

Officer Report

Application Details:

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| Application is for: | Use of land for a store (Earthmoving equipment on-site and cars within existing shedding) |
| Preferred Contact: Owner's Name: | McCullagh, Robert McIntosh, Gregory Bruce |
| Date Received: | 29 March 2021 Application Received 30 March 2021 Application Paid |
| Statutory Days: | More than sixty days <ul style="list-style-type: none"> • Due to mediation • Applicant placed on hold |
| Application Number: | P2021-052 |
| Planner: Name, title & department | Senior Town Planner Planning and Investment Department |
| Land/Address: | Lot 29 on Plan of Subdivision 099517, Certificate of Title Volume 9100 Folio 253. Taylor Drive, Miepoll VIC 3666 |
| Zoning: | Farming Zone |
| Overlays: | Land Subject to Inundation Overlay (Part) |
| Is a CHMP required? | No The Subject site is not within a Culturally Sensitive Area |
| Is it within an Open Potable Catchment Area? | No The Subject site is not within an Open Potable Water Catchment Area |
| Under what clause(s) is a permit required? (include description) | <p><u>Permit Triggers</u></p> <p><u>Farming Zone</u> Pursuant to Clause 35-07-1 (Section 2 – permit required land uses) Use of land for a “Store” (Warehouse)</p> <p><u>Other Matters</u></p> <p><u>Land Subject to Inundation</u> The site is partially covered by the Land Subject to Inundation Overlay. No buildings and works are proposed within the Land Subject to Inundation Overlay. The internal driveway is already constructed. The shedding has previous approval. There is no planning permit trigger under the Land Subject to Inundation Overlay for the Use.</p> |
| Restrictive covenants on the title? | Covenant HO175515 <ul style="list-style-type: none"> - Will not use the said land for any offensive trade, or piggery, or poultry farm. - Not allowed to keep more than three (3) dogs. |

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|------------------------------|--|
| Current use and development: | Rural Residential lot with existing shedding |
| Any Other Relevant Matters | 10metre wide drainage easement |

Detailed Assessment:

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|---|--|
| Adjacent to Road Zone Cat 1 or 2 | No |
| Status of Road on Road Register | Local Road Taylor Drive – (Unsealed R2 -Road) |
| Adjacent to Public Land | No |
| Previous Planning Applications: | P2017-041 Use and development of land for a dwelling and a shed (No dwelling has been constructed on the site) |

Disclosure of Conflicts of Interest in relation to advice provided in this report

After reading the definitions of a general or material conflict of interest as defined by the *Local Government Act 2020*, do you have a conflict of interest?

Yes

(if YES, please complete a Conflict of Interest and Declaration Making Declaration form)

No

Recommendation

That Council

- Having caused notice of Planning Application No. P2021-052 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to issue a **Notice of Decision to Refuse to Grant a Permit** under the provisions of the Strathbogie Planning Scheme in respect of the land known as (Lot 29 on Lodged Plan 099517), Taylor Drive, Miepoll VIC 3666, for the **Use and development of the land for a Store (earthmoving equipment on-site, and cars within existing shedding)**, based on the following grounds:
 - Having caused notice of Planning Application No. P2021-052 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to issue a Notice of Decision to Refuse to Grant a Permit under the provisions of the Strathbogie Planning Scheme in respect of the land known as (Lot 29 on Lodged Plan 099517), Taylor Drive, Miepoll VIC 3666, for the Use and development of the land for a Store (earthmoving equipment on site, and cars within existing shedding), based on the following grounds:

- a) **The proposal does not weight in favour; when assessed against what are considered appropriate decision guidelines of the Farming Zone:**
- it is incompatible with adjoining and nearby land uses
 - The area is used for rural residential living as identified in the 2004 Rural Residential Strategy.
- b) **The proposal, when assessed against the policy throughout the Strathbogie Planning Scheme, is not weighted in favour of support. The relevant policy that provides direction are:**
- **Clause 02.03-3 - Environmental Risk** - the proposed activity may pose an environmental risk as it has the potential to pollute waterways and soils, particularly during flood events.
 - **Clause 12.03-1S - River Corridors, Waterways, Lakes and Wetlands** - the proposal may lead to potential pollution of waterways.
 - **Clause 13 – Environmental Risks and Amenity** - the siting of the proposed Use has the potential to harm the environment, human health and amenity through incompatible land use.
 - **Clause 13.02-1S- Bushfire** - the proposed Use has elements which increase the fire risk within the existing residential settlement.
 - **Clause 13.03-1S - Floodplain Management** - the proposed activity may lead to the contamination (oils, fuel, chemicals) of floodwaters.
 - **Clause 13.04-1S - Contaminated and potentially contaminated land**
The application is retrospective, there are concerns appropriate measures have not been in place and contamination of soils and water may have already occurred. The proposed Use may not be able to be mitigated and lead to future contamination. The land is identified in a rural residential area which is a sensitive use.
 - **Clause 13.05-1S Noise Management** - the proposed activity has the potential to impact on the health of the occupants of nearby rural dwellings from noise exposure.
 - **Clause 13.07-1S – Land Use Compatibility** – the proposed Use is incompatible with adjoining and nearby residential land uses due to amenity and pollution concerns.
 - **Decision Guidelines of Clause 65** – the proposed store will result in a compatibility issue with the surrounding residential land uses. The level of the proposed activity is considered not in keeping with the existing neighbourhood character. The Use is not associated or in accordance with a Home-Based Business. The proposed activity will cause an impact on the amenity of the residents. Additionally, the proposal may also result in pollution to the surrounding environment.

Proposal

An application has been made to use the subject site for storage of earthmoving equipment which will not be located within a building but will be located externally on site, along with the storage of personal car collection and memorabilia within existing shedding

This application came about by way of complaints and potential for enforcement action and therefore this is a retrospective application to try to gain compliance.

Earthmoving Store

An earthmoving business is being operated from the site currently. Equipment is moved to and from the subject site to external work sites during the weekdays and Saturdays

Vehicles that are stored and moved to and from the site include but not limited to –

- HR and LR trucks,
- excavator,
- pozzitrack loader,
- wheeled bobcat,
- assortment of attachments and implements,
- triaxle trailer,
- landscaping tipper trailer
- maintenance supplies and spare parts,
- landscaping tools and stock

The proposed operating hours are –

- 7am start 5.30pm finish Monday to Friday.
- 8am to 3pm every other Saturday

The applicant has also informed that there are two full time and several casual staff members that work from the site.

The open-air storage areas are situated to the rear of the existing shedding on the site.

A padlocked gate is in place as a security measure.

A privately managed industrial bin is on site for general waste.

Fire protection methods, include regular slashing of block, fire extinguishers on machinery, tote tank, seasonal dam is accessible; and the hard stand area is proposed to be kept clear of vegetation.

