



AGENDA

Development Assessment Committee Meeting

Wednesday, 11 December 2024

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

Date: Wednesday, 11 December 2024

Time: 6.00pm

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

**Derek Madden
Chief Executive Officer**

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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

Development Assessment Committee Meeting Minutes 11 September 2024.

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 PA2024063 - DEVELOPMENT AND USE OF A DWELLING AND ANCILLARY OUTBUILDING AT SPRING LANE, SCOTSBURN

Author: Victoria Mack, Senior Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments:

1. Feature survey showing site contours (under separate cover)
2. Proposed plans (under separate cover)
3. Land Management Plan (under separate cover)

APPLICATION SUMMARY

Permit No: PA2024063

Lodgement Date: 21 May 2024

Planning Officer: Victoria Mack

Address of the land: Spring Lane, Scotsburn, Lot 2 on PS422149L

Proposal: Development and Use of a Dwelling and Ancillary Outbuilding

Lot size: 1.057ha

Why is a permit required? Clause 35.07 Farming Zone - Development and Use of a Dwelling and Ancillary Outbuilding

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Notice of Decision to Grant Planning Permit PA2024063 for the Development and Use of a Dwelling and Ancillary Outbuilding at Spring Lane, Scotsburn, known as Lot 2 on PS422149L, subject to the following conditions:

Endorsed plans:

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) An amended Land Management Plan (LMP) that includes a revegetation plan showing extended areas of native vegetation plantings across the site.

Land Management Plan:

2. A Land Management Plan to the satisfaction of the Responsible Authority must be endorsed as part of this permit and cannot be varied without the written consent of the Responsible Authority.
3. The subject land is to be maintained in accordance with the Land Management Plan for the site.

4. Before the issue of a Building Permit the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the *Planning and Environment Act 1987* (the Act) to the satisfaction of the Responsible Authority:
 - (a) Environmental management identified in the endorsed Land Management Plan must be undertaken on the land and must be in accordance with the Land Management Plan endorsed under Condition 2 of the Planning Permit and cannot be varied without the written consent of the Responsible Authority
 - (b) Before a Building Permit is issued for the dwelling, application must be made to the Register of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act and the owner must provide evidence of that registration of the Agreement to the Responsible Authority.
 - (c) The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.

Dwelling requirements:

5. Each dwelling or second small dwelling must be connected to a reticulated sewerage system 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.
6. The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for firefighting purposes.
7. The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.
8. Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.

Materials:

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

Native vegetation:

10. Unless exempt under Clause 52.17 or any other relevant provision of the Moorabool Planning Scheme, native vegetation must not be removed, destroyed or lopped without further planning approval.

Public Health:

11. An onsite wastewater management system with the capacity to treat effluent to a minimum of 20mg/L BOD, 30mg/L SS and 10orgs/100ml with chlorination, i.e., secondary treatment via an aerated wastewater treatment system must be installed.
12. Effluent disposal must be undertaken via subsurface irrigation system designed and installed by a wastewater irrigation expert in accordance with the EPA Code of Practice for Onsite Wastewater.
13. The effluent disposal area must be kept free of buildings, driveways, vehicular traffic and

services trenching.

14. All setback distances must be adhered to as dictated by Table 5 of the Code of Practice, Onsite Wastewater Management, EPA Publication Number 891.4.

Development Infrastructure:

15. Storm water drainage from the proposed buildings and impervious surfaces must be retained and disposed of with a legal point of discharge issued by the Responsible Authority. If applicable, overflows from on-site storage systems must be directed away from any wastewater disposal areas.
16. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991) and civil construction, building and demolition guide (EPA 2020).
17. Unless otherwise approved by the Responsible Authority there must be no buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
18. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's Asset Management identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority.

Permit expiry:

19. The permit will expire if:

- (a) The development and use are not started within two years of the date of this permit; or
 (b) The development is not completed within four years of the date of this permit.

Permit note:

Public Health: Prior to installation of works commencing on the wastewater system, a permit to install an onsite wastewater management system must be submitted to Environmental Health.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	No, as all properties within Spring Lane were notified.
Notice in Moorabool Newspaper:	Not applicable.
Number of objections:	Two.
Consultation meeting:	An onsite consultation meeting was held on 16th October 2024. The landowner was prepared to discuss amendments to the plan including the addition of screening such as vegetation, but no resolution was achieved between the parties.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 1: Healthy, inclusive and connected neighbourhoods**Priority 1.4: Develop a vision and provide opportunities for rural communities**

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, Central Highlands Water, Corangamite Catchment Management Authority, Council's Public Health and Development Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	A dwelling in the Farming Zone and site constraints with sloping topography.
Any discussions with applicant regarding concerns?	The applicant responded with more details and provided further justification for a dwelling in the Farming Zone.
Any changes made to the application since being lodged?	No.
Brief history.	Not applicable.
Previous applications for the site?	PA2021008 was a planning application for the Development and Use of a Dwelling. Four objections were received. The application was withdrawn. PA2001-281 was a planning application for the Development and Use of a Dwelling. The applicant did not provide the further information within the

	<p>prescribed time and the application was refused.</p> <p>A041998 was issued on 23 December 1998 authorising a re-subdivision of two existing lots.</p> <p>PA92/81 was issued on 11 May 1992 authorising a three lot subdivision.</p>
General summary.	<p>The application is for a dwelling and ancillary outbuilding in the Farming Zone. There is a small area of flat land in the southwest corner of the site suitable for a dwelling, but the balance of the site slopes down to a lake adjacent to the northern property boundary. The site constraints (including small lot size) limit productive agricultural use of the land.</p> <p>It is recommended that the application is supported with conditions.</p>
Summary of Officer's Recommendation	
<p>That the Development Assessment Committee, having considered all matters as prescribed by the <i>Planning and Environment Act 1987</i>, issue a Notice of Decision to Grant Planning Permit PA2024063 for the Development and Use of a Dwelling and Ancillary Outbuilding at Spring Lane, Scotsburn, known as Lot 2 on PS422149L, subject to conditions contained in this report.</p>	

SITE DESCRIPTION

The site and surrounding area comprise of a mixed settlement pattern of small lots sizes of 1ha containing dwellings and larger lots around 20ha, with some containing dwellings. The site and surrounds are within the Farming Zone.

The site is 1.057ha in area and is irregular in shape. It is located at the northern end of Spring Lane, which is a gravel no-through road for approximately 125m. The site has a significant slope with fall of approximately 20m to the lake edge located on the northern property boundary. There is a flat area of approximately 3,000sqm concentrated in the southwest corner.

The privately owned lake on the northern boundary, locally known as Back Lake, contains a designated waterway and has a surface area of approximately 3.45ha and is privately owned. A second water body abuts this lake to the northwest and is designated as crown land.



Figure 1: Aerial photograph

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

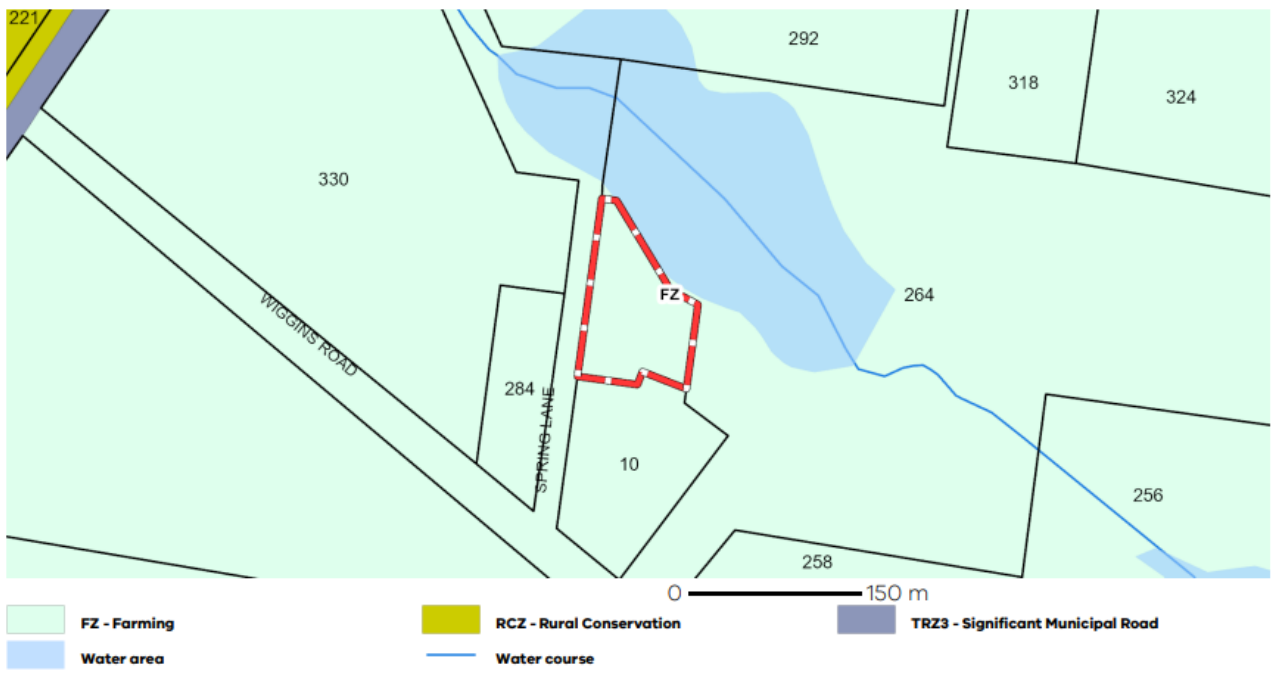


Figure 2: Zone Map

A Land Management Plan (LMP) was provided with the application. As the land is only 1.057ha, the LMP included weed control and revegetation to enhance the biodiversity of the site. Some of the native species nominated are not indigenous to the area. Two rain gardens would also be planted with native species.

