

Town Planning Committee Meeting

Agenda

Monday 5 May 2025

Commencing 7:00 PM

**Council Chambers
20 Siding Avenue, Officer
Victoria**

The Cardinia Shire Strategic Framework Plan (Figure 1) sets out the general pattern for land use and development to respond to the key influences and issues to achieve the strategic vision for the municipality.

Figure 1:

Cardinia Shire Strategic Framework Plan



Town Planning Committee Meeting

Monday 5 May 2025 at 7:00 PM.

Members: Cr Jack Kowarzik Mayor

Cr Liz Roberts

Cr Samantha-Jane Potter

Cr Casey Thomsen

Cr David Nickell

Cr Collin Ross

Cr Brett Owen

Cr Trudi Paton

Officers:	Carol Jeffs	Chief Executive Officer
	Peter Benazic	General Manager Infrastructure and Environment
	Debbie Tyson	General Manager Community & Planning Services
	Wayne Mack	General Manager Corporate Services
	Peter Harris	Manager Governance, Safety & Property
	Duncan Turner	Manager Planning & Design
	Natasha Berry	Senior Governance Officer

Dear Councillor,

You are advised that a meeting will be held in the **Council Chambers, Cardinia Shire Council Civic Centre, 20 Siding Avenue, Officer** on **Monday 5 May 2025** commencing at **7:00 PM**.

Carol Jeffs
CHIEF EXECUTIVE OFFICER

Order of Business

1 Opening And Reflection.....	6
2 Acknowledgements	6
3 Apologies.....	6
4 Declaration Of Interests	6
5 Ordinary Business.....	7
5.1 T240258 PA - Subdivision Of Land Into Four (4) Lots (Consolidation And Re-Subdivision) At CA 9 SEC G, Harewood Park Road & Lot 4 On PS627026, 19 Knight Road, Gembrook	7
5.2 T240419 PA - Use Of Land For A Residential Building (Short Stay Accommodation) At 186 Beenak Road, Gembrook	41
5.3 Planning Matters Dealt With By Officers Under Delegated Authority - May 2025	76
5.4 Planning Matters VCAT Report - May 2025	82
5.5 Planning Scheme Amendments Activity Report - May 2025	85

1 Opening And Reflection

I would ask those gathered to join us now for a few moments of silence as we reflect on our roles in this chamber. Please use this opportunity for reflection, Prayer or thought, to focus on our shared intention to work respectfully together for the well-being of our whole community.

2 Acknowledgements

Cardinia Shire Council acknowledges that we are on the traditional land of the Bunurong and Wurundjeri people and pay our respects to their elders past, present and emerging.

3 Apologies

- Cr Alanna Pomeroy, Deputy Mayor

4 Declaration Of Interests

5 Ordinary Business

5.1 T240258 PA - SUBDIVISION OF LAND INTO FOUR (4) LOTS (CONSOLIDATION AND RE-SUBDIVISION) AT CA 9 SEC G, HAREWOOD PARK ROAD & LOT 4 ON PS627026, 19 KNIGHT ROAD, GEMBROOK

Responsible GM:	Debbie Tyson
Author:	Evie McGauley-Kennedy
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	<p>4.1 We support our productive land and employment land to grow local industries</p> <p>4.1.1 Facilitate better planning for our agricultural land to support industry, innovation, local food economy and local job growth.</p> <p>5.1 We practise responsible leadership</p> <p>5.1.1 Build trust through meaningful community engagement and transparent decision-making.</p>

Recommendation

That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T240258 for the subdivision of land into four (4) lots (consolidation and re-subdivision) at CA 9 SEC G, Harewood Park Road, Gembrook and Lot 4 on PS627026, 19 Knight Road, Gembrook on the following grounds:

1. The proposal is inconsistent with Planning Policy Framework and Local Planning Policy Framework, that aim to preserve and protect rural land for its resources and scenic features, protect important agricultural land such as those in Gembrook, avoid the subdivision of productive agricultural land and avoiding the permanent loss of agricultural land, specifically:
 - a. Clause 11.01-1S - Settlement
 - b. Clause 11.01-1R - Green Wedges – Metropolitan Melbourne
 - c. Clause 13.07-1S – Land Use Compatibility
 - d. Clause 14.01-1S - Protection of Agricultural Land
 - e. Clause 14.01-1R - Protection of Agricultural Land – Metropolitan Melbourne
 - f. Clause 21.04-2 – Agriculture
 - g. Clause 21.02-2 – Landscape
2. The proposal is inconsistent with, and does not respond to the purposes and decision guidelines of Clause 35.04 (Green Wedge Zone), as it:
 - a. Will have a detrimental impact on the rural economy, due to the extent the proposal would increase the value of the land;
 - b. Does not enhance agricultural production or appropriately relate to rural land use;
 - c. Reduces the availability of land for future sustainable agricultural activities, and is not a subdivision consistent with sustainable land management practices;
 - d. Will compromise the preservation, protection and enhancement of significant agricultural land, primarily by further intensifying the potential for rural residential land use that would not be compatible with strategically supported agricultural land uses on the site and in the surrounding area;
 - e. Does not protect, conserve or enhance the character of the open rural and scenic non-urban landscape due to potential for proliferation of additional buildings in the landscape; and

- f. Would adversely impact landscape features, vistas and natural scenic beauty of the area due to potential for proliferation of additional buildings in the landscape.
3. The proposal is inconsistent with the relevant purposes and decision guidelines of Schedule 1 to the Environmental Significance Overlay, as it does not have proper regard to the soil quality of the site identified by the *Land Capability Study for the Cardinia Shire (February 1997)* as it relates to agricultural capacity and development capacity.
4. The proposal is inconsistent with Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions), which aims to protect metropolitan green wedge land from uses and development that would diminish its agricultural values, and to protect productive agricultural land from incompatible uses and development.
5. The proposal includes a restrictive covenant relating to building envelopes, for which permission has not been sought pursuant to Clause 52.02.

Application Details

APPLICATION NO.:	T240258
APPLICANT:	XWB Consulting
LAND:	CA 9 SEC G, Harewood Park Road, Gembrook; and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook)
PROPOSAL:	Subdivision of the Land into Four (4) Lots (Consolidation and re-subdivision)
PLANNING CONTROLS:	Zone: - Green Wedge Zone (Schedule 2) Overlays: - Environmental Significance Overlay (Schedule 1) - Bushfire Management Overlay - Significant Landscape Overlay (Schedule 1)
NOTIFICATION & OBJECTIONS:	Notice of the application was given pursuant to section 52 of the <i>Planning and Environment Act 1987</i> by placing signs on the site and sending notices. No objections have been received.
KEY PLANNING CONSIDERATIONS:	Subdivision of Green Wedge Zone land Protection of agricultural land Avoiding the fragmentation of productive agricultural land
REASON FOR MEETING:	Refusal

RECOMMENDATION:

Notice of Decision to Refuse to Grant a Permit

Executive Summary

The purpose of this report is to consider an application to subdivide two (2) contiguous parcels of land known as CA 9 SEC G, Harewood Park Road, Gembrook and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) into four (4) lots.

The land is subject to the Green Wedge Zone (Schedule 2), Environmental Significance Overlay (Schedule 1), Bushfire Management Overlay and Significant Landscape Overlay (Schedule 1).

The proposal involves the consolidation and re-subdivision of the lots.

The allotments are currently configured as follows:

- Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) currently measures an area of 27.05 hectares. On its own it cannot currently be further subdivided.
- CA 9 SEC G, Harewood Park Road currently measures 40.02 hectares. On its own it can currently be subdivided into two (2) lots.

A permit is required to subdivide land under the zone pursuant to Clause 35.04-3 and lots must be at least the area specified in the Schedule to the Zone. In this instance Schedule 2 of the Green Wedge Zone specifies that each lot to be created must be at least 15 hectares in area. Each proposed lot exceeds this requirement; therefore, a subdivision can be considered.

It is a well-established principle of robust and good planning that *'just because a permit can be granted does not imply that a permit should or will be granted'*. This principle is echoed throughout many Tribunal decisions and largely appears in decisions involving subdivision where there is a minimum lot size 'threshold'.

The subject land is within the 'Hills' region of Cardinia's Green Wedge Zone and Gembrook which is recognised for its scenic and environmental values and has a rich history of being productive farmland.

Reduced lot sizes, along with perceived entitlement to construct a dwelling and ancillary buildings that the proposed building envelopes provide for, has implications for the environmental and scenic landscape character of the 'Hills' and risks irreversibly creating an environment where the viability of using land for agricultural or other uses (i.e. tourism, recreational) contemplated by the purpose of the Green Wedge Zone are eroded.

Despite the Gembrook area being subject to the Dieldrin contamination (an organochlorine compound used from mid-century up until as recent as the late 1980's to control pests on potato crops) and the presence of the potato cyst nematode (PCN) in the area, both of which halted the potato growing industry, Gembrook is recognised under the planning scheme to have highly valuable soils to support sustainable agricultural land use. The subject site is identified in the *Land Capability Study of the Cardinia Shire, February 1997* as being a mix of 'Class 2 and 3' (Fair to Good).

The Victorian Legislative Assembly Environment and Planning Committee (the Committee) report into *Securing the Victorian food supply* (November 2024) observed that:

Subdivision is fragmenting farming regions, rising land values are reducing the viability of food production and inappropriate residential development is permanently sterilising some of the most fertile farmland in the state.

The Committee report follows the State Governments release in March 2024 of the *Planning for Melbourne's Green Wedges and Agricultural Land Action Plan 2024* with 20 actions to protect Melbourne's green wedges and Victoria's agricultural land to:

- strengthen protections for green wedge land within 100 kilometres of Melbourne
- reduce conflicts between farmers and other landholders
- emphasis the non-urban value of green wedges, including their agricultural value

Based on the relevant consideration of the state and local planning policies in the Cardinia Planning Scheme, it is recommended that the proposal be refused based on the grounds listed above.

Attachments

1. Attachment 1 - T240258 PA Officer Report Refusal [**5.1.1** - 25 pages]
2. Attachment 2 - T240258 PA - Locality Map - CA 9 SEC G, Harewood Park Road, Gembrook; and Lot 4 P S 627026, 19 Knig [**5.1.2** - 1 page]
3. Attachment 3 - T240258 PA - Decision plans [**5.1.3** - 4 pages]

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NOTICE OF DECISION TO REFUSE A PLANNING PERMIT OFFICER REPORT



Application Details

Proposal:	Subdivision of the Land into Four (4) Lots (Consolidation and re-subdivision)	
Application Number:	T240258	
Property Number:	5000036834	
Address:	CA 9 SEC G, Harewood Park Road, Gembrook; and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook)	
Applicant:	XWB Consulting	
Date Received:	12 June 2024	
Statutory Days:	72 days as of 11 April 2025	
Planner:	Evangeline McGauley-Kennedy	
Decision	<input checked="" type="checkbox"/> Refusal	
Plans to Endorse:	<input checked="" type="checkbox"/> No (refusal)	
Decision to be sent internally:	<input checked="" type="checkbox"/> Subdivisions (all applications relating to subdivisions, easements, restrictions, etc.)	<input type="checkbox"/> Waste Department (all applications with Waste Management Plans)
	<input type="checkbox"/> Environment (all applications with Environment referral responses)	<input type="checkbox"/> Development Contributions (applications on land affected by a DCPO–decision sent to DCP team)
	<input type="checkbox"/> Other, specify:	<input type="checkbox"/> Not Required
Decision to be sent externally:	<input checked="" type="checkbox"/> Yes, specify below:	<input type="checkbox"/> No
	<ul style="list-style-type: none"> • AusNet Services • APA Group • APA VTS (Pipeline Authority) • Country Fire Authority • Yarra Valley Water • Melbourne Water 	

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Can the application be decided under delegation?	<input checked="" type="checkbox"/> No The application is recommended for refusal.
Have any amendments been made to the application?	<input checked="" type="checkbox"/> No

Proposal

Description of proposal:
<p>Approval is sought for to subdivide two (2) contiguous parcels of land known as CA 9 SEC G, Harewood Park Road, Gembrook and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) into four (4) lots. The proposal involves the consolidation and re-subdivision of these lots.</p> <p>The allotments are currently configured as follows:</p> <ul style="list-style-type: none"> - Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) currently measures an area of 27.05 hectares. On its own it cannot currently be further subdivided. - CA 9 SEC G, Harewood Park Road currently measures 40.02 hectares. On its own it can currently be subdivided into two (2) lots. <p><u>Can the application be made?</u></p> <p>Originally there was concern raised by officers that the proposed subdivision appeared prohibited as Lot 4 on PS627026L currently measures 27.09ha in size, which cannot currently be subdivided into 2 lots due to the minimum lot size of the Green Wedge Zone (Schedule 2).</p> <p>i.e. $27.09 / 2 = 13.545\text{ha}$</p> <p>Additionally, a Section 173 Agreement AF546766C applies to the title which prohibits further subdivision unless certain conditions have been met. The Section 173 Agreement states:</p> <p><i>"Except for the subdivision of the Land into two (2) lots in accordance with the Plan of Subdivision, the Owner will not further subdivide the Land other than a subdivision which does not create any additional lots unless the land is consolidated with an adjoining parcel of land to create a lot which exceeds the minimum lot size specified in the zone in which the land is included under the scheme".</i></p> <p>Compliance with the Section 173 Agreement is discussed later in this report.</p> <p>In order to address this concern, the applicant provided a legal opinion which advised the following:</p> <ol style="list-style-type: none"> <i>the permit application is not prohibited by the provisions of the S173 Agreement. The permit application is arguably not for a further subdivision which creates 'additional lots' on the Eastern Parcel, however even if it is, the exemption as set out in clause 1 of the S173 Agreement applies; and</i> <i>the permit application is not prohibited by the provisions of the Cardinia Planning Scheme. The permit application includes both of the Existing Parcels as the planning unit, and the</i>

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Green Wedge Zone Schedule 2 (GWZ2) provisions simply require an analysis of whether each of the proposed lots would meet the minimum subdivision area (which they will).

Basically the advice found that in order to facilitate the subdivision, the plan essentially proposes to consolidate Lot 4 on PS627026 and CA 9 SEC G so that the combined area measures approximately 67.11 hectares. The land can then be subdivided into four (4) lots comprising:

- Proposed Lot 1, a vacant parcel measuring 16.01 hectares. This lot is proposed to contain a building envelope.
- Proposed Lot 2, a vacant parcel measuring 16.01 hectares. This lot is proposed to contain a building envelope.
- Proposed Lot 3, a parcel containing an existing dwelling and agricultural shedding measuring 19.49 hectares.
- Proposed Lot 4, a parcel containing an existing dwelling and small outbuildings, measuring 16.61 hectares.

Creation of Restriction

The proposal also involves the creation of restrictions in the form of two (2) building envelopes on the two (2) southern lots, being proposed Lots 1 and 2. The application includes building envelopes but has not sought permission to create a restriction on the plan of subdivision (under Clause 52.02).

Images of relevant plans:

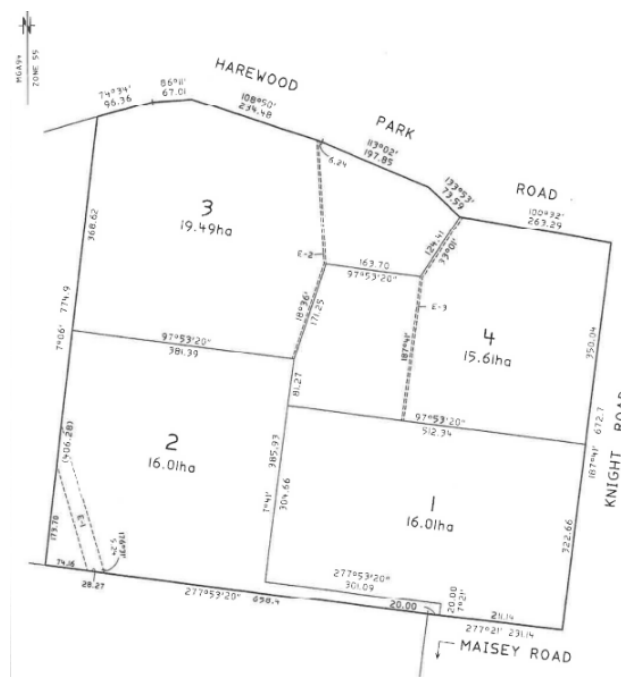
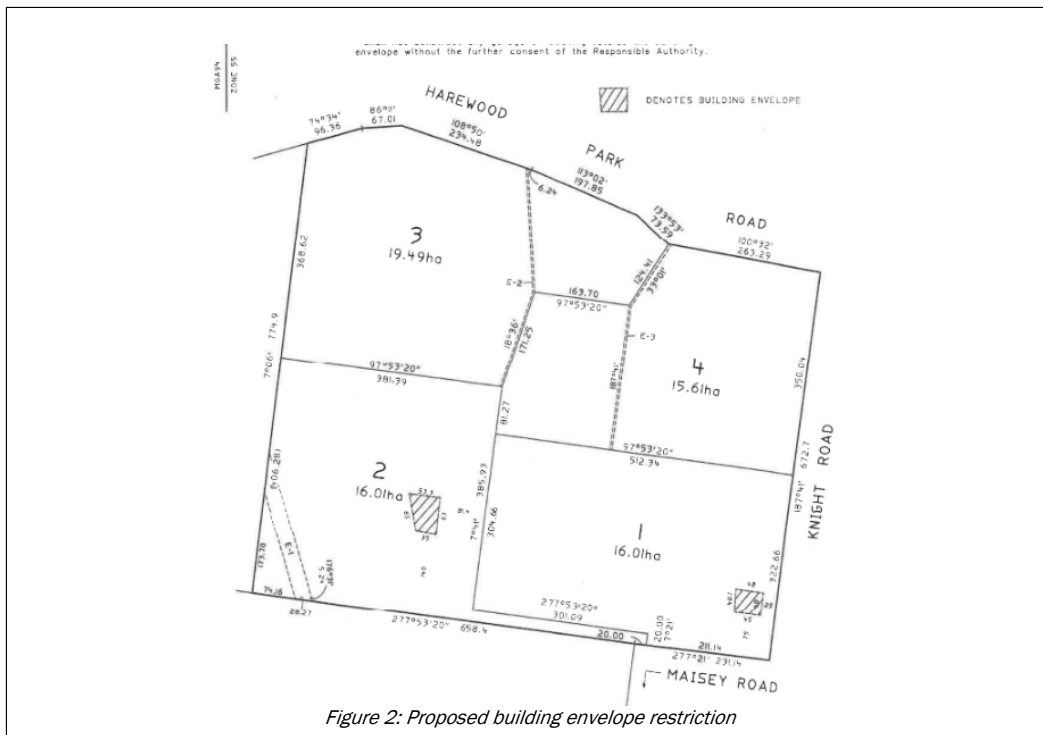


Figure 1: Proposed plan of subdivision

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Land Details

Description of site and surrounding area:

An inspection of the site and the surrounding area has been undertaken. Both lots are irregular in shape and are located on the southern side of Harewood Park Road and northern side of Maisey Road. CA 9 SEC G, Harewood Park Road measures 40.02 hectares and Lot 4 on PS627026, 19 Knight Road measures 27.09 hectares. Combined, the land measures approximately 67.11 hectares. CA 9 SEC G, Harewood Park Road, currently contains a dwelling, paddocks and large agricultural shedding, with access being provided from Harewood Park Road to the north. The south-west portion of the site is used for crop raising. Lot 4 on PS627026, 19 Knight Road currently contains a dwelling, outbuilding and paddocks, with access being provided from Harewood Park Road to the north. There is a gas pipeline easement running diagonally north-west to south-east through the south-west corner of CA 9 SEC G, Harewood Park Road. The topography of the land is undulating. The main characteristics of the surrounding area are:

