



# **AGENDA**

## **Development Assessment Committee Meeting Wednesday, 19 February 2025**

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

**Date: Wednesday, 19 February 2025**

**Time: 6.00pm**

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

**Derek Madden  
Chief Executive Officer**

**Order Of Business**

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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 PA2023164 - DEVELOPMENT/USE MOTORCYCLE TRACK FOR PRIVATE USE AND ASSOCIATED EARTHWORKS AT 88 WIGGINS ROAD, SCOTSBURN

**Author:** Mark Lovell, Coordinator Planning Services  
**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development

**Attachments:** Nil

#### APPLICATION SUMMARY

**Permit No:** PA2023164  
**Lodgement Date:** 15 November 2023  
**Planning Officer:** Mark Lovell  
**Address of the land:** 88 Wiggins Road, Scotsburn (Lot 2 on PS827217N)  
**Proposal:** Development/Use Motorcycle Track for Private Use and Associated Earthworks  
**Lot size:** 40.03ha  
**Why is a permit required?** Clause 35.07-1 (Farming Zone) – Use of land for a motorcycle track (leisure and recreation); Clause 35.07-4 (Farming Zone) Works associated with a Section 2 land use; Clause 42.01-2 (Environmental Significance Overlay) – Works within 100m of a waterway

#### RECOMMENDATION

That the Development Assessment Committee, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issue a refusal to grant a planning permit PA2023164 for the development/use of private motorcycle track and associated earthworks at 88 Wiggins Road, Scotsburn based on the following grounds:

1. The proposed use does comply with the objectives of the Farming Zone, Clause 35.07 of the Moorabool Planning Scheme and fragments a large agricultural lot.
2. The proposed use will result in reduced amenity to surrounding residents in an area comprising of existing dwellings.
3. The proposed use and development do 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:	Forty-four (44) objections.
Consultation meeting:	An information session was held at the Ballan

	Council Offices on 31 May 2024 attended by approximately 20 objectors.
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## POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

### Strategic Objective 2: Liveable and thriving environments

#### Priority 2.3: Enhance our natural environments

The proposal is consistent with the Council Plan 2021 – 2025.

## 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 – Mark Lovell*

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

## EXECUTIVE SUMMARY

Application referred?	Corangamite CMA and Council's Development Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	No.
Any discussions with applicant regarding concerns?	No.
Any changes made to the application since being lodged?	No.
Brief history.	Earthwork were undertaken on site between 2022 and 2023 without the required planning approval. A motorcycle track with jumps were completed on the land. The applicant has not used the track for motorcycle training since lodgement of the planning application.
Previous applications for the site?	Nil for 88 Wiggins Road

General summary.	The applicant is seeking retrospective approval for earthworks that have created a formed motorcycle track for the personal use of the landowner. The works is substantial in height and is not associated with any agricultural use of the land. The application was advertised, and 44 objections were received. The proposed use and development fragments productive agricultural land and is in area where a number of dwellings have been established, requiring amenity protection. The application is recommended for refusal.
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Development Assessment Committee issue a Refusal to Grant a Permit PA2023164 for the Development/Use Motorcycle Track for Private Use and Associated Earthworks at 88 Wiggins Road, Scotsburn subject to the grounds contained within this report.	

### SITE DESCRIPTION

The surrounding area is comprised of generally large farming lots predominately used for livestock and some agricultural businesses. There are clusters of small sized lots to the north-east and south-west reflecting historical crown lots, with the land predominantly being used for residential purposes. The wider area has dispersed settlement pattern.

Vegetation is limited to border plantings and shelter belts with dense woodland to the north-east.

The Midland Highway is located to the south, providing convenient access to the Ballarat city centre.

The subject site is triangular shaped lot with three street frontages being Wiggins Road to the east, Attwoods Roads to the south, and Skelton Road to the north. There is an excised house lot, centrally located with access to Wiggins Road that is not part of the subject land. The lot has a total area of 40.03 hectares, with a powerline easement in the north-west corner of the site.

The site is vacant land and contains a large water source adjacent to the northern boundary. A cleared section in the north-east corner is intended to create a potential housing site. The recently constructed motorcycle track is located adjacent to the southern property boundary.



**Figure 1:** Aerial Photograph and site and surrounds



**Figure 2:** Zone Map

### PROPOSAL

The application is for retrospective approval of earthworks undertaken for the development of a motorcycle track for personal use. The application indicated that the track would be used as a training facility for family use. The application is not for public or club use, which would transform the land use.

The proposal identifies that the motorcycle track will only be used during daylight hours between 9.00am to 6.00pm during the winter months and 9.00am to 8.00pm during the summer months, seven days a week.



The track has been constructed with fill material (soil) and has been verified as clean fill. The track consists of straight sections with jumps and curved/banked sections.

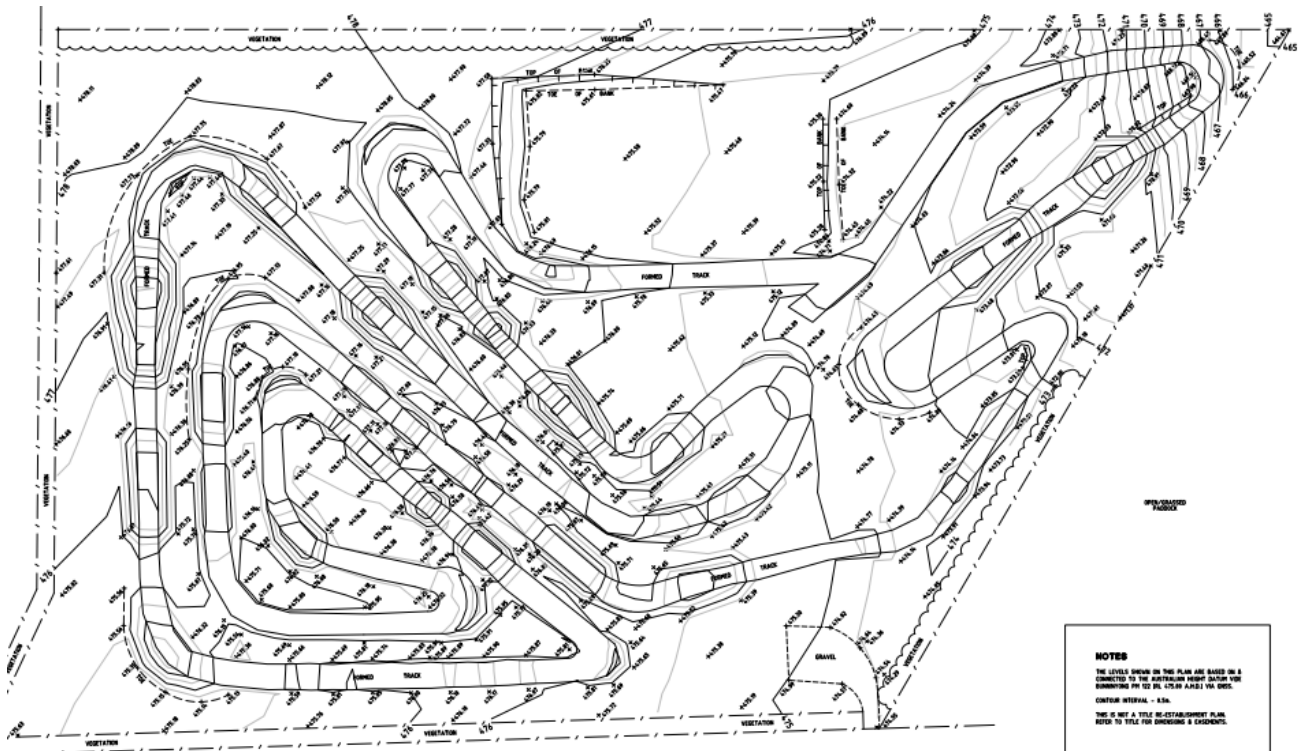


Figure 3: Track Layout



Figure 4: View of the completed track



## BACKGROUND TO CURRENT PROPOSAL

Several complaints were received whilst the motorcycle track was being constructed. The resultant planning enforcement investigation required the lodgement of this retrospective planning application. The works have been completed; however, the track is not being used.

### HISTORY:

PA2018309 was issued on 12 January 2019 authorising a two lot re-subdivision at 68 Wiggins Road, Scotsburn resulting in a house excised from the remaining land. This remaining land becoming known as 88 Wiggins Road.

There is no planning history with 88 Wiggins Road, Scotsburn.

### PUBLIC NOTICE

The application was notified to adjoining and surrounding landowners.

Initially 45 objections were received with 1 later withdrawn in writing.

### SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
<p>This area is zoned FZ Farming Zone Clause 35.07. Under this clause the Moorabool shire stipulates Farming zone is "to encourage the retention of productive agricultural land and to provide for the use of Agriculture. It must also be noted that this land has a particular soil type of "Red Volcanic Soil" and is graded very fertile and suitable for many varied Agricultural pursuits (source: Pastures and fodder crops for the Ballarat District 1985).</p> <p>We have a distinct deficit of prime, fertile agricultural land in this region and Australia at large and having what was once productive land be destroyed for a substantial and professional grade "private" racetrack for the use and enjoyment of one family seems counterproductive to the ideals and value systems the council are meant to uphold / Does not meet the purpose and decision guidelines of the relevant planning controls of the zone and overlays</p>	<p>Clause 35.07 - Farming Zone</p>
<p><b>Officer's Response:</b> The proposed use does not seek to enhance agricultural production. The proposal due to the scale and area occupied creates a limitation on future agricultural productivity and fragments Farming Zone land.</p>	

Objection	Any Relevant Requirement
<p>Under the Aboriginal Heritage Regulations 2018, 'areas of cultural heritage sensitivity' are one part of a two-part trigger which require a 'cultural heritage management plan' be prepared where a listed 'high impact activity' is proposed / Does not provide a mandatory Cultural Heritage Management Plan, given the proposal is defined as a 'high impact activity' pursuant to the Aboriginal Heritage Regulation 2018.</p>	<p>Aboriginal Heritage Regulation 2018</p>
<p><b>Officer's Response:</b> Written advice was received from First Peoples State Relations Group who reviewed the application documents and determined CHMP cannot be mandated in this instance. Instead, an official warning was issued by an authorised officer under the Aboriginal Heritage Act 2006 for works already undertaken.</p>	
Objection	Any Relevant Requirement
<p>Requesting permission to use a completed track sets an extremely dangerous precedent, whereby an individual can ignore council guidelines for the benefit of only themselves, at the detriment of the wider community / The landowner appears to believe that they are above the law and money should not prevail at the cost of the community and the very land that supports it / a developer has already developed the motocross complex before getting Council approval. Why would anyone invest in this shire if there is no control over what happens, for example, in Farming zones / The land owners show no respect for the law / This already completed illegal development at 88 Wiggins Rd, Scotsburn goes directly against council planning regulations, farming overlays, environmental protection overlays / There has been a complete disregard for council and environmental laws and processes in the development of this facility as well as lack of communication and community consultation.</p>	<p>Planning Permit Process</p>
<p><b>Officer's Response:</b> While works were undertaken without the required planning permission, the applicant is afforded the right to apply for a planning application and for an assessment to be undertaken in accordance with the Moorabool Planning Scheme.</p>	

Objection	Any Relevant Requirement
<p>This will be a huge detriment to neighbouring farms, residents and other businesses in the area. An obnoxious, totally unnecessary development. The proposed development is not a suitable development among tranquil surrounds and risks causing significant disturbance to surrounding residents and farms / I believe it is totally acceptable to expect to live a peaceful life in a rural community</p>	<p>Clause 13.07 - Amenity Impacts</p>
<p><b>Officer's Response:</b> The potential amenity impacts from the proposed use and development have been discussed within this report.</p>	
Objection	Any Relevant Requirement
<p>It also stretches belief that this track is intended for private use as its size, it's development cost and professional grading, along with what appears to be an extremely large carpark, do not support the claim that this is intended for private use by an individual or family group. This must be thoroughly investigated, and due diligence must be taken by the shire to its full capacity.</p>	<p>Application documents</p>
<p><b>Officer's Response:</b> The applicant has applied for private use and not a club or general public venue, conditions on any permit issued would enforce this restriction.</p>	
Objection	Any Relevant Requirement
<p>impact to local waterways is also significant and there is great concern as water is a precious resource and once lost cannot be restored / This development has to potential to negatively impact the environment including critical natural waterways</p>	<p>Clause 42.01 - Environmental Significance Overlay Schedule 2</p>
<p><b>Officer's Response:</b> Sediment run off can be managed via permit conditions. The local floodway authority had no objection to the application.</p>	
Objection	Any Relevant Requirement
<p>I object to the removal of carbon absorbing arable land with a greenhouse gas producing facility</p>	
<p><b>Officer's Response:</b> The application has been assessed against the Moorabool Planning Scheme, taking into consideration all applicable decision guidelines.</p>	

<b>Objection</b>	<b>Any Relevant Requirement</b>
The proposed track is simply in the wrong area. It should be closer to a commercial or industrial zone.	Clause 35.07 - Farming Zone
<b>Officer's Response:</b> A motorcycle track is a Section 2 land use in the Farming Zone and an application can be made for assessment by Council.	
<b>Objection</b>	<b>Any Relevant Requirement</b>
It is very obvious that the use of this track will have a profound and detrimental impact on numerous nearby residents, as well the local tourist attractions	Clause 13.07 - Amenity Impacts Clause 17.04 - Tourism
<b>Officer's Response:</b> A motorcycle track is a Section 2 land use in the Farming Zone and an application can be made for assessment by Council, as a part of this assessment, Council must consider all applicable state and local polices which includes amenity impacts.	
<b>Objection</b>	<b>Any Relevant Requirement</b>
Will introduce substantial and sustained amenity impacts, such as generating noise emissions synonymous with a motorcross track / Huge noise and traffic impact for our home and all neighbouring homes. / Will introduce substantial and sustained amenity impacts, such as generating noise emissions synonymous with a motorcross track.	Clause 13.05 - Noise
<b>Officer's Response:</b> The noise impacts, amenity and frequency of the use proposed is considered as a part of the assessment of this application.	
<b>Objection</b>	<b>Any Relevant Requirement</b>
This proposal does not meet this decision guideline as it will directly impact our operations as an Agri-tourism destination and potential to continue to utilise our land for primary production. It will also potentially limit our ability to develop further and our potential to add employment opportunities to our community and region.	Clause 35.07 - Farming Zone Clause 17.01 - Employment Clause 17.04 - Tourism
<b>Officer's Response:</b> A motorcycle track is a Section 2 land use in the Farming Zone and an application can be made for assessment by Council, the assessment must consider existing uses which include Agric-tourism and other uses/development.	
<b>Objection</b>	<b>Any Relevant Requirement</b>
It also stretches belief that this track is intended for private use as its size, it's development cost and professional grading,	Clause 52.06 - Car Parking

along with what appears to be an extremely large carpark, do not support the claim that this is intended for private use by an individual or family group. This must be thoroughly investigated, and due diligence must be taken by the shire to its full capacity.	
<b>Officer's Response:</b> There is no formal car parking proposed as this is a private use development, there is sufficient space on site to accommodate vehicle parking.	
<b>Objection</b>	<b>Any Relevant Requirement</b>
Biosecurity risk / contaminated soil	Clause 12.01 - Biodiversity
<b>Officer's Response:</b> A clean fill certificate has been provided in accordance with EPA Requirements.	
<b>Objection</b>	<b>Any Relevant Requirement</b>
As an appendix to our objection, we would like to submit a map showing most neighbours within a 2 km radius of the land in question are very opposed to this permit being approved. No neighbours were informed about this Motocross development / Incorrect display of large notice	Notice Provisions in Section 52 of the Planning & Environment Act
<b>Officer's Response:</b> The application was advertised with letters to surrounding landowners and occupiers and a notice displayed on site for a period of 14 days.	
<b>Objection</b>	<b>Any Relevant Requirement</b>
During this time, we saw a deterioration of the road edges and the road surface to Attwoods Rd. The mud and clay that was introduced to the road, made it nearly impassable, breaking the bitumen up in places on Wiggins Rd as well / Damage to roads / Truck traffic during constriction	Asset Protection
<b>Officer's Response:</b> As the application is for retrospective approval, construction activities cannot be considered through this process. A separate enquiry has been raised with the Assets Team to assess any damage to Council assets.	
<b>Objection</b>	<b>Any Relevant Requirement</b>
Property Devaluation	
<b>Officer's Response:</b> Property values cannot be considered as a part of this assessment.	

### PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 02.03-4 - Natural resource management
- Clause 11.03-5S - Distinctive Areas and Landscapes
- Clause 12.03-1S - River and riparian corridors, waterways, lakes, wetlands and billabongs
- Clause 13.02-1S - Bushfire Planning
- Clause 13.05-1S - Noise Management
- Clause 13.06-1S - Air Quality Management
- Clause 13.07-1S - Land Use Compatibility
- Clause 13.07-1L - Land Use Compatibility in Moorabool
- 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

The proposal does not comply with the relevant section of the PPF and the LPPF clauses outlined in the table below:

PPF	Title	Response
Clause 02.03-4	Natural resource management: Agriculture	This application has not demonstrated the motorcycle track supports or can maintain agricultural productivity.
Clause 13.05-1S	Noise Management	The objective of this clause is to ensure that development is not prejudiced, and community amenity and human health is not adversely impacted by noise emissions. With frequency of training will cause some off-site impacts during the daylight hours.
Clause 13.06-1S	Air Quality Management	A strategy of this clause is to ensure, wherever possible, that there is suitable separation between land uses that pose a human health risk or reduce amenity due to air pollutants, and sensitive land uses (residential use, childcare centre, school, education centre, residential aged care centre or hospital). There is the potential for dust emissions to the nearest residential dwelling. Dust suppression measures can be requested as part of any permit issued
Clause 13.07-1S	Land Use Compatibility	Two of the strategies are to ensure that use or development of land is compatible with adjoining and nearby land uses and secondly to avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses. A motorcycle track can be located in the Farming Zone but requires large separation distances to sensitive receptors such as residential dwellings.



Clause 14.01-1S	Protection of agricultural land.	This application has not demonstrated the need for a motorcycle track by reducing land set aside for agriculture. The use does not assist agricultural production of the remaining land.
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## **ZONE**

### Farming Zone

Pursuant to Clause 35.07-1 a motorcycle track is a Section 2 land use and under Clause 73.03 is defined as leisure and recreation. Pursuant to Clause 35.07-4 a permit is required for works associated with a Section 2 use.

Decision guidelines are listed under Clause 35.07-6.

Overall, the proposal is considered inconsistent with the objectives and purpose of the zone.

## **OVERLAYS**

### Environmental Significance Overlay - Schedule 2

Pursuant to Clause 42.01-2 a permit is required to construct works. There are no relevant exemptions under Schedule 2.

The relevant water authority had no objection to the application.

### Design and Development Overlay - Schedule 2

Pursuant to Clause 43.02-2 a permit is required to construct buildings and works with reflective materials. No building works are proposed and therefore no permit is required under this overlay.

### Bushfire Management Overlay

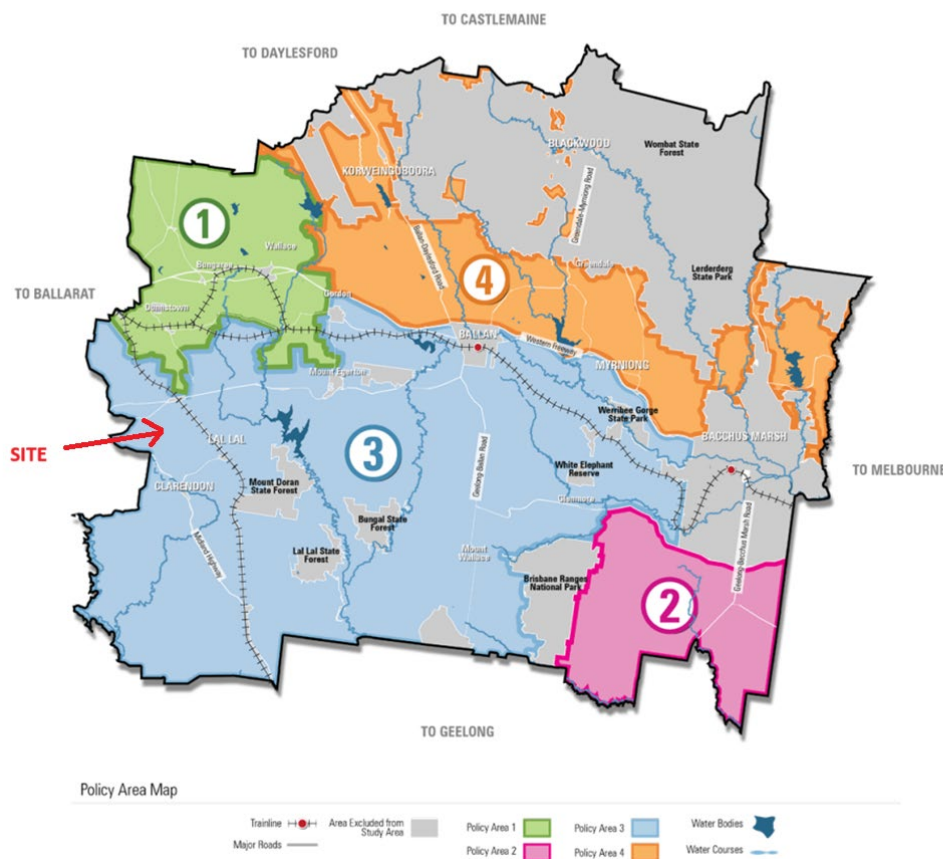
The Bushfire Management Overlay covers a small section of land in the north-east corner of the site and does not affect the works area. No permit is required pursuant to Clause 44.06-3.

## **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 5:** 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 large sized lot should not be fragmented in Area 3.

**PARTICULAR PROVISIONS**

**Clause 52.06 – Car Parking**

Motorcycle track does not have a nominated car parking requirement. The private use of the track and large land area is sufficient to cater for a couple of vehicles that maybe expected. There is no need for a formalised car park to comply with the design standards under Clause 52.06.

**DISCUSSION**

**Use of the land**

The site and surrounding area are located within the Farming Zone under the Moorabool Planning Scheme. The proposed use of a motorcycle track is not prohibited within the Farming Zone. A motorcycle track can be classified under land uses in Clause 73.03 as Leisure and Recreation which

is defined as land used for leisure, recreation or sport. The track will be for utilised by the landowner and will not be available for any outside public use.

When reviewing VCAT decisions, there are cases which have supported this same land use in the Farming Zone and the relevant tribunal member have pointed out certain aspects which are relevant to the current application.

In *Boyle vs South Gippsland*, the member made the following observations of the Farming Zone as follows:

*Although the list of section 2 uses and the decision guidelines dealing with non-agricultural uses anticipate that the FZ can be used for activities that are not related to farming, the decision guidelines are all framed at giving pre-eminence to agricultural activities through consideration of the effects from permanent removal of land from agricultural production and the impacts from noise and The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.*

*It is also the case, however, that non-agricultural activities such as motorcycle training tracks are a legitimate activity and are often suited to rural areas because their off-site amenity impacts, particularly noise, can often be ameliorated through large land areas and separation distances between the noise source, and adjoining land and sensitive land uses. Of course, this is tied to the physical context of the area, the type of farming prevalent in the area and the characteristic form of settlement of the locality.*

Based on this decision, the key consideration is looking at the site context and the impact this land use has upon surrounding agricultural activities and proximity to sensitive land uses such as dwellings.

The land area is large however the central section contains an existing dwelling with access to Wiggins Road created as part of a prior house excision. The occupants of this dwelling will have declined amenity from noise and other emissions generated from the motorcycle track.

It would be reasonably expected a dwelling in the Farming Zone will have lower levels of amenity and would need to deal with noise from farm machinery, spraying of cropping fields, dust and other nuisances. Regular use of the motorcycle track will affect the amenity to this adjacent dwelling which is a sensitive receptor. There are also several other dwellings in the surrounding areas reflecting a dispersed settlement pattern. The subject site is not located in an area with few dwellings which could support this Section 2 land use. The proposed use instead creates a land use conflict between dwellings and a motorcycle track. A motorcycle track layout with the height and scale means that sensitive receptors are more exposed to noise emissions and the potential for dust emissions due times of extreme wind conditions. The amenity of the residents cannot be sufficiently protected by standard permit conditions.

The applicant has undertaken a professionally designed and constructed motorcycle track with drainage points and will undertake dust suppression measures. However, there will be times when noise is unreasonable to surrounding properties or other emissions causing amenity concerns. Permit conditions can require strict compliance with EPA requirements including noise, but it would necessitate constant monitoring and Council regular site inspections or review of reports. Due to the scale of the track, it will be difficult to achieve complete compliance.

It is acknowledged the earth-based motorcycle track is temporary unlike a dwelling which is permanent fixtures on the land. VCAT decisions have noted the motorcycle track is a temporary use of the land and can occur in the Farming Zone. However, in this instance, the scale and size of track presents long term problems, when the motorcycle training use ceases and land reverts back

to an agricultural use. Earthworks will need to be removed or levelled to allow for some form of sustainable agricultural activity. The scale of works will require significant amount of earth moving which have to be undertaken by the landowner. Unlike quarry sites, there is no future plan to rehabilitate the site or measures to restore the land for agricultural potential.

While the planning scheme allows for non-agricultural activities within the Farming Zone, they are generally small in scale, have limited off site impacts and are well separated from neighbouring properties. The site at 88 Wiggins Road Scotsburn does not have these locational advantages by being surrounded by dispersed residential dwellings, has the potential to create off site impacts and limits future use of the site for productive agricultural use. The proposed use and development are considered incompatible with the objectives of the Farming Zone.

### **Earthworks**

The applicant has provided evidence the soil contained on site is clean and has been reviewed by the Environment Protection Authority. There are no contamination risks to any adjacent properties. The applicant has undertaken drainage works and does not want erosion to affect the integrity of the track. The track has some setbacks from properties boundaries and a site inspection undertaken did not identify any soil movements or sediment runoff. The motorcycle track perimeter was well grassed and in conjunction with trees along the southern property boundaries has prevented soil from extending beyond the property boundaries. The relevant floodway authority had no objection to the proposal. The earthworks will not adversely affect the environmental value of the area especially the nearby waterways.

### **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**

<b>Authority</b>	<b>Response</b>
Corangamite Catchment Management Authority	Consent, no conditions.
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**

That the Development Assessment Committee could consider the following options:

- 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 objectors appealing the Committee's decision at VCAT.

**CONCLUSION**

The proposed use and development for a personal motorcycle track not used by the public does not meet the core objectives and purpose of the Farming Zone provisions. The proposed use and development are located within an area with dwellings in close proximity and will result in reduced amenity for these nearby residents. The motorcycle track fragments a large sized farming zone lots does not represent the orderly planning for the area. The application is recommended for refusal.

**7.2 PA2024051 - 14 LOT SUBDIVISION AT 114 GISBORNE ROAD AND 7 LEILA COURT, BACCHUS MARSH**

**Author:** Thomas Tonkin, Senior Statutory Planner

**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development

**Attachments:**

1. Proposed plan of subdivision (under separate cover)
2. Traffic noise assessment (under separate cover)

**APPLICATION SUMMARY**

**Permit No:** PA2024051

**Lodgement Date:** 2 May 2024

**Planning Officer:** Tom Tonkin

**Address of the land:** 114 Gisborne Road and 7 Leila Court, Bacchus Marsh

**Proposal:** 14 Lot Subdivision

**Lot size:** 1.18ha

**Why is a permit required?** Clause 32.08-3 – Subdivide land; Clause 52.29 Land Adjacent to the Principal Road Network - Subdivision

**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 PA2024051 for 14 Lot Subdivision at Lots 8 & 9 on TP 741638B and Lot 10 on PS 124108 known respectively as 114 Gisborne Road and 7 Leila Court, Bacchus Marsh, subject to the following conditions:

**Endorsed Plans:**

1. Before the certification of the plan of subdivision, 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 identified as Development Plan, reference 1079-100PL-01, rev. C dated 2 July 2024, prepared by Axiom Consulting Engineers, and Traffic noise assessment for a proposed residential development located at 7 Leila Court, Bacchus Marsh, Victoria, 3340 Report no. 23048 dated 15 June 2023 prepared by Audiometric & Acoustic Services, but modified to show:
  - (a) Lot 10 to include a building exclusion zone providing for a minimum 25% of the lot area being set aside as garden area as defined at Clause 73.01 of the Moorabool Planning Scheme.
  - (b) The selected tree planting species amended to *Pyrus Calleryana* 'Capital'.
  - (c) The location of vehicle crossings amended, either by merging the crossings to Lots 4 and 5, or Lots 5 and 6.



- (d) An elevation drawing of the proposed traffic noise barrier, in accordance with the recommended options (not including earth bunds) in the traffic noise assessment report.
  - (e) A footpath constructed from the subdivision to connect to the existing footpath network in Leila Court to the satisfaction of the Responsible Authority
2. The formal plan of subdivision lodged for certification must be generally in accordance with the endorsed plan and must not be modified except to comply with statutory requirements or with the written consent of the Responsible Authority.