HISTORY

- PA2021008 being for the Development and Use of a Dwelling. Four objections were received. The application was subsequently withdrawn.
- PA2001-281 being for the Development and Use of a Dwelling. The applicant did not provide the further information that was requested within the prescribed time and the application was refused.
- A041998 was issued on 23 December 1998 authorising a re-subdivision of two existing lots.
- PA92/81 was issued on 11 May 1992 authorising a three lot subdivision.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners. Two objections were received.

SUMMARY OF OBJECTIONS

Objection	Any Relevant Requirement
<p>We do not want another dwelling on Spring Lane as it would negatively impact our lifestyle, threaten our privacy and peace. New owners would be able to look directly into our yard and house. We moved here to enjoy the quiet solitude of being surrounded by farmland and out of sight from neighbours.</p> <p>We purchased and moved into our current home at 10 Spring Lane because of the location, the natural surrounds and lack of immediate neighbours. The zoning was a huge factor in our decision as we presumed that there would be no further housing development adjacent to our property.</p> <p>There is no place for an additional dwelling. Especially one whose owners have no intention of undertaking any sort of farming activity as described in the Shire's definition of a farming zone within this area.</p>	<p>Clause 35.07 Farming Zone</p>
<p>Officer's Response: A dwelling is a Section 2, permit required land use in the Farming Zone. Dwellings can be established in the Farming Zone dependant on the site context and in consideration of the decision guidelines in Clause 35.07. The Farming Zone does not prohibit residential dwellings.</p>	
<p>The proposed dwelling will negatively affect our outlook and our views.</p> <p>The view lines of adjacent properties will be affected. The proposed construction will be clearly</p>	<p>Clause 35.07 Farming Zone</p>

<p>visible from many parts of my property not to mention the increased noise emanating from the activity within the proposed dwelling and shed. It will also be clearly visible from each adjacent property.</p>	
<p>Officer's Response: The Moorabool Planning Scheme does not have policies that relate to protection of views. The location of the proposed dwelling and large setbacks to the nearest adjacent dwelling provides surrounding properties with distant views.</p>	
Objection	Any Relevant Requirement
<p>Increased traffic on Spring Lane means that my three children will not be able to use the lane safely and their physical exercise will be limited, and our outside activities such as walking, horse-riding or biking in the lane, accessing the dam at the end of the lane to fish and swim will be curtailed. This will have a devastating for our family.</p> <p>The additional traffic and risk of people entering our property is increased and this is of concern for safety and security for both my animals and my family.</p>	
<p>Officer's Response: One new dwelling does not create a traffic risk or safety concerns and the site has an abuttal to a named, unmade roadway, Spring Lane.</p>	
Objection	Any Relevant Requirement
<p>The noise and disruption caused through the building of the dwelling is major concern.</p>	EPA Guidelines
<p>Officer's Response: Noise from the construction phase is controlled by the EPA Guidelines including start times of machinery.</p>	
Objection	Any Relevant Requirement
<p>Our privacy is at risk, and we will need to consider substantial upgrades to current security measures to feel safe in our home. It is unfair to expect surrounding properties to make these expensive and substantial changes.</p>	
<p>Officer's Response: A single storey dwelling cannot cause an invasion of privacy to adjacent properties. A new dwelling creates opportunities for passive surveillance which assists with the safety of residents.</p>	
Objection	Any Relevant Requirement
<p>The proposed dwelling will negatively affect the resale of our property in the future. There is no aspect of our lives that will not be negatively impacted by this development.</p>	

<p>One of the most concerning aspects of this proposal is the immediate and irreversible impact on the value of adjacent properties. The area is attractive for any future buyers because of its low-density housing and quiet surrounds. Any additional construction will drive the market value of adjacent properties down as it would alter the whole feel and look of the area.</p>	
<p>Officer's Response: Effects on property values is not a valid planning consideration as demonstrated in VCAT case law.</p>	

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 02.03-1 – Settlement
- Clause 02.03-4 – Natural resource management
- Clause 11.01-1S – Settlement
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.03-3S – Peri-Urban Areas
- Clause 12.03-1S – River and riparian corridors, waterways, lakes, wetlands and billabongs
- Clause 13.03-1S – Floodplain Management
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.01-1L – Agriculture, rural dwellings and subdivision
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-2S – Water quality
- Clause 15.01-6S – Design for rural areas
- Clause 16.01-3S – Rural residential development
- Clause 16.01-3L-01 – Rural residential development in Moorabool

The proposal complies with the relevant sections of the PPF and LPPF, with comments on the clauses outlined in the table below:

MPS	Title	Response
Clause 02.03-4	Natural resource management: Agriculture and Declared Special Water Supply Catchments.	The dwelling with a LMP provides a land use option on steep land within a small lot size. The site has very limited agricultural potential due to lot size.
PPF	Title	Response
Clause 14.01-1S	Protection of agricultural land.	The site is an isolated lot with an area of 1.057ha. Most of the site slopes steeply to the north and is generally unsuitable for agriculture. There is no opportunity to consolidate the lot with adjoining agricultural or farming land. In this context it is considered that a LMP is acceptable and allows for environmental improvement.

Clause 14.01-1L	Agriculture, rural dwellings and subdivision.	The land size is generally unsuitable for agricultural activities. The proposal would not adversely affect or constrain existing farms and their operations.
Clause 16.01-3S	Rural residential development	The LMP provides an opportunity for the revegetation of sloping land.
Clause 16.01-3L-01	Rural residential development in Moorabool.	The proposal will not lead to a proliferation of dwellings in the area as they are already present in the immediate vicinity. The application responds to environmental and physical constraints. The development does not restrict agricultural and horticultural production on surrounding properties.

ZONE

Farming Zone (FZ)

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

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

OVERLAYS

Environmental Significance Overlay, Schedule 2 (ESO2)

The dwelling and shed would not be located within the area covered by the ESO2 and a permit is not triggered under this overlay.

Design and Development Overlay, Schedule 2 (DDO2)

Pursuant to Clause 43.02-2, Schedule 2 of the Moorabool Planning Scheme a permit is not required to construct a building or construct or carry out works where all external walls and roof areas are clad with non-reflective materials.

RELEVANT POLICIES

Rural Land Use Strategy

Council adopted the Rural Land Use Strategy (RLUS) at the Special Meeting of Council on 11 September 2024 after consultation in August This is a seriously entertained planning policy.

The subject site is in Precinct Policy Area 3 - Mixed rural and broad acre agriculture.

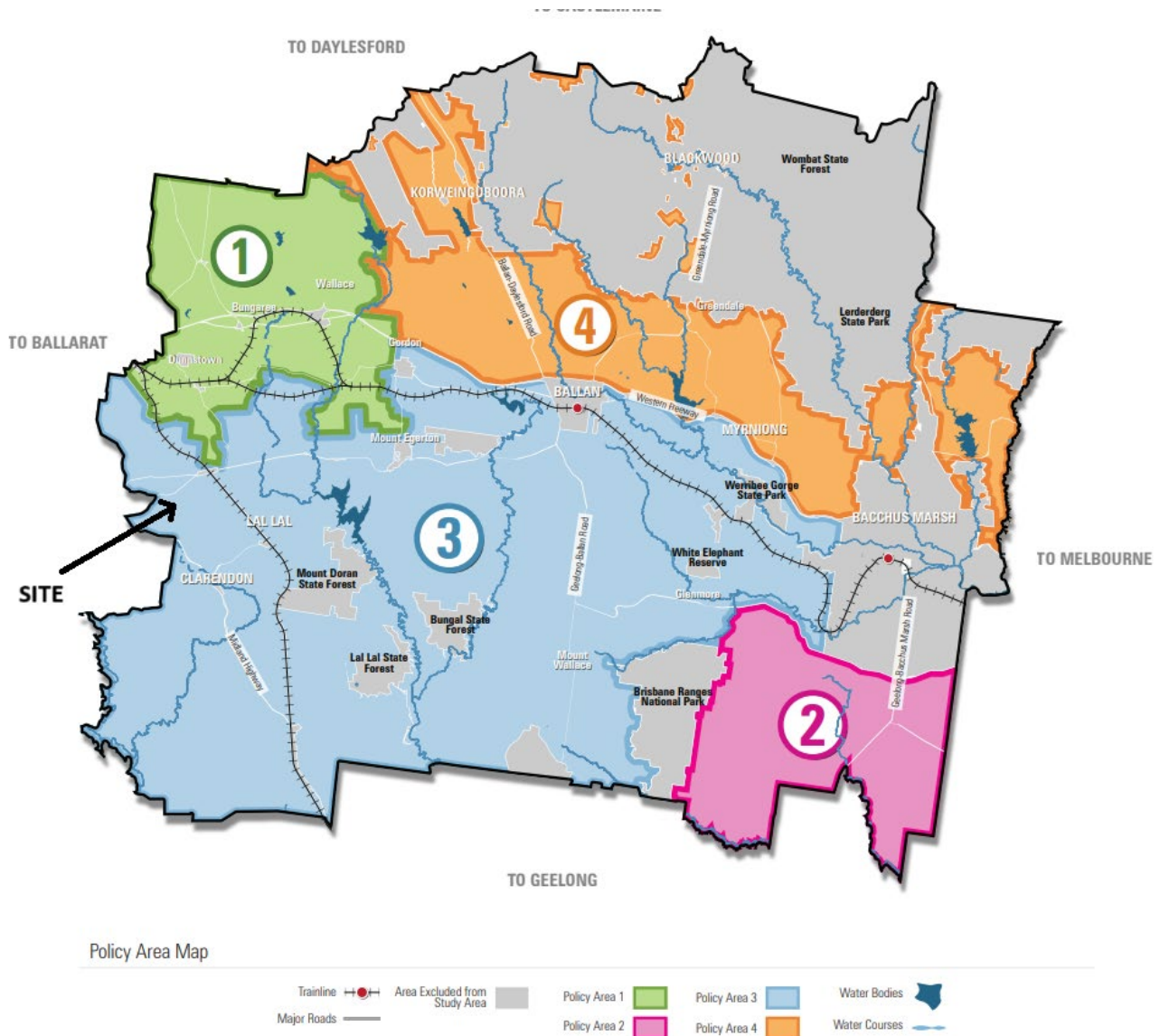


Figure 4: Site in relation to RLUS Area 3.