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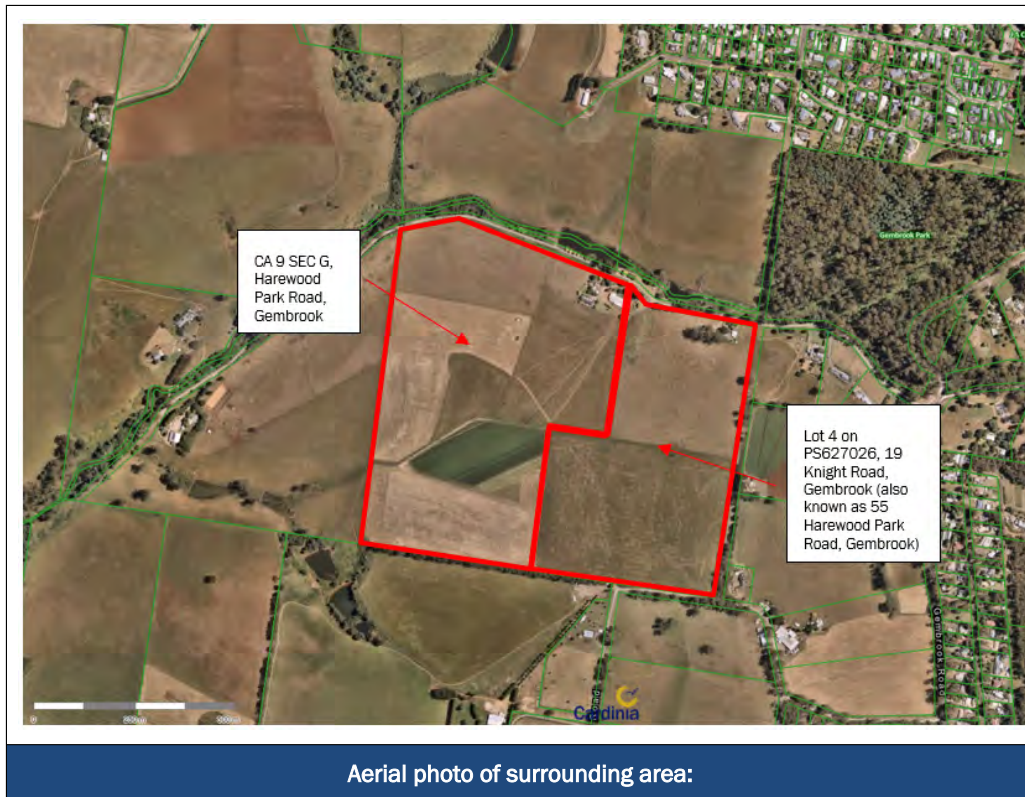
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	<ul style="list-style-type: none"> • North: North of the site is a similarly sized land holding currently used as part of this farm for agricultural activities such as grazing cattle. Further north is Belgrave-Gembrook Road and the Puffing Billy Railway. • South: South of the site is a similarly sized land holding, along with some smaller land holdings that each appear to contain a dwelling. These lots appear to be lifestyle / hobby farms with the larger property appearing to be undertaking agriculture in the form of crop raising. • East: East of the site are smaller properties containing dwellings, with some of the larger properties undertaking agriculture in the form of crop raising. • West: West of the site is another similarly sized property which contains a dwelling and appears to be used for grazing.
Permit/Site History:	<p>The history of the site includes:</p> <ul style="list-style-type: none"> • Planning Permit T040321 was issued for the subdivision of the land into four (4) lots on 20 April 2006. <ul style="list-style-type: none"> ○ This permit appears to be for the same proposal, however as the subdivision was not fully acted upon within the permit timeframes, it has since expired. ○ It is noted that the planning zoning controls have not changed since this permit was issued, however, given that nearly 20 years have passed since the issue of this permit, with planning policy and Tribunal decisions strengthening the protection of the green wedge within this timeframe. What may have been considered a good decision 20 years ago, is now at odds with how green wedge policy has progressed and been strengthened within the planning scheme. • Planning Permit T070244 was issued to develop the land for the purpose of a three (3) lot re-subdivision (boundary realignment) and the variation of an easement along the southern boundary on 12 October 2007. • Planning Permit T080764 was issued to develop the land for the purpose of a four (4) lot re-subdivision (boundary re-alignment) on 13 August 2009.
Aerial photo of site:	

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Aboriginal Cultural Sensitivity:	<input type="checkbox"/> No
	<input checked="" type="checkbox"/> Yes, a CHMP is: The land is partially covered by areas of Aboriginal Cultural Sensitivity
<input checked="" type="checkbox"/> Not required In accordance with Reg. 49 of the Aboriginal Heritage Regulations, 2018: <i>(1) The subdivision of land into 3 or more lots is a high impact activity if—</i>	

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		<p>a) <i>the planning scheme that applies to the activity area in which the land to be subdivided is located provides that at least 3 of the lots may be used for a dwelling or may be used for a dwelling subject to the grant of a permit; and</i></p> <p>b) <i>the area of each of at least 3 of the lots is less than 8 hectares.</i></p> <p>The subject land is zone Green Wedge Zone, which is not a residential zone. Despite this, in accordance with Reg. 49(1)(a) the subject land may be used for a dwelling, subject to the grant of a planning permit. Therefore, in order to be exempt from a CHMP, in accordance with Reg. 49(1)(b), the area of at least 3 of the lots must be less than 8ha in size.</p> <p>Due to the minimum lot size of Schedule 2 to the Green Wedge Zone, each lot proposed in this subdivision must be at least 15ha in area.</p> <p>Therefore, as all 4 lots exceed 8ha in area, a CHMP is not required.</p>	
Zoological/ Botanical significance?	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Zoological	<input type="checkbox"/> Botanical
Restrictive covenants or section 173 agreements:	<input type="checkbox"/> None	<p><input checked="" type="checkbox"/> Yes, list/describe below:</p> <p>Section 173 Agreement AF546766C prohibits further subdivision unless certain conditions have been met. The Section 173 Agreement states:</p> <p><i>"[the prohibition:] Except for the subdivision of the Land into two (2) lots in accordance with the Plan of Subdivision, the Owner will not further subdivide the Land other than a subdivision which does not create any additional lots <u>unless</u> [the exemption:] the land is consolidated with an adjoining parcel of land to create a lot which exceeds the minimum lot size specified in the zone in which the land is included under the scheme"</i></p> <p>The applicant's legal opinion provided advice that the Agreement is not breached as:</p>	

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		<ul style="list-style-type: none"> - <i>There is clearly a consolidation of the Existing Parcels before they are to be re-subdivided to create the four proposed lots. The proposed subdivision is unable to occur without the current common boundary being first 'obliterated' and then re-formed as shown in the Proposed Plan. This has consistently been held to be a consolidation and (then) re-subdivision of the planning unit; and</i> - <i>All of the proposed new lots as shown on the Proposed Plan would exceed 15ha (being "the minimum lot size specified in the zone in which the land is included under the scheme").</i>
		Would the grant of a permit breach a restriction?
		<input checked="" type="checkbox"/> No

Planning Provisions

Zoning:	GWZ1 - Green Wedge Zone - Schedule 2
Overlays:	BMO - Bushfire Management Overlay (partially covered in north-east corner) ES01 - Environmental Significance Overlay - Schedule 1 SL01 - Significant Landscape Overlay - Schedule 1
Other Provisions / Documents:	Other provisions and documents relevant to the assessment of the application include: <ul style="list-style-type: none"> • Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions • Clause 52.02 Easements, restrictions and reserves • Clause 53.01 Public Open Space contribution • Clause 53.02 Bushfire Planning • Clause 65 Decision Guidelines • Clause 66 Referral and notice provisions <ul style="list-style-type: none"> ◦ Clause 66.03 Referral of permit applications under other state standard provisions • Clause 71.02-3 Integrated Decision Making • <i>Land Capability Study for the Cardinia Shire (February 1997)</i> • <i>Gembrook Rural Review - Action Plan, 2004 (Reference document)</i>

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	<ul style="list-style-type: none"> ▪ <i>Casey and Cardinia Regional Agricultural Audit and Action Framework, 2004 (Reference document)</i> ▪ <i>Alternative Agricultural Land use Options Report, 2004 (document outside of the planning scheme)</i> • <i>Ragusa v Cardinia SC [2010] VCAT 1280 (27 July 2010)</i> • <i>Awesomeness Aussie Agricultural Life Group Pty Ltd v Cardinia SC [2024] VCAT 1137</i> • <i>Griffiths v Mitchell SC [2023] VCAT 811</i> • <i>Roussac-Hoyne v South Gippsland SC [2022] VCAT 577</i> • <i>Hart v Greater Shepparton CC [2022] VCAT 764</i>
Planning Policy Framework (including LPPF)	<p>The planning policies that are relevant to the assessment of the application include:</p> <ul style="list-style-type: none"> • Clause 11.01-1S Settlement • Clause 11.01-1R Green Wedges - Metropolitan Melbourne • Clause 13.07-1S Land use compatibility • Clause 14.01-1S Protection of agricultural land • Clause 19.01-3S Pipeline Infrastructure <p>Local Planning Policy Framework (LPPF)</p> <p>The relevant clauses of the LPPF are:</p> <ul style="list-style-type: none"> • Clause 21.01 Cardinia Shire Key Issues and Strategic Vision • Clause 21.01-3 Key Issues • Clause 21.02 Environment <ul style="list-style-type: none"> ○ Clause 21.02-2 Landscape ○ Clause 21.04-2 Agriculture

Permit Triggers

A permit is required for the following reasons:

Green Wedge Zone

Clause 35.04-3 – A permit is required to Subdivide land. Each lot must be at least the area specified in the schedule to the Zone.

- Schedule 2 to the Green Wedge Zone has a minimum subdivision area of 15ha. Each lot to be created exceeds 15ha.

Environmental Significance Overlay

Clause 42.01-2 – A permit is required to Subdivide land

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Bushfire Management Overlay

Clause 44.06-2 – A permit is required to Subdivide land

A permit is also required, and has not been applied for under Easements, restrictions and reserves

Clause 52.02 – A permit is required before a person proceeds under Section 23 of the Subdivision Act 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.

Notice

Notice of the application was given pursuant to section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices.
- Placing 3 signs on site.

Objections/Submissions

No objections or submissions have been received.

External Referrals/Notice

Referral Authority	Type	Advice/response/conditions:
AusNet Services	S55 Determining	No objection, subject to conditions.
APA Group APA VTS (Pipeline)	S55 Determining	No objection, subject to conditions.
CFA	S55 Recommending	No objection, subject to conditions
Yarra Valley Water	S55 Determining	No objection, subject to conditions.
Melbourne Water	S55 Determining	No objection, subject to conditions

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Internal Referrals

Internal Referral Department	Advice/response/conditions:
Subdivisions	Supported, no conditions.
Environment	Supported, no conditions.
Engineering	Supported, no conditions.
Traffic	Supported, subject to conditions.
Strategic & Urban Design	Supported, subject to conditions (removal of building envelopes).

Assessment

The application is for the Subdivision of the Land into Four (4) Lots (Consolidation and re-subdivision) and creation of a restriction, which requires a planning permit under the provisions of the Green Wedge Zone, Environmental Significance Overlay, Bushfire Management Overlay and Clause 52.02 (Easements, restrictions and reserves).

The key considerations of this application relate to:

- The relevant policies of the Planning Policy Framework.
- The Green Wedge Zone, Environmental Significance Overlay and Bushfire Management Overlay.
- The creation of restrictions pursuant to Clause 52.02.
- The compliance of the proposal with any restrictive covenants that apply to the land.
- Victorian Civil and Administrative Tribunal decisions.
- The overall acceptability of the proposal.

An assessment of these matters is provided below.

Planning Policy Framework (PPF) & Local Planning Policy Framework (LPPF)

A number of Planning Policies (including Local Planning Policy) are relevant to this application, and further demonstrate that this application provides an inappropriate response to planning principles and supports the position that the application be refused.

Clause 11.01-1S (Settlement) seeks to “*deliver networks of high-quality integrated settlements that have a strong identity and sense of place*” whilst “*balancing strategic objectives to achieve improved land use and development outcomes*” and “*preserving and protecting features of rural land and natural resources and features to enhance their contribution to settlement and landscapes*”.

Clause 11.01-1R (Green Wedges – Metropolitan Melbourne) seeks to “*to protect the green wedges of Metropolitan Melbourne from inappropriate development*” by “*promoting and encouraging the key features and related values of each green wedge area*”, “*consolidating new residential development in existing settlements and in locations where planned services are*

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available and green wedge values are protected”, “protecting important agricultural areas” and protecting areas of environmental, landscape and scenic value.

Whilst the application does not directly propose, or permit, use and/or development, subdivisions such as this one, play a role in the use and development environment. Reduced lot sizes, along with perceived entitlement to construct a dwelling that the proposed building envelopes play (such as what is proposed by this application), create an environment where the viability of using land for agricultural or other uses (i.e. tourism, recreational) contemplated by the purpose of the Green Wedge Zone are eroded. Generally, these types of subdivisions can erode the core purposes of the Zone due to the likely economics that come into play, which in turn reduces the viability of the land for its primary function.

Because of this, proposal does not preserve or enhance rural land and natural resources or achieve improved land use and development outcomes. Contrarily, this proposal has the potential to erode the rural land and its natural resources, as well as cause land use conflicts between what will likely become ‘rural residential lots’ owing to their reduced size and proposed building envelopes and agricultural activities occurring on neighbouring and surrounding land.

Clause 13.07-1S (Land use compatibility) seeks to “*protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts*” by “*a voiding or otherwise minimising adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measure*” and by “*protecting commercial, industrial and other employment generating uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively*”.

It is well established that the subdivision of land within the green wedge has potential to exacerbate or create conflicts between existing and future farming activities (i.e. via noise, keeping of livestock, odours, spraying) occurring on land and the subdivided parcels, as they become smaller and therefore, more attractive as lifestyle properties or hobby farms where higher levels of amenity are expected from occupants. It is evident that this could be a likely outcome of this subdivision as it proposes to create building envelopes, further enshrining the perception that the land is intended to be developed for more residential purposes. This is in conflict with the purpose of the zone and the protection of agricultural land uses of the land and surrounds, as well as the ‘right to farm’.

Clause 14.01-1S (Protection of agricultural land) and Clause 14.01-1R (Protection of agricultural land – Metropolitan Melbourne) seeks to “*protect the state’s agricultural base by preserving productive farmland*” by (in particular):

- *Protecting productive farmland that is of strategic significance in the local or regional context.*
- *Protecting productive agricultural land from unplanned loss due to permanent changes in land use.*
- *Preventing inappropriately dispersed urban activities in rural areas.*
- *Protecting strategically important agricultural and primary production land from incompatible uses.*
- *Limiting new housing development in rural areas by:*
 - *Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses.*
 - *Encouraging consolidation of existing isolated small lots in rural zones.*
- *In considering a proposal to use, subdivide or develop agricultural land, consider the:*

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- *Desirability and impacts of removing the land from primary production, given its agricultural productivity.*
- *Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.*
- *Compatibility between the proposed or likely development and the existing use of the surrounding land.*
- *Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.*
- *Give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land.*

The application fails to align with almost all of these strategies outlined above. On balance these strategies seek to do the opposite of what is proposed for the reasons set out below.

The application also fails to appropriately respond to planning policy at a local level. Many Local Planning Policy Frameworks seeks similar outcomes as those outlined above. In particular Clause 21.01 (Cardinia Shire key issues and strategic vision) which identifies the red volcanic soils around Gembrook, which have been historically significant for potato growing and that a key influence within the Shire is urban growth, including urban pressures on the rural hinterland and management of green wedge areas. The following relevant key issues are identified:

- *The protection of environmentally significant areas including the northern hills.*
- *The protection and sustainable use of agriculture.*
- *The management of urban growth, including urban pressures on the rural hinterland.*
- *The protection and sustainable use of agricultural land.*

Similarly, Clause 21.04-2 (Agriculture) again identifies Gembrook's agricultural significance and identifies that '*protecting productive agricultural land from incompatible uses and inappropriate development and subdivision, including non-soil based farming on lands with high soil quality*' is a key issue that can be addressed through the following strategies to maintain agriculture as a strong and sustainable economic activity within the municipality:

- *Protect agricultural land, particularly areas of high quality soils, from the intrusion of urban uses, inappropriate development and fragmentation which would lead to a reduction in agricultural viability, the erosion of the right of farmers to farm land, and ultimately the loss of land from agricultural production.*
- *Ensure the use or development, including subdivision, of agricultural land takes into consideration land capability.*

Whilst the subject land is within the 'Hills' region of Cardinia's Green Wedge Zone, it is located within Gembrook which has a rich history of being productive farmland. Despite more recently being subject constraints resulting from widespread Dieldrin contamination (an organochlorine compound used from mid-century up until as recent as the late 1980's to control pests on potato crops) and the presence of the potato cyst nematode (PCN) in the area, both of which halted the potato growing industry, Gembrook is still considered to have highly valuable soils capable of growing a variety of crops and pasture.

The subject site is identified in the *Land Capability Study of the Cardinia Shire, February 1997* as being a mix of 'Class 2 and 3' (Fair to Good), noting that 'Class 2' is the second highest rating given (discussed further below). Class 1 applies to much of Schedule 1 to the Special Use Zone (Horticultural Preservation Zone), with Class 2 applying to much of the Green Wedge Zoned land within the Cardinia Westernport Green Wedge, for comparison.

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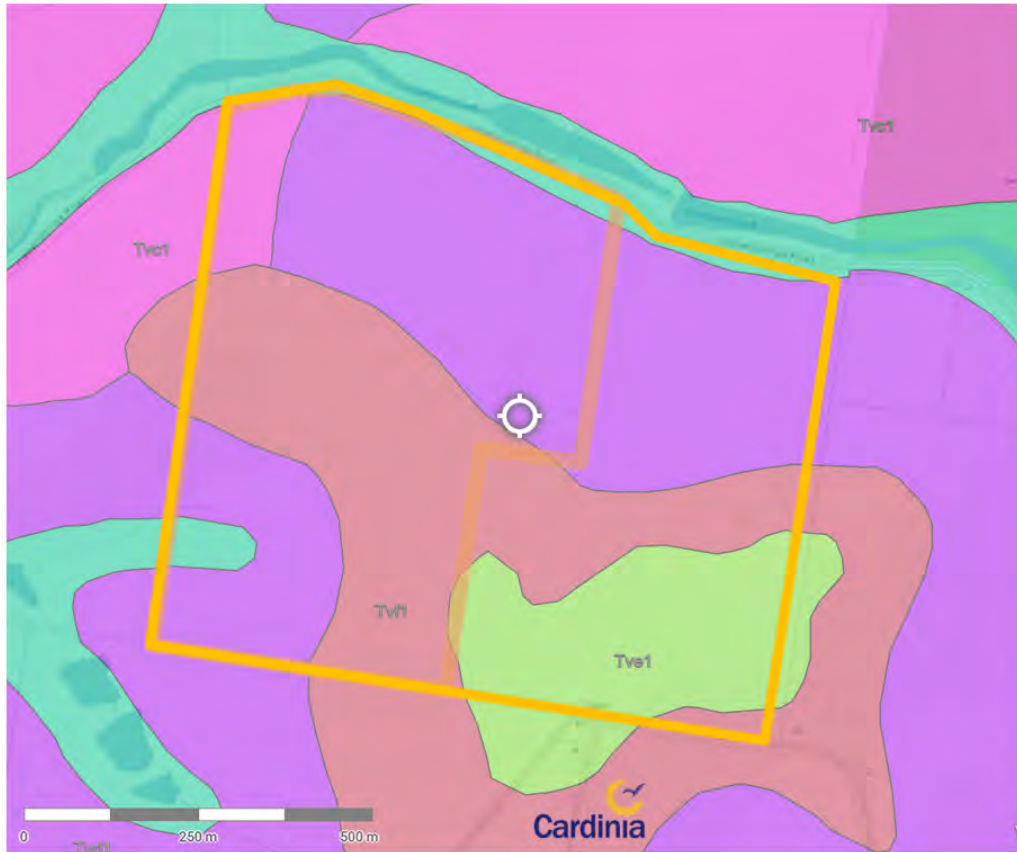


Figure 3: Land Capability Study soil classification mapping

Mapping reference number	Land capability and classification
'Tvc1' (Tertiary volcanics, moderately steep slope)	Shown as 'pink' has a Class 4-5 (poor - very poor) rating for all potential agricultural and residential uses/development specified in the LCA.
'Tvd1' (Tertiary volcanics, moderate slope)	Shown as 'purple' has a Class 3-4 (fair - poor) rating for all potential agricultural and residential uses/development specified in the LCA.
'Tve1' (Tertiary volcanics, gentle crest)	Shown as 'yellow' has a Class 2 (good) rating for agricultural uses and Class 3-4 (fair - poor) all other potential uses/development specified in the LCA.

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'Tvf1' (Tertiary volcanics, gentle slope)	Shown as 'red' has a Class 2-3 (good - fair) rating for agricultural uses and Class 4-3 for all potential uses/development specified in the LCA.
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Figure 4: Land Capability Study soil classification table in reference to mapping in Figure 3

Therefore, this lands contribution to the agricultural land base, should not be discounted or ignored, due to the 'perceived' limitations of Dieldrin contamination (which is decreasing and will eventually no longer be an issue) and PCN.

As such, emphasis must be placed on planning policy that seeks the protection of this regionally significant agricultural land from inappropriate subdivision (and development) as subdivision is likely to diminish the long-term productive capacity of the land and the land surrounding it.

Clause 21.02-2 (Landscape) includes key issues such as '*recognising the pressures to develop land in locations of high scenic value*' and seeks to protect it by '*ensuring that development in the urban growth area does not intrude or adversely impact on the landscape values of the area north of the Princes Highway and maintains significant vistas.*'

It is also important to consider the environmental and scenic landscape character of 'Hills' and the potential for the proposed subdivision of land to erode this through potential for more buildings (including dwellings) to be constructed on within the landscape.

The proposal compromises the purpose of the Metropolitan Green Wedge Land: Core Planning Provisions (Clause 52.01) which seeks to protect productive agricultural land from incompatible uses and development by creating a rural residential lot amongst an active agricultural use.

Based on the above policy assessment, on balance the application should not be supported as it fails achieve the objectives of both state and local planning policy that seeks to protect and enhance important agricultural land from inappropriate subdivision and, in particular the long-term effects of smaller allotments with building envelopes, that exacerbate land use conflict and attract land uses such as dwellings associated with 'rural lifestyle lots' and/or 'hobby farms' on productive agricultural land due to the scenic nature of the area.

Green Wedge Zone

Aside from implementing the Municipal Planning Strategy (MPS) and Planning Policy Framework (which as discussed above, the proposal is not considered to achieve), purposes of the Green Wedge Zone are as follows:

'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.'

A permit is required to subdivide land under the zone pursuant to Clause 35.04-3. Lots must be at least the area specified in the Schedule to the Zone. In this instance Schedule 2 of the Green

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Wedge Zone specifies that each lot to be created must be at least 15 hectares in area. Each lot exceeds this requirement, therefore a subdivision can be considered. As discussed at the outset of this report, there was a question as to whether this application could be made due to the Section 173 Agreement that applies to the land and the current size of Lot 4 on PS627026, however, as also noted above this was resolved and the application permitted to proceed.

