

5.2 T240015 PA - Use and Development of the Land for a Dwelling and Associated Earthworks at 680 Five Mile Road, Nar Nar Goon VIC 3812

Responsible GM: Debbie Tyson
Author: Alicia Brown

Recommendation

- A. That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T240015 for the *Use and Development of the land for a Dwelling and Associated Earthworks* on at 680 Five Mile Road, Nar Nar Goon the following grounds:
1. The proposal is inconsistent with the Municipal Planning Strategy and Planning Policy Framework and Local Planning Policy Framework, specifically:
 - a) Clause 11.01-1S – Settlement;
 - b) Clauses 11.01-1R Green wedges – Metropolitan Melbourne
 - c) Clause 13.07-1S – Land Use Compatibility
 - d) Clause 14.01 - Agriculture
 - e) Clause 16.01-3S Rural residential development
 - f) Clause 21.03-5 Rural residential and Rural Living development
 - g) Clause 21.04-2 - Agriculture
 - h) Clause 22.05 Western Port Green Wedge Policy
 - i) Clause 51.02 – Metropolitan Green Wedge Land: Core Planning Provisionsas the proposal does not protect valuable agricultural land, permanently removes the land from primary production and is an incompatible land use.
 2. The proposal is inconsistent with and does not respond to the objectives, policies and decision guidelines of Clause 22.05 (Western Port Green Wedge Policy), as:
 - a) It does not maintain and protect the highly productive agricultural land from incompatible uses
 - b) The proposal does not protect the values and assets of Green Wedge land by preventing encroachment of urban development into the Cardinia Westernport Green Wedge
 - c) The proposal does not encourage or support the use of the land in Precinct 3 (Railway) for agriculture to ensure that land use is compatible with the adjacent Precinct 1 (Agriculture, horticulture and soil based food production)
 3. The proposal fails to adequately respond to the purpose and decision guidelines of the Green Wedge Zone as it compromises the protection and conservation of Green Wedge land for its agricultural resources and results in a small residential lot that is not compatible with adjoining and nearby agricultural land uses and may impact their future expansion.
 4. The proposal is inconsistent with the relevant considerations of Clause 65.01 and does not represent the orderly planning of the area.

AND

- B. That Council authorise the Manager Planning and Design/Coordinator Statutory Planning to instruct Council's Statutory Planners and/or Council's advocates on any future application for review at the Victorian Civil and Administrative Tribunal.

Attachments

1. T240015 PA - Officer Report - Refusal [5.2.1 - 32 pages]
2. T 240015 PA - Locality Map [5.2.2 - 1 page]
3. T 240015 PA - Development Plans [5.2.3 - 4 pages]
4. T 240015 PA - Objection [5.2.4 - 4 pages]

Application Details

APPLICATION NO.:	T240015
APPLICANT:	Hargreaves Design Group
LAND:	L1 PS727458, 680 Five Mile Road, Nar Nar Goon VIC 3812
PROPOSAL:	Use and Development of land for a Dwelling and Associated Earthworks
PLANNING CONTROLS:	Green Wedge Zone - Schedule 1 Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	The application was put on public notice in accordance with Section 52 of the <i>Planning and Environment Act 1987</i> . One (1) objection has been received on the grounds of: <ul style="list-style-type: none"> <input type="checkbox"/> Fails to respond to local planning policy <input type="checkbox"/> Impact on surrounding farming operations & productivity <input type="checkbox"/> Concern with existing use of the building <input type="checkbox"/> Previous refusals of subdivision applications
KEY PLANNING CONSIDERATIONS:	Protection of the Westernport Green Wedge land from incompatible land uses and development Protection and preservation the Westernport Green Wedge land for agricultural uses by the permanent removal of agricultural land Land use conflicts between sensitive use (Dwelling) and existing and future agricultural activities 'right to farm'.
REASON FOR MEETING:	Delegation for Notice of Decision to Refuse to Grant a Permit
RECOMMENDATION:	Notice of Decision to Refuse to Grant a Permit

Executive Summary

The purpose of this report is to consider an application for use and development of land for a dwelling and associated earthworks at 680 Five Mile Road, Nar Nar Goon on a 1.5 hectare allotment.

The objective of Clause 11.01-1R Green Wedges – Metropolitan Melbourne is “to protect the green wedges of Metropolitan Melbourne from inappropriate development.” Supporting strategies include (but are not limited to):

- Consolidate new residential development in existing settlements and in locations where planned services are available and green wedge values are protected.
- Protect important productive agricultural areas such as Werribee South, the Maribyrnong River flats, the Yarra Valley, Westernport and the Mornington Peninsula.

The proposed use and development of land for the purpose of a dwelling is inconsistent with the purpose and decision guidelines of the Green Wedge Zone, and the future directions and preferred land uses defined in Clause 22.05 Western Port Green Wedge Policy.

This rural residential dwelling is not proposed to be associated with any agricultural pursuit and does not result in land used for agriculture or primary production. An assessment against the relevant policies and controls that apply to the site reveal that the application fails to appropriately respond to or advance policy in relation to the preservation, protection or enhancement of the Green Wedge, and results in a rural residential lot which policy seeks to discourage.

The application is recommended for refusal due to the poor response to the Green Wedge Zone and Clause 22.05 (Western Port Green Wedge Policy), as well as other policy throughout the Planning Policy Framework and Local Planning Policy Framework that seek to protect productive agricultural land for future sustainable use.

Decisions of the Victorian Civil and Administrative Tribunal (VCAT) support the recommendation to refuse to grant a permit, both within Cardinia Shire and other valuable agricultural areas. Recent VCAT Decision *Kenny v Cardinia SC [2024] VCAT 415 dated 6 May 2024* for a similar application at 275 Daly Road Nar Nar Goon and observed that:

45. The purposes of the GWZ1 do not extend to encouraging the use and development of land for a dwelling, or for rural residential or rural living purposes.

..

49. The proposal is not supported by any proposal to conduct agricultural production on the site, or by a land management plan or similar that can demonstrate how the proposal would be consistent with sustainable land management practices. These shortcomings expose the proposal as a non-rural use that fails to support the future directions and preferred land uses identified for areas that fall within Precinct 3 under Clause 22.05.

...

54. In my view, the proposal would undermine and erode the agricultural values of the Cardinia Western Port Green Wedge and does not achieve an acceptable outcome for the agricultural area of Nar Nar Goon.

As such, it is recommended Council support the Officers’ recommendation and determine to refuse to grant a planning permit.

Relevance to Council Plan

4.1 We support our productive land and employment land to grow local industries

4.1.1 Facilitate better planning for our agricultural land to support industry, innovation, local food economy and local job growth

5.1 We practise responsible leadership

5.1.1 Build trust through meaningful community engagement and transparent decision-making.

APPLICATION FOR CONSIDERATION
RECOMMENDATION FOR REFUSAL
OFFICER REPORT

Application Details:

Proposal	Use and Development of the land for a Dwelling and Associated Earthworks
Applicant	Hargreaves Design Group
Date Received:	18 January 2024
Statutory Days:	216 as of 12 March 2024
Section 50/50A/57A Amendment	<input checked="" type="checkbox"/> Yes, date: 12 March 2024 to include use of land for a dwelling as part of the application
Application Number	T240015
Planner	Alicia Brown
Land/Address	L1 PS727458, 680 Five Mile Road, Nar Nar Goon VIC 3812
Property No.	5000022776
Zoning	Green Wedge Zone - Schedule 1
Overlay/s	Land Subject to Inundation Overlay
Permit Trigger(s)	<ul style="list-style-type: none"> • Pursuant to Clause 35.04-1 (Green Wedge Zone), a planning permit is required to use the land for a Section 2 Use (Dwelling). • Pursuant to Clause 35.04-5 (Green Wedge Zone), a planning permit is required for buildings and works associated with a Section 2 Use (Dwelling) • Pursuant to Clause 44.04-2 (Land Subject to Inundation Overlay), a planning permit is required to construct a building or carry out works.
Aboriginal Cultural Sensitivity	<input checked="" type="checkbox"/> No
Section 55 Referrals	<input checked="" type="checkbox"/> Yes, list below: <ul style="list-style-type: none"> ▪ AusNet Electricity Services ▪ AusNet Transmission Group ▪ Melbourne Water
Registered restrictions on Title	<input checked="" type="checkbox"/> Yes, list below: <ul style="list-style-type: none"> • Covenant PS727458W dated 28/11/2016 requires that no dwelling or garage be constructed outside the building envelope, without further

	consent of the Responsible Authority. The proposal does not breach this restriction.
Recommendation	<input checked="" type="checkbox"/> Refusal to Grant a Planning Permit
Documents relied on	<ul style="list-style-type: none"> ▪ Application Forms ▪ Title Documentation (03 Oct 2023) ▪ Site Survey, Structerre Consulting (15 Nov 2023) ▪ Development Plans, Hargreaves Design Group REV D (12 Mar 2024) ▪ Planning Response, Hargreaves Design Group (12 Mar 2024) ▪ Land Capability Assessment, Engie Core (12 Dec 2023)

Proposal

The proposal seeks for the use and development of the land for a single dwelling. An outline of each component of the proposal is provided below.

Dwelling

The single-storey dwelling is to be located centrally within the lot, to the north-east of the existing ‘shed’ located on site (labelled as a garage). The dwelling will have a front setback of 55.2m, and side setbacks of ~35m (south) and ~44m (north).

The dwelling has a floor area of 334.8sqm and incorporates four (4) bedrooms including a master suite, 3.5 bathrooms, laundry, an open plan kitchen/meals/family area and two separate and additional rumpus and theatre rooms.

The dwelling is supported by a double car garage (44.1sqm), front porch (3.75sqm) and 73.8sqm of outdoor living / deck area. Minor cut and fill (levelling) is proposed to the dwelling area.

The single-storey dwelling is to have an overall building height of 6.02m and external materials include ‘red earthy tone’ brickwork, vertical wall cladding (dark grey/black tones) and a dark grey/black Colorbond Roof to be complimented by dark grey/black fascia, gutter, downpipes and window frames.

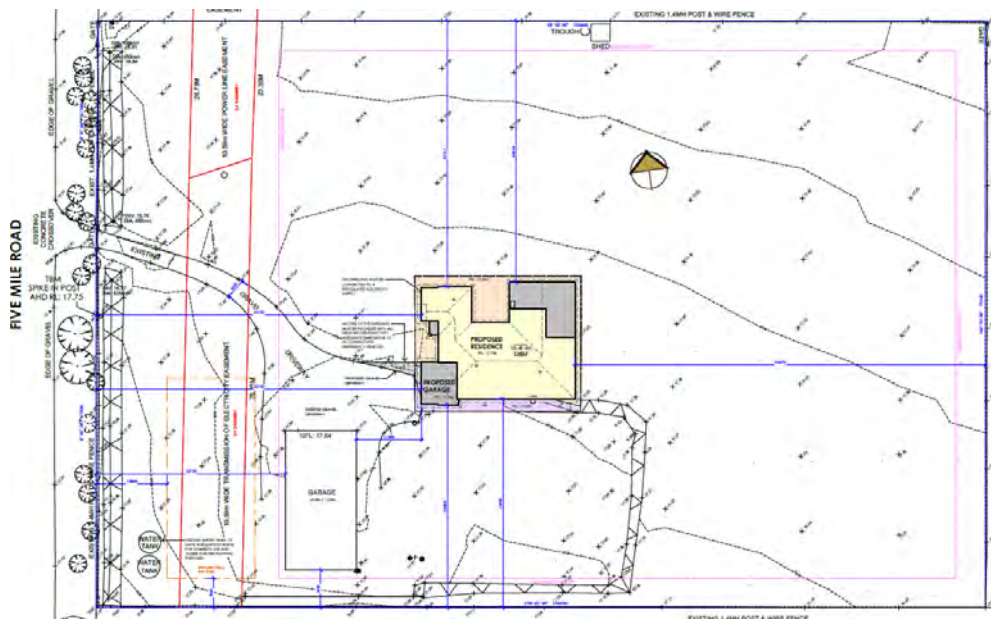


Figure 1 - Site Plan (Hargreaves Design Group, Issue D)



Figure 2 - Dwelling Floor Plan (Hargreaves Design Group, Issue D)



Figure 3 - Elevations (Hargreaves Design Group, Issue D)

Access

The dwelling is to be supported by the existing access arrangement to Nar Nar Goon Road, and an extension of the existing gravel driveway. Annotations on plans identify *“access to the dwelling must be provided with all weather driveway with adequate dimensions to accommodate emergency vehicles.”*

The accessway is annotated in sections as 3.5m wide, however the Survey Plan identifies the driveway narrows to ~2.5m and as such amended plans would be required if a permit were to be issued.

Effluent

A Land Capability Assessment has assessed the proposal based on a 4 bedroom + Rumpus Room development, and recommends a suitable effluent disposal area (minimum 495sqm) be located to the west or north of the dwelling.

Development Plans identify a 495sqm effluent field to the west of the existing shed.

Agriculture and Land Management

Application material provides no context or proposal as to the planned agricultural or land management to be undertaken. In short, application material:

- Broadly states the proposal does not impact on the agricultural base and preserves productive farmland, however does not explain or explore the matter further.
- Focuses on policy associated with providing a rural residential / lifestyle residence.
- States *“land owners are considering sustainable land management practices by farming organic crops (selected vegetables) in the future”* however provides no further detail.