The description of this precinct includes:

‘... Area 3 has the potential to support a diverse mix of agricultural activities, but more aligned to broadacre cropping and grazing activity. This is assisted by Area 3 having less land fragmentation overall and the largest rural allotments (i.e., 80+ ha) being located through the centre, south and southwest. Large scale farming and agricultural activities which benefit from available lot size will be considered the highest priority for Area 3. The potential approval of new dwellings in the Farming Zone (FZ) will only be supported where there is a direct relationship with farming or when a legitimate environmental benefit will be achieved on the site.’

In this instance, a legitimate environmental benefit through a LMP would justify a dwelling in this location.

PARTICULAR PROVISIONS

No relevant provisions.

DISCUSSION

The subject site is 1.057ha with a flat area of approximately 3,000sqm in the southwest corner of the site. The flat part of the site is where the dwelling with the associated wastewater treatment system and ancillary outbuilding would be located.

The balance of slopes steeply down to the large lake on the northern boundary.

The site is in the Farming Zone, but the small land size and steep terrain make it generally unsuitable for productive agricultural use. The option of consolidation with a larger agricultural holding would appear unlikely as same adjacent lots already contain dwellings.

In this application the size and slope of the site precludes it from agricultural or horticultural enterprises. The option is where an environmental benefit can be achieved. In considering this application, the LMP included revegetation with native species, weed control and more generally biodiversity enhancement would provide for environmental benefits. The revegetation plan as submitted has scope for amendments and can be revised to broaden the scope of the native vegetation plantings. This can be addressed through the submission of revised plan.

The site is unique in Scotsburn due to its size and topography. These site constraints support a dwelling, but these characteristics do not apply to nearby vacant lots which have larger land areas and less site constraints and therefore should be retained for farming purposes. It is considered a dwelling on this lot will not lead to a proliferation of dwellings in the area with existing planning scheme restrictions on minimum areas for subdivision preventing the creation of small vacant lots in the Farming Zone.

The proposal is consistent with the Rural Land Use Strategy due to the small lot size which is generally not typical of Area 3 and the proposal will include legitimate environmental benefits through the implementation of the LMP.

Two objections were received which are unable to be resolved through permit conditions while it is not expected one new dwelling will create any traffic or invasion privacy concerns. The new dwelling is well separated from these adjacent dwellings.

In this instance it is considered that the use of the land for a dwelling and ancillary outbuilding in association with a native species revegetation plan is a suitable use for this small allotment and should be supported.

GENERAL PROVISIONS

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

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

REFERRALS

Authority	Response
Central Highlands Water	Consent, no conditions.
Corangamite CMA	No objection, no conditions.
Council's Development Infrastructure	Consent with conditions.
Council's Public Health	Consent with conditions.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

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

COMMUNICATIONS STRATEGY

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

OPTIONS

That the Development Assessment Committee could consider the following options:

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

CONCLUSION

The site is an isolated small lot in the Farming Zone with an area of 1.057ha with the majority of the site comprised of significant sloping land. The site has limited farming potential and cannot be readily consolidated with adjacent properties. Due to the site constraints and with the implementation of a LMP to improve the environmental value of the area, the application is recommended for approval.

7.2 PA2024099 - USE AND DEVELOPMENT OF A WAREHOUSE AND A REDUCTION OF CAR PARKING (ONE CAR SPACE) AT 21 OSBORNE STREET, MADDINGLEY

Author: Thomas Tonkin, Senior Statutory Planner
Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development
Attachments: 1. Proposed plans (under separate cover)

APPLICATION SUMMARY

Permit No: PA2024099
Lodgement Date: 23 July 2024
Planning Officer: Tom Tonkin
Address of the land: 21 Osborne Street, Maddingley
Proposal: Use and Development of a Warehouse and a Reduction of Car Parking (one car space)
Lot size: 562sqm
Why is a permit required? Clause 33.02 Industrial 2 Zone – Use and Development for a Warehouse; Clause 52.06 Car Parking – Reduction of Car Parking

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue Planning Permit PA2024099 for Use and Development for a Warehouse and a Reduction of Car Parking (one car space) at Lot 1 on PS 728385S known as 21 Osborne Street, Maddingley, subject to the following conditions:

Endorsed Plans:

1. Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) A crossover to McPherson Street aligned with the proposed vehicle roller door to the warehouse building.
 - (b) Landscape plan in accordance with condition 12 contained herein.
2. Unless otherwise approved in writing by the Responsible Authority, all buildings and works must be constructed or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority.

Use:

3. The use of the site must comply with the requirements of Clause 53.10 (Uses with Adverse Amenity Potential) of the Moorabool Planning Scheme or separate planning approval obtained.

Operational:

4. A minimum of four onsite car spaces must be provided in accordance with the endorsed plans and always be available for car parking to the satisfaction of the Responsible Authority.
5. The loading and unloading of goods and materials from vehicles must only be carried out on the land.
6. Provision must be made within the warehouse for the storage and collection of garbage and other solid waste. Skip bins must not be located external to the building.

Amenity:

7. The amenity of the area must not be detrimentally affected by the use or development, through the:
 - (a) Transport of materials, goods or commodities to or from the land;
 - (b) Appearance of any building, works or materials;
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - (d) Presence of vermin; or
 - (e) Any other way.
8. Effective noise levels from the use of the premises must not exceed the recommended levels as set out in the Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011) or as amended.
9. External lighting must be provided with suitable baffles and located so that no direct light is emitted outside the site.
10. Any security alarm or similar device installed must be of a silent type.
11. Goods, equipment or machinery must not be stored or left exposed in a position that can be seen from the street.

Landscape Plans:

12. Before the use and development starts, 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 and must show:
 - (a) Details of surface finishes of the accessway.
 - (b) A planting schedule which must incorporate a mix of trees, shrubs and ground covers and include botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. All proposed trees must have a minimum planting height of 1.5m.
 - (c) Landscaping and planting within all open areas of the site.
 - (d) Details of raingardens or other environmentally sustainable landscaping works.Species selection must include indigenous species and shall be to the satisfaction of the Responsible Authority.

13. Before the occupation of the development starts or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
14. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

Signage:

15. Except where exempt under the Moorabool Planning Scheme, advertising signage must not be constructed or displayed without separate planning approval.

Development Infrastructure:

16. Prior to the occupation of the development, new industrial vehicle crossings must be provided on Osborne Street and McPherson Street to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossings with any redundant crossings being removed and restored to the satisfaction of the Responsible Authority. The industrial vehicle crossings must be generally in accordance with Standard Drawing 250 of the Infrastructure Design Manual unless an alternative design is approved under the vehicle crossing permit.
17. Unless otherwise approved by the Responsible Authority there must be no buildings, trees, structures, or improvements located over any drainage pipes and easements on the property.
18. Prior to the development and use commencing, engineering drainage plans and computations must be submitted to the Responsible Authority for approval and shall incorporate the following:
 - (a) The development as a whole must be self draining and must be connected to an approved point of discharge in an approved manner to the satisfaction of the Responsible Authority.
 - (b) Volume of water discharging from the development in a 10% AEP storm shall not exceed the 20% AEP storm prior to development. Peak flow must be controlled using a detention system located and constructed to the satisfaction of the Responsible Authority.
 - (c) Overland 1% AEP flow path(s) for the development must be shown on layout plans and shall ensure that no property is subject to inundation by such a storm to the satisfaction of the Responsible Authority.
19. Stormwater runoff must meet the "Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)".
20. Storm water drainage from the proposed buildings and impervious surfaces must be directed to the legal point of discharge to the satisfaction of the Responsible Authority. A Stormwater Point of Discharge permit must be obtained from the Responsible Authority prior to the commencement of the works associated with the permit.
21. Prior to the use commencing, the car park areas must be constructed with an all-weather surface, line-marking and drainage to the satisfaction of the Responsible Authority, and shall incorporate the following:
 - (a) Parking bays and aisle widths of the car park shall comply with Clause 52.06-9 of the

Moorabool Planning Scheme. Disabled Parking bays shall comply with Australian Standard AS2890.1:2009 Off-Street Parking for People with Disabilities.

- (b) The parking areas shall be provided with an all-weather surface and associated drainage.
 - (c) Concrete kerb of a minimum height of 150mm must be provided between landscaped areas and areas provided for parking and the passage of vehicles.
22. The building shall be provided with disabled access in accordance with the provisions of AS1428 – Design for Access and Mobility.
23. Prior to the works commencing on the development, notification including photographic evidence must be sent to Council’s Infrastructure Services identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority. If photographic evidence cannot be provided, then the damage must be fully reinstated at no cost to and to the satisfaction of the Responsibility Authority.
24. Sediment discharges must be restricted from any construction activities within the property in accordance with the relevant Guidelines including “Construction Techniques for Sediment Control” (EPA 1991) and “Environmental Guidelines for Major Construction Sites” (EPA 1995).

Permit Expiry:

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

PUBLIC CONSULTATION	
Was the application advertised?	Exempt from notice provisions.
Notices on site:	No.
Notice in Moorabool Newspaper:	No.
Number of objections:	None.
Consultation meeting:	Not applicable.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

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 – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, Council's Development Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	No.
Any discussions with applicant regarding concerns?	Not applicable.
Any changes made to the application since being lodged?	No.
Brief history.	Not applicable.
Previous applications for the site?	PA2022093 was issued on 15 August 2022 authorising Development and Use of a Restricted Recreation Facility (Gymnasium) and Display of Floodlit Business Identification Signage. PA2018270 was issued 19 June 2019 authorising a warehouse development. PA2015019 was issued on 19 May 2015 authorising a Development and Use of a Restricted Recreation Facility (Personal Training Centre) and Two (2) Lot Subdivision.
General summary.	It is proposed to develop the site for a warehouse and reduce the car parking requirement by one car space. The proposal satisfies all of the relevant planning provisions and is site responsive. The proposed reduction of car parking is acceptable considering the warehouse use of the building and on-street parking demand.