Despite overcoming the threshold issue of whether the application could be made, the proposal is not considered to achieve these purposes of the Green Wedge Zone, and the applicant was advised from the outset of the application.

Notwithstanding each proposed lot meeting the minimum lot size of Schedule 2 to the Green Wedge Zone, it is a well-established principle of robust and good planning that *'just because a permit can be granted does not imply that a permit should or will be granted'*. This principle is echoed throughout many Tribunal decisions, but largely appears in applications involving subdivision where there is a minimum lot size 'threshold'. Whilst meeting the minimum lot size is a 'test' that must be met, it is not the only 'test' on which a decision rests. Other 'tests' include meeting the purpose and decision guidelines of the zone, overlays, consideration of policy and other provisions of the Planning Scheme.

Cardinia Shire Council is no stranger to this principle, definitely no stranger as it relates to the subdivision of green wedge land in Gembrook. In affirming Council's decision to refuse to grant a planning permit to subdivide the land in *Ragusa v Cardinia SC [2010]* Member Keaney explained at paragraphs 48 & 49:

On my analysis, I am struggling to find a reference point in support of this application in the Cardinia Planning Scheme. I accept Mr McKenzie's submission that a key reference point might be the 15ha minimum lot size in the schedule to the zone and the fact that not only do the lots comply with this provision, the proposed lots are about 50% larger than that minimum. I also accept that Amendment C124 will seemingly not modify that lot size.

However, I think it is important to understand that just because a land parcel is of a size that can arithmetically be divided in accordance with the zone schedule, does not mean that it automatically follows that it will be approved. If it were that simple then presumably no permit would be required for subdivision above that size. But as noted at Clause 65 (which is a variation on the earlier Clause 31.02) a decision must be made based on whether the proposal would produce "acceptable outcomes" taking into account (and among other things), land suitability, existing uses, possible future development, the need for more lots, the physical characteristics of the land, and the size and dimensions of the lots.

As it relates to this application, just because a land parcel is of a size that can be divided in accordance with the zone schedule, does not mean that it automatically follows that it will be approved.

As Member Keaney says, Council officers must be satisfied that the proposal results in an 'acceptable outcome', taking into account other factors such as policy relating to protection of agricultural land, land use compatibility, possible future uses and development (in particular agricultural uses / other uses which align with the purpose of Zone / overlays), the need for the subdivision of land, among other factors.

The applicant has made submissions that the *Gembrook Rural Review – Action Plan, 2004* (Reference document) which they state was informed by the *'Alternative Agricultural Land use Options Report, 2004'*, partly informed Clause 21.04-2 (Agriculture) following the decline of the potato industry, anticipated the creation of smaller lots to allow for smaller agricultural enterprises, hobby farms, and lifestyle business (i.e. tree farming, horses, berries and gourmet foods). It is acknowledged that the *'Alternative Agricultural Land use Options Report, 2004'*

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discusses issues such as the 15ha minimum lot size within Schedule 2 of the Green Wedge Zone and the *potential* challenges of conducting sustainable agricultural operations on lots exceeding 15ha, calling for smaller lots and facilitation of 'lifestyle farms'. However, it is important to note that this document is not referenced in the Cardinia Planning Scheme and these recommendations did not completely inform the themes and actions of the *Gembrook Rural Review – Action Plan, 2004*. Whilst the *Gembrook Rural Review – Action Plan, 2004* identifies themes such as 'Promoting new productive land use opportunities' and 'Address soil constraints', it does not explicitly suggest that these issues be tackled by allowing for the subdivision of agricultural land.

It suggests and seeks the support of alternative agricultural and other land uses on Green Wedge land. It suggests that the current subdivision minimum (15ha) may actually be a barrier to attracting more intensive, smaller scale productive uses, but despite this, suggests that there are still promising, larger scale industries suited to larger lots that can replace the potato industry (i.e. forestry, nursery, horse industry, cattle) on lots of comparable (existing) size to the subject land.

The decision of *Ragusa* addressed the *Gembrook Rural Review – Action Plan, 2004*, with Member Keaney concentrating on the clear focus of the green wedge zone (and applicable PPF and LPPF) for its agricultural use and environmental protection.

Member Keaney emphasised the purpose of the Green Wedge Zone 'to encourage sustainable farming activities and provide opportunity for a variety of productive agricultural uses'. In referencing the *Gembrook Rural Review*, Member Keaney acknowledged the constraints that Dieldrin and PCN have on the land, but did not give weight to this issue, favouring that policy points to protecting and encouraging agriculture (including alternative and innovative agriculture) in the area, with there being no discussion on land fragmentation or the prospects of 'rural living opportunities' in the area.

In closing Member Keaney noted:

In the end I accept Council's submission that while the proposal may meet the arithmetic calculation of the zone schedule, there are important state and local strategies, and important local zone and overlay provisions which discourage the fragmentation of rural land.

What can be drawn from this decision is that green wedge land in Gembrook is important for a number of reasons, mainly, its agricultural and environmental significance and that the subdivision of this land, even when meeting the minimum lot size, is not appropriate when considering the MPS and the purpose of the zone. With this in mind, coupled with the building envelopes proposed as part of this application it should be concluded that land fragmentation or the prospects of 'rural living opportunities' in the area are not the intention of the MPS and the Zone.

This position has been echoed in a number of recent Tribunal decisions relating to the subdivision of both Green Wedge and Farming Zone land throughout Cardinia and the state and will not be repeated here. However, some recent decisions tackling similar themes, (including subdivisions that meet the minimum lot size) include:

- *Hart v Greater Shepparton CC [2022] VCAT 764*
- *Awesomeness Aussie Agricultural Life Group Pty Ltd v Cardinia SC [2024] VCAT 1137*
- *Griffiths v Mitchell SC [2023] VCAT 811*
- *Roussac-Hoyne v South Gippsland SC [2022] VCAT 577*

These decisions have been made using the same framework provided to council in this application. It has been discussed at length above that the proposal fails to achieve the

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objectives of policy and the purpose of the zone, but it must also consider the decision guidelines before being satisfied of what decision to make.

The majority of decision guidelines of the Green Wedge Zone relate to buildings and works, or uses, however, the underlying consideration is that decisions must take into account the ongoing viability of the land, and its capacity to provide for uses which are encouraged by the zone.

The decision guidelines for the zone leverage heavily the State, Regional and Local policy, which sets out the expectations for the land. As the previous assessment within this report has clearly set out and is inconsistent with the purpose to the zone. However, for completeness, an assessment of the relevant decision guidelines is provided below:

Decision Guideline	Assessment
General Issues	
<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>No use of land is proposed, and the only development proposed is subdivision of land.</p> <p>The proposed subdivision is considered likely to detrimentally impact these considerations – most notably rural land use.</p> <p>Specifically (and as discussed above), the subject site (both lots) is considered to have fair to good capability for broadacre agriculture. Based on this, both lots are better suited (and due to their current sizes 40.02 and 27.09 hectares), capable of meaningful agricultural operations (with further capacity possible once dieldrin - which reduces over time - is no longer present in the soil). The proposed subdivision of the land is likely to reduce the current capability of both lots for this purpose, which is not responsive to this decision guideline.</p>
<i>Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.</i>	<p>The site is not considered suitable for the proposed subdivision, given the characteristics of the land and surrounding area.</p> <p>'Fragmented' lots are not prevalent in the area, with the majority of land in surrounding the site used for agricultural purposes.</p> <p>While this use/development is not proposed as part of the current application, the proposed subdivision is considered to increase the potential for dwellings to be constructed on the new lots (owing to the proposed building envelopes), which would likely cause land use conflicts and materially alter the use/development of either lot. For these reasons the subdivision is considered incompatible with land uses in the surrounding area.</p>
Rural Issues	
<i>The maintenance of agricultural production and the impact on the rural economy.</i>	<p>The proposed subdivision is considered likely to detrimentally impact agricultural production or the rural economy, by risking the attraction of rural lifestyle and hobby farms, increasing the</p>

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<i>The environmental capacity of the site to sustain the rural enterprise.</i>	land value of the site and impacting the viability of the land to sustain sustainable agricultural pursuits. Currently the land has good environmental capacity to sustain rural enterprise. The proposed subdivision is likely to reduce this, and potentially remove the land for the agricultural base altogether via a permanent change in land use encouraged by the proposed building envelopes (suggestive that the land will be targeted as rural lifestyle land).
<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>	No use or development (other than subdivision) is proposed as part of the application. As noted above, there are agricultural activities operating in the surrounding area (and on the subject site) which will likely be impacted by the subdivision as previously discussed. The proposed subdivision is therefore, considered likely to materially alter the existing use/development of the subject site (both lots), and as such adverse impacts on surrounding land are considered likely.
<i>The protection and retention of land for future sustainable agricultural activities.</i>	As noted above, it is a potential that the subdivision will permanently remove any land from the 'base' that is useable for sustainable agriculture. The land is identified as having fair to good agricultural capacity and has been identified as being regionally significant. Once subdivided, the land use could likely be transformed into one that is of rural lifestyle or hobby farm which is often the result of these types of subdivision.
Environmental Issues	
<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>	As noted above and discussed further below (in response to ESO1 and Clause 52.17), the proposed subdivision entirely avoids removal and consequential loss of vegetation. There are no known areas of saline discharge or erosion issues on the broader subject site. Given this, no adverse environmental/biodiversity impacts are considered likely as a result of the subdivision. However, this does not mitigate against the recommendation for refusal.

Based on the decisions of the Tribunal and the above assessment against the Zone, it is recommended that the application be refused.

Environmental Significance Overlay

The environmental objectives specified in Schedule 1 to the Environmental Significance Overlay (ESO1) are as follows:

'To protect and enhance the significant environmental and landscape values in the northern hills area including the retention and enhancement of indigenous vegetation.

To ensure that the siting and design of buildings and works does not adversely impact on environmental values including the diverse and interesting landscape, areas of remnant

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vegetation, hollow bearing trees, habitat of botanical and zoological significance and water quality and quantity.

To ensure that the siting and design of buildings and works addresses environmental hazards including slope, erosion and fire risk, the protection of view lines and maintenance of vegetation as the predominant feature of the landscape.

To protect and enhance biolinks across the landscape and ensure that vegetation is suitable for maintaining the health of species, communities and ecological processes, including the prevention of the incremental loss of vegetation.'

These objectives are not heavily focused on subdivision, with considerations more centred around impacts of buildings and works on the landscape.

Given no vegetation removal or buildings and works are proposed, the only relevant decision guidelines (for subdivision) are assessed in the table below.

Decision Guideline	Assessment/Response
<i>The Land Capability Study for the Cardinia Shire (February 1997).</i>	<p>The subject site is located within four map units – 'Tvc1' (Tertiary volcanics, moderately steep slope), 'Tvd1' (Tertiary volcanics, moderate slope), 'Tvf1' (Tertiary volcanics, gentle slope) and 'Tve1' (Tertiary volcanics, gentle crest) as shown in Figure 3 (above).</p> <p>'Tvc1' has a Class 4-5 (poor - very poor) rating for all potential agricultural and residential uses/development specified in the LCA.</p> <p>'Tvd1' has a Class 3-4 (fair - poor) rating for all potential agricultural and residential uses/development specified in the LCA.</p> <p>'Tve1' has a Class 2 (good) rating for agricultural uses and Class 3-4 (fair - poor) all other potential uses/development specified in the LCA.</p> <p>'Tvf1' has a Class 2-3 (good - fair) rating for agricultural uses and Class 4-3 for all potential uses/development specified in the LCA.</p> <p>These classifications further the contention above that the site has fair to good capability for broadacre agriculture, with the lots proposed to be created (southern portion of the land) being more capable of agricultural output, with limited input subject to the 'Class 2' classification. Its also outlines that all of the land has a fair to very poor rating for other uses and development relating to things like effluent disposal, building foundations and rural residential uses. This clearly identifies that the subject land is best used for agriculture, further supporting that the land is not suitable for subdivision due to the</p>

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	<p>adverse impacts it may have on the agricultural viability of the land.</p> <p>This is of importance to the application as it demonstrates the good capability of the land to sustain agriculture which is likely to be degraded by the subdivision of the land for the reasons stated above.</p>
<p><i>Measures to address environmental hazards or constraints including slope, erosion, drainage, salinity and fire.</i></p>	<p>There are no known salinity or drainage issues on or surrounding the subject site. The subdivision achieves an acceptable response to the relevant bushfire policy, as discussed later in this report.</p> <p>While the land features steep slopes in portions, this is considered inconsequential with regard to the current application – given no buildings and works are proposed.</p> <p>Erosion considerations are discussed in response to the above decision guideline.</p> <p>Despite this, it does not mitigate against the recommendation for refusal as discussed throughout this report.</p>

Bushfire Management Overlay and Clause 53.02 – Bushfire Planning

For completeness, only a small portion of the north-eastern corner of the site is subject to the Bushfire Management Overlay (Figure 4). The proposed lots are not located within the BMO, however an existing dwelling on Lot 4 is located within the BMO.

The application was referred to the CFA under Clause 66.03 as a permit is required pursuant to Clause 44.06-2, who had no objection to the proposed subdivision. Based on this, if the subdivision were to be supported, it is not considered that it would result in an unacceptable risk to life and property.

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Figure 5: Bushfire Management Overlay Mapping

Significant Landscape Overlay

For completeness, it is noted that a planning permit is not required to subdivide land within the Significant Landscape Overlay.

Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions)

The proposal is contrary to the purposes of Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions). The relevant purposes within this particular provision are:

1. To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values, and
2. To protect productive agricultural land from incompatible uses and development.

As discussed above, the proposed subdivision would result in the permanent loss of agricultural land in an area of agricultural significance for the region. The subdivision will introduce smaller lots with building envelopes that are incompatible with agriculture because it would not only result in this loss, but it would also introduce a myriad of amenity conflicts with nearby farming enterprises. Therefore, the application is inconsistent with Clause 51.02.

Clause 52.02 - Proposed Building Envelope Restriction

As discussed, the application includes building envelopes but has not sought permission to create a restriction on the plan of subdivision (under Clause 52.02). This restriction involves creation of a building envelopes on Lots 1 and 2. Given the agricultural focus of this land, it is determined

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that it would not be appropriate to approve the subdivision with building envelopes as a registered restriction on title, given the 'perceived' entitlement for a dwelling to be constructed on the land.

As such, if a permit is to be issued, a condition should require the removal of the building envelopes from the title.

Clause 53.01 - Public Open Space

Under Clause 53.01, a person who proposes to subdivide land for urban residential purposes must make a contribution to Council for public open space of an amount specified in the schedule to this clause (or where an amount is not specified, in accordance with Section 18 of the *Subdivision Act 1988*). The subdivision is not for urban purposes. Should a permit be granted, the proposal is exempt from requiring payment of any open space contribution.

Clause 65.01

As discussed above the proposal fails to comply with the Municipal Planning Strategy, the Planning Policy Framework, the purpose the Green Wedge Zone and Clause 51.02 of the Cardinia Planning Scheme. The proposed subdivision will not contribute to the orderly planning of the area, being as it further fragments productive agricultural land. The proposed building envelopes also invite perspective buyers to expect a house right on the land and will likely lead to inflated land prices that directly impact the rural economy.

Conclusion

The proposal is an unacceptable planning outcome that does not demonstrate compliance with the relevant provisions of the Cardinia Planning Scheme and the *Planning and Environment Act 1987* and should therefore be refused.

Decision

Refusal

Having considered all of the matters required under section 60 of the *Planning & Environment Act 1987* and the Cardinia Planning Scheme, it is decided that Council refuses to grant a permit for the land known and described as CA 9 SEC G, Harewood Park Road, Gembrook; and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) as per the following table and subject to the below grounds.

Planning scheme clause	Matter for which the permit has been refused
35.04-3	To subdivide land
44.06-2	To subdivide land
42.01-2	To subdivide land

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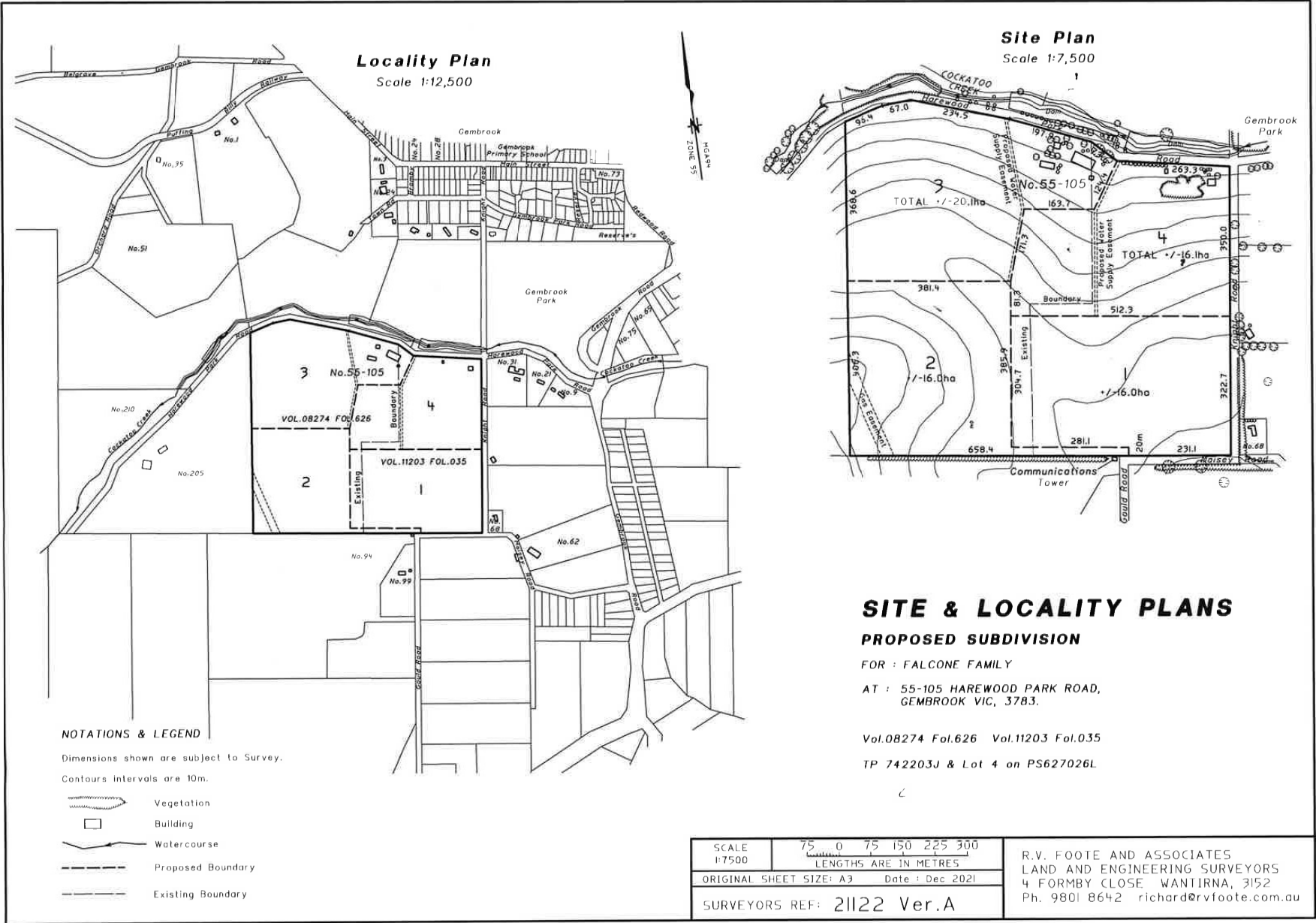
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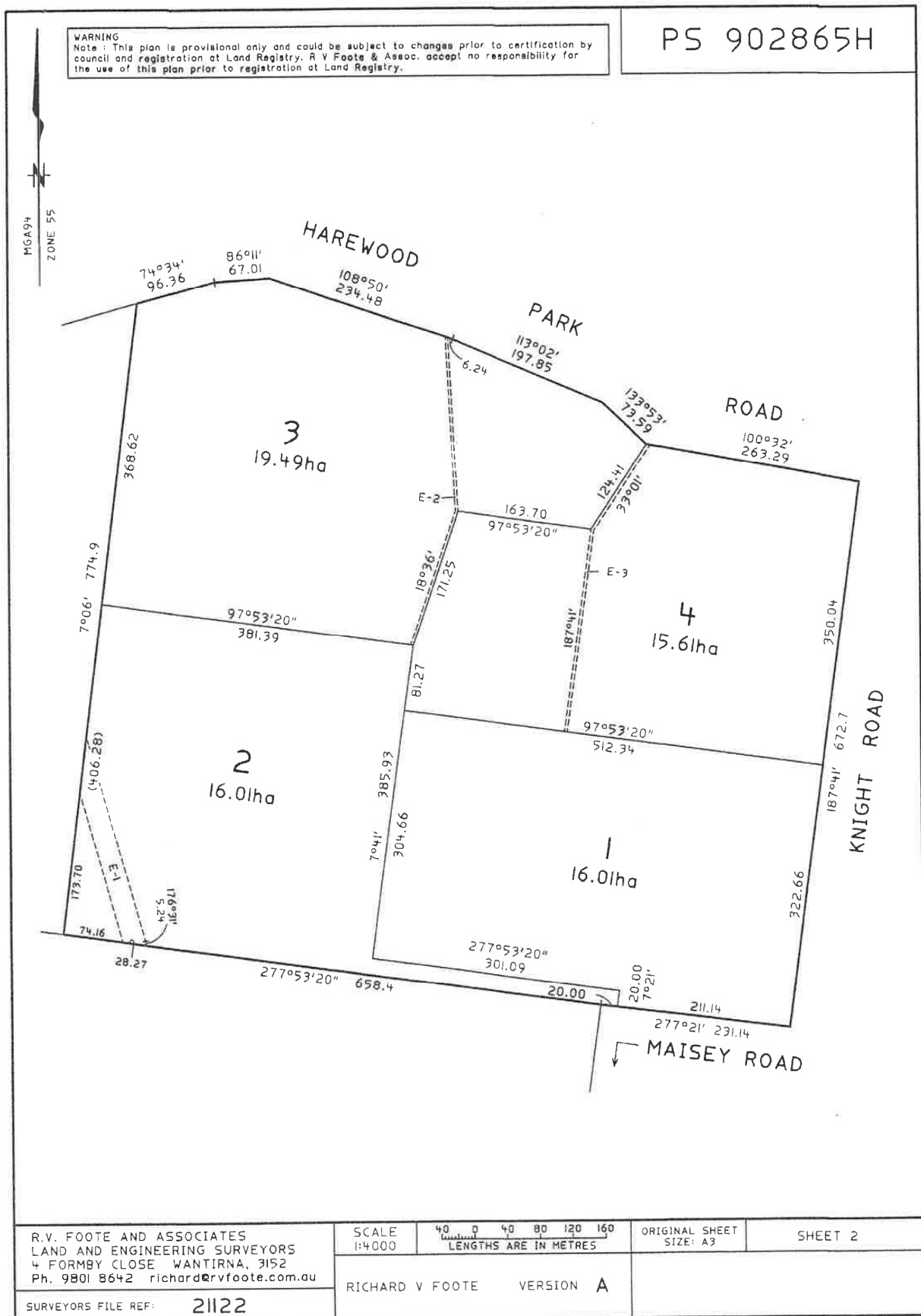
Refusal Grounds

