

# Planning Report – Standard

## Application Details:

|                              |   |
|------------------------------|---|
| Application is for:          | Use and Development of Land for a Dwelling  |
| Applicant:                   | Warren and Michelle Nicholls  |
| Lodged Date:                 | 20 October 2023   |
| Statutory Days:              | Received to council on 13/10/2023<br>There was no Request for Further Information (RFI)<br>60 statutory days = 13/12/2023<br>More than 60 days  |
| Application Number:          | P2023-109   |
| Assessing Officer:           | Jack Francis Senior Planner<br>Planning and Investment Department   |
| Address and Title Details:   | L1 TP826506 V6294 F750 Parish of Marraweeny<br>1823 Euroa-Strathbogrie Road, Kithbrook VIC 3666   |
| Current Use / Development:   | Farming   |
| Zone/s:                      | Farming Zone  |
| Overlay/s:                   | Erosion Management Overlay  |
| Permit Trigger/s:            | <p><b>Permit Triggers</b></p> <p><u>Farming Zone</u><br/>Pursuant to Clause 35.07-1 a permit is required to use the land for a dwelling.<br/>Pursuant to Clause 35.07-4 a permit is required to construct or carry out works associated with a section 2 use and for a building within 100m of a waterway.</p> <p><u>Erosion Management Overlay</u><br/>Pursuant to Clause 44.01-2 a permit is required to construct a building or construct or carry out works.</p> <p><b>Other Matters</b><br/>Previous refusal for use and development of a dwelling – P2023-029.</p> <p>The planning permit applicant has lodged an application for a review of a failure of the responsible authority to grant a planning permit within the prescribed time. Officers will make a recommendation on the application but do not have delegation to decide on the application. A recommendation will be made to Council to allow a determination on what Council's position on the application is.</p> |
| Any garden area requirements | Nil.  |

|   |   |
|---|---|
| Is a CHMP required:<br>Consider AH Regs 2018 and Tool   | Is the activity within an ACHS – yes<br>Is the activity a HIA – no<br>Has there been previous SGD – no<br>Has a statement been provided by the applicant – no<br><i>If unsure then RFI as the onus is on the applicant to provide evidence</i><br><br>NO CHMP IS REQUIRED FOR A SINGLE DWELLING |
| Encumbrances on Title:  | Nil.  |
| Open Potable Catchment Area:<br>Consider Clause 66.02-5   | Yes   |
| Contamination:<br>Consider PPN30  | Unknown.  |
| HP Gas Line:<br>Section 52 to<br><a href="mailto:APAProtection@apa.com.au">APAProtection@apa.com.au</a> | No.   |
| Adjacent to the Principal Road Network:<br>Section 55 to DoT  | No.   |
| Proximity to any activity that may impact amenity either way:   | No.   |
| Bushfire Prone Area:<br>Consider Clause 13.02   | Yes   |
| Clause 71.02-3 'Integrated Decision Making' assessment:   | Considered in report  |
| Clause 71.03-2 'Acceptable Outcomes':   | Considered in report  |

### Application Checklist:

|  |   |  |
|--|---|--|
| Application form <input checked="" type="checkbox"/>         | Title <input checked="" type="checkbox"/>           | Fee paid <input type="checkbox"/>            |
| Plans of Proposal <input checked="" type="checkbox"/>        | Planning Report <input checked="" type="checkbox"/> | LCA <input type="checkbox"/>                 |
| Geotechnical Report <input checked="" type="checkbox"/>      | Bushfire Reports <input type="checkbox"/>           | Biodiversity Report <input type="checkbox"/> |
| Pre-Application Meeting Document ID <input type="checkbox"/> | Clause 54/55/56 <input type="checkbox"/>            | Any other -                                  |

### 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

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## **Recommendation**

That Council -

- having caused notice of Planning Application No. P2023-109 to be given under Section 52 of the *Planning and Environment Act 1987* and or the planning scheme;
- 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 (L1 TP826506 V6294 F750 Parish of Marraweeny), **1823 Euroa-Strathbogie Road, Kithbrook VIC 3666**, for **the Use and Development of Land for a Dwelling** based on the following grounds -

### **Grounds of Refusal:**

1. The proposal does not support the Purpose of the Farming Zone and does not weight in favour of support when assessed against the appropriate decision guidelines of the Farming Zone –
  - The proposal for a dwelling has no connection to a productive farming pursuit that requires a dwelling on the land for its operation.
  - The proposal has the potential to limit operation and expansion of adjoining and nearby agricultural uses.
  - The proposal has the potential to lead to proliferation of dwellings in the area, which are not connected to farming, with potential for adverse impacts on surrounding agricultural production.
2. The proposal, when assessed against the policy directions throughout the Strathbogie Planning Scheme, is not weighted in favour of support. The relevant policy directions are –
  - a. Clause 02.03-4 – given the proximity to Melbourne and major regional centres, and the scenic nature of the area, there is a continual demand for rural lifestyle development not associated with farming. This leads to land use conflicts between farming and rural industries.
  - b. Clause 14.01-1S – the proposal does not protect the state’s agricultural base as it is an incompatible use with farming, in this location.
  - c. Clause 14.01-1L – the subject land is not identified in the Strathbogie Shire Rural Residential Strategy (Strathbogie Shire Council, 2004) as rural residential.

### **DRAFT Conditions for VCAT if required:**

#### **Endorsed Plans:**

1. The use / development must be carried out / sited and constructed in accordance with the endorsed plans and permit conditions and must not be altered without the prior written consent of the Responsible Authority.

### **General Amenity:**

2. The use and development must be managed so that the amenity of the area or locality, in the opinion of the Responsible Authority, is not detrimentally affected, through the:
  - a) transport of materials, goods or commodities to or from the land;
  - b) appearance of any building, works or materials;
  - c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
  - d) presence of vermin; and
  - e) others as appropriate.

