



AGENDA

Development Assessment Committee Meeting Wednesday, 19 June 2024

I hereby give notice that a Development Assessment Committee Meeting will be held on:

Date: Wednesday, 19 June 2024

Time: 6.00pm

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

**Henry Bezuidenhout
Executive Manager Community Planning & Development**

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1 OPENING**2 PRESENT AND APOLOGIES****3 RECORDING OF MEETING**

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

4 CONFIRMATION OF MINUTES**5 MATTERS ARISING FROM PREVIOUS MINUTES****6 DISCLOSURE OF CONFLICTS OF INTERESTS**

Conflict of interest laws are prescribed under the *Local Government Act 2020* (the Act) and in the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations). Managing conflicts of interest is about ensuring the integrity and transparency of decision-making.

The conflict of interest provisions under the Act have been simplified so that they are more easily understood and more easily applied. The new conflict of interest provisions are designed to ensure relevant persons proactively consider a broader range of interests and consider those interests from the viewpoint of an impartial, fair-minded person.

Section 126 of the Act states that a Councillor has a conflict of interest if they have a general conflict of interest or a material conflict of interest. These are explained below:

- A Councillor has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the member's private interests could result in them acting in a manner that is contrary to their public duty as a Councillor.
- A Councillor has a material conflict of interest in a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

A relevant person with a conflict of interest must disclose the interest in accordance with Council's Governance Rules and not participate in the decision-making process on the matter. This means the relevant person must exclude themselves from any discussion or vote on the matter at any Council meeting, delegated committee meeting, community asset committee meeting or, if a Councillor, any other meeting conducted under the auspices of the Council. The relevant person must also exclude themselves from any action in relation to the matter, including an action taken to implement a Council decision, for example, issuing a planning permit.

7 COMMUNITY PLANNING REPORTS

7.1 PA2023088 - DEVELOPMENT AND USE OF THREE BUILDINGS (CONVENIENCE SHOP AND TWO FOOD AND DRINK PREMISES) AT 102-104 HALLETTS WAY, BACCHUS MARSH

Author: Victoria Mack, Senior Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments:

1. Amended Development Plans (under separate cover)
2. Waste Management Plan (under separate cover)
3. Traffic Impact Assessment (under separate cover)

APPLICATION SUMMARY

Permit No: PA2023088

Lodgement Date: 21 June 2023

Planning Officer: Victoria Mack

Address of the land: 102-104 Halletts Way, Bacchus Marsh
Lots 125 and 126 on PS 643497C

Proposal: Development and Use of Three Buildings (Convenience Shop and Two Food and Drink Premises)

Lot size: 1,413sqm (combined lot area)

Why is a permit required? Clause 32.08-2 of General Residential Zone; Schedule 2 - Use of land; Clause 32.08-10 of General Residential Zone Schedule 2 - Development of three buildings

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2023088 for the Development and Use of Three Buildings (Convenience Shop and Two Food and Drink Premises) at 102-104 Halletts Way, Bacchus Marsh, otherwise known as Lots 125 and 126 on PS 643497C, subject to the following grounds:

1. The proposed use and development does not comply with the objectives and intent of Clause 17.02-2S (Out of Centre Development) of the Moorabool Planning Scheme.
2. The proposed change of use will adversely affect the residential amenity of the surrounding area.
3. The proposed use and development does not represent the orderly planning of the area.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	Fourteen.
Consultation meeting:	Held on 17 October 2023, attended by four objectors and two applicant representatives.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 3: A Council that listens and adapts to the needs of our evolving communities

Priority 2.4: Grow local employment and business investment

The proposal is not provided for in the Council Plan 2021-2025 and can be actioned by utilising existing resources.

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Victoria Mack

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

EXECUTIVE SUMMARY

Application referred?	Yes, referred to Transport for Victoria, Council's Environment, Emergency and Waste Management Strategic Planning, Development Infrastructure and Environmental Health.
Any issues raised in referral responses?	Issues raised by Development Infrastructure included traffic management to and from the site, the provision of traffic data, and stormwater management issues.

Preliminary concerns?	Acoustic concerns in a residential area with long operating hours; traffic management on Halletts Way, and waste management.
Any discussions with applicant regarding concerns?	The applicant has responded to all further information requests and has also responded to some objector concerns following the consultation meeting.
Any changes made to the application since being lodged?	Following the consultation meeting the development plans were amended and amended traffic, stormwater and waste management reports were provided.
Brief history.	The lots have been vacant since the subdivision was created on 13 February 2013.
Previous applications for the site?	PA2016093 for Development and Use of a Medical Centre, reduction of Car Parking and Business Identification Signage was issued on 21 March 2017. No works were undertaken, and the permit expired on 21 March 2019.
General summary.	<p>The application is for an out-of-centre development in a residential area. While future tenants of the three proposed buildings have not been identified, the concept would include a convenience shop comprising the sale of grocery items, and two food and drink premises, likely to be a café and a takeaway food premises.</p> <p>The parking spaces provided on the site meets the statutory requirement and the site provides access from Halletts Way with a double width crossover.</p> <p>The proposed convenience shop and take-away food premises are located within an established residential area and the proposal is an out of centre development which is discouraged by state planning policy.</p> <p>Due to the location and residential zoning of the land, the proposed use and development are recommended for refusal.</p>
Summary of Officer's Recommendation	
That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i> , issue a Refusal to Grant Planning Permit PA2023088 for the Development and Use of Three Buildings (Convenience Shop and Two Food and Drink Premises) at 102-104 Halletts Way, Bacchus Marsh, otherwise known as Lots 125 and 126 on PS 643497C, subject to the grounds contained in this report.	

SITE DESCRIPTION

Surrounding the site is an established residential precinct with dwellings and few undeveloped lots. The Western Freeway interchange off ramp to Halletts Way is located approximately 127m to the north and the Western Freeway itself approximately 264m to the north. The site is located approximately 1.7km northeast of the Bacchus Marsh township.