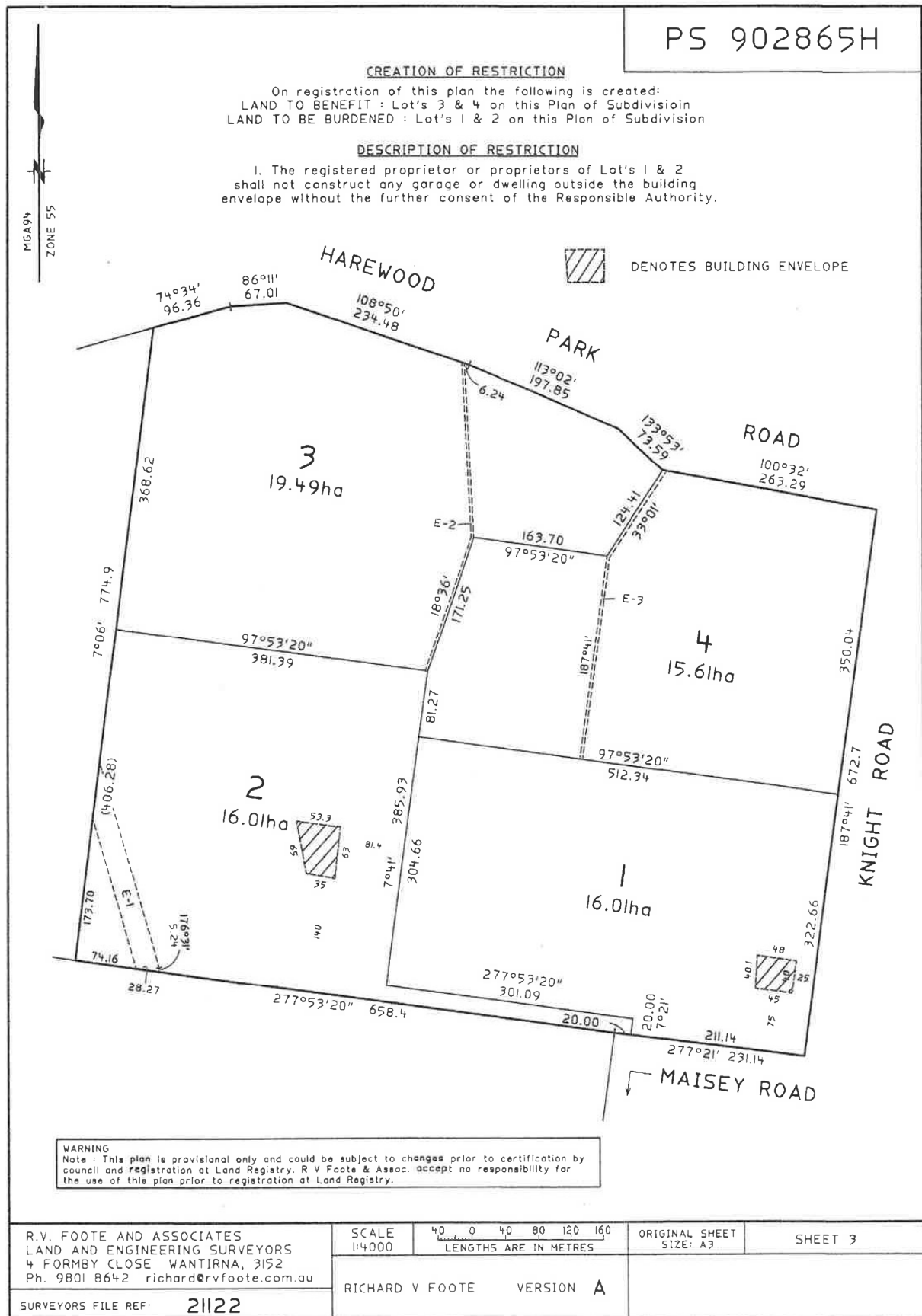
1. The proposal is inconsistent with Planning Policy Framework and Local Planning Policy Framework, that aim to preserve and protect rural land for its resources and scenic features, protect important agricultural land such as those in Gembrook, avoid the subdivision of productive agricultural land and avoiding the permanent loss of agricultural land, specifically:
 - a. Clause 11.01-1S - Settlement
 - b. Clause 11.01-1R - Green Wedges – Metropolitan Melbourne
 - c. Clause 13.07-1S – Land Use Compatibility
 - d. Clause 14.01-1S - Protection of Agricultural Land
 - e. Clause 14.01-1R - Protection of Agricultural Land – Metropolitan Melbourne
 - f. Clause 21.04-2 – Agriculture
 - g. Clause 21.02-2 - Landscape
2. The proposal is inconsistent with, and does not respond to the purposes and decision guidelines of Clause 35.04 (Green Wedge Zone), as it:
 - a. Will have a detrimental impact on the rural economy, due to the extent the proposal would increase the value of the land;
 - b. Does not enhance agricultural production or appropriately relate to rural land use;
 - c. Reduces the availability of land for future sustainable agricultural activities, and is not a subdivision consistent with sustainable land management practices;
 - d. Will compromise the preservation, protection and enhancement of significant agricultural land, primarily by further intensifying the potential for rural residential land use that would not be compatible with strategically supported agricultural land uses on the site and in the surrounding area;
 - e. Does not protect, conserve or enhance the character of the open rural and scenic non-urban landscape due to potential for proliferation of additional buildings in the landscape; and
 - f. Would adversely impact landscape features, vistas and natural scenic beauty of the area due to potential for proliferation of additional buildings in the landscape.
3. The proposal is inconsistent with the relevant purposes and decision guidelines of Schedule 1 to the Environmental Significance Overlay, as it does not have proper regard to the soil quality of the site identified by the *Land Capability Study for the Cardinia Shire (February 1997)* as it relates to agricultural capacity and development capacity.
4. The proposal is inconsistent with Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions), which aims to protect metropolitan green wedge land from uses and development that would diminish its agricultural values, and to protect productive agricultural land from incompatible uses and development.
5. The proposal includes a restrictive covenant relating to building envelopes, for which permission has not been sought pursuant to Clause 52.02.





PLAN OF SUBDIVISION		EDITION 1		PS 902865H	
LOCATION OF LAND PARISH: GEMBROOK TOWNSHIP: ***** SECTION: G CROWN ALLOTMENT: 9 & 10 TITLE REFERENCE: VOL.08274 FOL.626 VOL.11203 FOL.035 LAST PLAN REFERENCE: TP 742203J & LOT 4 ON PS 627026L POSTAL ADDRESS: 55-105 HAREWOOD PARK ROAD, GEMBROOK VIC, 3783. (at time of subdivision) MQA94 ZONE 55 CO-ORDINATES: E 371 400 (of approx centre of land in plan) N 5 797 570			CARDINIA SHIRE COUNCIL		
VESTING OF ROADS AND/OR RESERVES			NOTATIONS		
IDENTIFIER		COUNCIL/BODY/PERSON			
NIL		NIL			
NOTATIONS					
DEPTH LIMITATION : 15.24m BELOW THE SURFACE APPLIES TO ALL THE LAND IN THE PLAN SURVEY : This plan is/ is not based on survey. STAGING : This is /is not a staged subdivision. Planning Permit No. This survey has been connected to permanent marks No(s). In Proclaimed Survey Area No. N/A					
EASEMENT INFORMATION					
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road) Section 12(2) of the Subdivision Act applies to all the land in this subdivision.					
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	
E-1	GAS SUPPLY	27.00	C/E K398320	GAS & FUEL	
E-2	WATER SUPPLY	2.00	THIS PLAN	LOT 2 ON THIS PLAN	
E-3	WATER SUPPLY	2.00	THIS PLAN	LOT 1 ON THIS PLAN	
<div style="border: 1px solid black; padding: 5px;"> WARNING Note : This plan is provisional only and could be subject to changes prior to certification by council and registration at Land Registry. R V Foote & Assoc. accept no responsibility for the use of this plan prior to registration at Land Registry. </div>					
R.V. FOOTE AND ASSOCIATES LAND AND ENGINEERING SURVEYORS 4 FORMBY CLOSE WANTIRNA, 3152 Ph. 9801 8642 richard@rvfoote.com.au 21122PS.SEE / 21122PS.LCD		SURVEYORS FILE REF: 21122 RICHARD V FOOTE VERSION A		ORIGINAL SHEET SIZE: A3 SHEET 1 OF 3	





5.2 T240419 PA - USE OF LAND FOR A RESIDENTIAL BUILDING (SHORT STAY ACCOMMODATION) AT 186 BEENAK ROAD, GEMBROOK

Responsible GM:	Debbie Tyson
Author:	Michael Stockigt
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	<p>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. 4.1.5 Strengthen and promote our shire's unique identity and visitor attractions.</p> <p>5.1 We practise responsible leadership 5.1.1 Build trust through meaningful community engagement and transparent decision-making.</p>

Recommendation

That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T240419 for the Use of the Land for a Residential Building (Short Stay Accommodation) at 186 Beenak Road Gembrook on the following grounds:

1. The proposed use of the land for 'Residential Building' is miscategorised and does not meet the definition of the term within Clause 73.03 (Land Use Terms), as the real and substantive proposed use (short stay accommodation) is inconsistent with the definition of 'Residential Building', as well as the other uses included within this term.

Therefore, this use is best categorised as 'Accommodation', with use of the land for this purpose a Section 3 (prohibited) land use pursuant to Clause 35.04-1 (Green Wedge Zone) and Clause 51.02-2 (Metropolitan Green Wedge Land: Core Planning Provisions).

2. The proposal is inconsistent with considerations within the Planning Policy Framework and Local Planning Policy Framework, as it does not protect, enhance, provide for, or facilitate use of the land for agriculture, and would facilitate intensification of urban activities outside established settlement boundaries, in a location and manner where green wedge values are not adequately protected.

These outcomes are inconsistent with the objectives, strategies and key issues of the below provisions of the Planning Policy Framework and Local Planning Policy Framework:

- a. Clause 11.01-1S – Settlement;
 - b. Clause 11.01-1R – Green Wedges – Metropolitan Melbourne;
 - c. Clause 12.05 – Significant Environment and Landscapes;
 - d. Clause 14.01 – Agriculture;
 - e. Clause 15.01-6S – Design for Rural Areas;
 - f. Clause 21.01 – Cardinia Shire Key Issues and Strategic Vision;
 - g. Clause 21.02-2 – Landscape;
 - h. Clause 21.03-4 – Rural Townships; and
 - i. Clause 21.04-2 – Agriculture.
3. While the proposal does seek to provide tourist accommodation, it proposes to do so outside an established urban area, and in a manner where green wedge values

(including agricultural land and the rural character of the area) are not appropriately protected.

This outcome is inconsistent with:

- a. Clause 17.04-1S – Facilitating Tourism;
 - b. Clause 17.04-1R – Tourism in Metropolitan Melbourne;
 - c. Clause 21.03-4 – Rural Townships;
 - d. Clause 21.04-5 – Tourism;
 - e. Clause 21.07-1 – Gembrook; and
 - f. The *Gembrook Township Strategy (June 2011)*.
4. The proposal does not respond to the objectives and strategies of Clause 13.02-1S (Bushfire Planning) or the key issues and strategies of Clause 21.02-4 (Bushfire Management), as the proposal would increase the risk to human life from bushfire and does not demonstrate how this risk will be managed or reduced to an acceptable level.
 5. In addition to the fact the use for which permission sought ('Residential Building') is prohibited, the real and substantive proposed use (short stay accommodation) is inconsistent with, and does not respond to the purposes and decision guidelines of Clause 35.04 (Green Wedge Zone), as it:
 - a. Does not enhance agricultural production or appropriately relate to rural land use;
 - b. Reduces the availability of land for future sustainable agricultural activities, and is not a use and development consistent with sustainable land management practices, primarily by further intensifying urban activities that would not be compatible with strategically supported agricultural land uses on the site and in the surrounding area; and
 - c. Does not protect, conserve or enhance the character of the open rural and scenic non-urban landscape and would detrimentally alter the landscape features, vistas and character of the area, due to the fact the proposal seeks to provide two dwellings on the land.
 6. The proposal would transform and be in direct conflict with the approval granted under Planning Permit T220816 (to construct a replacement dwelling), as the proposal seeks to allow two dwellings to remain on the land.
 7. The proposal does not respond to the considerations within Clause 65 (Decision Guidelines) as it:
 - a. Is inconsistent with the orderly planning of the area, as it seeks to provide two dwellings on the subject site in contravention of established requirements of the Green Wedge Zone and Clause 51.02.
 - b. Does not achieve the purposes of the Green Wedge Zone or Clause 51.02.
 - c. Will have a detrimental impact on the rural environment, amenity, characteristics and appearance of the area; and
 - d. Does not demonstrate how the applicable bushfire hazard (in particular the bushfire hazard arising from the surrounding landscape) will be managed and mitigated to an acceptable level.

Executive Summary

Application no.:	T240419 PA
Applicant:	Ms Lauren Horwood; C/O Mr Philip Walton; XWB Consulting

Land:	L1 TP545356; 186 Beenak Road, Gembrook VIC 3783
Proposal:	Use of Land for a Residential Building (Short Stay/Visitor Accommodation)
Planning controls:	Green Wedge Zone – Schedule 1 Environmental Significance Overlay – Schedule 1 Bushfire Management Overlay
Notification & objections:	Notice of the application was given in accordance with Section 52 of the <i>Planning and Environment Act 1987</i> . One (1) objection and one (1) submission in support were received.
Key planning considerations:	Inappropriate land use categorisation; real and substantive use prohibited. Protection of Green Wedge land from inappropriately dispersed urban activities. Circumvention of established ‘single dwelling’ restriction on Green Wedge land. Inappropriate use in an area of high bushfire risk. Provision of tourist accommodation outside established township.
Reason for report	Refusal
Recommendation:	Notice of Decision to Refuse to Grant a Permit

The purpose of this report is to consider an application for use of land for a ‘Residential Building’. The specific use is proposed to comprise ‘short stay accommodation’ and is contained within an existing building (most recently used as a dwelling) on the land.

The applicant has categorised the proposed use as ‘Residential Building’, a use for which a permit can be granted (subject to assessment). Following review of documentation submitted by the applicant, relevant case law and legal advice obtained by Officers, it has been determined that categorisation as ‘Residential Building’ is not appropriate. Rather, the use is best defined as ‘Accommodation’ – a Section 3 (prohibited) land use for which a permit cannot be granted by Council.

Despite this position that a permit cannot be granted for the land use sought by the applicant, a merits assessment of the real and substantive proposed use has been undertaken, with it determined the proposal does not achieve an acceptable outcome with regard to relevant policy.

The proposal seeks to provide for a small-scale tourist accommodation facility, outside of the boundary of the Gembrook township. This outcome is not supported by relevant policy (including the *Gembrook Township Strategy*), which encourages such facilities to be located within (or at a minimum adjoining) established urban areas so as to ensure green wedge

values can be protected, as well as providing further reaching benefits (associated with co-locating such facilities near other businesses and services) for the township and hills region.

A separate permit was issued in 2023, to allow for construction of a new (replacement) dwelling on the subject site. Consistent with requirements of the planning scheme (that have been in place since the mid-2000s), this permit required the old dwelling (now proposed to be used for short stay accommodation) to be demolished or otherwise removed from the subject land once the new dwelling is completed and occupied. The proposal seeks to subvert this requirement, by allowing two dwellings on the subject land for the first time. This outcome is inconsistent with the character and pattern of development on surrounding land, and therefore the orderly planning of the area.

Further, by allowing two dwellings to remain on the subject land in a dispersed manner, the proposal would decrease the area of land able to be used for sustainable agricultural activities, an outcome inconsistent with policy throughout the Scheme and the purpose of the Zone.

Lastly, the application does not respond to how the high bushfire risk will be managed, even though the proposal seeks to intensify settlement on the site, including persons likely unfamiliar with the area and bushfire characteristics. Planning policy seeks to prioritise the protection of human life from bushfire, above all other policy considerations.

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

Confidential Attachments

The consideration of confidential information in a closed session of Council is in accordance with section 66(2)(a) and s.66(5)(a) and (b) of the *Local Government Act 2020* (the Act).

The Confidential Attachment (listed in Attachments section) – Confidential Attachment 4 - Legal Advice to Council – is designated confidential information pursuant to the Act, s.3(1)s.3(1)

(e) Legal privileged information, being information to which legal professional privilege or client legal privilege applies..

Attachments

1. Attachment 1 - T240419 PA - Officer Report - Refusal [5.2.1 - 27 pages]
2. Attachment 2 - T240419 PA - Locality Map - 186 Beenak Rd, Gembrook [5.2.2 - 1 page]
3. Attachment 3 - T240419 PA - Decision Plans [5.2.3 - 3 pages]
4. Confidential Attachment 4 - Legal Advice to Council [5.2.4 - 7 pages]

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NOTICE OF DECISION TO REFUSE A PLANNING PERMIT OFFICER REPORT



Application Details

Proposal:	Use of Land for a Residential Building (Short Stay/Visitor Accommodation)
Application Number:	T240419
Property Number:	2082850800
Address:	L1 TP545356; 186 Beenak Road, Gembrook VIC 3783
Applicant:	Ms Lauren Horwood; C/O Mr Philip Walton; XWB Consulting
Date Received:	21 August 2024
Statutory Days:	5 (as of 14 April 2025)
Planner:	Michael Stockigt
Recommendation:	<input checked="" type="checkbox"/> Notice of Refusal to Grant a Permit
Plans to Endorse:	<input checked="" type="checkbox"/> No (recommendation for refusal)
Decision to be sent internally:	<input checked="" type="checkbox"/> No
Decision to be sent externally:	<input checked="" type="checkbox"/> No

Application Processing

Can the application be decided under delegation?	<input checked="" type="checkbox"/> No
Have any amendments been made to the application?	<input checked="" type="checkbox"/> Yes: A Section 57A Amendment was lodged on 9 April 2025. This amendment changed the land use for which a permit is sought from 'Group Accommodation' to 'Residential Building'. No other details of the proposal were amended.

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Proposal

Description of proposal:

The applicant has proposed the use of land for short-stay (visitor/tourist accommodation), formally categorised by the applicant as 'Residential Building' as defined in the Scheme.

The use is to be located within a former dwelling on the land, with this dwelling 'replaced' by a new dwelling in accordance with Planning Permit T220186. This building is a modest single-storey dwelling, containing three bedrooms, a large open plan living/dining area and 'wrap around' style verandah. Aside from a minor change to the entry door (which does not require a planning permit), no buildings and works are proposed.

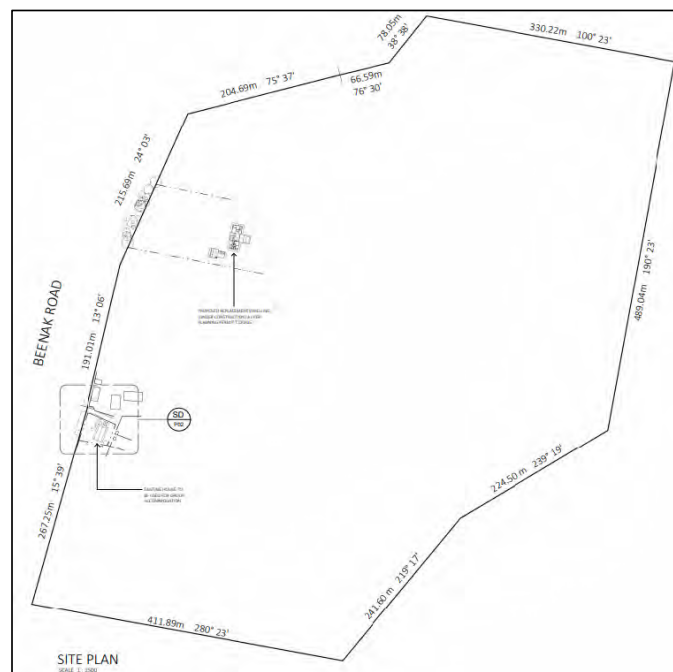
The use is proposed in conjunction with the existing use of the land for Agriculture and Natural Systems, with existing agricultural operations categorised as grazing of approximately 15 beef cows (with seasonal increases to 25-30), breeding of miniature donkeys, keeping of horses personal (domestic) use and keeping of chickens for personal egg production.