**Subdivisions:**

3. The plan of subdivision submitted for certification must include a creation of restriction. The wording of the creation of the restriction shall be as follows:

**Land to be Burdened:** Lot 10 on this plan.

**Land to Benefit:** All other lots on this plan.

**Creation of Restriction:** Upon registration of this plan, the following restriction is created.

**Description of Restriction:** Except in accordance with the 'Garden area' definition under Clause 73.01 of the Moorabool Planning Scheme, no buildings, no outbuildings, no driveways, and no car spaces are permitted within the designated area as shown on the endorsed plans attached to Planning Permit number PA2024051 issued by Moorabool Shire Council.

**Variation:** The restriction can only be varied with the written consent of Moorabool Shire Council.

4. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.
5. Before the statement of compliance is issued under the Subdivision Act 1988, the applicant or owner must pay to the responsible authority a sum equivalent to 5 per cent of the site value of all the land in the subdivision for public open space purposes. The permit holder/developer must pay the reasonable costs of Council in having the land valued for this purpose.

**Telecommunications:**

6. The owner of the land must enter into agreements with:
- (a) A telecommunications network or service provider for the provision of telecommunication service to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
  - (b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
7. Before the issue of Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
- (a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the

provider's requirements and relevant legislation at the time; and

- (b) A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is an area where the National Broadband Network will not be provided by optical fibre.

**Section 173 Agreement:**

- 8. Before the issue of a Statement of Compliance, the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority:
  - (a) The collection of all garbage and waste from each lot must be by a private contractor or by other means to the satisfaction of the Responsible Authority.
  - (b) Provision must be made on the land for the storage and collection of garbage and other solid waste. This area must be graded and drained and screened from public view to the satisfaction of the Responsible Authority.
  - (c) Before a Statement of Compliance is issued, application must be made to the Registrar 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.
  - (d) The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.
- 9. Before the issue of a Statement of Compliance, the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority:
  - (a) A noise barrier must be constructed and completed prior to the issue of a Statement of Compliance. The noise barrier's location, height and construction must be in accordance with the recommendations of the Traffic noise assessment for a proposed residential development located at 7 Leila Court, Bacchus Marsh, Victoria, 3340, Report no. 23048 dated 15 June 2023 and prepared by Audiometric & Acoustic Services. Earth bund construction is not permitted.
  - (b) The design and construction of dwellings must incorporate the recommended noise mitigation measures set out in the Traffic noise assessment for a proposed residential development located at 7 Leila Court, Bacchus Marsh, Victoria, 3340, Report no. 23048 dated 15 June 2023 and prepared by Audiometric & Acoustic Services.
  - (c) Alternatively, each Lot can be independently assessed by a suitably qualified acoustic engineer of the Lot owner's choosing. The acoustic engineer must assess the existing traffic noise level once the noise barrier is implemented and provide recommendations by application of AS3671 – 1989, Acoustics - Road Traffic Noise Intrusion – Building Siting and Construction and AS2107 – 2016 Acoustics - Recommended design sound levels and reverberation times for building interiors.
  - (d) The Traffic noise assessment for a proposed residential development located at 7 Leila Court, Bacchus Marsh, Victoria, 3340, Report no. 23048 dated 15 June 2023 and prepared by Audiometric & Acoustic Services must be included in full as an appendix

to this agreement.

- (e) Before a Statement of Compliance is issued, application must be made to the Registrar 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.
- (f) The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.

**Residential Gas Service:**

- 10. Any lot shown on the endorsed plan must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after a statement of compliance under the Subdivision Act 1988 has been issued and the subdivision authorised by this permit has been completed.

**Development Infrastructure:**

- 11. Unless otherwise approved by the Responsible Authority there must be no buildings, tree structures, or improvements located over any drainage pipes and easements on the property.
- 12. Prior to the issue of Statement of Compliance, an urban vehicle crossing must be provided on Leila Court and to each lot accessed via the common driveway, to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing to Leila Court with any redundant crossings on Leila Court and Gisborne Road being removed and restored to the satisfaction of the Responsible Authority. The new urban vehicle crossing must be generally in accordance with Standard Drawing 240 of the Infrastructure Design Manual unless an alternative design is approved under the vehicle crossing permit.
- 13. Prior to the issue of Statement of Compliance or a date agreed to in writing by the Responsible Authority, a 1.5m wide reinforced concrete footpath must be constructed in Leila Court in accordance with the Infrastructure Design Manual to connect the subdivision to the existing public footpath network, to the satisfaction of the Responsible Authority.
- 14. Prior to the development commencing, engineering drainage plans and detailed computations must be submitted and approved by the Responsible Authority. The drainage plans are to undertake in accordance with the Infrastructure Design Manual and Australian Rainfall & Runoff 2019 and shall incorporate (but not limited to) the following:
  - (a) The development as a whole must be self-draining to the legal point of discharge.
  - (b) All drainage courses within the development must pass through easements or reserves shown on the plan of subdivision.
  - (c) All outfall drainage passing through other land must be provided at the cost of the developer and be constructed within easements shown on the plan of subdivision.
  - (d) 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 by the use of a detention system located and constructed to the satisfaction of the Responsible Authority
  - (e) Each lot must be provided with a stormwater legal point of discharge at the low

point of the lot, to the satisfaction of the Responsible Authority.

- (f) Stormwater runoff must meet the “Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)”
  - (g) Flow paths of the 1% AEP storm must be determined and the subdivision designed so that no property is inundated by such a storm. The flow paths must be indicated on the engineering plans.
  - (h) The drainage system must be designed to include provision to intercept litter.
  - (i) The drainage design must take into account any applicable drainage or flood management strategy.
  - (j) If required, the layout of the subdivision must be modified based on the approved stormwater design.
15. Design computations for drainage of the whole site must be prepared and submitted to the Responsible Authority for approval, and must include analysis of the existing stormwater drainage system in the area to determine:
- (a) the requirements for drainage of the whole site.
  - (b) if the existing drainage network has sufficient capacity to cater for the additional runoff from the ultimate development.
  - (c) If additional outfall drainage or upgrading of the existing drainage network is required.
16. 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).
17. Prior to the issue of Statement of Compliance, permanent survey marks must be provided at a maximum spacing of 200 metres and registered, to the satisfaction of the Responsible Authority.
18. Prior to the commencement of the development, notification including photographic evidence must be sent to Council’s Asset Services department identifying any existing change 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.
19. Prior to the commencement of the development, plans and specifications of all road and drainage works must be prepared and submitted to the Responsible Authority for approval, detailing but not limited to the following:
- (a) Location of vehicle crossings;
  - (b) Details of the underground drainage;
  - (c) Location of drainage legal points of discharge;
  - (d) Standard details for vehicle crossing and legal point of discharge; and
  - (e) Civil notes as required to ensure the proper construction of the works to the satisfaction of the Responsible Authority.

**Greater Western Water:**

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20. It is essential the owner of the land enters into an agreement with Greater Western Water for the provision of water supply.
21. It is essential the owner of the land enters into an agreement with Greater Western Water for the provision of sewerage.
22. Prior to certification, the Plan of Subdivision must be referred to Greater Western Water in accordance with Section 8 of the Subdivision Act 1988.

**Powercor:**

23. The plan of subdivision submitted for certification under the Subdivision Act 1988 shall be referred to the Distributor in accordance with Section 8 of that Act.
24. The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards.  
Notes: Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make such supplies available, with the cost of such works generally borne by the applicant.
25. The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).  
Notes: Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.
26. The applicant shall, when required by the Distributor, set aside areas with the subdivision for the purposes of establishing a substation or substations.  
Notes: Areas set aside for substations will be formalised to the Distributor's requirements under one of the following arrangements:  
RESERVES established by the applicant in favour of the Distributor.  
SUBSTATION LEASE at nominal rental for a period of 30 years with rights to extend the lease for a further 30 years. The Distributor will register such leases on title by way of a caveat prior to the registration of the plan of subdivision.
27. The applicant shall establish easements on the subdivision, for all existing Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements.  
Notes: Existing easements may need to be amended to meet the Distributor's requirements Easements required by the Distributor shall be specified on the subdivision and show the Purpose, Origin and the In Favour of party as follows:- Purpose: Power Line, Origin: Section 88 Electricity Industry Act 2000, Land Benefitted: Powercor Australia Ltd.

**Department of Transport and Planning:**

28. No direct vehicular access from the proposed lots to Western Freeway or to Gisborne Road is permitted, to the satisfaction of the Head, Transport for Victoria.

**Permit Expiry:**

29. This permit will expire if the plan of subdivision is not certified within two (2) years of the date of issue of the permit.  
Statement of Compliance must be achieved and certified plans registered at the Titles office within five (5) years from the date of certification.

**Permit Notes:**

**Greater Western Water: The applicant should be made aware that a Non-works Development**

Application is required to be lodged with Greater Western Water in order to obtain our servicing requirements. The online application is accessible via our website

<https://propertyplus.gww.com.au/pplus/guest>

Powercor: It is recommended that applications for electricity supply to each lot be submitted at the earliest opportunity so that the precise requirements of the Distributor can then be determined and accommodated. Applications for electricity supply shall be submitted via the Distributor's web portal, "mySupply" which can be accessed via the following link:

<https://customer.portal.powercor.com.au/mysupply/CIAWQuickCalculator>

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes, two.
Notice in Moorabool Newspaper:	No.
Number of objections:	Three (3).
Consultation meeting:	No.

#### **POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

**Strategic Objective 1: Healthy, inclusive and connected neighbourhoods**

**Priority 1.5: Provide access to services to improve community connection in the Shire**

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, Powercor Australia, Melbourne Water, Greater Western Water, Department of Transport and Planning, Council's Development Infrastructure, Council's Waste Management, and Council's Urban Design and Landscape
Any issues raised in referral responses?	Yes.
Preliminary concerns?	Neighbourhood character.
Any discussions with applicant regarding concerns?	Yes.
Any changes made to the application since being lodged?	Changes were made in response to the preliminary concern outlined above.
Brief history.	Not applicable.
Previous applications for the site?	None.
General summary.	<p>It is proposed to subdivide the subject site into 14 residential lots, accessed via a common property driveway from Leila Court. The median lot size would be 413sqm.</p> <p>The application was advertised, and three objections received, raising traffic and access concerns.</p> <p>Overall, the proposal is generally in accordance with the relevant provisions of the Moorabool Planning Scheme.</p>
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , the Development Assessment Committee issue a Notice of Decision to Grant Planning Permit PA2024051 for 14 Lot Subdivision at 114 Gisborne Road and 7 Leila Court, Bacchus Marsh, subject to the conditions contained within this report.	

**SITE DESCRIPTION**

The land to the south is in the General Residential Zone and developed for mainly residential purposes. Development is typified by single dwellings on lots ranging in size from approximately 520sqm-1280sqm. To the north and west is land in the Transport Zone 2, beyond which is land in the General Residential Zone developed for a mix of residential and commercial purposes. To the east is land in the Farming Zone comprising the balance of the proponent's landholding which includes a small orchard.

The subject site is identified as Lots 8 & 9 on TP 741638B and is approximately 1.11ha in size, with a 6.1m wide frontage to Gisborne Road. The site is accessible from Leila Court via a 'way' easement affecting Lot 10 on PS 124108 known as 7 Leila Court, which currently serves the existing dwelling and is owned by the Department of Transport Lot 8 is developed with a single dwelling and ancillary outbuildings, and Lot 9 is partly developed with sheds. Apart from trees and

shrubs planted around the dwelling the land is otherwise cleared of vegetation. The site is relatively flat, falling gradually to the southeast.



Figure 1: Aerial photograph showing both lots

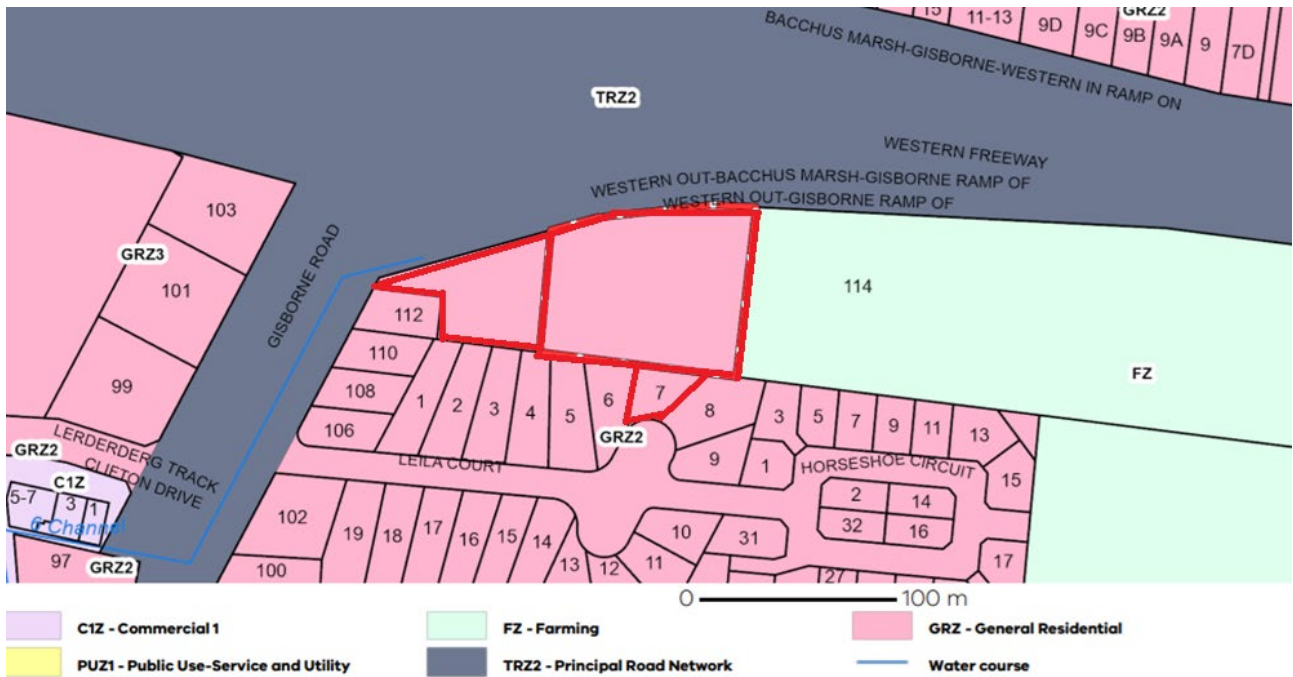


Figure 2: Zone map

**PROPOSAL**

It is proposed to subdivide the land into 14 lots.

The existing dwelling would be contained on proposed Lot 14 with an area of 3226sqm. Lots 1-13 would comprise vacant land and vary in size from 395sqm-702sqm. Access to the subdivision would be via a proposed 14m wide area of common property comprising a driveway and footpaths

connecting via 7 Leila Court. Proposed landscaping would comprise trees planted on both sides of the driveway.