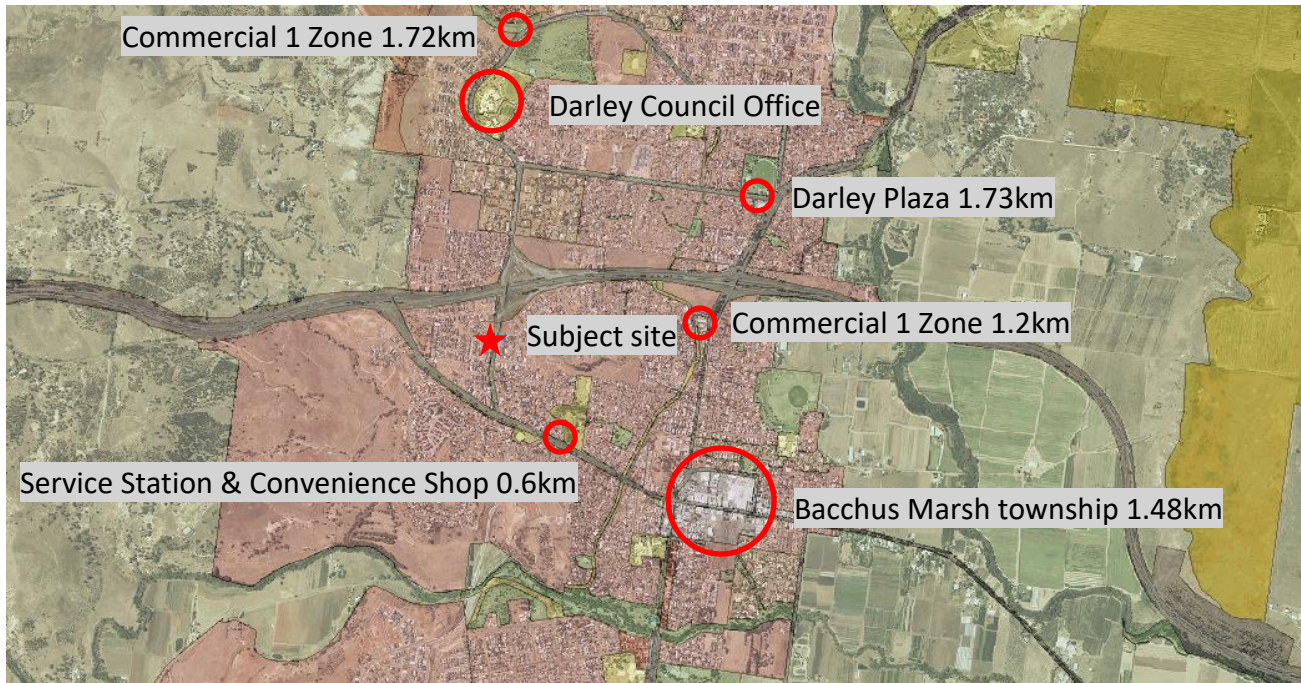


Figure 1: Site and surrounding commercially zoned land and distance to nearest Commercial Zoned land from the subject site

A public bus services Halletts Way which affords travel to the Bacchus Marsh town centre, railway station and surrounding activity centres.

The subject site is vacant land with no vegetation and has a generally flat topography with a slight slope to the north and northeast corner of the site and a northerly view of the Western Freeway off ramp embankment.

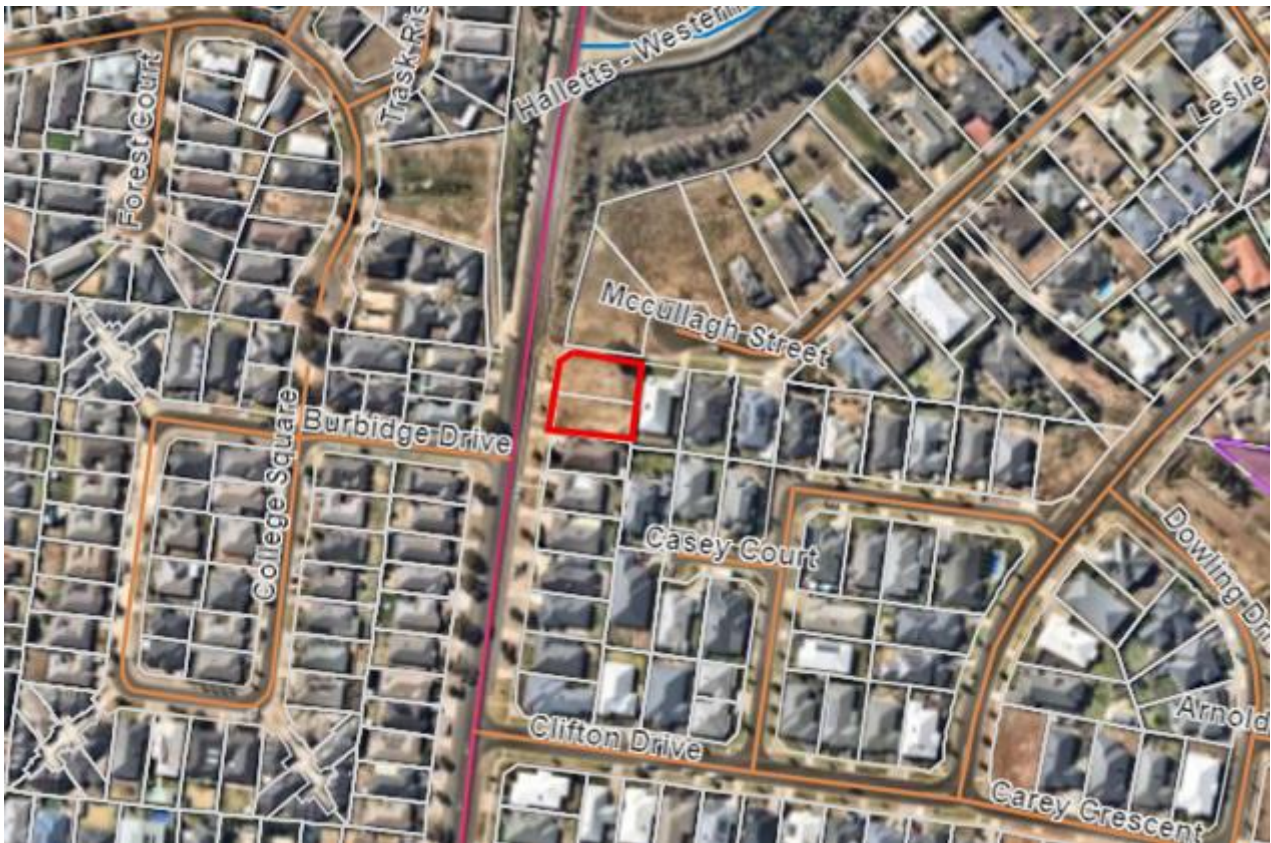


Figure 2: Aerial photo

GENERAL RESIDENTIAL ZONE (GRZ)

GENERAL RESIDENTIAL ZONE - SCHEDULE 2 (GRZ2)