The 'Natural Systems' relied upon are the vegetated eastern boundary of the land (surrounding the waterway), as well as the proximity of the subject site to Kurth Kiln State Park.

The accommodation is proposed to be made available for rent by visitors for short stays, on websites such as/similar to 'Stayz' or 'AirBnb'. Accommodation is proposed to be available 'year round', with a maximum of six persons to be accommodated on the land (excluding occupants of the main/new dwelling).

Wastewater for building is proposed to be treated within the system currently utilised for the building.

Images of relevant plans:



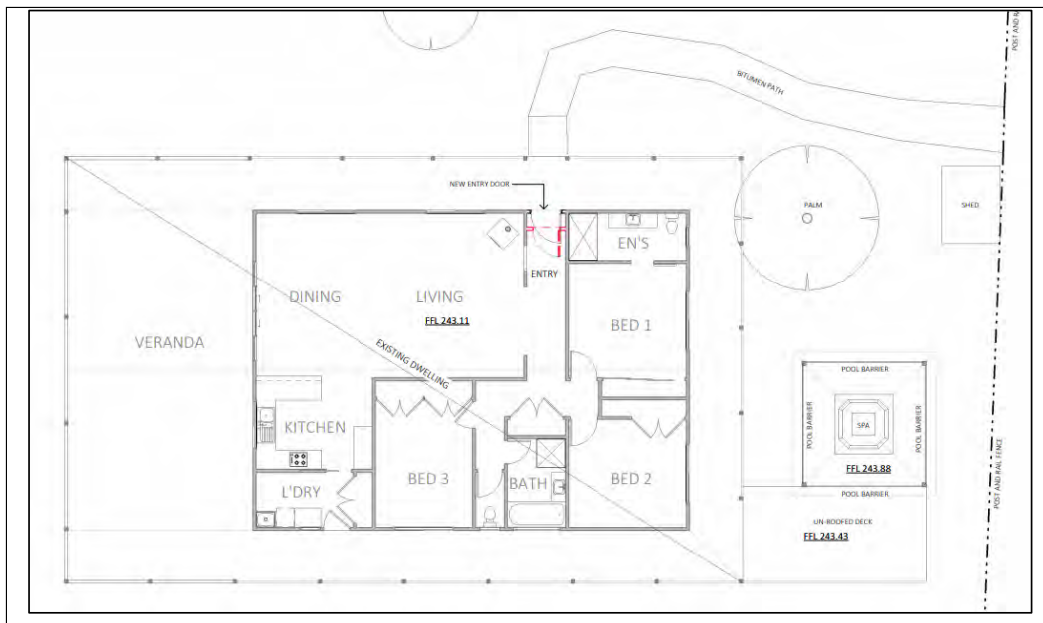
Notice of Decision to Refuse a Planning Permit

Officer Report

Page 2 of 27

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Land Details

Description of site and surrounding area:

An inspection of the site and the surrounding area was undertaken on 15 April 2025, where the site was viewed from Beenak Road unaccompanied.

The subject site is located on the eastern side of Beenak Road and is irregular in shape. The lot is expansive, measuring 46.29 hectares in area. The lot is largely devoid (cleared) of vegetation, and the majority is divided into fenced paddocks.

This excludes land along the eastern boundary, which is heavily vegetated with remnant native vegetation. This vegetation borders a designated waterway – being 'Shepards Creek East Branch'.

There are two key areas of development on the site, separated by approximately 280 metres. The southern cluster contains the building proposed to be used for a 'Residential Building' (referred to herein as the 'old dwelling'), as well as a number of sheds used for both agricultural and domestic storage, water tanks, gravel accessways and agricultural infrastructure such as cattle runs and crushes, small holding paddocks and a small dam.


The northern portion contains the dwelling approved by Planning Permit T220816 (referred to herein as the 'new dwelling') as well as an associated outbuilding (garage). Access to the new dwelling is provided via a 'new' gravel driveway, also off Beenak Road. Construction of this dwelling is nearing completion, however as of early April 2025 a certificate of occupancy has not yet been issued.

The site itself directly adjoins four individual allotments, with land to the north and east forming part of the 'Kurth Kiln Regional Park', as well as a number of lots owner by the Scout Association (and used accordingly) –

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	<p>known as 'Gilwell Park'. Land to the south and south-east is substantially smaller than the site, and forms part of a legacy 'rural residential' type subdivision however is within the Rural Conservation Zone.</p> <p>Lots to the west are comparatively larger, and are more consistent with the subject site in form and use. A number appear to be used for large scale crop raising operations, whilst a number are also developed with dwellings. Many are cleared of vegetation, but the majority not as extensively as the subject site – with large patches of remnant vegetation still present.</p> <p>The site is located approximately 4 kilometres due north of the core of the Gembrook township; a 6 minute drive via Gembrook Launching Place and Beenak Roads.</p>
<p>Permit/Site History:</p>	<ol style="list-style-type: none"> 1. Planning Permit P.2966 was issued by the Shire of Pakenham on 27 August 1987 to allow for <i>'The use and development...for the purpose of erecting a farm building'</i>. 2. Planning Permit T160630 was issued on 8 December 2016 to allow for <i>'Construction of an agricultural building and associated works'</i>. 3. Planning Permit T220816 was issued on 17 November 2023 to allow for <i>'Use and development of land for a replacement dwelling and shed'</i>. This permit allowed for construction of the 'new dwelling', with Condition 2 of the Permit reading as follows: <i>'Unless with the written consent of the Responsible Authority, within three (3) months of a Certificate of Occupancy being issued for the dwelling hereby approved, the dwelling to be replaced must either be removed from the subject land or demolished to the satisfaction of the Responsible Authority.'</i>
<p>Aerial photo of site:</p>	
 <p><i>Figure A: Subject Building – Old Dwelling (Red Pin)</i></p>	

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Figure B: Subject Site – Old Dwelling (Red Pin) & New Dwelling (Green Pin)

Aerial photo of surrounding area:



Figure C: Subject Site – Old Dwelling (Red Pin) & New Dwelling (Green Pin)

Aboriginal Cultural Sensitivity:	<input checked="" type="checkbox"/> No
Zoological/ Botanical significance?	<input checked="" type="checkbox"/> None
Restrictive covenants or section 173 agreements:	<input checked="" type="checkbox"/> None

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Zoning:	Green Wedge Zone - Schedule 1
Overlays:	Environmental Significance Overlay - Schedule 1 Bushfire Management Overlay
Planning Policy Framework (including LPPF)	<p>The planning policies that are relevant to the assessment of the application include:</p> <ul style="list-style-type: none"> • Clause 11 – Settlement <ul style="list-style-type: none"> ○ Clause 11.01 – Victoria <ul style="list-style-type: none"> ▪ Clause 11.01-1R – Green Wedges – Metropolitan Melbourne • Clause 12 – Environmental and Landscape Values <ul style="list-style-type: none"> ○ Clause 12.05 – Significant Environments and Landscapes • Clause 13 – Environmental Risks and Amenity <ul style="list-style-type: none"> ○ Clause 13.02 – Bushfire • Clause 14 – Natural Resource Management <ul style="list-style-type: none"> ○ Clause 14.01 – Agriculture • Clause 15 – Built Environment and Heritage <ul style="list-style-type: none"> ○ Clause 15.01 – Built Environment <ul style="list-style-type: none"> ▪ Clause 15.01-6S – Design for Rural Areas • Clause 16 – Housing <ul style="list-style-type: none"> ○ Clause 16.01 – Residential Development • Clause 17 – Economic Development <ul style="list-style-type: none"> ○ Clause 17.04 – Tourism <ul style="list-style-type: none"> ▪ Clause 17.04-1S – Facilitating Tourism ▪ Clause 17.04-1R – Tourism in Metropolitan Melbourne • Clause 21 – Municipal Strategic Statement <ul style="list-style-type: none"> ○ Clause 21.01 – Cardinia Shire Key Issues and Strategic Vision ○ Clause 21.02 – Environment <ul style="list-style-type: none"> ▪ Clause 21.02-2 – Landscape ▪ Clause 21.02-4 – Bushfire Management ○ Clause 21.03 – Settlement and Housing <ul style="list-style-type: none"> ▪ Clause 21.03-4 – Rural Townships ○ Clause 21.04 – Economic Development <ul style="list-style-type: none"> ▪ Clause 21.04-2 – Agriculture ▪ Clause 21.04-5 – Tourism

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	<ul style="list-style-type: none"> o Clause 21.07 – Local Areas – Hills Region <ul style="list-style-type: none"> ▪ Clause 21.07-1 – Gembrook
<p>Other Provisions / Documents:</p>	<p>Other provisions and documents relevant to the assessment of the application include:</p> <ul style="list-style-type: none"> • Clause 51.02 – Metropolitan Green Wedge Land: Core Planning Provisions • Clause 65 – Decision Guidelines • Clause 71.02-3 – Integrated Decision Making • <i>Gembrook Township Strategy (June 2011)</i> • <i>Historic Version (Planning Scheme Amendment VC18 – June 2003) – Clause 57 – Core Planning Provisions for Metropolitan Green Wedge Land</i> • <i>Derring Lane Pty Ltd v Port Phillip City Council (No 2) [1999] VSC 269</i> • <i>Armato v Hepburn Shire [2007] VCAT 603</i> • <i>XO Network Pty Ltd v South Gippsland SC [2019] VCAT 1789</i> • <i>Booth v Strathbogie SC [2023] VCAT 782</i> • <i>Paterson v Minister for Planning [2024] VCAT 761</i>

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Permit Triggers

A permit is required for the following reasons:

Pursuant to Clause 35.04-1 (Green Wedge Zone) a permit is required to use land for a 'Residential Building'.

The below conditions must be met by the use. If they are not, the use is prohibited (and a permit cannot be granted):

- *'Must be used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.'*
- *'Must be used to provide accommodation for persons away from their normal place of residence.'*
- *'The lot on which the use is conducted must be at least the minimum subdivision area specified in a schedule to this zone. If no area is specified, the lot must be at least 40 hectares.'*

While not discussed in detail (due to the mis-categorisation contention below), these requirements are considered to be met. The land measures 46.2 hectares in area, and persons accommodated as part of the use would be away from their normal place of residence (able to be ensured by permit condition and/or Section 173 Agreement).

The 'in conjunction' requirement requires in-depth assessment, however in summary the proposed use for 'Residential Building' is considered to be in conjunction with 'Agriculture' occurring on the land, for the purposes of Clause 64.02 (Land Used in Conjunction with Another Use) and the determinative Tribunal decision on the matter (*Jinalac Park PL v Mornington Peninsula SC [2007] VCAT 1238*).

However, the proposed use is not considered to be in conjunction with 'Natural Systems'. In summary, this is due to the fact there is no essential association between these two uses, there is no close and continuing functional relationship between the uses, and the proposed 'Residential Building' use is unlikely to benefit the 'Natural Systems' use.

However, due to the above contention (regarding Agriculture), failure of the in conjunction requirements with regard to 'Natural Systems' is not fatal – the condition is still met for the proposal.

Notice

Notice of the application was given pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

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

It is noted the application was amended after notice was undertaken (i.e. under Section 57A of the *Act*). In accordance with Section 57B(1), the responsible authority must determine whether further notice of the amended application is necessary, and if such notice is required the form it should take.

In this circumstance, notice of the amended application (re-advertising) was not considered necessary. This is due primarily to the 'minor' nature of the change – at least in the view of potentially affected parties. While the amendment changed the land use for which permission

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was sought (from Group Accommodation to Residential Building), the specific details of the proposal did not change. Rather, the proposal remained to provide short stay, tourist accommodation for a maximum of six persons, within the 'old dwelling' on the site. Therefore, it was considered the amendment was of no consequence to interested parties, and notice of the amended application was not required to be undertaken.

Objections/Submissions

During notice, one (1) objection and one (1) submission in support of the application were received.

Key issues raised within the objection are as follows:

- Amenity impacts (noise and visual);
- Previous behaviour of owners of the land; and
- Inappropriate use within the secluded rural landscape.

Key issues raised within the supporting submission are as follows:

- Sensible use of existing dwelling;
- Maintenance benefits;
- Perception adverse impacts are unlikely; and
- Tourism benefits both of and for the region.

External Referrals/Notice

Referral Authority	Type	Advice/response/conditions:
N/A – the application did not require referral or notice to any external authorities under Clause 66 and Section 55 of the <i>Act</i> .		

Internal Referrals

Internal Referral Department	Advice/response/conditions:
N/A – Given the proposal seeks to use an existing building (and no buildings or works are proposed), referral of the application to internal Council departments was not necessary.	

Assessment

The application is for *Use of land for a Residential Building*, which requires a planning permit under the provisions of the Green Wedge Zone.

The key considerations of this application relate to:

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- Land use categorisation.
- Existing Planning Permit T220816.
- Relevance of and response to bushfire policy within the PPF.
- The relevant policies of the Planning Policy Framework.
- The Green Wedge Zone.
- The overall acceptability of the proposal.
- Response to objection and submission.

Following assessment of the proposal, it has been determined that the real and substantive proposed use (short stay accommodation) is not appropriately categorised as 'Residential Building'. Rather, it is better defined as 'Accommodation' – a Section 3 (prohibited) land use under Clause 35.04-1 (Green Wedge Zone) – for which a permit cannot be granted by Council.

Notwithstanding this categorisation, the real and substantive proposed use is not considered to achieve an acceptable outcome with regard to relevant policy. Rather, the proposal seeks to subvert the well-established requirement that only one dwelling is permitted per lot, on land within the Green Wedge Zone.

Despite the above contention that a permit cannot be granted (reasons for which are outlined in detail below), a merits assessment of the real and substantive proposed use (short stay accommodation) is provided below for completeness.

Land Use Categorisation

As noted above, the applicant has categorised the proposed use as 'Residential Building', defined in Clause 73.03 (Land Use Terms) of the Scheme as follows:

'Land used to accommodate persons, but does not include camping and caravan park, corrective institution, dwelling, group accommodation, host farm, residential village, retirement village or small second dwelling.'

'Residential Building' includes the land uses shown and defined in Table 1 (below).

Term	Definition
Community Care Accommodation	Land used to provide accommodation and care services. It includes permanent, temporary and emergency accommodation. It may include supervisory staff and support services for residents and visitors.
Residential Hotel (includes Motel)	Land used to provide accommodation in serviced rooms for persons away from their normal place of residence. If it has at least 20 bedrooms, it may include the sale of liquor for consumption on, or off, the premises, function or conference rooms, entertainment, dancing, amusement machines, and gambling.
Motel	Land used to provide accommodation in serviced rooms for persons away from their normal place of residence, and where provision is made for parking guests' vehicles convenient to the rooms.
Rooming House	As defined in the <i>Residential Tenancies Act (1997)</i> – below. A building, other than an SDA dwelling, in which there is one or more rooms available for occupancy on payment of rent— (a) in which the total number of people who may occupy those rooms is not less than 4; or

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	(b) in respect of which a declaration under section 19(2) or (3) is in force;
Rural Worker Accommodation	Land used to accommodate a person engaged in agricultural production, away from their normal place of residence.
<i>Table 1: Terms within Residential Building (Current)</i>	

Real and Substantive Use

As is well established practice when categorising a use of land, the critical question to be asked is *what is the real and substantive purpose of the proposed use of land?* It is also relevant to note that Clause 73.03 (Land Use Terms) provides:

'A term describing a use...which is not listed in the table must not be characterised as a separate use of land if the term is obviously or commonly included within one or more of the terms listed in the table.'

In this application, the real and substantive use is considered to be to provide accommodation for multiple people, away from their normal residence; i.e. tourists. This accommodation is proposed to be provided within a singular building, most recently used as a dwelling.

It is understood to be rented as a single unit. While the building may accommodate multiple people (up to 6), this will only be under the one booking.

Course of Application

It is worth noting the application was first lodged seeking permission for an identical real and substantive use (short stay accommodation), however with the categorisation as 'Group Accommodation'.

During the course of assessment of the application, concerns were raised by officers regarding this categorisation. It was advanced that as the use could not be defined as 'Group Accommodation', one must firstly look elsewhere for defined terms in the Scheme. Having reviewed the proposal and relevant case law, officers contended that the proposed use was best defined as 'Accommodation' – notably a Section 3 (prohibited) land use in the Green Wedge Zone, for which a permit cannot be granted. Accommodation is defined as follows in the Scheme:

'Land used to accommodate persons'.

The reason for this categorisation (as Accommodation) relies heavily on the decision of the Tribunal in *Armato v Hepburn Shire [2007] VCAT 603* (referred to herein as *Armato*).

This decision also explores whether the use can be defined as 'Residential Building' – relevant (and explored later) as this is the term for which the applicant currently seeks permission.

Armato v Hepburn Shire [2007] VCAT 603

Despite the age of this decision, it is of relevance to the current application at hand. In *Armato*, the permit applicant sought permission for a comparable use – a single house (unit of accommodation), to be used to provide short-stay, tourist accommodation within Daylesford.

Prior to the main hearing in the matter, Deputy President Gibson (the highest ranking member of the Tribunal) answered a question of law relating to categorisation of the proposed use. In the preliminary hearing, both Council and the permit applicant contended that the use was 'Residential Building'. Notably, the definition of this term at present is unchanged since 2007.

As explained by Deputy President Gibson (at paragraph 15):

'Residential building is included in accommodation but the definitions of both uses are the same – "land used to accommodate persons". In order to distinguish between them and decide whether short term tourist or rental accommodation falls within the use

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"residential building" or "accommodation" it is necessary to look at the common characteristics of those land use terms nested within the term "residential building."

Having analysed the uses included within the terms, Deputy President Gibson arrived at two conclusions.

Firstly, that all terms included within 'Residential Building' involve provision of accommodation for multiple people, individually. In other words – multiple units of accommodation were provided.

This was distinguished from the circumstance in *Armato*, as only one unit of accommodation was to be provided. While multiple people could be accommodated within the building, the building was intended to be made available as a single unit.

Secondly, it was identified that the majority of terms at the time included within 'Residential Building' were places where people tended to live or stay for extended periods of time. In other words – their settled, or usual place of residence.

This was identified with being consistent with the meaning of 'reside' – inherently a key element of the land use term. The Supreme Court decision of *Derring Lane Pty Ltd v Port Phillip CC (no 2) [1999] VSC 269*, was also cited by Deputy President Gibson in support of this contention.

As explained by Justice Balmford in *Derring Lane*;

'The phrase "residential building" must be taken to refer to a building constructed for the purpose of people dwelling there permanently or for a considerable period of time, or having in that building their settled or usual abode'.

For these reasons, in *Armato* Deputy President Gibson found that the real and substantive proposed use (short-stay, tourist accommodation) was best categorised as 'Accommodation', not 'Residential Building'.

This is of relevance to the current proposal, as this same contention was advanced to the applicant – that officers considered the use to be best defined as 'Accommodation'.

Applicant Response

In response to the above, the applicant provided the opinion of a legal practitioner to dispute officers categorisation as 'Accommodation'.

The advice provided by the applicant considered that given the age of the *Armato* decision and associated changes to the Scheme (despite the fact the definition remained unchanged), this decision no longer carried substantial weight.

In support of this, the applicant drew attention to the fact the terms included within 'Residential Building' have changed substantially since *Armato*. This is undoubtedly the case – at time of *Armato*, terms included within 'Residential Building' were as shown in Figure 1 (below).

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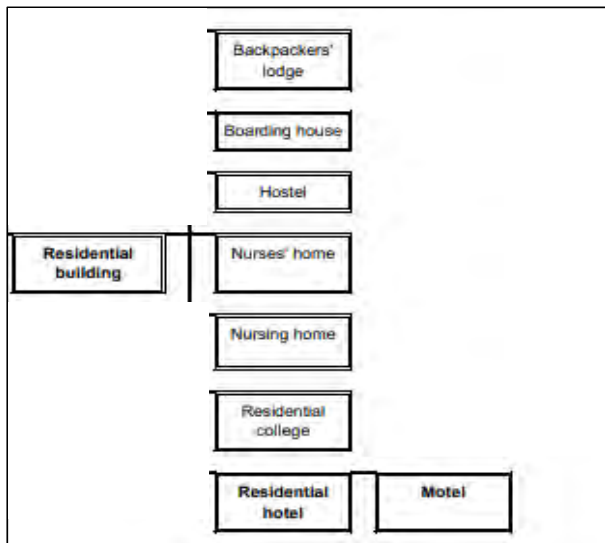


Figure 1: 'Residential Building' at time of Armato (8 March 2007)

The applicant contends that while the *Armato* terms met the key characteristics (being 'multiple units' and 'extended stay') explained by Deputy President Gibson, the current terms do not due to the changes. Current terms are outlined and defined in Table 1 (above), and there has undoubtedly been significant change since *Armato*.

Response to Applicant Contention

Despite the changes since *Armato* and having reviewed the information provided by the applicant, it is considered that the determinative factors identified by Deputy President Gibson remain relevant and have the effect of 'ruling out' the categorisation of the proposed use (in the current application) as 'Residential Building' – as advanced by the applicant.