### **Section 173 Agreement:**

3. Prior to the commencement of the use and development, the owner must enter into an agreement with the Responsible Authority, pursuant to Section 173 of the Planning and Environment Act 1987. This agreement must be registered on the title to the land pursuant to Section 181 of the Planning and Environment Act 1987. The owner must pay the costs of the preparation, execution, and registration of the Section 173 Agreement. The agreement must provide that:
  - a) The development and continued use of the dwelling has been permitted on the basis that the dwelling is reasonably required for the conservation of the land in accordance with an endorsed Integrated Land Management Plan. Any changes to the Integrated Land Management Plan (which reflects the activities on the land) must gain consent from the Responsible Authority before continuing.
  - b) The dwelling must not be subdivided from the lot and there must not be subdivision so as to increase the number of lots.
  - c) The owner acknowledges and accepts the possibility of nuisance from adjoining agricultural operations including animal production, spray drift, machinery use, and associated hours of operation necessary for agricultural production.

### **Dwelling in the Farming Zone:**

4. A lot used for a dwelling must meet the following requirements:
  - a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
  - b) Each dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available all wastewater from each 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.

### **Minimising Glare:**

5. The external cladding of the proposed buildings, including the roof, must be constructed of materials in good order and condition and be of muted colours to enhance the aesthetic amenity of the area. Materials having a highly reflective surface must not be used.

### **Soil Erosion Control:**

6. All works must be undertaken in a manner which minimises soil erosion, and any exposed areas of soil must be stabilised to prevent soil erosion, to the satisfaction of the Responsible Authority.
7. Sediment and erosion prevention/control measures must be maintained until the area has sufficient vegetation cover to resist erosion, and there is no longer any threat of erosion and siltation caused by the proposed development to the satisfaction of Responsible Authority.

### **Construction in accordance with Geotechnical Report:**

8. The development must be constructed in response to any recommendations in the Geotechnical Report by DM Lawrence Soil Testing Pty Ltd dated 22 June 2021 Ref 20210237.

### **Engineering:**

#### *Rural Vehicle Crossing Location*

9. Prior to the occupation of the dwelling, any new, relocated, alteration, or replacement of required vehicular entrances to the subject land from the road shall be constructed at a location and of a size and standard in accordance with the requirements of the relevant Authority and shall be at the applicant's expense. The final location of the crossing is to be approved by the Responsible Authority via a Vehicle Crossing Permit. Reference should be made to Clause 12.9.2 "Rural Vehicle Crossings" of the Infrastructure Design Manual. Refer to standard drawing SD255 for small vehicles or SD265 for large vehicles.
10. The vehicular crossing shall have satisfactory clearance to any power or Telecommunications pole, manhole cover or marker, or street tree and have a minimum of 50mm of gravel from the shoulder to the property boundary.

#### *Internal Access Roads*

11. Prior to the occupation of the dwelling, all internal access roads must be constructed, formed, and drained to avoid erosion and to minimise disturbance to the natural topography of the land to the satisfaction of the Responsible Authority. Internal access, including the turn-around areas for emergency vehicles, must be all-weather construction with a minimum trafficable width of 4m.

#### *Rural Drainage – Works*

12. All stormwater and surface water discharging from the site, buildings, and works must be conveyed to the legal point of discharge drains to the satisfaction of the Responsible Authority/Goulburn Murray Water or dissipated within the site boundaries. No effluent or polluted water of any type may be allowed to enter the stormwater drainage system.
13. Appropriate steps must be taken to retain all silt and sediment on-site during the construction phase to the satisfaction of the Responsible Authority and must be carried out in accordance with the following EPA guidelines and policies:
  - Environmental Guidelines for Major Construction Sites (EPA publication No. 480, December 19985); and

- Construction Techniques for Sedimentation Pollution Control (EPA publication No. 275, May 1991)
14. Prior to the commencement of any works, the design parameters for any defined watercourse crossing(s), both structural and hydraulic design, shall be approved by the Responsible Authority (GBCMA – Works on Waterways Permit).

**Environmental Health:**

15. Prior to the commencement of works on the dwelling the owner shall lodge with the Council an Application for a Permit to Install an Onsite Wastewater Management System. The application shall be in accordance with the Environment Protection Regulations 2021, the EPA Code of Practice – Onsite Wastewater Management, Publication 891.4, July 2016 and the Land Capability Assessment prepared by EWS Environmental, Report Ref - 220830, revised date 15 May 2023.
16. All wastewater from the dwelling must be treated to a standard of at least 20mg/L BOD and 30mg/L suspended solids using a package treatment plant or equivalent. The system must be installed, operated and maintained in accordance with the EPA Code of Practice – Onsite Wastewater Management, Publication 891.4, July 2016 and must have a Certificate of Conformity.
17. The wastewater disposal land application area must be located in accordance with the setback requirements of Table 5 of the EPA Code of Practice – Onsite Wastewater Management, Publication 891.4, July 2016 and specifically set back a minimum of 100m from Magiltans Creek.

**Goulburn Murray Water:**

18. All construction and ongoing activities must be in accordance with EPA Publication 1834.1 Civil Construction, Building and Demolition Guide (September 2023).
19. All wastewater from the dwelling must be treated and disposed of using an approved system. The system must have a certificate of conformity issued by the Conformity Assessment Body (or equivalent approval) and be installed, operated and maintained in accordance with the relevant Australian Standard and EPA Code of Practice.
20. The wastewater disposal area must be located at least: 100m from any waterways, 40m from any drainage lines, 60m from any dams, and 20m from any bores.
21. The wastewater management system must be appropriately designed to manage the potential volume of wastewater generated under full occupancy (based on a minimum 3 bedrooms), including an appropriately sized disposal area based on a full water balance specific to the proposal and subject land in accordance with the requirements of the current EPA Code of Practice – Onsite Wastewater Management.
22. The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.

23. No buildings are to be constructed within 30 metres of any waterways or on any drainage lines.

**Commencement of permit:**

24. This permit will operate from the issued date of this permit.

**Permit Expiry:**

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

- a) The development is not started within two (2) years of the date of this Permit,
- b) The development is not completed within four (4) years of the date of this Permit.
- c) The use ceases for two or more years.