Subject site & locality

A site inspection of the site and the surrounding area has been undertaken, where the site was viewed from Five Mile Road.

The 15,019sqm site (3.7 acres/1.5 hectares) is located on the eastern side of Five Mile Road, approximately 900m south of the Bald Hill Road/Five Mile Road intersection and 3km south-west of the Nar Nar Goon township.

The relatively flat site is improved by a shed, vehicle access and water tanks, approved under permit T170786 issued on 28 February 2018 for *use and development of the land for a rural store, a rainwater tank and earthworks*. The 12m x 24m rural store and one water tank were erected by February 2019, prior to the expiry date and the permit remains valid. Only one water tank was approved under this permit, with a capacity of 22,700L (dimensions 3.5m and height 2.7m). The second water tank has the same dimensions, which would also require a permit to construct a building or carry out works under the Land Subject to Inundation Overlay. This has been referred to council's compliance team to investigate.

Online advertising addresses the site as subject to a commercial business *Elevated Earthworks*. Subsequent aerial imagery identifies a significant number of vehicles and materials parked/stored on the site. Additionally, it is noted from imagery dated July 2023 that the shed is subject to several services, tv antennas and has domestic outdoor entertainment and play spaces (trampoline and basketball ring). These elements were also observed during the above mentioned site inspection. These observations have been referred to council's planning compliance team to ensure there is no breach of permit T170786 condition 7: *“The building may only be used for storage of vehicles and goods for agricultural purposes related to rural activities being carried out on the property. The shed may not be used for human habitation or for any non-agricultural related business”*.



Figure 4 - Aerial imagery of the site (MetroMap, August 2024)

Two separated and fenced paddocks are located within the northern portion of the site, whilst the balance of the site (being the majority of site area) is subject to the shed and no other evident land uses. It is noted the fencing has been erected between May and August 2024 and what appears to be animal shelters and water troughs are located along the northern boundary.

The site is accessed via a vehicle crossover located relatively centrally to the Five Mile Road frontage. An 11m wide easement and powerlines traverse the property in a north-south fashion, ~14m from the front boundary. The site is void of canopy cover/shrubbery, and is subject to pasture grasses.



Figure 5 - Streetview imager of the site, north of the existing access point looking east (Google Streetview, July 2023)



Figure 6 - Streetview imagery of the site from the south-west corner looking north-east (Google Streetview, July 2023)



Figure 7 - From Five Mile Road near to the north boundary of the site, looking south (Google Streetview, July 2023)

The lot is relatively small compared to the predominant lot size of the surrounds, however some similar sized lots (both subject to development or used for agriculture) are noted.

The site adjoins two lots, being:

- 770 Five Mile Road to the north and east, a 157 acre/63.8 hectare oddly shaped lot. There is an existing dairy farm and agricultural buildings on this land.
 - Extensive permit history for proposed subdivision and boundary realignments, which were mostly refused.
 - Planning permit T140281 issued in 2015 for *re-subdivision of existing lots (boundary realignment)*, which realigned the boundary between this land and the subject site. Described in permit history section below.
 - The current permitted land use is *use of the land and earthworks associated with the disposal of clean fill* (T170760 issued on 12 June 2019). The delegate report indicated this land use is temporary, with a five year completion timeframe. As each stage is progressively complete these will be returned to pasture and resume grazing use.
- 620 Five Mile Road to the south, a 158 acre/64.2 hectare oddly shaped rural lot, with grazing animals observed and development of one shed, vehicle access and fencing between paddocks.
 - Planning permit T030172 issued on 24 November 2003 to *subdivide the land into two (2) lots*, with a 1.5 hectare house lot excision for an existing dwelling in Lot 1 (610 Five Mile Rd, Nar Nar Goon) and 64.2 hectare rural land in Lot 2.

The site also interfaces 655 Five Mile Road located on the western side of Five Mile Road, made up of three lots totalling 199 acres/80.5 hectares.

- Planning permit T93/184 issued on 29 November 1993 for *the excision of a one hectare lot in accordance with the approved plan*, creating Lot 1 (1 hectare area) with Lot 2 comprised of the remaining land (66.24 hectares).
 - Clause 6.1.4 (c) of the Agricultural 1 Zone that applied to this land under the Pakenham Planning Scheme at this time provided for: *“notwithstanding the provisions of paragraph (b) of Clause 6.1.4 the Responsible Authority may permit the excision of one (1) lot lesser in area and/or frontage than prescribed therein from a lot for the purpose of providing a site for one (1) house for a person being either an employee who is engaged in bona fide farming production on the subject land or a member of the owner’s family provided that the lot from which the excision is made is not less than 25 hectares in area and provided further that the excised lot has an area of not less than 0.5 hectare and not greater than 1.0 hectare and provided that there has been no previous such excision or excision pursuant to paragraph (e) (ii) or (h) hereof since 23rd April, 1975 and further provided that the owner has owned the land for a period of not less than seven (7) continuous years immediately prior to and including the date the application is made, and further provided that the proposed transferee has at that date attained the age of eighteen years.”* This differs to the current planning controls (Green Wedge Zone – Schedule 1) that has a minimum subdivision area of 40 hectares.
- Planning permit T970698 issued on 19 February 1998 for *the subdivision of the land into two (2) lots generally in accordance with the approved plans*, creating Lot 1 25 hectares in area and Lot 2 54.59 hectares in area.
 - Clause 6.1.4 (b) of the Agricultural 1 Zone that applied to this land under the Pakenham Planning Scheme at this time provided for: *“except as provided for in Clause 33B or elsewhere in this clause no person shall subdivide any land into lots having an area of less than 25 hectares and a minimum width of frontage of 300 metres provided that the width of frontage may be reduced with the permission of the Responsible Authority.”* This differs to the current planning controls (Green Wedge Zone – Schedule 1) that has a minimum subdivision area of 40 hectares
- Planning permit T230460 withdrawn on 15 July 2024 for *development of the land for a dwelling* on the 1 hectare lot created under T93/184.

The main characteristics of the surrounds are large lots subject to agriculture and farming operations. The majority of lots are large in comparison to the subject site and are subject to evident agriculture, large agricultural outbuildings with some sites supported by dwellings.

Key alternate land use and development within 1km of the surrounds includes:

- 770 Five Mile Road (adjacent northern neighbour) – Urban Resource Management advertised as an *Environmentally Appropriate End Use ‘Clean Fill’ Site*
- 690 Bald Hill Road, 600m to the northeast, subject to a Broiler Farm (free range egg farm)
- Chairo Christian School Complex, 950m north



Figure 8 - Aerial imagery of the surrounds (MetroMap, August 2024)

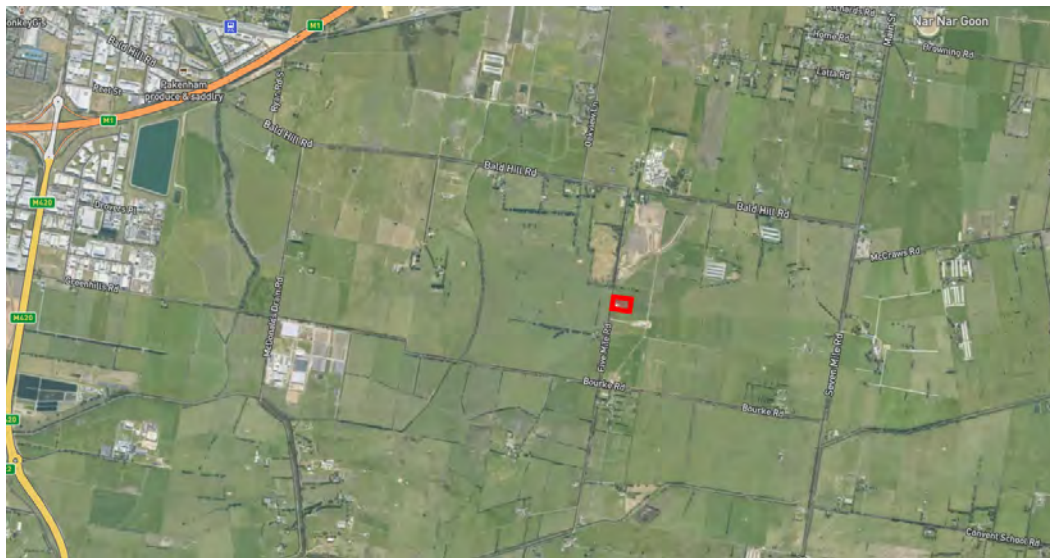


Figure 9 - The site (red) in comparison to Pakenham (north-west) and Nar Nar Goon (north-east) (MetroMap, August 2024)



Figure 10 – Aerial analysis of dwelling within the vicinity (CardiMap, October 2024). Yellow symbols represent dwellings with permits, blue symbols represent dwellings without permits (see table below).

Map Ref:	Address	Developed with	Permit issued to use land for a dwelling
	411 Bald Hill Rd, Pakenham	Dwelling	N/A
	425 Bald Hill Rd, Pakenham	Dwelling	N/A
1	Oakview Ln, Nar Nar Goon	Dwelling, broiler farm, farm buildings	Planning permit T110265 issued on 28 June 2011 for the use and development of the land for the purpose of a dwelling with a reduced setback and associated earthworks
2	45 Oakview Ln, Nar Nar Goon	Dwelling	Planning permit T980470 issued on 10 September 1998 for a house
	47 Oakview Ln, Nar Nar Goon	Dwelling	N/A
	55 Oakview Ln, Nar Nar Goon	Dwelling	N/A
	65 Oakview Ln, Nar Nar Goon	Dwelling	N/A
	75 Oakview Ln, Nar Nar Goon	Dwelling	N/A
	81 Oakview Ln, Nar Nar Goon	Dwelling	N/A

3	555 Bald Hill Rd, Nar Nar Goon	Dwelling, barn	Planning permit T030133 issued on 23 May 2003 to carry out works for the construction of a single storey dwelling
	575 Bald Hill Rd, Nar Nar Goon	Dwelling and school extension buildings	N/A
4	615 Bald Hill Rd, Nar Nar Goon	Dwelling	Planning permit T090462 issued on 30 November 2009 for the development of the land for the purpose of a replacement dwelling
5	675 Bald Hill Rd, Nar Nar Goon	Dwelling	Planning permit T041071 issued on 21 March 2005 for extension to an existing dwelling
	705 Bald Hill Rd, Nar Nar Goon	Dwelling	N/A
	15 Coop Rd, Pakenham	Dwelling	N/A
	57 Coop Rd, Pakenham	Dwelling	N/A
	75 Coop Rd, Pakenham	Dwelling	N/A
	450 Bald Hill Rd, Pakenham	Dwelling	N/A
6	460 Bald Hill Rd, Pakenham	Dwelling	Planning permit T120594 issued on 9 November 2012 for development of land for a dwelling extension (garage) and outbuilding extension
	480 Bald Hill Rd, Pakenham	Dwelling	N/A
7	500 Bald Hill Rd, Pakenham	Dwelling	Planning permit T070486 issued on 9 October 2007 to develop the land for the purpose of constructing extensions to an existing dwelling
8	540 Bald Hill Rd, Pakenham	Second dwelling, farm buildings	Planning permit T990473 issued on 2 July 1999 for a second dwelling & farm buildings
	775 Five Mile Rd, Pakenham	Dwelling	N/A
	590 Bald Hill Rd, Nar Nar Goon	Dwelling	N/A
	720 Bald Hill Rd, Nar Nar Goon	Two dwellings	N/A
	290 Seven Mile Rd, Nar Nar Goon	Dwelling	N/A
	300 Seven Mile Rd, Nar Nar Goon	Dwelling	N/A
9	445 Bourke Rd, Nar Nar Goon	Dwelling	Planning permit T080553 issued on 17 November 2008 for the development of land for the purpose of a replacement dwelling

	610 Five Mile Rd, Nar Nar Goon	Dwelling	N/A
10	655 Five Mile Rd, Pakenham	Dwelling	Planning permit T030517 issued on 2 September 2003 for a dwelling

Permit/Site History

The history of the site includes:

- Planning permit P.7956B was refused by council on 4 July 1985 for a *three lot subdivision of part Crown Allotment 74D, Parish of Nar Nar Goon, corner of Five Mile Road and Bourke Road, Pakenham* on the following grounds:
 - The proposal would lead to a density of development which conflicts with the objectives of the Planning scheme as stated in Clauses 5.2(a) and 6.1.2(a) and there are no reasons to depart from those objectives in this case.
 - Clause 5.2 (a) Objectives of the Local Section that applied to this land under the Pakenham Planning Scheme at this time provided for: *“to maintain existing bona fide agricultural land uses for the benefit of landholders and the community at large.”*
 - Clause 6.1.2 (a) Objectives of the Agricultural 1 Zone that applied to this land under the Pakenham Planning Scheme at this time provided for: *“to maintain farming activities within an area which is eminently suited for that purpose.”*
 - The proposal would be detrimental to the proper future planning of the area.
- Planning permit P.7956D was issued on 13 May 1986 for the resubdivision pursuant to Clause 6.1.4 (d) of the Ordinance to the Shire of Pakenham Planning Scheme Part 1 of Crown Allotment 74D, Parish of Nar Nar Goon, Five Mile Road, Nar Nar Goon, generally in accordance with the approved plan.
 - Clause 6.1.4 (d) of the Agricultural 1 Zone that applied to this land under the Pakenham Planning Scheme at this time provided for: *“notwithstanding the provisions of paragraph (b) of Clause 6.1.4 the Responsible Authority may permit the creation of one (1) or more lots lesser in area and/or frontage than prescribed therein in the case of resubdivision of land provided that there will not be created a greater number of lots than existed before the resubdivision; or the potential for creation of any extra lots pursuant to the provisions of the Local Section at the date of the application to re-subdivide.”*
- Planning permit P.7956E was issued on 30 December 1987 for the *use and development of Crown Allotment 76A, Parish of Nar Nar Goon, Bald Hill Road, Pakenham for the purpose of erecting a Farm Building (Hay Shed) generally in accordance with the attached endorsed plan.*
- Planning permit T970547 was refused by council on 16 February 1998 for the *subdivision of the land into two (2) lots* at the land known as Part CA.76A, Parish of NNG, Lot 2, PS322639, Corner Baldhill & 5 Mile Roads, Nar Nar Goon on the following grounds:
 - The subdivision would be detrimental to the proper future use and planning of the area.
 - The proposal will result in an undesirable fragmentation of agricultural land.
 - The proposal is contrary to the purpose and intent of the existing zone in which it is contained under the Pakenham Planning Scheme
 - The proposed subdivision is contrary to the purpose and intent of the exhibited Cardinia Planning Scheme and the Municipal Strategic Statement
- Planning permit T970767 was refused on 2 March 1998 for a three lot subdivision, for a 1 ha site and two 32ha lots.