Firstly, the current terms included within 'Residential Building' (see Table 1) are all considered to describe types of accommodation where multiple, separate units of accommodation are usually provided.

Although acknowledged none of the current definitions (Table 1) expressly require multiple units of accommodation, they also do not preclude this. This situation is unchanged from *Armato*.

In other words, at the time of *Armato* a single unit 'Nursing Home' could have been provided. Similarly, a single unit 'Rooming House' could be provided under current definitions. However, both outcomes would be an unusual form of the use, with such a facility not typical.

Rather, the current terms included within 'Residential Building' are considered to remain most applicable to facilities with multiple units of accommodation.

It is for this reason that the 'multiple units' contention is considered to remain relevant and does not support categorisation of the subject proposal as 'Residential Building' – as advanced by the applicant.

Similarly, the changes to the included terms (within Residential Building) are not considered to have made the 'extended stay' conclusion redundant, as advanced by the applicant.

The current terms (Table 1) are considered most commonly applied where people spend an extended period of time, unless otherwise specified in the definition.

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For example, while 'Rural Worker Accommodation' requires a person to be accommodated '*away from their normal place of residence*', persons occupying Rural Worker Accommodation are generally employed on the same land as the agricultural operation within which they are employed (or nearby) for extended periods where their labour is required – in other words (and most commonly) during 'harvest seasons' that generally involve months at a time.

Similarly, based on the definition, 'Community Care Accommodation' involves permanent accommodation. This is furthered by the fact care services must be provided with the accommodation – in other words, essential services for occupiers of the use on an ongoing basis.

It is however noted that 'Motel' represents an outlier of sorts – being a type of use that by definition caters for short stays. However, the definition and application of this term clearly differentiate this term – by stating 'away from normal residence', and also by requiring parking provision adjacent to rooms.

Further, the 'Motel' anomaly was also present (in near identical circumstances) at the time of *Armato*. Deputy President Gibson clearly identified this as an anomaly, and given the same circumstance arises at present, the anomaly is not considered to be fatal to the mis-categorisation argument put forth in this report.

Lastly, the term 'Residential Building' continues to inherently contain the term 'reside' or 'residential'. As noted above, it is well established that these words require that an accommodation unit be a normal place of residence or accommodate a person for a lengthy period.

For this reason, it is considered the decision of *Armato* continues to have substantial weight for the proposal at hand and provides useful considerations when categorising the real and substantive proposed use on the site.

The permit applicant was advised of this position, however still considered that the use was best categorised as 'Residential Building'. The application was therefore formally amended (under Section 57A of the *Act*) to seek permission for this purpose.

Accurate Categorisation

Given the above, the proposed use is not considered by officers to fall within the definition of 'Residential Building'. In order to decide the application, one must then firstly turn to other defined terms within the Scheme and consider the real and substantive nature of the proposed use (noted above).

Based on consideration of the proposed use above, it is clearly evident the proposal seeks to accommodate persons. This is consistent with the definition of 'Accommodation'.

The 'Accommodation' group of land use terms is broad – including a total of 18 individual terms (see Figure 2 below). All included within 'Accommodation' are however either clearly not applicable to the proposal at hand, such as 'residential aged care facility' or 'corrective institution', or include a condition/requirement that precludes them. An example of the latter is 'small second dwelling', which has a requirement that the gross floor area of the building be no larger than 60 square metres – a figure the proposal exceeds by a substantial amount.

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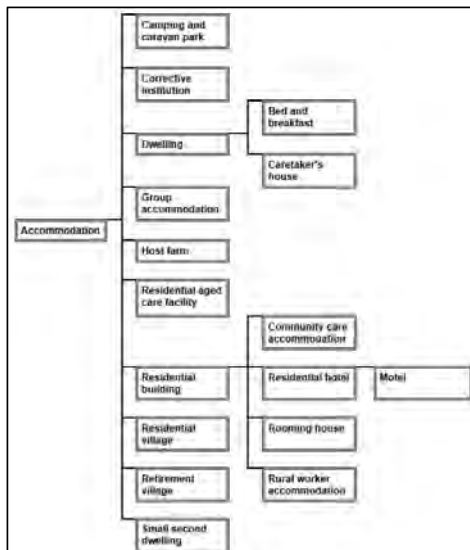


Figure 2: Current 'Accommodation' Group (Cl. 73.04-1)

Consideration of all land use terms is not provided in this report however the assessment is that there is clear rationale and good reasoning for excluding all the terms included within 'Accommodation' – other than 'Accommodation' itself.

For this reason, and informed (in part) by the decision of the Tribunal in *Armato*, the proposed use is considered to be best defined as 'Accommodation'. Pursuant to Clause 35.04-1 (Green Wedge Zone), 'Accommodation' is a Section 3 (prohibited) land use, meaning a permit cannot be granted and this application must be refused.

Despite this position, an outline of how the real and substantive use (short stay accommodation) responds to the relevant policies and other considerations is provided below.

Planning Permit T220816 & Single Dwelling Restriction on the Subject Site

Planning Permit T220816 was issued on 17 November 2023, to allow for construction of the 'new dwelling' on the land (and an associated outbuilding). As noted above, Condition 2 of this permit requires the 'old dwelling' to be demolished or removed from the subject land within 3 months of occupancy of the new dwelling – *unless* consent is provided to vary this requirement by Council.

Consistent with the requirement of this condition, plans approved under this permit (T220816) show the old dwelling 'to be demolished'.

Therefore, approval of the current proposal would be in direct conflict with both plans approved under and conditions of Planning Permit T220186. This outcome is not considered acceptable, given Council must enforce both (theoretical) planning permits.

The requirement for demolition of the old dwelling to be demolished 'stems from' the condition next to the term 'Dwelling' in Clause 35.04-1. This condition reads as follows:

'Must be the only dwelling on the lot. This does not apply to the replacement of an existing dwelling if the existing dwelling is removed or altered (so it can no longer be used as a dwelling) within one month of the occupation of the replacement dwelling.'

In other words – the land can only be used and developed with one dwelling. While a replacement dwelling can be constructed subject to a permit (while the old dwelling remains on the land), the

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old dwelling must be demolished or otherwise removed, shortly after the new dwelling is completed and occupied.

The current application clearly seeks to subvert this requirement, by allowing two dwellings to remain on the land. The restriction on the subject site that only a single dwelling can exist is not a recent change, having applied to the land since the inception of statewide provisions for green wedge land ([former Clause 57](#) – applied to the land via Planning Scheme Amendment VC018 on 13 June 2003).

As of (and since this date), the land has been restricted to a maximum of one dwelling. Therefore, and although acknowledged the applicant seeks to retain and ‘adaptively reuse’ the old dwelling (whilst providing a new, modern dwelling), such an outcome would be inconsistent with established planning policy that has applied to the land for nearly 22 years.

Bushfire Planning

The entirety of the subject site is within the Bushfire Management Overlay, indicating it is at a high risk of bushfire. As no buildings and works are proposed however, a permit is not required under Clause 44.06-2 (Bushfire Management Overlay).

Relevance of Bushfire Policy

Notwithstanding this, Clause 13.02-1S (Bushfire Planning) remains as statewide bushfire policy within the PPF, with its application clearly specified as follows:

‘This policy must be applied to all planning and decision making under the Planning and Environment Act 1987 relating to land that is:

- *Within a designated bushfire prone area;*
- *Subject to a Bushfire Management Overlay; or*
- *Proposed to be used or developed in a way that may create a bushfire hazard.’*

[emphasis added]

Similarly, Council’s local policy (Clause 21.02-4 – Bushfire Management) is considered relevant to the proposal.

These policies are able to be considered due to the purpose and decision guidelines of the Green Wedge Zone. The first purpose of the Green Wedge Zone is:

‘To implement the Municipal Planning Strategy and the Planning Policy Framework.’

While the first decision guideline (that must be considered before deciding on an application) in Clause 35.04-6 is:

‘The Municipal Planning Strategy and the Planning Policy Framework.’

The objectives, strategies and key issues of these policies were raised with the permit applicant during initial assessment of the application, with concerns raised as to how intensification of settlement (including persons likely unfamiliar with the area and bushfire characteristics) within an area of high bushfire risk represented an acceptable response to considerations within Clauses 13.02-1S and 21.02-4.

In response, the applicant cited a decision of the Tribunal (*Booth v Strathbogie SC [2023] VCAT 782* – referred to herein as *Booth*) that concerned a similar (albeit substantially larger scale) proposal for ‘Group Accommodation’, within a Designated Bushfire Prone Area.

In *Booth*, (and again responding to a question of law prior to the main hearing) the Tribunal determined that Clauses 13.02-1S & 1L (State and Local bushfire policy in the Strathbogie Planning Scheme) were not relevant to assessment of the proposal, as the Council did not have discretion to consider these policies. This was due to the purposes of the relevant planning

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controls (in this case the Farming Zone and Erosion Management Overlay), not directly requiring consideration of bushfire risk.

While on face value applicable to the proposal at hand, the decision in *Booth* has since been noted as adopting a fairly 'hardline' view of what policies are and are not relevant. For example, in *Paterson v Minister for Planning [2024] VCAT 761* (referred to herein as *Paterson*), the Tribunal considered the relevance of Aboriginal Cultural Heritage policy within the PPF, with regard to a permit requirement again under the Farming Zone.

As explained at paragraph 19:

'Applying this reasoning [the 'hardline' approach as in Booth] to the Aboriginal cultural heritage planning policy raises an interesting conundrum. This is because Aboriginal cultural heritage is primarily regulated through other legislation. As such, within the zones, parent overlay control provisions and particular provisions in the various Victorian planning schemes, there is most often no planning permission required to protect Aboriginal cultural heritage, and no purpose, objective or decision guideline that directly refers to the consideration of Aboriginal cultural heritage in deciding the merits of a planning application.'

This situation is in many ways similar to the application at hand. Given the structure of the Victoria Planning Provisions (that use of land is almost exclusively regulated by zones – not overlays, including the Bushfire Management Overlay), there is therefore no circumstance in which bushfire policy could be relevant to a 'use only' application, if the approach in *Booth* is adopted.

The question must then be asked, what is the purpose of the emphasised portion of Clause 13.02-1S (see above), that bushfire policy must be considered for all applications (both use and development) that may create a bushfire hazard, if such policy is never able to be considered?

It therefore follows that despite the decision in *Booth*, appropriate regard should be given to the applicable bushfire risk associated with the proposal, within the framework of Clauses 13.02-1S and 21.02-4.

As outlined in *Paterson* (paragraphs 35-36):

'The issues that a Responsible Authority needs to consider in any planning application will depend on the nature of the proposal, its physical context, the planning permissions being sought, and the matters that arise through the processing of the application including any objections...

...Depending upon the nature of the proposal and the context of the site and surrounds, it will always be possible for there to be contextual issues that arise that are not specifically identified by planning scheme provisions contained in the relevant zone or overlay controls. In such circumstances, planning policy guidance can be invaluable in assisting permit applicants, objectors and decision makers about the relevance and weight to be afforded to an identified contextual issue.'

Therefore, it is considered that despite the contention advanced by the applicant (relying on the decision in *Booth*), bushfire is a relevant consideration for the application, within the limits of discretion afforded by Clauses 13.02-1S and 21.02-4. As such, an assessment of how the proposal responds to these considerations is provided below.

Clauses 13.02-1S (Bushfire Planning) and 21.02-4 (Bushfire Management)

In addition to the applicability listed above, Clause 13.02-1S provides specific considerations of proposals for use and development of 'Accommodation' in designated bushfire prone areas, and consequently land subject to the Bushfire Management Overlay. These are as follows:

- *'Consider the risk of bushfire to people, property and community infrastructure.'*

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- *Require the implementation of appropriate bushfire protection measures to address the identified bushfire risk.*
- *Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.'*

Clause 21.02-4 (Bushfire Management – Council's local policy) generally echoes key themes identified in Clause 13.02-1S.

The subject site is considered to be in a location of high bushfire risk, with this largely arising from the surrounding landscape. As discussed above, the site is in close proximity to Kurth Kiln Regional Park; a densely vegetated State Forest, that adjoins and realistically forms part of the larger Bunyip State Forest. Bunyip State Forest itself is the southern-most part of an expansive fire run, which extends for hundreds of kilometres to the north and north-east.

While the subject site (east of the relevant building) could be categorised as 'grassland' (mown paddocks), the close proximity to very densely vegetated areas presents a considerable bushfire risk. No formal bushfire documentation has been provided with the application, including a 'Bushfire Hazard Landscape Assessment', as is required to be submitted for applications under the Bushfire Management Overlay (which the proposal is acknowledged as not being).

Despite this, the relevant technical document ('*Planning Permit Applications – Bushfire Management Overlay – Technical Guide*' (DELWP, 2017)) provides a framework for considering landscape bushfire risk. Based on the framework provided in this document, the site would be classified as a 'Landscape Type 3'. This landscape is described as having the following characteristics:

- *'The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site.'*
- *Bushfire can approach from more than one aspect.*
- *The site is located in an area that is not managed in a minimum fuel condition.*
- *Access to an appropriate place that provides shelter from bushfire is not certain.'*

In the event of a landscape scale bushfire, the access/egress arrangements to and from the site are considered likely to be hazardous. Evacuation would likely be encouraged to Gembrook, including potentially to the relevant Neighbourhood Safer Place. This involves a 4.6 kilometre drive, through areas of dense vegetation along narrow roads (see Figures 3-4 below).



Figure 3: Street View Image 1 - Beenak Road

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Figure 4: Street View Image 2 - Beenak Road

The proposal seeks to provide short stay/tourist accommodation – a type of use inherently involving persons unfamiliar with the area, and potentially unfamiliar with bushfire behaviour. This brings about further considerations, beyond those relevant to normal places of residence. The Tribunal has dealt with a similar circumstance on a number of occasions, most notably in *XO Network Pty Ltd v South Gippsland SC [2019] VCAT 1789 (XO Network)*. This decision concerned a 'Group Accommodation' (tourist accommodation) facility, in a similarly isolated, high bushfire risk location. As explained by Member Harty at paragraph 53:

'A bushfire can occur at any time, and it is the risk to visitors...who may be unfamiliar with the region, attempting to seek safer refuge from bushfire risk and the necessity to travel on this local road network through dense forested bush that makes the proposal unacceptable...'

This circumstance is materially similar to the current application. If approved (or able to be), the proposal would introduce visitors to the site, who would be unfamiliar with the area, and may be unfamiliar with bushfire behaviour. As the applicant has contended bushfire policy is not relevant to the proposal, details of how this risk will be managed are not known.

Given this absence of response or proposed risk management measures, it is not considered the proposal represents an acceptable outcome with regard to relevant bushfire policy within the PPF, and Scheme more broadly. As outlined in Clause 71.02-3 (Integrated Decision Making):

'Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.'

[emphasis added]

As a result of this guiding framework and the considerations relevant to Clause 13.02-1S and 21.02-4, the proposal cannot be considered to have prioritised protection of human life over other relevant considerations. Rather, if approved (or able to be approved) without demonstration of appropriate risk management measures, the proposed use (if approved, or able to be) would substantially increase the risk to human life from bushfire.

Planning Policy Framework (PPF) & Local Planning Policy Framework (LPPF)

In addition to the above unacceptable response to strategic bushfire policy, the proposal is considered to be inconsistent with other relevant objectives, strategies and identified key issues within the PPF and LPPF.

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The proposal seeks consent for two dwellings on the subject site (one for the permanent residence of the landowner and one for short-stay accommodation), representing an effective 'doubling' of the physical scale of urban development on the land. Given the site is outside an established settlement, this outcome is contrary to strategies of Clause 11.01-1R that (broadly speaking) seek to direct increased settlement and urban development to established areas, where appropriate services are provided and finite green wedge values are protected.

The siting of the new dwelling was considered appropriate (at time of approval of Planning Permit T220816) on the basis that the old dwelling would be demolished, and this area of the land returned to the 'agricultural base'. By seeking to retain the old dwelling and providing a new dwelling over 280 metres north, the proposal would result in inappropriately dispersed urban activities on the site – an outcome expressly discouraged by Clause 11.01-1R.

This dispersed siting is also likely to alter the appearance of the land, by being the only green wedge zoned lot in the surrounding area with two dwellings; worsened by the dispersion (approx. 285m) between the two. This is likely to materially change and detrimentally impact the attractive qualities of the broader landscape (including from surrounding ridgelines and roads) – contrary to the objectives of Clauses 12.05-2S, 15.01-6S, 21.02-2 and 21.06-1).

Further, if two dispersed domestic areas were supported on the lot, an area of agricultural land would be lost, inconsistent with strategies to retain land for future sustainable agricultural use (Cl. 14.01 & 21.04-2).

Provision/retention of two accommodation buildings on the land (one as a residence for the owners, and one for short stay accommodation) is considered likely to increase the value of the land, given two dwellings is an incredibly uncommon feature of green wedge land in the surrounding area. As such, the proposal risks increasing the value of the land, beyond the point it is a 'tradeable commodity' for agricultural purposes – a key purpose of the Green Wedge Zone and an outcome discouraged by relevant agriculture policy within the PPF and LPPF (Cl. 14.01 & 21.04-2). It is however acknowledged the site is affected by residue from a former (and now banned) herbicide – known as Dieldrin. The site is afforded a 'fair' agriculture capability rating by Clause 21.04-2 (see Figure 5 below). However, within such areas a viable level of agricultural production is still considered capable of being achieved, with appropriate management techniques. As evidenced within the *Land Capability Study for Cardinia Shire (1997)* (a reference document in Clause 21.04-2) and shown below (Figure 6), the subject site is within five different map units – indicating soil type and characteristics. Three of these map units (Tve1 – Tertiary Volcanics – gentle crest, Tvd1 – Tertiary Volcanics – moderate slope, and Tvf1 – Tertiary Volcanics – gentle slope) have Class 2 (good) and Class 3 (fair) ratings for agricultural capability – indicating while some constraints exist, limitations on agricultural production can be overcome through implementation of readily available (and some specialist) management techniques.

Figure 5: Agricultural Significance (from Cl. 21.04-2) - Subject Site Red Arrow

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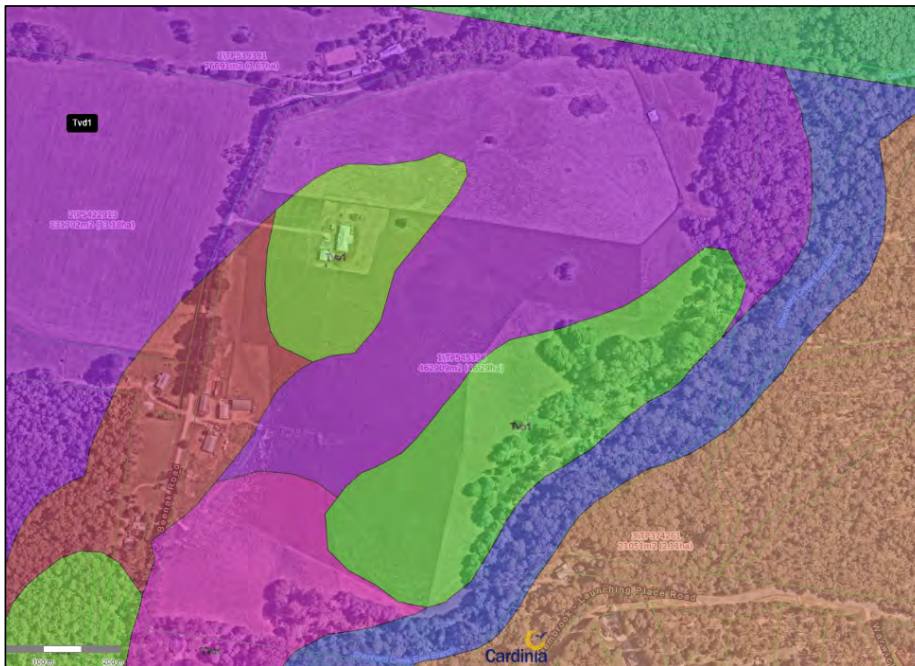
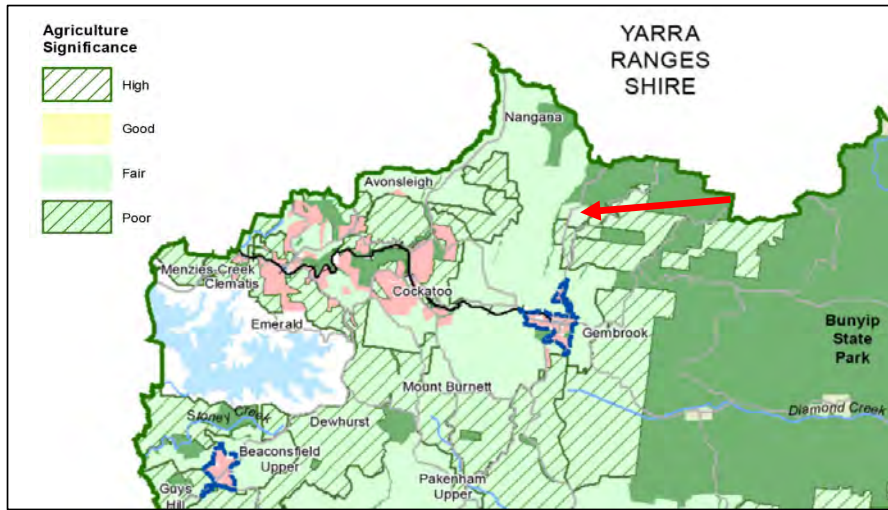


Figure 6: Geology - Land Capability Study for the Cardinia Shire (1997)

For this reason, it is not considered acceptable to 'write off' the value of the lot for agriculture given the Dieldrin residue. Rather, with appropriate management techniques productive, sustainable agriculture can be achieved. As such, it is not considered acceptable to support fragmentation of urban activities on the lot into two dispersed areas, as this outcome is inconsistent with policies that seek to retain land for sustainable agriculture (Cl. 14.01 & 21.04-2).