The Responsible Authority may extend the periods referred to if a request is made in writing:

- before the permit expires; or
- within six months afterwards if the use or development has not yet started; or
- within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

**Planning Notes:**

- This permit does not authorise the commencement of any building construction works. Before any such development may commence, the applicant must apply for and obtain appropriate building approval.
- Prior to works commencing on public land or roads, the applicant must obtain a permit from the relevant authority giving Consent to Work Within a Road Reserve.

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**Proposal**

It is proposed to use and develop the land for a single dwelling.

The dwelling proposed is shown to be a rectangular shaped building that includes the dwelling, garage and production area for the farming enterprise proposed. The dwelling is shown to contain a study, bedroom, master bedroom with ensuite, combined kitchen, dining and living room. The production area is shown to be approximately 21 metres long and 12 metres wide. The production area has a small bathroom, office, cool room with the rest of the area being open and including propagation tables and garden beds. The remainder of the building features an enclosed garage and unenclosed carport. The entire building is shown to have an area of 720sqm in addition to the unenclosed undercover canopy.

The dwelling is shown to have a 19.9 metres setback from the western boundary and 132 metre setback from the northern boundary.

A Farm Management Plan was submitted in support of the application. In general, the plan proposes:

- egg production through the use of 50 laying chickens. The chickens will be located in the orchards and throughout the site producing 16,000 eggs per year; and
- 400 quince trees planted (annually producing 24-40 tonnes at maturity); and

- 400 apricot trees (annually producing 12-15 tonnes at maturity); and
- Roadside produce stand; and
- Riparian conservation zones for waterways onsite;
- Soil rehabilitation and improve to control erosion.

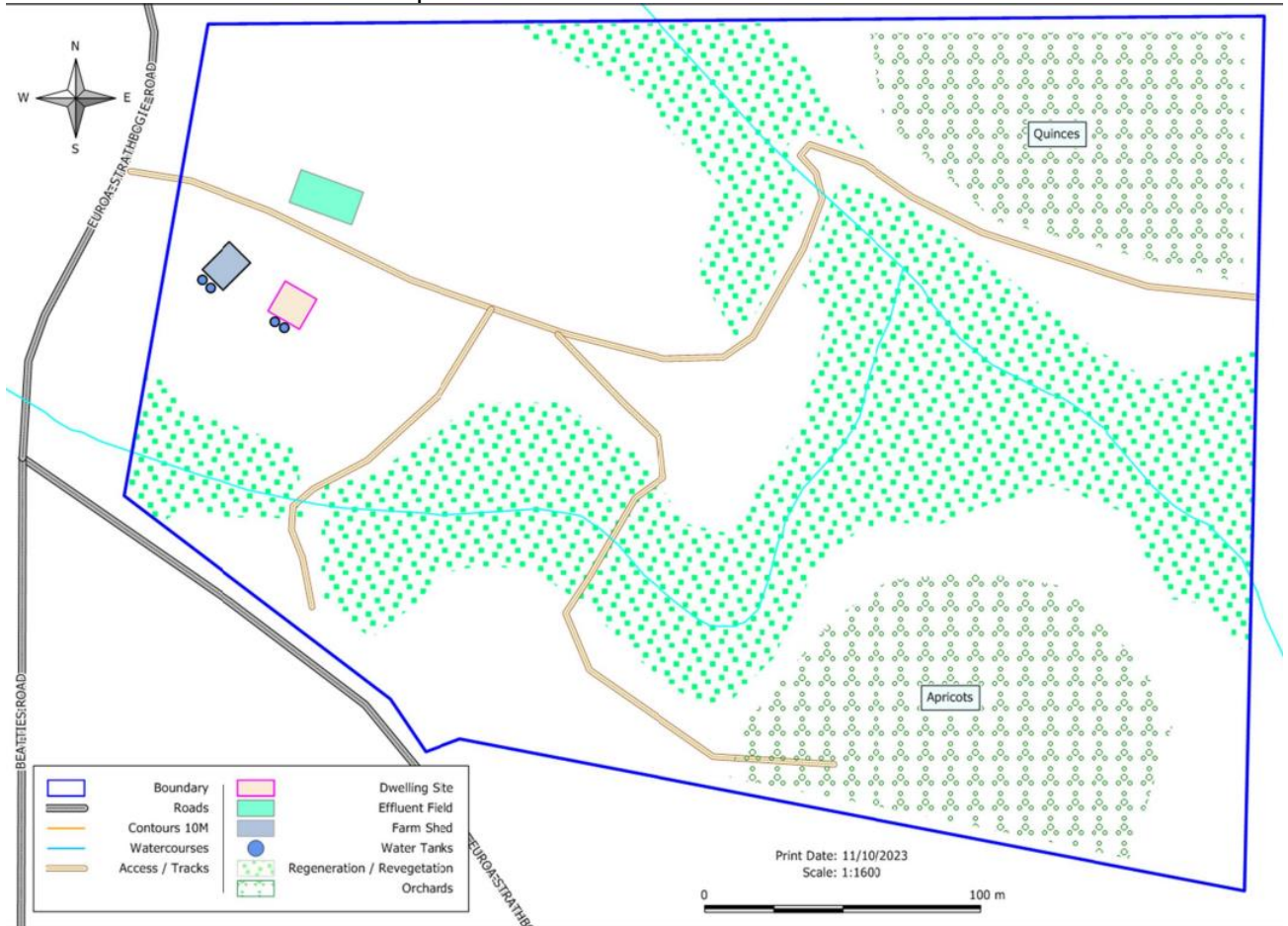


Figure 1: Proposed farm layout.