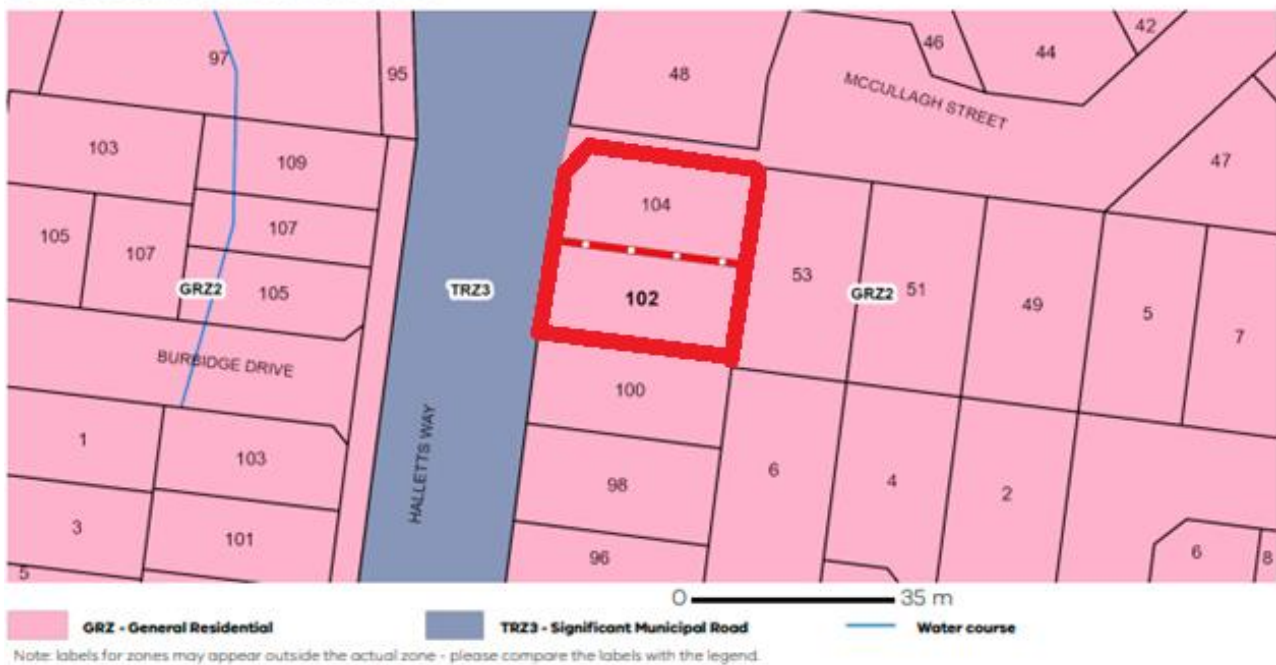


Figure 3: Zone map

PROPOSAL

It is proposed to construct a commercial building comprising of three separate businesses being:

- a convenience shop with a floor area of 127.21sqm
- a food and drink premises of 71sqm and 14 seats inside
- a food and drink premise of 70sqm, 18 seats inside six tables and 12 seats outside

The nominated hours of operation are:

- Convenience Shop 6am to 12am, seven days a week
- Food and Drink Premises 7am to 12am, seven days a week
- Food and Drink Premises 5am to 8pm, seven days a week

Each of the premises would have one toilet and the convenience shop would have a rear storage area.

The buildings would be comprised of glass frontages with profile metal faced composite panels, and precast concrete wall panels, Colorbond roofing, and pine timber features. The colour scheme would be shades of light to dark grey.

There would be internally illuminated signs at the front of each premise. The signs would be 4.8m wide and 1.4m high each with an area of 6.72sqm. The front signage for the three premises would have a total area of 2sqm. Specific signage details for each premises were not provided.

An illuminated pylon sign would also be erected facing Halletts Way. The pylon sign would be 5m high and 1.2m wide with a total area of 6qm. With signage attached to frontage of each premise, the total area of all signage on the site would be 12sqm.

Fifteen car spaces, including one disabled space would be constructed at the front of the development within a landscaped setting. There would be a bike rack with four bike spaces. The existing double crossover width at the site entrance would be retained.

A waste bin storage area would be located on the south side of the car park for access by waste removal vehicles. Waste collections would occur between 7am to 8pm on Mondays to Saturdays and between 9am to 8pm on Sundays and public holidays, in accordance with EPA Victoria Noise Control Guidelines 2021. All waste collections would occur via a standard 8.8m medium rigid vehicle with garbage collected twice per week, recycling twice per week and organics bins three times per week.