Personal Car Collection and Memorabilia

The personal storage of motor vehicles and memorabilia will be carried out within shedding on the site. The shedding in the middle of the subject site is existing. The shed on the northern boundary was approved as part of a previous planning permit for a dwelling and shed. A building permit has been issued for the shed; the dwelling was not constructed and the planning permit has since expired.

Both stores will be accessed via the existing crossover and accessway, from Taylor Drive, which is believed to have been constructed under another planning permit.



Native Vegetation

No native vegetation is proposed to be removed as part of the application.

Subject site & locality

| | | |
|--|--|--|
| Inspection date/s: Various 20 th October 2021 | Officer: Senior Town Planner | Area of land: 3.348 hectares |
|--|--|--|

Subject Site

The subject site is irregular in shape, encompassing a site area of 3.348 hectares. The site is flat and located on the western side of Taylor Drive. The site currently contains various shedding.



The site is located approximately 9 kilometres northwest of the Euroa.
There is an existing vehicle crossing within the subject site, accessed off Taylor Drive.
Taylor Drive is a gravel no through road.



The land is grassed and contains remnant native trees.

A dam is located towards the centre of the site.

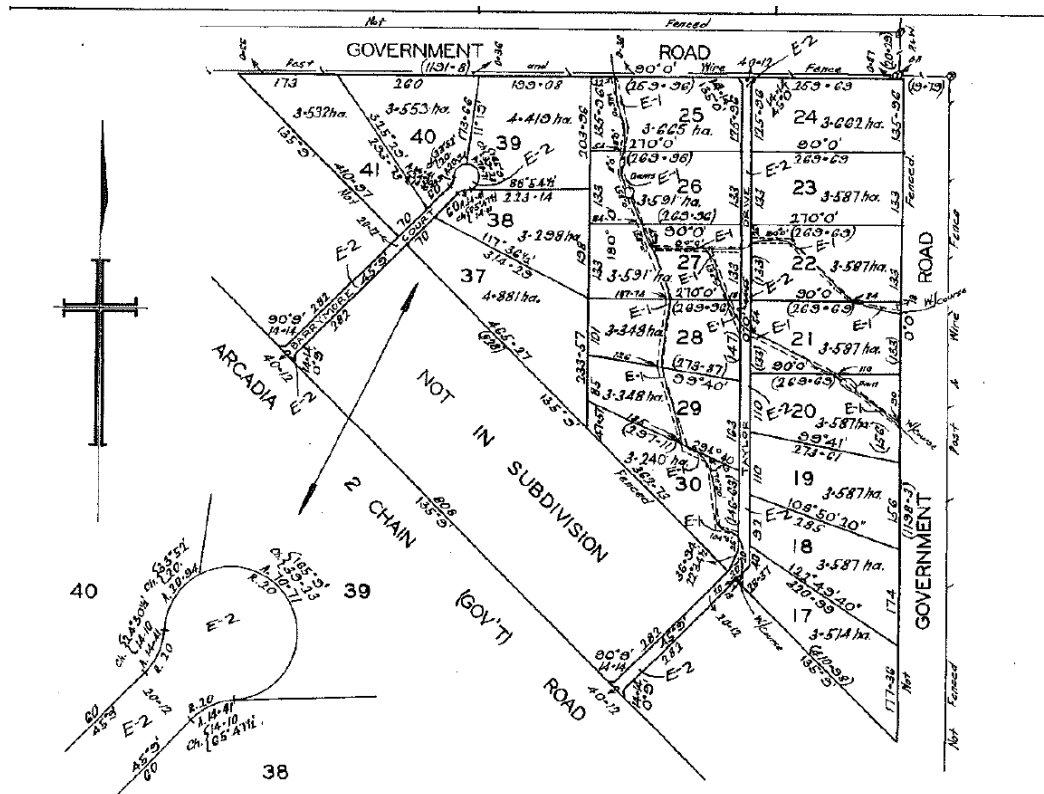
Overhead power lines are situated in Taylor Drive, the site has no internal connections or services. The area has no available connection to main sewer or water supply.

Drainage

The subject site relies on open drainage, on the site and within the road reserve.



A 10-metre-wide drainage easement bisects the property in a north-south direction towards the middle of the property; which then intersects with watercourses that feed into the Seven Creeks.



The land is in the Farming Zone and partly affected by the Land Subject to Inundation Overlay.

Non-Compliance

During inspections the site has previously been considered to be unkempt.



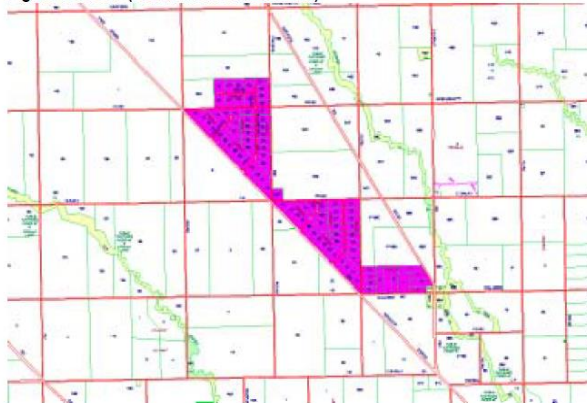


The site is currently being used for the storage of earthmoving equipment, rubbish, stockpiles of dirt, concrete, vehicles and other materials.

2004 Strathbogie Shire Rural Residential Strategy

The land is identified as Area 5 in the 2004 Strathbogie Shire Rural Residential providing for controlled development of small farming zoned lots for rural residential development.

Figure 5: Area 5 (Arcadia-Two Chain Road)



Surrounding Land

The surrounding allotments are similar in size, typically consisting of one residential dwelling with several outbuildings. It is quite clearly evidenced that this small settlement has been developed over the years for 'rural residential lifestyle' and the amenity expectation would be and is acknowledged as being different to that in the Farming Zone.