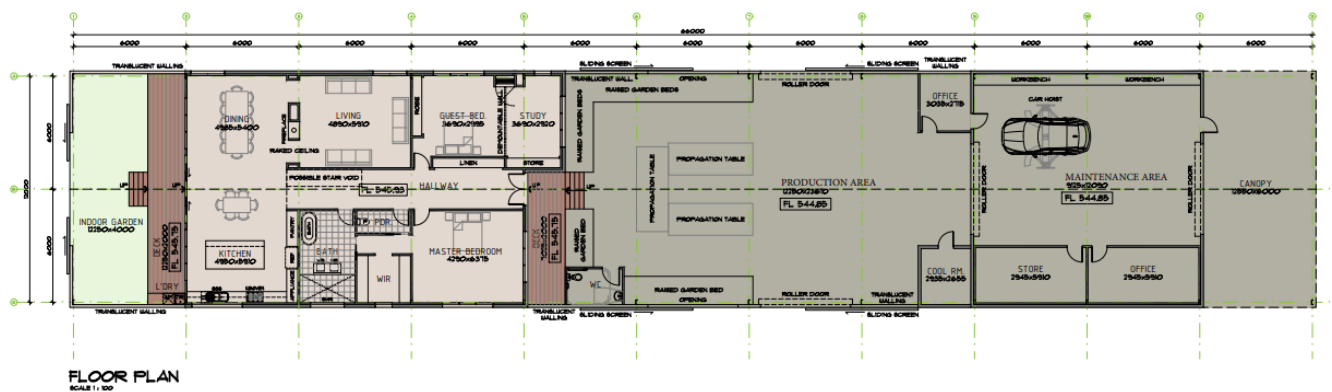


Figure 2: Dwelling plan.



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**Site Visit**

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| <b>Inspection date/s:</b> numerous throughout the times most recent March 2024 | <b>Officer:</b> Jack Francis |
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**Subject Site and Locality**

The subject site is located at 1823 Euroa-Strathbogie Road, Strathbogie with an area of 10.5 hectares. There are two waterways flowing through the site, entering from the north and west and exiting from the east, flowing in a 'Y' shape. The waterway is named as Magiltans Creek. The land significantly slopes down to each waterway, where there is sporadic vegetation plantings and several sections of the waterways have been negatively impacted by cattle grazing. The site has several rocky outcrops and due to the existing waterways is basically split up into three separate areas.

The site contains existing structures in proximity to the western boundary, which appear to have been used for human habitation. There is no evidence of any building or planning approval for these structures on Council's record system.

The surrounding area is made up of larger parcels of land in the Farming Zone, and on similar undulating topography, generally sloping down from west to east. Several neighbouring and nearby properties contain residences, whilst others are vacant.

On the adjoining lot to the south Council has issued a notice of decision to grant a permit for the "Use and Development of land for a distillery and associated sales; Use and Development for a manager's dwelling and associated outbuilding; Use and Development for group accommodation; Signage; and Liquor License". This application is currently being considered by VCAT.

The subject land and neighbouring land are identified as 90% high suitability in Council's CSAD mapping for overall versatility for the year 2050. Council's CSAD mapping identifies the land as being highly productive up to 2050.



Figure 3: Subject site.

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### Permit/Site History

A search of Council's planning electronic records results in the following planning permits being issued for the site:

- Planning application P2023-029 for the use and development of land for a dwelling was refused.

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### Further Information

Relevant principles in relation to the operation of section 54 are expressed in *Calodoukas v Moreland CC*<sup>41</sup>. In *Calodoukas*, the Tribunal outlined:

- the purpose of the power in section 54 is to enable a responsible authority to properly deal with a permit application –e.g. to clarify the application, or to overcome a deficiency in the application that prevents the responsible authority from understanding or resolving a key issue raised by the application that need to be assessed before a decision can be made.
- the further information required must relate to the potential planning impacts of the development or use proposed in the application, and the matters that the responsible authority must consider before making a decision on that application.
- importantly, the further information required must be proportionate to the scale and nature of the proposal, and the issues to be assessed.

- a requirement under s 54 must be a bona fide request for information. It should not be used to delay an application, or to effectively seek changes to the application. Nor should it seek generic information not directly related to the particular application under consideration, or information that would ordinarily be required only after a decision to grant a permit had been made – e.g. by way of a subsequent permit condition.

|  |                              |  |
|--|------------------------------|--|
| <b>Further Information Required:</b><br><b>What was requested?</b> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| <b>FI Requested:</b>   |                              |  |
| <b>FI Due:</b>   |                              |  |
| <b>FI Received:</b>  |                              |  |

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### Advertising/Public Notification

|  |                  |  |  |  |
|--|------------------|--|--|--|
| <b>Is notification/advertisement required under section 52?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Exempt<br><b>Please provide comment if No</b> |                  |  |  |  |
| <b>Advertised by:</b>  |                  | <input checked="" type="checkbox"/> Council  |  | <input type="checkbox"/> Applicant   |
| <b>Internal Documents:</b><br>Advertising list - 896365<br>Advertising map – 896364  |                  | <b>Website Documents:</b><br>Doc ID's 896372, 896375,<br>896373, 896378<br><br>Sent to Comms on 07/12/23<br>Doc 899773 & |  | <b>Notice Documents:</b><br>Page 2 of doc id 896372<br><br>Sent 07/12/23<br>Doc 899750 |
| <b>Add Instructions on Spear</b>   |                  | <input type="checkbox"/> Yes   |  | <input checked="" type="checkbox"/> No   |
| <b>Letters: yes</b><br><br>Sent<br>07/12/2023  | <b>Signs: no</b> | <b>Paper: no</b>   | <b>Sent: 07/12/23</b><br><b>Closes: 04/01/23</b> | <b>Stat Dec Rec: «Date»</b>  |
| Objections received?   |                  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  |  | Number: one  |

| Objection  | Officers Response  |
|--|--|
| <b>Objection 1</b>   |  |
| "Many objectives and management plans are stated in the current proposal but given the applicant failure to implement their own basic objectives in the previous proposal, | Not supported. There is no Council requirement for the landowners to manage their land in this particular instance. Other authorities may have these powers, however Council does not. |

