



**Colac Otway**  
SHIRE

**PLANNING COMMITTEE MEETING**

# **AGENDA**

**Wednesday 9 August 2023**

**at 4:00 PM**

**COPACC**

**95 - 97 Gellibrand Street, Colac**



# COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

Wednesday 9 August 2023

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# COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

NOTICE is hereby given that the next **PLANNING COMMITTEE MEETING OF THE COLAC OTWAY SHIRE COUNCIL** will be held at COPACC on Wednesday 9 August 2023 at 4:00 PM.

## AGENDA

### **1 DECLARATION OF OPENING OF MEETING**

#### **OPENING PRAYER**

*Almighty God, we seek your blessing and guidance in our deliberations on behalf of the people of the Colac Otway Shire. Enable this Council's decisions to be those that contribute to the true welfare and betterment of our community.*

AMEN

### **2 PRESENT**

### **3 APOLOGIES AND LEAVES OF ABSENCE**

### **4 WELCOME AND ACKNOWLEDGEMENT OF COUNTRY**

Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past, present and emerging and welcomes any descendants here today.

#### **RECORDING AND PUBLICATION OF MEETINGS**

Please note: All Planning Committee meetings are live streamed and recorded when the meeting is held either at COPACC or online. When meetings are held in other locations, Council will endeavour to make an audio recording of the meeting for community access. Matters identified as confidential items in the Agenda will not be live streamed or recorded regardless of venue or mode.

By participating in open Planning meetings, individuals consent to the use and disclosure of the information they share at the meeting (including any personal and/or sensitive information).

As soon as practicable following each open Planning Committee meeting, the live stream recording will be accessible on Council's website. Recordings are also taken to facilitate the preparation of the minutes of open Planning Committee meetings and to ensure their accuracy. Recordings will be retained by Council for a period of four years.

As stated in the Governance Rules, other than an official Council recording, no video or audio recording of proceedings of Planning Committee meetings will be permitted without specific approval by resolution of the relevant Planning Committee meeting.

This meeting will be livestreamed to the public via Council's YouTube channel (search Colac Otway Shire Council at [www.youtube.com](http://www.youtube.com) ).

## **5 DECLARATIONS OF INTEREST**

A Councillor who has declared a conflict of interest, must leave the meeting and remain outside the room while the matter is being considered, or any vote is taken.

## **6 CONFIRMATION OF MINUTES**

- **Planning Committee Meeting held on Wednesday 10 May 2023.**

### ***RECOMMENDATION***

***That the Planning Committee confirm the minutes of the Planning Committee Meeting held on Wednesday 10 May 2023.***



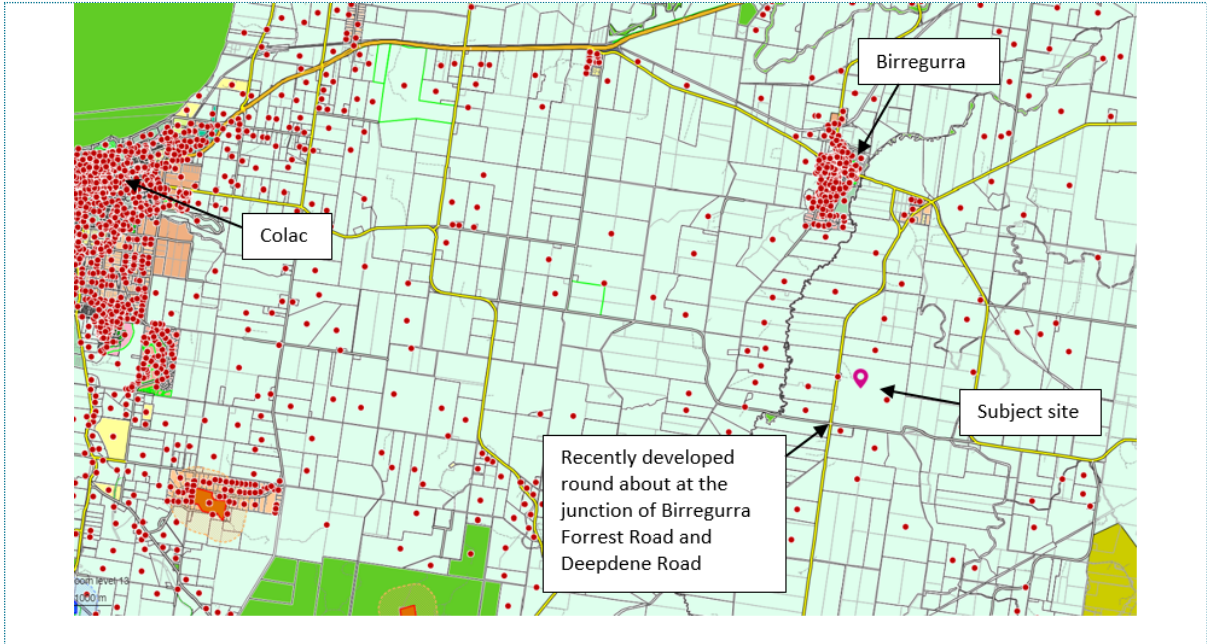
Item: 7.1

**PP329/2022-1 - 465 Birregurra Forrest Road, BIRREGURRA -  
Two Lot Subdivision**

<b>ADDRESS AND PROPERTY DETAILS</b>	465 Birregurra Forest Road BIRREGURRA	<b>APPLICATION NUMBER</b>	PP329/2022-1
<b>PROPOSAL</b>	Re-subdivision of the Land into Two (2) Lots and Alteration of the Access onto TRZ2		
<b>PERMIT TRIGGERS</b>	<p>Clause 35.07-3 (FZ) – a permit is required to subdivide land.</p> <p>Clause 44.01-5 (EMO1) – a permit is required to subdivide land.</p> <p>Clause 44.04-3 (LSIO1) – a permit is required to subdivide land.</p> <p>Clause 44.06-2 (BMO) – a permit is required to subdivide land.</p> <p>Clause 52.29 (Land Adjacent to the Principal Road Network): a planning permit is required to alter the access to land in the Transport Zone 2 (TRZ2).</p>		
<b>TRIGGER FOR DETERMINATION BY COMMITTEE</b>	More than three (3) objections – 4 received.		
<b>ZONE</b>	Farming Zone (FZ)	<b>OVERLAYS</b>	<p>Part Bushfire Management Overlay (BMO) – 4.31%</p> <p>Part Erosion Management Overlay – Schedule 1 (EMO1) – 53.42%</p> <p>Part Land Subject to Inundation Overlay – Schedule 1 (LSIO1) – 3.53%</p>
<b>COVENANTS</b>	None		
<b>CULTURAL HERITAGE</b>	Whilst a portion of land along the creek passing through the middle of the site is designated as Culturally Sensitive under the Aboriginal Heritage Act a two lot subdivision is exempt from the need for a Cultural Heritage Management Plan.		
<b>OFFICER</b>	Vikram Kumar	<b>CHIEF EXECUTIVE OFFICER</b>	Anne Howard
<b>DIVISION</b>	Executive		
<b>ATTACHMENTS</b>	1. Plan of subdivision and Applicant Response to Objections [7.1.1 - 9 pages]		

# 1. LOCATION PLAN / AERIAL PHOTO

## LOCATION PLAN



## AERIAL PHOTO



## 2. RECOMMENDATION

*That the Planning Committee resolves to issue a Notice of Decision to Grant a Permit for Re-subdivision of the Land into Two (2) Lots and Alteration of Access to a road in the Transport Zone 2, subject to the following conditions:*

### *Endorsed Plans*

- 1. The layout and site dimensions of the subdivision hereby permitted, as shown on the endorsed plan/s, must not be altered or modified without the written consent of the Responsible Authority. There are no requirements to alter or modify the endorsed plan if a plan is certified under the provisions of the Subdivision Act 1988 that is generally in accordance with the endorsed plan/s.*

### *Easements*

- 2. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.*

### *Compliance with Geotechnical Assessment*

- 3. The approved subdivision of the land must be carried out on the site in accordance with the recommendations of the Geotechnical Assessment prepared by Provincial Geotechnical Pty. Ltd. (Reference No. 20481J, dated 9 November 2022) or any Geotechnical Practitioner engaged to review the assessment submitted with the application.*

### *Wastewater*

- 4. Should any part of the wastewater system or effluent disposal field in Lots 1 or 2 be located outside the lot, or there be evidence of offsite discharge, any required alterations to the system must be undertaken prior to the issue of statement of compliance.*

### *Department of Transport & Planning condition*

- 5. Before a Statement of Compliance is issued, the existing shared accessway to Birregurra Forrest Road must be upgraded generally in accordance with the design of a Typical Driveway Access to Properties (see attached drawing GD4010), all to the satisfaction and at no cost to the Department of Transport. This may involve:
  - a) An all-weather seal to the property boundary.**
- 6. No further access to Birregurra Forrest Road is permitted (ie only the proposed E-3 Carriageway for lot 2). All this to the satisfaction of the Responsible Authority and the Head, Transport for Victoria.*

### *Powercor*

- 7. This letter shall be supplied to the applicant in its entirety.*
- 8. The plan of subdivision submitted for certification under the Subdivision Act 1988 shall be referred to the Distributor in accordance with Section 8 of that Act.*
- 9. The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards.*
- 10. The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).*

11. *The applicant shall establish easements on the subdivision, for all existing Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements.*

**Expiry**

12. *This permit will expire if one of the following circumstances applies:*

- a) *The plan of subdivision is not certified within two years of the date of the permit.*
- b) *A statement of compliance is not issued within five years of the date of certification of the Plan.*

*The Responsible Authority may extend the period for certification referred to if a request is made in writing before the permit expires, or within six months afterwards.*

**Notes:**

**Department of Transport & Planning**

1. *Any further access to Lot 2 must only be from Deepdene Road and will be subject to approvals being obtained from Council's Infrastructure department.*

**Powercor**

- 2. *Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make such supplies available, with the cost of such works generally borne by the applicant.*
- 3. *Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.*
- 4. *The following apply:*
  - a. *Existing easements may need to be amended to meet the Distributor's requirements.*
  - b. *Easements required by the Distributor shall be specified on the subdivision and show the Purpose, Origin and the In Favour of party as follows:*

<b>Easement reference</b>	<b>Purpose</b>	<b>Width (Metres)</b>	<b>Origin</b>	<b>Land Benefited/In Favour Of</b>
	<b>Power Line</b>		<b>Section 88 -Electricity Industry Act 2000</b>	<b>Powercor Australia Ltd</b>

### 3. PROPOSAL

The application seeks a planning permit for the re-subdivision of existing titles into two (2) new lots and the alteration of the existing access to land in the Transport Zone 2 (TRZ2).

The re-subdivision would result in two lots of 40.04ha (Lot 1) and 216.5ha (Lot 2). Its purpose is to separate the existing two dwellings onto separate lots with their associated farming activities, infrastructure, septic system, and shedding such as outbuildings/agricultural buildings. The subdivision design responds to the siting of these existing buildings, existing access, fence lines and existing agricultural activities.

In terms of access, both the lots would utilise the existing crossover, accessed from Birregurra-Forrest Road. A 6m wide carriageway easement (E-3) is proposed over this access-way in favour of proposed



Lot 2, and it would be shared between both lots. Both lots would continue to have frontage to Deepdene Road to the south.

Below is a photograph of the existing access:



A 12m wide power supply easement (E-2) is proposed to the west of the site (across the centre of proposed Lot 1). The existing buildings would be retained and no development is proposed as part of this application. No vegetation removal is proposed and there are no changes in the existing agricultural activities.

The proposed subdivision is shown as per the plan below:

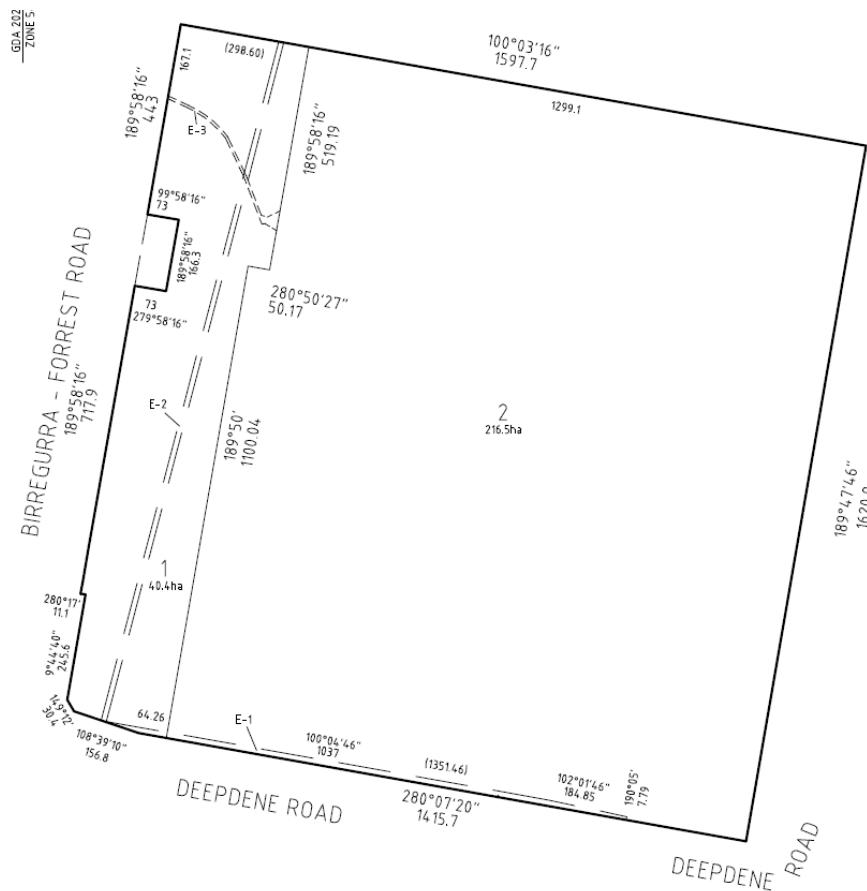


Fig.1 – Proposed plan of subdivision

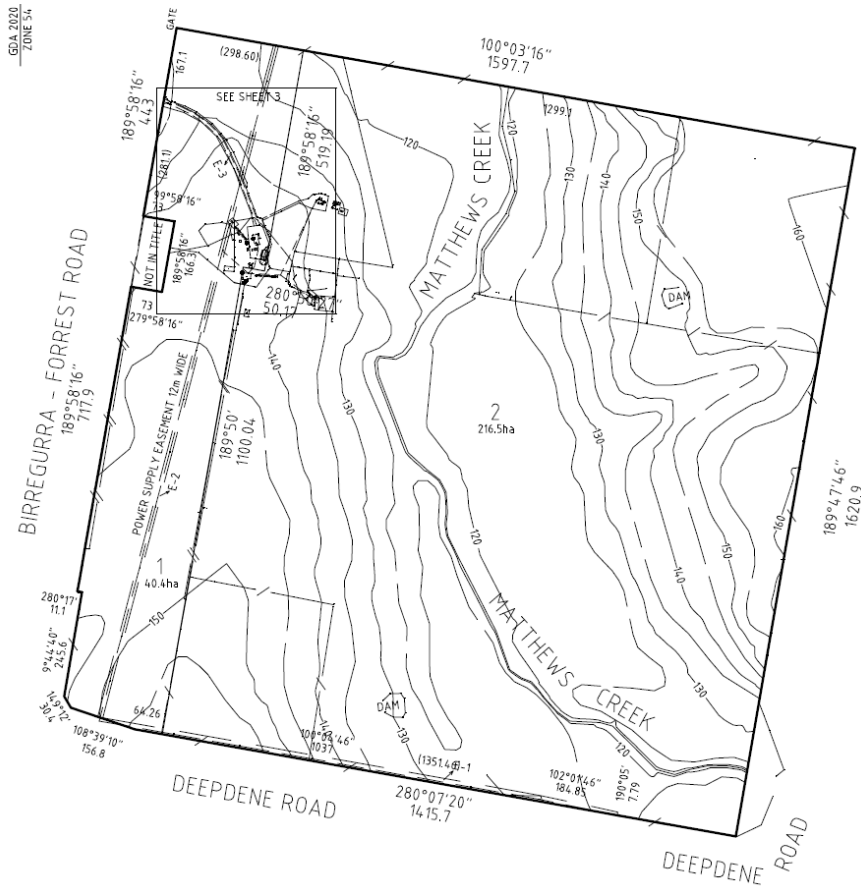


Fig.2 – Feature plan.

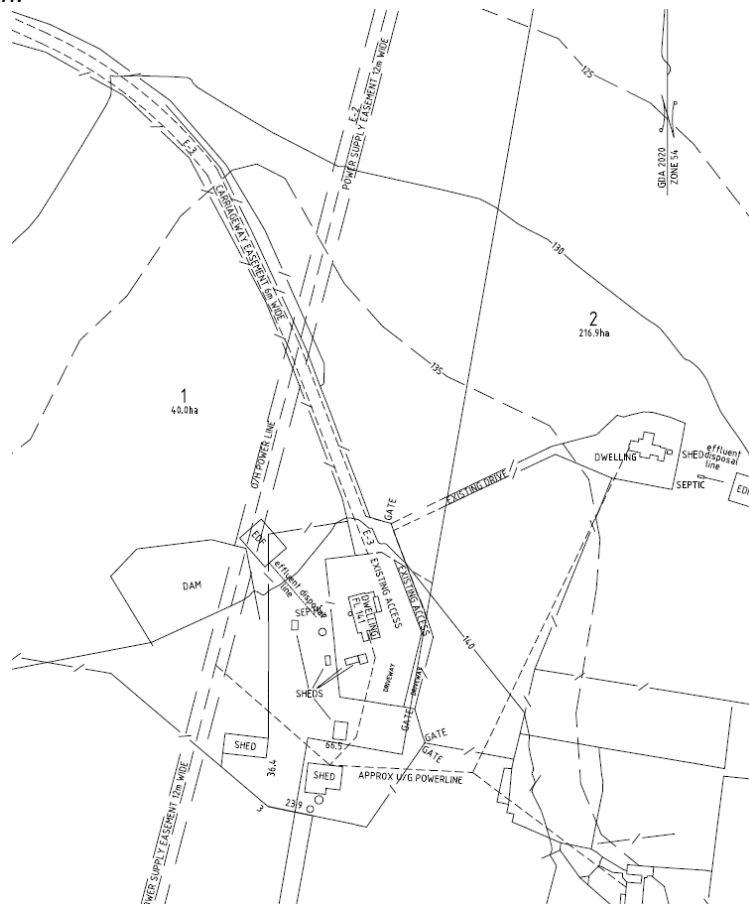


Fig.3 – Enlarged section of proposed plan of subdivision

## 4. SUBJECT LAND & SURROUNDINGS

The overall property comprises eight lots with a total area of 358.3 ha. Not all of this land is included in the proposal. The applicant is one of several co-owners of the land as listed on title, three of which have objected to the application (the partner of one of those owners has also objected). Land forming part of this application is identified as Lot 1 PS839570 (257.3ha) and Lot 1 TP250255 (0.8ha).

The 257.3ha lot contains the existing two dwellings and associated infrastructure and shedding, whereas the smaller 0.8ha lot is a small undeveloped lot located along the Birregurra Forrest Road towards the south.

Matthews Creek passes through the centre of the site from the north to south with several watercourses branching off within the site, and there is an existing fence along which the lot boundary is proposed in between Lot 1 and Lot 2.

Below is a photo showing the existing fence line along the proposed shared lot boundary.





There is existing vegetation along the frontage to Birregurra Forrest Road as shown in the photographs below:



The site is surrounded by farms, some of which are developed by dwellings. The surrounding lot sizes are varied in nature, ranging between 8,100sqm to 260 hectares.

## 5. PLANNING SCHEME PROVISIONS

### Planning Policy Framework

The Planning Policy Framework (PPF) seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development policies. Key policies considered relevant to the application are LPP 02.02 (Vision), VPP 11.03-6S (Regional and Local Places), VPP 13.02-1S (Bushfire Planning), VPP 13.03-1S (Floodplain Management), VPP 13.04-2S, and LPP 13.04-2L (Erosion and Landslip), VPP 14.01-1S and LPP 14.01-1L (Protection of Agricultural Land), and VPP 15.01-3S (Subdivision Design).



## Zone

The site is in the Farming Zone (FZ). The purposes of this zone are:

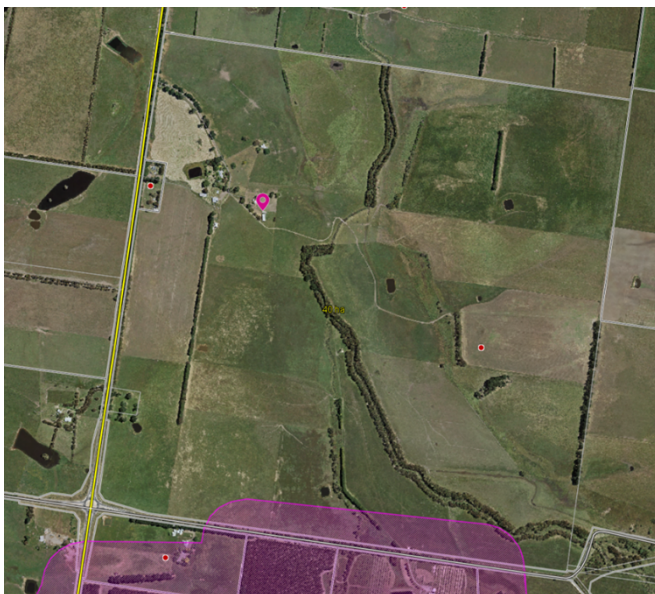
- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

A planning permit is required to subdivide land. A permit is also required to alter an access to land in the Transport 2 zone (Birregurra Forrest Road), and for subdivision of land adjoining this zone.

## Overlays

### Bushfire Management Overlay

The site is partially covered by the Bushfire Management Overlay (BMO) at the southern boundary along Deepdene Road as shown below:



The existing dwellings are located outside the BMO, being approximately 1.1km to the north within the site. The purpose of this overlay is to:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*

- *To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.*
- *To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

A planning permit is required to subdivide land under the BMO.

#### Land Subject to Inundation

The site is partially covered by a Land Subject to Inundation Overlay – Schedule 1 (LSIO1) along the creek line within the northern section of the site as shown below:



The existing dwellings are outside the LSIO, approximately 268m west of the overlay. The purpose of this overlay is to:

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

A planning permit is required to subdivide land under the LSIO1.

### Erosion Management Overlay – Schedule 1 (EMO1)

The site is partially covered by an Erosion Management Overlay – Schedule 1 (EMO1). The overlay covers about 53.42 percent of the site as shown below:



The existing dwellings are located outside the EMO1. The key purposes of EMO1 are:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To protect areas prone to erosion, landslip, other land degradation or coastal processes by minimising land disturbance and inappropriate development.*

A planning permit is required to subdivide land.

#### **Relevant Planning Scheme amendments**

Not applicable.

## **6. REFERRALS**

### **Internal Referrals**

The application was referred to Council's Infrastructure Department and Council's Health Protection Unit which raised no objection subject to conditions that have been included in the recommendation.

### **External Referrals**

Clause 66.01 (Subdivision Referrals) is not applicable as the subdivision creates lots for existing houses. No conditions need to be included on any permit issued under this clause.

The application was referred to the Country Fire Authority and Corangamite Catchment Management Authority (CCMA) which raised no objection. No conditions were requested.

The application was also referred to Department of Transport and Planning (DTP) which raised no objection subject to planning permit conditions that have been included in the recommendation.

Agriculture Victoria was notified of the application but did not respond. Powercor was referred the application given a new easement was proposed, and raised no objection subject to permit conditions that has been included in the recommendation.

## 7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for the application in the form of a site notice and letters to adjoining landowners/occupiers. Four (4) objections were received, three of which are co-owners of the land according to information on the title. The fourth objection is from a partner of one of the owners. The grounds of objection are outlined below, along with an officer response:

- a) Objection - The proposal does not meet the purpose and guidelines of the Farming Zone (Clause 35.07). The proposed subdivision will create fragmentation of farming land and be detrimental to the continued maintenance and efficient operation of farmland and sustainable agriculture.

Comment

*The subject site is located within an area which has a minimum lot size of 40ha as it is located south of Princes Highway. The proposal meets the minimum lot size area by creating proposed Lot 1 (40.4ha), and proposed Lot 2 (216.5ha). It is considered the proposal meets the requirements and decision guidelines of the Farming Zone (FZ) - there is further discussion in the Officer Assessment later in this report.*

- b) Objection - The design of the proposed Lot 1 will prejudice surrounding agricultural operations in proposed Lot 2, diminish agricultural productivity of Lot 2 by removing high quality farmland running along the Birregurra-Forrest Road and key shelter belts which are critical for stock.