	The proposal complies with the Industrial 2 Zone provisions and is recommended for approval, subject to conditions.
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 Planning Permit PA2024099 for use and development for a warehouse and a reduction of car parking (one car space) at 21 Osborne Street, Maddingley, subject to the conditions contained within this report.	

SITE DESCRIPTION

The site and surrounding area are in the Industrial 2 Zone. To the north, fronting Osborne Street are several single dwellings. To the west, fronting McPherson Street, is a 4.5m high building constructed to the east, north and west boundaries occupied by a personal training studio, with car parking in the front setback. To the south, across McPherson Street, is a motor repairs business and a disused industrial building. To the east, across Osborne Street, is vacant land.

All reticulated services are available to the site.

The subject site is identified as Lot 1 on PS 728385S and known as 21 Osborne Street, Maddingley, and is located on the northwest corner of Osborne and McPherson Streets. The site is 562sqm in area and is a trapezoid shape with a 20.12m frontage to Osborne Street and 26.32m frontage to McPherson Street. The site is vacant, has no vegetation and falls by less than 1.0m from west to east, and is encumbered by a 2.0m wide sewerage easement parallel to the north boundary.



Figure 1: Aerial Photograph

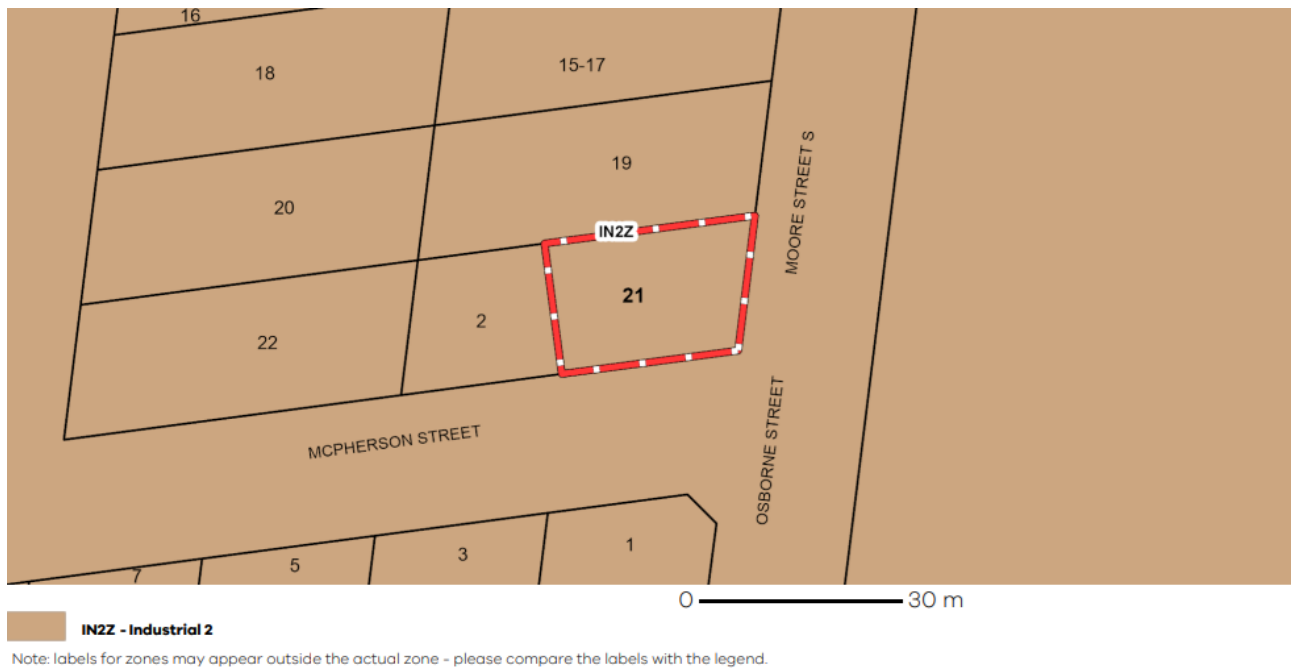


Figure 2: Zone Map

PROPOSAL

It is proposed to use and develop the site for a warehouse. The proposed building would be 276.7sqm, in area and would include an ancillary office space, toilet, kitchenette and internal loading bay 3.6m wide x 8.8m long. The building would have a frontage to Osborne Street, with four car spaces provided in the front setback accessed and a new crossover would be required to facilitate formal vehicle access. The building is proposed to be built to the west boundary and set back 1m from McPherson Street, 2m from the north boundary and between 9.52m - 14.59m from Osborne Street. The building is proposed to be contemporary in appearance consisting of concrete panel walls with a painted finish and incorporating a rendered cement sheet clad treatment to the primary pedestrian entry. Landscaping is proposed in the front and side setbacks areas.



Figure 3: Proposed site/floor plan

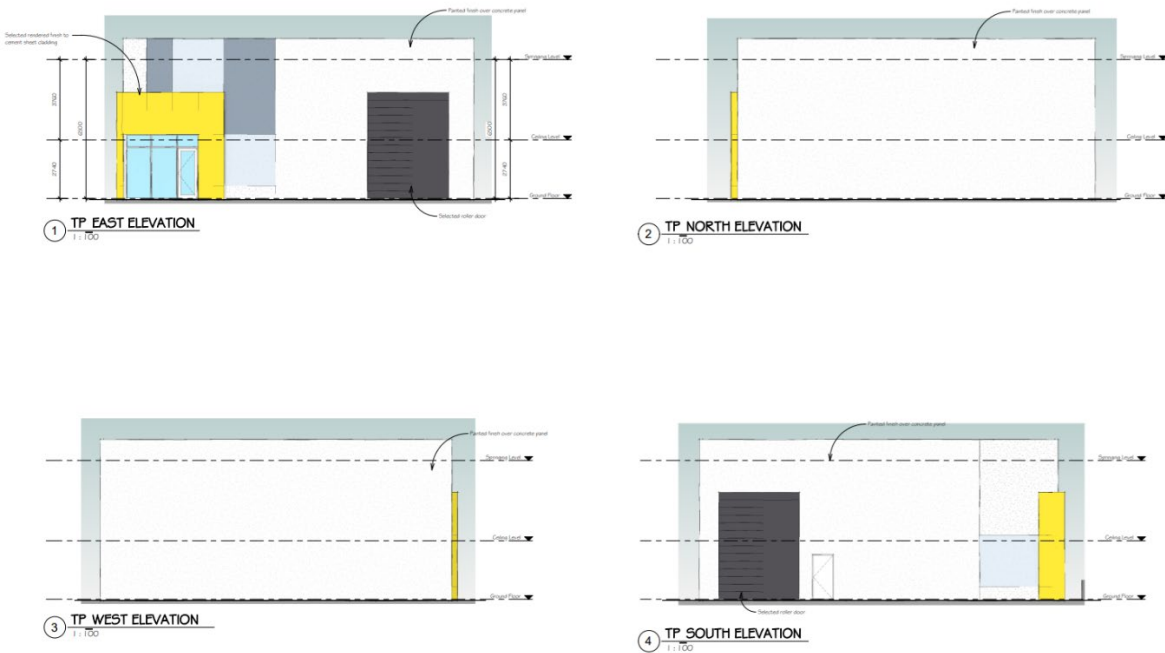


Figure 4: Proposed elevations

BACKGROUND TO CURRENT PROPOSAL

The current proposal is almost identical to a previous application for a warehouse development, PA2018270, for which a permit was granted by the Development Assessment Committee on 19 June 2019. The permit was not acted on and has expired.

HISTORY

In addition to the abovementioned planning permit, the following planning permits have also been issued for the site:

- PA2015019 for Development and Use of a Restricted Recreation Facility (Personal Training Centre) and Two (2) Lot Subdivision was approved on 19 May 2015. The subject site was created by the approved subdivision and the Restricted Recreation Facility was completed and is now known as 2 McPherson Street, Maddingley.
- PA2022093 for Development and Use of a Restricted Recreation Facility (Gymnasium) and Display of Floodlit Business Identification Signage was approved on 15 August 2022. The approved use and development have not commenced, and the permit has expired.

PUBLIC NOTICE

Under Clause 33.02 an application for use or development is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act. Under Clause 52.06-4 an application under Section 52.06-3 for a reduction of car parking is also exempt from the notice requirements.

PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 02.03-1 – Settlement, including Bacchus Marsh
- Clause 02.03-5 – Built environment and heritage
- Clause 02.03-7 – Economic development, including Local employment
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.01-1L-02 – Bacchus Marsh
- Clause 11.03-3S – Peri-urban areas
- Clause 13.07-1S – Land use compatibility
- Clause 15.01-1S – Urban design
- Clause 15.01-2S – Building design
- Clause 15.01-2L-02 – Industrial development
- Clause 17.01-1S – Diversified economy
- Clause 17.01-1R – Diversified economy - Central Highlands
- Clause 17.02-1S – Business

Subject to conditions the proposal complies with the relevant sections of the Municipal Planning Strategy and Planning Policy Framework.

ZONE

Industrial 2 Zone (IN2Z)

Under Clause 33.02-1 a permit is required for the use of a warehouse and under Clause 33.02-4 for buildings and works associated with the proposed use.

OVERLAYS

The subject site is not affected by any overlays.

Relevant Policies

The Moorabool Industrial Areas Strategy, 2015 is a reference document in the Moorabool Planning Scheme. The Strategy's key recommendations are not directly relevant to the current proposal, and the proposal would not prejudice the implementation of any of the recommendations.

The site is located outside of the specific car parking precinct for the Bacchus Marsh Industrial Area identified in Council's Parking Provision and Management Policy (July 2023).