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Therefore, when combined with the 'physical' impacts the development will have on the land, the proposed uses are considered to be inconsistent with the strategic direction provided by settlement, agriculture, residential development and environmental policies within the PPF and LPPF.

It is noted the proposal seeks to provide 'short stay' tourist style accommodation – an outcome considered by Clauses 17.04 and 21.04-5. While this is a proposition encouraged (to some degree) by policy (including the purposes of the GWZ), the above policies need to be balanced with other considerations. Rather, Clause 17.04-1S encourages 'well-designed and sited tourist facilities', while Clause 21.04-5 states that tourist facilities should recognise and protect environmental values, minimise adverse impacts on the landscape and environment, and protect the Green Wedge and rural environment. – all key matters upon which the business is based. While at least on face value, the proposal would provide further tourism opportunities in the area, it would do so with an unreasonable impact on the green wedge values. This position is arrived at due to the reduced availability of land for future sustainable agricultural activities that would occur as a result of the proposal as well as the visual impact to the site and surrounding area/landscape that the proposal would facilitate.

Further, the proposal is located well outside (approx. 4km) of the established township boundary of Gembrook. Provision of tourism facilities outside of established township boundaries cannot be considered consistent with the strategic direction to provide 'well...sited tourist facilities' (Cl. 17.04-1S), as appropriate services are not provided in these locations, and finite green wedge values will be detrimentally impacted. As noted above, the applicable bushfire risk also must be given regard when considering if such a facility is 'well sited'. Given the absence of demonstrated management of bushfire risk, this risk furthers the contention that the proposed use is not well sited/located. Similarly, while noted the proposal *may* provide an economic benefit, a more substantial economic benefit would be brought if the use was located within (if not directly adjoining) the township. This outcome is sought by policy throughout the LPPF (including Clauses 21.01, 21.03-4 and 21.07-2), that seek to support economic growth *within* rural townships of the Shire, to allow such townships to prosper and be 'self-sufficient'. Similarly, Clause 21.07-1 (Gembrook) provides support for tourist development, however, strongly encourages such land uses/facilities to locate within the township boundaries, allowing co-location with key tourist attractions plus existing services and businesses. More detailed discussion specific to Gembrook is provided in the *Gembrook Township Strategy* (below).

Given the above assessment, the proposal is not considered to achieve an acceptable response to key considerations within the PPF and LPPF.

Gembrook Township Strategy (June 2011)

The *Gembrook Township Strategy* (the Strategy) is incorporated into the Scheme and heavily informs Clause 21.07-1 (Gembrook), as well as broader decision making within Gembrook. Despite the age of this document, it remains the most recent (and therefore current) strategic planning document for the Gembrook township.

While noted Section 1.2 of the Strategy states the document is focussed on land within the urban growth boundary (i.e. the township), it is acknowledged the document has relevance within the broader region surrounding the township.

Section 5.7 of the Strategy addresses tourism and is of relevance to the proposal. Broadly, this Section of the Strategy seeks to establish and enhance Gembrook as a tourism destination, including by providing additional tourist accommodation. However, a key theme of Section 5.7 (and 5.1 – Economic Development Opportunities) is that such facilities should be located within the 'town centre', so as to be able to leverage off (and bring benefits to) other, existing commercial operations in the township.

While the proposal at hand would provide additional tourist accommodation, it seeks to do this outside the township boundary – on a large, cleared lot with capability for agriculture. This

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outcome is not supported by the Strategy at large, which seeks to support, enhance and protect agriculture in the region (on green wedge land), including lots formerly used for potato farming affected by Dieldrin residue (land contamination). The proposal is therefore considered at odds with this outcome.

Green Wedge Zone

Aside from implementing the Municipal Planning Strategy and Planning Policy Framework (which as discussed above, the proposal is not considered to achieve), purposes of the Green Wedge Zone are as follows:

'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.'

The proposal is not considered to achieve these purposes. While the proposal is stated to increase tourism opportunities (and agreed that this would occur), it does so outside of an established urban settlement, in a manner likely to detrimentally impact green wedge values. 'Combined' with the new dwelling (as approved by Planning Permit T220816), the proposal seeks to provide two dwellings on the land – contrary to the purposes of the Zone, and restrictions imposed by the Zone that have burdened the land for over two decades.

The two dwellings are dispersed on the site (separated by over 280 metres), resulting in an inappropriate fragmentation of urban development on the site. This in turn results in a loss of land for sustainable agricultural purposes, an outcome inconsistent with the above purposes and relevant decision guidelines that expressly seek to protect and retain land for future sustainable agricultural activities.

Similarly, the retention of a second dwelling on the land is considered likely to have a detrimental impact on the open rural and scenic non-urban landscape. As discussed above, since 2003 the land (and surrounding area) has been restricted to a single dwelling per lot. As a result, there are no identified examples of Green Wedge land in the surrounding area with two dwellings. The outcome sought in this application would therefore represent a substantial visual transformation of the subject site, in a manner inconsistent with the character of the surrounding area.

For this reason, it is not considered the proposed use (and associated development implications) is compatible with adjoining and surrounding land uses, as well as the characteristics of the area.

Clause 51.02 – Metropolitan Green Wedge Land: Core Planning Provisions

Clause 51.02 applies core provisions to all green wedge land within the Shire (and Metropolitan Melbourne more broadly). Purposes of this provision are as follows:

'To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values.

To protect productive agricultural land from incompatible uses and development.

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To ensure that the scale of use is compatible with the non-urban character of metropolitan green wedge land.

To encourage the location of urban activities in urban areas.'

These purposes share key similarities with the Green Wedge Zone. Given the assessment above, the proposed use is not considered to achieve these purposes. Rather, it seeks to provide an urban activity on green wedge land, in a manner that would detrimentally alter the non-urban character of the site (green wedge land) by providing two dwellings on the site. In addition to this, the proposal would result in inappropriately dispersed urban activities on the site, restricting future use of the land for sustainable agricultural activities, and removing a portion of the site from use for agricultural production.

In the case of the Green Wedge Zone and subject proposal, the provision provides identical use of land controls – prohibiting use of land for 'Accommodation'. No additional permit (or other requirements apply) beyond the above exist within Clause 51.02.

Given the above, the proposal is not considered to be consistent with the purposes of this provision, and the true use of land ('Accommodation') is prohibited under this Clause.

Response to Submissions

Supporting Submission

The supporting submission considers that the proposed use is a sensible way forward for the old dwelling, is unlikely to generate adverse amenity impacts, and would provide a net tourism benefit for the site and region.

While the retention of the old dwelling may appear logical to the submitter, it is an outcome inconsistent with the long standing (over 20 year) 'single dwelling' restriction on the subject site, as well as the nature of the approval for the replacement dwelling (Planning Permit T220186).

Further, while the proposal would provide a tourism facility, it seeks to do so outside established urban areas, in a manner inconsistent with and likely to detrimentally impact green wedge values. Finally, the specific land use for which a permit is sought ('Residential Building') is considered to be a mis-categorisation of the use. Rather, the use is better categorised as 'Accommodation' – a Section 3 (prohibited) land use, for which a permit cannot be granted by Council.

Objection

Key themes raised within the objection relate to amenity impacts, inappropriate location of the use and previous issues with the owner/s of the land.

Firstly, previous personal issues with the owner/s of the land are of no relevance to the proposal at hand. While such issues may have impacted the objector in the past, they have no bearing on the current application. Council is not in a position to verify the issues raised by the objector, and in any event these are not relevant to the current proposal.

Similarly, in the event a permit was proposed (or able) to be granted, issues of noise, traffic could likely be managed by appropriate permit condition.

However, the concerns raised by the objector regarding visual impact of the use in the surrounding area are considered highly relevant to the proposal at hand. As discussed throughout this report, the outcome sought by the proposal would allow two dwellings on the land – a proposition inconsistent with long standing policy for the site and surrounding area, as well as characteristics of use/development of surrounding land.

Similarly, the concerns raised regarding the appropriateness of the use on the subject site are also considered to hold substantial weight. As discussed throughout this report, policy within the Scheme directs urban activities to townships and other established settlements. The outcome sought by the proposal is contrary to this and is considered likely to have a detrimental impact on established green wedge values – sought to be protected by the Scheme.

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Conclusion

As discussed throughout this report, the proposed use of land (Residential Building) is considered to be miscategorised. Rather, it is better categorised as 'Accommodation' – a prohibited land use for which a permit cannot be granted. Despite this, a merits assessment of the real and substantive use (short stay accommodation) has been conducted, with it determined the use does not achieve an acceptable outcome or response to relevant policy.

In addition, the proposal seeks to circumvent a well established requirement that the subject land can only be developed with a single dwelling – by providing two dwellings on the land (one to be used for permanent residence of the landowners, and the other for short-stay accommodation). This outcome would also transform the approval granted for the replacement dwelling (under Planning Permit T220816).

Given this, the proposal is considered an unacceptable planning outcome that does not demonstrate compliance with the relevant provisions of the Cardinia Planning Scheme and the *Planning and Environment Act 1987* and a permit should therefore be refused.

Recommendation

Refusal

Having considered all of the matters required under Section 60 of the *Planning & Environment Act 1987* and the Cardinia Planning Scheme, it is recommended that Council refuses to grant a permit for the land known and described as L1 TP545356, 186 Beenak Road Gembrook as per the following table and subject to the below grounds.

Planning scheme clause	Matter for which the permit has been refused
35.04-1	Use of land for a Residential Building

Refusal Grounds

1. The proposed use of the land for 'Residential Building' is miscategorised and does not meet the definition of the term within Clause 73.03 (Land Use Terms), as the real and substantive proposed use (short stay accommodation) is inconsistent with the definition of 'Residential Building', as well as the other uses included within this term.

Therefore, this use is best categorised as 'Accommodation', with use of the land for this purpose a Section 3 (prohibited) land use pursuant to Clause 35.04-1 (Green Wedge Zone) and Clause 51.02-2 (Metropolitan Green Wedge Land: Core Planning Provisions).

2. The proposal is inconsistent with considerations within the Planning Policy Framework and Local Planning Policy Framework, as it does not protect, enhance, provide for, or facilitate use of the land for agriculture, and would facilitate intensification of urban activities outside established settlement boundaries, in a location and manner where green wedge values are not adequately protected.

These outcomes are inconsistent with the objectives, strategies and key issues of the below provisions of the Planning Policy Framework and Local Planning Policy Framework:

- a. Clause 11.01-1S – Settlement;
- b. Clause 11.01-1R – Green Wedges – Metropolitan Melbourne;

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- c. Clause 12.05 – Significant Environment and Landscapes;
 - d. Clause 14.01 – Agriculture;
 - e. Clause 15.01-6S – Design for Rural Areas;
 - f. Clause 21.01 – Cardinia Shire Key Issues and Strategic Vision;
 - g. Clause 21.02-2 – Landscape;
 - h. Clause 21.03-4 – Rural Townships; and
 - i. Clause 21.04-2 – Agriculture.
3. While the proposal does seek to provide tourist accommodation, it proposes to do so outside an established urban area, and in a manner where green wedge values (including agricultural land and the rural character of the area) are not appropriately protected.
- This outcome is inconsistent with:
- a. Clause 17.04-1S – Facilitating Tourism;
 - b. Clause 17.04-1R – Tourism in Metropolitan Melbourne;
 - c. Clause 21.03-4 – Rural Townships;
 - d. Clause 21.04-5 – Tourism;
 - e. Clause 21.07-1 – Gembrook; and
 - f. The *Gembrook Township Strategy (June 2011)*.
4. The proposal does not respond to the objectives and strategies of Clause 13.02-1S (Bushfire Planning) or the key issues and strategies of Clause 21.02-4 (Bushfire Management), as the proposal would increase the risk to human life from bushfire and does not demonstrate how this risk will be managed or reduced to an acceptable level.
5. In addition to the fact the use for which permission sought ('Residential Building') is prohibited, the real and substantive proposed use (short stay accommodation) is inconsistent with, and does not respond to the purposes and decision guidelines of Clause 35.04 (Green Wedge Zone), as it:
- a. Does not enhance agricultural production or appropriately relate to rural land use;
 - b. Reduces the availability of land for future sustainable agricultural activities, and is not a use and development consistent with sustainable land management practices, primarily by further intensifying urban activities that would not be compatible with strategically supported agricultural land uses on the site and in the surrounding area; and
 - c. Does not protect, conserve or enhance the character of the open rural and scenic non-urban landscape and would detrimentally alter the landscape features, vistas and character of the area, due to the fact the proposal seeks to provide two dwellings on the land.
6. The proposal would transform and be in direct conflict with the approval granted under Planning Permit T220816 (to construct a replacement dwelling), as the proposal seeks to allow two dwellings to remain on the land.
7. The proposal does not respond to the considerations within Clause 65 (Decision Guidelines) as it:
- a. Is inconsistent with the orderly planning of the area, as it seeks to provide two dwellings on the subject site in contravention of established requirements of the Green Wedge Zone and Clause 51.02.

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- b. Does not achieve the purposes of the Green Wedge Zone or Clause 51.02.
- c. Will have a detrimental impact on the rural environment, amenity, characteristics and appearance of the area; and
- d. Does not demonstrate how the applicable bushfire hazard (in particular the bushfire hazard arising from the surrounding landscape) will be managed and mitigated to an acceptable level.



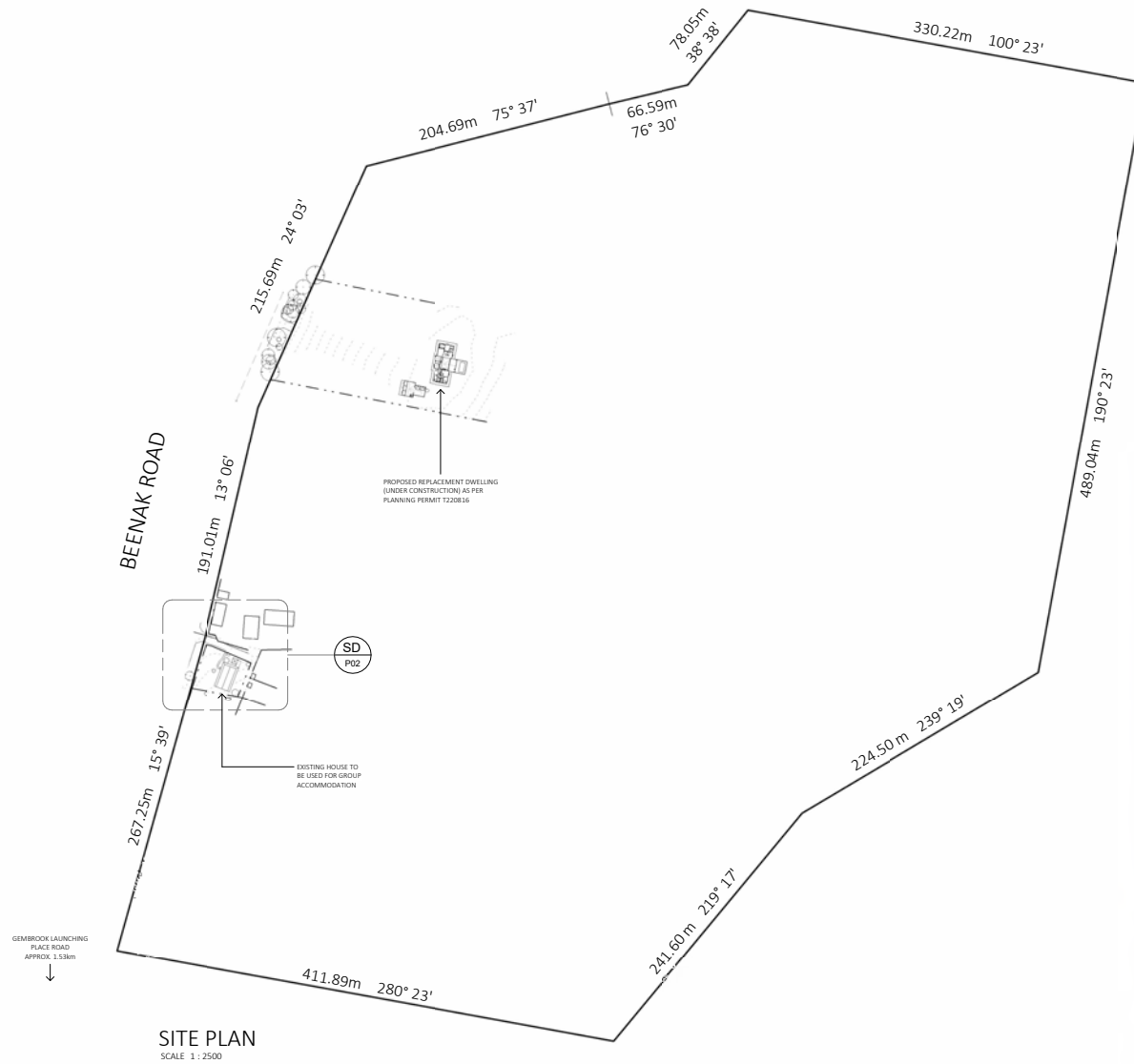
T240419 PA - Locality Map - 186 Beenak Rd, Gembrook

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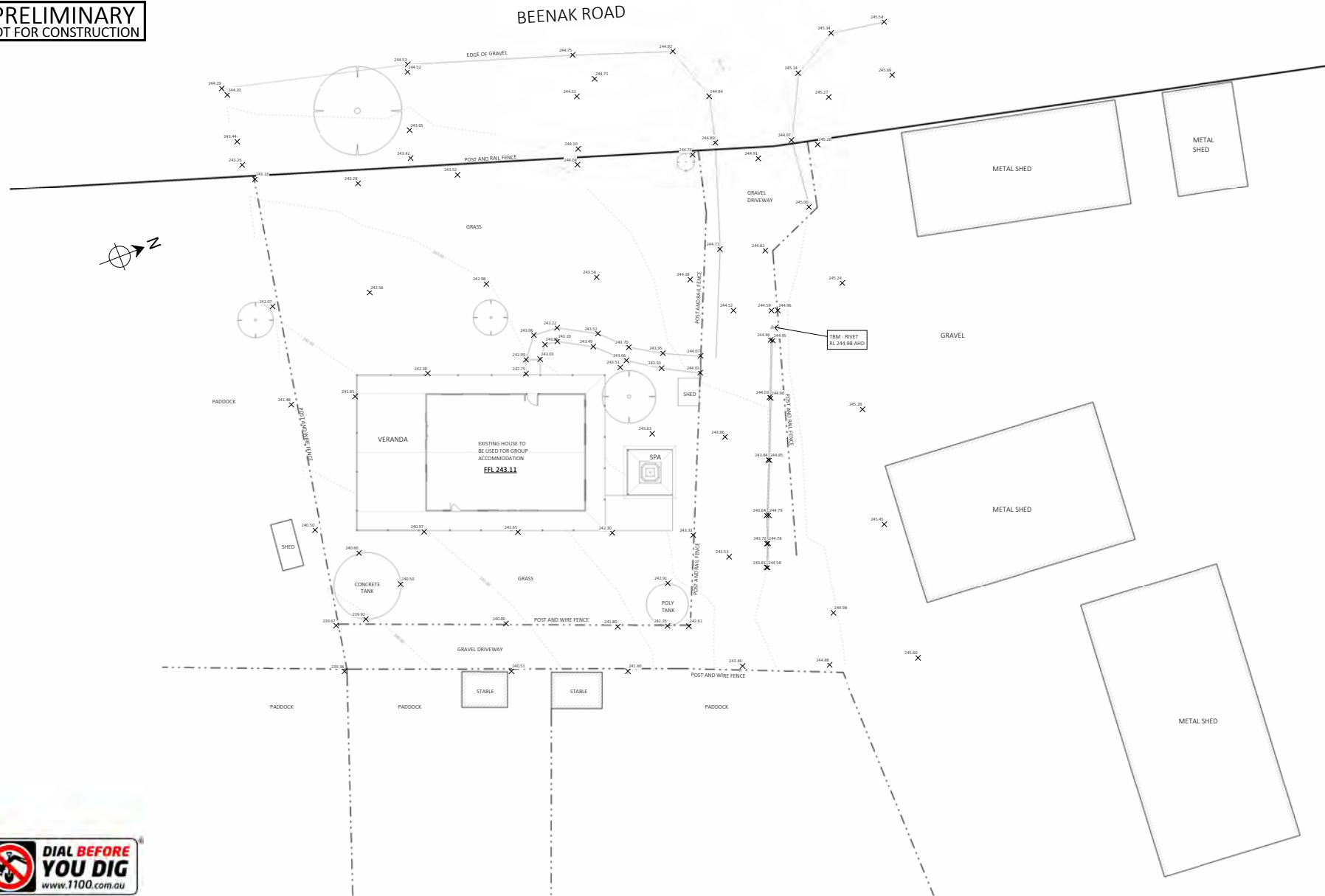
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10	PRELIMINARY	20/08/2024	CLIENT: B & L HORWOOD			PROJECT No.: 22029 DWN BY: DS	SHEET No.: P01
						PROJECT DATE: 27/06/2022 SCALE @ A2: As indicated	

PRELIMINARY
NOT FOR CONSTRUCTION



REV	DESCRIPTION	DATE
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PROJECT: PROPOSED GROUP ACCOMMODATION
186 BEENAK ROAD, GEMBOK

