654 | 0.5 | | Vacant | | Comprising Construction of an Agricultural Building | Permit Issued 28/11/2019 |
| | | 7\TP643654 | 19.1 | | Dwelling & Buildings | | | |
| | 415 Barrys Road BARONGAROOK WEST | 3\TP643654 | 6.2 | | Dwelling & Buildings | | | |
| | | 1\TP220589 | 42.1 | 413.5 | Shedding | | Two Lot Subdivision & Creation Of Road Reserve | |
| | 30 Gubbins Road | 1\TP329009 | 54 | 413.5 | Dwelling & Buildings | PP133/2000-1 | | Permit Issued 9/08/2000 |
| | BARONGAROOK WEST | 2\PS443884 | 42.6 | 413.5 | Vacant | PP457/2002-1 | Construction Of A Dwelling | Permit Issued 16/12/2002 |
| | | 24C\PP2776 | 107.1 | 413.5 | Shedding | | | 1 chine 105 ded 10, 12, 2002 |
| 11 | 7 | 24B\PP2776 | 41 | 413.5 | Vacant | PP48/2015-1 | Buildings and works comprising construction of | Permit Issued 28/04/2015 |
| | 1055 Irrewillipe Road BARONGAROOK WEST | 1\TP533150 | 85.8 | 413.5 | Vacant | | replacement agricultural shed | |
| | 1105 Irrewillipe Road BARONGAROOK WEST | 1\PS443884 | 41 | 413.5 | Dwelling | | | |
| 12 | 960 Irrewillipe Road 1 BARONGAROOK WEST | 1\TP219407 | 78.1 | 78.1 | Dwelling & Buildings | PP289/2010-1 | Buildings and Works for the purpose of constructing additions to an existing dwelling | Permit Issued 16/12/2010 |
| 13 | 1115 Irrewillipe Road BARONGAROOK WEST | 24\PP2776 | 41.4 | 41.4 | Shedding | | | |
| 14 | 125 Ackerleys Road West BARONGAROOK WEST 1 | 23B\PP2776 | 8.2 | 8.2 | Dwelling & Buildings | PP353/2006-1 PP353/2006-2 PP353/2006-3 PP353/2006-4 PP221/2016-1 | Use & Development Of Dwelling Buildings and Works Comprising Extension to Dwelling and Associated Works | Permit Issued 30/03/2007 28/05/2012 19/04/2013 Permit Issued 23/12/2016 |
| 1 | | | | | | | WOINS | |

| | | | 4) TRODECOCA | 70.0 | | Dwelling & | Atta | chment 8.5.8 Area Analysis (R e | efer to maps | in report) |
|----|--|---|--------------|------|-------|-------------------------|--|---|-------------------------|---|
| 15 | 415 South Larpent Road BARONGAROOK WEST | 3 | 1\TP836861 | 79.6 | 131.5 | Buildings | | | | |
| 13 | | | 1\TP890678 | 41.7 | 151.5 | Vacant | | | | |
| | | | 1\TP836878 | 10.3 | | Vacant | | | | |
| | 435 South Larpent Road BARONGAROOK WEST | 2 | 1\TP232060 | 21.4 | | Dwelling & Buildings | PP216/1995-1 | Machinery Shed | Permit Issue | d 20/06/1995 |
| 16 | | | 1\TP383286 | 1.2 | 22.7 | Vacant | PP54/2007-1 | Building And Works To Construct A New Dwelling And Shed (Existing Dwelling (Cabin) to be removed from site) | Permit Issue | d 18/09/2007 |
| 17 | 1195 Irrewillipe Road | 2 | 2\LP135533 | 29.6 | 59.5 | Vacant | | | | |
| | BARONGAROOK WEST | - | 1\TP118804 | 29.9 | 0010 | Vacant | | | | |
| 18 | 1125 Irrewillipe Road BARONGAROOK WEST | 1 | 1\TP118803 | 39 | 39 | Dwelling & Buildings | PP8/2007-1 PP257/2021-1 | Dam Repairs & Removal Of 32 Mature Cypress Trees And 8 Mature Pine Trees Extension and Alteration of Dwelling and Associated Works | Permit Issue | ed 31/01/2007 ed 22/10/2021 |
| 19 | 1120 Irrewillipe Road BARONGAROOK WEST | 1 | 1\TP118802 | 1.3 | 1.3 | Vacant | PP263/2008-1 PP188/2011-1 PP178/2021-1 | Construction of a dwelling Use & Development of a Dwelling & an Animal Boarding Facility (Cattery) and associated works Buildings and Works Comprising Construction of an | | 29/01/2009 24/07/2012 ed 23/09/2021 |
| 20 | 1160 Irrewillipe Road BARONGAROOK WEST | 1 | 1\TP106872 | 4 | 4 | Dwelling & Buildings | | Agricultural Building | | |
| 21 | 1140 Irrewillipe Road BARONGAROOK WEST | 1 | 1\TP118801 | 4.5 | 4.5 | Vacant | | | | |