Particular Provisions

Clause 52.06 Car Parking

Under Clause 52.06-5 a warehouse requires two car spaces plus 1.5 car spaces to each 100sqm of proposed net floor area. The proposed net floor area equates to five (5) car spaces whereas four (4) car spaces are proposed, therefore a reduction of one (1) car parking space is required.

Clause 52.34 Bicycle Facilities

There is no specified requirement for the provision of bicycle facilities for a warehouse, and no bicycle facilities are proposed.

Clause 53.10 Uses with Adverse Amenity Potential

Detailed information about the use of the proposed warehouse is unknown with no listed end user.

Clause 53.18 Stormwater Management in Urban Development

Subject to conditions the proposal meets the provisions of this clause.

DISCUSSION

The subject site is in an established industrial precinct in Maddingley with all utilities available. The proposed use for a warehouse is generally consistent with the surrounding mix of industrial land uses.

Clause 15.01-2L-02 - Industrial development

The proposed development is generally consistent with Council's policy for industrial development at Clause 15.01-2L-02 of the Moorabool Planning Scheme. The building footprint would be 49.23% of the total site area, less than Council's policy guideline of maximum 60%. External building materials and finishes would complement the area and be non-reflective. The varied front setback of 12.14m to 17.2m would accommodate car parking and easily satisfy the preferred minimum 7.5m setback requirement. Proposed landscaping would be integrated with the car parking areas to complement the streetscape and soften the site appearance and would contribute to 20% site coverage, exceeding the policy guideline preferred minimum of 10%.

The design response is generally site responsive and would complement the surrounding industrial area. It is recommended that a condition of approval require a landscape plan to be submitted for endorsement.

Clause 33.02 Industrial 2 Zone

The proposal is generally consistent with the Industrial 2 Zone provisions.

The proposed building would be contemporary in appearance and would be consistent with the zoning of the area. The proposal supports consolidated growth of the Shire's largest township and would contribute to local economic growth, in particular catering to the local demand for warehouse facilities.

Whilst the specific future warehouse use is unknown at this stage, subject to conditions there would be no detrimental amenity impacts. The surrounding road network can readily accommodate traffic associated with the development. The proposed streetscape presentation would provide for landscaped areas in the front setback capable of being planted to complement and soften the appearance of the built form. The proposed design and front façade of the building are well articulated and remain generally consistent with the scale of nearby industrial buildings. Provision of detailed stormwater management information is recommended as a condition of approval, in accordance with the requirements of Council's Development Infrastructure

Clause 52.06 Car Parking

A reduction of one (1) car space is required based on the statutory rate for a warehouse use.

The proposed parking provision is deemed to be adequately responsive to the proposed use, site features and physical context. Recent car parking assessments received by Council show that for warehouses of less than 500sqm in size the average car parking demand for the proposal would be three car spaces. Consequently, the proposed provision of four car spaces would be sufficient to accommodate the expected car parking demand.

Furthermore, nearby on-street parking is currently in low demand and would include two on-street spaces along the McPherson Street frontage of the site with additional space directly opposite on Osborne Street. There is also a local bus route 330m away providing a connection to the Bacchus Marsh Railway Station.

Overall, there is sufficient evidence to demonstrate that proposed on-site car parking spaces are likely to cater to the anticipated demand, with on-street parking available if overflow parking is required. Council's Development Infrastructure consented to the proposed car parking reduction.

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.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation to approve this application has no risk or OH&S implications for Council.

COMMUNICATIONS STRATEGY

No notice was undertaken for the application, in accordance with the exemptions in the Moorabool Planning Scheme outlined above. The applicant was invited to attend this meeting and to address the Development Assessment Committee if required.

OPTIONS

- Issue a Planning Permit in accordance with the conditions in the recommendation of this report; or
- issue a Refusal to Grant a Permit on grounds. The Development Assessment Committee would need to consider what reasonable grounds there would be to refuse the application. This option may result in the applicant appealing the Committee's decision to VCAT.

CONCLUSION

The proposal is generally in accordance with the relevant planning policies, particularly the Planning Policy Framework, Industrial 2 Zone provisions and Particular Provisions for car parking at Clause 52.06 of the Moorabool Planning Scheme. The proposed warehouse would contribute to the growth of the local economy and is designed to avoid any detrimental off-site impacts. The proposed car parking reduction of one car space is deemed to be acceptable based on the anticipated car parking demand. The layout of proposed car parking space and access would provide for safe and functional movements to and from the site. It is recommended that the application be approved, subject to conditions.

7.3 PA2019216-2 PLANNING PERMIT AMENDMENT AT 148C & 150A INGLIS STREET, BALLAN**Author:** Thomas Tonkin, Senior Statutory Planner**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development**Attachments:** Nil**APPLICATION SUMMARY****Permit No:** PA2019216-2**Lodgement Date:** 16 September 2024**Planning Officer:** Tom Tonkin**Address of the land:** 148C & 150A Inglis Street, Ballan**Proposal:** An amendment to the permit preamble to change the approved land use from offices to shops and reduce the car parking requirement by an additional one (1) car space.**Lot size:** 773sqm**Why is a permit required?** Clause 52.06 – Reduction of car parking**RECOMMENDATION**

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue an Amended Planning Permit PA2019216-2 to allow for the change of approved land use from offices to shops and reduction of the car parking requirement by an additional one (1) car space at 148C & 150A Inglis Street Ballan, subject to the following amendments:

1. Amend the permit preamble to read as follows:

Development of Three (3) Shops and One (1) Dwelling, Use and Development of Two (2) Dwellings and a Reduction of Car Parking (13 Car Spaces).

2. Amend the address of the land to reflect the current title details with street numbering remaining unchanged, as follows: Lots 4 and 6 on PS 829390M.
3. Amend Condition 2(a) to read as: Before the issue of a Certificate of Occupancy, a payment per car space waived under planning permit PA2019216 or subsequent amendments must be paid to Moorabool Shire Council as a financial contribution towards car parking.

PUBLIC CONSULTATION	
Was the application advertised?	No as exempt under the planning scheme.
Notices on site:	No.
Notice in Moorabool Newspaper:	No.

Number of objections:	None.
Consultation meeting:	Not applicable.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 2: Liveable and thriving environments

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 – Tom Tonkin

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

EXECUTIVE SUMMARY

Application referred?	Yes, to Council's Development Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	None.
Any discussions with applicant regarding concerns?	No.
Any changes made to the application since being lodged?	No.
Brief history.	Partially commenced mixed use development occupies the subject site.
Previous applications for the site?	PA2017281 was issued on 9 November 2018 for Six Lot Staged Subdivision, Development of Four Dwellings and Vegetation Removal. The approved subdivision, vegetation removal and development of one dwelling were completed.

	<p>PA2019216 was issued on 21 January 2021 for Development of Three (3) Offices and One (1) Dwelling, Use and Development of Two (2) Dwellings and a Reduction of Car Parking (12 Car Spaces).</p> <p>PA2019216-1 was issued on 26 March 2024 approving a correction to conditions 2 and 3 of the permit.</p>
General summary.	<p>The applicant proposes to amend the permit preamble to change the approved commercial land use from offices to shops, with a consequential change to the car parking reduction, from 12 to 13 car spaces due to the car parking calculations at Clause 52.06 (Car Parking).</p> <p>The proposal is generally consistent with the relevant provisions of the Moorabool Planning Scheme, and it is recommended that the amendment application be supported with an amended permit preamble and amended permit conditions.</p>
Summary of Officer's Recommendation	
<p>That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i>, the Development Assessment Committee issue an Amended Planning Permit PA2019216-2 to allow for the change of approved land use from offices to shops and consequential reduction of the car parking requirement by one (1) additional space, subject to the conditions contained within this report.</p>	

SITE DESCRIPTION

The site and surrounding land to the east, west and south is in the Commercial 1 Zone. To the west, fronting Inglis Street, is the former Ballan Times Printing Office. To the east, fronting Inglis Street, is a double storey building approved for retail/office space at ground level and a dwelling on the upper storey. Land to the north is in the General Residential Zone, comprising vacant residential lots accessed via the common property. To the south, across Inglis Street, is a hotel, retail premises and a two-storey building comprising an office at ground level and a dwelling on the upper storey. The Inglis Street road reserve is in the Transport Zone 2.

The subject site is located on Inglis Street roughly equal distance from Fiskin and Cowie Streets to the east and west respectively and has a total area of 773sqm. The site has a slight fall from south to north and is currently vacant. Vehicle access to the site is via a common property accessway to Simpson Street to the north.

The site comprises two lots identified as follows:

- Lot 4 on PS 829390M, known as 150A Inglis Street Ballan, an irregular shape with an 11.73m frontage to Inglis Street, maximum depth of 40.6m and area of 481sqm.
- Lot 6 on PS 829390M, also known as 148C Inglis Street Ballan, a rectangular shape with a 6.62m width, 44m depth and area of 292sqm.