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| <p>then one has to question how credible their current plan is.”</p> <p>“The result of not following through with their stated objective of fencing off the waterway from the cattle, has now resulted in extensive degradation of the waterway...”</p>  | <p>Notwithstanding, that Council would like to see these waterways appropriately managed.</p> <p>The Farm Management Plan provided identifies the current issues on site, such as impacts on existing waterways from cattle. The plan proposes further fencing and the regeneration of the existing waterways through the planting of endemic vegetation and improving soil qualities by mowing poultry manure and plant materials back into the soil.</p> <p>If approved, a condition will be applied to the permit requiring a section 173 agreement to tie the dwelling into the proposed agricultural activities.</p>   |
| <p>“None of reasons stated necessitate a dwelling and the stated tasks can all be achieved without a dwelling on the site.”</p> <p>The objection states further that many orchards in the Goulburn Valley “...do not have dwellings and exist by implementing measures to counter the problems that may arise that the applicant as alluded to.”</p> | <p>Supported. There is no specific cut off point for where agricultural production necessitates the need for a dwelling in the Strathbogie Planning Scheme. Different activities will require different amounts of time to be spent on the land, which does not necessarily correlate with the need for a residence.</p> <p>The application was accompanied by a Farm Management Plan which identified the activities proposed and advises that the orchard will require about 1200-1500 hours per year and the chickens will need an hour per day (every day of the year).</p> <p>The objection points out that there are larger orchards within the Goulburn Valley which do not necessitate the need for a dwelling.</p> |

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### Consultation

The following consultation was undertaken –  
The objection was acknowledged  
The redacted objection was sent to the applicant  
No mediation was undertaken

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### Referrals

External Referrals/Notices required by the Planning Scheme:

| REFERRALS                  |                          |  |                                |  |   |
|----------------------------|--------------------------|--|--------------------------------|--|---|
| Add instructions on SPEAR: |                          |  |                                | <input type="checkbox"/> Yes                   | <input type="checkbox"/> No   |
| Referrals Authority        | Type of Referral         | Referral Clause and Description                | Additional Instructions        | Date sent                                      | Date received including Advice/Response/Condition                   |
| GMW                        | Section 55 - Determining | Clause 66.02-5 - Special Waer Supply Catchment | Send doc id 896371 only to GMW | Sent 04/12/23<br>Doc 898979                    | Received 05/02/2024<br><br>No objections subject to conditions      |
| HEALTH                     | Internal                 |  |                                | workflow created on 05/12/23 for Doc ID 888136 | Received 05/02/2024<br><br>No objections subject to conditions      |
| ENGINEER                   | Internal                 |  |                                | workflow created on 05/12/23 for Doc ID 888136 | Conditional consent<br><br>DOC ID 901524<br><br>Received 15/12/2023 |
| OTHER –<br>Please specify  |                          |  |                                |  |   |

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## ASSESSMENT

### Zones and Overlays Farming Zone

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.

Permit trigger:

- Pursuant to Clause 35.07-1 a permit is required to use the land for a dwelling.
- Pursuant to Clause 35.07-4 a permit is required to construct or carry out a building or works associated with a use in section 2 of Clause 35.07-1.

Decision guidelines

| <b>Decision Guideline</b>   | <b>Officer's Response</b>  |
|---|--|
| <b>General issues</b>   |  |
| The Municipal Planning Strategy and the Planning Policy Framework.  | The proposal is considered to be inconsistent with the relevant MPS and PPF.   |
| Any Regional Catchment Strategy and associated plan applying to the land.   | Considered.  |
| The capability of the land to accommodate the proposed use or development, including the disposal of effluent.                      | A Land Capability Assessment has been provided showing that effluent can be appropriately managed.   |
| How the use or development relates to sustainable land management.  | The application does relate to sustainable land management, where it has identified that regenerative works need to be undertaken on the site  |
| Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses. | The site is considered to be not necessarily suitable for a residence. It is incompatible with most neighbouring properties which are larger and contain more traditional agricultural pursuits. |
| How the use and development makes use of existing infrastructure and services.  | There are few existing services or infrastructure available on the land.   |
| <b>Agricultural issues and the impacts from non-agricultural uses</b>   |  |
| Whether the use or development will support and enhance agricultural production.  | The proposal includes a farm management plan that proposes to undertaken orchards and raising of chickens, which the farm management plan identifies the need for a dwelling to undertake this.  |
| Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.          | The house will remove land from agricultural production, however this is minimal as the house includes a conjoined agricultural outbuilding.   |
| The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.            | The agricultural use proposed is minimal as there is very little room on the site to undertake agriculture.  |

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|   | It is unknown exactly the impacts on neighbouring land.   |
| The capacity of the site to sustain the agricultural use.   | A farm management plan has been provided that identifies that the site can sustain the agricultural uses proposed.  |
| The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.   | The land has water access, although the land is topographically challenged.   |
| Any integrated land management plan prepared for the site.  | An integrated land management plan was provided.  |
| Whether Rural worker accommodation is necessary having regard to: <ul style="list-style-type: none"> <li>○ The nature and scale of the agricultural use.</li> <li>○ The accessibility to residential areas and existing accommodation, and the remoteness of the location.</li> </ul> | No rural workers accommodation is proposed.   |
| The duration of the use of the land for Rural worker accommodation.   | No rural workers accommodation is proposed.   |
| <b>Accommodation issues</b>   |   |
| Whether the dwelling will result in the loss or fragmentation of productive agricultural land.  | The land is identified by Council's CSAD mapping as being highly productive. The proposal will result in fragmentation with another dwelling being located in the Farming Zone and the loss of productive farmland.   |
| 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.  | It is considered that there will be little impact on the proposed dwelling from existing activities occurring on neighbouring properties. However the introduction of a dwelling on a small lot could lead to conflict in future if the agricultural activities on surrounding land intensify.<br><br>Should approval be given for the gin distillery at 1890 Euroa-Strathbogie Road, then there may be adverse affects felt by the owners of the subject site in regards to the hours of operation, patron numbers, traffic (amongst other amenity impacts). |
| Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.   | It is considered unlikely that the residence will impact the operation or expansion of adjoining activities. However, the introduction of a dwelling, brings the potential for a rural lifestyle use, which can cause conflict with neighbouring agricultural land uses.  |