Comment

*It is noted that the lot boundary between the proposed Lot 1 and Lot 2 has an existing fence and there is no change proposed in the agricultural activities and the way the farm is operated. Even if the lots were sold separately, this should not adversely impact on adjoining farming operations.*

- c) Objection - The proposal will cause a significant farm to be fragmented. The proposal notes 'the purpose of the subdivision is to rationalise the families' ownership'. The applicant is seeking a subdivision so the remainder of the farm can be sold and Lot 1 can be retained by the applicant.

Comment

*The proposal would create lot sizes of 40.4ha (Lot 1) and 216.5ha (Lot 2). The proposed Lot 1 would be narrow but would still have a minimum width of 230m which is considered to be able to be used for agricultural purposes. Both of the proposed lots could be sold separately once established however the smaller lot would still be of substantial size and likely to continue to be used for agriculture. No additional houses would be established.*

- d) Objection - Farm subdivision and fragmentation can lead to a shift in land use from primary production to rural residential uses. This increases the risk of land use conflict and the alienation of agricultural resources. There is no guarantee that proposed Lot 1 will continue the existing agricultural and farming operations currently occurring at the property as claimed in the application. These operations currently occur under a lease arrangement. The Lot 1 and Lot 2 dwellings do not form part of the current farming lease.

Comment

*It is considered that the proposed Lot 1 (40.4ha) has the ability to be used for agricultural purposes, and applicant has indicated that there is an existing agricultural activity within the proposed Lot 1 which is separated by a fence from the proposed Lot 2 agricultural activities.*

- e) Objection - The Colac Otway Shire Rural Land Strategy final report 2007 describes farms needing to increase in size and not decrease in size in order to remain economically viable (4.3.1). The proposed Lot 1 is considered too small to effectively carry out the current agricultural activity of the property including sheep and cattle farming, crop and hay production. The proposed Lot 1 will not provide a viable farming enterprise. It does not have access to farming infrastructure including a shearing shed and yards, separate cattle yards and machinery shed.

Comment

*The subject site is not within Farmland of Strategic Significance, and neither is it within the area which is high agricultural capability within the Rural Land Strategy 2007. The minimum lot size for this site is 40ha and the proposal meets this requirement.*

*The applicant advised that:*

*"This layout uses three existing paddocks, which are lined by tree shelter belts on both long sides. These have been farmed in this manner for more than 60 years to support calving and lambing specifically. Pregnant stock need to be in place a few weeks prior to commencement of birthing. Birthing cycles can be more than a month across a herd. Following births, the young cannot be moved for another 6 weeks, due to youth and need to bond with mothers. So pregnant stock are kept in place for 3 to 4 months. Even then only moved short distances for fresh pasture.*

*The shelter belts raise the temperature 3 to 4 degrees, similarly cool it on hot days. So frost, rain events and excessive sunshine have reduced effect on stock welfare. In the spring growth months these paddocks also allow fodder baling.*

*Calving season begins March to May, lambing late May to August in this region. Animals are sent to the Christmas meat market, from early December, with the last, smaller animals mid to late January.*

*The fourth paddock on the east side of the carriageway has a similar environment from the long term pine-tree boundary plantings.*

*Lot 2 will retain 4 paddocks of a similar nature not to be a disadvantage to its productivity. The terrain adjacent to Matthews Creek is lower land and whilst tree belts have also been developed, wet winters can make it harder on the stock.*

*The existing fences, tree plantings and gates support this usage, with only a few additions. To subdivide east-west would create a number of challenges for both proposed properties."*

- f) Objection - The proposed Lot 1 does not have enough land around the dwelling to buffer adjoining agricultural operations in Lot 2. There is a high likelihood of conflict for future owners. The dwelling in Lot 1 will be adversely affected by agricultural activities on adjacent land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation. The proximity of the Lot 1 dwelling to Lot 2 stock paddocks has potential for domestic pets tormenting stock and conflict.



Farming activities occur at all times of day and night with many different contractors and employees accessing the farm via the current driveway (and proposed shared easement) which directly passes Lot 1 dwelling. This can adversely affect residents of the Lot 1 dwelling and cause potential conflict with employees and contractors to the farm.

Comment

*Both dwellings currently exist and the current owners share the existing access for these dwellings and associated infrastructure and agricultural activities from Birregurra Forrest Road. The proposal would create an access way in favour of proposed Lot 2, and it would be shared between both the lots. Council's Infrastructure Unit, and Department of Transport & Planning raised no issue with this proposal. Both the Lots meets the minimum lot size under the Farming Zone (FZ) and it is considered the subdivision would not change the practical relationship of the current dwellings to farming operations conducted on the land.*

- g) Objection - The proposed Lot 1 includes a large water dam and existing hay shed that would no longer be available for farm operations in Lot 2. Water from the dam is the only water source from the west side of Matthews Creek and reticulated to stock troughs in all paddocks via a pressure pump on the west side of the creek. Matthews Creek does not flow all year round and cannot be relied on for stock water. The water from the dam is used also in the small dwelling on Lot 2.

Comment

*The applicant did not provide a response to the objections, however the lots are of a size that both would be capable of supporting continued rural use. Any future construction of a dam on proposed Lot 2 would need a planning permit or a licence from Southern Rural Water. This issue does not preclude the subdivision proceeding.*

- h) Objection - The primary entrance to the property is the Birregurra Forrest Road. The proposed Lot 1 includes the current driveway from this road and would only provide access to Lot 2 as a shared driveway via an easement. If the application was approved the house on Lot 2 can only be accessed via the shared driveway. This presents as a significant cause of conflict for future owners. The shared driveway arrangement via an easement will create conflict and with considerable disruption to the farm operations undertaken in Lot 2. Who would be responsible for maintenance of a driveway in the easement? It must be noted that heavy machinery and large trucks currently require access to the working farm.

In the event that the proposed easement would not receive approval, the alternative entrance via Birregurra-Forrest Road as shown in the application would be highly unlikely to be approved by VicRoads due to the dangerous location. The proposed entrance is also 15 metres wide which would be insufficient for heavy machinery and large trucks.

Comment

*Following DTP advice, the plan has been amended and there is no longer scope for creating any future access from Birregurra Forrest Road for proposed Lot 2. The two houses would share access via the proposed easement. This would continue the current arrangement.*

*Any works to construct or maintain the driveway access to both houses would be the responsibility of the owners. The subdivision, if it was to proceed, would be done on the basis of an understanding of maintenance requirements, and future owners would likewise purchase on the basis of these obligations.*

- i) Objection - In order to maintain current agricultural activity in Lot 2 including trucks for stock movement and machinery traffic, the shared driveway would need to be accessible 24 hours a day, seven days a week.

Comment

*The situation currently exists where the two dwelling occupants share this access for both the dwellings and agricultural use. There is no proposed change to this as part of the subdivision proposal. It is noted that access is currently available to the land from Deepdene Road for agricultural purposes.*

- j) Objection - The current planning provisions seek to minimise the number of houses removed from farmland. If Council approves this application and proposed Lot 2 is sold, it is likely that future owners of Lot 2 would want a new dwelling to be constructed for farm management. The existing dwelling on Lot 2 is not sufficient for management of a farm of this size.

Comment

*The proposed Lot 2 would have an existing single dwelling, and any future dwelling would need a planning permit. Any future application would be assessed on its planning merit.*

- k) Objection – The objector disputes that “the subject land is an unusually large allotment in this neighbourhood. The wider neighbourhood is also zoned Farming FZ and predominantly consists of parcels of about 40ha. In this regard the proposal is consistent with the neighbourhood character and accepted sizes”. The majority of neighbourhood farming enterprises are significantly larger than the proposed Lot 1. The Shire has acknowledged incremental land division causes fragmentation of farming land and compromises farm viability. The current planning provisions seek to minimise fragmentation which can be detrimental to sustainable agriculture.

Comment

*There is no doubt that the site is within an area characterised by farming operations, including many lots of around 40ha. The map below highlights lots in vicinity of the site which are of similar size:*



- l) Objection - Inadequate notice was given of the planning application. It is claimed that no letter was received via registered post notifying them of the application. Further, the sign erected on the land subject to the application is not visible to the general public as the Birregurra-Forrest Road is currently closed due to roadworks.

Comment

*It is considered that adequate public notice was given in this instance. A notice was placed on site and letters were sent to the owners and occupiers of adjoining lots. Whilst a section of Birregurra Forrest Road had been closed for road works, local traffic was still able to access the road.*

- m) Objection – More detail was requested of the measurements in metres of the proposed Lot 1 and it was claimed that the application does not contain sufficient detail.

Comment

*Whilst the applicant did not provide plans with more detailed measurements, it is considered that the plan submitted is acceptable and shows the levels of detail normally contained on subdivision plans.*

## 8. OFFICER'S ASSESSMENT

### Farming Zone (FZ)

The zone purposes seek to preserve agricultural activities and the scheme states that subdivision should promote effective land management practices and infrastructure provision. With each lot containing an existing house and meeting the 40ha minimum lot size of the zone, it is considered that the proposed subdivision would not negatively impact on the agricultural use of the land and therefore would meet the criteria and objectives of the Farming Zone. The following is an officer comment against each of the decision guidelines in the zone:

Whether the use or development will support and enhance agricultural production.

The applicant has advised that there would be no changes to the agricultural production of the land. It is noted that the fence already exists along the proposed lot boundaries, and this application would formalise the proposed subdivision. Whilst the two lots would be in separate land ownership, each would be of a size that could maintain a viable agricultural operation. Each lot would also contain an existing dwelling.

Whether the use or development will permanently remove land from agricultural production.

The application does not propose any use or development, it is only for the proposed re-subdivision of the land to create the lot sizes of 40.4ha (Lot 1), and 216.5ha (Lot 2), along the existing fence. The proposal would increase the size of the current 0.8ha lot to 40ha, providing greater certainty it will remain in agricultural use.

The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.

There is no proposed development associated with the application. The re-subdivision would have no effect on the operation and expansion of adjoining and nearby agricultural uses, as the dwellings



already exist. There could be potential for increased conflict of use between different landowners within the site were the new lots to be separately sold after subdivision, however this is not considered a sufficient concern that should prevent the issue of a permit.

*The capacity of the site to sustain the agricultural use.*

The use of both allotments is likely to continue for agricultural purposes. Both lots would be of a size for viable agricultural use.

*The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.*

Not applicable.

*Whether the dwelling will result in the loss or fragmentation of productive agricultural land.*

No dwelling is proposed. It is also noted that the subject site is not identified within the Farmland of Strategic Significance and is not within an area of High Agricultural Capability. The proposed subdivision would meet the minimum lot size, and it is not considered that it would result in the loss or fragmentation of productive agricultural land.

*Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.*

Not applicable, as the built form already exists.

*Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.*

All built form is established, as are the agricultural activities. Any future purchasers would have a clear context of the farming activity within which the dwelling exists.

*Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.*

As previously noted, all built form and agricultural activities are already existing.

*The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.*

The application creates two (2) lots and each of them would contain an existing dwelling.

**Erosion Management Overlay – Schedule 1 (EMO1)**

A geotechnical assessment relating to the proposed subdivision, prepared by Provincial Geotechnical Pty. Ltd. (Report No. 20481J, dated 9 November 2022) concludes that the site can achieve an Acceptable risk level. The applicant also included a 'Form A' as required by the Schedule. It is considered that the proposal is acceptable in terms of the EMO requirements. A condition has been included in the recommendation.

### **Land Subject to Inundation – Schedule 1 (LSIO1)**

As stated earlier in this report, both the existing dwellings are located outside this overlay. The application was referred to the CCMA which raised no objection.

### **Bushfire Management Overlay**


As stated earlier in this report, both the existing dwellings are located outside this overlay. The application was supported by a Bushfire Management Statement which was referred to the Country Fire Authority (CFA), which raised no objection. The subdivision is considered to meet the requirements of the BMO.

### **Clause 52.29 (Land Adjacent to the Principal Road Network):**

As noted above, the application was referred to the Department of Transport and Planning (DTP), which raised no objection subject to conditions that have been included in the recommendation. There would be no increase in the number of access points to Birregurra Forrest Road.

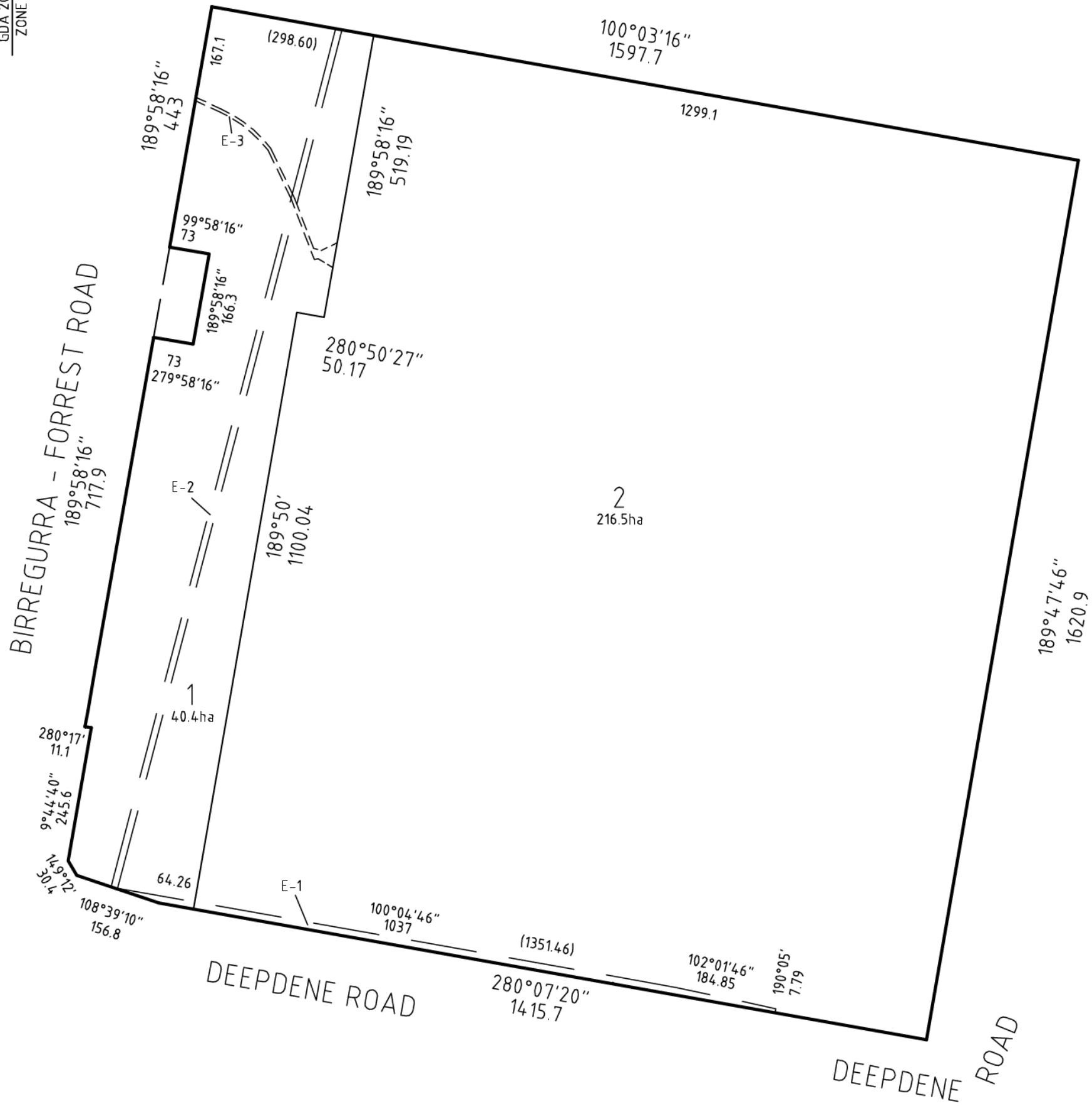
## **9. OFFICER DIRECT OR INDIRECT INTEREST**

No officer declared an interest under the *Local Government Act 2020* in the preparation of this report.

<b>PLAN OF SUBDIVISION</b>		<b>EDITION 1</b>		<b>PS 915328N</b>	
<b>LOCATION OF LAND</b> PARISH: WHOOREL TOWNSHIP: – SECTION: – CROWN ALLOTMENT: 5 (PART), 6, 7, 8 CROWN PORTION: – TITLE REFERENCE: 09813/178  LAST PLAN REFERENCE: 2/LP211723W, 1/TP250255F POSTAL ADDRESS: 465 BIRREGURRA – FORREST ROAD (at time of subdivision) BIRREGURRA 3242  MGA2020 CO-ORDINATES: E: 743360                      ZONE: 54 (of approx centre of land                      N: 5748599                      GDA 2020 in plan)		COLAC OTWAY SHIRE			
<b>VESTING OF ROADS AND/OR RESERVES</b>			<b>NOTATIONS</b>		
<b>IDENTIFIER</b>		<b>COUNCIL/BODY/PERSON</b>			
NIL		NIL			
<b>NOTATIONS</b>					
DEPTH LIMITATION    NIL					
<b>SURVEY:</b> This plan is based on survey.  <b>STAGING:</b> This is not a staged subdivision. Planning Permit No. –  This survey has been connected to permanent marks No(s). 6, 26  In Proclaimed Survey Area No. –					
<b>EASEMENT INFORMATION</b>					
LEGEND:    A - Appurtenant Easement    E - Encumbering Easement    R - Encumbering Easement (Road)					
<b>Easement Reference</b>	<b>Purpose</b>	<b>Width (Metres)</b>	<b>Origin</b>	<b>Land Benefited/In Favour Of</b>	
E-1 E-2 E-3	POWERLINE POWERLINE CARRIAGEWAY	SE PLAN 6m 6m	C/E J185425 THIS PLAN THIS PLAN	STATE ELECTRICITY COMMISSION OF VICTORIA POWERCOR AUSTRALIA LTD LOT 2 ON THIS PLAN	
<b>Rodney Martin &amp; Associates Pty.Ltd.</b>		SURVEYORS FILE REF: 22082		ORIGINAL SHEET SIZE: A3	SHEET 1 OF 2
 GEELONG WEST                      A.C.N. 053 461 073 236 Latrobe Terrace, Geelong West 3218. Ph.(03)52 293788, RMSURVEYING.COM		[REDACTED]			

PS 915328N

GDA 2020  
ZONE 54



Rodney Martin & Associates Pty.Ltd.

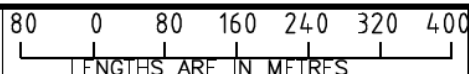
GEELONG WEST



A.C.N. 053 461 073

236 Latrobe Terrace, Geelong West 3218. Ph.(03)5229 3788

SCALE  
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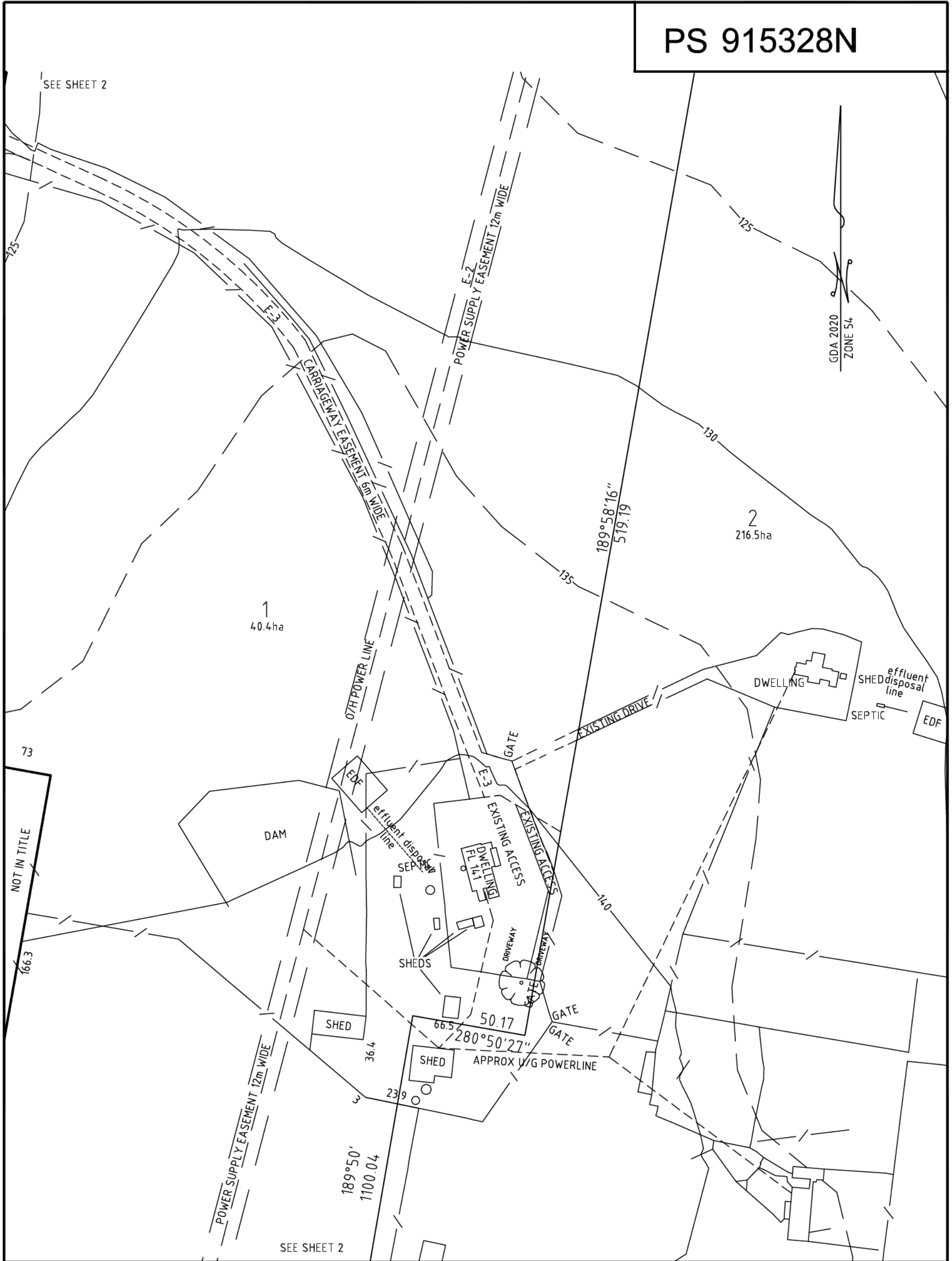
ORIGINAL SHEET  
SIZE: A3

Sheet 2

VER 4

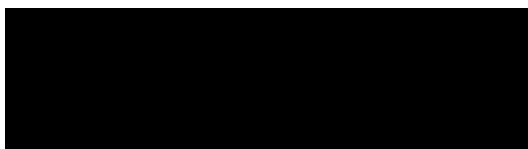
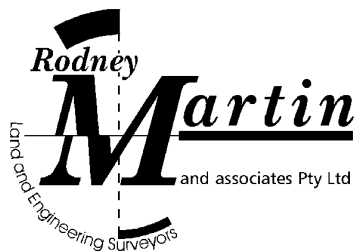


# PS 915328N



<p><b>Rodney Martin &amp; Associates Pty.Ltd.</b></p> <p>GEELONG WEST  A.C.N. 053 461 073</p> <p>236 Latrobe Terrace, Geelong West 3218. Ph.(03)5229 3788</p>	<p>SCALE 0 15 30 45 60 75</p> <p>1:1500</p> <p>LENGTHS ARE IN METRES</p> <p style="text-align: center;">VER 4</p>	<p>ORIGINAL SHEET</p> <p>SIZE: A3</p>	<p>Sheet 3</p> <p>NOTES: DATE OF SURVEY 10/10/2022-11/10/2022 CONTOUR INTERVAL IS 5m HEIGHTS ARE TO AHD</p>
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**SITE RESPONSE: 465 BIRREGURRA-FORREST ROAD BIRREGURRA ZONE AND OVERLAYS: FARMING ZONE FZ, BMO, EMO, LSIO**

Site and context description:

Site and context description is as per the site plan submitted. The subdivision proposed is a 2 lot subdivision each lot having an existing dwelling with electricity to each. Both dwellings have existing onsite effluent treatment and disposal and onsite water storage. The proposed lot 1 is **40ha** and lot 2 is **216.9ha**, thus meeting the minimum lot sizes in the schedule to the zone. The subject land is an unusually large allotment in this neighbourhood. The wider neighbourhood is also Zoned Farming FZ and predominantly consists of parcels of about 40ha. In this regard the proposal is consistent with the neighbourhood character and accepted lot sizes.