- Planning permit application T040979 was withdrawn on 11 December 2006, following a recommendation for refusal at council meeting on 5 June 2006 for a *three lot resubdivision* at the land known as Lot 2 PS 322639 (Pt) CA74D and CA761 and Lot 2 PS 516628, No's 620 & 770-775 Five Mile Road Pakenham on the following grounds:
 - The proposal may create future land use conflicts between the proposed small lots and adjoining agricultural land uses.
 - The re-subdivision would be detrimental to the proper future use and planning of the area.
 - The proposal will result in an undesirable fragmentation of agricultural land.
 - The proposal is contrary to the strategic directions of Clause 21.06 Agriculture in the Cardinia Planning Scheme to protect agricultural land.
 - The proposal is contrary to the purpose and intent of the Green Wedge of the Cardinia Planning Scheme.
- Planning Permit application T060818 was refused on 5 April 2007 for a *two (2) lot boundary realignment* at the land known as CA:74, 770 Five Mile Road Pakenham on the following grounds:
 - The proposal may create future land use conflicts between potentially conflicting land uses and developments.
 - The proposed re-subdivision would prejudice the future planning and development of the area.
 - The proposal is not consistent with the minimum subdivision requirement of the Green Wedge Zone (GWZ) and the objective and strategies of Clause 12.02-1 Strategies for Urban Growth Boundary & Green Wedges.
 - The proposal will result in an undesirable fragmentation of agricultural land.
 - The proposal is contrary to the strategic directions of Clause 21.06 Agriculture of the Cardinia Planning Scheme to protect agricultural land.
- Planning permit T140281 issued on 17 August 2015 for *re-subdivision of existing lots (boundary realignment), generally in accordance with the approved plans*. Boundaries were realigned between L2 PS322639A (53.2 hectares) and CP166802 (11.87 hectares) both addressed at 770 Five Mile Rd Nar Nar Goon, to create a 1.5 hectare lot L1 PS727458W addressed as 680 Five Mile Rd, Nar Nar Goon (the subject site) and a 63.07 hectare lot L2 PS727458W addressed as 770 Five Mile Road Nar Nar Goon.
 - Clause 35.04-3 Green Wedge Zone allowed a permit granted to subdivide land into smaller lots than the area specified in the schedule (40 hectares) if the following applied: "*The subdivision is the re-subdivision of existing lots, the number of lots is not increased, and the number of dwellings that the land could be used for does not increase.*"
 - Condition 1 required amended plans to be submitted to and approved by the Responsible Authority to show the broiler farm (located at 700 Bald Hill Rd, Nar Nar Goon) buffer distance of 567 metres, and building envelopes for each lot created outside of the broiler farm buffer distances.
 - Plans associated with this permit were endorsed on 19 October 2015
 - Permit T140281 was corrected on 16 February 2016 to delete conditions 7 and 8
- Planning permit T170786 issued on 28 February 2018 for *use and development of the land for a rural store, a rainwater tank and earthworks, generally in accordance with approved plans*.
 - Plans associated with this permit were endorsed on 1 March 2018
- Planning permit application T230407 lapsed on 13 November 2023 for *use and development of land for the purpose of a dwelling*.

Please refer to the discussion chapter for further information.

Planning Scheme Provisions

Zone

The land is subject to the following zones:

- Green Wedge Zone - Schedule 1

Overlays

The land is subject to the following overlays:

- Land Subject to Inundation Overlay

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11 Settlement
 - Clause 11.01 Victoria
 - Clause 11.01-1S Settlement
 - Clause 11.01.1R Green Wedges – Metropolitan Melbourne
 - Clause 11.03-3S Peri-Urban Areas
- Clause 12 Environment and Landscape Values
 - Clause 12.05-2S Landscapes
- Clause 13 Environmental Risks and Amenity
 - Clause 13.03-1S Floodplain Management
 - Clause 13.07-1S Land Use Compatibility
- Clause 14 Natural Resource Management
 - Clause 14.01-1S Protection of Agricultural Land
 - Clause 14.01-1R Protection of Agricultural Land – Metropolitan Melbourne
 - Clause 14.01-2S Sustainable Agricultural Land Use
 - Clause 14.02-1S Catchment Planning and Management
 - Clause 14.02-2S Water Quality
- Clause 15 Built Environment and Heritage
 - Clause 15.01-2S Building Design
 - Clause 15.01-6S Design for Rural Areas
- Clause 16 Housing
 - Clause 16.01-3S Rural Residential Development

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.02 Environment
 - Clause 21.02-1 Catchment and Coastal Management
 - Clause 21.02-2 Landscape
- Clause 21.03 Settlement and Housing

- Clause 21.03-5 – Rural Residential and Rural Living Development
- Clause 21.04 Economic Development
 - Clause 21.04-2 Agriculture
- Clause 22.05 – Western Port Green Wedge Policy

Relevant Particular/General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions
- Clause 65.01 Approval of an Application or Plan
- Clause 66 Referral and Notice Provisions
 - Clause 66.03 Referral of permit applications under other state standard provisions
- *Land Capability Study for the Cardinia Shire (February 1997)*
- *Cardinia Western Port Green Wedge Management Plan (Incorporated Document – May 2017)*
- *Guidelines for Development within the Koo Wee Rup and Longwarry Flood Protection District, Melbourne Water (July 2019)*
- *Muley Investments Pty Ltd v Cardinia SC [2023] VCAT 1268 (15 November 2023)*
- *Kenny v Cardinia SC [2024] VCAT 415 (6 May 2024)*
- *Marson v Cardinia SC [2024] VCAT 639 (11 July 2024)*
- *Shetland Heights West Pty Ltd v Bass Coast SC [2024] VCAT 1 (5 January 2024)*
- *Wood v Mornington Peninsula SC [2024] VCAT 87 (2 February 2024)*

Planning Permit Triggers

The proposal requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.04-1 (Green Wedge Zone), a planning permit is required to use the land for a Section 2 Use (Dwelling).
- Pursuant to Clause 35.04-5 (Green Wedge Zone), a planning permit is required for buildings and works associated with a Section 2 Use (Dwelling)
- Pursuant to Clause 44.04-2 (Land Subject to Inundation Overlay), a planning permit is required to construct a building or carry out 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 and the statutory declaration has been submitted to Council on 16 May 2024.

Council has received one (1) objection to date.

The key issues that were raised in the objection include:

- The proposal fails to respond or fails to respond appropriately to various clauses of the Planning Policy Framework and Local Planning Policy Framework

- Impacts to the amenity of the agricultural surrounds and impacts to farming operations and productivity as a result of the land use and development
- Queries / concerns relating to subdivision history of the site
- Queries / concerns relating to the use of the existing building on the land

Referrals

External Referrals/Notices:

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55 Referrals	AusNet Electricity Services (Determining)	24 April 2024 - No objection, however provided permit notes.
	AusNet Transmission Group (Determining)	24 April 2024 – No objection.
	Melbourne Referral (Determining)	24 May 2025 – No objection, subject to conditions requiring amended plans.

Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
Engineering	16 April 2024 - No objection, subject to conditions.
Health	16 April 2024 - No objection, subject to conditions.
Strategic	22 October 2024 – Application not supported. <ul style="list-style-type: none"> • The application does not adequately address how the proposed dwelling can support the use of the land for agriculture or why it is required to facilitate the productive agricultural use of the land. • Approval of this application would result in a rural-residential style development which is discouraged in this area.

Assessment

Key matters to be considered as part of determination of the application include:

- Response to the Planning Policy Framework and Local Planning Policy Framework;
- Response to Clause 22.05 (Western Port Green Wedge Policy) and associated documents;
- Response to Clause 35.04 (Green Wedge Zone);
- Response to recent decisions of the Victorian Civil and Administrative Tribunal (VCAT);
- Nature of the existing and proposed agricultural use; &
- Response to floodplain and flooding policy, including:
 - Policy within the PPF and LPPF;

- o Clause 44.04 (Land Subject to Inundation Overlay); &
- o *Guidelines for Development within the Koo Wee Rup and Longwarry Flood Protection District, Melbourne Water (July 2019)*

Following assessment of these matters, it has been determined the proposal does not achieve an acceptable response to all above considerations, aside from those relating to flooding. The proposal seeks to introduce residential development outside of an existing settlement and within an area of highly productive agricultural land, is considered likely to bring about land use conflicts in future, and hinder productivity of surrounding agricultural operations.

As such, it is recommended Council refuse to grant a permit, on the basis of the assessment is provided below.

Response to Planning Policy Framework and Local Planning Policy Framework

The proposal is considered to be inconsistent with the below strategic objectives and purposes of key considerations within both the PPF and LPPF.

The **Planning Policy Framework** identifies desired outcomes and protection of the Green Wedge.

The objective of Clause 11.01-1R Green Wedges – Metropolitan Melbourne is *“to protect the green wedges of Metropolitan Melbourne from inappropriate development.”*

Supporting strategies include (but are not limited to):

- *Consolidate new residential development in existing settlements and in locations where planned services are available and green wedge values are protected.*
- *Protect important productive agricultural areas such as Werribee South, the Maribyrnong River flats, the Yarra Valley, Westernport and the Mornington Peninsula.*

Clause 11.03-3S Peri-Urban Areas follows this theme, identifying a need to *“protect and enhance”* valued attributes including environment and agriculture. One strategy identifies a need to provide for development within established settlements, and to *“prevent dispersed settlement and provide for non-urban breaks between urban areas.”*

Clause 14.01 Agriculture continues this theme by identifying the need to protect and preserve productive farmland as the main objective of Clause 14.01-1S Protection of Agricultural Land, with associated strategies seeking to avoid permanent removal of productive land via planned or unplanned loss due to changes in land use, and an intent to prevent *“urban activities”* within rural areas.

In fact, one specific strategy seeks to discourage *“development of isolated small lots in the rural zones from use for dwellings or other incompatible uses”* and decision makers are recommended to consider impacts on not just the site itself, but the impacts on existing, continued and future production on adjacent land.

Clause 14.01-1R Protection of Agricultural Land – Metropolitan Melbourne intangibly links agriculture and the green wedge by seeking to *“protect agricultural land in Metropolitan Melbourne’s green wedges and peri-urban areas to avoid the permanent loss of agricultural land in those locations.”*

Clause 21.04-2 Agriculture supports this notion, noting the importance of the Green Wedge in regard to the economic development of the municipality.

The above policies are summarised as identifying the need to protect and preserve the green wedge from erosion and intrusion of inappropriate uses and development, which can otherwise lead to a reduction in the viability of both the green wedge and agricultural production.

Whilst other policy identifies the primary use of the land should result in the protection of the green wedge and promotion of agriculture, it is acknowledged that rural-residential development could form part of an outcome where on-site living was required to assist with farming operations. It is noted again that this is not the case for this proposal.

Clause 16.01-3S Rural Residential Development seeks to identify land suitable for rural residential development. Strategies seek to *“manage development in rural areas to protect agriculture and avoid inappropriate rural residential development”* and to consolidate *“new housing in existing settlements where investment in physical and community infrastructure and services has already been made.”* Of

particular note is the strategy to “discourage development of small lots in rural zones for residential use or other incompatible uses.” Various other strategies relay the same message and are not repeated here.

Clause 21.03-5 Rural Residential and Rural Living Development identifies key issues including the need to integrate “rural residential and rural living development with an urban area or township” and to recognise that “rural residential and rural living development impacts on the environmental characteristics and constraints of the area” and especially on agricultural land.