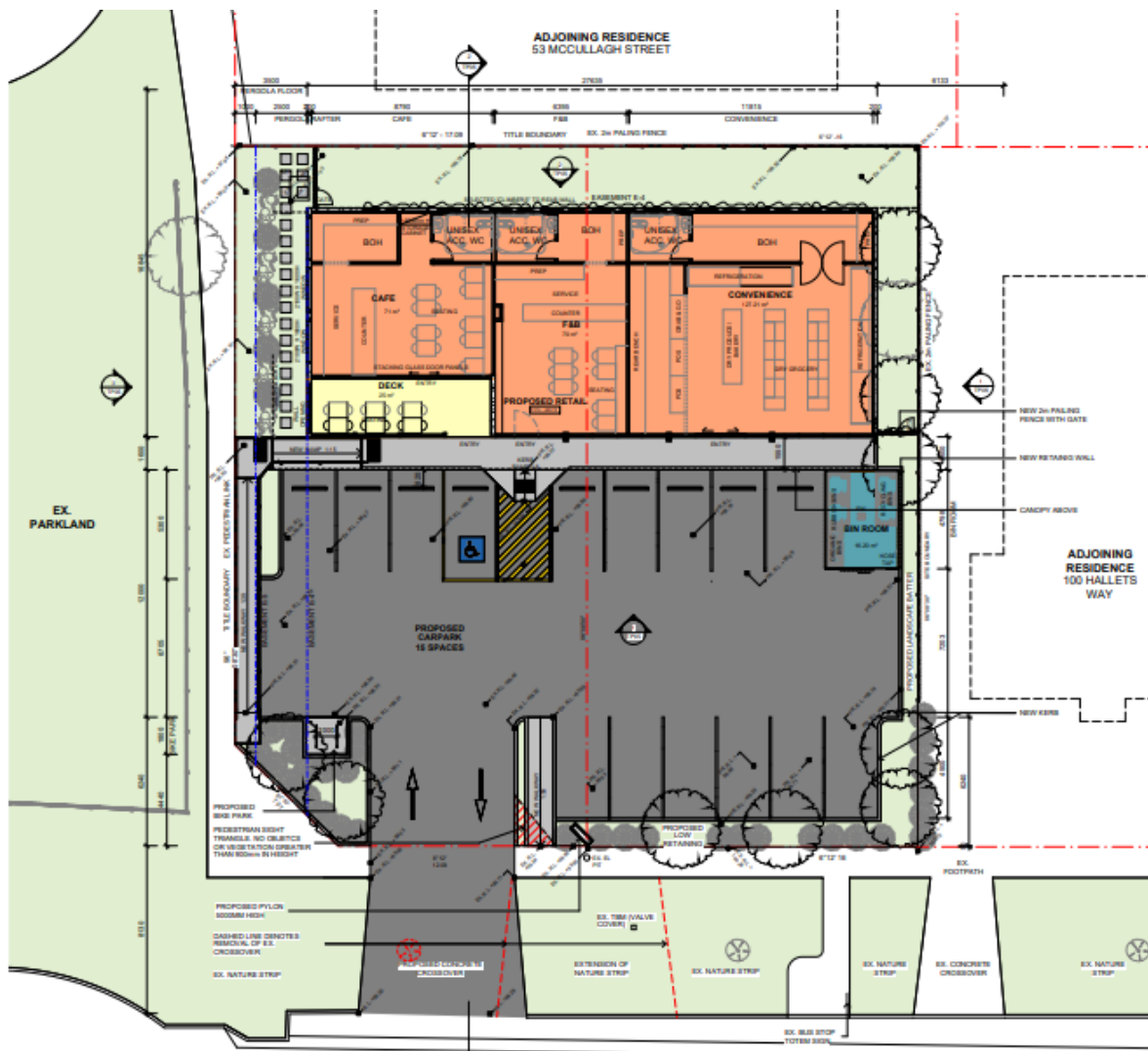


Figure 4: Site and floor plan of the development

HISTORY

Planning Permit PA2016093 was issued for the Development and Use of a Medical Centre, Reduction of Car Parking and Business Identification signage on 21 March 2017. An appeal was lodged with VCAT by the permit applicant relating to conditions on the permit which was upheld in part. The medical centre was not built, and the permit expired on 21 March 2019.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners and sign on site.

Fifteen objections were initially received with one later withdrawn in writing, leaving a total of fourteen objections.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
Additional acoustic treatment of east wall of café required particularly the café deck area.	EPA Commerce, industry and trade noise guidelines, December 2022.
Officer's Response: The deck and alfresco dining area has been moved away from the east wall of the northern building to reduce noise impacts.	
Fence along east side boundary to be reviewed for acoustic performance, may have to be replaced.	Clause 53.04 Convenience Restaurant and Take-Away Food Premises
Officer's Response: The site plan does not currently include an acoustic fence.	
Easement area along east rear boundary to be securely fenced off from wastes and itinerant use.	
Officer's Response: A fence and lockable gate have been added to the development plans.	
Opening hours for each premises to be amended to better suit a residential area.	Clause 53.04 Convenience Restaurant and Take-Away Food Premises
Officer's Response: The applicant has agreed to reduce trading closing time to 10pm. This does create a limitation on the future trading of each premise.	
Waste collection to be reviewed to assess if the estimated collections (eight per week) are correct. What types of trucks would be used and when? Waste bins around the site should be marked (if applicable) – allegedly the site is windy and waste bins need to be wind proof.	Clause 53.04 Convenience Restaurant and Take-Away Food Premises
Officer's Response: The amended waste management plan shows up to seven collections per week using an 8.8m medium rigid vehicle. Short term bin stations are also mentioned but not shown clearly on the development plans.	
The application to be amended to include: Security options including security along north walkway from McCullagh Street. Will there be a fence between the development and the existing pedestrian walkway. Not clear on plans. Sign/lighting types with additional details; light spill controls. Is there any other lighting required?	Clause 53.04 Convenience Restaurant and Take-Away Food Premises
Officer's Response: The walkways have been amended to ensure integration with the existing pedestrian walkway.	
A more specific landscape concept plan.	
Officer's Response: A detailed Landscape plan has not been provided.	

Who will maintain the site including landscape management – what arrangements would likely be in place been tenants and site owner such as Body Corp arrangement in the future?	
Officer's Response: The common driveway and landscaping can be managed by the existing landowner or if subdivided in the future by an owner's corporation.	
<p>a) Were the counters able to include vehicles swerving around “stationary turning vehicles”?</p> <p>b) The front of the site is often used by Police for breath testing. Did this impact the traffic count on the days recorded?</p> <p>c) Would line marking help?</p> <p>d) Pedestrian links in the immediate area allegedly poor. No crossing points.</p> <p>e) The bus stop, used by school children, and vehicles turning into Burbidge Drive at times cause traffic “chaos” in this vicinity.</p> <p>f) It is understood it is a small development, but existing traffic conditions at times can be challenging and three businesses will attract more vehicles.</p> <p>g) Traffic has increased since the off ramp from the Freeway was opened and Halletts Way extended south to Maddingley.</p>	Council's Development Infrastructure Services.
Officer's Response: An amended traffic management report has been provided and was referred to Council's Development Infrastructure which consented to the proposal subject to conditions.	
Traffic issues were the biggest concern for objectors followed by acoustic issues from the development if allowed to open until all hours.	Council's Development Infrastructure Services.
Officer's Response: An amended traffic impact assessment report has been provided.	

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 02.03-1 – Settlement & Bacchus Marsh
- Clause 02.03-5 – Built environment and heritage
- Clause 02.03-7 – Economic Development
- Clause 02.03-8 – Transport
- Clause 17.02-1S – Business

- Clause 17.01-1R – Diversified Economy – Central Highlands
- Clause 17.02-2S – Out-of-centre development

The proposal does not comply with Clause 17.02-2S of the Moorabool Planning Scheme. Clause 17.02-2S is the state policy for Out of Centre Development that discourage proposals for expansion of single use retail, commercial and recreational facilities outside activity centres, and ensures that out-of-centre proposals are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

The site is in close proximity to the Bacchus Activity Centre and Darley Plaza and these commercial areas allow for a wide range of commercial activities. There is sufficient capacity in these commercial areas to accommodate new tenants or facilitate re-developments for new shops.

It is furthermore noted that Bacchus Marsh has several existing cafés or take away food premises that serve the local community.

The proposed development is in a General Residential Zone and does not comply with this state policy.

ZONE

The site is within the General Residential Zone, Schedule 2.

In accordance with Clause 32.08-2 a permit is required to use land for a convenience shop and food and drink premises and in accordance with Clause 32.08-10 a permit is required for buildings and works to a Section 2 Use. Decision guidelines are listed under Clause 32.08-14.