**Figure 3:** Proposed plan

**BACKGROUND TO CURRENT PROPOSAL**

Not applicable.

**HISTORY**

Not applicable.

**PUBLIC NOTICE**

Notice of the application was given to adjoining and nearby landowners and occupiers by way of mail and signs erected on site. Three objections were received.

**SUMMARY OF OBJECTIONS**

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

Objection	Any Relevant Requirement
The only road access to the subdivision would be via Leila Court, resulting in increased traffic which would exacerbate traffic delays at the congested intersection of Leila Court and Gisborne Road.	Clauses 56.06-8 & 65.
<p><b>Officer’s Response:</b></p> <p>The Traffic Impact Assessment (TIA) prepared by the applicant demonstrates that the design of</p>	

Leila Court and its intersection with Gisborne Road are able to accommodate the additional 130 vehicle movements per day expected to be generated by the proposed subdivision. Council's Development Infrastructure had no objection.	
That section of proposed common driveway and footpath located on 7 Leila Court would create additional traffic noise close to existing bedrooms.	Clause 56.
<b>Officer's Response:</b> The existing bedroom windows are understood to be set back a minimum 1.5m from the title boundary. Traffic noise associated with 14 lots would not be considered unreasonable in the urban context.	
The location of the proposed site access would exacerbate traffic congestion in Leila Court. The frontage to the Gisborne Road service lane should be used instead.	Clauses 56.06-8 & 65.
<b>Officer's Response:</b> The Gisborne Road frontage is only 6.1m wide which is insufficient for safe and convenient vehicle and pedestrian access to a multi-lot subdivision.	
No objection to the proposed subdivision, but improvements to the intersection of Leila Court and Gisborne Road – ideally traffic lights – to benefit ambulances leaving their facility near that intersection, are requested.	Clause 65.
<b>Officer's Response:</b> The additional 14 lots will not cause unreasonable impacts to the local road network based on DTP referral advice.	

### PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 02.03-1 – Settlement, including Bacchus Marsh
- Clause 02.03-5 – Built environment and heritage
- Clause 11.01-1L-01 – Settlement in Moorabool
- Clause 11.01-1L-02 – Bacchus Marsh
- Clause 11.03-3S – Peri-urban areas
- Clause 15.01-3S – Subdivision design
- Clause 15.01-4S – Healthy neighbourhoods
- Clause 15.01-5S – Neighbourhood character
- Clause 15.01-5L – Landscape and neighbourhood character

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

**ZONE**

The subject site is in the General Residential Zone, Schedule 2 (GRZ2).

Under Clause 32.08-3 a permit is required to subdivide land.

**OVERLAYS**

The subject site is not affected by any Overlays.

**Relevant Policies**

All relevant Council policies have been implemented in the Moorabool Planning Scheme, in particular Housing Bacchus Marsh to 2041.

**Particular Provisions**Clause 52.29 Land Adjacent to the Principal Road Network

Under Clause 52.29-2, a permit is required to subdivide land adjacent to a road in a Transport Zone 2. The site adjoins Gisborne Road and the Western Freeway.

Clause 53.01 Public Open Space Contribution and Subdivision

A person who proposes to subdivide land must contribute to the council for public open space provision. Pursuant to Section 18 of the *Subdivision Act 1988*, it is recommended that a condition of approval require payment of a contribution equal to five percent of the value of the land.

Clause 53.03 Residential Reticulated Gas Service Connection

This clause relates to prohibition of reticulated gas connection to new residential subdivisions. Subject to a standard condition, the proposal complies with this clause.

Clause 56 Residential Subdivision

A residential subdivision must meet the relevant objectives of Clause 56 and should meet the relevant standards.

**DISCUSSION**Policy Framework

Relevant planning policies at the State and Local level require consideration of a range of objectives and strategies which generally support the valued character of Melbourne's peri-urban settlements whilst ensuring growth is consolidated in suitable locations to ensure no detrimental impacts to the environment or rural land uses.

The Central Highlands Regional Growth Plan (Victorian Government 2014) and policies in the Moorabool Planning Scheme recognise Bacchus Marsh's role in supporting residential growth as the Shire's largest town. This must be achieved by directing growth to preferred locations with access to services and infrastructure, respect for neighbourhood character and integration with surrounding development.

The subject site and surrounding land are in the General Residential Zone, Schedule 2 (GRZ2). Existing developments nearby reflect the incremental growth of Bacchus Marsh over many decades, typified by mostly single dwelling developments on a range of lot sizes. The application proposes lot sizes mostly smaller than many lots in the surrounding neighbourhood, contributing to more diverse lot sizes and increased housing choice without any detrimental impacts on the existing neighbourhood character. The proposed subdivision is responsive to the policy context for



consolidated township growth and integrates with its surrounding urban context, providing opportunities for housing to take advantage of existing infrastructure and services.

#### Rescode

The proposal meets the relevant requirements of Clause 56 for the assessment of residential subdivision. The proposed lot dimensions would accommodate a building envelope of 10m x 15m, and at least 85% of the lots are oriented to meet the solar access requirements for future development, exceeding the 70% minimum. Each lot would be directly oriented to the proposed common property driveway to enhance social interaction and passive surveillance opportunities. Subject to conditions, the proposed common property driveway would be capable of efficient management by a future owner corporation. Tree planting is proposed on both sides of the proposed driveway, contributing to the amenity of the proposed subdivision and surrounding neighbourhood.

#### Landscaping

The application was referred to Council's Urban Design and Landscape, who consented to the proposal subject to changes to the proposed tree species and location of vehicle crossovers to ensure future plantings are appropriately protected from encroachment of hard paving to prevent any detriment to the trees' growth.

#### Garden Space

In accordance with the requirements of Clause 32.08-3, it is recommended that a condition of approval require Lot 10 to have a building exclusion zone to ensure the minimum garden area requirements are met.

#### Traffic and Access

The proposal would include provision of pedestrian footpaths within the proposed common property, linking to Leila Court. There is no existing cycling network in the immediate area, but the proposal would facilitate a low vehicular traffic speed environment and connect to Leila Court. The proposed common property driveway provides acceptable access to the subdivision from Leila Court. The submitted TIA demonstrates adequate turning and manoeuvrability for vehicles and provides for safe and convenient access to the road network.

Under the requirements of Clause 52.29, the application was referred to the Department of Transport and Planning (DTP), due to the abuttal to the Western Freeway and Gisborne Road. DTP consented to the proposal, subject to a requirement that no direct access from the site to either road be provided. This is consistent with the proposed subdivision plan.

#### Waste Management

As requested, Council's Waste Management, a condition of approval will require the need for future private waste collection be reinforced by way of a Section 173 Agreement registered on the title to each lot. This will ensure that any landowner is aware Council's waste collection service will not be available to future residents of this subdivision.

### **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**

<b>Authority</b>	<b>Response</b>
Greater Western Water	Consent with conditions.
Melbourne Water	Consent.
Powercor Australia	Consent with conditions.
Department of Transport and Planning	Consent with conditions.
Council's Development Infrastructure	Consent with conditions.
Council's Waste Management	Consent with conditions.
Council's Urban Design and Landscape	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 does not have any risk or OH&S implications for 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 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 Permit in accordance with the conditions in the recommendation of this report; or
- issue a Refusal to Grant a Permit on 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**

Overall, the proposed subdivision is generally in accordance with the relevant provisions of the Moorabool Planning Scheme. The proposal would provide for increased residential growth in a location served by existing infrastructure and proximate to a range of services. The proposed lots would contribute to lot diversity and respond positively to the surrounding neighbourhood character. It is recommended that that the application be supported, subject to conditions.

### 7.3 PA2023182 - TWO LOT SUBDIVISION WITH BUILDING ENVELOPES AT 165A WERRIBEE VALE ROAD, MADDINGLEY

**Author:** Mark Lovell, Coordinator Planning Services

**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development

**Attachments:** Nil

#### APPLICATION SUMMARY

**Permit No:** PA2023182

**Lodgement Date:** 7 December 2023

**Planning Officer:** Mark Lovell

**Address of the land:** 165A Werribee Vale Road, Maddingley

**Proposal:** Two lot subdivision with Building Envelopes

**Lot size:** 6.33 ha

**Why is a permit required?** Clause 32.08-3 Subdivide land

#### 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 PA2023182 for a two lot subdivision with building envelopes at 165A Werribee Vale Road, Maddingley subject to the following grounds:

1. The proposed subdivision undermines the strategic planning of West Maddingley by encroaching onto a natural river escapement.
2. The proposed subdivision is generally not in accordance with Development Plan Overlay Schedule 3, Clause 43.04-2 of the Moorabool Planning Scheme.
3. The proposed subdivision creates a dwelling envelope on area sets aside for open space as shown on the endorsed development plan under the Development Plan Overlay Schedule 3.
4. The proposed subdivision does not support the continuation of the residential edge roadway in accordance with the endorsed development plan under the Development Plan Overlay Schedule 3.
5. The proposed subdivision 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:	One
Consultation meeting:	No consultation undertaken with the objector as the recommendation is for refusal.

## POLICY IMPLICATIONS

The Council Plan 2021-2025 provides as follows:

### Strategic Objective 2: Liveable and thriving environments

#### 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 – Mark Lovell*

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

## EXECUTIVE SUMMARY

Application referred?	Yes, Greater Western Water, Melbourne Water, Downer Utilities, Powercor Australia, Country Fire Authority, Council's Development Infrastructure, and Council's Strategic Planning.
Any issues raised in referral responses?	Strategic Planning did not support the subdivision and noted the West Maddingley Development Plan clearly identifies the subject land as open space due to the escarpment and its environmental values.
Preliminary concerns?	Subdivision that is not generally in accordance with endorsed Development Plan under the Development Plan Overlay Schedule 3.
Any discussions with applicant regarding concerns?	Applicant provided a response to access arrangement and detailed survey plans with longitudinal sections.
Any changes made to the application since being lodged?	No.

Brief history.	The subject land was part of Caldera Estate with only south-western section land remaining that can be developed in accordance with the Development Plan Overlay, Schedule 3.
Previous applications for the site?	PA2019002 for 21 Lot Staged Subdivision and Removal of Native Vegetation and Variation of a Power Supply Easement was issued on 17 July 2019. Titles were released on 24 July 2021.
General summary.	The recommendation is for refusal.
<b>Summary of Officer's Recommendation</b>	
That, having considered all relevant matters as required by the <i>Planning and Environment Act 1987</i> , Development Assessment Committee issue a Refusal to Grant Planning Permit PA2023182 for a two lot subdivision with building envelopes at 165A Werribee Vale Road, Maddingley.	

### SITE DESCRIPTION

The surrounding area to the south and east is comprised of detached dwellings on moderate lot sizes reflective of contemporary architectural detailing. These dwellings are located within new residential estates. The surrounding land to the north is comprised of agricultural fields in close proximity to the Werribee River.

The subject site is located on the northern side of Blake Drive in Caldera Estate and is adjacent to the western side of Calderwood Road in Stonehill Estate. The site has no road abuttal to Werribee Vale Road and the street address reflects its former association with 165 Werribee Vale Road. The lot has a total area of 6.33 ha and is comprised of steep slope descending in a south to north direction reflective of a natural river valley. There are a scattering of trees and shrubs along the escarpment.



Figure 1: Aerial Photography

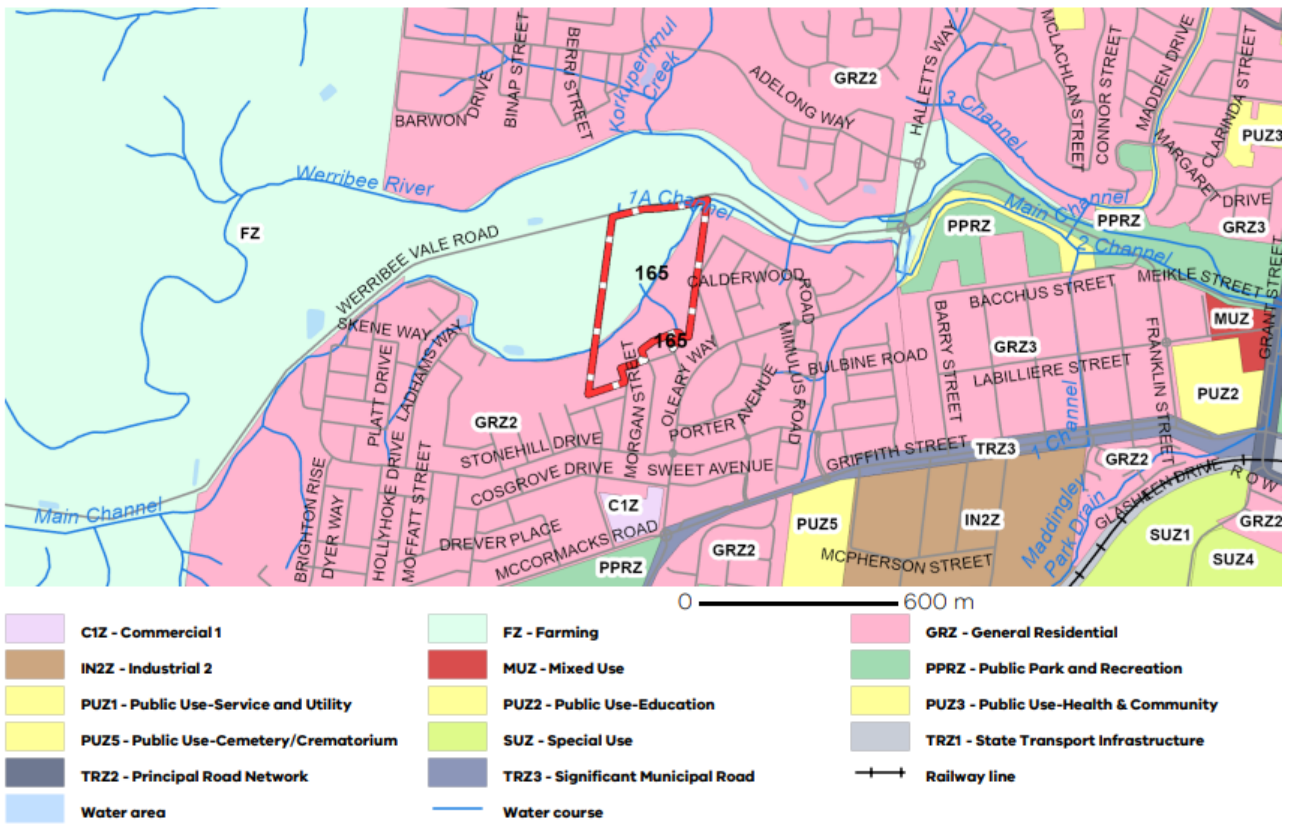


Figure 2: Zone Map

**PROPOSAL**

It is proposed to subdivide the land into two lots.