Objectives and strategies seek to result in rural residential and rural living development that minimises its impact on agricultural land, be generally located within existing urban areas and townships, as well as ensure detrimental impacts to the surrounding environment are avoided.

Whilst the site is capable of accommodating effluent to an appropriate level, this alone does not indicate that the proposal will otherwise minimise impacts (or potential future impacts) to agriculture or is an appropriate location for rural residential/rural living development.

The proposal does not appropriately respond to these Clauses, as the application fails to address and respond to the agricultural value of the site and provides no protection of said agricultural land. The proposal will result in the permanent loss of agricultural land and seeks to develop the isolated small parcel, outside of the Urban Growth Boundary (UGB) and nearby existing settlements of Nar Nar Goon and Pakenham for a dwelling, with no agriculture to occur. In fact, Clause 14.01-1S expressly directs residential development to existing settlements. The proposal is at clear odds with this strategy as it seeks to introduce an inappropriately dispersed urban activity to a rural area.

These matters are directions are reflected in and expanded on by the **Local Planning Policy Framework**. In particular, Clause 21.04-2 Agriculture and Clause 22.05 Western Port Green Wedge Policy are of most relevance to the proposal, discussed below

Clause 22.05 (Western Port Green Wedge Policy) & Cardinia Western Port Green Wedge Management Plan (May 2017)

Informed by the above reference document, Clause 22.05 outlines a strategic vision for the Western Port Green Wedge, which as above the subject site lies within. The objectives of this Clause are:

- *‘To give effect to Council’s vision for the Cardinia Western Port Green Wedge.*
- *To ensure that land uses are carefully located and managed to be consistent with the vision for the Cardinia Western Port Green Wedge.*
- *To provide clear guidance on appropriate tourism industries and their location.*
- *To provide guidance and clear direction for preferred land uses for each of the 3 precincts.’*

Clause 22.05-1 Policy Basis identifies that:

- The Western Port Green Wedge is home to important assets that have value in their own right and have a significant role to play in making Melbourne a great city.
- A large proportion of Cardinia’s Western Port Green Wedge has some of the best agricultural soil in Melbourne.
- Important natural resources exist within the green wedge, with existing sand extraction industry in operation around Lang Lang with potential future extractive industry to occur in the north.
- The green wedge includes important biodiversity values.
- There are a number of rural townships and localities that play an important role, providing opportunities for non-urban township living as well as providing a focus for the local provision of services, schools and employment.
- Green wedges are continually subject to intense pressures for urban development and change. There are often competing pressures from urban development, hobby farms, tourism, and intensive agriculture.
- A proactive approach is required to ensure that these pressures are appropriately managed and that the liveability, economic values and the scenic and natural qualities of the green wedge are not eroded over time.

Clause 22.05-3 Policy further explores that all use and development proposals within the green wedge should (in part):

- *Ensure that green wedge soils and their versatility are recognised as a finite resource and are protected accordingly.*
- *Maintain and protect the highly productive agricultural land from incompatible uses including non-soil based farming.*
- *Provide for the restructuring of lots in agricultural areas to reduce the impact of old and inappropriate subdivisions on the economic agricultural viability of the area.*
- *Protect the values and assets of green wedge land by preventing further encroachment of urban development into the Cardinia Western Port Green Wedge.*
- *Allow only limited growth for all green wedge settlements, where supported by an adopted township strategy and/or policy.*

Two specific maps are of importance to determine the potential and agricultural importance of the site.

The site is located within an area of “Good Agricultural Significance” on the Land Capability for Agriculture Map within Clause 21.04-2 Agriculture, being the second highest ‘tier’ available.

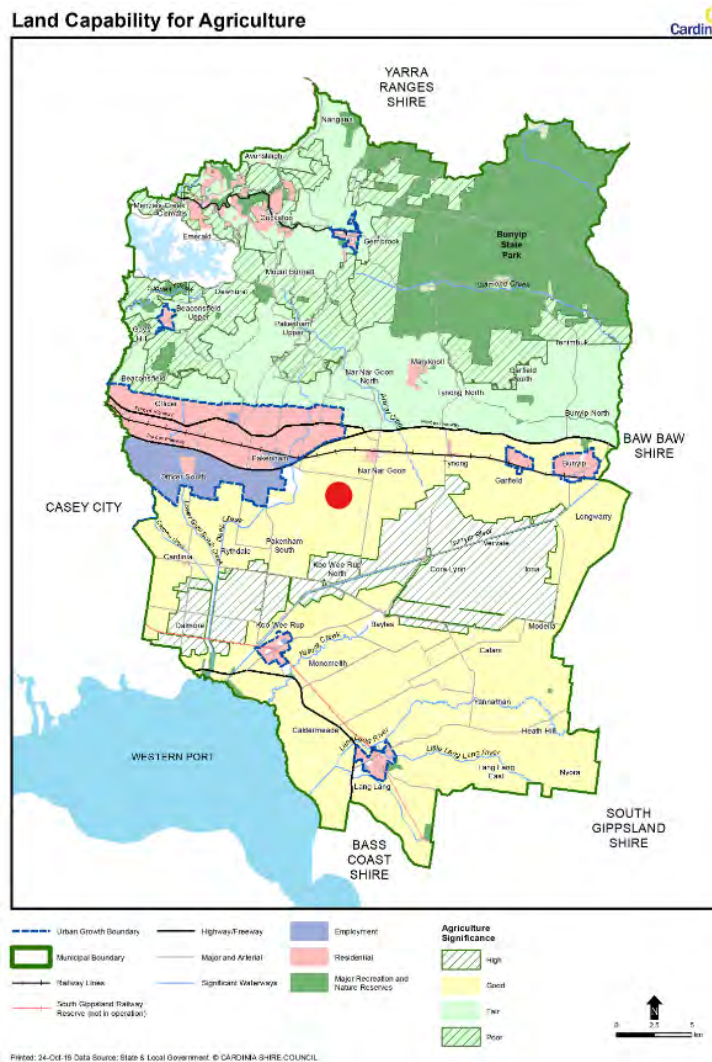


Figure 11 - Land Capability for Agriculture Map (Clause 21.04-2 Agriculture) with the site identified by the red dot.

The site is also located within Precinct 3 – The Railway Precinct of Map 1: Cardinia Green Wedge Precincts forming part of Clause 22.05 Western Port Green Wedge Policy:

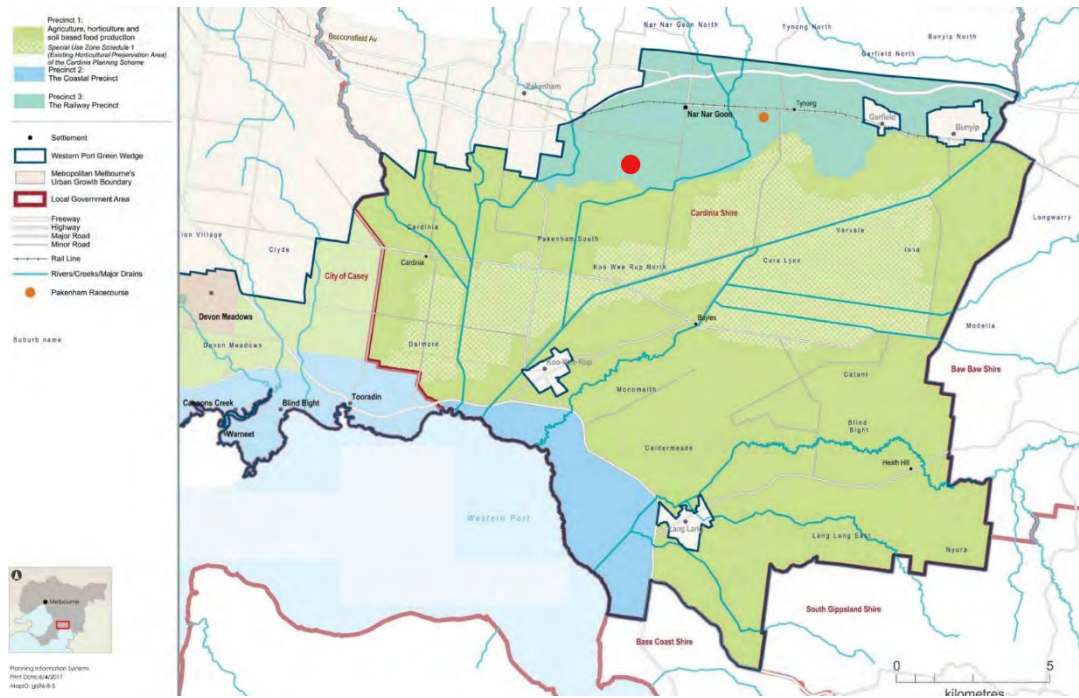


Figure 12 - Precinct Plan within Clause 22.05 Western Port Green Wedge Policy with the site identified by the red dot.

Precinct 3 seeks for “land use transition” between urban townships (in this instance Nar Nar Goon) and Green Wedge Land.

Whilst Precinct 3 generally seeks to mirror land outside of areas nominated as having “high” agricultural significance, precinct guidelines still identify:

The railway precinct will provide a sensitive transition from urban townships to green wedge land, assist in protecting land that is of agricultural, landscape, environmental and biodiversity significance and will continue to support the Pakenham Racing Club’s Tynong Racecourse. This precinct will seek to ensure that UGBs are defensible in the long term and that there is a clear edge to metropolitan growth.

Any intensification of the development pattern of the townships that exist within the precinct, or expansion of their boundaries must be strategically justified and be proven to not detrimentally impact the surrounding Precinct 1 or the environmentally sensitive environment of the Cardinia Western Port Green Wedge.

The application does not include an appropriate response to these considerations and guiding policy. A dwelling will permanently remove the site from agricultural production where policy notes the site is subject to good soils and good agricultural significance, and as such the application fails to protect the identified agricultural value of the site.

The above assessment identifies that the proposal does not satisfy the policies, objectives or strategies of the Planning Policy Framework or Local Planning Policy Framework. To the contrary the policy offers strong opposition to the proposal and is therefore not supported.

An assessment of the relevant decision guidelines at Clause 22.05-5 is provided in the Table below.

Decision Guideline	Response
<i>The vision and local policy for the Cardinia Western Port Green Wedge.</i>	The vision and local policy for the Western Port Green Wedge are clear and unambiguous; Green Wedge Land, particularly that in close proximity to townships should be protected from encroachment from urban development. Further, these documents acknowledge green wedge soils as a finite resource which should be protected; something the proposal is considered to be at odds with, given it seeks to allow the land to be used for a dwelling for the first time.
<i>The precinct objective and the future directions/ preferred land uses for the site.</i>	The subject site is located within 'Precinct 3' designated for 'sensitive transition from urban townships and green wedge land, assisting in protecting land that is of agricultural, landscape, environmental and biodiversity significance'. The future directions/preferred land uses for this Precinct aim to 'protect the values and assets of the green wedge by preventing further encroachment of urban development into the Western Port Green Wedge'. Non-rural uses are expressly discouraged from locating within Precinct 3, with these preferred to be located within townships or adjoining the UGB. Given this, the proposed use and development for a dwelling is considered to be inconsistent with the Precinct 3 objectives and future directions/preferred land uses for the site.
<i>Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.</i>	It is considered the proposed use and development will permanently remove approximately 3,500 square metres of the land from Agricultural production, comprising 24% of the overall site.
<i>The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.</i>	As discussed above, dwellings on comparably sized lots are not commonplace in the area. As such and owing to the designation (within Precinct 3) of the land as highly suitable for agriculture and horticulture, it is considered such uses (agriculture and horticulture) would be strongly encouraged on surrounding land. Given these agricultural uses are known to generate adverse amenity impacts, it is considered likely approval of a dwelling on the land would lead to, and likely facilitate land use conflicts in future.
<i>The capacity of the site to sustain the agricultural use.</i>	No agricultural use is proposed.

Given the above assessment, the proposed use and development is considered to be inconsistent with the objectives and vision for the site, as well as the decision guidelines within Clause 22.09 and the *Cardinia Western Port Green Wedge Management Plan*.

Response to Green Wedge Zone

Aside from implementing the PPF and MSS, the purposes of the Green Wedge Zone are:

'To provide for the use of land for agriculture.

To recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources.

To encourage use and development that is consistent with sustainable land management practices.

To encourage sustainable farming activities and provide opportunity for a variety of productive agricultural uses.

To protect, conserve and enhance the cultural heritage significance and the character of open rural and scenic non-urban landscapes.

To protect and enhance the biodiversity of the area'.

This proposal triggers the need for both use and development planning permit approvals pursuant to the Green Wedge Zone.

The proposed use and development are not considered to achieve an acceptable response to the above purposes.