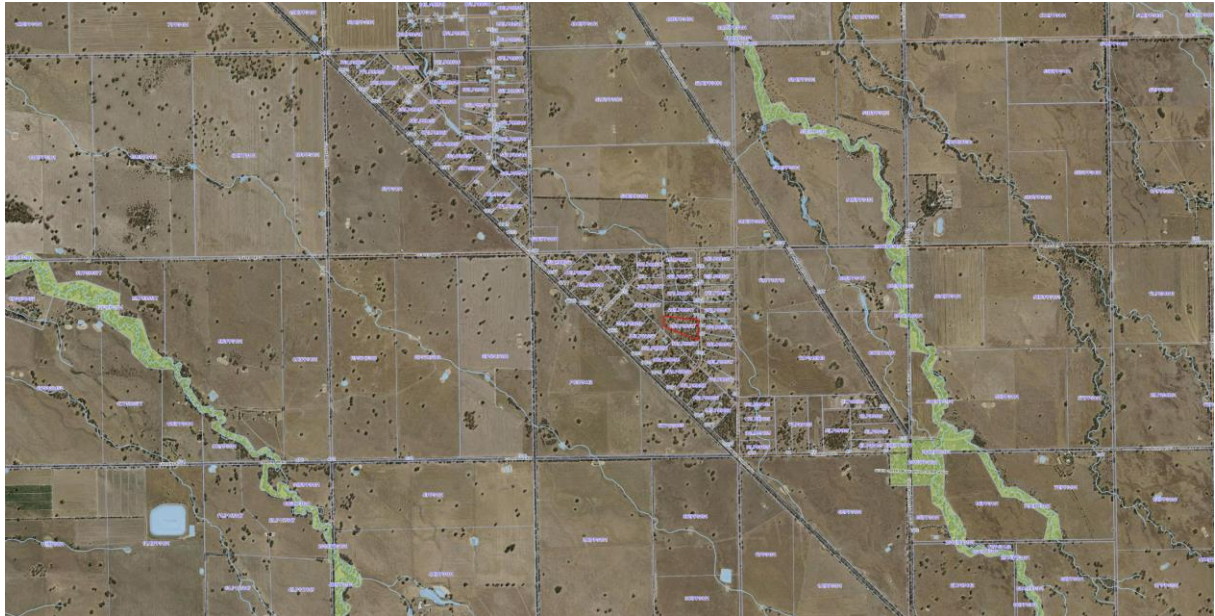
The properties adjacent to the site are:

- Properties to the north is 71 Taylor Drive (28\LP99517), which consists of a dwelling various outbuildings.
- Properties to the east are 56 and 64 Taylor Drive (19\LP99517 and 20\LP99517), with each site consisting of a dwelling and associated outbuilding.
- Properties to the west is 32 Barrymore Court (37\LP99517), consisting of a dwelling and associated outbuilding.

- Property situated to the south is 43 Taylor Drive (30\LP99517), which contains various outbuildings.

In conjunction with the residential dwellings, the area is utilised for low level grazing and farmlets.

Land further to the north, east and south and west consist of larger allotments, where larger farming enterprises including cropping are carried out.



Permit/Site History

An electronic search of Councils records found the following planning permits issued for the site:

- P2017-041 Use and development of land for a dwelling and a shed

Further Information

| Further Information Required: | Yes | No |
|---|-----|----|
| What was requested? | | |
| 1. Full copy of title including plans and any agreements. The title submitted with your application must be no more than 30 days old. https://www.landata.vic.gov.au/ . | | |
| <u>Owner 1</u> | | |
| - <u>Site plan showing:</u> | | |
| <ul style="list-style-type: none"> • Property Boundaries • Location of vehicular access • Location of internal driveway • Location and use of existing buildings on the site • Location of proposed area to be used to store car collection with setbacks from two adjacent boundaries. • Any additional proposed buildings, works, or landscaping. | | |
| - Information regarding the removal or impact on any native vegetation. | | |

- Elevation and floor plans of any new proposed building and list of materials if required.
- Number and type of goods to be stored.

Owner 2

- Site plan showing:
 - Property Boundaries
 - Location of vehicular access
 - Location of internal driveway
 - Location and use of existing buildings on the site
 - Location of proposed area to be used to store equipment with setbacks from two adjacent boundaries.
 - Any additional proposed buildings, works, or landscaping.
- Any proposed security measures
- Information regarding the removal or impact on any native vegetation, soil or water quality.
- Number and type of goods to be stored
- Details regarding the frequency of machinery movement and hours operation on and off site.
- Number of Staff
- Any proposed earthworks
- Fire protection methods, ie.) location of fire extinguishers on machinery, storage is being undertaken away from potential fire risks, any water tanks located on site.

| | |
|--|---|
| <p>FI Requested:</p> <p>14 April 2021 sent to Owner and preferred contact</p> | <p>FI Received:</p> <p>17 April 2021 Further Information Received 17th May 2021 Site Plan Received</p> |
|--|---|

Advertising/Public Notification

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

- Sending letters to adjoining landowners
- Placing (a) sign on site

The notification has been carried out correctly.

| Is notification/advertisement required under section 52? Yes No Exempt | | |
|---|---|--|
| Please provide comment | | |
| Advertised by: | Council | Applicant |
| Site plan selected: | Site plan selected | Doc ID: 713836 |
| Advertising Map 713444 Advertising List 713439 | Advertising on Website 713836 699631 709742 But not the attachment new site plan at 713836 | Advertising docs sent to website Doc 719845, 713836 25/06/2021 |

| | | | | |
|----------------------------------|-----------------|-------------------|-------------------------|-----------------------------------|
| Add Instructions on Spear | | Yes | No | |
| Letters: Yes | Signs: 1 | Paper: Nil | Sent: 28/06/2021 | Stat Dec Rec: Not Received |

| | | | |
|----------------------------------|-----|----|-----------------|
| Objections/Submissions received? | Yes | No | Number: Six (6) |
|----------------------------------|-----|----|-----------------|

Consultation

29th March 2021

Doc Id 699631 - Application Received

30th March 2021

Application Paid

8th April 2021

Doc Id 701695 - Title and Title Plan Received

14th April 2021

Doc Id 702854 - Application Acknowledged

19th April 2022

Doc Id 774453 - Further Information requested

Including Full copy of title including plans and any agreements. The title submitted with your application must be no more than 30 days old. <https://www.landata.vic.gov.au/>.

Owner

- Site plan showing:
 - Property Boundaries
 - Location of vehicular access
 - Location of internal driveway
 - Location and use of existing buildings on the site
 - Location of proposed area to be used to store car collection with setbacks from two adjacent boundaries.
 - Any additional proposed buildings, works, or landscaping.
- Information regarding the removal or impact on any native vegetation.
- Elevation and floor plans of any new proposed building and list of materials if required.
- Number and type of goods to be stored.

Preferred Contact

- Site plan showing:
 - Property Boundaries
 - Location of vehicular access
 - Location of internal driveway
 - Location and use of existing buildings on the site
 - Location of proposed area to be used to store equipment with setbacks from two adjacent boundaries.

- Any additional proposed buildings, works, or landscaping.
- Any proposed security measures
- Information regarding the removal or impact on any native vegetation, soil or water quality.
- Number and type of goods to be stored
- Details regarding the frequency of machinery movement and hours operation on and off site. Number of Staff, Any proposed earthworks. Fire protection methods, ie.) location of fire extinguishers on machinery, storage is being undertaken away from potential fire risks, any water tanks located on site.

19th April 2021 17th May 2021

Doc Id 774453 and 709742 Site Plan and some of the further information from preferred contact received.

2nd June 2021

Doc Id 774448 - Further Information still outstanding -current copy of title, title plan and covenant on file.