Figure 1: Aerial photograph

- [COMMERCIAL 1 ZONE \(C1Z\)](#)
- [SCHEDULE TO THE COMMERCIAL 1 ZONE \(C1Z\)](#)
- [GENERAL RESIDENTIAL ZONE \(GRZ\)](#)
- [GENERAL RESIDENTIAL ZONE - SCHEDULE 4 \(GRZ4\)](#)

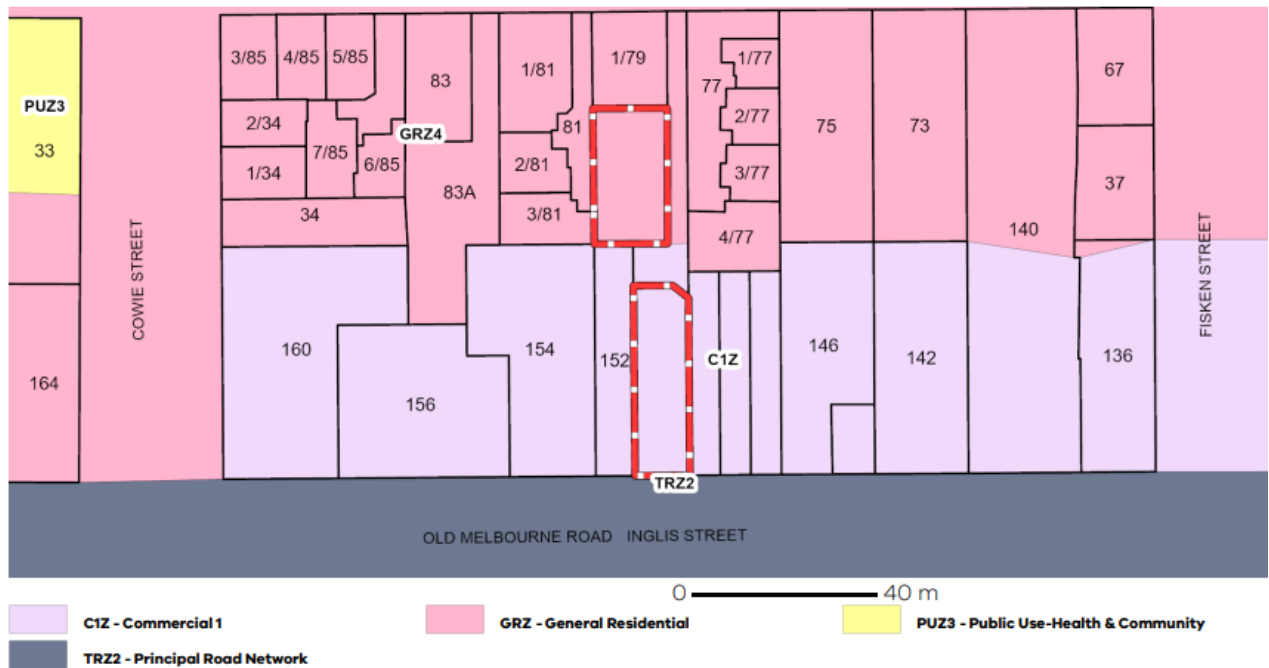


Figure 2: Zone map

PROPOSAL

It is proposed to amend planning permit PA2019216 as follows:

- Amend the permit preamble to change the use of development (on the ground floor) from three offices to three shops; and consequently
- Amend the car parking reduction from the approved 12 spaces to 13 car spaces.

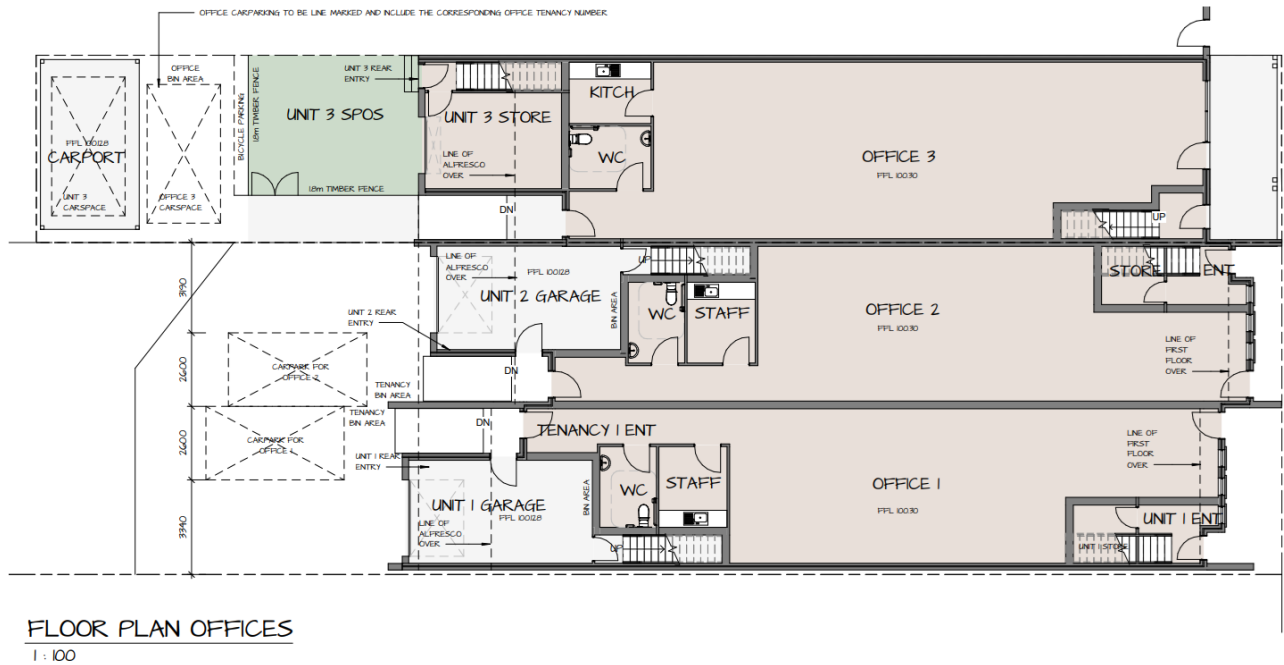


Figure 3: Current ground floor plan.

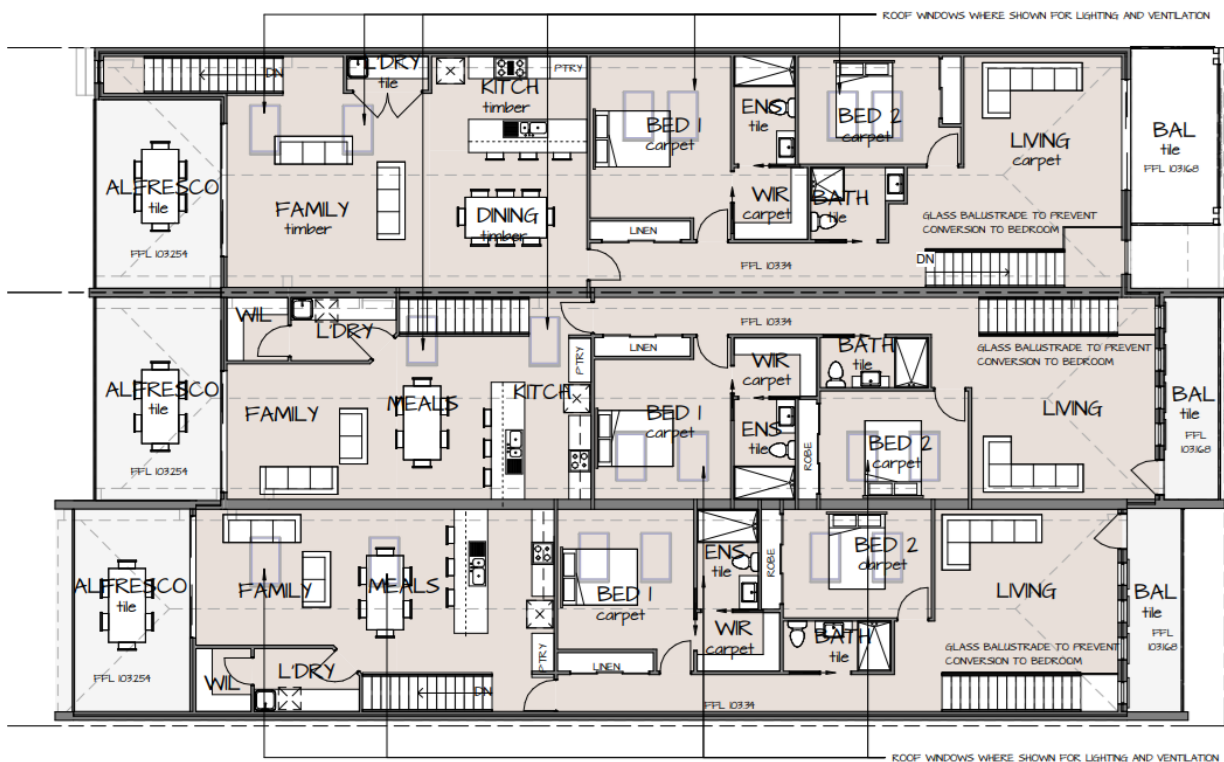


Figure 4: Current first floor plan.

BACKGROUND TO CURRENT PROPOSAL

Not applicable.

HISTORY

On 16 December 2020, Council's Development Assessment Committee (DAC) issued a Notice of Decision to Grant a Permit for Development of Three (3) Offices and One (1) Dwelling, Use and Development of Two (2) Dwellings and a Reduction of Car Parking (12 Car Spaces). The permit was issued on 21 January 2021. The only component of the development undertaken thus far is construction of the common property accessway to Simpson Street. The permit was amended on 26 March 2024 to correct clerical errors and on 18 October 2024 to extend the expiry time for the development to be completed by 21 January 2027.

It is further noted that as a result of the subdivision approved under PA2017281 that the title details of the subject site have changed since the original permit was issued and can be updated as part of this permit amendment request.

PUBLIC NOTICE

The proposed increase to the car parking waiver from 12 to 13 car spaces requires a permit under Clause 52.06-3 of the Moorabool Planning Scheme.

Under Clause 52.06-4, the application is exempt from the applicable notice requirements, decision requirements and review rights under the *Planning and Environment Act 1987*.

PLANNING SCHEME PROVISIONS

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

The relevant clauses to the amendment are:

- Clause 02.03-1 – Settlement – Ballan
- Clause 02.03-7 – Economic development
- Clause 11.03-1S – Activity centres
- Clause 11.03-1L – Activity centres
- Clause 11.03-3S – Peri-urban areas
- Clause 17.01-1S – Diversified economy
- Clause 17.01-1R – Diversified economy - Central Highlands

ZONE

Commercial 1 Zone

The proposed amendments do not trigger any further approval under the zone.

OVERLAYS

Environmental Significance Overlay, Schedule 1

The proposed amendments do not trigger any further approval under this overlay.

Relevant Policies

Council's Parking Provision and Management Policy (July 2023).