Additionally, the Green Wedge Zone includes seven purposes that an application must consider and respond to appropriately as relevant. These seven purposes are assessed below:

Green Wedge Zone Purpose	Assessment and Response
<i>To implement the Municipal Planning Strategy and the Planning Policy Framework.</i>	<u>Not Met</u> As assessed in the previous section of this report, on balance the proposal does not seek to implement the visions and objectives of the Municipal Planning Strategy or Planning Policy Framework.
<i>To provide for the use of land for agriculture.</i>	<u>Not Met</u> The application material provided does not detail any existing agricultural use, or provide any detail on a proposed agricultural land use. Application material references a rural lifestyle / rural residential living opportunity. The application references "landowners are considering sustainable land management practices by farming organic crops (selected vegetables) in the future" however no detail or Farm Management / Land Management / Whole Farm Plan is provided. As a result, the application does not seek to use the land for agriculture.
<i>To recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources.</i>	<u>Not Met</u> The application material provided does not detail any protection or conservation methods associated with any highlighted agricultural or environmental values of the site. The proposal results in a rural lifestyle opportunity in the Green Wedge Zone.
<i>To encourage use and development that is consistent with sustainable land management practices.</i>	<u>Not Met</u> The application material provided does not detail any proposed land management activities within a Farm Management / Land Management / Whole Farm Plan or any other document.
<i>To encourage sustainable farming activities and provide opportunity for a variety of productive agricultural uses.</i>	<u>Not Met</u> The application material provided does not detail any existing or proposed sustainable farming activities within a Farm Management / Land Management / Whole Farm Plan or any other document.
<i>To protect, conserve and enhance the cultural heritage significance and the character of open rural and scenic non-urban landscapes.</i>	<u>Not Met</u> A single-storey dwelling can nestle within the Green Wedge Zone and not impact upon the character of the non-urban landscape, however in this instance the dwelling is located centrally within the site with no existing vegetation, proposed or topography to assist with minimising visual impact. The substantial dwelling located within proximity to the existing large outbuilding exacerbates the outcome.
<i>To protect and enhance the biodiversity of the area.</i>	<u>Not Met</u> The application material provided does not detail any existing or proposed environmental protection or enhancement of the site within a

	Farm Management / Land Management / Whole Farm Plan or any other document.
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As such, the proposal does not appropriately respond to the purposes of the Green Wedge Zone.

Clause 35.04-2 identifies that a lot used for a dwelling must meet the following:

Dwelling Requirement	Assessment and Response
<i>Access to the dwelling or small second dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.</i>	Plans submitted do not provide for appropriate all-weather road dimensions adequate to accommodate emergency vehicles. CFA emergency vehicles require a minimum trafficable width of 3.5m. The existing accessway is 3.1m at its narrowest section, as the crossover enters through the gate to the property. However, permit conditions could ensure the access is upgraded to achieve compliance if a permit were to be granted.
<i>The dwelling or small second dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.</i>	Reticulated sewerage is not available to the subject site. The applicant has submitted a Land Capability Assessment (LCA) (prepared by Engle Core, dated 12 December 2023). The document contends that wastewater can be treated and retained within the lot, in accordance with relevant requirements (including the EPA Act). Further, this document was referred to Council's Environmental Health team, who have not objected to grant of a permit.
<i>The dwelling or small second dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for fire fighting purposes.</i>	Reticulated potable water supply is not understood to be available to the subject land. As stated in the submitted documentation, two existing water tanks are stated to have adequate storage for domestic use and 10,000L for firefighting purposes. While the capacity of these tanks has not been described, it is considered that re-filling (via water delivery) opportunities are readily available given the proximity of the land to existing settlements.
<i>The dwelling or small second dwelling must be connected to a reticulated electricity supply or have an alternative energy source.</i>	Documentation submitted with the application states the dwelling is proposed to be connected to reticulated electricity supply. Data available from the relevant electricity supply/distribution authority (AusNet Services) indicate there are 22kV distribution lines along Five Mile Road, and as such it is considered the proposed dwelling is able to be connected to reticulated electricity.

Given the above, it is considered all requirements of Clause 35.04-2 are met by the proposed dwelling. Should the application be recommended for approval, this would be ensured via permit condition requiring the above (prior to occupation), however as the application is recommended for refusal this is not necessary. An assessment of the proposal against the remainder of the Green Wedge Zone is provided below.

Clause 35.04-6 Decision Guidelines identifies that the Responsible Authority must consider, as appropriate the following issues:

Decision Guidelines	Assessment and Response
<p><u>General Issues</u></p> <p><i>The Municipal Planning Strategy and the Planning Policy Framework.</i></p> <p><i>Any Regional Catchment Strategy and associated plan applying to the land.</i></p> <p><i>The capability of the land to accommodate the proposed use or development.</i></p> <p><i>How the use or development relates to rural land use, rural diversification, natural resource management, natural or cultural heritage management, recreation or tourism.</i></p> <p><i>Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.</i></p> <p><i>Whether the use or development is essential to the health, safety or well-being of the State or area but is not appropriate to locate in an urban area because of the effect it may have on existing or proposed urban areas or the effect that existing or proposed urban areas may have on the proposed use or development.</i></p> <p><i>The need to minimise adverse impacts on the character and appearance of the area or features of architectural, scientific or cultural heritage significance, or of natural scenic beauty.</i></p> <p><i>The potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.</i></p>	<p><u>Not Met</u></p> <p>The proposed use and development and the application material do not establish any link to appropriate rural land use, diversification, natural resource management or other matter.</p> <p>The site is adjacent to and within an area of predominantly large landholdings subject to a variety of agricultural pursuits. One adjoining property to the north is subject to a dairy farm and temporary disposal of clean fill (with pasture and grazing use to resume after completion).</p> <p>The dwelling, with no identified agricultural pursuit or land management activity, will result in the loss of the site as an agricultural site. The proposal is therefore not considered to be compatible with the adjoining and surrounding land uses. Sensitive uses such as dwellings are known to increase the likelihood of land use conflicts, such as separation distances from poultry farms, and impact on the 'right to farm' in agricultural areas and policy expressly seeks to avoid this.</p> <p>Whilst the site is relatively small, no application material identifies how or why the site cannot be used for a small or niche agricultural pursuit or be supported by land management and conservation outcomes.</p> <p>A dwelling, and the wider site appearing to be used for associated residential pursuits may impact upon the compatibility with surrounding land uses.</p> <p>Whilst the built form is setback from the street, the built form is located centrally within the site with no existing vegetation, proposed or topography to assist with minimising visual impact.</p> <p>The centralised siting of the dwelling also impacts on the potential use of the land for agriculture, with approximately 24% of the site to be lost to 'domestic areas'.</p>
<p><u>Rural Issues</u></p> <p><i>The maintenance of agricultural production and the impact on the rural economy.</i></p> <p><i>The environmental capacity of the site to sustain the rural enterprise.</i></p> <p><i>The need to prepare an integrated land management plan.</i></p> <p><i>The impact on the existing and proposed rural infrastructure.</i></p> <p><i>The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agriculture and other land uses.</i></p> <p><i>The protection and retention of land for future sustainable agricultural activities.</i></p>	<p><u>Not Met</u></p> <p>The site is to be permanently removed from agricultural production.</p> <p>Whilst the approval of a single site may not detrimentally impact upon the rural economy, it otherwise sets a precedent that dwellings on small lots with no application material identifying agricultural or land management pursuits is an appropriate outcome which it is not when considering the purposes and decision guidelines of the Zone. This precedence (perceived or not) can have the effect of increasing the value of agricultural land, which can have an impact on the rural economy by raising the price of agricultural</p>

	<p>land and therefore, making it unviable for existing or new farming operations.</p> <p>The introduction of a dwelling also has the potential to lead to a proliferation of urban / domestic uses occurring on the lot, which in turn can impact nearby farming practices and prevent expansion.</p> <p>Whilst a Land Management Plan is not an application requirement pursuant to the zone, a planning application seeking for use and development of a dwelling in a Green Wedge Zone is most likely best placed to be supported by a Land Management Plan to assist in determining compliance and appropriate responses to relevant Policy.</p> <p>Council requested further information including a written response to the relevant Planning Policy Framework, Municipal Strategic Statement, and decision guidelines of the Green Wedge Zone, that specifically considered the suitability of land for a dwelling, and how the dwelling supports the primary purpose of the zone. In this letter, council raised a preliminary concern that the proposed use and development of land for the purpose of a dwelling is inconsistent with the purpose and decision guidelines of the Green Wedge Zone, and the future directions and preferred land uses defined in Clause 22.05 Western Port Green Wedge Policy.</p> <p>Whilst application documentation makes broad statements about potential future agricultural uses, the facts are that the application material does not detail any proposed expansion of agriculture on the site. The dwelling, as applied for, does not seek to protect or retain the site for future sustainable agricultural activities and is likely to be permanently removed from the state’s agricultural base.</p>
<p><u>Environmental Issues</u></p> <p><i>The impact of the use or development on the flora and fauna on the site and its surrounds.</i></p> <p><i>The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.</i></p> <p><i>How the use or development relates to sustainable land management and the need to prepare an integrated land management plan.</i></p> <p><i>The location of on site effluent disposal areas to minimise impact of nutrient loads on waterways and native vegetation.</i></p>	<p><u>Not Met</u></p> <p>The proposal does not seek to remove any significant vegetation on site, however does not include any Farm / Land Management Plan that details agricultural and land management principles, provide for conservation or revegetation areas or identify sustainable land management principles incorporated in Soil and Pasture Improvement Plans, or proposed Weed Management. ‘</p>
<p><u>Design and Siting Issues</u></p> <p><i>The need to minimise any adverse impacts of siting, design, height, bulk, and colours and materials to be used, on landscape features, major roads and vistas.</i></p>	<p><u>Not Met</u></p> <p>If approved, two relatively large buildings will be located on the site in a relatively central location on the small lot. The centralised siting of the dwelling also impacts on the potential use of the land for agriculture, with approximately 24% of the site to be lost to ‘domestic areas’.</p>

<p><i>The location and design of existing and proposed infrastructure services which minimises the visual impact on the landscape.</i></p> <p><i>The need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance.</i></p> <p><i>The need to locate and design buildings used for accommodation to avoid or reduce the impact from vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.</i></p>	<p>Whilst materiality of the built form is not of any significant concern, the extent and height of the built form does not respect or reflect an appropriate outcome for this particular site.</p> <p>A single-storey dwelling can nestle within the Green Wedge Zone and not impact upon the character of the non-urban landscape, however in this instance the dwelling is located centrally within the site with no existing vegetation, proposed or topography to assist with minimising visual impact.</p> <p>The substantial dwelling located within proximity to the existing large outbuilding exacerbates the outcome.</p>
<p><u>Primary school or secondary school issues</u></p> <p>These matters are not relevant to the proposal.</p>	<p>These matters are not relevant to the proposal.</p>

As such, the proposal does not appropriately respond to the decision guidelines of the Green Wedge Zone.

As detailed in Clause 71.03-2 (Operation of Zones):

'Because a use is in Section 2 does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes...'

Assessment of the application has occurred, and the proposed use (as well as associated development) is not considered to achieve an acceptable outcome.

Response to Land Subject to Inundation Overlay

The site is subject to the Land Subject to Inundation Overlay and triggers the need for planning permission for buildings and works.

Purposes of the Land Subject to Inundation Overlay include:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To identify flood prone land in a riverine or coastal area affected by the 1 in 100 (1 per cent Annual Exceedance Probability) year flood or any other area determined by the floodplain management authority.*
- *To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.*
- *To minimise the potential flood risk to life, health and safety associated with development.*
- *To reflect a declaration under Division 4 of Part 10 of the Water Act, 1989.*
- *To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.*
- *To ensure that development maintains or improves river, marine, coastal and wetland health, waterway protection and floodplain health.*

Pursuant to Clause 44.04-7, the application has been referred to Melbourne Water pursuant to Section 55 of the Planning and Environment Act 1987. As a determining authority, Melbourne Water have provided consent to the proposal subject to conditions which require amended plans. Melbourne Water's response includes the following conditions:

- *Finished floor levels of the proposed new dwelling must be shown no lower than 900mm above the natural ground level at the location which is 600mm above the applicable flood depth of 300mm*

from the natural surface level: (Natural surface level at the location considered as 17.40 metres to AHD)

- *Finished floor level of the proposed garage must be shown no lower than 150mm from the flood depth of 300mm from the natural surface level of 17.40 metres to AHD;*
- *A fill pad that extends a minimum of 5.0 metres from the dwelling envelope at a minimum level of 150mm above the applicable flood depth of 300mm from the natural ground surface level must be shown. (450mm above the natural surface level of 17.40 metres to AHD).*

Council officers do not raise objection to the proposal and its response to the Land Subject to Inundation Overlay, noting the determining authority has provided conditional consent to the proposal. Melbourne Water's conditional consent identifies the proposal responds appropriately to the purposes and decision guidelines of the Overlay.

Response to Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions

The purposes and provisions within Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions echo those within the Green Wedge Zone, as well as elsewhere in the Scheme. No additional permit requirements arise under this provision, and as such the assessment of the proposal with regard to Clause 35.04 (Green Wedge Zone) is considered to apply comparably to this provision.

The site is located outside of the Urban Growth Boundary, and clause 51.02 provides a further layer of protection to the green wedge, generally raising the same particulars. For the same reasons outlined above regarding the PPF, LPPF and the Green Wedge Zone, the proposal is not considered to respond appropriately to the purposes of Clause 51.02.

Precedence, Outcomes and Notions of Fairness (Recent Decisions of the Victorian Civil and Administrative Tribunal)

A number of recent decisions of the Victorian Civil and Administrative Tribunal ('VCAT' or 'the Tribunal') are of relevance to the proposal, given their location on Green Wedge land within Cardinia Shire or similarities concerning the proposal or lack of Agricultural use. While these Tribunal decisions are not binding on Council and decision made should 'turn on the facts before it', they provide a useful framework for consideration of the application.