OVERLAYS

No overlays apply to the site.

RELEVANT POLICIES

Council is preparing a new Retail Strategy to reflect the expected population growth anticipated within the growth precincts that will provide guidance on the form and hierarchy of existing and planned activity centres within the Moorabool Shire.

Relevant objectives of the draft strategy are to:

- Maintain and extend the hierarchy of retail activity centres.
- Support the Bacchus Marsh town centre as the major retail centre within the Shire.
- Ensure that new residential areas are well-serviced by the retail hierarchy.
- Support the provision of a wider range of goods and services in the Shire.
- Encourage improvement in the provision of retail services to visitors.

The draft Retail Strategy 2023 includes supporting the retail hierarchy as follows:

- Concentrating shops, offices and many community services into well-located activity centres to maintain and improve the accessibility, equity and sustainability of services.
- A planned hierarchy of activity centres provides guidance for investors and consumers about the anticipated level of service at each location.
- Moorabool has a hierarchy of centres and as the population grows, the network will need to expand to provide excellent levels of service and employment opportunities.

- The network of existing and proposed activity centres, and expectations about their key features, including:
 - Local activity centre or village centre
 - Single general store or small collection of day-to-day goods and services or visitor outlets.
 - Potential future - Halletts Way and Hopetoun Park North.

There is currently a dedicated parcel of land in a Commercial 1 Zone in Halletts Way (known as 41 Ramsay Crescent) with a current permit (PA2020038) for five shops and a medical centre. The site is yet to be developed. This site is approximately 1.72kms north of the subject site.

Particular Provisions

Clause 52.05 Signs

The General Residential Zone is in Category 3 for signage.

Category 3 states that a permit is required for Business identification signs, internally illuminated signs and a pylon sign.

Clause 52.06 Car parking

In accordance with Table 1 of Clause 52.06-5 a convenience shop requires 10 car parking spaces if the leasable floor area exceeds 80sqm, and a food and drink premise requires four spaces to each 100sqm of leasable floor area. In this instance as each premises is 70sqm, each requires two car spaces.

The development therefore requires a total of 14 car spaces.

Fifteen car parking spaces have been provided on the site, including one disabled space, the car parking requirement.

Clause 52.27 Licenced premises

No licenced premise has been requested.

Clause 53.04 Convenience Restaurant and Take-Away Food Premises

Before deciding on an application to use land for a convenience restaurant or take-away food premises or to construct a building or construct or carry out works associated with a convenience restaurant or take-away food premise, in addition to the decision guidelines in Clause 65, the Responsible Authority must consider, as appropriate:

- Any policy in this scheme relating to convenience restaurants or take-away food premises.
- Whether the location is appropriate for a convenience restaurant or take-away food premise.
- The effect on the amenity or character of the street or neighbourhood.
- Whether the site layout and the design of buildings, noise attenuation measures, landscaping, car parking, vehicle access lanes, loading bays, rubbish bins, plant and equipment, lights, signs, drive through facilities and playgrounds are designed to prevent significant loss of amenity to adjoining land due to noise, emission of noise, emission of light or glare, loss of privacy, litter or odour.

- Whether any special measure may be necessary to protect the amenity of adjoining land in residential use, including buffer planting, noise attenuation measures and litter collection arrangements.
- The adequacy of traffic measures.
- The adequacy of car parking, loading and drive through queuing spacing to accommodate customers at peak periods and employee requirements on the land.

It is considered that the development partly responds to the requirements of this provision. Located in an established residential precinct, it is considered to result in adverse amenity impacts to surrounding residents, including noise emissions, littering, traffic, etc. There is no policy support within the Moorabool Planning Scheme for take away food premises in residential zoned land.

Clause 52.34 Bicycle facilities

Convenience shop and food and drink premises are not specifically mentioned in Table 1 to Clause 52.34-5 and therefore no bicycle parking is required.

DISCUSSION

The application is for a development of three attached non-residential land uses within an established residential area.

The buildings would be single storey and set back nearly 20m from Halletts Way. The development would be low scale with a skillion roof and external cladding in shades of grey with the building frontage comprised glass. It is considered that the single storey development is relatively low scale and is well setback from Halletts Way with adequate car parking and bicycle spaces provided. Landscaping would also soften the appearance of the development.

A car parking area, with 15 car spaces including one disabled space, would be constructed at the front of the development. The car spaces provided meet the requirement for this development. Four bicycle spaces would also be provided.

The Traffic Impact Assessment by SALT concluded the proposed car park access and layout has been designed in accordance with Clause 52.06 and relevant Australian Standards and facilitates convenient and efficient access. Features of the traffic report include that adequate provision has been made for loading and waste collection and the traffic generated by the proposal would have no adverse impact on the safety and operation of the surrounding road network.

Waste collection must be managed to ensure waste collection vehicles are limited to certain times of the day and are appropriate to the use and scale of the businesses.

The application was referred to Council's Strategic Planning who provided advice in relation to bin location, improving the interface with the public walkway on the north boundary, noise, and landscaping.

While the built form does not dominate the surrounding detached dwellings, the use proposed for all three attached buildings are non-residential uses and not compatible with the existing neighbourhood character. There are opportunities for non-residential uses where there is a local need and predominately comprised of uses such as medical centres or childcare centres. Commercial businesses such as take-away food premises or convenience shops are ideally situated in small localised commercial strips, free standing shopping centres and activity centres. The site is in close proximity to the Bacchus Activity Centre and Darley Plaza and there is sufficient capacity of both of these commercial areas to accommodate new tenants or can facilitate re-developments for new shops. Fragmenting the location of commercial businesses and placing constraints on operations such as trading hours due to being sited in a residential area does not support long

term economic viability. There is no policy support for an out centre development within the planning scheme.

The use of three food premises introduces non-residential emissions and reduces amenity afforded by living in a residential zone. The land is zoned for residential purposes and residential amenity must be protected especially during the nighttime period. While permit conditions could mitigate impacts such as noise emissions to comply with EPA requirements, baffling external light sources and effectively managing waste on site, it will be difficult to maintain existing amenity levels. The three businesses would also be constrained due to hours of operation and would be unable to operate to their full potential which can occur in commercial zoned land.

The proposed use and development of three non-residential land uses is inappropriately sited in a residential zone and prevents future residential activity on this site. The residential zoning of the land correctly limits non-residential land uses to only serve a community need. The site is not isolated from existing cafés and take away food premises, instead has convenient access to the Bacchus Marsh Activity which contains a wide range of retail land uses.