**FZ PURPOSE**

**Municipal Planning Strategy and the Planning Policy Framework:**

**To provide for the use of land for agriculture.**

No change is proposed to the existing farming use. The farming is sheep and cattle farming.

**To encourage the retention of productive agricultural land.**

The purpose of the subdivision is to rationalise the families ownership not change the existing use.

**To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.**

No new dwellings are proposed and no non agricultural uses are proposed.

**To encourage the retention of employment and population to support rural communities.**

It is considered that the development will not impact employment or population.

**To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.**

The current use is sustainable and has been seen to be well managed for many years

**To provide for the use and development of land for the specific purposes identified in a schedule to this zone**

The existing farming use will continue.

**Agricultural issues:**

**Whether the use or development will support and enhance agricultural production.**

No Change Proposed to existing agricultural and farming uses.

***Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.***

No Change Proposed to existing agricultural and farming uses.

***The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.***

- ***The capacity of the site to sustain the agricultural use.***
- 
- ***The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.***
- Lot 2 utilises dams and stock troughs, plus a permanent river source Matthews Creek. The proposed subdivision does not disadvantage either Lot 1 or 2, in the agricultural viability and productivity, in part to the reliable rainfall even in drought stress seasons.
- Existing house on Lot 2 fresh water is sourced from the primary farm sheds and water tanks which reside within Lot 2, feeding by gravity to the residence. Additional collection could be reinstated from the residence guttering.
- ***Any integrated land management plan prepared for the site.***  
Current Land management will be ongoing as detailed below in this response
- ***Whether Rural worker accommodation is necessary having regard to:***  
Not proposed or required

***BMO***

The site is affected by a bushfire management overlay due to the tree growing on farmland on the South side of Deepdeene Road in close proximity to the site. A bushfire management report has been prepared by SCBC and submitted with the application demonstrating that appropriate measures can be put in place, particularly as no new buildings are proposed and the existing dwellings are not within the BMO to improve the bushfire resilience of the site. The existing dwellings will be required to manage an area of 22m around them to achieve a BAL of 12.5

***EMO***

The site is affected by an erosion management overlay. An erosion assessment and management plan has been prepared by Provincial Geotechnical and submitted with this application. The report identifies the soil types, slope, geomorphology and landslip risk. Lot 1 is not subject to any erosion or management issues.



The affected area relates to the Matthew Creek environs and minor feeders. Matthews creek which is fully situated in Lot 2 was scoured in the 1950s flood event to a deep waterway from the vicinity of the Deepdene road crossing. This is a permanent water source which has been fenced and planted with a significant native tree belt to prevent stock access except over a flood relief section and bridged crossing (refer plan). The area not fenced is sufficiently steep that there is no evidence of direct stock usage and water troughs installed elsewhere in the paddock. An indirect benefit is the reduction in gorse bush's - which remain an issue on both neighbouring properties and Council land.

The minor feeders that are shown on the overlay provide slope drainage and hold no or little water in even wet seasons. Light tree planting and very low grazing practised on the more defined of these on the Deepdene boundary.

***Aboriginal Heritage:***

These above mentioned steps were taken about 15 years ago, in cooperation with the local Landcare group and we believe meet the sensitivities and practises of the original land owners. There is no change in practise envisaged for this area.

An unexpected outcome is as a fauna corridor across Deepdene road, for the kangaroo population resident in neighbouring blue gum plantation.

***Environmental issues:***

Both Lot 1 & 2 have fenced, mature shelter belt trees. This is a mixture of pine and eucalyptus which have also assisted in securing some of the ridge lines and minor gully drain points.

More recent plantings of cypress, eucalyptus and blackwoods have been developed along paddock boundaries to provide stock shelter and shade, and have matured to an average 4 metre height. These provide benefits to both Lots.

Lot 2 has a number of natural springs, related to substrata drainage. In the past decade salinity increases from these have led to sowing salt tolerant grass belts, initially fenced and now open to grazing. Notable improvement to reduce boggy, marsh affected soil has been achieved.

- ***The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.***
- No Change Proposed to existing agricultural and farming uses.
- ***The impact of the use or development on the flora and fauna on the site and its surrounds.***
- The mature trees on Lot 1 have proved a varied bird habitat in numbers and variety in particular overnight roosting and nesting sites as appropriate of - ibis, cranes, cockatoos, galas, kookaburras, whistling kytes, ducks, magpies and crows. Intention is to continue this favoured site relationship.

- ***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.***
- Revegetation and land management practices are in place, refer to the Environment management report submitted
- ***The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.***
- Both dwelling contain and treat effluent disposal within their lots and are remote from any waterways.

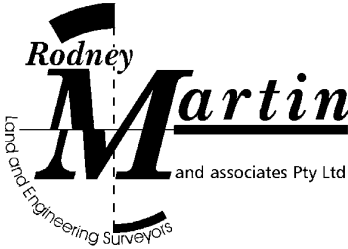
#### ***Design and siting issues***

- ***The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.***
- No buildings are proposed and existing dwellings and associated outbuildings are grouped
- ***The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.***
- Existing dwellings and no change proposed.
- ***The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.***
- Existing dwellings and no change proposed.
- ***The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.***
- All infrastructure will remain as is and no changes are proposed.
- ***Whether the use and development will require traffic management measures.***

No new access ways are proposed, the existing access from the Birregurra-Forrest Road, which is a declared main road, will remain as a shared access. The development will have no impact on existing traffic and no traffic management measures are required.

#### **SUMMARY**

The proposed subdivision conforms with the requirements of the scheme and responds to the objectives therein.



Subdivisions Manager  
Colac Otway Shire  
2-6 Rae Street,  
COLAC, VIC, 3250

Friday, 10 March 2023

Dear [REDACTED],

**RE 2 lot subdivision at 465 Birregurra-Forrest Road Birregurra 3242 spear ref S202884A**

Further to your request for further information, we respond as follows.

Reasoning behind the layout of Lot 1.

This layout uses three existing paddocks, which are lined by tree shelter belts on both long sides. These have been farmed in this manner for more than 60 years to support calving and lambing specifically. Pregnant stock need to be in place a few weeks prior to commencement of birthing. Birthing cycles can be more than a month across a herd. Following births, the young cannot be moved for another 6 weeks, due to youth and need to bond with mothers. So pregnant stock are kept in place for 3 to 4 months. Even then only moved short distances for fresh pasture.

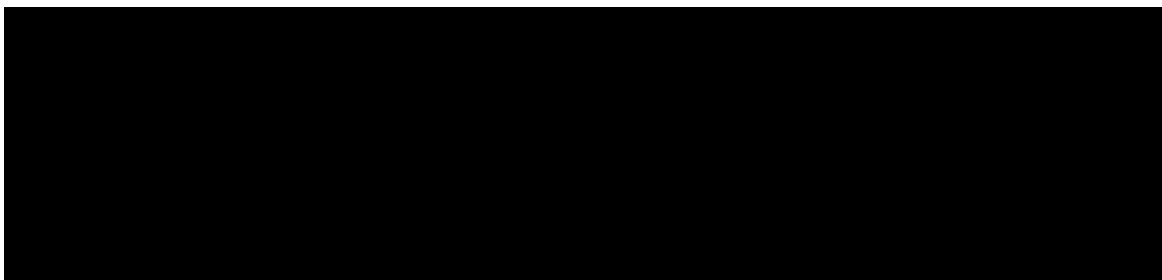
The shelter belts raise the temperature 3 to 4 degrees, similarly cool it on hot days. So frost, rain events and excessive sunshine have reduced effect on stock welfare. In the spring growth months these paddocks also allow fodder baling.

Calving season begins March to may, lambing late may to august in this region. Animals are sent to the Christmas meat market, from early December, with the last, smaller animals mid to late January

The fourth paddock on east side of carriageway has a similar environment from the long term pine-tree boundary plantings.

Lot 2 will retain 4 paddocks of a similar nature not to be a disadvantage to its productivity. The terrain adjacent to Matthews Creek is lower land and whilst tree belts have also been developed, wet winters can make it harder on the stock.

The existing fences, tree plantings and gates support this usage, with only a few additions. To subdivide east - west would create a number of challenges for both proposed properties.



Item: 7.2

**PP101/2020-1 - 979 Corangamite Lake Road, CORAGULAC - Proposed Dwelling and Shed**

<b>ADDRESS AND PROPERTY DETAILS</b>	979 Corangamite Lake Road, Coragulac	<b>APPLICATION NUMBER</b>	PP101/2020-1
<b>PROPOSAL</b>	Use and Development of Land for a Dwelling		
<b>PERMIT TRIGGERS</b>	<p>Clause 35.07-1 - Farming Zone – Use of the land for a dwelling, for a store and associated works</p> <p>Clause 35.07-4 - Farming Zone – Building and works associated with a Section 2 (permit required) use; within specified setbacks; and within 500m of the nearest title boundary of land on which a work authority has been granted under the <i>Mineral Resources (Sustainable Development) Act 1990</i>.</p> <p>Clause 42.01-2 – ESO2 – Buildings and works</p> <p>Clause 42.03-2 – SLO1 – Buildings and works</p>		
<b>TRIGGER FOR DETERMINATION BY COMMITTEE</b>	Deferred at Planning Committee on 7 December 2022 and 10 May 2023 (until August 2023 meeting at the latest), to allow the applicant to engage consultants to assess landfill gas and contamination risk		
<b>ZONE</b>	Farming Zone	<b>OVERLAYS</b>	Environmental Significance Overlay, Schedule 2 (ESO2) Significant Landscape Overlay, Schedule 1 (SLO1) Part Land Subject to Inundation Overlay, Schedule 1 (LSIO) - 4.42%
<b>COVENANTS</b>	<p>None.</p> <p>Note: a right of carriageway exists over 977 Corangamite Lake Road to access the subject site.</p>		
<b>CULTURAL HERITAGE</b>	The subject site is in an area of cultural heritage sensitivity; however, construction of a single dwelling is not a high impact activity under the Aboriginal Heritage Regulations 2018. With regards to use of land for a store (for purposes associated with the applicant’s business, rather than ancillary to the dwelling), the land has already been subject to significant ground disturbance. As such, it is considered that the proposal would fall within the exemption under Regulation		

58(4) which states, inter alia, that if the whole of the activity area for an activity requiring statutory authorisation has been subject to significant ground disturbance, that activity is not a high impact activity.

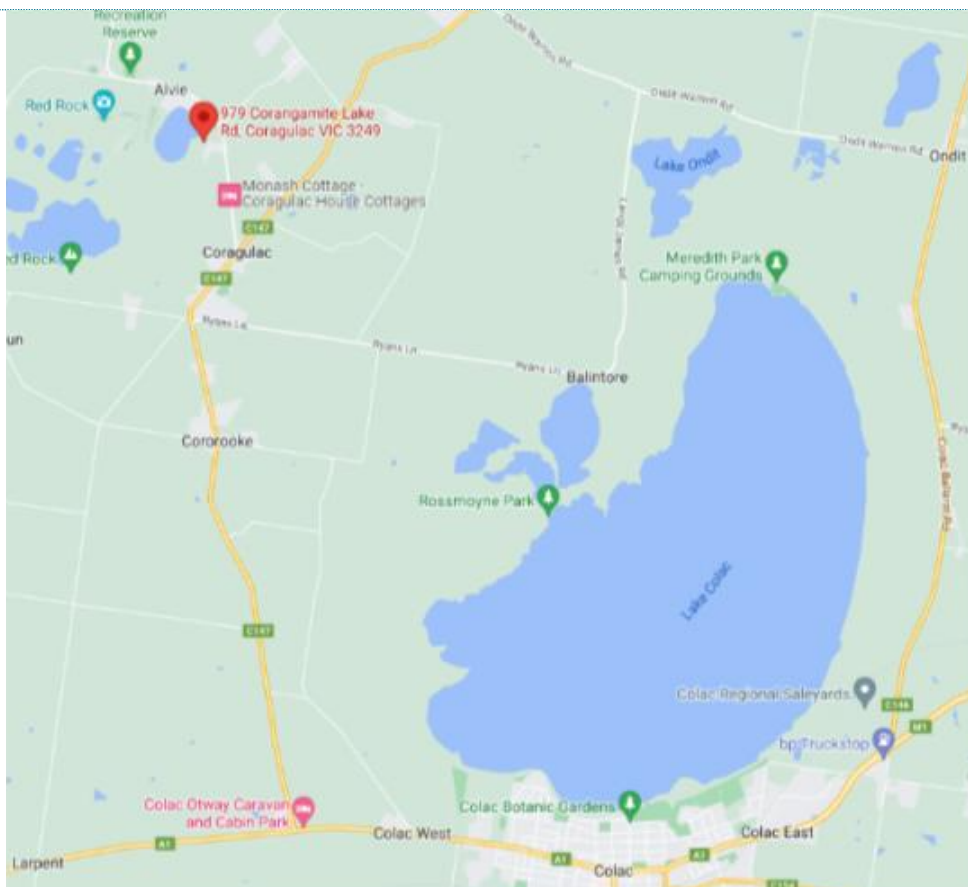
**OFFICER** Ravi Ayyagari **CHIEF EXECUTIVE OFFICER** Anne Howard

**DIVISION** Executive

- ATTACHMENTS**
1. Application Plans [7.2.1 - 6 pages]
  2. Application Documents [7.2.2 - 14 pages]
  3. Draft Conditions - Not Officer Recommendation [7.2.3 - 4 pages]
  4. Officer Report - December 2022 Planning Committee Meeting [7.2.4 - 37 pages]

## 1. LOCATION PLAN / AERIAL PHOTO

### LOCATION PLAN



*Fig. 1 – Location of the site in wider context*



**AERIAL PHOTO**



*Fig. 2 – Aerial image of the site and surroundings*



*Fig. 3 – Subject site and surrounding uses*

## 2. RECOMMENDATION

*That Council resolves to refuse to grant a permit for the use and development of the land at 979 Corangamite Lake Road, Coragulac (Lots 1, 2 and 3 TP663499W - V/F: 8213/973) for a dwelling, a store and associated works including the retention of a retaining wall, on the following grounds:*

- 1. Evidence has not been submitted after multiple opportunities provided to the applicant to demonstrate that the land can be safely developed with a dwelling, having regard to the proximity of the building that is proposed to be converted and extended to a closed landfill site and an operating green waste and materials recovery facility, and the lack of information about potential contamination of the land. As such, the proposal is contrary to clauses 13.04-1S (Contaminated and Potentially Contaminated Land), 13.07-1S and 13.07-1L (Land Use Compatibility) and 65.01 (Approval of an Application or Plan) of the Colac Otway Planning Scheme.*
- 2. The proposed use and development of a dwelling is contrary to clauses 02.03-4 (Natural Resource Management), 02.04 (Strategic Framework Plans), 14.01-1S and 14.01-1L (Protection of Agricultural Land) and 16.01-3S (Rural Residential Development) of the planning scheme, which seek to limit new housing development in rural areas by directing housing growth into existing settlements, and to limit rural residential development unless an application adequately demonstrates that a dwelling is genuinely required to carry out a long term agricultural activity having regard to the size of the lot, and the intensity and ongoing nature of the proposed agricultural activity.*
- 3. The proposed use and development of a dwelling on the land does not accord with the purpose and relevant decision guidelines of the Farming Zone set out in Clause 35.07 of the planning scheme, given that:*
  - a) It has not been demonstrated that the site is suitable for the use or development, or that the proposal is compatible with adjoining and nearby land uses.*
  - b) It has not been demonstrated how the use or development relates to sustainable land management.*
  - c) It has not been demonstrated that a dwelling would enhance agricultural production based upon the land unit described in the application.*
  - d) It has not been demonstrated that a dwelling would not lead to a concentration or proliferation of dwellings in the area, which would impact on the use of the land for agriculture.*
- 4. The proposed dwelling does not accord with Council's adopted Rural Land Strategy 2007 or its Rural Living Strategy 2011, not being within an area nominated in these documents for rural living purposes.*

## 3. PROPOSAL

The application seeks permission for the use and development of the land for a dwelling and a store, and associated works including the retention of a retaining wall. The application was considered at the Planning Committee held on 7 December 2022 and 10 May 2023, as the officer's recommendation was for refusal of the proposed dwelling in the Farming Zone. The original Planning Committee report, which sets out the reasons for that officer recommendation, is attached to this report. Also attached are the applications plans.

A planning permit is required for the use and development of the dwelling due to the size of the lot being under 40ha, with an additional permit trigger for the dwelling due to its proposed location within 5m of a site boundary and within 100m of land designated as a floodplain. A planning permit is also required because the proposed dwelling would be within 500m of the nearest title boundary of land on which a work authority has been granted under the Mineral Resources (Sustainable Development) Act 1990 (i.e., the quarry at 955 Corangamite Lake Road shown in figure 3 above, which is operated by the applicant).

It is also proposed to construct a shed, which would be used for the storage of trucks, trailers, an excavator and other items associated with the applicant’s quarry business. This building would not be ancillary to the proposed dwelling and is classed as a ‘store’ under the land use definitions at Clause 73.03 (Land Use Terms) of the planning scheme, i.e., “Land used to store goods, machinery, or vehicles.”

## 4. SUBJECT LAND & SURROUNDINGS

The site is located within the Farming Zone and is known as 979 Corangamite Lake Road. It is covered by Environmental Significance Overlay, Schedule 2 (ESO2), Significant Landscape Overlay, Schedule 1 (SLO1) and partially covered by Land Subject to Inundation Overlay (LSIO) (4.42%).

The site comprises three parcels of land, i.e., Lots 1, 2 and 3 on Title Plan 663499W, as shown below:

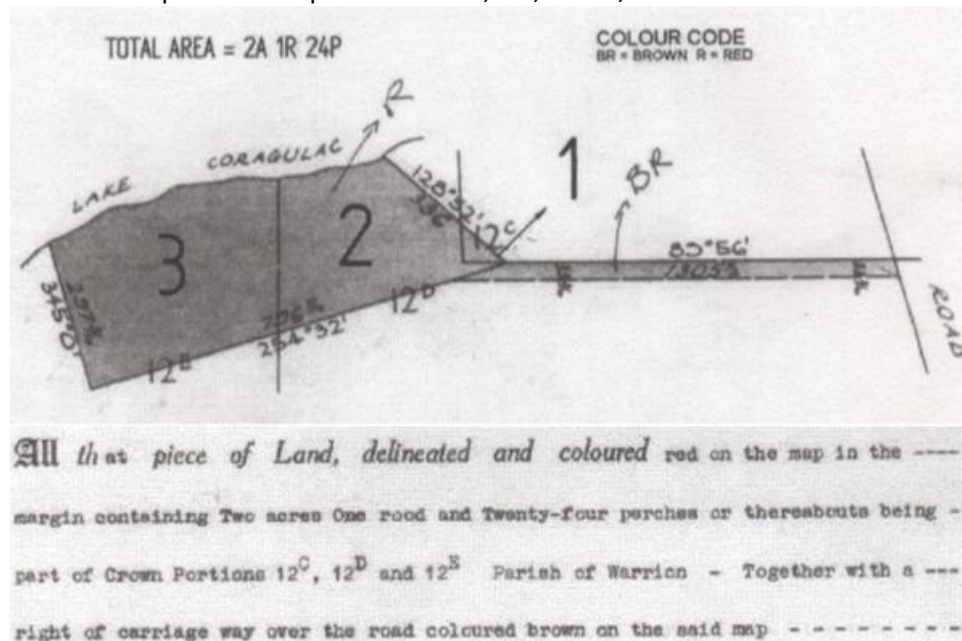


Figure 4 – Extracts from property title

The site, which is located on the western side of Corangamite Lake Road, is accessed via a right of way easement on 977 Corangamite Lake Road (shown marked ‘BR’ on the extract from the Title Plan above). The site is elevated near its southern boundary but slopes relatively steeply down towards the northern boundary. There are currently vehicles, trailers, an excavator and other items stored in the open across the site.

The site contains a building which was previously used as a ski shack when there were water activities at Lake Coragulac. This is located in the lower, northern part of the site. Whilst the applicant stated that the previous owner lived in this building until the applicant purchased the property in 2018,



neither Council's rating database nor its planning records show the presence of any lawful dwelling on this land.

The land adjoins Lake Coragulac to the north, which is in the Public Conservation and Recreation Zone (PCRZ). There are properties in the Farming Zone to the east and west, with the former containing a dwelling. Council's green waste and materials recovery facility is located to the south of the subject land. There is also a quarry near the south of the subject site, at 955 Corangamite Lake Road (Work Authority WA249). This quarry is currently owned by the applicant, who has verbally advised that it is only used on an occasional basis. The proposed dwelling would be located approximately 160m from the quarry site boundary.

## 5. KEY INFORMATION

The subject site is located close to industrial land uses, which include a closed landfill site and an operating green waste and materials recycling facility.

The key issues that were considered in the original officer report (attached) were whether the proposal is in accordance with land use compatibility planning policies, given the site is in close proximity to industrial land uses; whether sufficient information has been provided to determine there would be no risk from site contamination to the proposed dwelling; and whether the proposal is in accordance with relevant planning policies for the Farming Zone.

During the processing of the planning application, and prior to its consideration by Planning Committee in December, the applicant was provided with opportunities to provide both a landfill gas risk assessment that addressed concerns about the site's proximity to a closed landfill site, and also a Preliminary Site Investigation (PSI) report that assessed the potential for contamination because of the presence of the landfill site and materials recycling facility close to the site. The applicant did not provide this information.

At the Planning Committee meeting on 7 December 2022, Councillors resolved to defer the decision on the application to allow further time for the applicant to provide the information relating to landfill gas and contamination requested by officers as follows:

### **RESOLUTION**

**MOVED Cr Stephen Hart, SECONDED Cr Jamie Bell**

***That the Planning Committee:***

- 1. Defers the decision on the application for planning permit seeking approval for the Use and Development of the Land for a Dwelling and Store at 979 Corangamite Lake Road, Coragulac to allow further time for the applicant to provide information requested by planning officers.***
- 2. Consider an officer report on the application when the requested information has been supplied to officer's satisfaction, or no later than the scheduled May 2023 Planning Committee meeting, whichever occurs first.***
- 3. Acknowledges that the only reason for refusal of the shed at this time is reason 5 (the Zincalume roof on the shed), and a new application for the construction of a shed that addresses the concern in that reason may be assessed in a more timely and simplified manner under delegation by officers.***

**CARRIED 5 : 0**

The resolution specified that a further report was to be considered by the Planning Committee after the requested information was supplied to the satisfaction of Council officers, or no later than the scheduled May 2023 Planning Committee meeting, whichever occurred first.

The information was not provided by the applicant and officers listed the item for consideration at the May Planning Committee meeting. Councillors resolved to defer the decision on the application to allow further time for the applicant to provide the information relating to landfill gas and contamination requested by officers as follows:

#### **RESOLUTION**

**MOVED Cr Stephen Hart, SECONDED Cr Max Arnott**

***That the Planning Committee:***

- 1. Defer consideration of the application for the use and development of the Land at 979 Corangamite Lake Road, Coragulac for a dwelling and store for a further three months, until August 2023 Planning Committee meeting, to allow further time for the applicant to provide the requested information relating to landfill gas risk and contamination.***
- 2. Consider an officer report on the application when the requested information has been supplied to officer's satisfaction or no later than the scheduled August 2023 Planning Committee meeting, whichever occurs first.***

**CARRIED 5 : 0**

The resolution at the May meeting specified that the item should be considered by the Planning Committee again after the applicant had provided the requested information relating to landfill gas risk and contamination to the satisfaction of Council officers, or no later than the scheduled August 2023 Planning Committee meeting, whichever occurred first.