Kenny v Cardinia SC [2024] VCAT 415

Recent VCAT Decision *Kenny v Cardinia SC [2024] VCAT 415* dated 6 May 2024 reflects a generally similar proposal at 275 Daly Road, Nar Nar Goon 4km to the east of the subject site. The applicant sought for permission to use and develop the land for a dwelling and did not propose any agriculture or environmental improvements to the site.

In this instance, the site was subject to the similar planning controls (Green Wedge Zone, Land Subject to Inundation Overlay) and is a similar "small lot" (2.163ha/5.3 acres) within the Green Wedge. Further, the applicant also relied on the perceived 'fact' that a permitted subdivision in 2018 that created the small lot identified that (summarised, paraphrased) Council anticipated a dwelling and concluded that the site was not a productive agricultural lot which was not accepted at the Tribunal.

Council proceeded to VCAT with the following (summarised) grounds of refusal seeking to ensure the Green Wedge was protected from inappropriate use and development:

- *The proposal did not appropriately respond to the wider policy framework of the Cardinia Planning Scheme in regard to protection of the green wedge and agricultural land.*
- *The proposal does not appropriately respond to the purposes or decision guidelines of the Green Wedge Zone.*
- *The proposal results in rural-residential living within an inappropriate location.*

The VCAT Member noted the key issue as to whether the use and development of the land was acceptable in the Green Wedge and agricultural area of Nar Nar Goon. The VCAT member found:

12. ... I find the proposal fails to achieve an acceptable outcome. This is fundamentally a proposal for a dwelling within a rural setting. It's main failing is the absence of any form of established agricultural production on the site.
13. The proposal for a dwelling fails to provide support for achieving the purposes of the Green Wedge Zone which is protection of environmental, landscape and agricultural values. A dwelling within an agricultural setting has the potential to lead to land use conflict which is not an orderly planning outcome.
44. I also find that policy support for residential use and development of land in the Green Wedge and in these areas of good agricultural significance is either silent or at best, tempered.
45. The purposes of the GWZ1 do not extend to encouraging the use and development of land for a dwelling, or for rural residential or rural living purposes.
49. The proposal is not supported by any proposal to conduct agricultural production on the site, or by a land management plan or similar that can demonstrate how the proposal would be consistent with sustainable land management practices. These shortcomings expose the proposal as a non-rural use that fails to support the future directions and preferred land uses identified for areas that fall within Precinct 3 under Clause 22.05.
54. In my view, the proposal would undermine and erode the agricultural values of the Cardinia Western Port Green Wedge and does not achieve an acceptable outcome for the agricultural area of Nar Nar Goon.

This decision, as well as decisions such as *Muley Investments Pty Ltd v Cardinia SC [2023] VCAT 1268* provide guidance and precedence that use and development proposals that remove a site from the agricultural base within the Green Wedge is not supported by or the intent of policy and the Cardinia Planning Scheme.

Muley Investments Pty Ltd v Cardinia SC [2023] VCAT 1268

Muley Investments Pty Ltd v Cardinia SC [2023] VCAT 1268 sought for permissions within Precinct 3 – The Railway Precinct (Clause 22.05-3)

In this instance, the applicant appeared to suggest that as that site was not located in “Precinct 1” or as having “high quality agricultural land” that it should not be considered productive or valuable on a sliding scale. The Tribunal considered this, forming the opinion that (summarised, paraphrased) a site does not need to be located within the highest/top tier to be considered valuable, and nor does having a lower tier mean that a site has no or extremely limited value:

54. Council's submission highlighted that the review site has an agricultural significance designation as 'good' expressed in clause 21.04. I note this is the second highest rating expressed within the four tier rating shown in the Land Capability for Agriculture map under clause 21.04-2. No contrary agricultural evidence was put to me that established the specific soil and agricultural capacity of the review site did not rate as 'good.'
55. The applicant sought to rely on the fact the review site is not located in Precinct 1, where high quality agricultural land has been identified. However, I have not been persuaded by this submission. Particularly given the review site is identified in the second highest 'significant agricultural rating' expressed in clause 21.04-2. I take this to support council's view that the review site retains 'good' potential for ongoing agricultural production. In the absence of any contrary and tested evidence I have placed weight on this in my findings.
56. Policy settings that apply to the GWZ1 clearly dictate that Green Wedge soils, including their importance to ongoing agricultural production as a 'finite resource,' should take primacy in future land use planning within green wedge areas. I agree.
57. It is also relevant, that any proposed transition of non-agricultural land uses into Green Wedge land around townships, as is proposed here, should be carefully managed to ensure ongoing

encroachment of inappropriate uses is avoided and agricultural protection continues in these GWZ1 areas.

Symmons v Macedon Ranges SC [2024] VCAT 614

Symmons v Macedon Ranges SC [2024] VCAT 614 (3 July 2024) explores the notion of fairness, relevant to the proposal to some degree noting the permit applicant appears to rely on permit history and Section 173 Agreement to anticipate approval. In this decision, the applicant sought to rely on the ‘fact’ that a 2002 permit which alluded to likely future dwellings as part of S173 agreements results in a “reasonable interpretation” that the site in question can be used and developed for a dwelling, and it is otherwise ‘unfair’ for Council to not honour the apparent intent of the approval 20 years earlier. As such, the notion of fairness was explored as part of the Tribunal’s decision making as follows:

- 17. I consider that just because other smaller lots have been used and developed for dwellings does not justify further approvals which would undermine those policies seeking to avoid construction of dwellings on small rural lots.*
- 19. The fact that agricultural land is fragmented into lots smaller than a zone minimum is common across much of the rural areas of Victoria. Such lots, particularly the multitude of crown allotments created in the 19th century, have often been owned and managed as part of a larger farming enterprise. They are in essence ‘paper lots’ and it is only when they are sought to be developed for dwellings that the number and size of such lots becomes obvious.*
- 20. The review site, despite its relatively small size was once part of larger holding involving both Lots 1 and 2. Prior to the creation of the lot comprising Lots 1 and 2 it may also have been managed as part of a larger farming enterprise before it and surrounding lots were either subdivided or sold off into separate ownership.*
- 22. It is my experience that without such guarantees there is a high probability that a planning permit for a dwelling will not be granted on small rural lots across Victoria. As I have noted in previous decisions, I can recall that in the 1970’s the State Government published a booklet which strongly advised prospective landowners not to buy small rural lots unless and until a planning permit for a dwelling had been obtained. That advice is equally relevant today.*
- 23. It appears to be the case here where Ms Symmons purchased the land in 2005 without a permit to use the land for a dwelling. Although a s173 agreement associated with the subdivision gave the impression that Lot 2 would be suitable for a dwelling, no permit was granted for such a use at that time. That may have been a misunderstanding of the subdivision permit and s173 agreement by Ms Symmons, but the fact remains that at no time was a permit issued for a dwelling.*
- 24. I distinguish the circumstances here from those in the case cited by Mr Bitmead in Ferraro v Macedon Ranges SC [2006] VCAT 46. In that case the council had previously granted a permit for a dwelling some five years prior. The permit had since lapsed, and council refused to approve a new application for a dwelling. The Tribunal set aside council’s refusal on the basis that the background circumstances dictated that notions of fairness must be give substantial weight. In the application I am considering, it is now nearly 20 years since Ms Symmons purchased the property without a planning permit for a dwelling and she has been using it for hay production while living off the site.*

In this instance, no permit has ever been granted for a dwelling. The approval for subdivision is 10 years old. The re-subdivision of land did not increase the number of lots or potential for dwellings. The Delegate Report was specific in stating that any proposed future use of land for a dwelling would be subject to

planning approval, ensuring that the policy of the day is the decision-making tool Council has to determine the application.

Response to Covenant PS727458W

Covenant PS727458W applies to the site, which identifies a substantial building envelope. The purpose of the Building Envelope is discussed elsewhere in this report, instigated to ensure appropriate siting of future sensitive uses and buffer distances to nearby Broiler Farms.

The proposed dwelling and garage are located within the Building Envelope.

Guidance provided by the Department of Transport and Planning in the [Building Envelopes Information Kit - The statutory framework for building envelopes](#) (2003) clarifies in section 6.3 Dwelling approvals in building envelopes:

The Victoria Planning Provisions (VPPs) do not currently make specific reference to the recognition of building envelopes in the consideration of planning permit applications. This means that where a planning permit is required to construct a dwelling, the planning scheme provisions relating to the grant of that permit apply in addition to an approved envelope.

Planning Application T140281 sought for a two lot boundary realignment, which was approved and resulted in the current lot formation.

It is noted a number of prior subdivision applications had been refused on the site.

In the Council Delegate Report dated 17 August 2015, comments include:

The proposed re-subdivision will not significantly alter the existing site arrangement although will provide some benefits for the existing land owners. The subdivision will enable the existing dairy farm to be contained within one larger lot for agricultural purposes as such is consistent with the state and local planning policy framework.

A permit may be granted to create smaller lot if the subdivision is the re-subdivision of existing lots, the number of lots is not increased, and the number of dwellings that the land could be used for does not increase.

The proposal is a boundary realignment and as such will not increase the number of lots or the number of dwellings the land could be used for. The larger lot will include the existing farms sheds and the smaller lot will be vacant. Therefore both allotments could be developed for dwellings.

The proposal realigns the existing two allotments to provide redistribution of land to allow the better operation of the existing activities on the site. The realignment will not increase the potential for dwellings on the site.

As such, the boundary realignment was approved as it was seen to benefit the agriculture that was being undertaken on the site at the time.

Whilst the Delegate Report contemplates the future residential use of Lot 1, further commentary highlights that an assessment of any subsequent application must be undertaken based upon its own merits, noting *"it cannot be ignored that the existing smaller lot could currently be used for a dwelling as it is, subject to planning approval. The proposed realignment does not alter this fact."*

The re-subdivision did not improve or reduce the likely outcome of a dwelling.

Clarity is provided regarding the need for a building envelope, with the Delegate Report confirming that building envelopes are provided to ensure any future sensitive development (if lodged and approved) *"will not be located within the buffer distance and that future purchasers are aware of the buffer distance required. Currently a 566.02 metre setback is required by the current capacity of the broiler farm. This will be the minimum required setback of the building envelopes."*

It is of note that:

- This subdivision occurred close to 10 years ago. Significant time since the approval has passed, whilst VCAT precedence and Council's evolving and strengthened position regarding dwellings and Green Wedge matters has occurred.

- Site and permit history whilst potentially providing guidance, does not automatically result in future approvals or refusals. Each application and its associated application material is assessed on its merits. In short, just because a building envelope exists does not constitute any guarantee of approval.

The application, as submitted, is silent or provided an inadequate response to the decision making levers such as the Planning Policy Framework, Municipal Strategic Statement and the Green Wedge Zone as to agricultural or environmental outcomes on the site.

Other matters (Nearby Broiler Farms)

Poultry (Broiler) Farms are nested under the Agricultural land use term and is therefore a land use consistent with the planning controls in this area. Poultry Farms containing over 100 poultry require a permit to use the land, to ensure adequate separation distances are provided from sensitive uses such as residential uses that may be impacted by odour and noise emissions.

Permit T970224 was issued on 6 July 1998 for the *expansion of existing poultry (Broiler) Farm by the addition of four (4) broiler sheds including associated improvements and a caretakers dwelling* at 770 Bald Hill Rd, Nar Nar Goon. This land has a combined 7 broiler sheds, with the closest shed located 650 metres northeast from the subject site, and approximately 720 metres from the proposed dwelling location.

Previous correspondence from the neighbouring broiler farm (prior to 2014) indicated that the farm contained 280,000 birds in seven sheds, four of which are closest to the subject site. The separation distance specified in the Victorian Code for Broiler Farms 2009 cannot be completely contained on the site, therefore, the farm is classified as a Class B farm, with the separation distance being 27×20.9 (280,000 birds/1000 to the power of 0.54) = 566.02 metres.

A separation distance of 700 metres is therefore sufficient to minimise the risk of offensive odour and dust emissions under both routine and abnormal conditions and allow the broiler farm to expand up to 400,000 birds without adopting odour reduction technology. Where a nearby broiler farm (or Farm Cluster) has a farm capacity of greater than 400,000 birds, the separation distances of the Victorian Code for Broiler Farms 2009 do not apply. Planning and responsible authorities should consider the use of an Odour Environmental Risk Assessment, rather than a separation distance based on the farm capacity, to ensure that sensitive uses and/or zones are not at risk of being adversely impacted by broiler farm emissions.

There are no perceived land use conflicts for existing poultry farms as a result of this application. However, potential future applications for poultry farms in the surrounding area would potentially be impacted if adequate separation distances from the dwelling could not be achieved.

Decision Guidelines

Clause 65 Decision Guidelines includes several matters requiring consideration:

- The matters set out in section 60 of the Act.
- Any significant effects the environment, including the contamination of land, may have on the use or development.
- The Municipal Planning Strategy and the Planning Policy Framework.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the environment, human health and amenity of the area.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.

These matters are generally explored throughout this report, and are not repeated here. However, as explored throughout this report, the application does not appropriately respond to the main decision guidelines and considerations for an application and site of this nature.