Particular Provisions

Clause 52.06 Car Parking

The approved commercial floor area is 361sqm.

Under Clause 52.06 a permit is required to reduce the car parking requirements set out in the table below based on the use of the land.

Use	Statutory car parking rate	Required car parking spaces
Office	3.5 car spaces per 100sqm net floor area	12 car spaces
Shop	4 car spaces per 100sqm leasable floor area	13 car spaces

The change of use from offices to shop results in one (1) additional car space reduction.

It should be noted that the current permit includes onsite car parking provision of six (6) car spaces consisting of one (1) to each dwelling and one (1) to each commercial premise.

DISCUSSION

The proposed amendment requires an assessment against the provisions of Clause 52.06 (Car Parking). Based on the applicable decision guidelines, the proposed change in the car parking reduction from 12 to 13 car spaces is acceptable for the following reasons:

- The proposed reduction of one additional car parking space is a minor increase expected to have negligible impact on car parking availability in the surrounding area.
- The land use associated with the proposal (shops) is encouraged in this location, being in the Commercial 1 Zone close to numerous other commercial premises and community facilities. This proximity increases the likelihood of multi-purpose trips resulting in consolidation of shared public car parking spaces.
- Ballan Railway Station is within 540m walking distance providing for public transport access.
- Two bicycle parking spaces are provided within the development, accessible from Simpson Street, enabling an alternative mode of transport to the site.
- The small lot size is not conducive to the provision of any additional onsite car parking spaces, without compromising the layout of the approved development.
- Council owned public car parking is within 280m walking distance of the subject site.
- There is currently unrestricted on-street parking in Simpson Street which may accommodate overflow car parking if required.

Overall, the proposed amendment to the planning permit is consistent with the relevant provisions of the Moorabool Planning Scheme, in particular the applicable decision guidelines at Clause 52.06. The change of use to from offices to shop allows for more retail activity in the Ballan Activity Centre.

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.

FINANCIAL IMPLICATIONS

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

RISK & OCCUPATIONAL HEALTH & SAFETY ISSUES

The recommendation to approve this amendment application does not have any risk or OH&S implications for Council, apart from contributing additional funds towards public car parking infrastructure.

COMMUNICATIONS STRATEGY

No notice was undertaken for the application in accordance with the exemptions in the Moorabool Planning Scheme. The applicant was invited to attend this meeting and to address the Development Assessment Committee if required.

OPTIONS

- Issue an Amended Planning Permit in accordance with the amended conditions in the recommendations of this report; or
- Issue a Refusal to Grant an Amended Planning Permit. The Development Assessment Committee would need to consider what reasonable grounds there would be to refuse the amendment application. This option may result in the applicant appealing the Committee's decision to VCAT.

CONCLUSION

The proposed amendment to Planning Permit PA2019216 to change the approved land use from offices to shops and consequently one car space reduction is deemed to be acceptable having regard for the relevant provisions of the Moorabool Planning Scheme and the amenity of the surrounding neighbourhood. There is adequate justification to reduce the standard car parking rate by one additional space in consideration of the decision guidelines of Clause 52.06. It is recommended that the proposed amendments to the permit be approved with amended conditions.

7.4 PA2024057 - TWO LOT SUBDIVISION, REMOVAL OF A COVENANT AND CREATION OF A NEW COVENANT AT 5 CAMPBELL COURT DARLEY

Author: Justin Rocio, Statutory Planner

Authoriser: Henry Bezuidenhout, Executive Manager Community Planning & Development

Attachments: Nil

APPLICATION SUMMARY

Permit No: PA2024057

Lodgement Date: 7 May 2024

Planning Officer: Justin Rocio

Address of the land: 5 Campbell Court, Darley

Proposal: Two Lot Subdivision, Removal of a Covenant and Creation of a New Covenant

Lot size: 3499.38sqm

Why is a permit required? Clause 32.09-3 Neighbourhood Residential Zone Schedule 5 – Subdivision; Clause 52.02 Easements, Restrictions and Reserves – Removal of a Covenant and Creation of a Covenant.

RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a Refuse to Grant Planning Permit PA2024057 for a Two Lot Subdivision, Removal of a Covenant and Creation of a New Covenant at 5 Campbell Court, Darley, subject to the following grounds:

1. The proposed removal of covenant does not satisfy the tests in Section 60(5) of the *Planning and Environment Act 1987*.
2. The proposed removal of covenant will likely cause owners benefitting from the restriction to suffer detriment, including perceived detriment.

PUBLIC CONSULTATION	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	Yes.
Number of objections:	Two.
Consultation meeting:	Discussion with the objectors.

POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

Strategic Objective 1: Healthy, inclusive and connected neighbourhoods

Priority 1.1: Improve the health and wellbeing of our community

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 – Justin Rocio

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

EXECUTIVE SUMMARY

Application referred?	Yes, Council's Development Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	No.
Any discussions with applicant regarding concerns?	Not applicable.
Any changes made to the application since being lodged?	No.
Brief history.	No.
Previous applications for the site?	No.
General summary.	<p>The application is for a two-lot subdivision, removal of a restrictive covenant and the creation of three new restrictive covenants.</p> <p>During the advertising period, two objections were received, one of the objectors being a beneficiary to the covenant on the land.</p> <p>Objection grounds included stormwater issues that may arise because of the subdivision and localised</p>

	<p>flooding concerns.</p> <p>Due to an objection from a beneficiary of the covenant who has perceived detriment from the proposal and future development, it is recommended the application be refused in accordance with Section 60(5) of the <i>Planning and Environment Act 1987</i>.</p>
<p>Summary of Officer’s Recommendation</p>	
<p>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 PA2024057 for a Two Lot Subdivision, Removal of a Covenant and Creation of a New Covenant at 5 Campbell Court, Darley.</p>	

SITE DESCRIPTION

The subject site is located north west of the Bacchus Marsh town centre. The Western Freeway and the on-ramp from Halletts Way are just south of the site. There is a completed subdivision as part of Grandview Crescent (130-144 Holts Lane) that is adjacent to the rear of the property.

The area consists of detached dwellings with large front and side setbacks on similar sized lots. It is noted that the lots along Campbell Court are larger than the surrounding lots to the north on the other side of Grey Street and to the south as part of the completed Holts Lane Subdivision

The site itself has an area of 3499.38sqm and currently has a single storey dwelling with vegetation towards the rear of the property. The land slopes down to the south east.



Figure 1: Aerial Photograph

NEIGHBOURHOOD RESIDENTIAL ZONE (NRZ)
 NEIGHBOURHOOD RESIDENTIAL ZONE - SCHEDULE 5 (NRZ5)

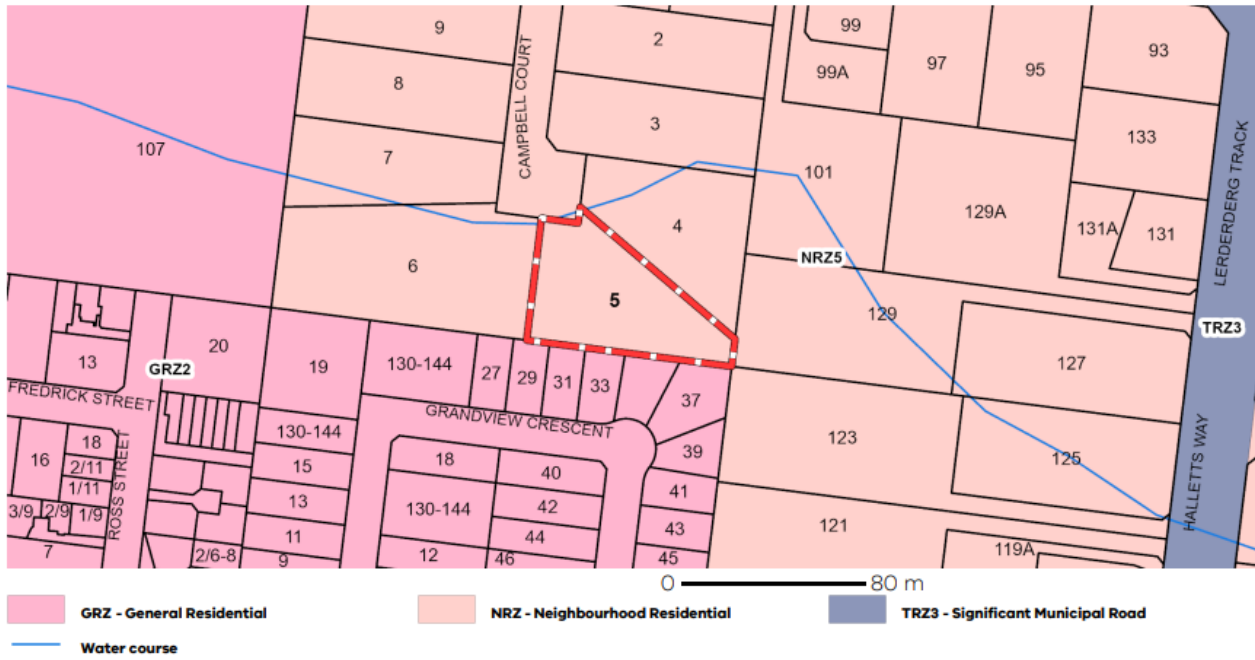


Figure 2: Zone Map

PROPOSAL

Subdivision

It is proposed to subdivide the land into two lots. Lot 1 which will contain the existing dwelling will be 1998sqm in area and Lot 2 will be a new vacant lot at 1500sqm.