Lot 1 is located on the eastern half of the site with a total land area 3.68 ha. A building envelope is proposed that is 40m in length and 25 metres in width and is located in a central part of escarpment. There will be a 5m wide vehicle access to connect to Blake Drive to the south.

Lot 2 is located on the western half of the site with a total land area 2.66 ha. A building envelope is proposed that is 30m in length and 20m in width located on moderate sloped land that is setback 10m from the southern property boundary. There will be a 5m wide vehicle access to connect to Durward Avenue to the east. Some of the planted vegetation will need to be removed within the building envelopes.

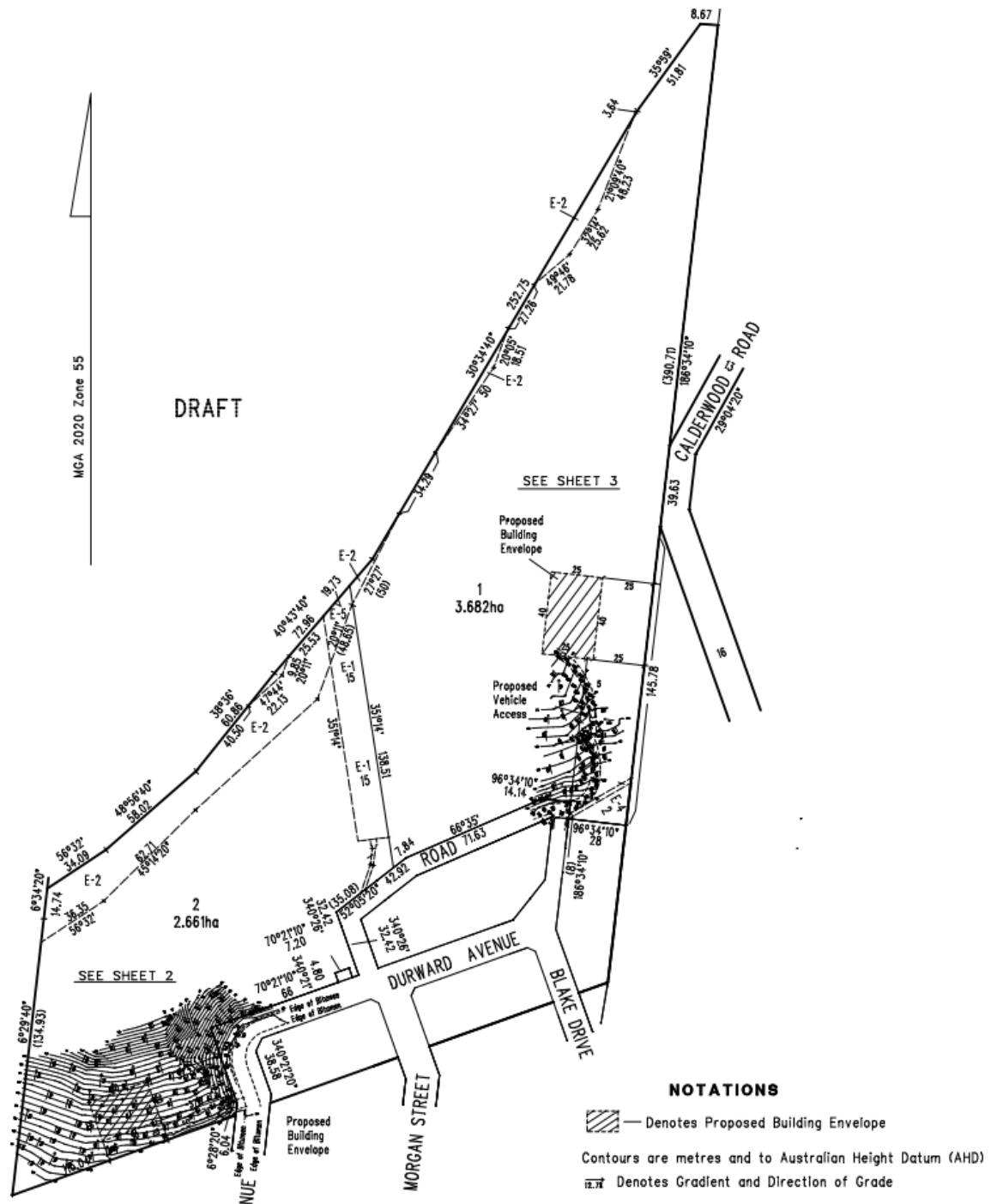


Figure 3: Subdivision plan

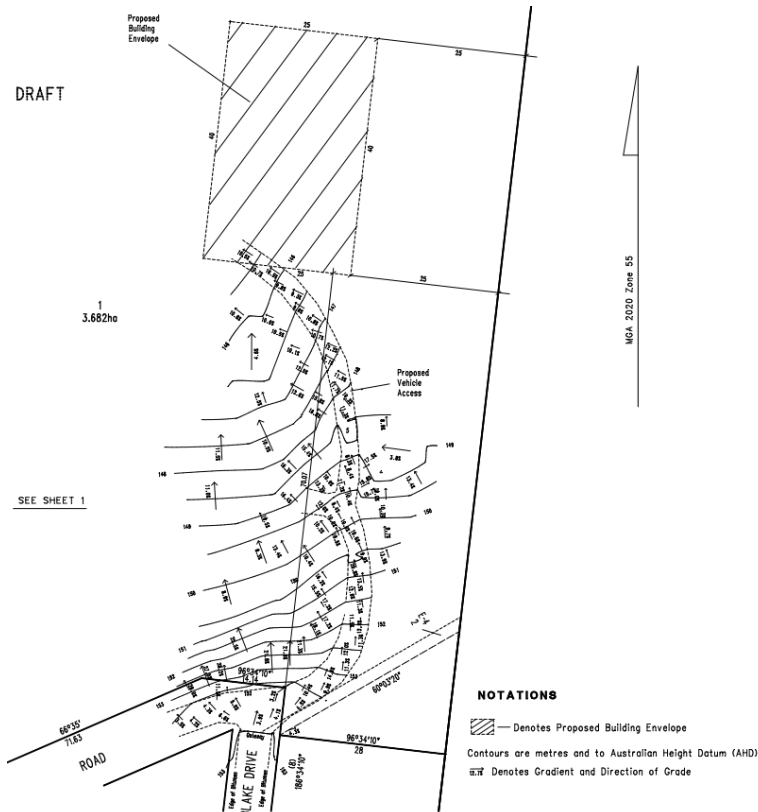


Figure 4: Enlargement of the Building Envelope and Driveway to Lot 1

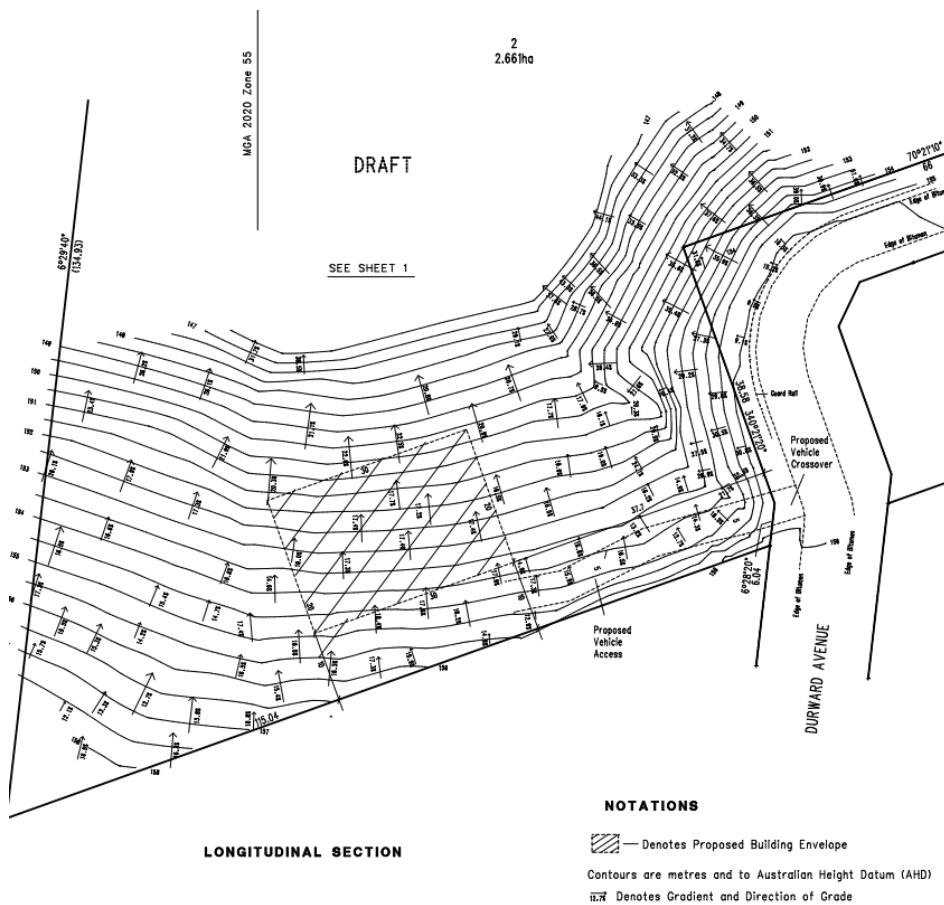


Figure 5: Enlargement of the Building Envelope and Driveway to Lot 2



## BACKGROUND TO CURRENT PROPOSAL

The Minister of Planning prepared and approved a Planning Scheme Amendment C49 on 19 November 2009, which rezoned the land known as West Maddingley from Farming Zone to Residential 1 Zone and also placed a Development Plan Overlay, Schedule 3 on the land.

## PUBLIC NOTICE

The proposed subdivision is not in accordance with the endorsed development plan under the Development Plan Overlay, Schedule 3 and is therefore not exempt from the notification provisions.

The application was notified to adjoining and surrounding landowners One objection was received.

## SUMMARY OF OBJECTIONS

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

Objection	Any Relevant Requirement
Access road to the subdivision will result in loss of multiple trees, which will allow the wind directly hit 64, 66, and 68 Calderwood Road.	Development Plan Overlay Schedule 3. Clause 52.17 – Remove native vegetation.
<b>Officer's Response:</b> There is no permit trigger for tree removal due to the vegetation been planted and designed to stabilise erosion from the escarpment. The area is designed as encumbered open space rather than set aside for a dwelling and associated accessway. Tree removal should be avoided along the escarpment.	

## PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 11.01-1S – Settlement
- Clause 11.02-3S – Sequencing of development
- Clause 11.03-5S – Distinctive areas and landscapes
- Clause 11.03-2L – Growth Areas
- Clause 12.05-2S – Landscapes
- Clause 13.04-2S – Erosion and landslip
- Clause 15.01-3S – Subdivision Design
- Clause 15.01-4S – Healthy Neighbourhoods
- Clause 15.01-5S – Neighbourhood Character
- Clause 15.01-5L – Landscape and neighbourhood character
- Clause 15.03-1S – Heritage Conservation
- Clause 16. 01-1S – Housing Supply
- Clause 17 – Economic Development
- Clause 18 – Transport
- Clause 19 – Infrastructure

The proposal does not comply with the relevant section of the PPF clauses outlined in the table below:



PPF	Title	Response
Clause 12.05-2S	Landscapes	<p>The objective of this clause is to protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.</p> <p>A building envelope located on a river escarpment does not protect open spaces that has environmental value.</p>
Clause 15.01-5L	Landscape and Neighbourhood Character	<p>A strategy of this clause is to encourage development that protects the visual, aesthetic and environmental values of scenic hilltops, escarpments, ridgelines and areas of visual prominence including views from the Bacchus Marsh valley and other areas.</p> <p>The building envelope in Lot 1 does not protect the visual and environmental value of the escarpment.</p>

### ZONE

The site is located in the General Residential Zone Schedule 2 (GRZ2).

A planning permit is required to subdivide land under Clause 32.08-4. Decision guidelines are listed under Clause 32.08-14.

### OVERLAYS

The site is covered by the Development Plan Overlay, Schedule 3 (DPO3). Map 1 in Schedule 3 of the Development Plan Overlay is shown below.

