

4 USE AND DEVELOPMENT OF A DWELLING AT LOT 4 ROPERS LANE, CORA LYNN

FILE REFERENCE INT2033919

RESPONSIBLE GENERAL MANAGER Peter Benazic

AUTHOR Emma Brennan

RECOMMENDATION

That a Refusal to Grant Planning Permit T190162 be issued for Use and development of the land for a dwelling at Ropers Lane, Cora Lynn VIC 3814 on the following grounds:

- The proposed use and development of a dwelling is inconsistent with the purpose of Schedule 1 to Clause 37.01 Special Use Zone (Schedule 1 – Horticultural Preservation) as it is considered that the lot is not appropriate for rural residential living having regard to the proximity to the existing neighbouring broiler farm.
- The proposal is incompatible with the surrounding land uses, having regard to the separation distance benchmark under the Victorian Broiler Code 2009 (as amended 2018) and will likely create substantial future compatibility problems between the operation of the adjoining free range chicken farm and the amenity of the future occupants of the dwelling.

Attachments

1 Locality Map 1 Page

EXECUTIVE SUMMARY:

APPLICATION NO.:	T190162
APPLICANT:	Michael Tyler C/- John McCaffrey - Consultant Town Planner
LAND:	Ropers Lane, Cora Lynn VIC 3814 Lot 4 on LP222475 Vol 10094 Fol 145
PROPOSAL:	Use and development of the land for a dwelling
PLANNING CONTROLS:	Special Use Zone - Schedule 1 (Horticulture Preservation) Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	Advertised with no objections received
KEY PLANNING CONSIDERATIONS:	Compatibility of the proposed dwelling with the Special Use Zone and the other nearby existing farming activities
RECOMMENDATION:	Refusal to Grant a Planning Permit

BACKGROUND:

A similar planning application T110045 was submitted to Council and refused in 2012 on the following grounds:

- The location of the proposed dwelling results in inappropriate separation distances between conflicting uses to the detriment of the amenity of the residents of the proposed dwelling and the potential future expansion of the existing neighbouring broiler farm.

The applicant appealed this decision at Victorian Civil and Administrative Tribunal (VCAT) and on 13 November 2012, Council's decision was upheld.

Planning Permit T100343 was refused by Council on 27 October 2010 for the use of the land for a caretakers dwelling.

Planning Permit T080621 was issued by Council on 1 December 2008 for the development of the land for the purpose of a farm shed.

SUBJECT SITE

The land is located on the north-east side of Ropers Lane, approximately 300m north-west of the Tynong- Bayles Road, Cora Lynn. Ropers Lane is an unmade road and the Tynong - Bayles Road is sealed. The subject land is flat with a number of trees along the southern part of the street frontage. It is approximately rectangular in shape with a total area of about 15.4 hectares. There are a number of outbuildings and farm buildings on the property.



The site is currently used for agricultural activities including racehorse agistment, horse-breaking, beef cattle grazing, cropping (hay), feeding hay and silage to cows and farm contracting services.

The surrounding area is also generally flat, with relevant features being:

- A free range chicken broiler farm adjoining the subject site to the west, known as Schembri farm.
- An asparagus farm on the south-east corner of Ropers Lane and Tynong Bayles Road, abutting the Schembri farm.

PROPOSAL

It is proposed to construct a dwelling on the subject land. It is to be single storey, located 165 metres from the Ropers Lane frontage, 51.85 metres from the north-eastern boundary, approximately 335 metres from the northern boundary and 225 metres from the south-eastern boundary. The dwelling is proposed to comprise three bedrooms, a study, kitchen, living rooms and garage.



PLANNING SCHEME PROVISIONS

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11 Settlement
 - Clause 11.01-1R Green wedges -
- Clause 14 Natural Resource Management

- Clause 14.01-1S Protection of agricultural land
 - Clause 14.01-2 Sustainable agricultural land use
- Clause 21.04 Economic Development
 - Clause 21.04-2 Agriculture

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 53.09 Poultry Farm
- Clause 65 Decision Guidelines
- Cardinia Shire's Liveability Plan 2017-2029.