5th, 16th 21st July 2021

Doc Id 721709, 724784, 725864 –Objection 1 sent responses on above dates which was acknowledged on 6th July 2021 (Doc Id 722374).

8th, 9th and 13th, 30th July 2021

Doc Id 722783, 723082, 723835, 727633 - Objection 2 Received acknowledged on the 21 July 2021 (Doc Id 725817)

9th July 2021

Doc Id 723028 - Objection 3 Received acknowledged on the 21 July 2021 (Doc Id 725846)

13th July 2021

Doc Id 723994 –Objection 4 Received acknowledged on the 21 July 2021 (Doc Id 725872)

13th July 2021

Doc 723996 – Submission 6 regarding environmental concerns Received acknowledged on the 21 July 2021 (Doc Id 727265)

16th July 2021

Doc Id 724810 –Objection 5 Received acknowledged on the 21 July 2021 (Doc Id 727271)

18th August 2021

Doc Id 774444 - File Note regarding burning off, officers drove past, and any current fires were not evident from the road, however Council sought access to conduct a site visit on 19/08/2022.

19th August 2022

Doc Id 732394 – Objections sent to Applicant - preferred contact

2022

4th February 2022

Doc Id 767123 - Advice regarding an update of the application sent to preferred contact.

The property owner gave permission to attend the site.

The application has been referred and advertised and objections were received. The Objections were sent to you as the preferred contact in August. Council has not received a response from you and therefore the planning department has progressed to a final assessment of the provided documents.

Upon final assessment and consultation and discussion in the Planning Department, it is determined a recommendation for refusal should be prepared.

8th February 2022

Doc Id 767237 – Objections sent to Landowner

11th February 2022

Doc Id 767893 – Landowner provided response to objections

23rd February 2022

Doc Id 769792 – Landowners response provided to Objectors/Submitters.

28th February 2022

Doc Id 770590 – Objector 3 advised their Objection stands.

25th March 2022

Doc Id 797419 - Planning Note to set up meeting with preferred contact regarding the earthmoving component.

29th March 2022

Email Doc Id 797418 – Advising preferred contact of the meeting with Braydon Aitken (Manager of Planning) and Jason McConkey (Manager of Community Safety). Euroa Main Office at 9am on Friday 1st April 2022.

4th April 2022

Email Doc Id 777290 - Advice from Manager of Planning following meeting with preferred contact. Preferred contact has indicated that he will be in a position to decide how he wants to proceed with the application by the end of May. Application will be placed on hold until then.

6th June 2022

Email Doc Id 797414, 788709 – Advice sent to preferred contact regarding the Earthmoving Component please advise by the 20th of June 2022, how you wish to proceed.

20th June 2022

Email Doc Id 797414 - Acknowledged that preferred contact wishes to proceed with the earthmoving component on the application.

13th July 2022

Doc Id 797422 - Copy of Covenant Retrieved by Council

After discussion with the applicant Council agreed to place the Application on hold whilst the earthmoving component considers alternative locations until 30 May 2022.

The business owner of the earthmoving component has decided not to proceed with an alternative location and Council will proceed with the application.

Council has received six (6) objections/submissions from nine (9) people to date.

The matters raised by objectors is as follows:

- Reducing the quality of life and amenity of the residents in the surrounding rural residential area.
- Impact on existing flora and fauna resulting in the loss of biodiversity values.
- Sedimentation discharge and runoff into the water catchment area and Seven Creeks.
- Detrimental impacts on the existing ecosystem within the site and surrounding environment leading to the broader agricultural area
- Loud noises generated by the earth moving trucks and equipment (Commercial Traffic).
- Non-compliant burning of stockpiles resulting in poor air quality.
- Road damage along Taylor Drive from heavy earth moving trucks.
- Existing livestock and native wildlife within the surrounding area affected.
- Increase traffic and associated increase in noise, dust and road damage as a result.
- Non-compliant dumping/rubbish collected from contract clearing
- Non-compliance with state and local planning policy of the Strathbogie Planning Scheme.

The objections/Submissions were sent to the applicant and owners.

A number of meetings were organised for mediation with various parties.

27 September 2022

Council contacted the Objectors to ensure objections still stand.

No objections/Submissions have been withdrawn therefore the application can not be decided under delegation and is required to be heard before Council.

Officer Response

Most of the objections and submissions received are based on amenity and environmental risk.

Majority of the lots have been developed with dwellings and are utilised for rural living opportunities.

The land is identified in the 2004 Strathbogie Shire Rural Residential Strategy for rural lifestyle living.

It is considered that careful consideration should be given on how any proposed use may impact on the amenity of the residents and the environment.

The proposal is for a work depot for a commercial business and is not considered to be appropriate in this contextual setting due to the following reasons.

- Siting of proposal onsite in relation to existing dwellings
- The smaller lot sizes do not offer a suitable buffer from the established residential uses.
- activity on site that relates to keeping and using a works depot, that may contribute to:
 - unreasonable noise, dust and pollutants.
- potential road damage on an unsealed road due to the large number of heavy vehicle movements daily, particularly in the wetter months.
- storage of work associated vehicles in greater numbers than what would be associated with any home-based business,

It is concluded the proposal may detrimentally impact the amenity of the residents and environment in this settlement by the introduction of this use for what might be considered a works depot.

Referrals

External Referrals/Notices required by the Planning Scheme:

| REFERRALS | | | | | |
|----------------------------|---------------------------|---------------------------------|---|---------------|--|
| Add instructions on SPEAR: | | | Yes | No | |
| Referrals Authority | Type of Referral | Referral Clause and Description | Date sent | Date received | Comment |
| GBCMA | Section 52 - Recommending | Choose an item. | 25/06/2021 Doc 719827 | 28/06/2021 | Proposed works outside of LSIO sent for information and comment only No objection subject to conditions |
| HEALTH | For Referral | | Sent via internal workflow 25/06/2021 Doc 69931 | | No response |
| ENGINEER | For Referral | | Sent via internal workflow 25/06/2021 Doc 69931 | 15/07/2021 | No objection subject to conditions |

Assessment

Farming Zone

Purpose:

- *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.*

Pursuant to Clause 35-07-1 a planning permit is required to use of land for a Store (Section 2 use)

Officers Response:

The proposed activity is not associated with agriculture and therefore is considered a Section 2 Use.

The proposal seeks to use the land for two types of storage, both for vehicles.

One outdoor storage area will hold a range of earth moving equipment and materials to support the existing earth moving business which is already being run from the subject site but has not existing use rights and does not meet the requirements for a Home-Based Business. There is no dwelling located on the site.

The other storage use is for a personal car collection and memorabilia which will be located in an existing shedding

The main consideration is towards the earthmoving equipment and running of a business from the subject site. The storage of the personal car collection and memorabilia is considered quite passive in nature and will be enclosed existing shedding.