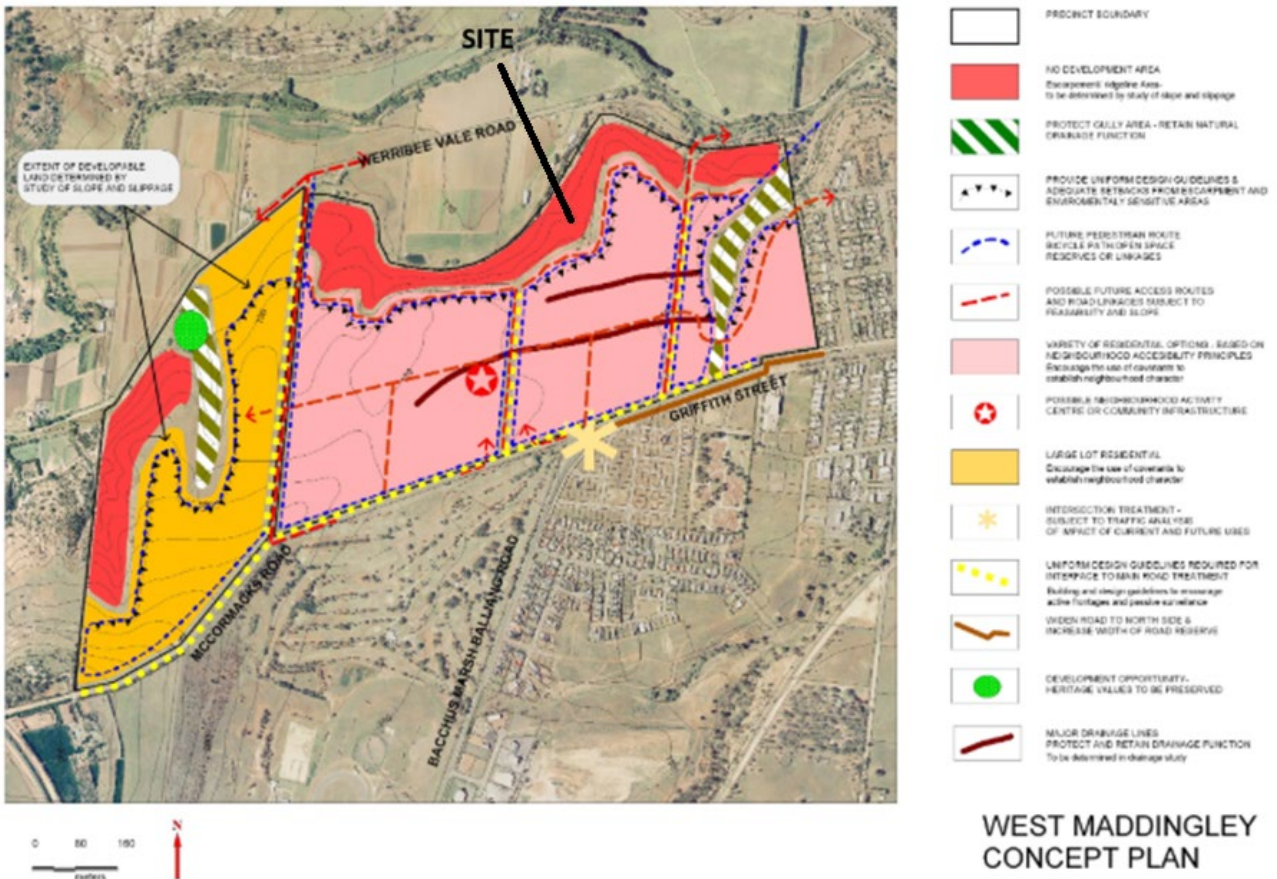
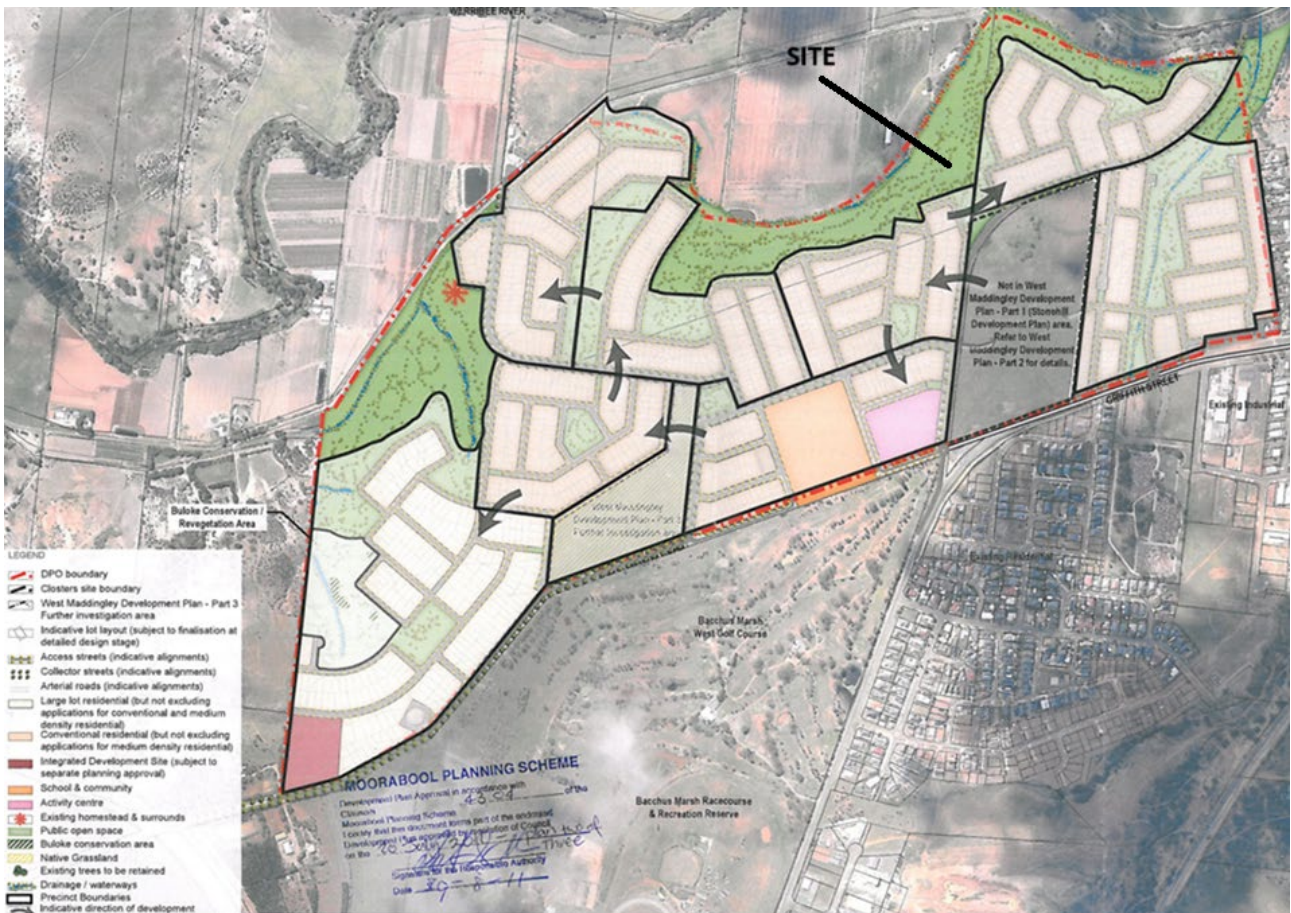


Figure 6: West Maddingley Concept Plan with dark red area marked No Development Area



**Figure 7: Endorsed Development Plan showing open space areas****Relevant Policies**Housing Bacchus Marsh to 2041

This policy addresses the management of growth, housing and guides neighbourhood character in Bacchus Marsh and surrounds. Maddingley is one of the three suburbs within close proximity to Bacchus Marsh in terms of both physical proximity as well as significant natural features and distance with the Western Freeway warranting the adoption of planning and housing strategies to support sustainable neighbourhoods. This policy guides development towards sustainable principles such as:

- Environmentally Sustainable Design
- Compact Neighbourhoods
- Walkable and Pedestrian Scale
- Mixed Land Uses
- Diverse Housing, Streets and Public Spaces
- Interconnected Streets
- Variety of Transport Options
- Range of green spaces as features

The Housing Strategy identifies subject site in Precinct 27 which is designated for greenfield residential growth.

**Particular Provisions**Clause 53.01 (Public Open Space Contribution and Subdivision):

This provision requires that a person who proposes to subdivide land must make a contribution to the Council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial, or commercial purposes, or a percentage of the site value of such land, or a combination of both). The schedule to Clause 52.01 does not specify a percentage for public open space.

A requirement has already been provided as a result of the earlier Stonehill Residential Estate.

Clause 56 – Residential Subdivision

This clause seeks to create liveable and sustainable neighbourhoods and urban places with character and identity and to achieve residential subdivision outcomes that appropriately respond to the site and its context.

The proposed subdivision complies with most of the standards of Clause 56 applying to a two lot subdivision due to access to existing infrastructure and services. The proposed subdivision however fails to respond to its site context.

**DISCUSSION**Development Plan Overlay Schedule 3

The master planning of West Maddingley considered all site features and determined where development should be located and areas of value that needed to be protected. The objectives of the Development Plan Overlay Schedule 3 are to identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land. All estates within the Development Plan Overlay



Schedule 3, being Stonehill Estate, Queensbrook Estate and Caldera Estate have been subdivided generally in accordance with the endorsed development plan.

Caldera Estate consisting of 21 lots left a large balance lot that would enable the last few lots to be subdivided in a future second stage of the subdivision and based on the endorsed development plan under the Development Plan Overlay Schedule 3 could consist of an extension of Durward Avenue directly to the west, as shown below.



**Figure 8:** Location of the 21 lots in Caldera Estate and where a future subdivision could be located

The applicant however in this current application proposes to split the balance lot into two large lots. The Lot 1 building envelope is proposed on the escarpment and in an area designated as open space and the Lot 2 building envelope generally where development should occur but without a proper road reserve that would include a two way roadway, naturestrip with street trees and a footpath. The lack of a roadway accessing Lot 2 prevents Caldera Estate from connecting to the western adjacent property which would then connect to Stonehill Estate.

The proposed building envelope to Lot 1 is located in an open space area and will adversely affect the landscape and visual character of a natural escarpment. This subdivision proposal will undermine the entire estate by encroaching onto areas specifically set aside for open space and transforming the existing and preferred neighbourhood character. As stated in Clause 43.04-2 of the Moorabool Planning Scheme a permit granted must be generally in accordance with the development plan and this is not achieved in the proposed subdivision. The application cannot be

supported due to this conflict with the overlay provisions and does not represent the orderly planning of the area.

The applicant could undertake a two lot subdivision by extending Durward Avenue directly to the west and undertaking earthworks to form a relatively flat topography to create suitable building lots similar to the arrangement with existing Caldera Estate. The applicant has decided instead to propose a subdivision with building envelopes in contravention of the Development Plan Overlay.

#### General Residential Zone.

The land is zoned for residential purposes and both lots are of a sufficient size to accommodate a future dwelling, and all services authorities had no objections. Both proposed building envelopes have excessive driveway lengths to gain access to the nearest road reserve which is an inappropriate design response in a new residential estate and does not assist with pedestrian connectivity or people with limited mobility.

#### **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**

<b>Authority</b>	<b>Response</b>
Greater Western Water	Consent with conditions
Melbourne Water	Consent
Powercor Australia	Consent with conditions
Downer Utilities	Consent with a condition
Country Fire Authority	Consent with conditions
Council's Development Infrastructure	Consent with conditions
Council's Strategic Planning	Refusal

#### **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**

That the Development Assessment Committee could consider the following 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 how the proposal complies with the Moorabool Planning Scheme. This option may result in the objectors appealing the Committee's decision to VCAT.

**CONCLUSION**

The proposed two lot subdivision with building envelopes represents a departure from the approved development plan endorsed in accordance with the Development Plan Overlay Schedule 3. There are no planning grounds to support a future dwelling located on an escarpment which detracts from the natural characteristics of a river valley. The escarpment should remain as encumbered open space and provides landscape and environmental value to the surrounding area. The proposed subdivision is recommended for refusal.

**7.4 PA2024139 - DEVELOPMENT OF A TELECOMMUNICATIONS FACILITY AT 18A LINKS ROAD, DARLEY**

**Author:** Fatima Goreishi, Statutory Planner

**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development

**Attachments:** Nil

**APPLICATION SUMMARY**

**Permit No:** PA2024139

**Lodgement Date:** 20 September 2024

**Planning Officer:** Fatima Goreishi

**Address of the land:** 18A Links Road, Darley

**Proposal:** Development of a Telecommunications Facility

**Lot size:** 49.55 ha

**Why is a permit required?** Clause 37.01 Special Use Zone, Schedule 3 – Buildings and Works  
Clause 52.19 Telecommunications Facility – Buildings and Works

**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 PA2024139 for the Development of a Telecommunications Facility at 18A Links Road, Darley, subject to the following conditions:

**Endorsed Plans:**

1. Before the 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) A colour schedule showing the proposed monopole painted a Eucalyptus Green or similar colour tone.
2. Unless otherwise approved in writing by the Responsible Authority, all buildings and works are to be constructed or undertaken in accordance with the endorsed plans to the satisfaction of the Responsible Authority.

**Telecommunications:**

3. All noise emanating from any mechanical plant on the site must comply with the Environment Protection Authority's (EPA's) regulations and Council Environmental Health department requirements.
4. The telecommunications facility must be designed in accordance with the Australian Standard Radiation Protection Series S-1 Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz published by the Australian Radiation Protection and Nuclear

**Safety Agency (ARPANSA) in 2021.****Development Infrastructure:**

5. 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.
6. Sediment Control 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).
7. Photographic evidence notification Prior to the works commencing on the development, notification including photographic evidence must be sent to Council’s Infrastructure Services department 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.

**Permit Expiry:**

8. The permit will expire if:
  - (a) The development is 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.

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	Two.
Consultation meeting:	No. Perceptions of health risks cannot be resolved through mediation.

**POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

**Strategic Objective 1: Healthy, inclusive and connected neighbourhoods****Priority 1.5: Provide access to services to improve community connection in the Shire**

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 – Fatima Goreishi*

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 and Council's Special Projects.
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?	PA2004-015 Resubdivision of land to enlarge existing lots on PS218492. PA2007-096 Works ancillary to an existing golf club venue (restaurant/gambling premises). PA2010275 Development of a shed. PA2017218 River works (Erosion Control Measures) and vegetation removal. PA2022178 Extension of liquor licence area.
General summary.	It is proposed to construct a telecommunications facility comprising a 30m high monopole as part of a mobile phone base station within the golf course. The application was advertised, and two objections were received raising concerns about health and safety impacts and visual amenity. Subject to conditions, the proposal is in accordance with the relevant Moorabool Planning Scheme provisions.

**Summary of Officer's Recommendation**

That, having considered all relevant matters as required by the *Planning and Environment Act 1987*, the Development Assessment Committee issue a Notice of Decision to Grant Planning Permit PA2024139 for the development of a telecommunications facility at 18A Links Road, Darley, subject to the conditions contained within this report.

**SITE DESCRIPTION**

The subject site is in the Special Use Zone, Schedule 3 (Golf Courses) and is bordered to the west and south by land in the Neighbourhood Residential Zone developed for residential purposes. To the north and east the site is bordered by the Lerderberg River, beyond which is land in the Farming Zone, mostly cleared and typified by small rural landholdings, most of which are developed with single dwellings.

The subject site is identified as Lot 1 on PS 831254H and known as 18A Links Road, Darley. The site is 49.55ha in size, irregularly shaped and used and developed as a golf course. The site has a gradual fall, from west to east, of up to 40m. There is a spread of vegetation across the site and generally typical of golf course design. The site is developed with a clubhouse and car parking near the west boundary abutting Links Road, two dams and ancillary sheds.

The site is an active golf course.