CLIENT: B & L HORWOOD

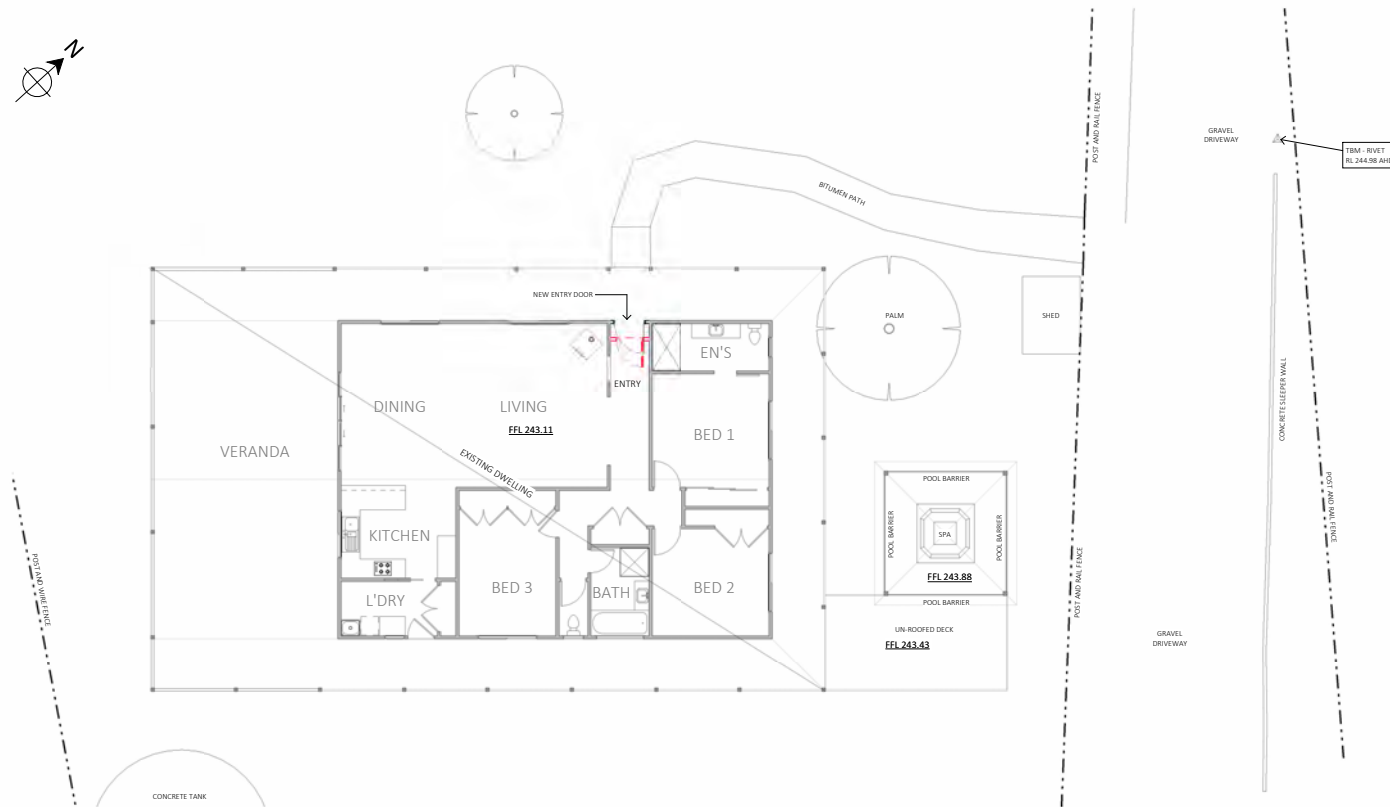
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SHEET TITLE:
SITE DETAIL - EXISTING DWELLING
PROJECT No.: 22029
DWN BY: DS
PROJECT DATE: 27/06/2022
SCALE @ A2: 1 : 200

REVISION: 10
SHEET No.:
P02

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5.3 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATED AUTHORITY - MAY 2025

Responsible GM:	Debbie Tyson
Author:	Jason Gilbert
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	5.1 We practise responsible leadership 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

Recommendation

That Council note the 'Planning Matters Dealt with by Officers Under Delegated Authority – May 2025' report.

Executive Summary

The following matters have been dealt with under delegated powers since the last report to Council.

Planning Matters Report

The below is for the period between 17 March 2025 and 14 April 2025.

Attachments

Nil

Beacon Hills Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T230601	65 Norris Road, Pakenham VIC 3810	Development of Land for a Replacement Dwelling	Issued	4/12/2023	19/03/2025
T240368	19-21 Woods Street, Beaconsfield VIC 3807	Construction of a Fence within Heritage Overlay.	Refused	30/07/2024	24/03/2025
T230632	29 Maisey Road, Gembrook VIC 3783	Use and Development of Land for a Dwelling, Development of an Outbuilding and Removal of Vegetation	Issued	19/12/2023	26/03/2025
T060765 - 2	51 Old Princes Highway, Beaconsfield VIC 3807	Development of the land for the purpose of a supermarket & speciality shops, display of signage and shower facility dispensation in accordance with the endorsed plans	Issued	13/01/2025	27/03/2025
T200837	23 Whiteside Road, Beaconsfield VIC 3807	Mixed Use Development (including Child Care Centre)	Refused	19/01/2021	28/03/2025
T240667	293 O'Neil Road, Beaconsfield VIC 3807	Buildings and Works (Construction of a Shed)	Issued	10/12/2024	31/03/2025
T250019	2 Coach House Lane, Beaconsfield VIC 3807	Buildings and Works (Extension to a building in a Heritage Overlay)	Issued	14/01/2025	31/03/2025
T240366	137 Bourkes Creek Road, Pakenham Upper VIC 3810	Subdivision of land (re-subdivision of 2 existing lots into 2 lots)	Issued	30/07/2024	1/04/2025
T250043	165 Army Settlement Road, Pakenham VIC 3810	Buildings and works (construction of a carport)	Issued	31/01/2025	3/04/2025
T230500	1000 Pakenham Road, Pakenham Upper VIC 3810	Use and Development of the Land for a Dwelling and Alteration of Access to a Road in a Transport Zone 2	NOD	12/10/2023	7/04/2025
T240412	250 Brown Road, Pakenham VIC 3810	Alterations and Additions to an Existing Dwelling	Issued	9/09/2024	7/04/2025
T240089	49-51 Woods Street, Beaconsfield VIC 3807	Use and development of a Child Care Centre, including the construction and display of business identification signs	NOD	8/03/2024	8/04/2025
T240641	3 Sylvia Road, Beaconsfield VIC 3807	Subdivision of Land into Two (2) Lots	Issued	29/11/2024	8/04/2025
T240511	28 Beaconsfield-Emerald Road, Beaconsfield Upper VIC 3808	Use of the land for a Veterinary Centre and a reduction in the number of car parking spaces required	Issued	2/10/2024	11/04/2025
T230424	Shop 1/52 Old Princes Highway, Beaconsfield VIC 3807	Construct or put up for display three (3) signs (internally illuminated above verandah sign, above verandah sign and a business identification sign)	Refused	25/08/2023	14/04/2025
T240327	15 Shelton Road and Bourkes Creek Road, Pakenham Upper VIC 3810	Subdivision of Land into Two (2) Lots (Boundary Re-Alignment) and Creation of a Restriction	Issued	16/07/2024	14/04/2025

Bunyip Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T210891	42 A'Beckett Road, Bunyip VIC 3815	Buildings and works (construction of a carport)	Refused	26/11/2021	18/03/2025
T230300	635 Railway Avenue, Garfield VIC 3814	Buildings and works for a replacement dwelling (second dwelling)	Refused	20/06/2023	18/03/2025
T240111	13-15 Hope Street, Bunyip VIC 3815	Subdivision of land into eight (8) Lots	Issued	15/03/2024	21/03/2025
T220800	315 Pooley Road, Nar Nar Goon North VIC 3812	Use and Development of Land for Rural Worker Accommodation and a Small Second Dwelling, and Removal/Lopping of Native Vegetation	Refused	6/12/2022	25/03/2025
T240439	50 Fourteen Mile Road, Garfield VIC 3814	Buildings and Works (Construction of a Shed)	Issued	4/09/2024	27/03/2025
T240091	260 Nar Nar Goon-Longwarry Road, Nar Nar Goon VIC 3812	Development of an agricultural shed associated within an existing dairy	Issued	7/03/2024	28/03/2025
T240664	5 Mulcare Street, Nar Nar Goon VIC 3812	Buildings and Works (Extension to an Existing Dwelling for a Verandah and a Deck)	Issued	8/12/2024	2/04/2025
T240408	280 Snell Road, Nar Nar Goon North VIC 3812	Alterations and Additions to an Existing Dwelling	Issued	20/08/2024	4/04/2025
T240139	61 Turramurra Road, Maryknoll VIC 3812	Buildings and Works (Construction of a Shed)	Issued	25/03/2024	10/04/2025

Central Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T250093	8 Bolton Grove, Officer VIC 3809	Construct or extend one dwelling on a lot of less than 300 square metres	Issued	14/02/2025	28/03/2025

Henty Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240103	38 Eagle Drive, Pakenham VIC 3810	Subdivision of land into two (2) lots	Issued	11/03/2024	25/03/2025
T240016	28-46 Bald Hill Road, Pakenham VIC 3810	Buildings and works to alter car parking layout and accessways, alteration of access to road in a transport zone 2 and construction of hard stand areas	Issued	17/01/2024	1/04/2025
T240701	50-54 John Street, Pakenham VIC 3810	Construct and Display Signs in Section 2 (Internally Illuminated, Business Identification and Directional Signs)	Issued	24/12/2024	4/04/2025

Officer Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T230097	56 Station Street, Officer VIC 3809	Use and development of the land for a shop, office and medical centre and reduction of car parking requirement	Issued	6/03/2023	21/03/2025
T250031	11 Station Street, Officer VIC 3809	Display of business identification signage	Issued	23/01/2025	21/03/2025
T250042	11 Station Street, Officer VIC 3809	Display of Signage	Issued	30/01/2025	21/03/2025
T220167 - 2	451 Brown Road, Officer VIC 3809	Amendment to T220167-1 for Development of the land in stages for a Child Care Centre and Indoor Recreation Facility (Swim School), display of signage and a reduction in car parking	Issued	26/02/2025	11/04/2025

Pakenham Hills Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240444	4 Baltaser Drive, Pakenham VIC 3810	Construction of a Second Dwelling on a Lot	NOD	5/09/2024	31/03/2025
T240349	5 Trinidad Walk, Pakenham VIC 3810	Removal of one (1) tree	Refused	24/07/2024	1/04/2025

Ranges Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240072	65 Evans Road, Cockatoo VIC 3781	Buildings and works associated with existing agriculture (construction of agricultural shed) and associated earthworks	Issued	21/02/2024	25/03/2025
T240222	3 Innes Road, Gembrook VIC 3783	Buildings and Works (Construction of an Outbuilding) and Associated Earthworks	Refused	14/05/2024	26/03/2025
T240693	90 Beaconsfield-Emerald Road, Emerald VIC 3782	Buildings and Works (Construction of a Replacement Outbuilding)	Issued	17/12/2024	28/03/2025
T250177	21 Deery Road, Emerald VIC 3782	Buildings and Works (Construction of an Outbuilding)	Issued	26/03/2025	8/04/2025

Toomuc Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T190010 - 1	795 Princes Highway, Pakenham VIC 3810	T190010-1 APP - Amended Planning Permit	Refused	5/11/2020	19/03/2025
T240683	T21.4 Cardinia Road, Officer VIC 3809	Use of the land for the sale and consumption of liquor	Issued	18/12/2024	31/03/2025
T250188	59 Skyline Drive, Officer VIC 3809	Buildings and works (verandah) within the Significant Landscape Overlay - Schedule 6	Issued	2/04/2025	8/04/2025

Westernport Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240581	42 Sette Circuit, Pakenham VIC 3810	Buildings and works (construction of an industrial building associated with the use of the land as a store)	Issued	8/11/2024	17/03/2025
T240626	CA 6A Parish of Pakenham, Cardinia Road (Future Lot 4 PS845122, 14 Advance Boulevard), Officer South VIC 3809	Buildings and works associated with two warehouses and a reduction in car parking	Issued	26/11/2024	18/03/2025
T240607	11 Tarmac Way, Pakenham VIC 3810	Subdivision of Land into Six (6) Lots	Issued	19/11/2024	24/03/2025
T250065	130 Moody Street, Koo Wee Rup VIC 3981	Buildings and works (construction of an outbuilding)	Issued	13/02/2025	24/03/2025
T230390 - 1	Southeast Business Park, 37 Commercial Drive, Pakenham VIC 3810	Use and development of Land for Retail premises (Motor vehicle Sales)	Issued	28/10/2024	28/03/2025
T230560	7 Pioneer Road, Lang Lang VIC 3984	Subdivision of land (re-subdivision of three existing lots into three lots)	Issued	8/11/2023	2/04/2025
T240514	16 Evolve Street, Officer South VIC 3809	To construct buildings and works associated with two (2) warehouses with a reduced car parking requirement pursuant to Clause 52.06 of the Scheme	Issued	4/10/2024	3/04/2025
T240515	20 Evolve Street, Officer South VIC 3809	To construct buildings and works associated with two (2) warehouses with a reduced car parking requirement pursuant to Clause 52.06 of the Scheme	Issued	4/10/2024	3/04/2025
T240516	24 Evolve Street, Officer South VIC 3809	To construct buildings and works associated with two (2) warehouses with a reduced car parking requirement pursuant to Clause 52.06 of the Scheme	Issued	4/10/2024	3/04/2025
T240687	37 Sette Circuit, Pakenham VIC 3810	Buildings and Works (Construction of a Warehouse)	Issued	18/12/2024	4/04/2025

T210338 - 1	We 1/9 Southeast Boulevard, Pakenham VIC 3810	Section 72 amendment to change land to which the permit applies (include part Common Property) and alter plans approved under the Permit	NOD	4/11/2024	7/04/2025
T240573	130 Greenhills Road, Pakenham VIC 3810	Development of the land for warehouses, works within the LSI0, reduction in car-parking and advertising signs (illuminated business identification signs) in accordance with the endorsed plans	Issued	1/11/2024	9/04/2025
T210851	140 O'Briens Road, Yannathan VIC 3981	Construct or carry out earthworks (associated with drainage, pasture management and a horse riding arena)	Refused	13/11/2021	10/04/2025
T230651	170 Dineen Road, Bayles VIC 3981	Use and development of land for a dependent person's unit	Refused	19/12/2023	10/04/2025
T240618	Tower Road, Koo Wee Rup VIC 3981	Buildings and works for a replacement telecommunications facility (35m monopole)	Issued	21/11/2024	10/04/2025
T250062	14 Sierra Circuit, Pakenham VIC 3810	Buildings and Works (Construction of a Mezzanine and an Office) and a Reduction in Car Parking Requirements	Issued	11/02/2025	11/04/2025
T240519	29 Advance Boulevard, Officer South VIC 3809	To construct a building and carry out works associated with warehouse use	Issued	4/10/2024	11/04/2025
T240521	37 Advance Boulevard, Officer South VIC 3809	To construct a building and carry out works associated with warehouse use	Issued	4/10/2024	14/04/2025

5.4 PLANNING MATTERS VCAT REPORT - MAY 2025

Responsible GM:	Debbie Tyson
Author:	Jason Gilbert
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	5.1 We practise responsible leadership 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

Recommendation

That Council note the 'Planning Matters VCAT Report – May 2025' report.

Executive Summary

The following list is presented to keep Council informed of applications that are currently the subject of appeals proceedings and recent decisions from the Victorian Civil and Administrative Tribunal (VCAT). This list is current as of 14 April 2025.

Matters Recently Lodged at VCAT

Hearing Date	App. No.	Address	Proposal	Council Decision	Appealed By
20/8/2025	T240181	35 Canty Lane, Pakenham	Subdivision of land and associated works, and removal of native vegetation	FTD	Applicant

*FTD denotes an application for review of Council's failure to issue a decision within the prescribed timeframe.

Matters Currently the Subject of VCAT Appeal

Hearing Date	App. No.	Address	Proposal	Council Decision	Appealed By
20/8/2025	T230589	215 Evans Road, Longwarry	Use of land for a Dwelling and Buildings and Works (Construction of a Dwelling, Shed and Associated Earthworks)	Refusal	Applicant
23-25/6/2025	T230472	1610 Princes Highway, Nar Nar Goon	Staged subdivision of land and removal of native vegetation	Refusal (Melbourne Water)	Applicant
30/6/2025 & 1-2/7/2025	T230269	1610 Princes Highway, Nar Nar Goon	To construct and carry out buildings and works associated with Stage 1 - Pakenham East Local Town Centre and to use the land for a restricted recreation facility (gym)	Refusal (Melbourne Water)	Applicant
24/07/2025	T230359	225 Bladens Road, Koo Wee Rup	Use of land for a Dwelling and Buildings and Works (Construction of a Dwelling and Outbuilding)	FTD	Applicant
22/07/2025	T240177	80 O'Briens Road, Yannathan	Use and Development of land for Dwelling, Outbuilding and Associated works	Refusal	Applicant
14-15/05/2025	T210341	209 Berglund Road, Beaconsfield Upper	Use and development of the land a dwelling, outbuilding and removal of native vegetation	Refusal	Applicant
8-10/04/2025	T230342	565 Murray Road, Vervale	Use of the land for Rural Industry (mud brick manufacturing)	Notice of Decision to Grant a Permit	Objector
29/04/2025	T230499	1 Outlook Road, Emerald	Buildings and Works (Construction of a Garage and Earthworks) and Vegetation Removal	Refusal (FTD)	Applicant
TBD	N/A	67 Officer South Road, Officer	N/A – Application for declaration in relation to the Officer Major Activity Centre Urban Design Framework	UDF adopted	Applicant

*FTD denotes an application for review of Council's failure to issue a decision within the prescribed timeframe.

Matters Recently Decided at VCAT

App. No.	Address	Proposal	Council Decision	Appealed By	Outcome	Decision Date
T120364-3	2 Montuna Grove, Guys Hill	Use of Land for an Art Gallery, Building and Works (Construction of a Studio and Art Gallery) and Display of Signage (Business Identification)	Notice of Decision to Grant a Permit	Objector	Withdrawn	24/03/2025

Attachments

Nil

5.5 PLANNING SCHEME AMENDMENTS ACTIVITY REPORT - MAY 2025

Responsible GM:	Debbie Tyson
Author:	Marcelle Bell
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	5.1 We practise responsible leadership 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

Recommendation

That Council note the 'Active Planning Scheme Amendments' report in Table 1.

Executive Summary

This report provides an update on the status of active Planning Scheme Amendments and planning scheme amendment requests received.

Status of Active Planning Scheme Amendments

In Table 1 details the status of active Planning Scheme Amendments being processed as of 14 April 2025.

Table 1 : Planning Scheme Amendment Activity

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
C278	Cardinia Shire Council	Municipal wide	Introduces a new Environmentally Sustainable Development (ESD) local policy (Clause 22.11) and makes associated changes to the Municipal Strategic Statement (MSS).	29/02/24	8/04/24	<ul style="list-style-type: none"> Council endorsed to seek authorization from the Minister for Planning to prepare proposed Amendment C278card on the 20/03/2023. Council received the Ministers authorization on the 23/10/2023 to prepare the proposed Amendment C278card. The proposed Amendment was placed on public exhibition from the 29/02/2024 until the 8/04/2024. Council received five submissions to the proposed Amendment C78card. On the 17 June 2024 Council considered the submissions made to C278card and endorsed referring the submissions to a Planning Panel appointed by the Minister for Planning. A Planning Panel Hearing was held on the 26/8/2024 and Council received the Panel report on the 6/09/2024. On the 16/12/2024 Council adopted the proposed Amendment C278card with changes based on the Panel Report and to submit the adopted Amendment to the Minister for Planning for approval. On the 23 December 2024, a Council submitted the Amendment to the Minister for Planning for approval.
C282	James Hicks Pottery Pty Ltd	Lot AA PS814723 Cotswold Crescent, Officer	The amendment under Section 96A of the Planning and Environment Act 1987 amends the Schedule to the Heritage Overlay (Clause	To be determined	To be determined	<ul style="list-style-type: none"> Council in February-March 2025 received new information associated with the proposed Amendment. Council in June 2025 will consider the proposed Amendment C282card to request the Minister for Planning to authorise Council to prepare Amendment C282card.

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			43.01) to allow Council to consider a prohibited use under the Heritage Overlay (H0104) for an office.			
C283	Cardinia Shire Council	Municipal wide	Section 20(4) Amendment to make corrections of anomalies and errors (Fix-Up Amendment).	To be determined	To be determined	Council on the 14 April 2025 will consider the proposed Amendment C283card to seek authorisation from the Minister for Planning to prepare and exercise her Ministerial powers of intervention pursuant to Section 20(4) of the Planning and Environment Act to approve Amendment C283card.
C284	Cardinia Shire Council	Crown Allotment 2001 next to Pakenham Cemetery	Section 20(2) Amendment to rezone former road reserve known as Crown Allotment 2001 from Urban Growth Zone Schedule 1 (UGZ1) to Public Use Zone Schedule 5 (PUZ5).	To be determined	To be determined	Council on the 14 April 2025 will consider the proposed Amendment C284card to request the Minister for Planning to authorise Council to prepare Amendment C284card.

Attachments

Nil

6 Meeting Closure