Clause 65 Decision Guidelines make no specific reference to the consideration of building envelopes.

Conclusion

The Application fails to appropriately respond to or advance policy in relation to the preservation, protection or enhancement of the Green Wedge, and results in a rural residential lot which policy seeks to discourage.

This rural residential dwelling is not proposed to be associated with any agricultural pursuit, and does not result in land used for agriculture or primary production.

As such, it is recommended that this application be refused.

Recommendation

Refusal to Grant a Planning Permit

- A. It is recommended that Council having caused notice of Planning Application No. T240015 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to Refuse to Grant a Permit in respect of the land known and described as L1 PS727458, 680 Five Mile Road, Nar Nar Goon VIC 3812 for the Use and Development of a Dwelling and Associated Earthworks on the following grounds:
1. The proposal is inconsistent with the Municipal Planning Strategy and Planning Policy Framework and Local Planning Policy Framework, specifically:
 - a) Clauses 11.01-1R Green wedges – Metropolitan Melbourne
 - b) Clause 14.01 Agriculture
 - c) Clause 16.01-3S Rural residential development
 - d) Clause 21.03-5 Rural residential and rural living development
 - e) Clause 22.05 Western Port Green Wedge Policyas the proposal does not protect valuable agricultural land, permanently removes the land from primary production and is an incompatible land use.
 2. The proposal is inconsistent with and does not respond to the objectives, policies and decision guidelines of Clause 22.05 (Western Port Green Wedge Policy), as:
 - a) It does not maintain and protect the highly productive agricultural land from incompatible uses
 - b) The proposal does not protect the values and assets of Green Wedge land by preventing encroachment of urban development into the Cardinia Westernport Green Wedge
 - c) The proposal does not encourage or support the use of the land in Precinct 3 (Railway) for agriculture to ensure that land use is compatible with the adjacent Precinct 1 (Agriculture, horticulture and soil based food production)
 3. The proposal fails to adequately respond to the purpose and decision guidelines of the Green Wedge Zone as it compromises the protection and conservation of Green Wedge land for its agricultural resources and results in a small residential lot that is not compatible with adjoining and nearby agricultural land uses and may impact their future expansion.
 4. The proposal is inconsistent with the relevant considerations of Clause 65.01 and does not represent the orderly planning of the area.

AND

- B. That Council authorise the Manager Planning and Design/Coordinator Statutory Planning to instruct Council's Statutory Planners and/or Council's Solicitors on any future application for review at the Victorian Civil and Administrative Tribunal.



T240015 PA - 680 Five Mile Road, Nar Nar Goon - Locality Map

Disclaimer: This content is provided "as is" without warranty of any kind. 13-Nov-2024

[View map online](#)



1 : 10,564 at A4

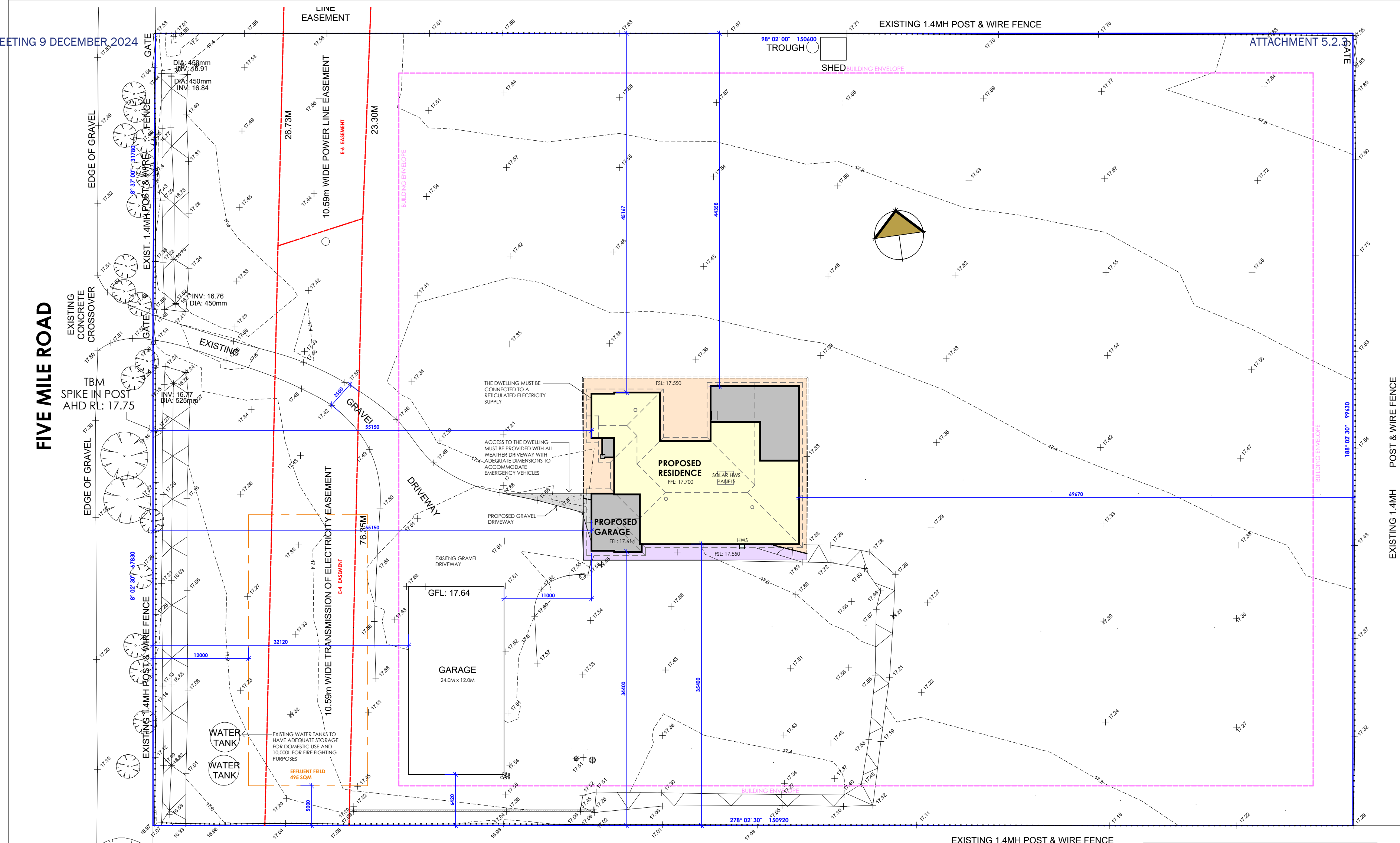


PROPOSED: PROPOSED DWELLING
AT: 680 FIVE MILE RD, NAR NAR GOON
FOR: S. ROSE & K. SAVAGE

DRAWING INDEX	
SHEET NAME	SHEET NUMBER
COVER PAGE	1
PROPOSED SITE PLAN	2
LOCALITY PLAN	3
PROPOSED FLOOR PLAN	4
PROPOSED ELEVATIONS	5



ISSUE	AMENDMENT DETAILS
A	INITIAL SKETCH DRAWINGS 09.10.23 - SR
B	AMEND SKETCH DRAWINGS (CLIENT CHANGES) 23.11.23 - SR
C	TOWN PLANNING DRAWINGS 19.12.23 - SR
D	RESPONSE TO RFI 15.02.24 12.03.24 - GS
E	
F	
G	
H	
I	
J	
K	
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M	
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O	
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V	



SITE CUT & FILL NOTE
 PROVIDE SITE CUT OF 180mm & FILL 270mm OVER BUILDING AREA & PROVIDE AN ADDITIONAL SCRAPE TO GARAGE TO ACCOMMODATE A 86mm STEPDOWN NOTE: 45° BATTER ANGLE

SITE CUT/FILL LEGEND & NOTES
 DENOTES AREA OF SITE CUT
 DENOTES AREA OF SITE FILL

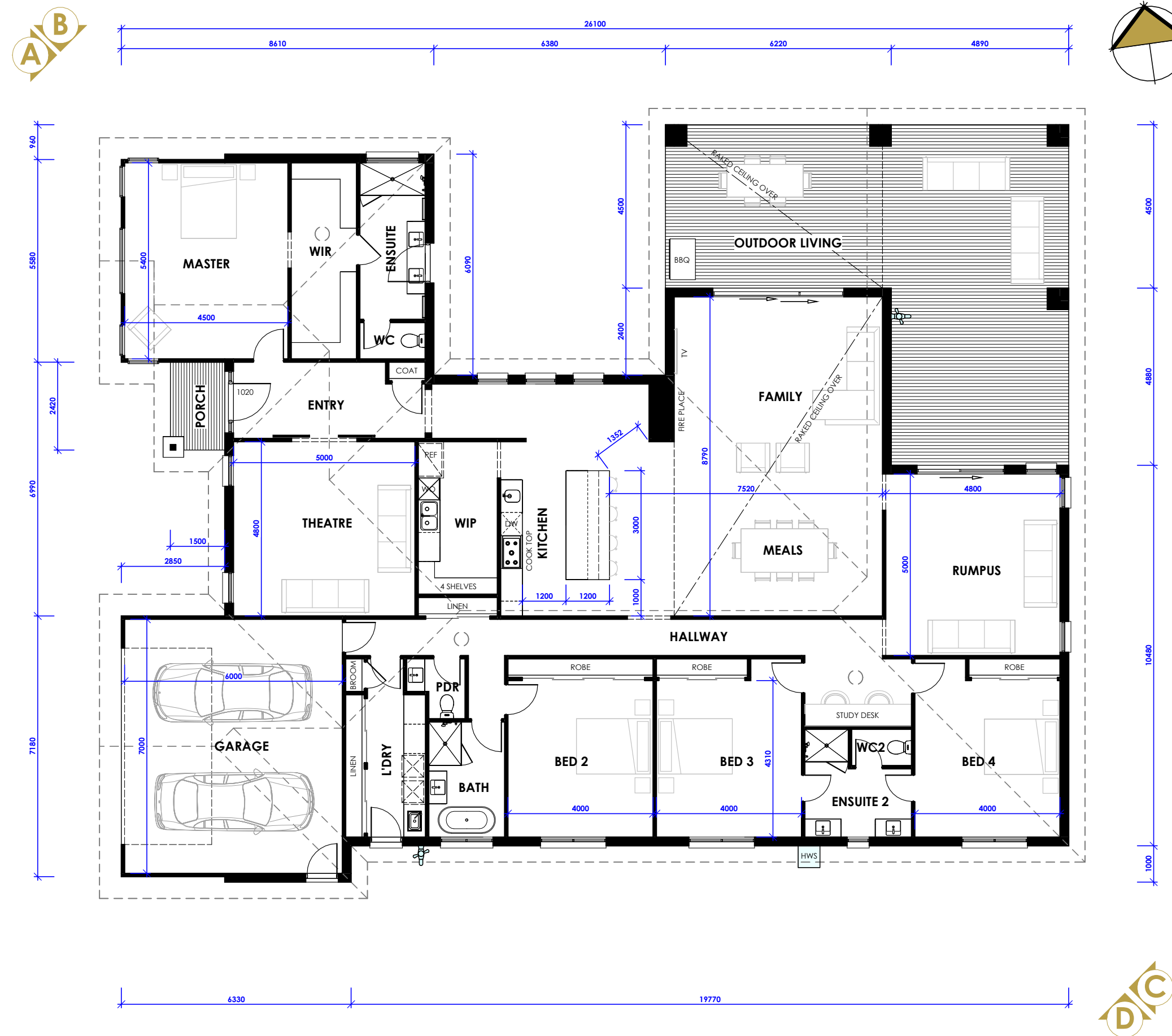
TOWN PLANNING REQUIRED

SITE ANALYSIS		
GARDEN AREA REQ. FOR GRZ & NRZ ZONES ONLY: 400-500m2 = 25% 501-650m2 = 30% 650m2+ = 35%		
GARDEN AREA	13792.74 m ²	91.77%
NON-COMPLIANT GARDEN AREA	0.00 m ²	0.00%
TOTAL PERMEABLE SPACE	13792.74 m ²	91.77%
SITE COVER	744.53 m ²	4.95%
PAVED AREA	0.00 m ²	0.00%
DRIVEWAY AREA	492.08 m ²	3.27%
TOTAL HARD COVER	1236.61 m ²	8.23%



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proposed: **HOUSE & GARAGE** for: **S. ROSE & K. SAVAGE** address: **680 FIVE MILE RD** TP
 drawing: **PROPOSED SITE PLAN** drawing: **NAR NAR GOON, 3812** sheet: **2 of 5** issue: **D** date: **12/03/24** job no.: **23-05380**
 drawn: **SR** date: **05/10/23** scale: **1 : 300**