Zone

The land is subject to the **Special Use Zone - Schedule 1 (Horticultural Preservation)**

Overlays

The land is subject to the **Land Subject to Inundation Overlay**

PLANNING PERMIT TRIGGERS

The proposal for the use and development of a dwelling requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 37.01-1, a planning permit is required for the use of a dwelling.
- Pursuant to Clause 37.01-1-4, a planning permit is required for buildings and works.
- Pursuant to Clause 44.04-1, a planning permit is required for buildings and works.

PUBLIC NOTIFICATION

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site

The notification has been carried out correctly, and Council has received no objections to date.

It is noted that, pursuant Option 2 to Clause 44.04 (LSIO), the proposal is exempt from third party notice and review rights.

REFERRALS

Melbourne Water

The application was referred to Melbourne Water as a statutory referral. No objection to the proposal subject to conditions.

DISCUSSION

Approval is sought for the use and development of the land for a dwelling. Firstly, it is important to note that the proposal is essentially a repeat application, with a previous decision to refuse the application being upheld at the Tribunal on 23 November 2012, being application T110045 (VCAT reference P3350/2011). The key differences between the previously refused application and the current application of T190162 are outlined as follows:

T110045	T190162
Application for the use and development of a dwelling and use of an existing building as a temporary dwelling (to be decommissioned once dwelling is constructed).	Application for the use and development of a dwelling. The temporary dwelling has been removed from the application.
Broiler farm located to the west with 300,000 birds on site.	Broiler farm is now in the form of a free range chicken farm (assessed as a broiler farm under the Victorian Broiler Code as amended in 2018), reducing the number of birds on site to 270,000.
A Farm Management Plan had not been prepared.	A 'property plan' and a 'farm business plan' have been provided (note: not a Farm Management Plan).
n/a	A soil test report has been provided. This report does not provide a significant argument against a non-soil agricultural activity from being carried out on site.
The proposed dwelling was sited in the north eastern portion of the site, 93 metres from the Ropers Lane frontage.	The proposed dwelling is sited in the north eastern portion of the site, 165 metres from the Ropers Lane boundary.

Special Use Zone (Schedule 1 – Horticultural Preservation)

The land is zoned Special Use Zone – Schedule. 1. This is a unique zoning to Cardinia Shire and differs from other Green Wedge farming zones in relation to permit triggers and the purpose of the zone. In essence, the SUZ1 is specifically designed to preserve land of high agricultural quality for soil-based agricultural pursuits.

The purposes of the SUZ1 are:

- *To preserve land of high agricultural quality for horticulture and other farming activities.*
- *To discourage non-agricultural and non-soil-based uses establishing on soil of high agricultural value.*
- *To protect the area from the encroachment of urban and rural residential type development.*

- *To minimise the potential for conflict between residents and normal farming practices that are related to the conduct of agricultural activities.*
- *To encourage sustainable farming activities based on whole farm and catchment planning principles on an individual and community basis.*

Setting aside the concerns raised regarding the proposed dwelling's proximity to the broiler farm, an assessment against the SUZ1 as to whether it is appropriate to locate a dwelling on this site is required.

At the same of the November 2012 hearing, the land was being used for agricultural activities including racehorse agistment, horse-breaking, beef cattle grazing, cropping (hay), feeding hay and silage to cows and farm contracting services. The following assessment was made by the Tribunal with respect to the uses on site requiring a 'living on site' presence on the farm, as part of a viable and genuine agricultural purpose:

[para 18] ... In particular we note that in the course of the cross-examination of Mr Tyler and Ms Goodall during the hearing, they indicated that their total gross income in recent years was approximately \$50 - \$90,000 p.a. from the various activities undertaken. However it was not clear to us how much of this figure related to actual farming of the review site, as opposed to Mr Tyler as a contractor working on other properties.

Since this time, the applicant has submitted that, should a dwelling be approved on the land, the agricultural activities would alter as follows:

- A mixed thoroughbred enterprise, comprising racehorse agistment and foaling down/boarding of brood mares. Beef cattle would also run primarily for pasture management purposes.
- Foaling of mares occurs almost exclusively at night, with the applicant submitting that a dwelling on the property being essential.
- The applicant has submitted that the total gross annual income from the above agricultural activities would range from approximately a \$120,000 to \$133,000pa.