GENERAL PROVISIONS

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

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

REFERRALS

Authority	Response
Transport for Victoria	Consent with one condition.
Council's Development Infrastructure	No objection with conditions.
Environmental Health	Consent with conditions.
Strategic Planning	Advice only.
Environment, Emergency and Waste Management	Consent, no conditions.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

That the Development Assessment Committee:

- issue a Refusal to Grant a Permit with specified grounds as listed in the recommendation of this report; or
- Issue a Notice of Decision to Grant a Planning Permit. The Development Assessment Committee would need to consider what reasonable grounds there would be to support the application under the Moorabool Planning Scheme. This option may result in the applicant appealing the Committee's decision at VCAT.

CONCLUSION

The proposal is for three buildings comprising a convenience shop and two food and drink premises. Objector concerns can be partially mitigated by permit conditions, including restricting closing time to 10pm; however, there will be reduced residential amenity to surrounding residents as a result of this proposal. The non-residential land uses are poorly positioned within an established residential precinct that already has convenient access to nearby commercial areas. There is no policy support for an out of centre development and no long term strategic objective to undertake a spot re-zoning of this site. The proposed use and development does not represent the orderly planning of the area.

It is recommended that the application be refused.

7.2 PA2023162 - DEVELOPMENT OF A DWELLING AT 6 ELLERSLIE COURT, BACCHUS MARSH

Author: Victoria Mack, Senior Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: 1. Dwelling development plans (under separate cover)
2. Landscape plan (under separate cover)

APPLICATION SUMMARY

Permit No: PA2023162

Lodgement Date: 15 November 2023

Planning Officer: Victoria Mack

Address of the land: 6 Ellerslie Court, Bacchus Marsh
Lot 43 on PS125692

Proposal: Development of a Dwelling

Lot size: 2,160sqm

Why is a permit required? Clause 42.02 - Environmental Significance Overlay and Schedule 2 - Buildings and works

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refusal to Grant Planning Permit PA2023162 for the Development of a Dwelling at 6 Ellerslie Court, Bacchus Marsh, subject to the following grounds:

1. The proposal does not comply with the objectives of Clause 42.02 (Environmental Significance Overlay and Schedule 2) of the Moorabool Planning Scheme.
2. The proposal does not adequately respond to the preferred neighbourhood character (Precinct 21) in accordance with Housing Bacchus Marsh to 2041 (Mesh,2018) and Clause 11.01-1L-02 (Bacchus Marsh).
3. The proposal does not comply with neighbourhood character and landscape objectives of Clause 11.01-1L-02, Clause 15.01-2S, Clause 15.01-2L-01 and Clause 15.01-5L of the Moorabool Planning Scheme.
4. The proposal does not represent orderly planning for this area.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	Three, with one subsequently withdrawn.
Consultation meeting:	Online consultation on 16 April 2024, however no resolution was achieved.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 1: Healthy, inclusive and connected neighbourhoods

Priority 2.3: Enhance our natural environments

The proposal is not provided for in the Council Plan 2021-2025 and can be actioned by utilising existing resources.

VICTORIAN CHARTER OF HUMAN RIGHTS & RESPONSIBILITIES ACT 2006

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

OFFICER'S DECLARATION OF CONFLICT OF INTERESTS

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

Executive Manager – Henry Bezuidenhout

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

Author – Victoria Mack

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

EXECUTIVE SUMMARY

Application referred?	Referred to Council's Environment, Emergency and Waste Management Services and Development Infrastructure.
Any issues raised in referral responses?	Council's Development Infrastructure requested further information relating to the driveway shared by both the subject site, number 5, and number 6 Ellerslie Court.

Preliminary concerns?	A site visit revealed that the existing dwelling and a swimming pool had been demolished and the site cleared of all vegetation including mature trees. The tree removal was conducted in breach of the Moorabool Planning Scheme, a separate planning enforcement investigation is being undertaken with regards to this.
Any discussions with applicant regarding concerns?	Tree removal without a planning permit. An arborist assessment was provided documenting the 27 mature trees and shrubs that had been removed.
Any changes made to the application since being lodged?	An amended existing conditions plan was provided showing the site was cleared.
Brief history.	The site contained a four-bedroom brick veneer single storey dwelling in an established garden setting with a swimming pool and sundry small outbuildings.
Previous applications for the site?	None recorded.
General summary.	<p>The application is for a single dwelling on a vacant lot covered by an Environmental Significance Overlay Schedule 2. The site is within 100m of the Werribee River and protection of the waterway is the primary planning consideration.</p> <p>The proposal does not comply with State and Local Policy or the objectives of the Environmental Significance Overlay.</p> <p>The application is recommended for refusal.</p>
Summary of Officer's Recommendation	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Refusal to Grant Planning Permit PA2023162 at 6 Ellerslie Court, Bacchus Marsh, otherwise known as Lot 43 on PS125692, in accordance with the grounds contained within this report.	

SITE DESCRIPTION

The site is located approximately 1km south east of the centre of the Bacchus Marsh township, via Lord Street and McGrath Street. The surrounding streetscape is leafy and spacious with lots generally similar in size to the subject site and generally comprised of single storey dwelling with generous front setbacks with a lack of front fences. The Werribee River is located on the southern side of the site with a wide river corridor containing a public walkway. The Werribee River riparian corridor is generally well vegetated along this section with native trees and understory species.

The subject site is located at the southern end of Ellerslie Court. It is flat and irregular in shape with an area of 2,160sqm. Access is from Ellerslie Court via a 5m wide and 45m long driveway which is parallel to a similar driveway that services the neighbouring dwelling on the east side at No. 5 Ellerslie Court. A four-bedroom brick veneer single storey dwelling, swimming pool, small garden sheds and all vegetation was removed from the site in late 2023.



Figure 1: Aerial photo of the subject site and surrounds



Figure 2: Previous dwelling and tree locations (before demolition and clearing of the land)



Figure 3: Zone Map

PROPOSAL

It is proposed to construct a double storey dwelling on the site which would comprise three distinct pavilions in a H-shaped building arrangement. The dwelling will consist of four bedrooms, living areas, amenities, personal dance studio, swimming pool, alfresco dining and five car space garage.

The site would be landscaped predominantly with native vegetation including trees shrubs and understorey species. The landscape plan is at concept stage and does not specifically cite the number of plants of each variety to be planted or their specific location.



Figure 4: Ground floor plan.