The area in which the subject site is located is identified in the 2004 Strathbogie Shire Rural Residential Strategy as being able to be developed for rural residential living on small farming zoned lots.

Small crown allotments are prominent within the Farming Zone and Council continues to experience demand for development of dwellings on these lots.

The usual considerations around farming uses are put to one side given the precedence for rural lifestyle development in this area being supported by the Strategy.

This then changes the dynamics and context of any development proposed in this locality, due to the changed expectations from the residents regarding amenity, which would not be from farming practices but more akin to a quieter, rural residential amenity.

Whilst the activity is not prohibited it is considered overall, the proposal is not in keeping with the intent of the Farming Zone when considering the existing neighbourhood character. Based on this assessment, the proposal is deemed to create an adverse effect on the use of land within the site as well as the adjoining properties.

Municipal Planning Strategy and Planning Policy Framework

Clause 02.03-3 – Environmental Risk

Clause 12.03-1S – River Corridors, Waterways, Lakes and Wetlands

Officers Response:

Part of the subject site and surrounding land is identified in the Land Subject to Inundation Overlay.

The subject site and surrounding land is very flat and contains open drainage which feeds into the Seven Creeks system. The area is quite often inundated with water in the winter months, and it is expected that the land is likely to be affected by more extreme increased rainfall in the future.

Careful consideration is needed when considering proposed activities on the land in order to protect the environment including any waterways.

Activities proposed in this area have the potential to pose an environmental risk and impact waterways due to overland flow paths.

It is not clear that the proposal will be responsive to the potential environmental risks. The earth moving equipment may contribute to pollution (i.e. soil contamination, water and air quality). The earthmoving vehicles are currently stored on site and there is no evidence of any bunded areas. The application has not provided sufficient detail regarding how any chemicals/pollutants will be appropriately stored or disposed of.

Earth moving equipment / vehicles will often need to be cleaned and serviced. This may inevitably lead to soil contamination and run-off into the overland drainage, watercourses, waterways and onto land identified with in the Land Subject to Inundation Overlay.

Officers are concerned potential pollutants may leach and or be conveyed into the drainage easement and into the nearby waterway which contributes to the Seven Creeks Catchment.

Several non-compliant issues have been raised to Council which may pose an environmental risk these include storage of equipment, burning off of rubbish and various stockpiles.

It is considered the proposed activity may deteriorate environmental values and pose an environmental risk. The proposed earthmoving store has the potential to pollute waterways and soils, particularly during flood events and through the overland drainage.

Clause 13 – Environmental Risks and Amenity

Officers Response:

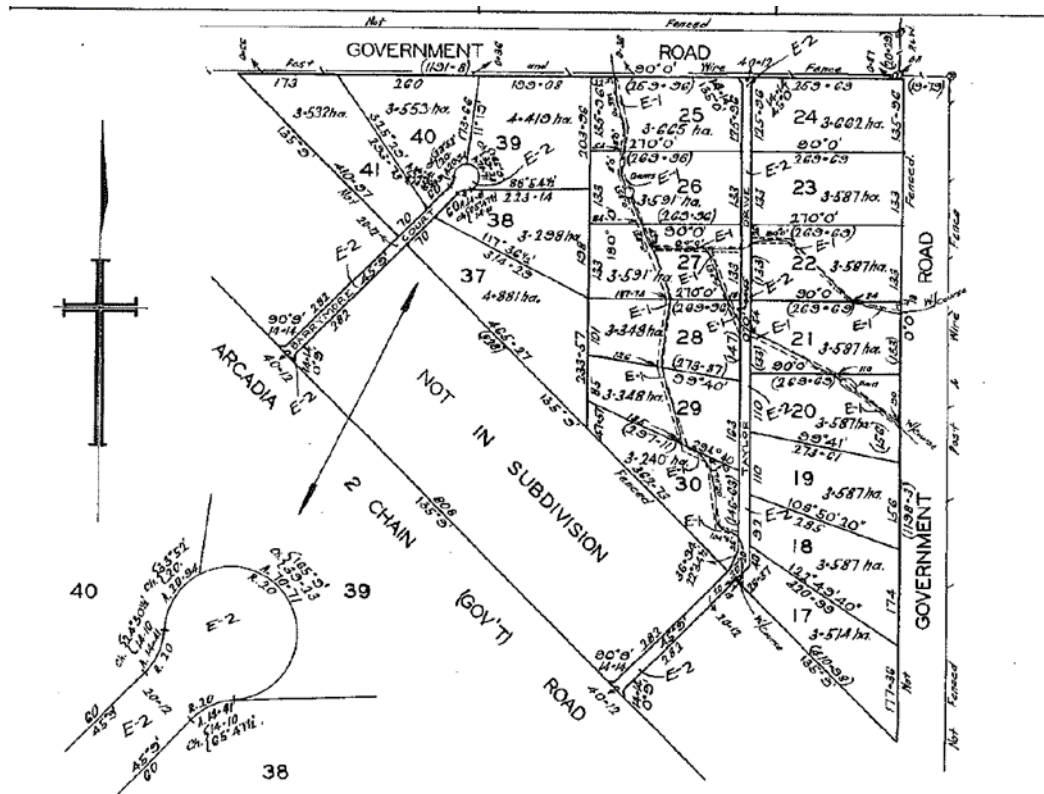
Presently, the surrounding land is principally used for rural residential lifestyle purposes combined with limited agricultural pursuits and farmlets.

It is considered the proposal on this site, in particular the earthmoving machinery component presents a risk of harm to the environment, human health and amenity through incompatible land use.

The proposed activity does not complement the neighbourhood characteristic which has been previously established. The proposal is retrospective and there has been evidence of previous mismanagement. Stockpiles including rubbish have been found on the site and reports of bonfires containing household goods and other offensive items.

Officers are concerned that any risk mitigation that may be put in place may not be sufficient in protecting natural and managed drainage lines which leads into the waterways due to previous non-compliance and lack of services and infrastructure in the area.

The proposed external earthmoving storage is located in close proximity to a 10metre wide drainage easement which bisects the property in a north-south direction. The easement is an open drain which intersects with watercourses that feed into the Seven Creeks and flows through areas identified in the Land Subject to Inundation Overlay.



The proposed earthmoving store is located within close proximity to the open drain, which services the lot and surrounding rural residential lots.



It is understood that these types of lots are in high demand for the lifestyle they offer which includes utilising the land for larger gardens and farmlets which may include some animal grazing and small food crop production.

The siting of the external earthmoving equipment store is within close proximity and the direct sightline of the neighbouring dwelling and has the potential to be unsightly and affect the resident with undue dust and noise.

Taylor Drive is a no through gravel road which currently services rural residential lots.