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|   | The house is located in proximity to heavily vegetated sections of the Euroa-Strathbogie Road reserve and the northern neighbouring property containing a heavily vegetated section.   |
| 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.  | <p>There is potential that the proposal will further add to the proliferation of dwellings in the surrounding area. There are vacant lots nearby that could be the subject of planning permit applications in the future.</p> <p>The land is just outside of the township of Strathbogie and is not identified in the RRS2004.</p> |
| <p>The potential for accommodation to be adversely affected by noise and shadow flicker impacts if it is located within one kilometre from the nearest title boundary of land subject to:</p> <ul style="list-style-type: none"> <li>○ A permit for a wind energy facility; or</li> <li>○ An application for a permit for a wind energy facility; or</li> <li>○ An incorporated document approving a wind energy facility; or</li> <li>○ A proposed wind energy facility for which an action has been taken under section 8(1), 8(2), 8(3) or 8(4) of the <i>Environment Effects Act 1978</i>.</li> </ul> | There are no nearby windfarms.   |
| The potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.  | There is no land on which a work authority has been applied or granted within 500 meters of the site.  |
| <b>Environmental issues</b>   |  |
| The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.   | The applicant has provided a farm management plan that has identified the existing degradation that has occurred from cattle grazing on the site and mentioned that  |
| The impact of the use or development on the flora and fauna on the site and its surrounds.  |  |



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|--|--|
| <p>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.</p>   | <p>the land will be better managed to protect the waterways onsite.</p> <p>The improvements will occur through fencing of waterways and clearer identification of exclusion zones for animals onsite. This will help to rejuvenate the existing waterways and reduce erosion impacts.</p>  |
| <p>The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.</p>  | <p>A Land Capability Assessment has been provided showing that effluent can be appropriately managed. Goulburn Murray Water and Council's Environmental Health Officer have consented to the LCA.</p>  |
| <p><b>Design and siting issues</b></p>   |  |
| <p>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.</p>  | <p>The dwelling is shown to be located close to Euroa-Strathbogie Road and is located in one of the more appropriate spots for a building on the land.</p>   |
| <p>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.</p>   | <p>The dwelling proposed is a modest design that is shown to be incorporated into the agricultural shedding also proposed for the site. The building is modest in nature, although the location will be visible on the landscape. This is largely unavoidable as the location chosen is one of the more suitable spots for residence on the site, and this site happens to be in proximity to Euroa-Strathbogie Road and the most elevated part of the site.</p> |
| <p>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.</p>   | <p>The surrounding area is an attractive landscape, with significant pressure on rural lifestyle properties.</p>   |
| <p>The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.</p>  | <p>Very few services are available and will require connection upon development.</p>   |
| <p>Whether the use and development will require traffic management measures.</p>   | <p>Access is already on to Euroa-Strathbogie Road.</p>   |
| <p>The need to locate and design buildings used for accommodation to avoid or reduce noise and shadow flicker impacts from the operation of a wind energy facility if it is located within one kilometre from the nearest title boundary of land subject to:</p> <ul style="list-style-type: none"> <li>○ A permit for a wind energy facility; or</li> <li>○ An application for a permit for a wind energy facility; or</li> <li>○ An incorporated document approving a wind energy facility; or</li> <li>○ A proposed wind energy facility for which an action</li> </ul> | <p>There are no nearby windfarms.</p>  |

|   |  |
|---|--|
| <p>has been taken under section 8(1), 8(2), 8(3) or 8(4) of the <i>Environment Effects Act 1978</i>.</p>  |  |
| <p>The need to locate and design buildings used for accommodation to avoid or reduce the impact from vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.</p> | <p>There is no land on which a work authority has been applied or granted within 500 meters of the site.</p> |

### Officer Response

This proposal does propose a small scale, agricultural business being organic produce for retail sale. This is likely to be sustainable production of food. Whether it is productive is a question to be answered. Given it is proposed on a small scale, it is not likely to be highly productive. It may respond to a local market demand. This forms the justification for the basis of the need for the dwelling.

It is likely that the land can accommodate the required wastewater management given the lot size.

This lot size is much smaller, 10ha, than the minimum lot size in this area which is 40ha. It is considered at this time that the dwelling is likely not needed for the agricultural proposal.

If the application is supported, there is the possibility that it could transform into a rural lifestyle proposal given the size of the land and topographical restraints. Approval of the application has the potential to lead to a proliferation of dwellings in the locality which is already known to be highly attractive to those seeking rural lifestyle opportunities. Officers have no guarantee the proposed agricultural use will be implemented nor has it been substantiated that a dwelling is required to support this use.

Feedback from Council's Strategic Planner is that given the location, to the north, and the current review of the rural residential and rural land use strategies, that the land could possibly be included as an area suitable for rural residential land use into the future as part of a review of the Rural Residential Strategy 2004. As this strategic work is yet to be completed any reliance of this advice is seen as premature. Given the characteristics of the site and the location it is considered support for the application would set a precedent for the area without any formal strategic support.

The lot is approximately 10ha, considerably smaller than the minimum lot size in the Farming Zone (40ha). The land around the site contains a mix of lot sizes, generally larger than the subject site, however the land opposite Euroa Strathbogie Road to the west is of a similar size and contains a dwelling and small cropping operation.

Given the dimensions and proposed use of the land, it is unlikely the proposal will result in a sustainable agricultural business, rather the agricultural productivity will be a by product of the use of the land for rural lifestyle type living. The proposed agricultural use is not dependent on the dwelling for its operation, in fact the installation of toilet and office facilities in all areas of

the building make each section viable as a stand alone building that does not require a permanent dwelling on the property to operate.

The proposed dwelling is not considered to result in any environmental issues. No existing native vegetation will be removed and while cut and fill is proposed for the development, it has been sited to minimise earthworks and respond to the geotechnical constraints of the land.