Figure 5: Concept site landscape plan

BACKGROUND TO CURRENT PROPOSAL

The existing four-bedroom brick veneer single storey dwelling and swimming pool were demolished, and the site cleared of all vegetation in late 2023 including 27 mature native trees and shrubs. A permit is required under the Environmental Significance Overlay, Schedule 2 (ESO2) to remove any vegetation. The tree removal was undertaken without planning approval. A separate planning enforcement investigation is being undertaken with regards to this.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners and a notice placed on the site for a minimum period of 14 days. Three objections were received, with one subsequently being withdrawn, two objections remain.

SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
If a commercial business, the dance studio would create amenity concerns including traffic and safety issues in Ellerslie Court.	
Officer’s Response: The applicant has confirmed that the dance studio is for private purposes only. No commercial dance classes are proposed.	
The proposed height of the building would unnecessarily impact on our property.	Building design (Clause 15.01-2S and Clause 15.01-2L-01) Landscape and neighbourhood character (Clause 15.01-5L)
Officer’s Response: The proposed buildings and works are out of character with the existing neighbourhood character which consists of leafy and spacious with lots generally similar in size to the subject site and generally comprised of single storey dwelling with generous front setbacks and large setbacks to the river corridor. The proposed buildings and works reach 9m	

in height in part (well in excess of a single story dwelling generally reaching 3m in height).	
The proposal is not in accordance with Neighbourhood character objectives of Precinct 21 or those contained in the Moorabool Planning Scheme for the NRZ4.	Bacchus Marsh (Clause 11.01-1L-02) Landscape and neighbourhood character (Clause 15.01-5L)
<p>Officer's Response: The proposed buildings and works are out of character with the existing and preferred neighbourhood character as identified in Precinct 21 which aims to maintain large lots occupied by single dwellings, wide frontages, and generous setbacks around the dwellings. Clause 11.01-1L-02 (Bacchus Marsh) requires the responsible authority consider <i>Housing Bacchus Marsh to 2041 (Mesh,2018)</i> which identifies the subject site in Precinct 21 on the Bacchus Marsh Residential Settlement Framework Plan.</p> <p>State and Local Planning Policy require consideration of the neighbourhood character and the existing and preferred landscape character. This proposal does not provide adequate setbacks to the river corridor or appropriate screening/setbacks to dwellings north, south, and east of the proposal as would be expected given the existing character of the area.</p>	
Concern that the location and noise from pool pumps and air conditioning condensers would impact on neighbouring dwellings private open space.	Environmental Protection Authority (EPA)
<p>Officer's Response: Council's Building Department has advised EPA regulations govern noise from mechanical equipment in residential zones.</p>	
All the vegetation has already been cleared from the lot. It is not clear in the landscape plan, and the concept plan if the significant sized trees that were removed will be replaced. What will happen to the large gum tree that is at the front of the driveway (street end) as the landscape concept plan does not show this tree.	Environmental Significance Overlay, Schedule 2 Building design (Clause 15.01-2S and Clause 15.01-2L-01) Landscape and neighbourhood character (Clause 15.01-5L)
<p>Officer's Response: The proposal does not minimise the removal and disturbance of native vegetation or encourage the planting of indigenous vegetation to assist in screening development. A separate planning enforcement investigation is being undertake with regards to vegetation removal.</p>	
The landscape plan shows that only a few larger sized trees are proposed. All are on the boundaries and would grow into neighboring lots. It is not clear what tree is being planted where.	Environmental Significance Overlay, Schedule 2 Building design (Clause 15.01-2S and Clause 15.01-2L-01) Landscape and neighbourhood character (Clause 15.01-5L)
<p>Officer's Response: The proposed setbacks to the building and works do not provide adequate space for the planting of indigenous vegetation to assist in screening development to specifically to the north, east and south due to the configuration of the dwelling and the extent of hardstand surfaces proposed. Furthermore, the proposed buildings and works do not allow adequate space for tree planting to enhance the existing landscape as a priority.</p>	

The concerns are that the landscape plan sits very close to being non-compliant with the minimum landscape requirements?	Environmental Significance Overlay, Schedule 2 Building design (Clause 15.01-2S and Clause 15.01-2L-01) Landscape and neighbourhood character (Clause 15.01-5L)
Officer's Response: The proposed setbacks to the building and works do not provide adequate space for the planting of indigenous vegetation to assist in screening development to specifically to the north, east and south due to the configuration of the dwelling and the extent of hardstand surfaces proposed. Furthermore, the proposed buildings and works do not allow adequate space for tree planting to enhance the existing landscape as a priority.	
An aerial view of the immediate area shows open spaces, trees, vegetation, and very generous setbacks on all the lots in the precinct. The Moorabool neighbourhood character precinct 21 cites an existing neighbourhood character of 20% site coverage. The preferred character statements aim to maintain the open and spacious character of the neighbourhood. This has not been achieved with this development.	
Officer's Response: The proposed buildings and works are out of character with the existing and preferred neighbourhood character as identified in Precinct 21 which aims to maintain large lots occupied by single dwellings, wide frontages, and generous setbacks around the dwellings. Clause 11.01-1L-02 (Bacchus Marsh) requires the responsible authority consider <i>Housing Bacchus Marsh to 2041 (Mesh,2018)</i> which identifies the subject site in Precinct 21 on the Bacchus Marsh Residential Settlement Framework Plan.	

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.01-1L-02 – Bacchus Marsh
- Clause 12.03-1S – River and riparian corridors, waterways, lakes, wetlands and billabongs
- Clause 12.05-2S – Landscapes
- Clause 14.02-2S – Water quality
- Clause 15.01-2S – Building design
- Clause 15.01-2L-01 – Building design
- Clause 15.01-5L – Landscape and neighbourhood character

The proposal does not comply with the relevant sections of the PPF and MPS outlined in the table below:

PPF	Title	Response
Clause 11.01-1L-02	Bacchus Marsh	<p>Clause 11.01-1L-02 (Bacchus Marsh) requires the responsible authority consider <i>Housing Bacchus Marsh to 2041 (Mesh,2018)</i> which identifies the subject site in Precinct 21 on the Bacchus Marsh Residential Settlement Framework Plan.</p> <p>The preferred neighbourhood character of Precinct 21 is to (amongst other things) maintain generous setbacks around the dwelling, built form which occupies a low proportion of the site to allow for openness landscaping and vegetation to dominate the lots.</p>
Clause 12.03-1S	River and riparian corridors	<p>This policy in part states that design and site development should maintain and enhance the natural environment of waterway systems by:</p> <ul style="list-style-type: none"> • Minimising the visual intrusion of development on the natural landscape views from major roads, bridge crossings, public open space, recreation trails and within waterway systems themselves. • Ensuring development is visually subordinate to the local landscape setting, including, through the use of vegetation to filter views of development. <p>The site has been cleared of vegetation and it will take some time for new landscaping treatments to soften the impact of the dwelling when viewed from the river corridor landscape.</p>
Clause 15.01-2S Clause 15.01-2L-01	Building design	<p>The proposal does not respond to the objective of this policy as the proposed buildings and works do not respond to existing site conditions by retaining existing vegetation.</p> <p>Furthermore, the development does not provides landscaping that responds to its site context (adjacent to a river corridor).</p> <p>It is strategy to design, site and construct buildings and works to:</p> <ul style="list-style-type: none"> • Minimise the removal and disturbance of native vegetation. • Avoid buildings that create visually prominent bulk, scale and size in significant landscape areas. • Encourage the planting of indigenous vegetation to assist in screening development. <p>The proposed buildings and works do not minimise the</p>