**Figure 1:** Aerial Photograph





Figure 2: Location plan (blue star)

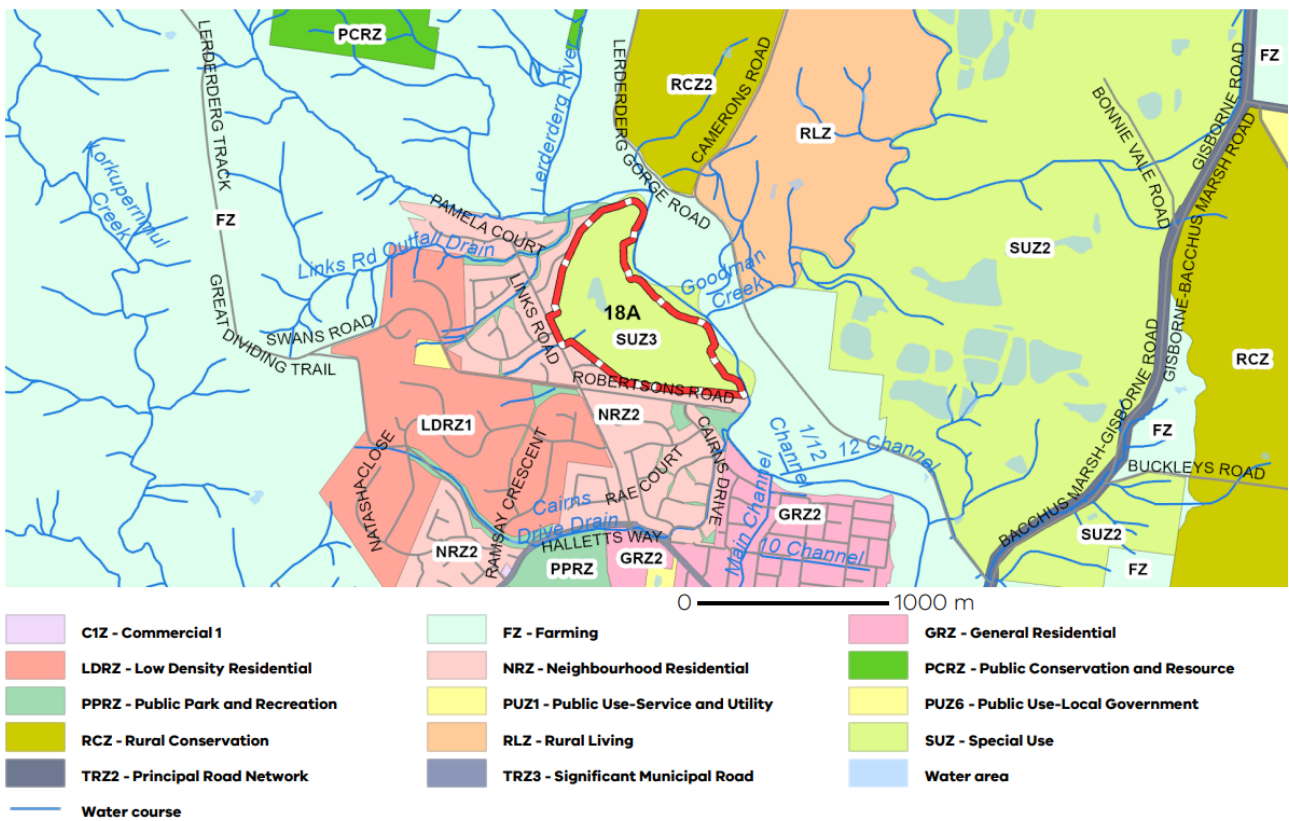
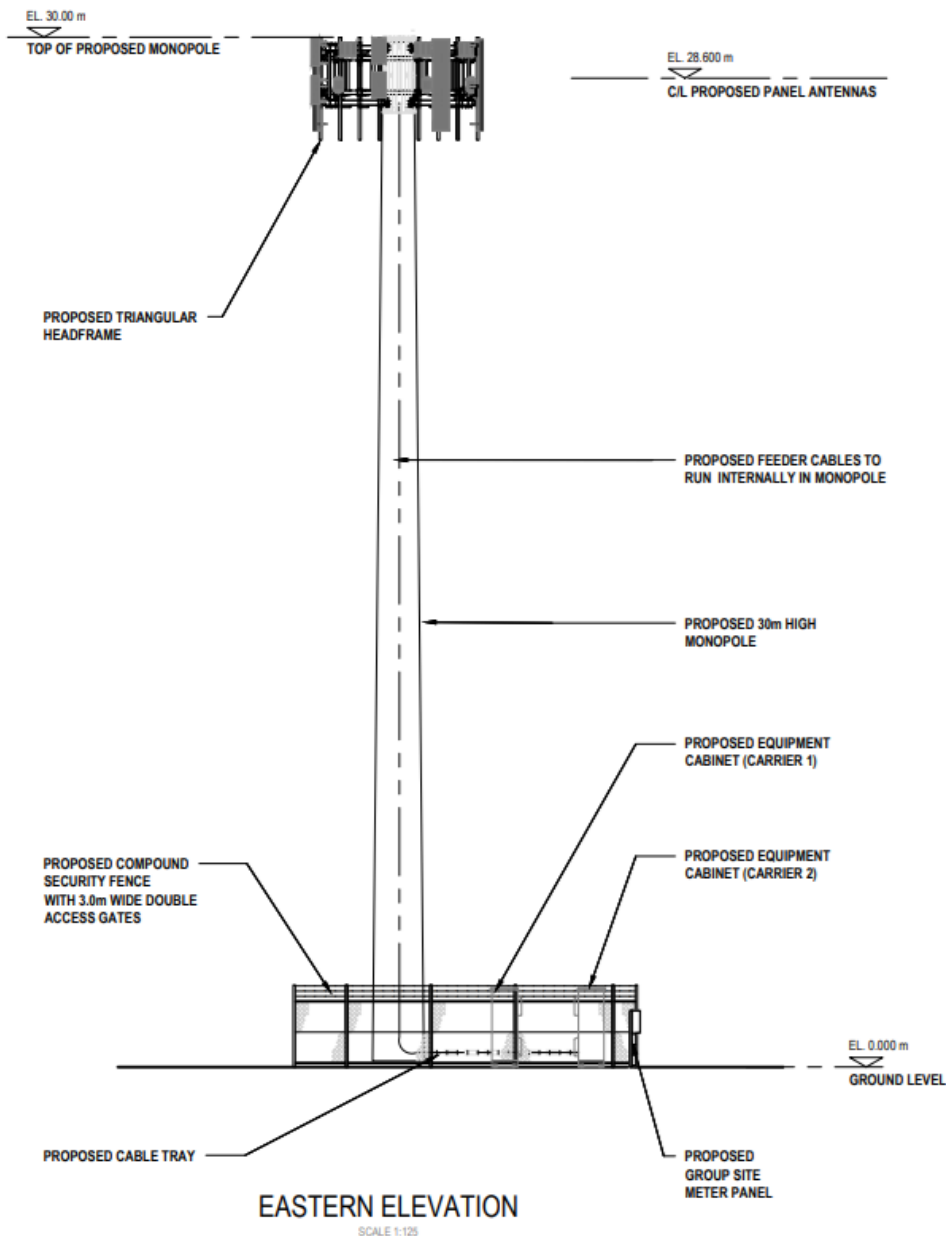


Figure 3: Zone Map

**PROPOSAL**

It is proposed to develop the site for a telecommunications facility. The proposal would comprise a 30m high steel monopole with a triangular headframe mounted at the top to accommodate future panel antennas, two equipment cabinets near the base surrounded by security fencing to create a square shaped compound approximately 100sqm in area. The monopole and antennas would be a grey colour, and the cabinets painted green. No external lighting is proposed.

The facility would be constructed on the southeast side of the shed located near the larger dam. Access to the facility would be via existing internal accessways and no vegetation removal would be required.



**Figure 4:** Elevation plan

**BACKGROUND TO CURRENT PROPOSAL**

Not applicable.

**HISTORY**

PA2004-015 - Resubdivision of land to enlarge existing lots on PS218492.

PA2007-096 - Works ancillary to an existing golf club venue (restaurant/gambling premises).

PA2010275 - Development of a shed.

PA2017218 – River works (Erosion Control Measures) and vegetation removal.

PA2022178 - Extension of liquor licence area.

**PUBLIC NOTICE**

Notice of the application was given to adjoining and nearby landowners and occupiers by post and a sign was erected on site. Two objections were received.

**SUMMARY OF OBJECTIONS**

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

<b>Objection</b>	<b>Any Relevant Requirement</b>
Concerns about detrimental health impacts, given the proposed facility's 200-230m distance from some residential properties, which is unsafe and poses health risks to residents.	Clauses 19.03-4S, 52.19-5 & 65.01.
<b>Officer's Response:</b> Recommended permit conditions would require the facility to comply with current health standards which will respond to health and safety concerns.	
The tower will be too close to residential properties and will substantially and permanently impact views from the objector's property.	Clauses 19.03-4S, 37.01, 52.19-5 & 65.01.
<b>Officer's Response:</b> Vegetation on the site includes large established trees which would partially screen and soften views of the proposed facility which combined with the site's topography and the minimum 230m setback from residential properties would reduce its visual impact. There are no planning scheme controls applicable to the site or adjoining residential areas which require specific assessment of view lines, and accordingly impact on views is not specifically considered a relevant concern in assessing the application.	
Negative impact on property values.	Not applicable.
<b>Officer's Response:</b> Property values are not a valid planning consideration as demonstrated by previous VCAT rulings.	
Existing telecommunications infrastructure provides sufficient phone coverage in the area and therefore the proposal is not required.	Clause 19.03-4S.

**Officer's Response:**

The applicant has identified a need for improvements to mobile phone coverage in the area, catering to both current and expanded future needs of mobile phone carriers, with convenience and safety benefits. The nearest existing mobile telecommunications facility is more than 1.9km away.

**PLANNING SCHEME PROVISIONS**

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

The relevant clauses are:

- Clause 02.03-1 Settlement
- Clause 02.03-2 Environmental and landscape values
- Clause 11.03-3S Peri-urban areas
- Clause 15.01-5L Landscape and neighbourhood character
- Clause 19.03-4S Telecommunication Facility

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

**ZONE**Special Use Zone, Schedule 3

The subject site is in the Special Use Zone, Schedule 3 (Golf Courses).

Pursuant to Schedule 3 to Clause 37.01, any use listed in Clause 62.01 which includes a Telecommunications Facility does not require a permit for use.

Under Clause 37.01-4 a permit is required for buildings and works. There are no exemptions in Schedule 3.

**OVERLAYS**Environmental Significance Overlay Schedule 2

The subject site is partly affected by the Environmental Significance Overlay, Schedule 2 (Waterway Protection), but this does not include that part of the site proposed to be developed.

A permit is therefore not required under this overlay.

Land Subject to Inundation Overlay, Schedule 1

The subject site is partly affected by the Land Subject to Inundation Overlay, Schedule 1 (Werribee River, Lerderderg River and Little River Catchments), but this does not include that part of the site proposed to be developed.

A permit is therefore not required under this overlay.

Special Building Overlay, Schedule 1

The subject site is partly affected by the Special Building Overlay, Schedule 1 (Werribee River and Lerderderg River Catchments), but this does not include that part of the site proposed to be developed.

A permit is therefore not required under this overlay.

**Relevant Policies**

Not applicable.

**Particular Provisions**Clause 52.19 Telecommunications Facility

Under Clause 52.19-1 a planning permit is required to construct buildings and works for a telecommunications facility. There are no relevant exemptions.

**DISCUSSION**Municipal Planning Strategy (MPS) and Planning Policy Framework (PPF)

The proposal is generally in accordance with the relevant provisions of the MPS and PPF. The proposed development would contribute to required infrastructure to support mobile phone communications in an established area of Darely, meeting both current and future needs. The proposed facility will be capable of hosting at least two mobile phone carriers, satisfying the policy preference for co-location of such facilities.

Clause 37.01 Special Use Zone, Schedule 3

Overall, and in consideration of the decision guidelines in Clause 4.0 of Schedule 3, the proposed development is deemed appropriate for its location on a golf course. The sloping topography of the site and surrounding land, combined with established vegetation and the recommended Eucalyptus green colour of the monopole will maintain the visual amenity of the subject site and surrounding area to an acceptable extent.

Clause 52.19 Telecommunications Facility

The proposed telecommunication facility comprising a 30m high monopole. The nearest dwellings 230m to the west and, combined with established trees on the golf course would reduce the visual prominence of the facility.

Visibility of the facility would vary from different vantage points surrounding the site. Views from the north on St Andrews Way would have a significant level of vegetation screening to the immediate north. From the northwest side towards Pamela Court, there is a 600m separation in addition to vegetation which would significantly reduce visual impacts. Views from the south towards the proposed facility would be foregrounded by trees to the immediate north and a separation distance of at least 400m, reducing the visual impact of the monopole and equipment. From the east, across the Lerderderg River, there are unlikely to be any considerable visual impacts. Ground level structures and equipment forming part of the development would be substantially screened by existing vegetation.

Furthermore, the topography of the wider golf course and surrounding landscape provides for wide vistas which would also be expected to lessen the visual prominence of the proposed facility. For these reasons, it is not considered that the proposal would have a detrimental effect on the amenity of the surrounding area.

**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 Special Projects	Consent
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 does not have any risk or OH&S implications for 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. Both submitters and the applicant were invited to attend this meeting and 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 Permit in accordance with the conditions in the recommendation of this report; or
- issue a Refusal to Grant a Permit on 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 proposed development of a telecommunications facility is generally in accordance with the relevant provisions of the Moorabool Planning Scheme. The proposal would improve the reliability of mobile telecommunications services in the area and be sited to achieve substantial separation from residential areas to avoid any detrimental amenity impacts. There would be no detriment to the operation of the existing golf course. It is recommended that the application be approved subject to conditions.



**7.5 PA2023106 - EARTHWORKS AT 283 CAMERONS ROAD, COIMADAI****Author:** Justin Rocio, Statutory Planning Officer**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Development**Attachments:** Nil**APPLICATION SUMMARY****Permit No:** PA2023106**Lodgement Date:** 1 August 2023**Planning Officer:** Justin Rocio**Address of the land:** 283 Camerons Road, Coimadai**Proposal:** Earthworks**Lot size:** 17ha**Why is a permit required?** Clause 35.06-5 Rural Conservation Zone Schedule 2 – Earthworks which change the rate of flow or the discharge point of water across a property boundary.**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 PA2023106 for Earthworks at 283 Camerons Road, Coimadai subject to the following conditions:

**Endorsed Plans:**

1. Within 3 months of the issue of a planning permit, 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 or some other specified plans but modified to show:
  - a) Level plan to Australian Height Datum (AHD) confirming current surface level of the works area and nominating proposed finished surface level in accordance with condition 1b
  - b) A notation on the plan stating that a maximum depth of 300mm to any new fill required for leveling the existing works area.
1. Earthworks:
2. Any additional material must be accompanied by certificates confirming it meets requirements as clean fill and cannot contain any building, household or green waste to the satisfaction of the Responsible Authority.
3. Unless with the written consent of the Responsible Authority, no additional site cutting or extension to the boundaries of current works area is permitted.

**Development Infrastructure:**

4. 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 Civil Construction, Building and Demolition Guide (EPA 2020).
5. 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.
6. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council's assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority.

**Greater Western Water and Southern Rural Water:**

7. Sediment control measures as outlined in the EPA's publication No 275 Sediment Pollution Control shall be employed during the construction and maintained until the disturbed area has been revegetated.

**Permit Expiry:**

8. This permit will expire if:
  - a) the development is 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.

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	No.
Notices on site:	No.
Notice in Moorabool Newspaper:	No.
Number of objections:	Two objections.
Consultation meeting:	No.

**POLICY IMPLICATIONS**

The Council Plan 2021-2025 provides as follows:

**Strategic Objective 2: Liveable and thriving environments****Priority 2.3: Enhance our natural environments**

The proposal is consistent with the Council Plan 2021 – 2025.