Dwellings on the eastern side of Taylors Drive are setback between 25 and 50 metres. The road reserve on the eastern side is devoid of vegetation. With the amount of dust generated from the proposal, dwelling setbacks and lack of screening, it is reasonable to conclude the air quality of the area will be reduced and this will detract from the amenity of the area and the standard of amenity expected for farming and rural residential sites.



It is considered the increased traffic movement by the earth-moving vehicles/machinery in and out of the site will not only generate a large amount of dust but also lead to deterioration of the road surface, causing corrugations and surface damage particularly the wetter months. This may impact the safety of the residential users. These are concerns also raised by objectors.

Other air quality concerns have been raised by an objector regarding stockpiles being burned on site and polluting the air with toxic substances.

It is concluded the use and proposed siting has the potential to harm the environment, human health and amenity through incompatible land use.

Clause 13.02-1S- Bushfire

Officers Response:

The subject site is within a bushfire prone area.

The proposed activity may pose a bushfire hazard to the existing settlement, the site is not regularly monitored as there is no dwelling on site, workers will come and go during the day.

The subject site is not connected to mains water and is serviced by an unsealed internal driveway and gravel road which may be impacted by rainfall and flooding at times.

The proposal is for the storage of bulk goods including vehicles.

The activity may also result in the storage of additional chemicals and flammable materials on site

The site contains remnant vegetation.

Some risks may be mitigated however it is considered there may be an increased fire risk.

Clause 13.03-1S - Floodplain Management

Officers Response:

Due to the topography of the site and the surrounding land, drainage of water in the area can become an issue. The area is very flat, the front of the site and surrounds is within the Land Subject to Inundation Overlay.

There is a drainage easement which contains an open drain, the drain intersects with watercourses to the north that feed into the Seven Creeks.

It is considered the proposed land use on this site may have a detrimental impact on the floodplains and cause a risk of waterway contamination. This will occur during rainfall events and due to the linkage from the open drain to watercourses, waterways and floodplains.

As previously detailed the proposed activity has the potential to cause contamination of soils which may lead into the floodplains. It is not clear that the proposal will be responsive to the potential environmental risks. The earth moving equipment may contribute to pollution (i.e. soil contamination, water and air quality). The earthmoving vehicles are currently stored on site and there is no evidence of any bunded areas. The application has not provided sufficient detail regarding how any pollutants will be appropriately stored or disposed of.

Earth moving equipment / vehicles will often need to be cleaned and serviced which may lead to toxic substances and sedimentation discharge within the site that may inevitably lead to soil contamination and run-off into the overland drainage, watercourses, waterways and land identified in the Land Subject to inundation Overlay.

Any contamination on site will lead to downstream impacts and affect neighbours who often have dams along the easement.

The proposed activity may be at risk of contaminating waterways during flooding events.

Clause 13.04-1S - Contaminated and potentially contaminated land

Officers Response:

The subject site is identified in a rural settlement. It is understood that these types of lots are in high demand for the lifestyle they offer which includes utilising the land for larger gardens and farmlets which may include some animal grazing and small food crop production.

The land is not serviced.

The application is for retrospective permission for an earthmoving store, and it is unclear if any soil degradation, and or pollution that may have already occurred. Several non-compliant issues have been raised with Council. The site is not bunded and it is unclear what practices may be undertaken onsite when servicing and maintaining the equipment as part of what is now considered a work depot. The application has not addressed how any commercial, or trade waste is currently or in the future be contained, tested and or removed.

There is already evidence of stockpiling on site.

It is unclear that the land is used safely and can be used safely in the future. The area is considered to be in a sensitive area, due to lot size, servicing and residential use.

Clause 13.05-1S Noise Management

Officers Response:

The subject site is in a rural settlement which is considered a sensitive land use.

In this case it is considered the earthmoving store on a small lot in close proximity to an existing dwelling will have a noise impact on the residents. The land is flat and there is no physical buffer between the dwelling and the activity. It is expected the vehicles will be moving around in the early morning and later in the afternoon, this is when you would expect more people to be at home.

Earth moving equipment is known to generate loud noises including during the unloading and loading process.

Based on the site plan provided, the proposed earthmoving store is situated relatively close to the common boundaries of the adjoining properties (i.e. less than 60m). This means that the adjoining properties will be affected by the loud noises generated by the equipment/vehicles and associated tools including generators.

The noise and pollution associated with the machinery in such proximity to neighbouring dwellings may cause detriment on the amenity of the area and the current amenity enjoyed by residents in the area. Council have already received complaints regarding the continuous operation of a generator on site.

The proposed activity has the potential to have an ongoing impact on the health of the occupants of nearby rural dwellings from noise exposure which is considered not in keeping with the area., or appropriately setback from the residential dwelling.

Clause 13.07-1S – Land Use Compatibility

Officers Response:

The surrounding properties, particularly along Taylor Drive, Thorndyke Drive, Temple Court and Barrymore Crescent are mostly rural residential sites. These sites generally contain a dwelling and associated outbuilding.

The proposed earthmoving activity is considered not in keeping with existing land use.

Since initially receiving the application, the business has grown and considered to align with consideration of a work depot due to the number of equipment and staff, as previously discussed this would not accord with a home-based business even if there was a dwelling on the site.

The earthmoving equipment is located in close proximity to the northern property boundary and can be considered unsightly.

The existing dwelling on the neighbouring property to the north is less than 60 metres from the proposal. The dwelling is orientated in a south easterly direction which means it faces the proposed location for the proposed external machinery Store.

The presence of existing stockpiles and machinery within the site can easily be viewed from the adjoining property, and nearest dwelling at 71 Taylor Drive. The proposal will reduce the overall view of the landscape and vegetated amenity of the area for this resident.



It is considered there is not an appropriate buffer between the proposed use and the existing dwelling, and the proposed use is not compatible due to operation hours, increased in heavy vehicle traffic movements, potential impacts on the environment including additional dust, noise and pollutants being stored externally. Additional traffic movements will impact the local road; and may not be sustainable.

The permit applicant has not provided any details on washing of machinery and how runoff, noise, sediment discharge etc will be appropriately managed. Sedimentation runoff generated from these earth-moving equipment may lead to soil contamination. Any toxic substances will absorb into the ground. This can impact sensitive land users and effect the smaller farmlets in the area.

In summary, the proposal is incompatible with the surrounding land uses, and will cause detrimental impacts on the environment. The amenity of the adjoining properties, and their residents, will also be affected by the proposal.

Relevant Particular Provisions

No relevant particular provisions apply to this application.

The decision guidelines of Clause 65

The proposal has been assessed against the decision guidelines of Clause 65 of the Strathbogie Planning Scheme and is considered not to be in accordance with the decision guidelines.

The proposed stores will result in a compatibility issue with the surrounding land uses, which is not consistent with the existing neighbourhood character. Additionally, the proposal will also result in pollution to the surrounding land, water and air, which leads to detrimental impacts on the existing flora and fauna of the site as well as surrounding crops.