		<p>disturbance of native vegetation as the site has been cleared of all vegetation (without a permit) to enable the proposed design.</p> <p>The proposed buildings and works are out of character due to the extensive site coverage, lack of screening to the river corridor and height (over 9m).</p> <p>The proposed buildings and work have inadequate screening to the river corridor (south) or the adjoining properties to the north and east.</p>
Clause 15.01-5L	Landscape and neighbourhood character	<p>The objective of this policy is to recognise, support and protect neighbourhood character, cultural identity, and sense of place.</p> <p>Proposal does not respond to the strategies within this policy as the proposed buildings and works have disregard for the underlying natural landscape character and significant vegetation which was present on site and removed without planning permission.</p> <p>Furthermore, the proposed buildings and works does not allow adequate space for tree planting to enhance the existing landscape as a priority.</p>

ZONE

Neighbourhood Residential Zone, Schedule 4 (NRZ4)

A permit is not required for the development of a single dwelling on a lot in accordance with Clause 32.09-2, Section 1.

OVERLAYS

Environmental Significance Overlay, Schedule 2 (ESO2) – Waterway protection.

A permit is required for buildings and works within the ESO2, being within 100m of the Werribee River. The ESO2 covers the whole of the subject property.

Environmental objectives to be achieved:

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

RELEVANT POLICIES

No relevant policies apply to this application.

Particular Provisions

No particular provisions apply to this application.

DISCUSSIONConsiderations:

Under the ESO and ESO2, when considering an application for buildings and works, the responsible authority must consider the decision guidelines as appropriate.

In addition to the decisions guidelines under the ESO and associated schedule, the decision guidelines pursuant to Clause 65.01 (Approval of an Application or Plan) of the Moorabool Planning Scheme must be considered before the responsible authority decides on an application. The following must be considered, effect on environment, State and Local Policy, the purpose of the overlay and any schedule, the orderly planning of the area, proximity of the land to public land, the extent and character of native vegetation and the likelihood of its destruction and whether native vegetation can be protected, planted or allowed to regenerate.

Neighbourhood character:

Clause 11.01-1L-02 (Bacchus Marsh) requires the responsible authority consider *Housing Bacchus Marsh to 2041 (Mesh,2018)* which identifies the subject site in Precinct 21 on the Bacchus Marsh Residential Settlement Framework Plan.

The preferred neighbourhood character of Precinct 21 is to (amongst other things) maintain generous setbacks around the dwelling, built form which occupies a low proportion of the site to allow for openness landscaping and vegetation to dominate the lots.

The proposal does not comply with neighbourhood character objectives as outlined in Clause 11.01-1L-02, Clause 15.01-2S, Clause 15.01-2L-01 and Clause 15.01-5L as:

- The proposed buildings and works are out of character due to extensive site coverage and a building height of 9m when compared to neighbouring and surrounding properties consisting of single dwellings of mostly single story height (approx. 3m).
- The proposed setbacks to the building and works (dwelling) do not provide adequate space for the significant planting of indigenous vegetation to assist in screening development, specifically the north, east and south due to the configuration of the dwelling and the extent of hardstand surfaces proposed.
- The proposed buildings and works do not allow adequate space for tree planting to enhance the existing landscape as a priority.
- The proposed buildings and work have inadequate screening to the river corridor (south) or the adjoining properties to the north and east.

Vegetation and landscaping:

Whilst a retrospective application for vegetation removal cannot be made for vegetation which has already been destroyed, the existing vegetation and vegetation characteristics of the area can be considered when considering the proposed buildings and works.

The site has recently been cleared of all vegetation which includes 27 native trees and shrubs, as such the proposed buildings and works do not minimise the disturbance of native vegetation.

The proposal does not respond to the strategies and objectives of the applicable State and Local Policies, the ESO and ESO2, and the decision guidelines at Clause 65. The following is considered relevant in this consideration:

- The proposal has disregard for the underlying natural landscape character and significant vegetation which was present on site and removed without planning permission.
- The proposed buildings and works do not provide adequate space for tree planting to enhance the existing landscape as a priority.
- The proposed built form occupies a large proportion of the site and does not allow for appropriate landscaping and vegetation to dominate the lot.
- The development does not complement the existing landscape environment, nor does the proposed concept landscape plan show appropriate landscaping.

Waterways Protection:

Clause 12.03-1S of the Moorabool Planning Scheme relating to River and riparian corridors states that design and site development should maintain and enhance the natural environment of waterway systems by minimising the visual intrusion of development on the natural landscape views from public open space and within waterway systems themselves. The policy also aims to ensure development is visually subordinate to the local landscape setting, including, through the use of vegetation to filter views of development, and ensuring development adjacent to waterways adopts high quality materials and respectful design and siting.

Objector concerns included that the height, bulk of the dwelling and vegetation removal have been considered and responded to throughout the report as appropriate.

GENERAL PROVISIONS

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

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

REFERRALS

Authority	Response
Council's Development Infrastructure	Consent with conditions.
Environment, Emergency and Waste Management	Consent.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

- Issue a Refusal to Grant a Planning Permit in accordance with the grounds in the recommendation of this report; or
- issue a Notice of Decision to Grant a Planning Permit with conditions. The Development Assessment Committee would need to consider what reasonable grounds there would be to approve the application.

CONCLUSION

The application for buildings and works does not meet the objectives and strategies outlined in the Environmental Significance Overlay, the State and Local Planning Policy or the preferred neighbourhood character statement (Precinct 21) included within the Housing Bacchus Marsh to 2041 (Mesh,2018).

8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS

9 UPDATE ON VCAT DECISIONS

10 OTHER BUSINESS

11 DATE OF NEXT MEETING

12 MEETING CLOSE