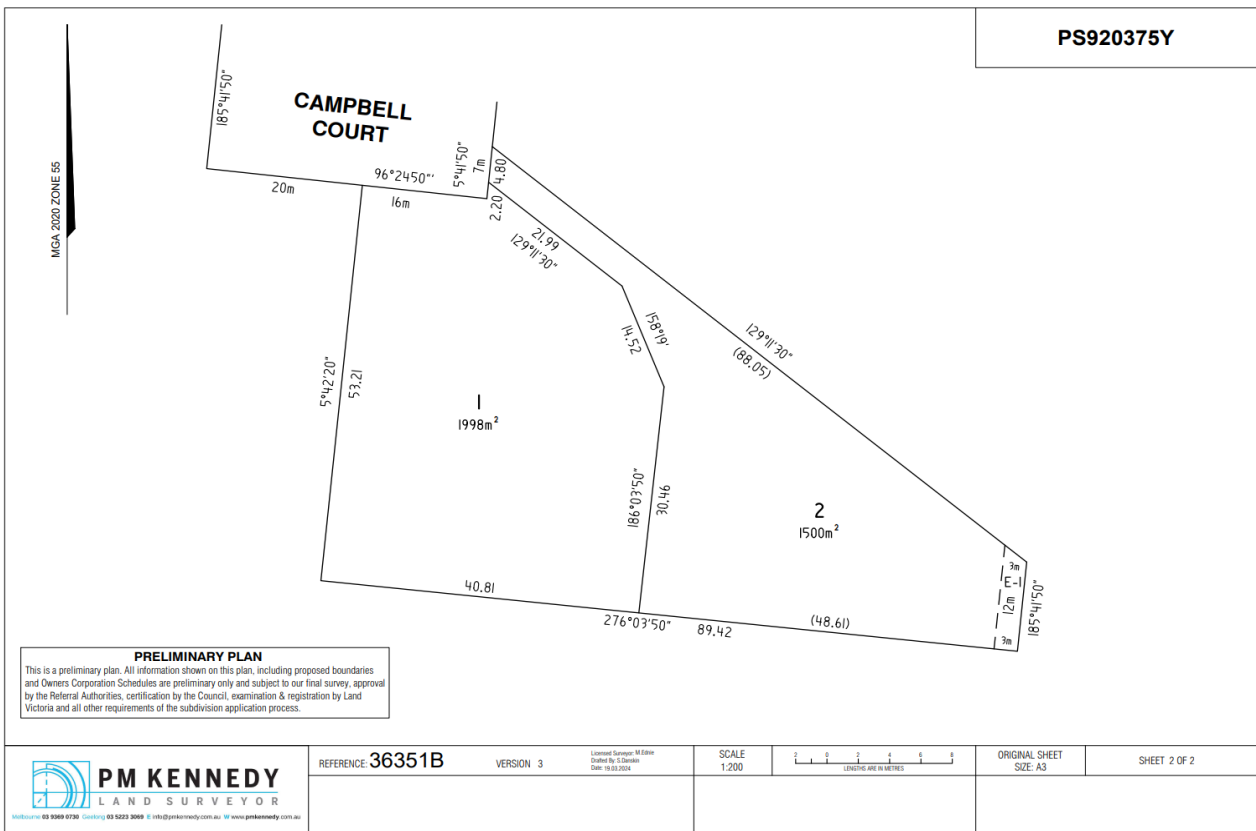


Figure 3: Subdivision Plan

Creation of Covenant

It is also proposed to create three new restrictions (Restriction A, Restriction B and Restriction C which will burden and benefit all new lots on the subject land. The creation of new restrictions are separate to the removal of the existing covenant.

Restriction A reads as follows:

The registered proprietor or proprietors for the time being of any burdened lot on this plan to which this restriction applies shall not construct more than one dwelling on each lot.

Restriction B reads as follows:

The registered proprietor or proprietors for the time being of any burdened lot on this plan to which this restriction applies shall not construct a dwelling of more than one storey.

Restriction C reads as follows:

The registered proprietor or proprietors for the time being of any burdened lot on this plan to which this restriction applies shall not construct any new external boundary fence of material other than wooden paling type, be no higher than 2m and where the fence fronts the road the minimum openness between palings is to total no less than 20% of the overall fence distance and the openness is to be evenly spaced.

These new covenants seek to prevent more than one dwelling on a lot, double storey or higher dwellings and control the boundary fencing material.

Removal of Covenant

It proposed to remove the existing covenant contained in Instrument of Transfer N520637K created on 17 June 1988 and reads as follows:

said Transferor and the registered proprietor or proprietors for the time being of every lot on the said Plan of Subdivision and every part or parts thereof other than the lot hereby transferred that the said Transferee his heirs executors administrators and transferees shall not at any time erect construct or build or cause to be erected constructed or built on the said lot hereby transferred or any part or parts thereof any building other than a private dwelling house having an area of not less than 110 square metres excluding carport garage and verandah and to be erected not closer than twelve (12) metres from the road alignment of such lot and the external walls of such dwelling house shall be constructed of a material or materials as approved by the Shire of Bacchus Marsh and the location on such lot of such dwelling house and all outbuildings shall be in such position or positions as is approved in writing by the Shire Engineer of the said Shire of Bacchus Marsh."

The restrictive covenant prevents a small sized dwelling less than 110sqm in area, dwellings built closer than 12m to the front property boundary and requiring the written consent of the Shire Engineer for the external wall materials of a dwelling and positioning of the dwelling.

BACKGROUND TO CURRENT PROPOSAL

Not applicable.

PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners and beneficiaries to the restrictive covenant. A sign was placed on site and a newspaper advertisement was sent out in accordance with the advertising provisions to remove a restrictive covenant.

SUMMARY OF OBJECTIONS

Two objections were received and are detailed below:

Objection	Any Relevant Requirement
The proposed subdivision will further worsen flooding concerns that are already currently being experienced.	
Officer's Response: Council's engineers have reviewed the application and have no objection to the application with conditions.	
Further development of these larger blocks will detract the country and regional feeling of Bacchus Marsh.	
Officer's Response: The proposed subdivision would create two lots with the smaller of the two lots being 1,500sqm, the proposed lot sizes are in accordance with the provisions of Clause 32.09 (Neighbourhood Residential Zone - Schedule 5).	

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 11.01-1S – Settlement
- Clause 11.01-1L-02 – Bacchus Marsh
- Clause 11.02-1S – Supply of urban land
- Clause 15.01-3S – Subdivision design
- Clause 15.01-5S – Neighbourhood character
- Clause 15.01-5L – Landscape and neighbourhood character

The proposal complies with the relevant sections of the PPF.

ZONE

Neighbourhood Residential Zone Schedule 5

A planning permit is required under Clause 32.09-3 for a two lot subdivision (the minimum lot size requirement is 1,500sqm).

OVERLAYS

There are no overlays affecting the property.

Relevant Policies

None.

Particular Provisions

Clause 52.02 Easements, Restrictions and Reserves

A permit is required before a person proceeds under Section 23 of the *Subdivision Act 1988* to vary or remove a restriction.

The decision guidelines state that before deciding on an application, in addition to the decision guidelines in Clause 65, the Responsible Authority must consider the interests of affected people.

Clause 56 Residential Subdivision

The proposed subdivision complies with all of the ResCode standards (Clause 56 of the Moorabool Planning Scheme) due to the location of the site with an established residential precinct that has access to all service utilities.

DISCUSSION

Subdivision

The proposed subdivision complies with the relevant provisions of the Moorabool Planning Scheme. Lots 1 and 2 of the subdivision are large enough to still allow for large setbacks between dwellings and to the street frontage. The subdivision will not detract from the neighbourhood character within Campbell Court.

Removal of Covenant

Notification of the application was undertaken with beneficiaries of the restrictive covenant included. Notification also included a sign on site and a newspaper advertisement.

Two objections were received in relation to the application, including one from a beneficiary to the covenant.

The relevant subsections of Section 60 of the *Planning and Environment Act 1987*, subsection 60(4) states:

Subsection (2) does not apply to any restriction which was:

- (a) registered under the Subdivision Act 1988; or*
- (b) lodged for registration or recording under the Transfer of Land Act 1958; or*
- (c) created before 25 June 1991.*

The covenant on title was created on 17 June 1988.

Subsection 60(5) of the *Planning and Environment Act 1987* then states the following:

The Responsible Authority must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that—

- (a) The owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and*
- (b) if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.*

Due to the date of the covenant and the objection received from the beneficiary to the covenant, identifying detriment (including the neighbourhood character and amenity of the area), Council must determine the application in accordance with Section 60(5)(a) and (b) of the *Planning and Environment Act 1987*. Due to the nature of the objection Council cannot be satisfied that there is no detriment or perceived detriment and as such must issue a refusal based on the requirements of the Act.

The relevant objection outlined perceived detriment such as increased flooding and detracting from the country feeling of Bacchus Marsh. Furthermore, there is nothing in the objection to suggest that it is vexatious or not made in good faith. The interests of non-beneficiaries have been considered with regard to Clause 52.02.

Creation of Covenant

The new covenants proposed by the applicant do not conflict with any existing planning scheme controls. The new covenants would limit the development of the new lot to single storey, which is consistent with the existing character of Campbell Court. There are no planning concerns establishing a private covenant on title as requested by the current landowner.

Overall, while subdivision meets the requirements of the Neighbourhood Residential Zone, and complies with the standards of ResCode, the proposed removal of covenant does not satisfy the requirements of Section 60 of the *Planning and Environment Act 1987*, and the application, as a whole, must be refused.

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

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 Permit on the grounds listed in the recommendation of this report; or
- Issue a Notice of Decision to Grant a Permit with conditions. The Development Assessment Committee would need to satisfy itself that the covenant beneficiaries would be unlikely to suffer any detriment of any kind (including any perceived detriment) consistent with the provisions of Section 60(5) of the *Planning and Environment Act 1987*. This option may result in the objectors appealing the Committee's decision to VCAT.

CONCLUSION

The application was advertised, and two objections received including a beneficiary of the registered covenant on title which raised amenity and neighbourhood character concerns. Based on the objection received from a beneficiary of the covenant, the proposal is deemed to be inconsistent with Section 60(5) of the *Planning and Environment Act 1987* and is recommended for refusal.

8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS

9 UPDATE ON VCAT DECISIONS

10 OTHER BUSINESS

11 DATE OF NEXT MEETING

Wednesday 19 February 2025.

12 MEETING CLOSE