**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**

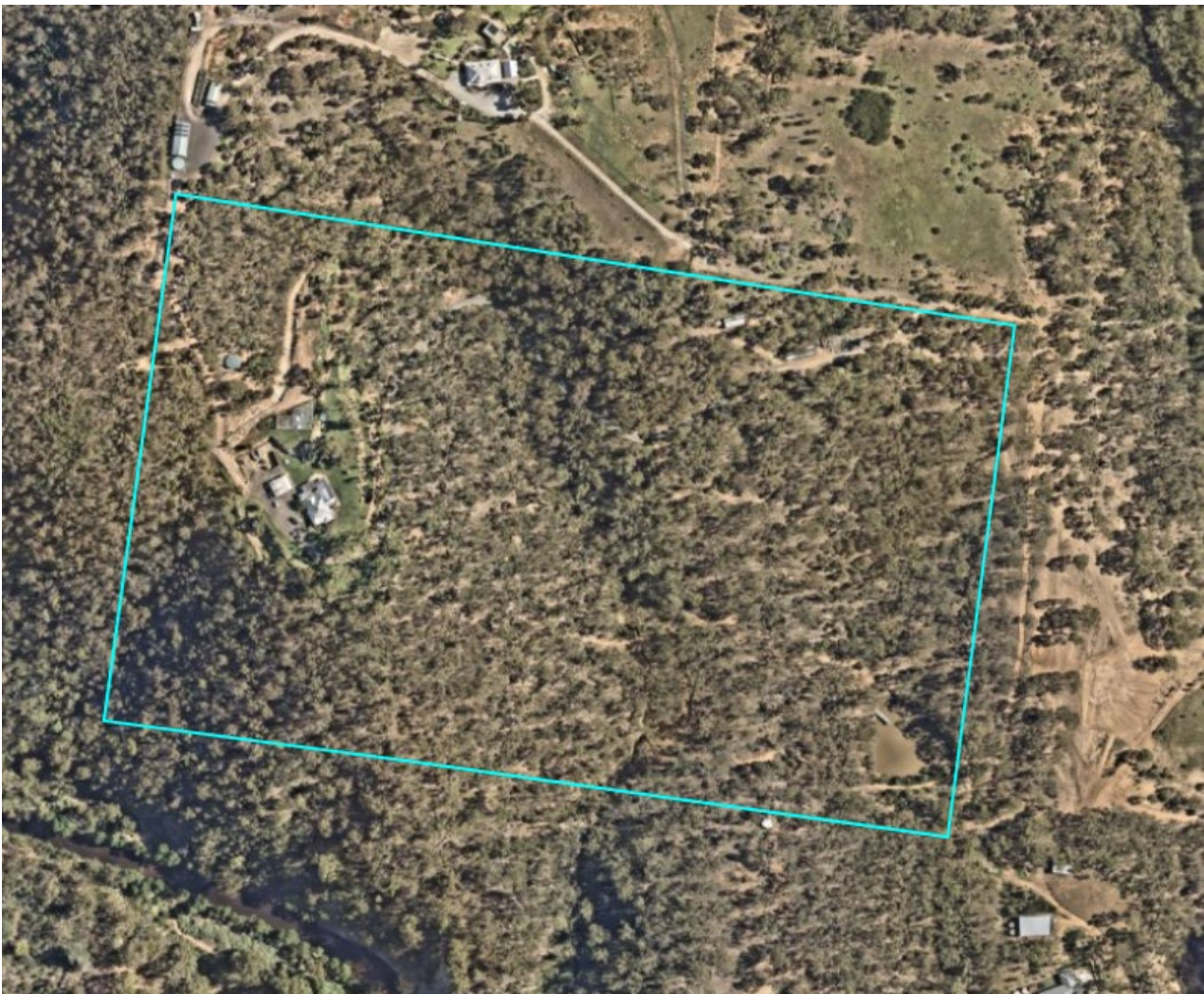
Application referred?	Yes, Council's Development Infrastructure.
Any issues raised in referral responses?	No.
Preliminary concerns?	Earthworks were previously undertaken on site without planning approval.  More information regarding clean fill certificates, source of material and level details.
Any discussions with applicant regarding concerns?	Yes, applicant was advised of request and provided receipts of material already placed on site and provided a soil report from the origin of material (Stonehill Estate).
Any changes made to the application since being lodged?	No.
Brief history.	Earthworks were previously undertaken on site without prior planning approval. The works were undertaken quite some time ago and it is now maintained with vegetation occupying the area.
Previous applications for the site?	No.
General summary.	This proposal seeks retrospective approval for earthworks in the form of imported fill. The application also seeks to place additional material up to 300mm in depth onto works area to level off the ground level.  It is noted that advertising of the application is not required for earthworks however, two objections were received from neighbouring properties.  The existing earthworks have not created detrimental impacts through sediment run off and have not adversely affected water flow through the property. Application is recommended for approval.
<b>Summary of Officer's Recommendation</b>	

That, having considered all relevant matters as required by the *Planning and Environment Act 1987*, the Development Assessment Committee issue a Notice of Decision to Grant Planning Permit PA2023106 for Earthworks at 283 Camerons Road, Coimadai subject to the conditions contained within this report.

## SITE DESCRIPTION

The area is within a water catchment managed by Greater Western Water and Southern Rural Water. The Lerderderg State Park and the Lerderderg River are located west of the subject site. The surrounding area is also heavily vegetated which gradually clears closer towards Camerons Road. To the east, north and south is comprised of single dwellings on large lots sizes.

The subject lot is a rectangular shaped with an area of around 17ha. The site slopes upwards in a westerly direction towards Lerderderg State Park. The property is a landlocked property and is accessed through a carriageway easement running along 287 Camerons Road, Coimadai. This carriageway easement is shared by another landlocked property just north of the subject site at 285 Camerons Road, Coimadai. The subject lot contains an existing dwelling and multiple outbuildings towards the western portion of the site (see figure 1). The property is heavily vegetated and there are a number of waterways running through the property each that connect to Lerderderg River.



**Figure 1:** Aerial photograph



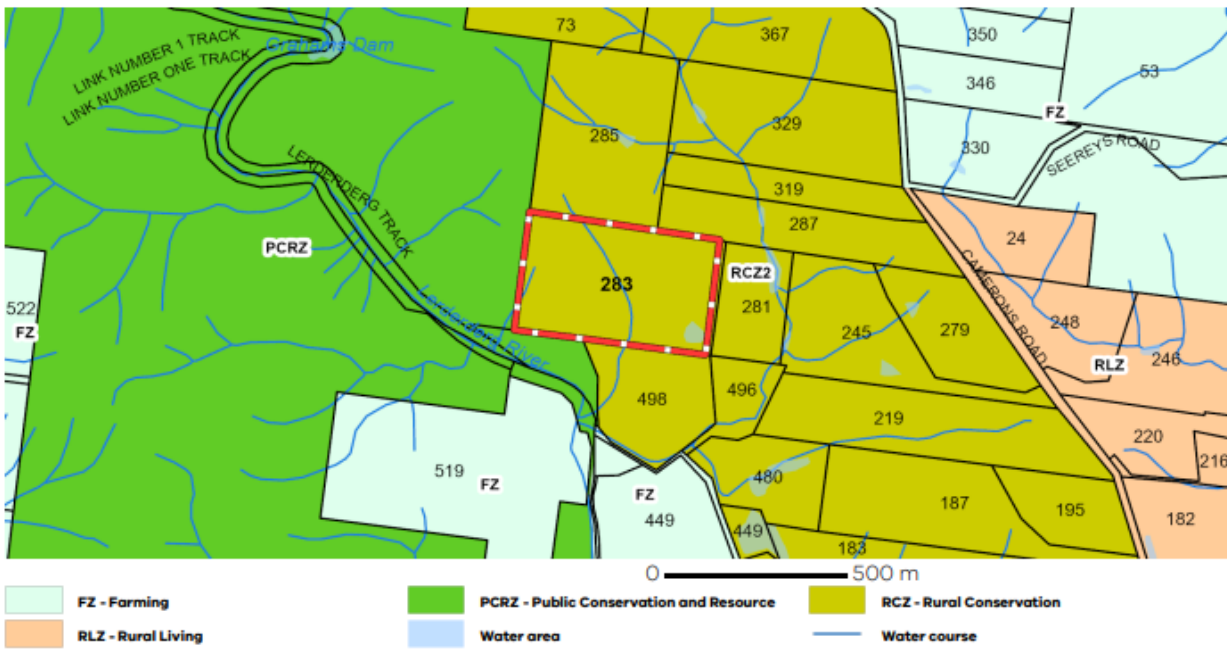


Figure 2: Zone Map

**PROPOSAL**

The applicant is proposing to bring in an additional 300mm in depth of clean fill to flatten and level the previous cut and filling works. The earthworks will be located just north of the existing dwelling and outbuildings. The area of the earthworks will be around 900sqm in area.



Figure 3: Existing earthworks area



**Figure 4:** Eastern side of works area with vegetation over the embankment

**BACKGROUND TO CURRENT PROPOSAL**

The applicant has previously conducted earthworks without planning permission. Enforcement action was undertaken and works have since stopped. The current works area is a cleared area with some vegetation already starting to grow on the embankment side.

**HISTORY**

No previous planning applications on the site.

**PUBLIC NOTICE**

The application was not notified to adjoining and surrounding landowners.

**SUMMARY OF OBJECTIONS**

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

Objection	Any Relevant Requirement
Potential toxic soil as part of the fill/discarded soil from development sites/potential asbestos	
<b>Officer’s Response:</b> The applicant submitted soil reports from Ground Science stating the origin of material was from Stonehill Estate Stage 22. The soil material was tested and was classified as clean fill.	
The applicant has removed trees, tipped soil on the edge their driveway onto trees/no	Clause 52.17

indication as to whether any native vegetation has/will be impacted by the works.	
<b>Officer's Response:</b> Large scale tree removal based on aerial photography occurred in approximately 2014 without planning approval. Retrospective approval cannot be given to this tree removal. No further trees are proposed for removal as a result of the additional fill material over the existing works area.	
The applicant has had 15 truckloads a day for 3.5 years	
<b>Officer's Response:</b> There is no current truck movements and the additional fill of up to 300mm in depth and an area of 900 sqm does not necessitate high truck volumes to and from the site.	
Given the application is retrospective, details are not included of original and current conditions via an accurate land survey.	
<b>Officer's Response:</b> Level surveys will need to be undertaken by a licensed land surveyor to ensure all new fill does not exceed a depth of 300mm. This will be a requirement prior to endorsement of plans and must be completed within 3 months of the issue of the permit.	
No indication as to whether any local waterways, including Lerderderg River or Goodmans Creek will be impacted by the works	Rural Conservation Zone
<b>Officer's Response:</b> The site inspection undertaken of the existing earthworks area showed no evidence of sediment runoff is being discharged beyond the works area or to nearby waterways.	
Does not comply or contrary to Clause 02.03 Strategic Direction of the Moorabool Planning Scheme; Clause 12.03-1S River and riparian corridors, waterways, lakes, wetlands and billabong; Schedule 14 to Clause 43.02 Design and Development Overlay; Clause 12.05-2L Landscapes in Moorabool, Clause 13.04-2S Erosion and landslip.	Planning Policy Framework
<b>Officer's Response:</b> Subject to conditions controlling sediment run off, the existing earthworks and proposed earthworks can comply with the planning policy framework. The earthworks have been undertaken well way from the property boundaries and are not visible from the road frontage or from the existing dwelling due to its elevated position on the site and surrounded by well-established mature trees.	

### PLANNING SCHEME PROVISIONS

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

The relevant clauses are:

- Clause 12.01-1S – Protection of biodiversity
- Clause 12.01-1L – Biodiversity
- Clause 12.05-1S – Environmental sensitive areas
- Clause 12.05-2S – Landscapes
- Clause 12.05-2L – Landscapes in Moorabool
- Clause 14.02-1S – Catchment planning and management
- Clause 14.02-1L – Declared special water supply
- Clause 14.02-2S – Water quality

The proposal complies with the relevant sections of the PPF and MPS.

## **ZONE**

### Rural Conservation Zone Schedule 2

A permit is required for earthworks which change the rate of flow or the discharge point of water across a property boundary.

## **OVERLAYS**

### Bushfire Management Overlay

A permit is not required for earthworks under the Bushfire Management Overlay.

### Design and Development Overlay Schedule 2

A permit is not required for earthworks under the Design and Development Overlay Schedule 2.

### Design and Development Overlay Schedule 14

A permit is not required for earthworks under the Design and Development Overlay Schedule 14.

## **Particular Provisions**

No particular provisions.

## **DISCUSSION**

The proposed additional fill material is intended to further flatten and level the existing earthworks area already undertaken on site without planning approval. Conditions can be in place to ensure any additional fill material is clean and does not contain asbestos or building materials. The clean fill material for the existing earthworks originated from Stonehill Estate and detailed soil reports were completed. Based on a visual inspection of the site, there also appears to be no evidence of sediment runoff along the bank of the works area which is helped by vegetation starting to grow on the flattened area (see site photos). The works area is surrounded by well-established trees that further restricts sediment movements and is at least 50 metres from the central waterway that cuts through the middle of the site. There is also a significant distance between the location of the earthworks and the property boundaries (see aerial photograph). The applicant has shown with the historic site cut covering the dwelling has been maintained as a large lawn area and garden beds limiting the impacts of exposed soils in the Rural Conservation Zone.

A condition will be added to further ensure no new fill material will be placed on the site that exceeds 300mm in depth. The additional soil on site, subject to mitigating sediment control measures and adequate separation distances to waterways and adjacent properties will not negatively affect the water quality of both Goodmans Creek and Lerderderg River. The treed landscape values of the land will continue to be maintained.



The change to the rate of flow across the property due to a change in topography will not negatively impact on surrounding properties through flooding and is consistent with the objectives of the Rural Conservation Zone.

### **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**

<b>Authority</b>	<b>Response</b>
Council's Development Infrastructure	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 not undertaken for the application. 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 grounds in the recommendation of this report; or
- issue a Refusal to Grant a Planning permit on specific grounds. The Development Assessment Committee would need to consider what reasonable grounds there would be to refuse the application under the Rural Conservation Zone provisions.

### **CONCLUSION**

The earthworks (existing and proposed) are generally in accordance with the relevant planning provisions and the Planning Policy Framework of the Moorabool Planning Scheme. In response to objections, a condition will limit the depth of the new fill material through the provision of a proper level survey. The existing earthworks will not create sediment runoff issues due to its distance from adjacent property boundaries and waterways. This will be further controlled through sediment control permit conditions. It is therefore recommended that the application be supported subject to conditions.

**8 UPDATE ON TRENDS, ISSUES AND OTHER MATTERS**

**9 UPDATE ON VCAT DECISIONS**

**10 OTHER BUSINESS**

**11 DATE OF NEXT MEETING**

Wednesday 19 March 2025

**12 MEETING CLOSE**