- GENERAL NOTES:**
- WRITTEN DIMENSIONS ALWAYS TAKE PREFERENCE OVER SCALE
 - BRIDGE RAMP ALL ASSESS GARAGE DOOR HEIGHT ON BE AS REQUIRED
 - UNLESS OTHERWISE INDICATED ALL WALL DIMENSIONS ARE:
 - * EXTERNAL ROOMS = 100 BUCK 45 CAVITY TESTED
 - * INTERNAL ROOMS = 100 BUCK 45 CAVITY TESTED
 - ALL INTERNAL DOORS TO BE 2045H (2540H NOTED WITH ASTERISK - 807)
 - PROVIDE REMOVABLE HINGES TO HINGED WC & POWDER ROOM DOORS
 - PROVIDE REMOVABLE HINGES TO HINGED BURY DOOR (P)
 - ADVANCE CEILING ACCESS MANHOLE LOCATION (P)
 - SMOKE EXTRACTOR PRECONNECTED WITH BATTERY BACKUP
 - ENGINEER DESIGNED BEAM - (EB)
 - DOOR CLEARANCE (DC)
 - BRICKWORK ARTICULATION (BA)
 - EXTERNAL PLUMBING POINTS TO PLUMBER'S DISCRETION
 - SAFETY GLASS (SG) WHERE REQUIRED IN WITHIN 500 OF SHOWER BASE
 - RECYCLED TAP (RT)
 - GAS METER (GM) CLEARANCE TO OPENINGS & GROUND SOURCES (GS)
 - HWS WATER SERVICE TO BE 500MM CLEAR OF BLDG OPENINGS

AREAS TABLE

AREAS	(m ²)	(SQ)
GROUND FLOOR	334.88 m ²	36.05
SUB TOTAL:	334.88 m ²	36.05
GARAGE	44.16 m ²	4.75
OUTDOOR LIVING	73.86 m ²	7.95
PORCH	3.75 m ²	0.40
TOTAL OTHER	121.77 m ²	13.11
GRAND TOTAL	456.65 m ²	49.16



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proposed: **HOUSE & GARAGE**

for: **S. ROSE & K. SAVAGE**

drawing: **PROPOSED FLOOR PLAN**

drawn: **SR** date: **05/10/23** scale: **1 : 100**

address: **680 FIVE MILE RD**

NAR NAR GOON, 3812

sheet: **4** of **5** issue: **D** date: **12/03/24** job no.: **23-05380**

TP



ELEVATION A - (WEST)







ELEVATION B - (NORTH)

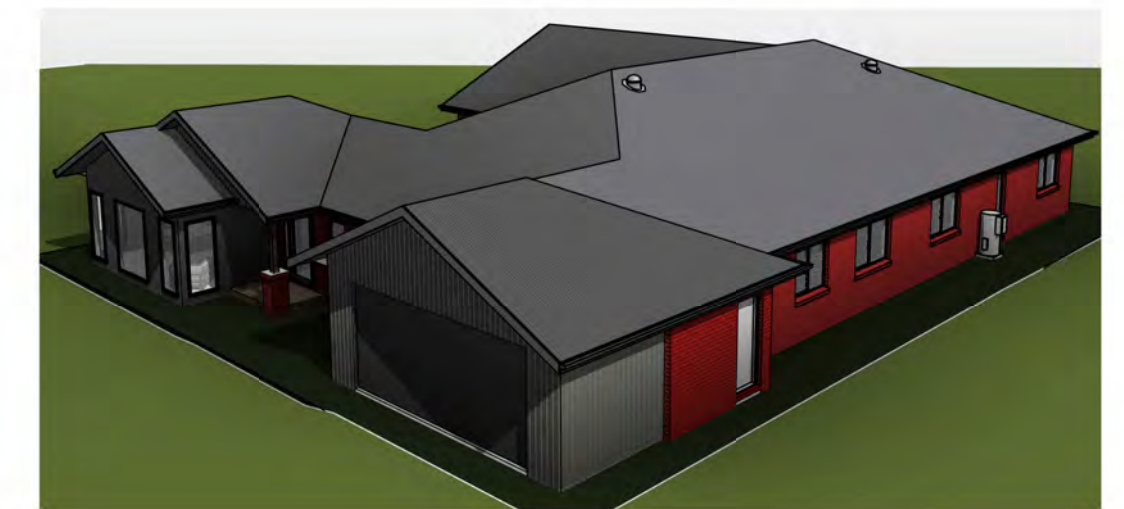



ELEVATION C - (EAST)



ELEVATION D - (SOUTH)

FINISHES/MATERIAL SCHEDULE	
 BRICKWORK: COLOUR: RED EARTHY TONES	 FASCIA, GUTTER, DOWN PIPES, WINDOW FRAMES: COLOUR: DARK GREY/BLACK TONES
 COLORBOND SHEET ROOFING: COLOUR: DARK GREY/BLACK TONES	 VERTICAL WALL CLADDING: COLOUR: DARK GREY/BLACK TONES




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proposed: HOUSE & GARAGE	for: S. ROSE & K. SAVAGE	address: 680 FIVE MILE RD	TP
	drawing: PROPOSED ELEVATIONS	NAR NAR GOON, 3812	
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OBJECTION TO P.A. T240015 RE. 680 FIVE MILE ROAD, NAR NAR GOON

Joint Objection by James Naylor and Andrew Naylor as occupants and co-executors representing the Estate of the late Mr. C. Naylor (owner, 655 Five Mile Road Pakenham), c/- PO Box 63 Pakenham 3810. This is an Objection to a proposal for the use and development of land for a dwelling at 680 Five Mile Road Nar Nar Goon, on a lot of 1.503 ha being lot 1 of Plan of Subdivision PS 727458 W.

Reasons for the Objection/How we would be affected:

1. The report of some 5 pages submitted as part of the application does not meet the requirements of a Planning Report in that it fails to appropriately respond to clauses 11, 13, 14 and 15 of the State Planning Policy Framework.
 - 1.1 In particular there is no response showing how the proposal complies with clause 11; instead there is merely a description of the provisions of that clause.
 - 1.2 In regard to clause 13, the said report fails to demonstrate that the proposed dwelling meets the appropriate required appropriate separation distance between the nearby broiler sheds to the north-east of the site and the nearest edge of the proposed dwelling under the relevant Victorian Code.
 - 1.3 In regard to Clause 14, the report's statement that "The proposed development does not impact negatively on the agricultural base by preserving productive farm land, maintaining the natural drainage function and landscape values of the site." Is simply not accurate as the entire subject site of some 1.5 ha has been effectively removed from soil based agriculture for some years (whilst acknowledging that the occupant had two steers grazing on the site for some months at a early stage of their tenure; furthermore, the landscape values of the site have been diminished by the construction of the existing shed on the site and the remaining vistas from Five Mile Road will be further diminished by the location of the proposed dwelling to the north-east of the existing shed.
 - 1.4 In regard to Clause 15 the report merely provides a description of that Clause (and of Clause 21.06-1) without providing any linkage with the proposed development.
 - 1.5 In regard to clause 22.05-Westernport Green Wedge Policy, the report states that "The proposal ensures that it does not significantly adversely affect the biodiversity, agricultural productivity, landscape, rural amenity, or other environmental values of the area." We do not accept this assertion. We have made reference to the adverse impact on landscape above. In regard to agricultural activity, the proposal will significantly impede our ability to continue farming as we are currently entitled to. The proposed dwelling represents a conflict of use with our activities such as spreading smelly fertiliser, ability to use noisy machinery including e.g. feeding out hay or making hay late into the evening, spraying of herbicides and pesticides, attending to sick animals during the night; furthermore the occupants of the proposed dwelling may well keep dogs which are a potential threat to livestock, especially sheep, which we have grazed in the past and expect to do so again, noise from livestock handling in stock yard. Any such activities carried on at night under lights using

tractor or other vehicle lights could potentially be curtailed by objections made by the occupants of the proposed dwelling.

1.6 In regard to rural amenity the proposed dwelling will significantly raise the ambient noise level in the vicinity of our existing dwelling, thereby diminishing our quiet enjoyment of our existing rural surrounds. Increased proximal traffic will raise dust levels from the dirt road in the vicinity of our dwelling during the drier months of the year.

1.7 A major conflict-of-use issue represented by the proposed dwelling that will adversely affect the agricultural productivity of our farm is the future run-off from the subject site which will increase in rate post heavy rain events and thereby overwhelm the existing drain through our property that receives the runoff from the subject site and much of the surrounding dairy farm from which the subject lot was created and therefore lead, at times, to overwhelming the drain which receives this run-off and runs east west through part of our property, south of the gas valve station on Five Mile Road. In recent years this drain has become prone to breaching after significant rainfall events which is a new phenomenon in our experience farming on our property (which we have done since the late 1970's). We note that the report supporting the application does not acknowledge that the entire subject site is apparently within the Koo Wee Rup and Longwarry flood protection district (according to a map forming part of Melbourne Water's Customer Service Charter, published July 2018. See figure 1). We are increasingly concerned in recent years by significant earthmoving activities which have altered nearby farming land topography, which have increased the rate of runoff through our property, via both the above mentioned drain and also the Ararat Drain, despite which we have had no ability to influence by any permit application notified to us. Such incremental activities can have a very significant cumulative effect over time. The nuisance thereby created has thereby caused increased pugging by cattle of our pastures and diminished pasture growth during significant parts of the year. The applicant's planning report refers to property information provided by Cardinia Shire Council in relation to potential flooding of the subject land etc., yet this document cannot be assessed by us as it is not included in the documents supporting the application and we request that this be provided to us for review and potential further comment.

2. Site History

The subject land has a chequered history. The existing two dwellings on the parent dairy farming property were excised onto separate titles some years ago. However the subject land (of some 1.5ha) was created some considerable years after the introduction of the Green Wedge planning provisions, being a re-configuration of a narrow lot formed from the closure of a proposed road. When notice was originally provided of the subdivision proposal to create the subject lot, the subject lot was located approximately 100metres due north of its existing position. Accordingly, we did not consider that the positioning of the subject site, in its original proposed location, warranted lodging an objection. Subsequently, without notice to our late father (the former owner of our farm), the subject site was shifted south by approximately 100 metres and a permit granted, without notice to him. This caused us considerable consternation as we would have objected to the subdivision permit application in its final form due to concerns over drainage and other issues, in the event of it being developed.

Subsequently, we understand the dairy farmer opposite sold the subject site to the current applicant, who then applied for a planning permit for a "Rural Store". According to the planning scheme definition, "Rural store" is defined as "Land used to store unprocessed agricultural produce, or products used in agriculture." We made no objection to this proposal, but in fact the substantial shed built on the subject land (presumably pursuant to that application) does not appear to have been used in any activity that meets this definition. Rather, the subject site has been used by a business known as "Elevated Plumbing & Drainage" whose activities, according to photos displayed on its Facebook site, are predominately non-agricultural in nature. It is not clear to us what activity takes place within the shed built pursuant to the Rural Store application; however, it is highly improbable that it relates to agricultural purposes. Excavators and an associated truck and other commercial vehicles are invariably parked outside this shed. We therefore consider that the subject site has indeed been used in recent years as a Contractor's Depot – a use which is more appropriately sited on industrial zoned land. We are therefore concerned that the shed currently on the subject site is not a Rural Store and that the activities taking place are not conducted pursuant to a valid permit. It also occurs to us that part of the applicant's motivation for obtaining a permit for use and development of the land as a dwelling is to retrospectively acquire planning rights to use the land for its current purposes under cover of conducting a home based business. We do not accept that in fact the current activities could in fact meet all of the conditions of a home based business but in any event it is unacceptable for the occupant of the subject site to be applying (via the applicant) for a use that is non compatible with agricultural activities (being a dwelling), in order to provide cover for an existing non compliant use of the subject site.

3. We are unclear from the information supporting the permit application as to which referral authorities have been notified by council, but we would like to see the responses from Melbourne Water and the EPA respectively, in order to better assess the implications of the proposed development. What is apparently the planning report (which we say is incomplete for reasons outlined above) included in the published documents supporting the application is dated "12.03.24" but disclosed no author and we surmise that that person may not be a qualified town planner. The prospect of some small scale agricultural activity taking place on the subject site (as indicated by the vague reference to the owners of the subject site considering "farming organic crops (selected vegetables) in the future" is no substitute for the present reality of complete loss of the subject site from soil based agricultural activities formally undertaken as part of the surrounding highly productive dairy farm, and neither is a dwelling to justify a non complying drainage contractor's business an acceptable substitute for a legitimate farming related enterprise. The granting of a permit for a dwelling would only entrench the existing loss of valuable agricultural land on the subject site.

4. We also submit that the proposed development does not comply with numerous various statutory planning provisions including (but not necessarily limited to):

Planning Policy Framework

Clause 11.01-1R Green wedges Metropolitan Melbourne; Clause 11.03 -3S Peri-urban areas;
Clause 14.01 Agriculture; clause 15.01 Built Environment (the proposed dwelling is located with a

significantly greater setback from Five Mile Road than the minimum provided under the planning scheme which will accordingly reduce available land for any agricultural activity);

Clause 16.01-3S Rural residential development; Clause 21.03-5 Rural residential and rural living development; Clause 22.05 Western Port Green Wedge Policy and Clause 35.04 Green Wedge Zone (Schedule 1).

5. We received notice of this planning application with only 7 clear business days available to us to assess a myriad implications. We therefore submit this objection under protest, on account of the grossly inadequate time available to us in assessing the application. However, we acknowledge that we have not yet been able to inspect the planning file held at council offices, or discuss the proposal with any council officers, and therefore our position is subject to possible review.

Sincerely,

James Naylor and Andrew Naylor (jointly in their individual capacities and in their capacity as co-executors for C Naylor Estate)