While the design of the building introduces a large built form into the landscape, the proposal is of materials and design common to rural farm sheds. Large agricultural buildings are a feature of the Farming Zone and the proposal will be constructed from external materials of a natural palette, non-reflective and designed to integrate with the natural environment. The accessway is existing and the overall development is not considered to be a dominant feature in the landscape given its notable setback from property boundaries. No traffic management measures are considered to be required.

#### Erosion Management Overlay

The purpose is –

- *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.*

#### Permit trigger:

Pursuant to Clause 44.01-2 a permit is required for buildings and works.

A proposal is exempted from notice requirements and review rights.

Appropriate decision guidelines are considered to be –

- The Municipal Planning Strategy and the Planning Policy Framework.
- Any proposed measures to manage concentrated runoff and site drainage.
- Any proposed measures to minimise the extent of soil disturbance.
- The need to stabilise disturbed areas by engineering works or revegetation.
- Whether the land is capable of providing a building envelope which is not subject to high or severe erosion concern.
- Whether buildings or works are likely to cause erosion or landslip.
- Whether access and servicing of the site or building envelope is likely to result in erosion or landslip.

#### Officer Response

The Geo-tech report submitted with the application has assessed the risk and any recommendations will ensure that the risk of erosion and landslide is minimised.

#### **Municipal Planning Strategy and Planning Policy Framework**

Clause 02.01 informs that the majority of the shire is used for a variety of agricultural enterprises that are supported by the towns of Euroa, Nagambie, Avenel and Violet Town along with the smaller townships. The farming enterprises include equine, poultry, pig, wool, grain and cattle production, vineyards and other horticultural enterprises.

Clause 02.02 provides the vision in the shire to provide a framework for improving the social, physical, environmental and economic wellbeing of the community.

Clause 02.03-4 informs that the shire is often faced with land use conflicts, namely between lifestyle properties and rural industries. Council's strategic direction for agriculture are to retain areas of high quality rural land for farming and agriculture purposes; encourage consolidation of small rural lots within the Farming Zone; encourage emerging rural enterprises; prioritise productive farming development over residential development; encourage value adding rural industries; protect, maintain and grow environmentally sustainable intensive agriculture; and promote the clustering of codependent uses.

Clause 02.03-7 informs that the shires economy is centred on agriculture.

Clause 13.02 addresses the bushfire risk under the BPA.

Clause 13.04-2S sets an objective to protect areas prone to erosion, landslip and other land degradation processes.

Clause 14 sets an objective to protect the states agricultural base by preserving farming land. This is to be achieved by preventing inappropriately dispersed urban activities in rural areas, directing housing growth into existing settlements and discouraging development of isolated small lots in rural zones. Planning is directed to consider the compatibility of the proposed use and development and the existing surrounding use of the land.

Clause 14.01-1L sets the objective to discourage proliferation of dwellings on lots less than the minimum lot size in the Farming Zone. It directs planning to discourage dwellings not associated with the agricultural use of the land that will compromise the operation of nearby agricultural enterprises.

Clause 14.01 sets an objective to protect the state's agricultural base by preserving productive farmland. Planning is directed to –

- consider state, regional and local issues and characteristics when assessing agricultural quality and productivity.
- avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for production and processing sectors.
- Protect productive farmland that is of strategic significance in the local or regional context.
- Protect productive agricultural land from unplanned loss due to permanent changes in land use.
- Prevent inappropriately dispersed urban activities in rural areas.
- Limit new housing development in rural area by directing it to existing settlements, discouraging dwellings on isolated small lots, and encouraging consolidation of existing isolated small lots in rural zones.

Planning is directed to consider the following when assessing an application to subdivide-

- Desirability and impacts of removing the land from primary production, given its agricultural productivity.
- Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.
- Compatibility between the proposed or likely development and the existing use of the surrounding land.

- The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.
- Land capability.

This policy also directs planning to avoid the subdivision of productive agricultural land from diminishing the long term productive capacity of the land, whilst also directing that priority is to be given to the restructure of inappropriate subdivisions where they exist.

Clause 14.01-1L directs planning to ensure rural subdivisions prioritise agriculture and result in improved agricultural productivity; and discourage rural subdivision where they create new lots that have potential for further subdivision or a dwelling.

Clause 14.01-2S directs planning to ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources; and support adaptation of the agricultural sector to respond to the potential risks arising from climate change.

#### Officer Response

The above policies seek to protect productive agricultural land and encourage sustainable agricultural land use to maintain a viable and sustainable agricultural industry to support the municipal economy and wellbeing.

It is policy to discourage new dwellings on an existing lot less than the size specified in the Farming Zone unless the lot has been identified in the *Strathbogjie Shire Rural Residential Strategy* (2004) as rural residential. As discussed earlier, while the site is not identified in the Strategy.

It is noted that the application includes agricultural uses for the land, that will maintain the majority of the land for agriculture, however it is not considered that the proposed dwelling is necessary to sustain the productivity of the land for the proposed farming activities.

The surrounding area is made up of larger parcels of land in the Farming Zone, and on similar undulating topography, generally sloping down from west to east. Several neighbouring and nearby properties contain residences, whilst others are vacant. Providing approval for a dwelling on a small lot has the potential to promote further fragmentation of surrounding agricultural land, which could lead to a proliferation of dwellings in the area.

The dwelling will be designed to comply with relevant bushfire construction standards, ensuring a resilient built form outcome.

The proposal has been assessed against the relevant policy and it is concluded that the argument is in favour of refusal at this time. The subject site is not the minimum lot size and the proposed activity does not require a dwelling to be located on the land. Thus it can only be considered that the farming activity is secondary to the primary use of the land for a residency. This then is considered to have potential to impact the farming activities still prevalent in this locality.