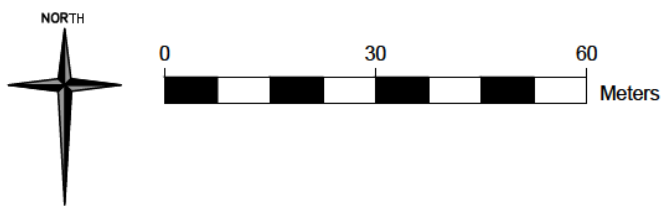
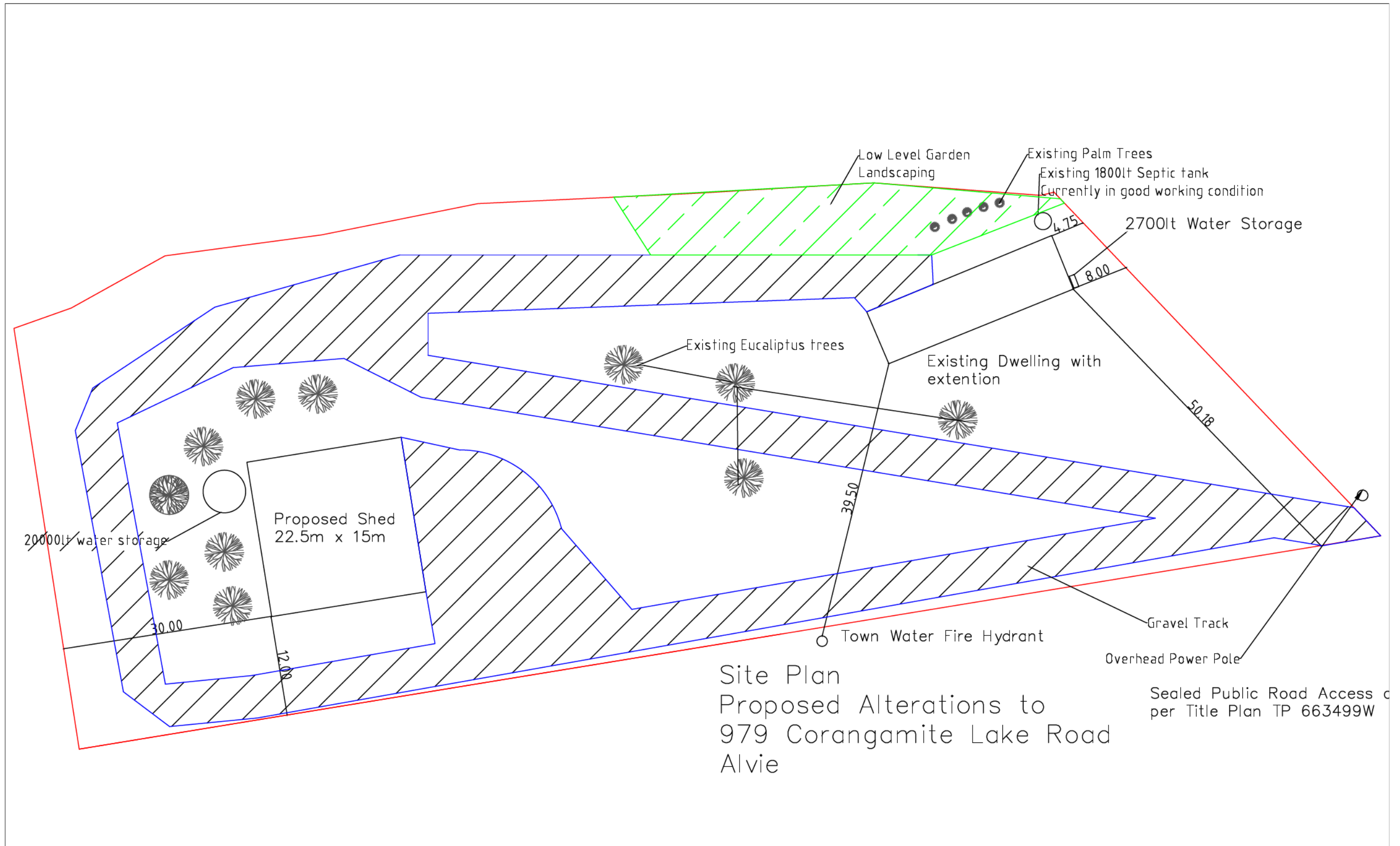
The applicant has been asked following the May Planning Committee meeting to provide an update on progress with undertaking the required assessments for the planning application. Whilst there is no written response from the applicant it is understood that the quoted cost of sourcing these consultant reports is prohibitive for him, and that no further progress has been made with engagement of consultants to do this work.

Officers have confirmed with the applicant that the use of land for store can be dealt as a separate planning permit application to that of the dwelling, but no application has yet been received.

Given the time elapsed since the December and May Planning Committee meetings, and the lack of progress in the engagement of consultants to undertake the work considered necessary to establish that the subject land could safely be developed with a dwelling after providing two opportunities, it is considered the application should be refused in accordance with the original officer recommendation.

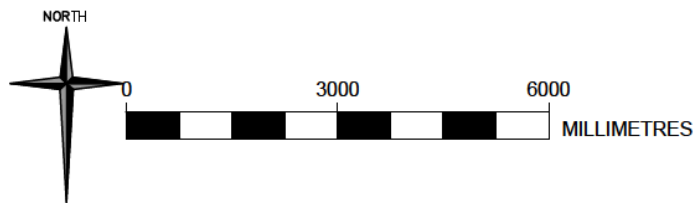
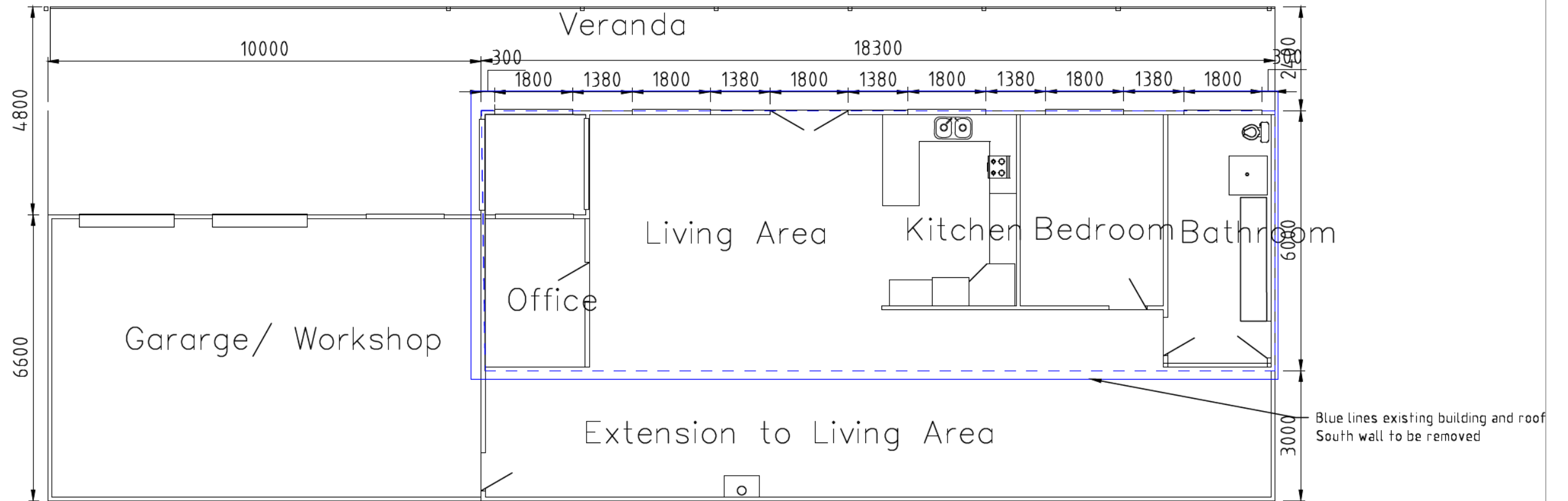
## **6. OFFICER DIRECT OR INDIRECT INTEREST**

No officer declared an interest under the *Local Government Act 2020* in the preparation of this report.



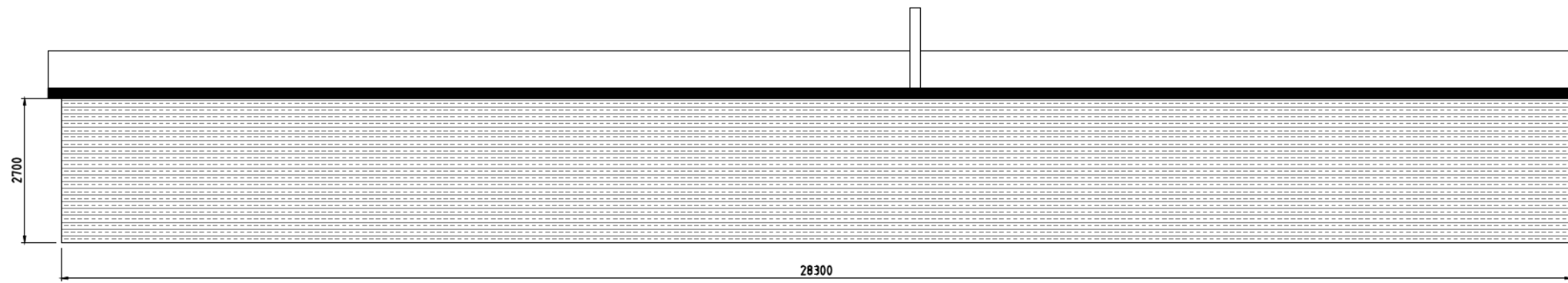
REV	DESCRIPTION	DATE
A	FIRST ISSUE	01.01.01

DESIGNED:	DATE: Sep 20	PROJECT:	Site Plan
CHECKED:	DATE: Sep 20	Extensions & Renovations 979 Corangamite Lake Rd Alvie	
SCALE: A3 AS SHOWN	DATE: Sep 20	DRAWING TITLE:	
CAD FILE: existing building.dwg	PROJECT No: PRO002-001	SHEET No: 1 OF 4	REV: A

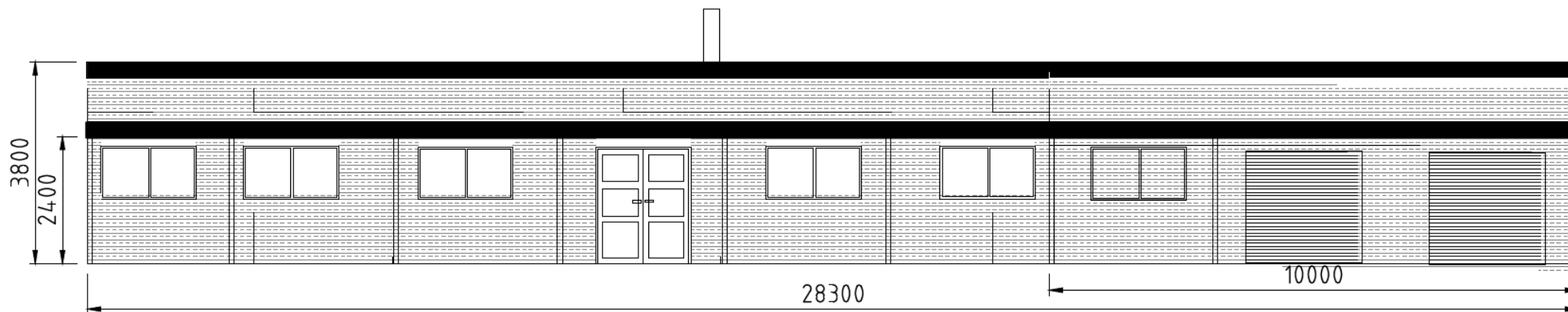


REV	DESCRIPTION	DATE
A	ISSUED FOR CONSTRUCTION	

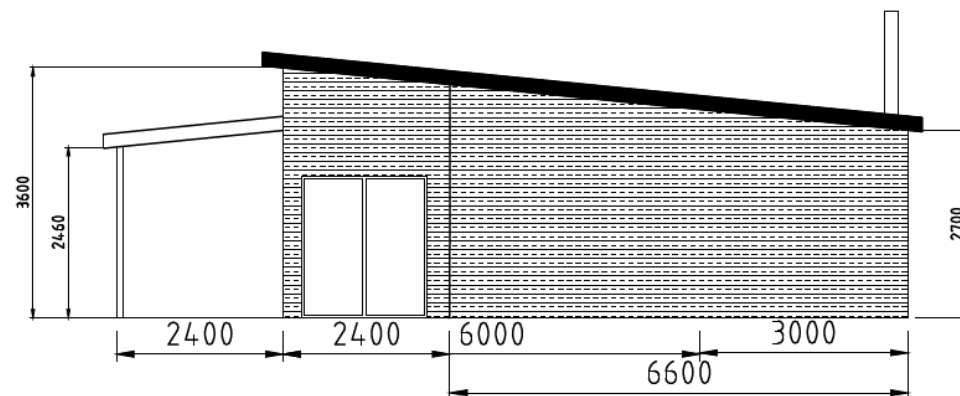
DESIGNED:	DATE: Sep 20	PROJECT: Proposed Floor Plan
CHECKED:	DATE: Sep20	nsions & Renovations 979 Corangamite Lake Rd Alvie
SCALE: A4 AS SHOWN	DATE:	DRAWING TITLE:
CAD FILE: esalpy building.dwg	PROJECT No: PRO002-001	SHEET No: 3 OF 4
		REV: A



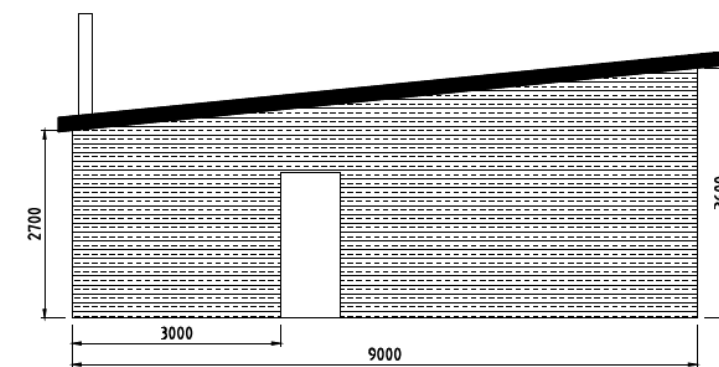
South Elevation



North Elevation

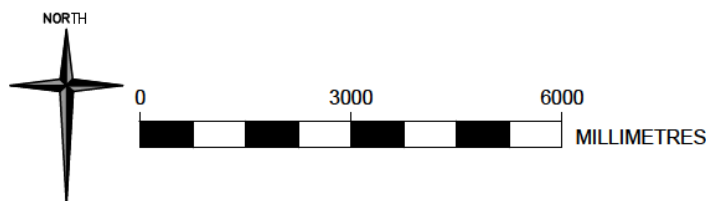


West Elevation



East Elevation

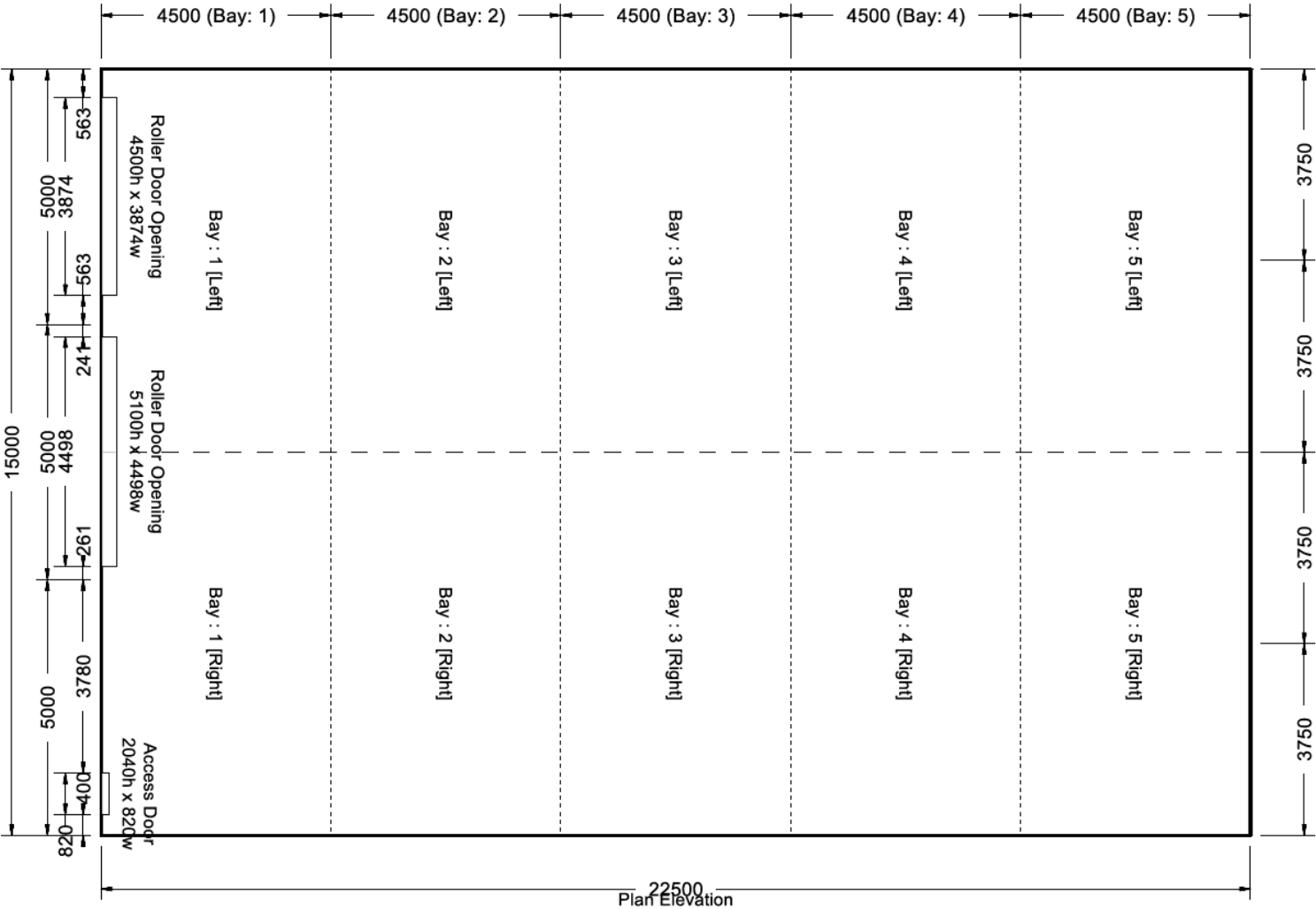
- \*Horizontally Clad in Woodland Grey Colour Bond Corrugated Iron
- \*Roof Zinc Trimdeck
- \*Sliding Aluminium Windows
- \*Combination of Cedar and Aluminium Sliding Windows



REV	DESCRIPTION	DATE
A	ISSUED FOR CONSTRUCTION	

DESIGNED:	DATE: Nov 22	PROJECT: Elevation View
CHECKED:	DATE: Nov 22	nsions & Renovations 979 Corangamite Lake Rd Alvie
SCALE: A4 AS SHOWN	DATE:	DRAWING TITLE:
CAD FILE: esal17g building.dwg	PROJECT No: PRO002-001	SHEET No: 4 OF 4 REV: D





**PLANS DRAWN BY** **JOB DETAILS** **DRAWING DETAILS**



P 1300 559 668 F [Redacted]  
 E [Redacted]@nowbuildings.cc  
 www.nowbuildings.com.au

[Redacted] 15/07/2023 14:00:00 16m x 22.6m x 5.1m

CUSTOMER:

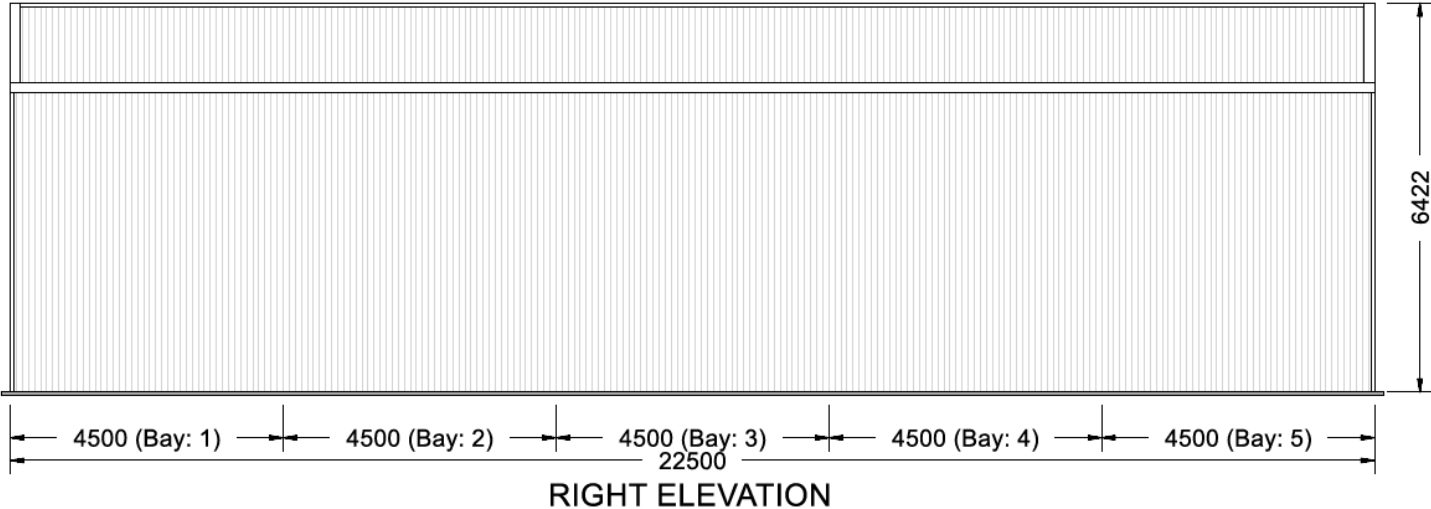
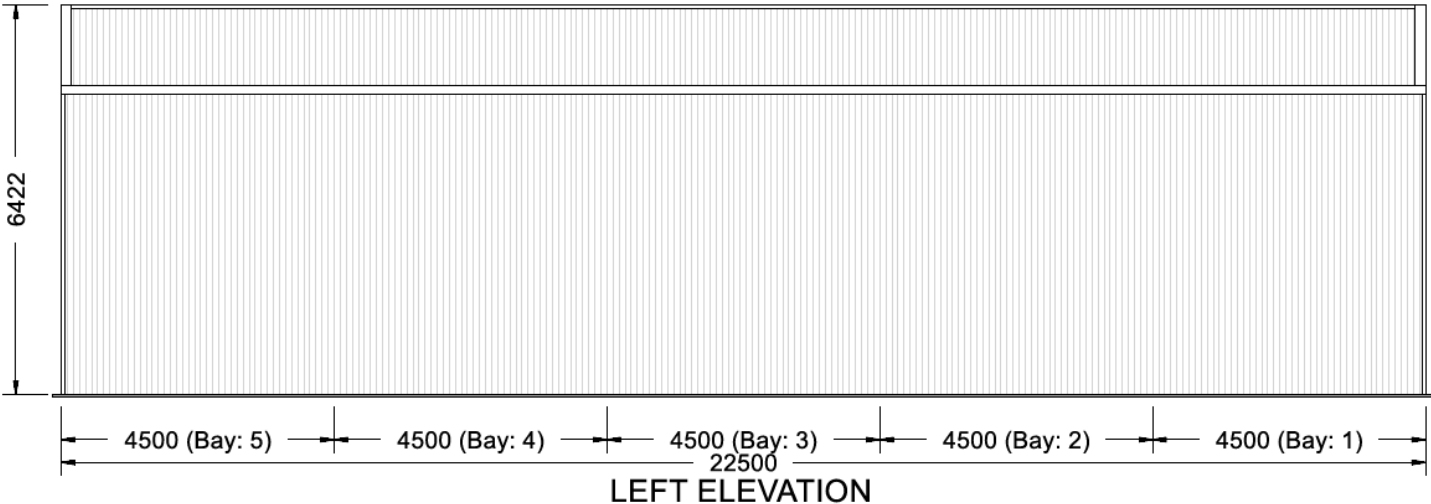
SITE:

DRAWING NO.: Quote

DRAWING TYPE: Architectural Drawings

DRAWING SCALE: 1:116





**PLANS DRAWN BY** **JOB DETAILS** **DRAWING DETAILS**

**NOW BUILDINGS**

P 1300 559 668 F [REDACTED]  
 E [REDACTED]@nowbuildings.cc  
 www.nowbuildings.com.au

[REDACTED] 15007 - Cont 00000004 | 15m x 22.6m x 5.1m

CUSTOMER:  
 SITE:

DRAWING NO.: Quote  
 DRAWING TYPE: Architectural Drawings  
 DRAWING SCALE: 1:110



Colac Otway  
SHIRE

Planning Enquiries  
Phone: (03) 5232 9400  
Email: [inq@colacotway.vic.gov.au](mailto:inq@colacotway.vic.gov.au)  
Web: [www.colacotway.vic.gov.au](http://www.colacotway.vic.gov.au)

Office Use Only

VicSmart?  YES  NO

Specify class of VicSmart application:

Application No.: \_\_\_\_\_ Date Lodged: / /

# Application for a Planning Permit

If you need help to complete this form, read MORE INFORMATION at the back of this form.

**⚠** Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act 1987*. If you have any concerns, please contact Council's planning department.

**⚠** Questions marked with an asterisk (\*) must be completed.

**⚠** If the space provided on the form is insufficient, attach a separate sheet.

**i** Click for further information.

Clear Form

## Application Type

Is this a VicSmart application?\*

No  Yes

If yes, please specify which

VicSmart class or classes:.....

**⚠** If the application falls into one of the classes listed under Clause 92 or the schedule to Clause 94, it is a VicSmart application.