It would appear that these figures directly relate to actual farming activities carried out on the subject site, addressing the Tribunal's concern that the operation results in 'sustainable farming activities.' However, Council officers remain unconvinced that a dwelling on this property is essential to the operation of the farming activities. It is considered that the applicant's decision to live on-site remains a 'rural-residential lifestyle' decision, which directly contravenes the purpose of the SUZ1, 'to protect the area from the encroachment of urban and rural residential type development.' Council officer's remain unconvinced that the revised farming activities would alter the Tribunal's view, being that these activities could readily be undertaken by someone living in an established residential area who commutes to the subject site.

Land Subject to Inundation Overlay

Melbourne Water did not object to the proposal, subject to conditions which primarily related to the LSIO http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2012/1726.html?context=1;query=T110045;mask_path=au/cases/vic/VCAT-fn2. It is noted that there are no third party notice or appeal rights under the LSIO as it applies here.

Proximity to Broiler Farm

Clause 53.09 Poultry Farm is a relevant particular provision given the adjoining broiler (free range chicken) farm located immediately west of the subject site. The purpose of this provision is:

To facilitate the establishment and expansion of poultry farms, including broiler farms, in a manner that is consistent with orderly and proper planning and the protection of the environment.

The Victorian Code for Broiler Farms 2009 ('Code') was amended in 2018 to include free range chicken farms. The Code sets out the appropriate separation distances for new broiler farms, which is calculated using the following formula:

$$D = 27 \times N^{0.54}$$

D = Separation distance

N = number of chickens/1000

The calculation is therefore as follows:

$$27 \times ((270,000/1000)^{0.54}) = 554.85 \text{ metres separation distance.}$$

The Code advises that although separation distance requirements apply to only the development or expansion of broiler farms, they can also be used as a guide to identify locations where a future sensitive use (including a dwelling) may be adversely affected by the broiler farm emissions. This proposal to locate a dwelling within the broiler farm's 554 metre separation distance is indicative of adverse impacts upon its future occupants.

Further to this, the use and development of a dwelling (sensitive use) being located within the separation distance of the broiler farm could potentially limit the ability of this existing agricultural land use (broiler farm) from being able to expand. It was acknowledged in VCAT P3350/2011 that the SUZ1 prohibits Animal Husbandry where the gross floor area of all buildings associated with the use exceeds 500m, however a portion of the Schembri property is zoned Green Wedge Zone (Schedule 1) which allows for expansion of the facility (albeit in the opposite direction to the subject site). Whether a not a planning permit would be issued for an expansion of the broiler farm would be based upon its merits at the time, however it is noted that existing use rights could be considered at the time of any future application.

It is acknowledged that there are other dwellings in closer proximity to the existing broiler farm than the proposed dwelling, however as the Tribunal determined, *'we do not accept that this in itself justifies the proposal. The proposal needs to be worthy on its own merits'*.

Given the above assessment, it therefore considered that the use and development of a dwelling is inconsistent with the purpose of the Special Use Zone (Schedule 1 – Horticultural Preservation) and is incompatible with the surrounding land uses, having regard to the separation distance benchmark under the Victorian Broiler Code 2009 (as amended 2018) and will likely create substantial future compatibility problems between the operation of the adjoining free range chicken farm and the amenity of the future occupants of the dwelling.

CONCLUSION

Having regard to the above zoning, overlays and provisions of the Cardinia Planning Scheme, it is recommended that the proposal for the use and development of the land for a dwelling is refused.

Grounds of Refusal:

- The proposed use and development of a dwelling is inconsistent with the purpose of Schedule 1 to Clause 37.01 Special Use Zone (Schedule 1 – Horticultural Preservation) as it is considered that the lot is not appropriate for rural residential living having regard to the proximity to the existing neighbouring broiler farm.
- The proposal is incompatible with the surrounding land uses, having regard to the separation distance benchmark under the Victorian Broiler Code 2009 (as amended 2018) and will likely create substantial future compatibility problems between the operation of the adjoining free range chicken farm and the amenity of the future occupants of the dwelling.

Lot 4 Ropers lane, Cora Lynn



376.7 0 188.35 376.7 Meters

1:7,415

Data Source: State & Local Government. © CARDINIA SHIRE COUNCIL

5-May-2020

Notes