16 Dwellings in study area

PP70/2022-1 – 1075 Larpent Road, Larpent

Draft Conditions (Not Officer Recommendation)

That Council resolves to Issue a Notice of Decision to Grant a Permit for the Use and Development of the Land for a Dwelling at 1075 Larpent Road, Larpent (Lot 1 PS 024858, V/F: 07795/142), subject to the following conditions:

Amended Plans

- 1. Prior to the commencement of development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans, which must be drawn to scale with dimensions, must be generally in accordance with the plans submitted with the application, but modified to show:
 - a) vehicle access to the dwelling, including details of its width and surface
 - b) location of the proposed wastewater treatment system
 - c) location of proposed water tanks

Endorsed Plans

2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

Dwelling Infrastructure

- 3. Prior to the initial occupation of the dwelling hereby permitted, the following must be provided to the satisfaction of the Responsible Authority:
 - a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
 - b) The dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the *Environment Protection Act* 2017 for an on-site wastewater management system.
 - c) 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.
 - d) The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

Access

- 4. Prior to the commencement of development, unless otherwise agreed in writing by the Responsible Authority, vehicular access from the roadway to the property boundary must be constructed to the satisfaction of the Responsible Authority.
- 5. Prior to the initial occupation of the dwelling, the driveway must be constructed to an allweather standard and with a minimum width of 3 metres, to the satisfaction of the Responsible Authority.

Stormwater

- 6. All runoff from stormwater, including overflow from water storage, must be taken to a legal point of discharge to the satisfaction of the Responsible Authority.
- 7. The site must be developed and managed to ensure there is no stormwater pollution through the contamination of runoff by chemicals, sediments, wastes or pollutants in accordance with 'Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control' (EPA) at any time during construction or operation, to the satisfaction of the Responsible Authority.

Wastewater

8. An onsite wastewater management system must be constructed concurrently with the dwelling hereby permitted, so that all liquid waste is at all times contained within the curtilage of the lot. The design and installation of any wastewater disposal system for any building on the land must comply with 'Code of Practice - Onsite Wastewater Management', July 2016 (EPA Publication No. 891.4, or as amended), to the satisfaction of the Responsible Authority.

Expiry

- 9. This permit will expire if one of the following circumstances applies:
 - a) The development is not commenced within three years of the date of this permit.
 - b) The development is not completed, and the use is not commenced, within five years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act* 1987, an application may be made to the Responsible Authority to extend the periods referred to in this condition.

Notes:

- 1. This permit does not authorise the commencement of any building works. Prior to the commencement of development, it will also be necessary to obtain a building permit for the proposed buildings.
- 2. Prior to conducting any drainage works, a legal point of discharge (LPOD) must be obtained in accordance with Building Regulation 133.
- 3. A works within road reserve permit is required prior to any works being undertaken on Council managed road reserves within the Colac Otway Shire.
- 4. At least seven (7) days before any works start, an Asset Protection Permit must be obtained from Council. Council infrastructure must be maintained in a safe condition during the construction period. Any damage caused by these works to Council assets must be reinstated to the satisfaction of the Council prior to the completion of works.
- 5. A separate application to install a domestic wastewater management system must be submitted to and approved by Council's Health Protection Unit prior to the commencement of works. The Health Protection Unit reserves the right to request a Land Capability Assessment by a suitably qualified person to be submitted for approval at the permit application stage, to support a detailed system design and sustainable wastewater management system.