## Pre-application Meeting

Has there been a pre-application meeting with a Council planning officer?

No  Yes

If 'Yes', with whom?:

Date:

day / month / year

## The Land **i**

Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

Street Address \*

Unit No.:

St. No.: 979

St. Name: Lake corangamite road

Suburb/Locality: coragulac

Postcode: 3249

Formal Land Description \*

Complete either A or B.

**⚠** This information can be found on the certificate of title

If this application relates to more than one address, attach a separate sheet setting out any additional property details.

A  Lot No.: \_\_\_\_\_  Lodged Plan  Title Plan  Plan of Subdivision No.: \_\_\_\_\_

OR

B  Crown Allotment No.:

Section No.:

Parish/Township Name:



### The Proposal

**⚠** You must give full details of your proposal and attach the information required to assess the application. Insufficient or unclear information will delay your application

**i** For what use, development or other matter do you require a permit? \*

building permit to renovate building or dwelling on site, there for re clad outside new roof iron, new windows.

change from farming to rural living. this dwelling has been here since 1954 and known as the ski shack on lake corangulae there are four other dwelling built after this property that are on small acreage, next door 981 lake coranganite road built in an old quarry owner tony mahoney and its farming zone aswell.

Provide additional information about the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.

**i** Estimated cost of any development for which the permit is required \*

Cost \$ 30,000

**⚠** You may be required to verify this estimate. Insert '0' if no development is proposed.

If the application is for land within metropolitan Melbourne (as defined in section 3 of the Planning and Environment Act 1987) and the estimated cost of the development exceeds \$1 million (adjusted annually by CPI) the Metropolitan Planning Levy must be paid to the State Revenue Office and a current levy certificate must be submitted with the application. Visit [www.sro.vic.gov.au](http://www.sro.vic.gov.au) for information.

### Existing Conditions **i**

Describe how the land is used and developed now \*

For example, vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

one bed room dwelling using land for grazing goats on site, parking my trucks and excavator's worth thousands of dollars, I need to be here for security after hours, its a well tree covered 3-5 AERE block

Provide a plan of the existing conditions. Photos are also helpful.

### Title Information **i**

Encumbrances on title \*

Does the proposal breach, in any way, an encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope?

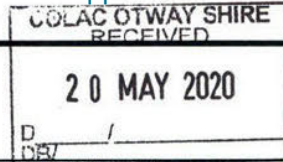
Yes (If 'yes' contact Council for advice on how to proceed before continuing with this application.)

No

Not applicable (no such encumbrance applies).

Provide a full, current copy of the title for each individual parcel of land forming the subject site. The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', for example, restrictive covenants.





### Applicant and Owner Details i

Provide details of the applicant and the owner of the land.

#### Applicant \*

The person who wants the permit.

Please provide at least one contact phone number \*

Where the preferred contact person for the application is different from the applicant, provide the details of that person.

#### Owner \*

The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.

Name:  Same as applicant

Title:  First Name:  Surname:

Organisation (if applicable):

Postal Address:  If it is a P.O. Box, enter the details here:

Unit No.:  St. No.:  St. Name:

Suburb/Locality:  State:  Postcode:

Contact information for applicant OR contact person below

Business phone:  Email:

Mobile phone:  Fax:

Contact person's details\*  Same as applicant

Name:  Same as applicant

Title:  First Name:  Surname:

Organisation (if applicable):

Postal Address:  If it is a P.O. Box, enter the details here:

Unit No.:  St. No.:  St. Name:

Suburb/Locality:  State:  Postcode:

Name:  Same as applicant

Title:  First Name:  Surname:

Organisation (if applicable):

Postal Address:  If it is a P.O. Box, enter the details here:

Unit No.:  St. No.:  St. Name:

Suburb/Locality:  State:  Postcode:

Owner's Signature (Optional):  Date:   
day / month / year

### Information requirements

Contact Council's planning department to discuss the specific requirements for his application and obtain a planning permit checklist.

Is the required information provided?

Yes  No

### Declaration i

This form must be signed by the applicant \*

Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.


I declare that I am the applicant; and that all the information in this application is true and correct; and the owner (if not myself) has been notified of the permit application.

Signature:  Date:   
day / month / year

### Checklist

Have you:

Filled in the form completely?

Paid or included the application fee?  Most applications require a fee to be paid. Contact Council to determine the appropriate fee.

Provided all necessary supporting information and documents?

- A full, current copy of title information for each individual parcel of land forming the subject site.
- A plan of existing conditions.
- Plans showing the layout and details of the proposal.
- Any information required by the planning scheme, requested by council or outlined in a council planning permit checklist.
- If required, a description of the likely effect of the proposal (for example, traffic, noise, environmental impacts)
- If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it is issued by the State Revenue Office and then cannot be used). Failure to comply means the application is void

Completed the relevant council planning permit checklist?

Signed the declaration above?

### Need help with the Application?

If you need help to complete this form, read More Information at the end of this form.

For help with a VicSmart application see Applicant's Guide to Lodging a VicSmart Application at [www.planning.vic.gov.au](http://www.planning.vic.gov.au)

General information about the planning process is available at [www.planning.vic.gov.au](http://www.planning.vic.gov.au)

Assistance can also be obtained from Council's planning department.

### Lodgement

Lodge the completed and signed form, the fee and all documents with:

Colac Otway Shire  
 PO Box 283  
 Colac VIC 3250  
 2-6 Rae Street  
 Colac VIC 3250

**Contact information**

Phone: (03) 5232 9400  
 Email: [inq@colacotway.vic.gov.au](mailto:inq@colacotway.vic.gov.au)

**Deliver application in person, by post or by electronic lodgement.**





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**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

Page 1 of 1

VOLUME 08213 FOLIO 973

Security no : 124086887463J  
Produced 01/12/2020 03:06 PM**LAND DESCRIPTION**

Lots 1,2 and 3 on Title Plan 663499W.  
PARENT TITLE Volume 06021 Folio 121  
Created by instrument A684929 10/02/1959

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Sole Proprietor

of [REDACTED]  
AR056106A 24/05/2018

**ENCUMBRANCES, CAVEATS AND NOTICES**

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE TP663499W FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

DOCUMENT END



<b>TITLE PLAN</b>	<b>EDITION 1</b>	<b>TP 663499W</b>										
<p><b>Location of Land</b></p> <p>Parish: WARRION</p> <p>Township:</p> <p>Section:</p> <p>Crown Allotment:</p> <p>Crown Portion: 12C(PT),12D(PT),12E(PT)</p> <p>Last Plan Reference:</p> <p>Derived From: VOL 8213 FOL 973</p> <p>Depth Limitation: NIL</p>	<p style="text-align: center;"><b>Notations</b></p> <p>ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN</p>											
<p style="text-align: center;"><b>Description of Land / Easement Information</b></p> <p><i>All that piece of Land, delineated and coloured red on the map in the --- margin containing Two acres One rood and Twenty-four perches or thereabouts being - part of Crown Portions 12<sup>C</sup>, 12<sup>D</sup> and 12<sup>E</sup> Parish of Warrion - Together with a --- right of carriage way over the road coloured brown on the said map - - - - -</i></p>		<p>THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT</p> <p>COMPILED: 24/10/2000</p> <p>VERIFIED: GB</p>										
<p>TOTAL AREA = 2A 1R 24P</p>		<p><b>COLOUR CODE</b> BR = BROWN R = RED</p>										
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">TABLE OF PARCEL IDENTIFIERS</th> </tr> <tr> <td colspan="2" style="font-size: small;">WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962</td> </tr> <tr> <td style="width: 50%;">PARCEL 1 = CP 12C (PT)</td> <td></td> </tr> <tr> <td>PARCEL 2 = CP 12D (PT)</td> <td></td> </tr> <tr> <td>PARCEL 3 = CP 12E (PT)</td> <td></td> </tr> </table>			TABLE OF PARCEL IDENTIFIERS		WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962		PARCEL 1 = CP 12C (PT)		PARCEL 2 = CP 12D (PT)		PARCEL 3 = CP 12E (PT)	
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WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962												
PARCEL 1 = CP 12C (PT)												
PARCEL 2 = CP 12D (PT)												
PARCEL 3 = CP 12E (PT)												
LENGTHS ARE IN LINKS	Metres = 0.3048 x Feet Metres = 0.201168 x Links	Sheet 1 of 1 sheets										



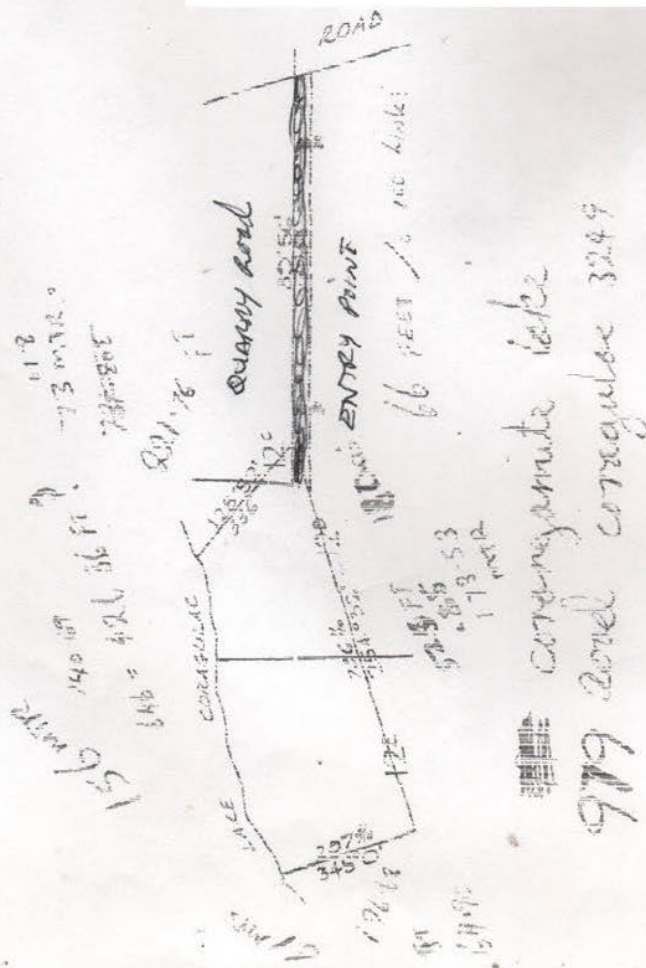
right of carriage way over the road coloured brown on the said map

Dated the Tenth day of February One thousand nine hundred and fifty-nine.



Registrar of Titles  
VICTORIA

ENCUMBRANCES REFERRED TO



THE MEASUREMENTS ARE IN LINKS



Reference: Planning permit application PP101/2020-1

Subject land: 979 Corangamite Lake road, Alvie 3249

Proposal: Development of land, comprising a change of use to a dwelling.

I write in relation to the letter received requesting more information by statutory planner.

The general points that this document responds to are:-

1.The building permits being sought are a Planning Permit and a Building Permit.

The building permit will be sought to renovate and extend the existing ski shack into a dwelling. A plant storage shed is proposed to be built over time, 22.5m x 15m @, 5.1m-6.0m high.

The subject land is Rural Farming Land and I'm applying to have the existing ski shack, changed to Class 1A single dwelling.

Scope of Works

The dwelling will consist of a single bedroom, office, entry with a double car garage and household workshop. The proposed dwelling area is 164.7sq.m. the garage workshop area is 66sq m and verandah is 44 sq m.

A new verandah will be built on the north side of the existing dwelling.

To renovate the existing building.

Remove existing roof structure and south wall

Remove concrete slab and engage new footing, intermediate beams and concrete slab., including a 3m wide extension to the southern side of the dwelling.

New timber wall frames will be built as per attached floor plan and installed to AS Building code

The roof will be skillion (pent roof) truss structure pitched at 3deg with timber battens and zinc trimdeck roofing, spouting and roof flashings will be Woodland Grey.

External timber walls will be wrapped in insulation foil and clad in Woodland Grey corrugated iron.

Sliding aluminium windows and a combination of cedar and aluminium sliding doors will be fitted

R6.5 insulwool batts will be fitted to the ceiling, with 10mm plasterboard ceilings

Walls will be fitted with R 2.5 batts clad also in plasterboard.

All electrical, plumbing and wet area works will be in accordance with Australian Standards and comply with the Building Code.

Painting to all internal and external surfaces.

The machinery shed will be a steel frame structure with colourbond cladding to the walls in Woodland Grey.

The roof will be zincalum.

Storm water will be directed into a 20,000 litre tank to be used for watering and to serve as a fire fighting supply.

2. The rest of the land will be used for:-

- Storage of equipment in shed.
- Grazing of small animals like goats.
- Planting of native vegetation
- Large grass lawn area.

Please find attached:-

3. Copies of the plans for the dwelling

- Existing floor plan
- Proposed floor plan
- Elevation plan
- Site plan including landscaping

4. Farming zone

The existing dwelling has town water and an electricity connection. Please refer to the attached bills for both.

Access is referred to in point 7.

The sewage is an existing septic tank, 1800lts in good working order.

The property has a public fire hydrant situated within 60m of the dwelling.

An existing bore will also provide water for improving and developing vegetation to screen the site and dwelling in general. A sprinkler system will be installed to help keep the site green during the fire season.

5. In regards to providing a written statement in reference to Clause 35.07.5

Re Clause 35.07.05

Statement that the proposal is in line with the Planning and Environment Act.

I propose that the works and development which will be undertaken will be an improvement to the property in general.

The piece of land isn't of a significant size for it to be used for productive farming of any nature.

The soil quality is rated poor as is the evident around the Waste Disposal Centre and nearby properties. The land comprises of mainly scoria wombat.

There are currently three neighbourhood properties whose land adjoins the lake area. I propose to keep the landscape and the natural environment in keeping with those properties.

6. I have provided a copy of the Title Plan as requested in point 6

7. Legal access

Legal access to the property is off Corangamite Lake Road, Alvie, the same road that services the Colac Otway Shire's Waste Disposal Centre. The road is bitumen sealed. The property is accessed through a locked boundary gate on the north side of the Waste Disposal Centre.

The same side road is shared by neighbours whose house is located on the north (RHS) of the road. The house on the south east corner of the road is owned by .

Attached is a copy of the Title which identifies the road as "Quarry Road, Coragulac, also Public access road."

8. Overlays. Significant landscape overlay, valleys, hills and planes precinct.

- a. The building doesn't have any contrasting shapes as it is basically an oblong shape.
- b. The colours proposed as listed are Woodland grey walls for the dwelling and shed with zinc roofing. The size of either dwelling is not seen as excessive.

c. In relation to how essential the building works are, the response is that I am aiming to enhance the site by restoring and improving the historic ski shack.

All works are proposed to blend in with the landscape.

In regards to the reference that the building is located on a higher elevation, the building is actually located on the lower section of the north side cutting.

#### 9. Waste water disposal. Land Capacity Assessment (LCA)

re Disposal of waste water, the existing septic tank is currently connected also to waste water from the ski shack.

I have had discussions with \_\_\_\_\_ from the Colac Otway Shire's Health Department who advised me that the existing 1,800 litre septic is adequate for a single bedroom dwelling. \_\_\_\_\_ asked if the septic was working well at the present and I assured him that it was.

\_\_\_\_\_ informed me during our discussion on Monday 28<sup>th</sup> September @ 3.15pm that I would not need to apply for a septic tank permit.

In conclusion the above information has been collated and research in reference to other land holders and operating facilities e.g. the waste disposal centre next door and is proposed to not conflict with any of the Shire Planning Act. Please read this document with the letter sent to \_\_\_\_\_ Deputy Municipal Building Surveyor, 20<sup>th</sup> April, 2020, a copy of this is attached.

For any further discussion or clarification please email

#### List of documents attached

- Existing floor plan
- Proposed floor plan
- Elevation plan
- Site plan
- Title plan
- Plan (Document TP 663499W)
- Certificate of title
- Original plan
- Copy of power account
- Copy of Barwon Water account





- There are four existing dwellings that have been built around the Coragulac Lake area and go right to the lake boundary. This was the first one built in 1954.
- The small parcel of land (3.5 acres) would not be of use for farming purposes. The land would be cared for if someone was living there.       proposes a garden, planting trees and generally caring for the Lake and the surrounding environment. He has already sprayed thistles, repaired fences and cleared rotten trees.
- Converting the building into a dwelling would save a historic landmark. The building had been unused and left neglected for many years. If left for a further period it would become another local eyesore for the tourists and locals who frequent Red Rock, much the same as the old Mobil service station on the left-hand side of the highway when entering Colac from the east.
- quarry business operates from a property located only 500m away and by living nearby he is providing security for his assets. These include truck, excavators and other general machinery.

In closing, I wish to point out that       is a person of great character and heavily involved in this community. He is a life long volunteer of the Cororooke Fire Brigade, the Cororooke Hall Committee, the Alvie Football club and many other services in this district that requires assistance.

      is looking forward to working through this situation with representative of the Colac Otway Shire to achieve the best outcome,

Regards

*Domestic and Commercial builder*  
DBU9393                      CBU 6398  
ABN 49630830583



5<sup>th</sup> July, 2021.

RE:                      975 Corangamite Lake Road, Alvie, 3249.

Dear

Firstly, thanks for the site visit which has clarified a few issues.

has engaged an engineer to provide computations for the retainer wall.

I have followed up regarding the 'impact of landfill gas on the proposed dwelling and potential contamination.' I have spoken with                      from the EPA who confirmed the report provided was a Statutory report and the EPA wasn't seeking any action and had no objections to the building.

                    , an agricultural/environmental consulting engineer confirmed that the information required is already available to you, as the Colac Otway Shire already contracts a company to undertake ground water and gas monitoring on the site.

I contacted Council employee,                      who confirmed she would provide you with these reports. Can you please confirm that you have received them?

Do you require any further information on that issue ?

Once                      has the engineer computations, we can send you the final response to the outstanding issues that you have listed.

Regards

**PP101/2020-1 – 979 CORANGAMITE LAKE ROAD, CORAGULAC**  
**Draft Conditions (Not Officer Recommendation)**

That Council resolves to Grant a Permit for the Use and Development of the Land for a Dwelling and Store at 979 Corangamite Lake Road, Coragulac (Lots 1, 2 and 3 TP 663499W, V/F 8213/973), subject to the following conditions:

**Amended Plans**

1. Prior to the commencement of use and/or development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans, which must be drawn to scale with dimensions, must be generally in accordance with the plans submitted with the application, but modified to show:
  - a) The deletion of zincalume from the proposal, with the use of muted, non-reflective materials only shown on the plans

**Endorsed Plans**

2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

**Consolidation**

3. Prior to the initial occupation of the dwelling hereby permitted, unless an alternate timeframe is agreed in writing by the Responsible Authority, Lots 1, 2 and 3 TP 663499W, V/F 8213/973 must be consolidated under the provisions of the *Subdivision Act 1988* to the satisfaction of the Responsible Authority, and a copy of the title following consolidation must be submitted to the Responsible Authority.

**Dwelling Infrastructure**

4. Prior to the initial occupation of the dwelling hereby permitted, the following must be provided to the satisfaction of the Responsible Authority:
  - a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
  - b) The dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the *Environment Protection Act 2017* for an on-site wastewater management system.
  - c) The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for fire-fighting purposes.
  - d) The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

**Access**

5. Prior to the initial occupation of the dwelling, the driveway must be constructed to an all-weather standard and with a minimum width of 3 metres, to the satisfaction of the Responsible Authority.

**Drainage**

6. All runoff from stormwater, including overflow from water storage, must be taken to a legal point of discharge to the satisfaction of the Responsible Authority.
7. The site must be developed and managed to ensure there is no stormwater pollution through the contamination of runoff by chemicals, sediments, wastes or pollutants in accordance with 'Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control' (EPA) at any time during construction or operation, to the satisfaction of the Responsible Authority.

**Retaining Wall**

8. Prior to the initial occupation of the dwelling hereby permitted, the permit holder must engage a suitably qualified engineer to assess the condition and stability of the existing retaining wall to the rear of the dwelling, and to prepare a report on the condition of that wall. The report, which must include details of the existing condition of the wall and recommendations to address construction issues (if any), must be submitted to the Responsible Authority. The permit holder must implement any recommendations in the report prior to the initial occupation of the dwelling, unless otherwise approved in writing by the Responsible Authority.

**Landfill Gas Risk Assessment**

9. Prior to the commencement of works, the permit holder must to the satisfaction of the Responsible Authority:
  - a) engage a professional environmental consultant with demonstrated experience in the assessment of landfill gas risks to conduct an assessment of the potential for landfill gas to impact on the development and prepare and submit to the Responsible Authority the scope of the proposed risk assessment.
  - b) upon approval of the scope of the risk assessment by the Responsible Authority, have the consultant conduct the risk assessment and prepare a report to be submitted to the Responsible Authority which contains the consultant's opinion as to any potential risk associated with landfill gas beneath the land and any recommendations for the management or monitoring of the gas. The consultant must provide an opinion on whether an audit is required under the *Environment Protection Act*.
  - c) implement any recommendations of the risk assessment report.
  - d) if the risk assessment report recommends an audit under the *Environment Protection Act*:
    - i. engage an environmental auditor appointed under the *Environment Protection Act* to prepare and submit to the satisfaction of the Responsible Authority a scope of the proposed audit which includes consideration of both landfill gas and odour risk.
    - ii. have the environmental auditor conduct an audit under the *Environment Protection Act* in accordance with the agreed scope.
    - iii. implement any recommendations of the audit report.
  - e) if the risk assessment report or audit report requires ongoing management or monitoring, the owner must enter into an agreement under section 173 of the *Planning*

and *Environment Act 1987* with the Responsible Authority requiring the implementation of any ongoing requirements.

The owner/operator under this permit must pay the reasonable costs of the preparation, execution and registration of the section 173 agreement.

**Contamination**

10. Prior to the commencement of works, the permit holder must engage a suitably qualified environmental consultant to undertake a Preliminary Site Investigation. The Preliminary Site Investigation must be submitted to the Responsible Authority prior to any works being undertaken on site.

The permit holder must implement any recommendations of the Preliminary Site Investigation.

The Preliminary Site Investigation must recommend if an environmental audit is required to be completed. If an environmental audit is required it must be undertaken in accordance with the requirements of condition 9 of this permit.

11. Prior to the commencement of works, if required by the Preliminary Site investigation undertaken in accordance with condition 9 of this permit, the permit holder must provide:
- a) An environmental audit statement under Part 8.3, Division 3 of the *Environment Protection Act 2017* which states that the site is suitable for the use and development allowed by this permit; or
  - b) An environmental audit statement under Part 8.3, Division 3 of the *Environment Protection Act 2017* which states that the site is suitable for the use and development allowed by this permit if the recommendations made in the statement are complied with.

12. If an environmental audit statement is required, all recommendations of that statement must be complied with to the satisfaction of the Responsible Authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental consultant or other suitable person acceptable to the Responsible Authority.

Compliance sign off must be in accordance with any requirements in the environmental audit statement recommendations regarding verification of works.

**On-site Storage**

13. All equipment, goods, or motor vehicles used in conjunction with the occupation of a resident of the dwelling on the site must be kept in the store hereby permitted. No external storage of such items may occur externally on the site.

**Landscaping**

14. Prior to the commencement of development, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan, which must be drawn to scale with dimensions, must show:
- a) a survey (including botanical names) of all existing vegetation to be retained and/or removed



- b) details of surface finishes of pathways and driveways
- c) a planting schedule of proposed trees, shrubs and ground covers, including botanical names, common names, sizes at maturity, and quantities of each plant, to mitigate the visual impact of the proposed development from Red Rock outlook.

An in-ground irrigation system is to be provided to all landscaped areas.

All species selected must be to the satisfaction of the Responsible Authority.

15. Prior to the initial occupation of the dwelling hereby permitted, or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must thereafter be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

**Expiry**

16. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within three years of the date of this permit.
  - b) The development is not completed, and use is not commenced, within five years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be made to the Responsible Authority to extend the periods referred to in this condition.

**Notes:**

1. This permit does not authorise the commencement of any building works. Prior to the commencement of development, it will also be necessary to obtain building permits for the proposed buildings.
2. At least seven (7) days before any works start, an Asset Protection Permit must be obtained from Council. Council infrastructure must be maintained in a safe condition during the construction period. Any damage caused by these works to Council assets must be reinstated to the satisfaction of the Council prior to the completion of works.