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| <p>The matters set out in section 60 of the Act.</p> | <p>The matters have been reviewed and are addressed throughout the report.</p> <p>Five objections and one submission have been received raising concerns regarding the proposal.</p> <p>The objections have been reviewed and it is considered that a number of relevant planning matters have been raised and these are reflected in the policy that provides the grounds for refusal.</p> <p>The objections are detailed and responded to in the report.</p> <p>It is considered the proposal does not accord with all the matters set out in Section 60 of the Act, in particular pollution and</p> |
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| | amenity, these have been addressed throughout the report. |
| Any significant effects the environment, including the contamination of land, may have on the use or development. | Nil |
| The Municipal Planning Strategy and the Planning Policy Framework. | <p>There are a number of relevant policies to consider for this proposal and it is considered that the weighting is not in favour of support.</p> <p>The proposal has the potential to have significant effect on the environment in particular waterway contamination and a detrimental impact on the amenity of the rural residents in an established settlement.</p> <p>It is considered the scale of this proposed earthmoving business is quite extensive to the point that noise and pollution have to seriously be considered, on the amenity.</p> <p>These have been detailed above in this report.</p> |
| The purpose of the zone, overlay or other provision. | <p>Although, the subject site is identified as Farming Zone, it is considered the use of this site, and nearby surrounds has predominantly been removed from larger agricultural enterprises. This is due to the land being established as rural residential settlement.</p> <p>The site has been identified in the 2004 Rural Residential Strategy for lifestyle uses and development.</p> <p>It is considered that the proposal is unlikely to meet the purpose or appropriate decision guidelines of the Farming Zone, given it is undersize and not identified for farming uses.</p> |
| Any matter required to be considered in the zone, overlay or other provision. | Although the proposed use does not trigger a requirement for a planning permit under the Land Subject to Inundation Overlay. Consideration has been given to the Overlay and how it relates to possible |

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| | <p>pollution of drainage easements and waterways.</p> <p>The application was referred to GBCMA as a Section 52 responding authority, they have identified that the Use could contaminate the site with pollutants. GBCMA have offered Conditional consent.</p> <p>Due to non-compliance issues, topography, unique site features, and linkage between the floodplains, overland drainage, easements, watercourse and waterways Council is not satisfied that these risks can be appropriately mitigated..</p> <p>It is considered the proposed activity may be detrimental to the floodplain environment.</p> <p>This has been detailed in the report above.</p> |
| The orderly planning of the area. | <p>It is considered that due to the subject site being considered as appropriate for rural residential lifestyle uses and development, that does not weight in favour of support, that the proposal will not result in orderly planning.</p> <p>The proposed activity is considered not to be compatible with the existing sensitive land use.</p> |
| The effect on the environment, human health and amenity of the area. | <p>It is considered that due to the amount of earthmoving equipment and movements proposed for the business, that this component will have potentially an effect on the environments with contamination of chemicals through washing down, servicing and also from being in contaminants from external work sites. These will have impacts on human health undoubtedly and will affect the amenity through noise, dust, odours, deterioration of the 'residential' road network through this small, 'rural residential' development</p> |
| The proximity of the land to any public land. | Nil |

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| <p>Factors likely to cause or contribute to land degradation, salinity or reduce water quality.</p> | <p>Council has concerns that the proposal may reduce water quality.</p> <p>The proposal is in close proximity to a flood area (identified as the Land Subject to Inundation Overlay), and drainage easements which lead into surrounding watercourses and waterways.</p> <p>The application is retrospective and has outstanding compliance issues regarding land degradation. Sufficient detail regarding management of pollutants has not been provided as part of the application.</p> <p>Detailed response regarding the factors which may cause land degradation and water quality have been addressed in the planning policy framework.</p> |
| <p>Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.</p> | <p>It is noted that a drainage stormwater easement identified as E-1 on the title plan crosses the subject site. Concerns regarding the stormwater drainage system and linkage to waterways and any potential pollution is detailed in the report.</p> |
| <p>The extent and character of native vegetation and the likelihood of its destruction.</p> | <p>N/A</p> |
| <p>Whether native vegetation is to be or can be protected, planted or allowed to regenerate.</p> | <p>No native vegetation is proposed to be removed.</p> |
| <p>The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.</p> | <p>The subject site is within a bushfire prone area. The proposed activity may pose a bushfire hazard to the existing settlement. The subject site is not connected to mains water and is serviced by an unsealed internal driveway and gravel road which may be impacted by rainfall and flooding at times.</p> <p>The activity may result in the storage of additional chemicals and flammable materials on site.</p> <p>There is no dwelling on the site and therefore it is considered it is not regularly monitored.</p> <p>The site contains remnant vegetation. It is considered the proposed use may create an increased bushfire risk.</p> |

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| | Possible detrimental impact on Floodplains is detailed above. |
| The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts. | The site is sufficient to accommodate loading and unloading however it is considered the increased traffic movement by the earth-moving vehicles/machineries in and out of the site will lead to deterioration of the road surface. |
| The impact the use or development will have on the current and future development and operation of the transport system. | Increased traffic movements from the proposal on the unsealed may damage the road surface. This may impact the safety of the residential users. These are concerns also raised by objectors |

Other relevant adopted State policies/strategies – (e.g. Melbourne 2030.)

There are no relevant adopted State policies.

Relevant incorporated, reference or adopted documents

Strathbogie Rural Residential Strategy (July 2004)

Area 5 (Arcadia-Two Chain Road)

The land identified for Area 5 that is used for rural living purposes is pictured below. The smallest lot size in this subdivision is 6 acres (2.4 hectares). These properties are mostly developed through precedent that has been established by Council over the years.

Recommendations from Implementation of the Strategy:

- a) Restructure Overlay or Design Development Overlay could be applied **to minimise or avoid future inappropriate development.**
- b) No further subdivision in this rural location

Figure 5: Area 5 (Arcadia-Two Chain Road)



Officers Response:

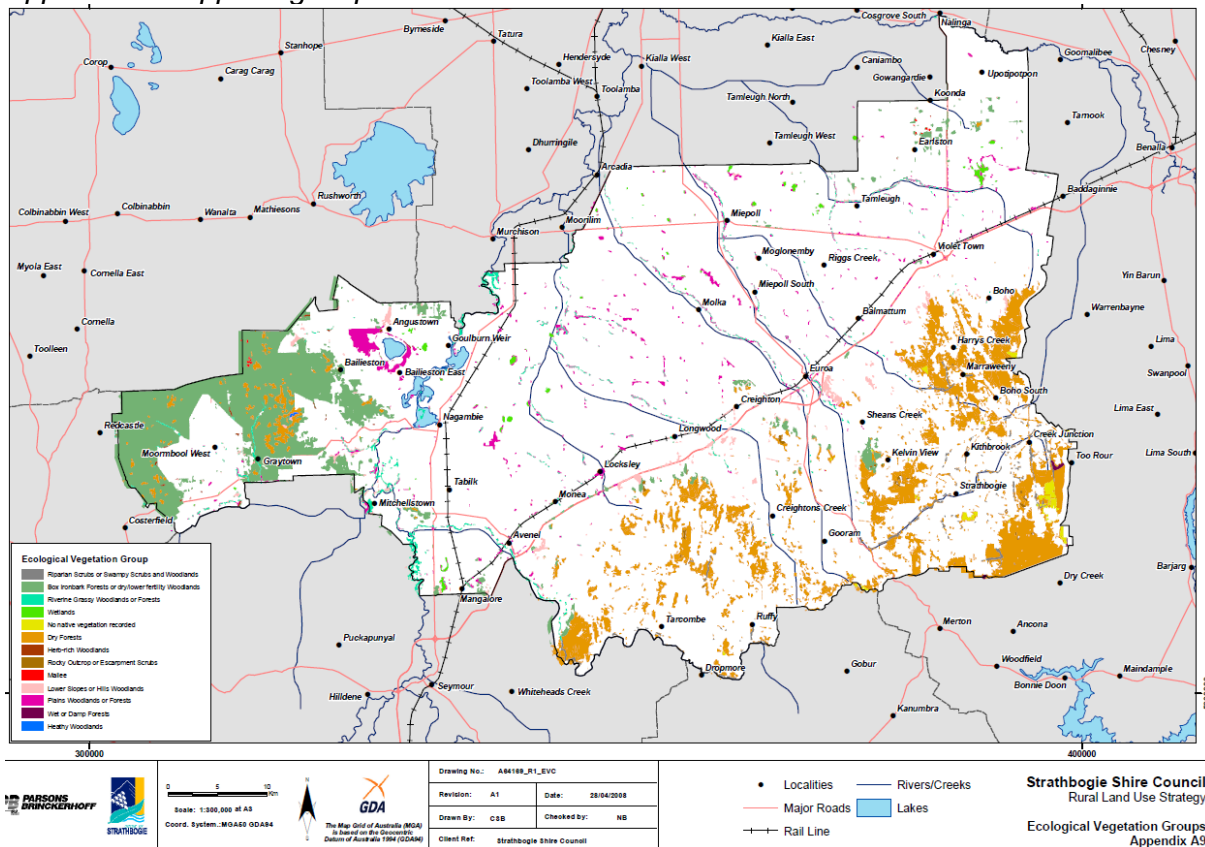
The site is identified in a rural settlement. The Strategy suggests that inappropriate development should be minimised in the future. Residential development in rural areas is low density development outside of the Township Zone. Rural living plays an important role in the future sustainable development of the Shire. These lifestyle properties typically contain a single dwelling and shedding and utilised as small farmlets. It is important for proactive planning in rural areas to ensure appropriate development in these areas. This proposal does not meet the requirements set out for a Home-Based Business and the proposal is deemed inappropriate from this site, given its proposed intensity and incompatibility amidst 'rural residential' development.

Strathbogie Rural Land Use Strategy

The Shire of Strathbogie Sustainable Land Use Strategy (SLUS) is based on the recognition that the rural areas of the shire have a role and a value that includes agriculture, both commercial and lifestyle, as well as tourism, wine making, horse breeding, environment and rural living.

This strategy proposes a rural area that provides for the continuation of farming, but also supports the growth of tourism and the protection of environmental values

Appendix A Supporting Maps



Officers Response:

The strategy highlights the shire's unique amenity is a key attractor of residents and visitors, and the health of the environment directly influences amenity as well as agricultural prospects. There is a strong tradition of rural living and lifestyle farming in the Shire that should continue in a planned manner.

Protection of agricultural enterprise through the limitation of non-agricultural uses and retention of larger allotments within farming areas should continue.

This includes

- Support for 'lifestyle' agriculture on appropriately zoned land
- Management and protection of natural environmental assets throughout the Shire

Rural living, is an important part of the lifestyle opportunity offered in the Shire, and appropriately managed and planned can play a role in the future sustainable development of the Shire. It is considered as discussed above in this report the proposal leads to the loss of landscape and rural amenity.

It is also noted there are areas of wetlands found within the area.

Relevant Planning Scheme amendments

There are no relevant planning scheme amendments.

Risk Management

The author of this report considers that there are no significant Risk Management factors relating to the report and recommendation.

Strategic Links – policy implications and relevance to Council Plan

The author of this report considers that the report is consistent with Council Policies, key strategic documents and the Council Plan.

Summary of Key Issues and Assessment

- Five objections and one submission raising concerns regarding the proposal including but not limited to:
- Impact on rural residential development.
- Land use compatibility with the surrounding properties, and the consistency with the existing neighbourhood character.
- Amenity of the residents affected.
- Pollution – land, water, and air.

Officers Response:

The surrounding properties, particularly along Taylor Drive are mostly rural residential sites. These sites generally contain dwellings and associated outbuildings, land further to the north, east, south and west retaining larger portions of vacant agricultural land.

Overall, the proposal is considered incompatible with the surrounding land uses as the purpose of the Farming Zone. The site has long been established for rural residential purposes.

The proposal is considered to have a detrimental impact on the overall landscape, amenity and environment within the area. It is considered the activity is not consistent with the existing neighbourhood character.

The proposal will impact the residents as well as affect the surrounding ecosystems of the area.

Noting the reasons and assessment above, it is considered that the proposal should not be supported.

Conclusion

After due assessment of all the relevant factors, it is considered appropriate to grant a planning permit, subject to conditions.

Decision:

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| Delegate Report <input type="checkbox"/> | Committee Report <input type="checkbox"/> |
| Determination: Choose an item. | Determination Date: |

Endorsed Plans:

| Date: | Plan Numbers: |
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Declaration:

In making this decision as a delegated Officer, I declare that I have had regard to the decision-making requirements of the Strathbogie Shire Council's Governance Rules 2020 outlined by Rule 6 and have:

Made a fair, balanced, ethical and impartial decision - Sub Rule 6(c)(i)

Made a decision based on merits, free from favouritism or self-interest and without regard to irrelevant or unauthorised considerations- Sub Rule 6 (c)(ii)

Applied the principles of natural justice to my decision, ensuring any person whose rights will be directly affected by the decision has been entitled to communicate their views and have their interests considered - Sub Rule 6(d) N/A

Identified the person or persons whose rights will be directly affected
Sub Rule 6(e)(i)
Given notice of the decision Council must make under Sub Rule G(e)(i) N/A

Ensured that such person(s) have had an opportunity to communicate their views and have their interests considered before I made the decision - Sub Rule 6(e)(i) N/A

Included information about how I've met these Sub Rules in my delegate report-
Sub Rule 6(e)(iv)