#### **Relevant Particular Provisions**

Nil

## The Decision Guidelines at Clause 65

| Clause 65.01  |  |
|---|--|
| Decision Guideline  | Officer Comment  |
| <i>The matters set out in Section 60 of the Act.</i>  | Considered.  |
| <i>Any significant effects the environment, including the contamination of land, may have on the use or development.</i>  | The environment is unlikely to have any significant on the proposed dwelling. The site is unlikely to have been exposed to contaminants in the past.   |
| <i>The Municipal Planning Strategy and the Planning Policy Framework.</i>   | As discussed above, the proposal supports by the Municipal Planning Strategy and the Planning Policy Framework.  |
| <i>The purpose of the zone, overlay or other provision.</i>   | For reasons discussed throughout this report, the proposal is consistent with the purpose of the Farming Zone and Erosion Management Overlay.  |
| <i>Any matter required to be considered in the zone, overlay or other provision.</i>  | As discussed above, the proposal is consistent with the relevant requirements and decision guidelines of the Farming Zone and Erosion Management Overlay.  |
| <i>The orderly planning of the area.</i>  | The proposal is considered to be primarily for the use of a dwelling and any agricultural pursuit to be of hobby farm size, and therefore is not productive farming on a scale more than local.                          |
| <i>The effect on the environment, human health and amenity of the area.</i>   | The proposed dwelling is unlikely to have any negative effects on the environment, human health and amenity of the area.   |
| <i>The proximity of the land to any public land.</i>  | The site does not have any interface with Crown Land.  |
| <i>Factors likely to cause or contribute to land degradation, salinity or reduce water quality.</i>   | The proposal is unlikely to contribute to land degradation, salinity or reduced water quality. All stormwater and wastewater will be appropriately managed on site and no existing vegetation is required to be removed. |
| <i>Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.</i>   | The Engineering Department have reviewed the application and recommended a condition relating to on-site stormwater retention. No major issues were raised in relation to stormwater.                                    |
| <i>The extent and character of native vegetation and the likelihood of its destruction.</i>   | N/A – no native vegetation will be impacted by the proposed subdivision.   |
| <i>Whether native vegetation is to be or can be protected, planted or allowed to regenerate.</i>  | No re vegetation is proposed.  |
| <i>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.</i> | The proposal is located in an area of low bushfire risk and will be constructed to respond to any relevant geotechnical recommendations.   |
| <i>The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.</i>   | Driveways can accommodate domestic vehicles as well as emergency service vehicles.   |
| <i>The impact the use or development will have on the current and future development and operation of the transport system</i>  | One dwelling is unlikely to have an impact on the current and future operation of the transport system.  |

### Clause 71.02-3 Integrated Decision Making

Victorians have various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

Planning authorities should identify the potential for regional impacts in their decision making and coordinate strategic planning with their neighbours and other public bodies to achieve sustainable development and effective and efficient use of resources.

### **Clause 71.03-2 Making Decision about Section 2 Uses**

Because a use is in Section 2 does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the Municipal Planning Strategy, the Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65.

### **Relevant State Policy**

- Melbourne Plan 20230
- Hume Regional Growth Plan 2014

Hume Regional Growth Plan 2014 – The Executive Summary identifies agriculture as important industry sectors and goes on to explain that the Hume Region relies heavily on agriculture. To protect farming the Plan direct that rural residential uses will be provided for in defined areas close to existing settlements to ensure this form of development does not impact adversely on productive agriculture or other broad scale rural uses.

### **Relevant incorporated, reference or adopted documents**

Rural Residential Strategy 2004 – the subject site is not identified in this strategy which identifies lots that are close to existing settlements that are smaller than prescribed minimum lot size and might be controlled for rural residential development until such time as further strategic work is undertaken.

### **Relevant Planning Scheme amendments**

- Nil

### **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.

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## **Summary and Conclusion**

- The application is for Use and Development of a Dwelling to support farming activities.
- The subject site is less than the minimum farming lot size in this area for an as of right use for a dwelling.
- The site is in an area of potential landslip risk and erosion, and a Geotechnical Assessment Report has been provided.

### Officer Response:

The proposed use and development requires a planning permit under the Farming Zone and Erosion Management Overlay.

The proposal would see the development of a small lot within the Farming Zone for the use of a dwelling. The dwelling is purported to be required to support the use of the land for a small scale farming operation.

All access is via Euroa-Strathbogrie Road to the west.

GMW has responded to the application and does not oppose the proposal subject to conditions to be placed on any planning permit issued.

The Planning Policy Framework of the Strathbogrie Planning Scheme allows for consideration of dwellings on small lots where they have been identified in the RRS2004, or more broadly, where there is surrounding context to support a more lenient approach to rural lifestyle development.

The proposal is for a dwelling on a small lot in the Farming Zone. The lot is not identified in the Rural Residential Strategy 2004 for managed rural lifestyle development. The lot is located outside the settlement of boundary of the Strathbogrie Township and is surrounded by large farming lots that undertake grazing and cropping activities.

Approval of the proposal has the potential to lead to proliferation of dwellings not associated with farming activities, potentially set up non farming expectations with impacts on the dwelling as well as the farms surrounding, and also put further demand on surrounding farms to make available small parcels for rural lifestyle development, particularly given the scenic area and the prices associated with rural lifestyle lots.

It is considered the proposal is inconsistent with the Planning Policy Framework of the Strathbogrie Planning Scheme and should be refused.

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**Decision:**

|  |                                      |
|--|--------------------------------------|
| <b>E Bulletin and Date -</b>   | <b>Council Report and Date - Yes</b> |
| <b>Grant <input type="checkbox"/> Refuse <input checked="" type="checkbox"/></b> | <b>NOD Issued -</b>                  |
|  | <b>Appeal lodged -</b>               |

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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 Strathbogrie 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)

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**Attachments**

**Plans for endorsement Doc ID Nil**

Assessing Officer: Jack Francis Senior Planner ..... Reviewing Officer: G Williamson Principal Planner .....

Signature:  ..... Signature:  .....

Date: 21 March 2024 ..... Date: 21 March 2024 .....

**Copy of permit to:**

Nil

Date sent:..... Initials:.....