**CCMA**

3. The Authority recommends that the building envelope be restricted to its current footprint to protect the lake environment from further development.
4. Lake Coragulac has been designated as a waterway under the *Water Act 1989*. As such, any development within 30 metres of the waterway will require a Works on Waterways Permit from the Corangamite Catchment Management Authority. A permit application can be submitted from the CCMA website at <https://ccma.vic.gov.au/waterways/flood-advice-works-on-waterways/#workswaterways>



## Item: 8.3

## PP101/2020-1 - 979 Corangamite Lake Road, Cororooke - Use and Development of Land for Dwelling

<b>ADDRESS AND PROPERTY DETAILS</b>	979 Corangamite Lake Road, Coragulac Lots 1, 2 and 3 TP663499W (V/F: 8213/973)	<b>APPLICATION NUMBER</b>	PP101/2020-1
<b>PROPOSAL</b>	Use and Development of Land for a Dwelling		
<b>PERMIT TRIGGERS</b>	<p>Clause 35.07-1 - Farming Zone – Use of the land for a dwelling, for a store and associated works</p> <p>Clause 35.07-4 - Farming Zone – Building and works associated with a Section 2 (permit required) use; within specified setbacks; and within 500m of the nearest title boundary of land on which a work authority has been granted under the <i>Mineral Resources (Sustainable Development) Act 1990</i>.</p> <p>Clause 42.01-2 – ESO2 – Buildings and works</p> <p>Clause 42.03-2 – SLO1 – Buildings and works</p>		
<b>TRIGGER FOR DETERMINATION BY COMMITTEE</b>	Officer recommendation for refusal of an application for a dwelling in the Farming Zone		
<b>ZONE</b>	Farming Zone (FZ)	<b>OVERLAYS</b>	<p>Environmental Significance Overlay, Schedule 2 (ESO2)</p> <p>Significant Landscape Overlay, Schedule 1 (SLO1)</p> <p>Part Land Subject to Inundation Overlay, Schedule 1 (LSIO) - 4.42%</p>
<b>COVENANTS</b>	<p>None.</p> <p>Note: right of carriageway exists over 977 Corangamite Lake Road to access the subject site.</p>		

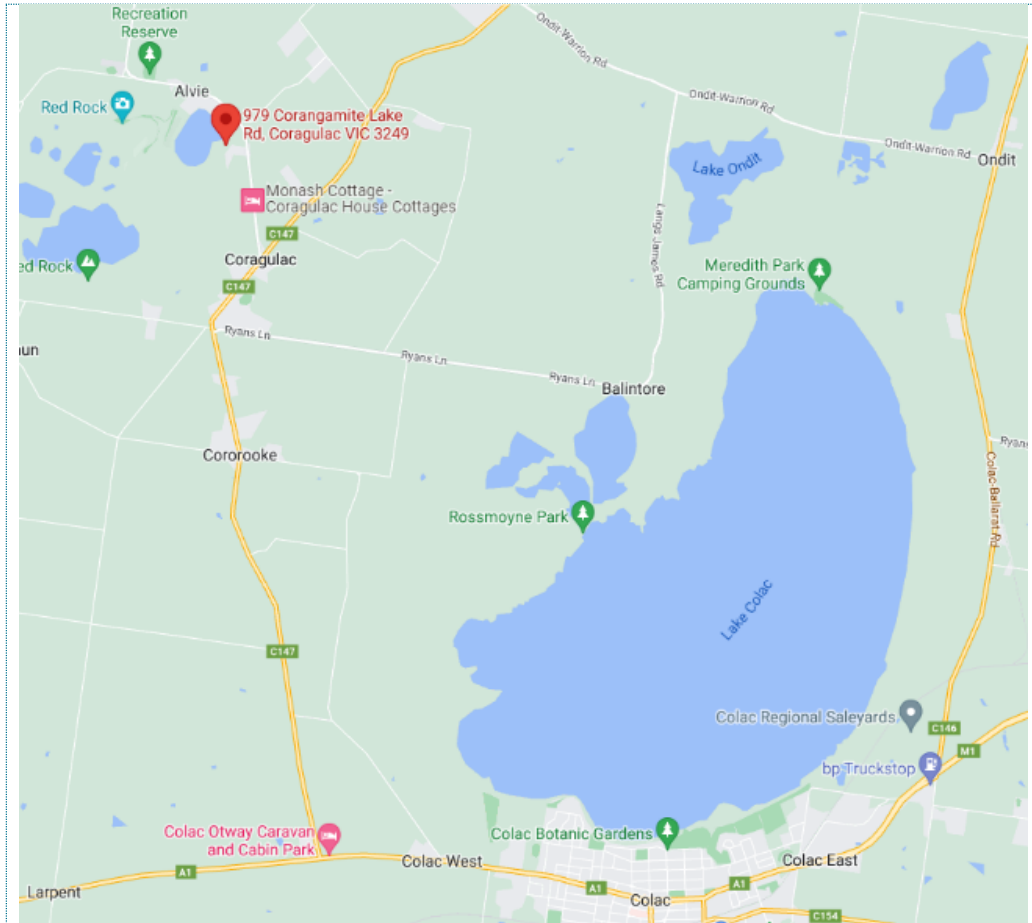
## Item: 8.3

## PP101/2020-1 - 979 Corangamite Lake Road, Cororooke - Use and Development of Land for Dwelling

<b>CULTURAL HERITAGE</b>	The subject site is in an area of cultural heritage sensitivity; however, construction of a single dwelling is not a high impact activity under the <i>Aboriginal Heritage Regulations 2018</i> . With regards to use of land for a store (for purposes associated with the applicant's business, rather than ancillary to the dwelling), the land has already been subject to significant ground disturbance. As such, it is considered that the proposal would fall within the exemption under Regulation 58(4) which states, inter alia, that if the whole of the activity area for an activity requiring statutory authorisation has been subject to significant ground disturbance, that activity is not a high impact activity.		
<b>OFFICER</b>	Ravi Ayyagari	<b>CHIEF EXECUTIVE OFFICER</b>	Anne Howard
<b>DIVISION</b>	Executive		
<b>ATTACHMENTS</b>	<ol style="list-style-type: none"> <li>1. Plans [8.3.1 - 6 pages]</li> <li>2. Application Documents [8.3.2 - 14 pages]</li> <li>3. Draft Permit Conditions (Not Officer Recommendation) [8.3.3 - 4 pages]</li> </ol>		

## 1. LOCATION PLAN / AERIAL PHOTO

### LOCATION PLAN



*Fig. 1 – Location of the site in wider context*



**AERIAL PHOTO**



*Fig. 2 – Aerial image of the site and surroundings*



*Fig. 3 - Subject site and surrounding uses*

## 2. RECOMMENDATION

*That Council resolves to refuse to grant a permit for the use and development of the land at 979 Corangamite Lake Road, Cororooke (Lots 1, 2 and 3 TP663499W - V/F: 8213/973) for a dwelling, a store and associated works including the retention of a retaining wall, on the following grounds:*

- 1. Evidence has not been submitted to demonstrate that the land can be safely developed with a dwelling, having regard to the proximity of the building that is proposed to be converted and extended to a closed landfill site and an operating green waste and materials recovery facility, and the lack of information about potential contamination of the land. As such, the proposal is contrary to clauses 13.04-1S (Contaminated and Potentially Contaminated Land), 13.07-1S and 13.07-1L (Land Use Compatibility) and 65.01 (Approval of an Application or Plan) of the Colac Otway Planning Scheme.*
- 2. The proposed use and development of a dwelling is contrary to clauses 02.03-4 (Natural Resource Management), 02.04 (Strategic Framework Plans), 14.01-1S and 14.01-1L (Protection of Agricultural Land) and 16.01-3S (Rural Residential Development) of the planning scheme, which seek to limit new housing development in rural areas by directing housing growth into existing settlements, and to limit rural residential development unless an application adequately demonstrates that a dwelling is genuinely required to carry out a long term agricultural activity having regard to the size of the lot, and the intensity and ongoing nature of the proposed agricultural activity.*
- 3. The proposed use and development of a dwelling on the land does not accord with the purpose and relevant decision guidelines of the Farming Zone set out in Clause 35.07 of the planning scheme, given that:*
  - a) It has not been demonstrated that the site is suitable for the use or development, or that the proposal is compatible with adjoining and nearby land uses.*
  - b) It has not been demonstrated how the use or development relates to sustainable land management.*
  - c) It has not been demonstrated that a dwelling would enhance agricultural production based upon the land unit described in the application.*
  - d) It has not been demonstrated that a dwelling would not lead to a concentration or proliferation of dwellings in the area, which would impact on the use of the land for agriculture.*
- 4. The proposed dwelling does not accord with Council's adopted Rural Land Strategy 2007 or its Rural Living Strategy 2011, not being within an area nominated in these documents for rural living purposes.*
- 5. The proposed use of a reflective material on a site clearly visible from Red Rock Lookout would be detrimental to the character of the area, contrary to the decision guidelines of the Farming Zone in Clause 35.07 and to the objectives of Significant Landscape Overlay, Schedule 1 which seeks to ensure development has regard to character of an area.*

### 3. PROPOSAL

Planning permission is sought for the use and development of the land for a dwelling and a store, and associated works including the retention of a retaining wall.

A planning permit is required for the use and development of the dwelling due to the size of the lot being under 40ha, with an additional permit trigger for the dwelling due to its proposed location within 5m of a site boundary and within 100m of land designated as a floodplain. A planning permit is also required because the proposed dwelling would be within 500m of the nearest title boundary of land on which a work authority has been granted under the *Mineral Resources (Sustainable Development) Act 1990* (i.e., the quarry at 955 Corangamite Lake Road shown in figure 3 above, which is operated by the applicant).

It is also proposed to construct a shed, which would be used for the storage of trucks, trailers, an excavator and other items associated with the applicant's quarry business. This building would not be ancillary to the proposed dwelling and is classed as a 'store' under the land use definitions at Clause 73.03 (Land Use Terms) of the planning scheme, i.e.: *"Land used to store goods, machinery, or vehicles."*

#### Proposed Dwelling

It is proposed to convert an existing building on the site, which was previously used as a ski shack, into the dwelling. The proposed dwelling footprint would extend over an existing detached building to the east of the ski shack, which was previously used as a bathroom and toilet. A local builder working with the applicant has advised that this would entail the following substantial works:

*"Remove existing roof structure and south wall.*

*Remove concrete slab and engage new footing, intermediate beams and concrete slab, including a 3m wide extension to the southern side of the dwelling.*

*New timber wall frames will be built....*

*The roof will be skillion (pent roof) truss structure pitched at 3deg with timber battens and zinc trimdeck roofing, spouting and roof flashings will be Woodland Grey.*

*External timber walls will be wrapped in isolation [sic] foil and clad in Woodland Grey corrugated iron.*

*Sliding aluminium windows and a combination of cedar and aluminium sliding doors will be fitted R6.5 insulwool batts will be fitted to the ceiling, with 10mm plasterboard ceilings Walls will be fitted with R 2.5 batts clad also in plasterboard."*

The builder also provided a letter stating that the ski shack building previously contained kitchen facilities, a bedroom, bathroom and toilet (this is included as part of the application documents in an attachment to this report). It should be noted that there are no Council records showing that planning permission was ever granted for accommodation within the ski shack.

The applicant proposes to undertake extensions to the building, comprising an extension to the rear of the building as part of the living area, a verandah on the north side of the proposed dwelling and a garage/workshop on the western side. The proposed dwelling would have a total area of 208.6sqm.



In addition, the applicant proposes to construct a new shed measuring 22.5m x 15m, with a maximum height of 6.42m to the apex. As noted above, this shed would be used to store the applicant’s trucks, trailers, an excavator and other items which he uses for his quarry business. These are currently spread across the site, as seen in the pictures below.

The proposed dwelling would be sited a minimum of 4.75m from the eastern site boundary and 35.5m from the southern boundary. The proposed shed would be located 30m from the western boundary and 12m from the southern boundary.

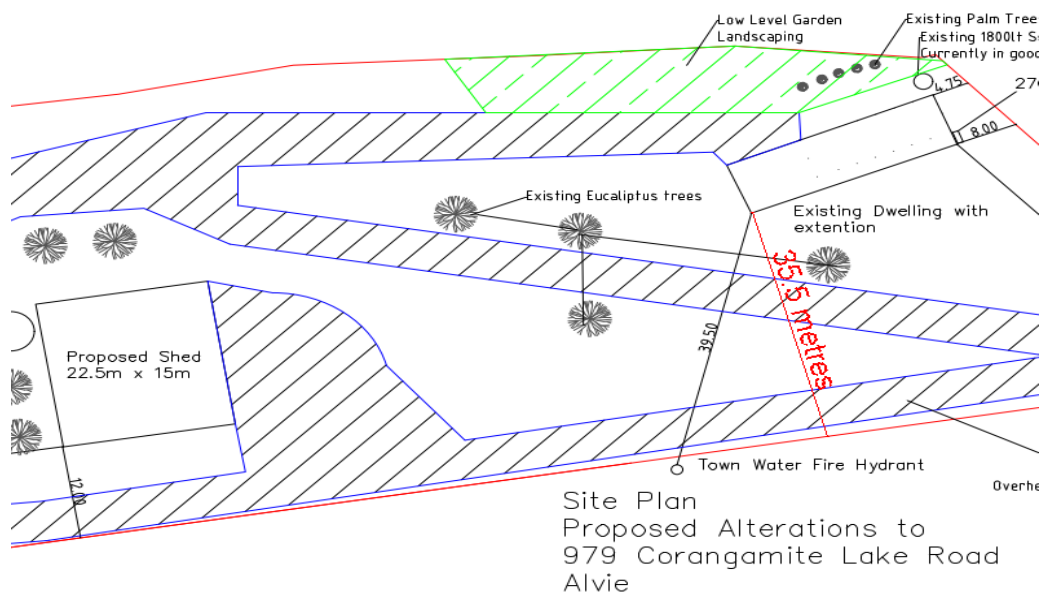


Fig. 4 – Applicant’s Site Plan





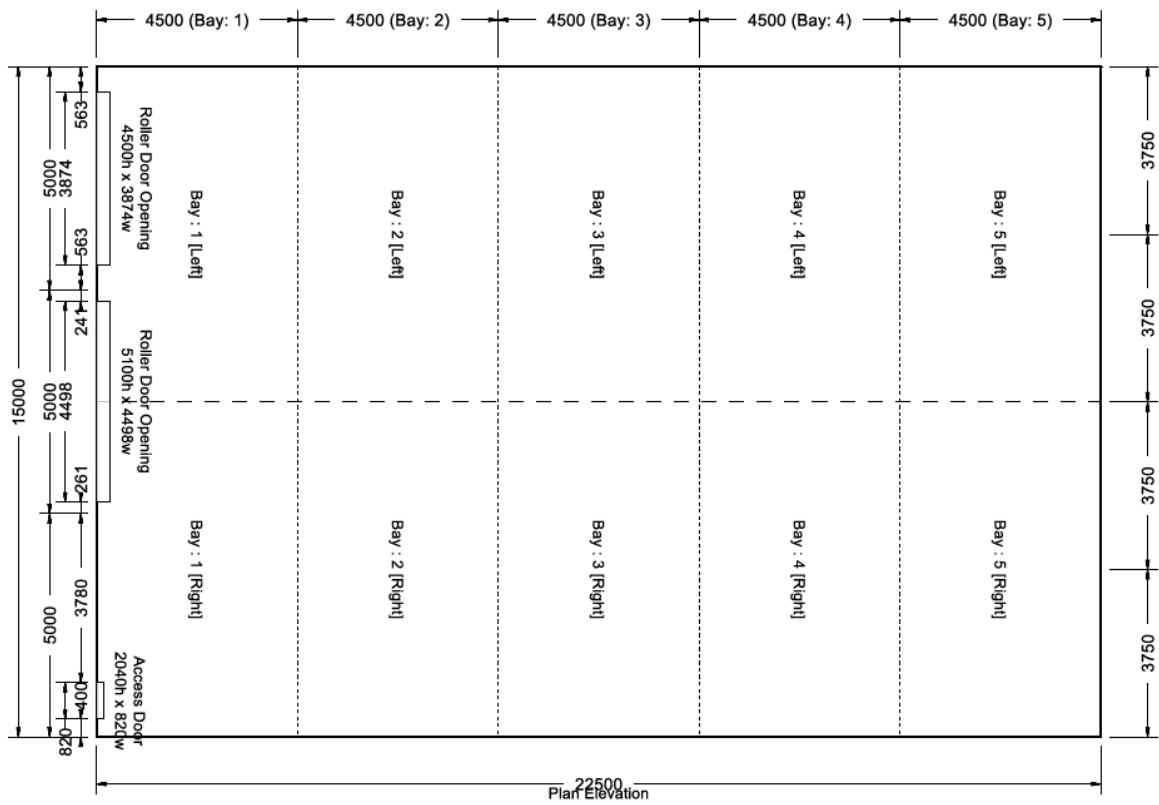


Fig. 7 – Proposed Floor Plan of Shed

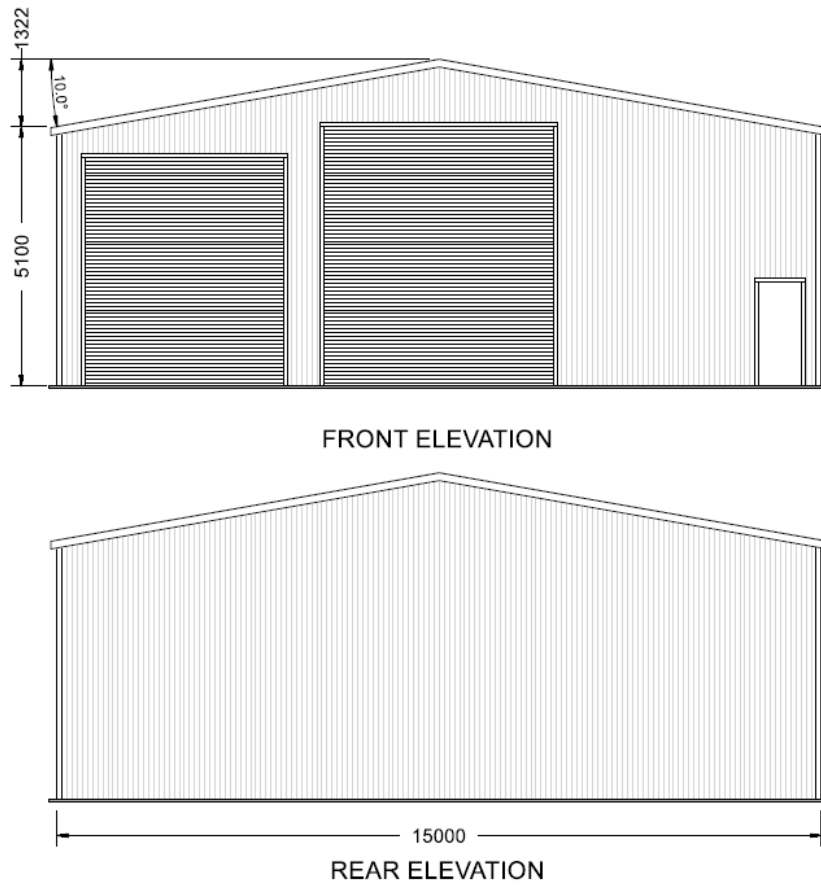


Fig. 8 – Proposed shed elevations

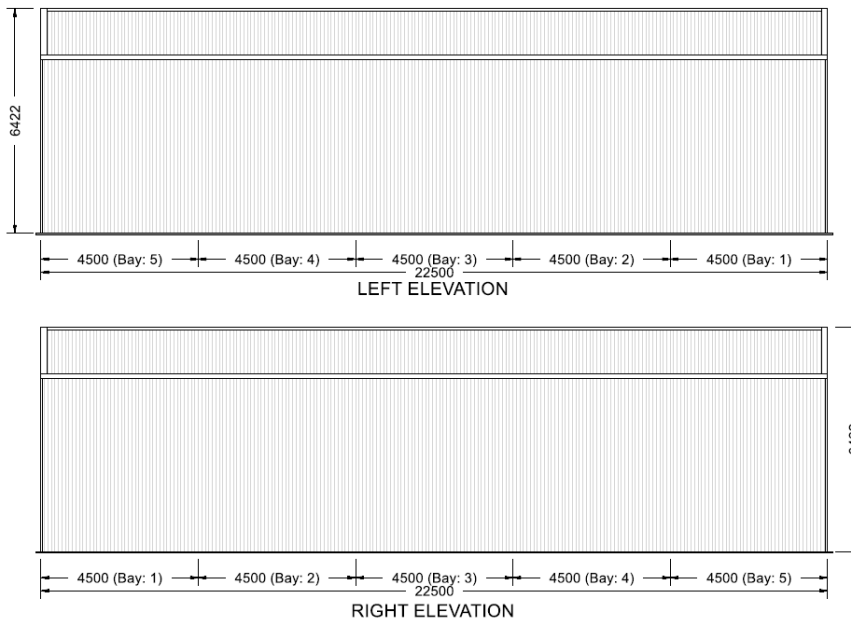


Fig. 9 – Proposed shed elevations

## 4. SUBJECT LAND & SURROUNDINGS

The site is located within the Farming Zone and is known as 979 Corangamite Lake Road. It is covered by Environmental Significance Overlay, Schedule 2 (ESO2), Significant Landscape Overlay, Schedule 1 (SLO1) and partially covered by Land Subject to Inundation Overlay (LSIO) (4.42%).

The site comprises three parcels of land, i.e., Lots 1, 2 and 3 on Title Plan 663499W, as shown below:

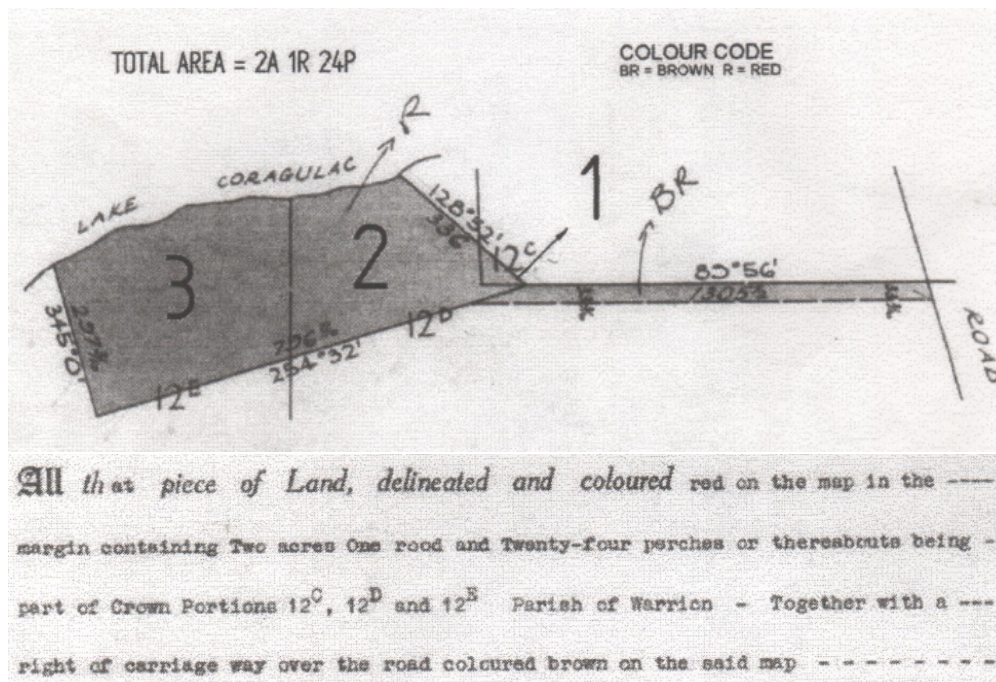


Figure 10 – Extracts from property title

The site, which is located on the western side of Corangamite Lake Road, is accessed via a right of way easement on 977 Corangamite Lake Road (shown marked 'BR' on the extract from the Title Plan above). The subject site is elevated near its southern boundary but slopes relatively steeply down towards the northern boundary. There are currently vehicles, trailers, an excavator and other items stored in the open across the site.

As stated earlier, the site contains a building which was previously used as a ski shack when there were water activities at Lake Coragulac. This is located in the lower, northern part of the site. Whilst the applicant stated that the previous owner lived in this building until the applicant purchased the property in 2018, neither Council's rating database nor its planning records show the presence of any lawful dwelling on this land.

The land adjoins Lake Coragulac to the north, which is in the Public Conservation and Recreation Zone (PCRZ). There are properties in the Farming Zone to the east and west, with the former containing a dwelling. Council's green waste and materials recovery facility is located to the south of the subject land. There is also a quarry in close proximity to the south of the subject site, at 955 Corangamite Lake Road (Work Authority WA249). This quarry is currently owned by the applicant, who has verbally advised that it is only used on an occasional basis. The proposed dwelling would be located approximately 160m from the quarry site boundary.



The site is visible from the Red Rock Lookout as shown in one of the photographs below.



*Fig. 11 – View of materials on site near the southern boundary*



*Fig. 12 – View from the elevated section of the site of the existing building proposed to be converted to a dwelling, with Lake Coragulac (dried up) in the background*





*Fig. 13 – Existing building proposed to be converted to a dwelling*



*Fig. 14 – View of the existing detached building (previously used as bathroom and toilet) adjacent to the former ski shack*



*Figs. 15 and 16 – Vehicles and other items on site*





Fig. 17 – Excavator (small) on site



Fig. 18 – View of the site from Red Rock hill top lookout

## 5. PLANNING SCHEME PROVISIONS

### Planning Policy Framework

The Planning Policy Framework (PPF) seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development policies. The policies considered relevant to the application are identified below:

- 02.01 - Context
- 02.02 - Vision
- 02.03 - Strategic Directions
- 02.04 - Strategic Framework Plans
- 11.01-1S, 11.01-1R and 11.01-1L – Settlement
- 12.05-2S and 12.05-2L – Landscapes
- 13.04-1S – Contaminated and Potentially Contaminated Land
- 13.07-1S and 13.07-1L - Land Use Compatibility
- 14.01-1S and 14.01-1L - Protection of Agricultural Land
- 14.01-2S and 14.01-2R - Sustainable Agricultural Land Use
- 14.02-1S – Catchment Planning and Management
- 15.01-6S and 15.01-6L - Design for Rural Areas
- 16.01-3S - Rural Residential Development

As stated above, the site is located near a closed landfill site, Council's operating green waste and materials recovery facility and also to a quarry. Matters such as the potential for the land to be contaminated, and land use compatibility issues (including risk from landfill gas to any future sensitive use, such as a dwelling) must therefore be considered prior to such a use or development being allowed.

Clause 13.04-1S (Contaminated and Potentially Contaminated Land) seeks to ensure that contaminated and potentially contaminated land is used and developed safely. Strategies include ensuring that contaminated or potentially contaminated land is or will be suitable for the proposed use, prior to the commencement of any use or development, and protecting a sensitive use (including residential use), from the effects of contamination. [emphasis added] The policy guideline in this clause is as follows:

"Consider as relevant the potential for contamination to impact the proposed use or development through an assessment that is proportionate to the risk, including:

- An assessment in accordance with the National Environment Protection (Assessment of Site Contamination) Measure (National Environment Protection Council, 1999)
- A preliminary risk screen assessment or environmental audit under Part 8.3 of the *Environment Protection Act 2017*."

Clause 13.07-1S (Land Use Compatibility) seeks to:

- *Ensure that use or development of land is compatible with adjoining and nearby land uses.*
- *Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.*
- *Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.*
- *Protect existing commercial, industrial and other uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.*

Clause 14.01-1-1S (Sustainable Agricultural Land Use), which is a state-wide planning policy relating to the protection of agricultural land, seeks to limit new housing development in rural areas by discouraging the development of isolated small lots in the rural zones with dwellings or other incompatible uses. Clause 14.01-1L, which is the related local policy, seeks to discourage dwellings on lots that do not meet the minimum lot area of the zone unless it is required for an intensive agricultural activity on the land or to achieve the environmental protection of the land.

Colac Otway Shire Rural Living Strategy

The subject site and the surrounding area are not identified as a potential rural living area within this strategic document. The Strategy noted, inter alia, in relation to Coragulac:

- *“The settlement is located on the Warrion aquifer. Any future development must minimise groundwater usage and demonstrate that effluent management and disposal will not negatively impact on groundwater quality.*

**Rural residential development along Corangamite Lake Road/Ryans Lane:**

- *Given the extent of existing development, fragmented ownership patterns and the lack of obvious constraints, it is recommended that this precinct be rezoned to Low Density Residential.*
- *It is considered that the proposed rezoning better reflects existing development patterns and will ensure that a clear distinction is drawn between productive agricultural land and residential development.*
- *The proposed rezoning will strengthen the community and alleviate demand in the region for rural residential development which cannot currently be met by existing land supply in other town’s of the Shire other than Colac.”*



Figure 19 – Extract from the Colac Otway Shire Rural Living Strategy



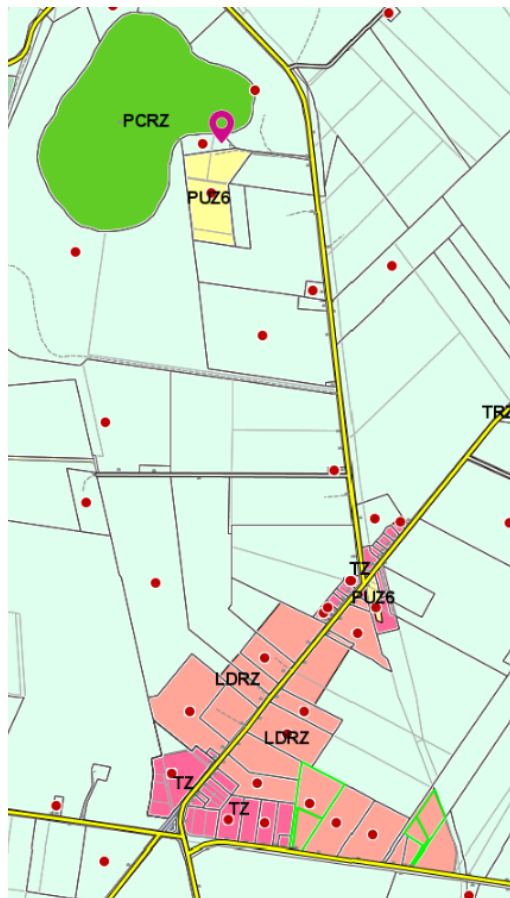


Figure 20 – Subject site (pink pin) in relation to area shown in figure 17 at southern end of image)

The subject site does not lie within the area identified for re-zoning nor in the long-term investigation area. Whilst the constraints of the site - including the surrounding uses, topography and size are acknowledged - it is important land in the wider area is preserved for farming purposes given it is identified as Farmland of Strategic Significance in the *Rural Land Strategy 2007*.

### Zone

The subject site is located within the Farming Zone (FZ). The key purpose of this zone is to provide for the use of land for agriculture and to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture. Under Clause 35.07-1 of the Farming Zone, a permit is required to use the land for a dwelling and store, and under Clause 35.07-4 a permit is required for building and works associated with a dwelling on a lot less than 40ha. There is also a permit trigger if minimum setbacks are not met, as is the case for the proposed dwelling. The relevant setbacks are:

- 20m from a road – there is no road abutting, or within 20m of, the subject site.
- 5m from any boundary – whilst the proposed shed would not encroach into the specified setback, the proposed dwelling would be within the setback.
- 100m from any dwelling not in the same ownership – both the proposed dwelling and the shed would be more than 100m from the nearest dwelling to the north-west.
- 100m away from a waterway, wetland or designated floodplain – both the proposed dwelling and shed would be within 100m of Lake Coragulac and land designated as LSIO.

It is not considered that the encroachment into these specified setbacks would cause material detriment to the character of the area. Any views of the proposed dwelling and shed from the road would be restricted. With regards to closeness to Lake Coragulac and the extent of the LSIO, the application was referred to the CCMA which, whilst raising a concern about the increase in the footprint of the building, raised no concerns about flooding and did not object. Notes were recommended for inclusion on any permit issued.

In addition, there is a permit trigger for a building or works associated with accommodation located within 500 metres of the nearest title boundary of land on which a work authority has been applied for or granted under the *Mineral Resources (Sustainable Development) Act 1990*. This is discussed in the assessment section below

The main issues in this case relate to the principle of allowing the proposed dwelling close to the industrial uses (with landfill, quarries and materials recycling etc. all being types of industry) and also the acceptability of allowing the proposed dwelling on a small lot, having regard to the purpose of the Farming Zone and relevant planning policy.

### **Overlays**

#### Environmental Significance Overlay, Schedule 2 (ESO2) - Lakes, Wetlands and Watercourses

The site is covered by Environmental Significance Overlay, Schedule 2 (ESO2) – Lakes, Wetlands and Watercourses. This overlay recognises that lakes, wetlands and watercourses are a significant environmental resource that should be protected from inappropriate development. The key objectives of this overlay are, inter alia, to protect the quality of water entering lakes, watercourses and wetlands; to prevent erosion of banks, streambeds and adjoining land and the siltation of watercourses, drains and other features; and to consider the intensity of the development of environmentally sensitive land. Under Clause 42.01-2, a planning permit is required for buildings and works associated both with the proposed dwelling and the store.

Under the provisions of this overlay, a planning permit must be referred under Section 55 of the *Planning and Environment Act 1987* (the Act) to the Department of Environment, Land, Water and Planning (DELWP). No response has been received from DELWP to date.

#### Significant Landscape Overlay, Schedule 1 (SLO1) - Valleys, Hills and Plains Landscape Precinct

The site is covered by Significant Landscape Overlay, Schedule 1 (SLO1) - Valleys, Hills and Plains Landscape Precinct. A key purpose of this overlay is to identify significant landscapes, and to conserve and enhance the character of significant landscapes. Applications under this overlay are required to demonstrate that all new buildings and works are designed and constructed to avoid contrasting shape, colour, size and mass. Structures are required to be sited and screened so that they become an integral part of the visual landscape rather than dominating it, with buildings and works on ridgelines, the slopes of scoria cones and inside craters avoided. It must be demonstrated that there is no alternative suitable site, and that the buildings and works are essential. Under the provisions of this overlay, a planning permit is required under Clause 42.03-2 for buildings and works associated with the construction of the proposed dwelling and shed.

As noted above, the site is visible from Red Rock Lookout and it would be important, in the event a permit is issued against officer recommendation, that any development can become “*an integral; part of the visual landscape*” and that suitable muted, non-reflective materials are used (rather than, as proposed, using zincalume on any building).

Land Subject to Inundation Overlay, Schedule 1 (LSIO1) - Valleys, Hills and Plains Landscape Precinct

Only a small portion of the site (4.42%) is within the LSIO, as shown below. A key purpose of this overlay is to identify flood prone land in a riverine or coastal area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority; to minimise the potential flood risk to life, health and safety associated with development; and to protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.

None of the works proposed would be in the area covered by the LSIO. Should fencing be proposed within this area in the future, it would be necessary to establish whether or not it would meet the exemptions listed in the schedule to the LSIO.

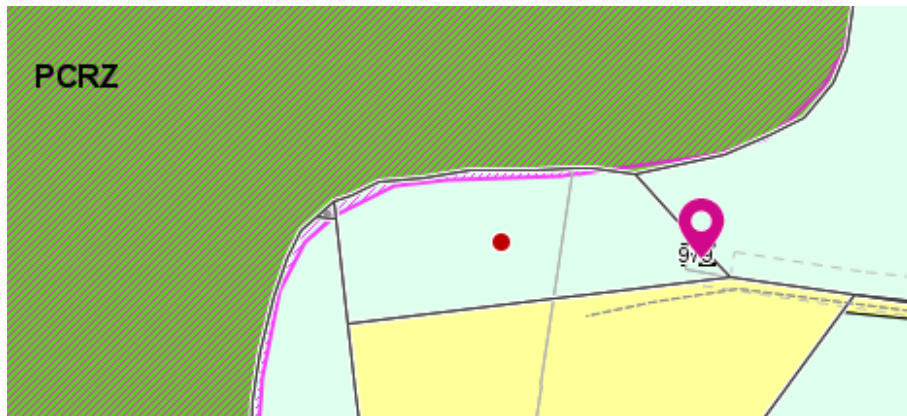


Figure 21 – Extent of LSIO shown hatched

### Other relevant provisions

Clause 65.01 (Approval of an Application or Plan) of the Victoria Planning Provisions (VPP) requires a responsible authority, before deciding on a permit application or approval of a plan, to consider as appropriate “any significant effects the environment, including the contamination of land, may have on the use or development” [emphasis added]. It also requires consideration, as appropriate, of “the effect on the environment, human health and amenity of the area”, as well as “the orderly planning of the area”.

### Relevant Planning Scheme amendment

Not applicable

### Other Relevant Documents

There are a number of other important documents that provide guidance on assessing proposals where there may be land use conflicts or land contamination. These include:

- Planning Practice Note 30, ‘Potentially Contaminated Land’ (July 2021). The purpose of this practice note, inter alia, is to provide guidance for planners and applicants on:
  - How to identify potentially contaminated land
  - The appropriate level of assessment of contamination in different circumstances
  - Appropriate conditions on planning permits

This practice note provides advice about the role of the planning system and applies to situations where a planning approval or control applies.

- Planning Practice Note 92 ‘Managing Buffers for Land Use Compatibility’ (March 2021). The purpose of this practice note is to provide guidance on:
  - planning for land use compatibility and the Planning Policy Framework
  - requirements in planning provisions relating to the management of buffers, including:
    - clause 53.10 Uses and activities with potential adverse impacts; and
    - clause 44.08 Buffer Area Overlay

This practice note flags that many industrial and other land uses have the potential to produce off-site impacts, such as noise, dust, odour and hazardous air pollutants. It notes that these impacts are particularly concerning where sensitive uses may be exposed. PPN92 notes that even ‘state of the art’ facilities are not always able to eliminate the potential for unintended off-site impacts.

The practice note defines sensitive uses as *“land uses considered to be sensitive to emissions from industry and other uses due to their impact on amenity, human health and safety”*, with dwellings included as an example.

- EPA Publication No. 1518 ‘Recommended Separation Distances for Industrial Residual Air Emissions’ (17 March 2013). This is included under Clause 13.07-1S (Land Use Compatibility) for consideration as a policy document. The document provides guidance on what land uses require separation, the types of land uses that are suitable as interface land uses and informs strategic land use planning decisions and consideration of planning permit applications.
- EPA Publication No. 1642: Assessing Planning Proposals Within the Buffer of a Landfill’ (16 October 2017). This document is intended to assist planning and responsible authorities under the *Planning and Environment Act 1987* assess planning permit applications and planning scheme amendments that would lead to development within the buffer of an operating or closed landfill.
- EPA Publication No. 788.3 ‘Siting, Design, Operation and Rehabilitation of Landfills’ (August 2015).

## 6. REFERRALS

### Internal Referrals

The application was referred internally to Council’s Infrastructure Department and Health Protection Unit. No objections were raised by either. The Infrastructure Department requires permit conditions to be imposed in the event that a planning permit is issued. The Health Protection Unit did not require any conditions to be imposed, on the basis that the building was previously a one-bedroom building and there would be no change to the nominal rooms as a result of the current proposal. The applicant was also referred to Council’s Coordinator Landfill Rehabilitation, given the proximity of the site to Council’s green waste and materials recovery facility.



## External Referrals

The application was referred externally to DELWP under section 55 of the Act, but no response has been received.

The Corangamite Catchment Management Authority (CCMA) was also notified of the application under section 52 of the Act, given the site's proximity to Lake Coragulac. The CCMA noted that lake levels started declining in 1998 and it has been almost empty for the past 20 years. It advised that the water table has dropped considerably in the Red Rock Complex in recent decades, leaving the volcanic lakes such as Coragulac Lake empty. In light of this, the CCMA advised that it does not have any requirements in relation to flooding. However, the CCMA also stated:

*"...The Authority notes that an Environmental Significance Overlay – Schedule 2 exists over the entire lot in recognition of the need to protect environmentally significant lakes and wetlands from inappropriate development. The existing building is located within 5 metres of the top of bank of the lake. The decision guidelines of the ESO2 overlay requires (amongst others), consideration of the ability to provide a vegetated buffer of a width of at least 50 metres around lakes or watercourses where no development will take place.*

*The Authority recognizes the existing building and would not object to the renovation of the building if the Responsible Authority considers it appropriate to allow the building to be used as a dwelling. However, the Authority would recommend that the building envelope be restricted to its current footprint. Increasing the size of the existing development appears to be in conflict with the intent of the ESO2 overlay.*

*In light of the above information and pursuant to Section 56 of the Planning and Environment Act 1987, the Authority does not object to the granting of a permit, and makes the following comments for Council's consideration:*

### NOTE:

- 1. The Authority recommend that the building envelope be restricted to its current footprint to protect the lake environment from further development.*
- 2. Lake Coragulac has been designated as a waterway under the Water Act 1989. As such, any development within 30 metres of the waterway will require a Works on Waterways Permit from the Corangamite Catchment Management Authority. A permit application can be submitted from the CCMA website at:  
<https://ccma.vic.gov.au/waterways/flood-advice-works-on-waterways/#workswaterways>."*

Notice of application was also provided to the Environment Protection Authority (EPA) and Department of Jobs, Precincts and Regions (DJPR) under Section 52 of the Act. The DJPR confirmed it does not object to grant the permit, subject to consideration of EPA Publication No. 1518 (Recommended Separation Distances for Industrial Residual Air Emissions – Guideline) before making a decision.

The EPA has raised concerns about the proximity of the proposal to industrial land uses and provided some comments for Council's consideration. These are discussed in detail below.

## 7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application in the form of a site notice and letters to adjoining landowners/occupiers. No objections were received.

## 8. OFFICER'S ASSESSMENT

The key issues for consideration in the determination of this application are whether the proposal is in accordance with land use compatibility planning policies, given the site is in close proximity to industrial land uses; whether sufficient information has been provided to determine there would be no risk from site contamination to the proposed dwelling; and whether the proposal is in accordance with relevant planning policies for the Farming Zone. Amongst the main issues to take into account are the proximity of the proposed dwelling to a closed landfill site and to an operating green waste and materials recycling facility, and the potential for issues such as gas migration and land contamination to be a risk to the occupants of the proposed dwelling. A dwelling is a sensitive use and particular care must be taken to ensure residences are appropriately sited and any risks are properly understood before a planning permit is issued.

Ensuring land use compatibility is fundamental to the objectives of planning in Victoria. Where separation between incompatible uses is not considered as part of the planning process, land use conflict can occur and there can be risk to residential properties.

It is considered that the current proposal does not comply with the following clauses in the Colac Otway Planning Scheme:

- 02.03-4 - Strategic Directions – Natural Resource Management
- 02.04 - Strategic Framework Plans
- 13.04-1S – Contaminated and Potentially Contaminated Land
- 13.07-1S and 13.07-1L - Land Use Compatibility
- 14.01-1S and 14.01-1L - Protection of Agricultural Land
- 16.01-3S - Rural Residential Development

The EPA has raised concerns about the proximity of the proposal to industrial land uses and provided comments relating to the following for Council's consideration:

- Potential Amenity Impacts
- Proximity to Landfill
- Potentially Contaminated Land
- Stormwater Management

The following assessment has had regard to relevant planning scheme provisions, EPA's publications and Planning Practice Notes, and the information required under these to satisfy both EPA and Council concerns. Despite a number of requests, the applicant has not provided the required information to establish that this site could safely be developed with a dwelling. Whilst it is noted that, as stated in EPA Publication No. 1518, there are no statutory obligations on an industry to supply information about its operations to third parties in respect to separation distances, and the agent of change (i.e. the applicant) is responsible for providing the evidence that demonstrates that a proposed use or development would be acceptable, Council has offered to provide any relevant information that

would assist an environmental professional engaged by the applicant to undertake a Preliminary Site Investigation (PSI), as discussed below.

The EPA noted that residential encroachment and intensification near critical industrial facilities could have significant impacts on the health and amenity of future residents, as well as the viability of these industries. As stated earlier, the subject site is adjacent to an operating green waste and materials facility to the south and the EPA has stated that, in its experience, these facilities are high-risk activities. The EPA advised that potential risks include management of waste material, waste stockpiling and operational risks associated with odour, dust and noise. In addition, it is noted that the works authority boundary of the quarry (WA249) is approximately 160m to the south of the proposed dwelling.

The EPA has advised Council to consider its Publication No. 1518 'Recommended Separation Distances for Industrial Residual Air Emissions' *when* assessing the compatibility of the proposed development as per Clause 13.07-1S (Land Use Compatibility) of the planning scheme. EPA publication 1518 provides advice on recommended separation distances between industrial land uses that emit odour or dust, and sensitive land uses.

Industry type	Definition	Recommended separation distance (m)	Comments
Quarry	Quarrying, crushing, screening, stockpiling and conveying of rock	Without blasting – 250m With blasting – 500m	DJPR confirmed the quarry at 955 Corangamite Lake Road does not involve blasting. As such, the recommended separation distance is 250m.
Landfill	Landfills used for the discharge or deposit of solid wastes (including solid industrial wastes) onto land, except premises with solely land discharges or deposits, used only for the discharge or deposit of mining wastes, and in accordance with the <i>Extractive Industries Development Act 1995</i> or the <i>Mineral Resources (Sustainable Development) Act 1990</i>	For closed landfills If landfill accepted solid inert waste – 200m If landfill accepted municipal (putrescible) waste – 500m	Council's Coordinator Landfill Rehabilitation advised that the landfill has not accepted waste since 2011. The site received putrescible waste until 1997, after which solid inert wastes were accepted up until 2011.  Given that the landfill site accepted putrescible waste in the past, it is considered that the recommended separation distance is 500m.
Materials recovery and recycling facility	Collecting, dismantling, treating, processing, storing, recycling, or selling used or surplus materials	Case by case	In this case, the separation distance to be determined to the satisfaction of the EPA.

The EPA noted that, even with good pollution technology and practice, there may still be unintended emissions affecting sensitive land uses beyond the boundary of the source premises.

Section 9 of EPA Publication No. 1518 includes information regarding variations from a recommended separation distance. This section states that, where a variation from the recommended separation distance is sought, approval should not be given by the planning authority or other responsible authority until the relevant land use separation issues have been resolved to the satisfaction of the EPA. It notes that *“in most cases, the party seeking variation from the recommended separation distance will be the proponent of the proposed land use change, and that proponent will be seeking to reduce the separation distance”*. Section 9.1 of this publication states that it should be the responsibility of the ‘agent of change’ (being the applicant) to provide evidence to the planning authorities or other responsible authorities that a variation from the recommended separation distances is appropriate. In this case the applicant was advised that a variation from the recommended separation distances could be sought and that it is the responsibility of the applicant to provide evidence to the Council to support a variation from the recommended separation distance. The applicant did not formally seek a variation from the recommended separation distance in the application and also did not address the land use separation issues to the satisfaction of the EPA or planning officers. As such, it is considered that Council does not have adequate information to allow the use and development of the subject land for a dwelling.

Table 4 under section 9.2 of publication 1518 lists the criteria that must be considered during the assessment of a site-specific variation to the recommended separation distances. Section 9.2 states that:

*“Separation distances seek to mitigate the consequences of IRAEs [industrial residual air emissions]. Any proposal to vary from a recommended separation distance should detail why the consequences of IRAEs are such that variation from the recommended separation distances is justified. Table 4 provides a guide to the criteria that must be considered during the assessment of site-specific variation to the recommended separation distances. Consideration of these criteria is a prerequisite for site-specific variation, but not a guarantee that a variation is justified. Additional information may be required in many cases, including sufficiently detailed data to enable dispersion modelling.*

Table 4: Criteria for site-specific variation

Criteria	Explanation
Transitioning of the industry	Existing industry has formally indicated that it will transition out of an area and over a specified timeframe.
Plant equipment and operation	The industrial plant and equipment have an exceptionally high standard of emission control technology.
Environmental risk assessment	An environmental risk assessment of IRAEs has been completed that demonstrates a variation is justified.
Size of the plant	The plant is significantly smaller or larger than comparable industries.
Topography or meteorology	There are exceptional topographic or meteorological characteristics which will affect dispersion of IRAEs.
Likelihood of IRAEs	Particular IRAEs are either highly likely or highly unlikely to occur.

Figure 22 – Table 4 from EPA Publication No, 1518

Despite a number of requests being made, the applicant has not provided any information to address the site-specific criteria for Council and the EPA to determine if a site-specific variation can be considered as part of the proposed development.

The EPA also noted that residential encroachment and intensification near a critical industry can impact on the viability of that operation. It must be noted that, when there is an inadequate



separation distance between an industry and sensitive land uses, subsequent remedial action to alleviate off-site effects may be uneconomical or impractical.

#### Proximity to Landfill

As stated above, as well as currently operating as a green waste and materials recovery facility, the site at 977 Corangamite Lake Road is a closed landfill. The application does not address the proximity of the subject land to either.

The EPA has drawn Council's attention to EPA Publication No. 1642 'Assessing Planning Proposals within the Buffer of a Landfill' which provides information and advice on assessing planning permit applications that would result in development within the buffer of an operating or closed landfill. More specifically, it advises on the level of assessment a planning or responsible authority should require to inform its decision, and recommends a staged, risk-based approach.

For closed landfills, buffers are used to manage the risk of landfill gas. Buffers separate landfills and 'sensitive land uses' and are used to manage the risk of landfill gas from operating closed landfills and amenity impacts from operating landfills, including odour, noise, dust and litter. EPA Publication No. 1642 states that, in the context of landfill gas, any building or structure is considered sensitive, because of the risk of explosion or asphyxiation. (Councillors may recall the case where a methane gas leak from a disused landfill site in Cranbourne in 2008 led to a requirement for millions to be paid in compensation by Casey Council and the Environment Protection Authority.)

EPA Publication No. 788.3 'Siting, Design, Operation and Rehabilitation of Landfills' states, also notes the importance of buffer distances:

*"Appropriate buffer distance must be maintained between the landfill and sensitive land uses (receptors) to protect those receptors from any impacts resulting from a failure of landfill design or management or abnormal weather conditions. These failures might constitute discharge from the site of potentially explosive landfill gas, offensive odours, noise, litter and dust. Features that could be adversely affected by landfilling operations include surface waters, buildings and structures.... Buffer areas are not an alternative to providing appropriate management practices, but provide for contingencies that may arise with typical management practices."*

Section 4.3 of EPA Publication No. 1642 and section 8 of EPA Publication No. 788.3 provide guidance for measuring buffers for closed landfills. These documents state that buffers should be measured from the sensitive land use to the edge of the nearest landfill cell. Council's Coordinator Landfill Rehabilitation has advised that the landfill cell boundaries are not certain, as the site was not constructed according to EPA Best Practice Environmental Management (BPEM) at the time of landfill. However, the Coordinator also advised that, as a component of rehabilitation preparation, Council will be undertaking an extent of waste geotechnical assessment to identify the location, depth and types of waste in each cell, which is scheduled for the 2023/24 financial year. Given the landfill cell location is uncertain, the boundary of the landfill premises should be used, which is the common property between the subject site and 977 Corangamite Lake Road. Given the landfill site previously accepted putrescible waste, it is considered that there should be a buffer distance of 500m from the common property line between the subject site and 977 Corangamite Lake Road.

It is known that there is landfill in the southern section of 977 Corangamite Lake Road (Lot 1 TP338721), though it is to be established whether there is landfill within the northern section now

occupied by the green waste and material recovery facility. The Coordinator Landfill Rehabilitation has advised that there have been anecdotal accounts that some waste has been found near the materials recovery facility.

The proposed shed would be located only 12m from the northern boundary of 977 Corangamite Lake Road and the dwelling would be only 35.5m from that boundary. As noted above, whilst the landfill site is closed, the dwelling would be 160m from the known area of landfill within 977 Corangamite Lake Road. It is understood that closed landfills can potentially discharge landfill gas for more than 30 years after they last accept waste, which was in 2011. EPA Publication No. 788.3 notes that:

*“8.2.1 Buffers and measurement*

*The post-closure buffers are set to manage landfill gas impacts, including the risk of explosion and/or asphyxiation. Landfill gas potential risks remain for at least 30 years post-closure.*

*Buffers are measured from the sensitive land use to the edge of the closest cell. All cells, including closed cells, need to be considered in calculating buffers. For sites that cannot demonstrate the above, the premises boundary is the point of measurement.*

*For old landfill sites, the original plans for the development of the landfill — or, in their absence, the relevant property titles — should be used to determine the original boundary of the landfill premises.*

*8.2.2 Buffer distances and encroachment*

*Proposed developments and any works within the recommended landfill buffer can pose a safety risk by potentially providing preferential pathways for landfill gas migration, or providing an environment where landfill gases can accumulate to dangerous levels. All buildings and structures should be considered, including:*

- *buildings and structures used for sensitive or non-sensitive uses*
- *change of use..,*

*Responsible planning authorities need to be provided with sufficient information by the proponent to satisfy them that the proposed new development or rezoning will not be adversely impacted by its proximity to the landfill site.”*

Section 6 of EPA Publication No. 1642 provides guidelines for a standardised, risk-based approach for the planning or responsible authority to determine the appropriate level of assessment for landfill gas risks. Section 6.2 suggest that a four-step approach is required to determine the level of information required to be submitted as part of an application for a sensitive use. An overall score determines the level of information, which is based on the proposal type, landfill age, landfill type and landfill age. Whilst Council’s Coordinator Landfill Rehabilitation advised that the age of the landfill is not known, it is considered that the overall score would fall between 9-25 and the level of assessment required would be a landfill gas risk assessment to be submitted as part of the application. [The scoring is based on: 1-8 – no further assessment required; 9-25 – landfill gas risk assessment required; 26-45 – section 53v audit required.] The flowchart below shows the recommended approach to the assessment of the risk of landfill gas impacts.

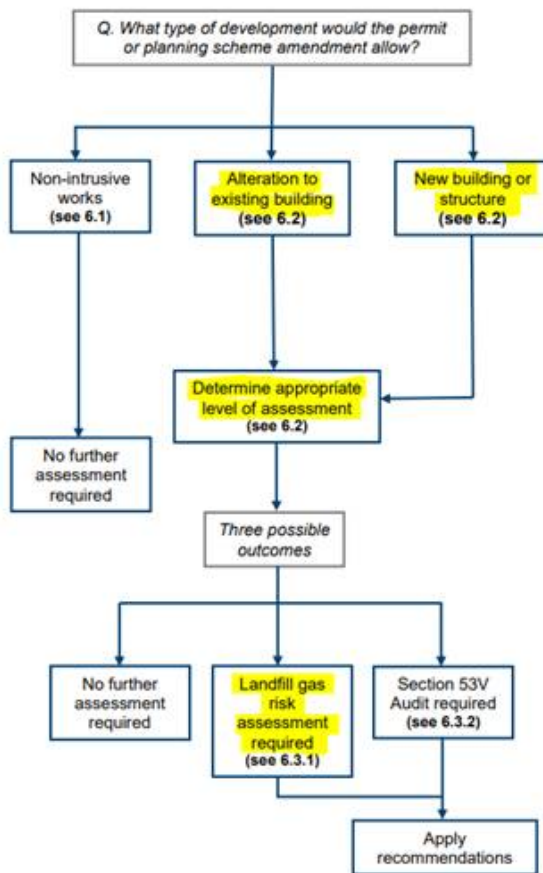


Fig. 23 – Overview of recommended approach to assess the risk of landfill gas impacts

The applicant did not submit this assessment for Council or EPA's consideration, to determine if the proposed development would be acceptable within the buffer of the landfill site.

It is noted that the most recent monitoring report from January 2022, which provided details of methane and carbon dioxide concentrations at each Landfill Gas Bore found that there has been exceedance of the EPA Action Levels in Carbon Dioxide levels at certain locations. The monitoring data from 2018-2021 and the January 2022 monitoring event, confirms that current landfill gas levels are at concentrations that are not elevated and have been consistent over the past four years.

Given the absence of a landfill gas risk assessment for the proposed development and its risk to exposure to landfill gas, it is considered that the proposed location of the dwelling would not be appropriate and, as such, the proposed development should not be allowed. If Councillors decide to allow the proposal against officer recommendation, it is considered imperative that a condition be imposed to require a landfill gas risk assessment prior to commencement of use of the land for residential purposes.

The information below is an excerpt from section 6.3 of EPA publication 1642, which provides details on landfill gas risk assessment.

*Who can conduct a landfill gas risk assessment?*

*A landfill gas risk assessment should be conducted by a professional environmental consultant with demonstrated experience in conducting landfill gas risk assessments for developments near landfills. The planning permit applicant or planning scheme proponent should engage this person. [emphasis added]*

*What is a landfill gas risk assessment?*

*A landfill gas risk assessment should include:*

- 1. a conceptual site model, based on the characteristics of the landfill and proposal and the likely pathways of gas migration and exposure at the proposed development site.*
- 2. sufficient environmental monitoring from the proposal site to inform the assessment and enable the environmental risks to be characterised (magnitude and likelihood of hazard)*
- 3. an assessment of the environmental risk posed by the landfill to the proposed development site in accordance with a recommended methodology (see below)*
- 4. site-specific recommendations for further action (including mitigation measures for the buildings and structure at the proposed development site if necessary).*

*What is the landfill gas risk assessment process?*

*EPA recommends that landfill gas risk assessments follow the methodology in either:*

- Assessing risks posed by hazardous ground gases to buildings (Construction Industry Research and Information Association (CIRIA), Publication 665:2007); or*
- Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings (British Standard 8485:2015).*

*These two publications propose essentially the same methodology using different terminology.*

*What are the potential outcomes of a landfill gas risk assessment?*

*A landfill gas risk assessment should recommend:*

- 1. what, if any, mitigation measures are required*
- 2. what, if any, further assessment is required (such as monitoring or the need to complete a section 53V Audit).*

*How long does a landfill gas risk assessment take?*

*A landfill gas risk assessment will typically take 1 – 24 months (as outlined in the relevant standards CIRIA Publication 665:2007). The time required will depend on the type and frequency of environmental monitoring required to inform the assessment.*

#### Potentially Contaminated Land

The site is in proximity to land uses where high potential for contamination activities exists/existed:

- Adjacent to closed landfill site.
- Adjacent to green waste and materials recycling station.
- Quarry to the south. Mining and extractive industries have high potential for contamination.



Because of the presence of the landfill and materials recycling close to the site, there is potential for contamination of the subject land. As noted earlier in this report, Clause 13.04-1S (Contaminated and Potentially Contaminated Land) seeks to ensure that contaminated or potentially contaminated land is or will be suitable for the proposed use, prior to the commencement of any use or development.

It must be noted that the planning authority (Council in this instance) must adhere to the requirements of Planning Practice Note 'Potentially Contaminated Land' (PPN30) and State Environment Protection Policy 'Prevention and Management of Potentially Contaminated Land'.

Consistent with the obligations under section 60 of the *Planning and Environment Act 1987*, Council is required to consider any significant effects the environment may have on the proposed use or development, or the use or development may have on the environment. This places a clear obligation on Council as the Responsible Authority to satisfy itself that the land is suitable for the intended use.

Planning Practice Note 30 'Potentially Contaminated Land' provides guidance, including how to identify if land is potentially contaminated. It notes that potentially contaminated land is defined in Ministerial Direction No.1 'Potentially Contaminated Land' and Clause 73.01 (General Terms) of the Victoria Planning Provisions (VPP) as land:

- a) *used or known to have been used for industry or mining;*
- b) *used or known to have been used for the storage of chemicals, gas, waste or liquid fuel (other than minor above-ground storage that is ancillary to another use of the land); or*
- c) *where a known past or present activity or event (occurring on or off the land) may have caused contamination on the land. [emphasis added]*

Among the land uses listed as having high potential for contamination are "landfill sites/waste depots" and "materials recycling and transfer stations".

PPN30 states that if insufficient information is available, Council may need to request further information from the applicant:

*"When should additional information be required from the applicant?*

*If there is insufficient information to determine the current and historical uses of land and its surrounds following the review of information sources in Table 1, a site history review (as described in Appendix 2) may be commissioned to gather further information. The site history review may be obtained through a request to the proponent or applicant under s54 of the Planning and Environment Act 1987. A request for a site history review must be made prior to a decision on a planning scheme amendment or permit application, to ensure that a determination on whether land is potentially contaminated can be reached. If the review of the current and historical use of the land and surrounds shows a history of non-contaminating activities and there is no other evidence or suspicion for contamination, further investigation is not required."*

Council has requested the applicant to provide this information. However, no information has been received to help it to understand whether or not the subject land is contaminated.

Table 2 of PPN30 notes that landfill sites and materials recycling and transfer stations are land uses with high potential to contaminate land; as such there is a potential risk of off-site contamination or

polluted groundwater migration. The EPA suggested Council may therefore wish to request that the applicant undertake a Preliminary Site investigation (PSI). It advised that the PSI should gather sufficient information on the history of the site, which can then be assessed against the land uses or activities which might indicate potential contamination and ultimately should contain sufficient information for Council to determine the need for an environmental audit. The PSI should also include any possible sources of off-site contamination from neighbouring land uses, both current and historical. The EPA advised, in line with relevant guidance documents, that the PSI should be prepared by an environmental professional with qualifications to the satisfaction of the responsible authority and be compliant with the provisions for a Preliminary Site Investigations in Schedule B2 of the *National Environment Protection (Assessment of Site Contamination Measure 1999)* (as amended 2013). PPN30 states:

*“When does the environmental audit system apply to a planning permit application?  
For permit applications relating to land that has been identified as potentially contaminated, the responsible authority must seek appropriate environmental assessment....  
Where a proposal involves both buildings and works and establishment of a sensitive use, the environmental audit requirement must be met prior to whichever of these commences first.  
Where EAO requirements do not apply, s 60 of the Planning and Environment Act 1987, and clauses 65 and 13.04-15 of the VPP provide a basis for the responsible authority to consider the effect of potential contamination on a proposed use or development. At the time of the decision, the responsible authority must determine whether the land is potentially contaminated and identify the appropriate level of assessment.”* [emphasis added]

The applicant was advised on a couple of occasions that a PSI should be undertaken to establish if the subject site is contaminated. Whilst the applicant did not provide a PSI, he advised that the Council would have the information given it contracts a consultant to undertake groundwater and gas monitoring on the adjacent site. The applicant was advised that Council could help provide any relevant information to their environmental professional when undertaking a PSI, but that it is the applicant's (as the agent of change, proposing a sensitive use on the subject land) responsibility to satisfy Council that the subject site is free from contamination, as shown in the extract below from PPN30 outlining the roles and responsibilities of parties. This information has not been part of the application.

### Appendix 3: Roles and responsibilities in managing contaminated and potentially contaminated land

#### Applicants, proponents, landowners and occupants

- Provide adequate information on the existing or potential for contamination to have future adverse effects, to enable a planning or responsible authority to make an informed decision, including through undertaking required environmental investigations, and comply with requirements of the planning scheme and planning approvals.
- Comply with contaminated land duties under the *Environment Protection Act 2017*, including the duty to notify and duty to manage contaminated land.

#### Planning and Responsible Authorities

##### Administering the planning scheme

A responsible authority must consider the potential for land to be contaminated when proposing land use changes (including changes to permitted land uses or through rezoning proposals) and when assessing planning permit applications and ensure that the site is suitable for its proposed use.

##### Enforcement of planning scheme

Where a responsible authority becomes aware that an occupier is failing to comply with requirements set out in the planning scheme or planning permit, enforcement procedures under the *Planning and Environment Act 1987* are available. These may include planning infringement notices, enforcement orders or prosecution through the Magistrates Court.

##### Outside remit

Managing risks from contaminated land where no planning approval or control applies, for example, risks to an existing or as-of-right use.

Figure 24 – Extract from Planning Practice Note 30 ‘Potentially Contaminated Land’

Should Council decide to allow the proposal, a condition would need to be imposed requiring that, prior to the commencement of any works, a PSI must be undertaken and submitted to the Council to determine if the site is contaminated. If the PSI states that the site is contaminated then an environmental audit would need to be undertaken, which would also list any remediation works. PPN30 states that requiring an environmental audit as a condition of a permit may be acceptable if the responsible authority is satisfied that the land can be made suitable for its proposed use or development. In this case, it is considered that there is not sufficient information available to say whether the site is contaminated or not; what level of contamination there may be; and that, if contaminated, that the land could be made suitable for a dwelling.

#### Stormwater Management

The subject site is located adjacent to Lake Coragulac. Any construction activity should follow best practice guidelines in order to prevent the discharge of sediments and other pollutants to the stormwater system and waterways. Council’s Infrastructure Department has reviewed the proposal and recommended conditions requiring best practice stormwater management in accordance with ‘Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control’ (EPA) and also that any runoff from the development be taken to a legal point of discharge.

#### Farming Zone

The subject site currently is not used for any significant agricultural activity, being used mostly to store vehicles, trailers, excavators and other items which it is understood are generally used in association with the applicant’s quarry business, as seen in the photographs above. The activities on the site came to Council’s attention as part of a complaint.

The applicant has stated that the subject site is not of sufficient size for it to be used for productive farming of any nature and that the proposed dwelling would not have any effect on the loss or fragmentation of productive agricultural land. Whilst this may be the case, it should be noted that Clause 14.01-1S seeks to limit any new housing development in rural areas by discouraging development of isolated small lots in the rural zones from use for dwellings. Clause 14.01-1L also discourages dwellings on lots that do not meet the minimum lot area of the zone unless it is required for an intensive agricultural activity on the land. The application does not propose any intensive agricultural activity. It is considered that the application would not result in an orderly planning outcome, and that the proposal is against the policy direction provided by the Colac Otway Planning Scheme.

In response to the decision guidelines of the Farming Zone:

#### General issues

Whilst the applicant did not submit a Land Capability Assessment (LCA), Council's Health Protection Unit did not raise any objection to the proposal on the basis that the existing building had one bedroom and there would be no increase to bedrooms/nominal rooms as part of the proposal. On that basis, there is no requirement to upgrade the existing septic system.

However, planning officers have some concerns about the lawfulness of any previous residential use of the ski shack, and the potential issue of effluent disposal near the lake (noting also the CCMA's comments regarding the potential conflict with ESO2 through the extension of the existing building). A septic tank has been shown on the plans, which the applicant states is operating satisfactorily, but no further detail of wastewater management is known.

#### Agricultural issues and the impacts from non-agricultural uses

As noted earlier in this report, the subject site is not currently used for any agriculture purposes of note and, given the undulating topography and existing use of the land, it is unlikely the site possesses any agricultural values. It is acknowledged that the subject site is located adjacent to a closed landfill site and an operating materials recovery and recycling facility, and considered that any use of land for agriculture would be unviable.

#### Dwelling issues

With regard to 'dwelling issues' it is considered that, for the reasons outlined in this report, allowing a dwelling on such a small site cannot be justified on planning policy grounds.

The concerns about the proximity to a closed landfill site, and an operating green waste and materials recovery facility, have been discussed in detail earlier in this report. Concerns about allowing a sensitive use close to those industries, with the inherent risk potentially posed by gas migration and contamination (which have not been satisfactorily addressed by the applicant in the application) are central to the officer recommendation to refuse this application.

As stated above, the subject site is also located approximately 160m from the quarry located to the south of the site at 955 Corangamite Lake Road. Under the provisions of the Farming Zone, there is a requirement to consider the potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust and vibration from an existing extractive industry operation if a dwelling is located within 500 metres of the nearest title boundary of land on which a work authority has been granted under the *Mineral Resources (Sustainable Development) Act 1990*.

EPA Publication No. 1518 recommends a separation distance of 500m from a quarry within which there is blasting, and a separation of 250m from a quarry without blasting. As noted above, there is a separation distance of 160m between the building it is proposed to convert to a dwelling and the quarry at 955 Corangamite Lake Road, which is operated by the applicant. Given the small scale of this quarry; the fact there is no blasting; the siting of the proposed dwelling at a low-level down by the lake; and the fact that vehicles from the quarry would not pass the proposed dwelling, it is not considered that the quarry would materially impact on the dwelling.

#### Environmental issues

The proposed dwelling would be sited close to the top of bank of the lake, whilst the proposed shed would be located on the higher part of the site. The applicant proposes to use the existing septic system. Council's Infrastructure Department has recommended conditions to ensure stormwater would be appropriately managed.

As noted above, planning officers have some concern that, whilst it is claimed that the ski shack had a bedroom, there is no evidence that this was lawful from a planning perspective. There is related some concern about effluent disposal on the site, with limited information provided with the application (which states there is an existing functioning septic tank on the site). It is considered that further clarification of the existing situation should be sought in the event a planning permit is issued.

#### Design and siting issues

Whilst the proposed dwelling would be located on the lower area of the subject site adjacent to the lake, there would be a clear line of sight of the proposed dwelling from the Red Rock hilltop lookout, as shown below. The proposed shed would be located on a higher part of the site and would be even more prominent when viewed from the lookout.

It is noted that the site currently appears untidy, but also noted that the lawfulness of the on-site storage has not been demonstrated (e.g., through a Certificate of Compliance application). Whilst, if the storage use is lawful, there could be a potential argument that a shed would help improve the site's appearance (with a requirement for storage to be within the shed), this argument does not hold for the proposed dwelling.

It is accepted that the ski shack building exists, though it is considered that the description of works provided by the applicant indicates that the existing building would largely be demolished and rebuilt. Given the visibility of the site from Red Rock Lookout and the location of the subject land within a Significant Landscape Overlay, it is recommended that, in the event a planning permit is issued against officer recommendation, the use of muted, non-reflective materials is required (and the proposed use of zinalume is not agreed).





Figure 25 – View of site from Red Rock Lookout

Significant Landscape Overlay, Schedule 1 (SLO1) - Valleys, Hills and Plains Landscape Precinct

The landscape character objective under this overlay seeks to protect landscape features including volcanic cones and significant views within the Shire. As stated above, the proposed buildings would be visible from the Red Rock hilltop lookout. As also discussed above, in the event a planning permit is issued against officer recommendation, it is recommended that appropriate materials be used to minimise the impact of development on the landscape. The submission and approval of an appropriate landscaping scheme, to mitigate the impact of the proposed development, should also be required.

Environmental Significance Overlay, Schedule 2 (ESO2) - Lakes, Wetlands and Watercourses

The CCMA has reviewed the proposal and commented as follows:

*The Authority understands the application relates to renovations and extension to an existing building to turn it into a habitable dwelling. The extension will involve a 44 square metre veranda on the north side (lake side) of the building, a 66 square metre garage workshop on the west side of the building and a 3m wide extension on the south side of the building.*

*Flood information available to the Authority comes from the Victorian Flood Data Transfer Project, pre-2000, and is considered coarse in nature. It indicates an approximate 1% AEP flood level of 121.4 metres AHD. LiDAR land elevation data indicates the existing dwelling site is at approximately 123.7 to 124.2 metres AHD and is therefore not expected to be impacted by lake flooding for flood events up to the 1% AEP flood event. Please note this assessment is approximate only.*

*The lake has in the past held water, as evidenced by the development of the water-skiing club facilities. However, lake levels started declining in 1998 and has been almost empty for the past 20 years. The water table has dropped considerably in the Red Rock Complex in recent*

*decades, leaving the volcanic lakes such as Coragulac Lake empty. It is questionable whether lake flooding is therefore likely to be an issue into the future.*

*In light of the above, the Authority would not have any requirements in relation to flooding.*

*The Authority notes that an Environmental Significance Overlay – Schedule 2 exists over the entire lot in recognition of the need to protect environmentally significant lakes and wetlands from inappropriate development. The existing building is located within 5 metres of the top of bank of the lake. The decision guidelines of the ESO2 overlay requires (amongst others), consideration of the ability to provide a vegetated buffer of a width of at least 50 metres around lakes or watercourses where no development will take place.*

*The Authority recognizes the existing building and would not object to the renovation of the building if the Responsible Authority considers it appropriate to allow the building to be used as a dwelling. However, the Authority would recommend that the building envelope be restricted to its current footprint. Increasing the size of the existing development appears to be in conflict with the intent of the ESO2 overlay.*

*In light of the above information and pursuant to Section 56 of the Planning and Environment Act 1987, the Authority does not object to the granting of a permit...”:*

It is noted that the CCMA recommended that the building envelope be restricted to its current footprint to protect the lake environment from further development and, whilst raising no objection, the CCMA noted that increasing the size of the existing development appears to be in conflict with the intent of the ESO2 overlay. The CCMA noted that a Works of Waterway Permit would be required for any works within 30m of the waterway.

#### Other Matters

The applicant has constructed a retaining wall to the rear of the existing building, as shown in the photograph below. It is considered that retrospective planning permission is required for the construction of this wall, as it is considered it constitutes buildings and works within SLO1. Should Councillors resolve to allow the proposed dwelling against officer recommendation, it is considered that a condition should be imposed to ensure that a suitably qualified engineer check the stability of this wall prior to the commencement of the dwelling use. Any required remediation works would also need be undertaken before the residential use commenced.



Figure 26 – Existing retaining wall

As stated earlier in the report, the subject site consists of three parcels of land on one title. If Council proposes to issue a permit for the proposed development, it is recommended that a condition be imposed requiring the consolidation of all three parcels.

#### Summary

In summary, it is considered that allowing a dwelling in close proximity to a closed landfill and operating green waste and materials recovery facility would be contrary to planning policy and guidance, and to EPA guidance. Evidence has not been submitted that demonstrates that allowing the proposed sensitive use would be acceptable, in terms of the potential risks to the health and amenity of the residents of the subject site, as well as the continued viability of the operating industry.

The applicant, as the agent of change (proposing a sensitive use close to the closed landfill site and the operating green waste and materials recovery facility), has not demonstrated that a permit should or could reasonably be issued, having regard to matters such as contamination and risk of landfill gas migration.

The proposal is also contrary to planning policies which seek to discourage the development of isolated small lots in rural zones from use for dwellings.

## **9. OFFICER DIRECT OR INDIRECT INTEREST**

No officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

