

1 USE OF THE LAND AND WORKS ASSOCIATED WITH THE DISPOSAL OF CLEAN FILL

FILE REFERENCE INT1944570

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RECOMMENDATION

That a Refusal to Grant Planning Permit **T180774** be issued for **Use of the land and works associated with the disposal of fill** at **21 Latta Road, Nar Nar Goon VIC 3812** for reasons set out in this report.

Attachments

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| 1 | Locality Map | 1 Page |
| 2 | Development Plans | 3 Pages |
| 3 | Copy of Objections, circulated to Councillors only | 47 Pages |

EXECUTIVE SUMMARY:

APPLICATION NO.:	T180774
APPLICANT:	ESG Services Pty Ltd Millar Merrigan
LAND:	21 Latta Road, Nar Nar Goon VIC 3812
PROPOSAL:	Use of the land and works associated with the disposal of fill
PLANNING CONTROLS:	Green Wedge Zone Schedule 1 Land Subject to Inundation Overlay (does not apply to works site)
NOTIFICATION & OBJECTIONS:	Notice of the application was given by way of sending notices to adjoining and near-by land owners/occupiers and by placing a sign on both road frontages (Latta Road and Oakview Lane) Council has received twenty-three (23) objections to date.
KEY PLANNING CONSIDERATIONS:	On and off-site amenity impacts Protection of agricultural land Appropriateness of land use

BACKGROUND:

Planning permit T050376 was issued 25 July 2005 for the development of the land for the purpose of a dwelling. Following this, Planning permit T060253 was issued 22 June 2006 to develop the land for the purpose of installing an inground pool, change room and shed.

SUBJECT SITE



Figure 1: Subject site

The site is a rectangular allotment of approximately 53.56 hectares, bound by Latta Road to the east and Oakview Lane along the western boundary. The property lies approximately 1400 metres from the Main Street, of the township centre of Nar Nar Goon. It is also positioned 150 metres south-east of the Pakenham East HCMT and stabling yards.

A crossover is located off Latta Road that services the existing dwelling and outbuildings that are located in the south-eastern corner of the lot. An additional rural crossover is located toward the north-west corner of the allotment from Oakview Lane.

The allotment undulates across the site, sloping from its highest point along the southern boundary of 45.5 metres (above sea level), to its lowest point of 22.5 metres toward the western boundary. The topography slopes from both northern and southern boundaries forming a general depression east-west through the centre of the lot.

Through the centre lies a 3 metre-wide water supply easement running the width of the property. A powerline easement (12 metre-wide) runs along the south-west corner of the lot, parallel to Oakview Lane before branching off across the road.

Within the immediate vicinity of the property:

- To the north of the parcel is a 21-hectare rural parcel containing a dwelling approximately 40 metres from the common boundary. Beyond this point lies the regional train line.
- East of the subject site is a division of predominantly 3-hectare rural-residential lots on the outskirts of the Nar Nar Goon township - the majority of which are used primarily for residential purpose
- To the south is a large rural property containing a dwelling and associated buildings that front Bald Hill Road. Chairo Christian School is positioned approximately 600 metres south of the site.
- The two properties to the west form the majority of the site frontage and are identified as broiler farms, with farm shedding a minimum 125 metres west of the works areas

PROPOSAL

The application has identified the land as being in poor condition for agricultural use stemming from inadequate drainage and low levels of top soil, leading to inadequate pasture conditions and a reduced productive capacity to the site for grazing. The site is currently used for horse agistment and cattle grazing.

To resolve these issues, the importation of 510,740 cubic metres of clean fill is proposed to be distributed across the majority site, with a concentration of fill within the south-west area of the lot to a maximum depth of 3–3.5 metres. Remaining fill areas will be raised to a height ranging 0.5 - 1.5 metres. A buffer along the eastern boundary of approximately 100 metres is also to be established.

The fill is to be sourced from Greenfield subdivisions, comprising of subsoil and topsoil, assessed (visual test) for contaminants before being brought to site. On-site, the proposal is to be managed by a site manager.

Approximately 30-50 heavy vehicles are estimated to enter the site daily, between Monday and Saturday over a three year period. Deliveries will be accepted from either Oakview Lane or Latta Road, depending on the source of the fill and area to be filled.

An Agronomist Report has been submitted that comments on the Agronomic conditions of the site and identifies that the site has been overstocked, leading to the compaction on soils in some areas resulting a reduced pasture growth. Further assessment is provided of the area's soil profile and drainage along with details of processes in restoring pasture growth to allow for further grazing capacity.

PLANNING SCHEME PROVISIONS

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- 13.07-1 Land Use Compatibility
- 14.01-1S Protection of agricultural land
- 14.01-1R Protection of agricultural land – Metropolitan Melbourne
- 14.01-2 Sustainable Agricultural Land Use

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- 21.01 Municipal strategic statement
- 21.04-2 Agriculture
- 22.05 Westernport Green Wedge Policy

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- 51.02 Metropolitan Green Wedge Land: Core Planning Provisions
- 65 Decision guidelines
- 66 Referral and notice Provisions

Zone

The land is subject to the **Green Wedge Zone Schedule 1**

Overlays

The land is subject to the Land Subject to Inundation Overlay (The overlay does not apply to the works area)

PLANNING PERMIT TRIGGERS

The proposal for the **use of the land and works associated with the disposal of fill** requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.04-1 of the Green Wedge Zone a permit is required for an innominate use (disposal of fill)
- Pursuant to Clause 35.04-5 of the Green Wedge Zone a permit is required for works (associated with a Section 2 use)

PUBLIC NOTIFICATION

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

- Sending notices to the owners and occupiers of adjoining land.
- Placing two signs on site, facing Latta Road and Oakview Lane.

Council has received twenty-three (23) objections to date.

The key issues that were raised in the objections are:

- Loss of amenity due to heavy vehicle traffic, generation of dust and noise from heavy machinery and the length of time works are to be undertaken
- Traffic – safety risks around schools, lack of footpaths
- Increased degradation of the roads
- Incompatible with the agricultural practice
- Additional pressure on the regions drainage system and overflow impact on adjoining neighbours
- Source and quality of the fill, testing procedure
- Impact to land value
- Whether soil is to be temporarily stored

REFERRALS

AusNet

The application was referred to AusNet for comment. The referral authority has no objection to the proposal subject to the inclusion of one condition. This condition is not enforceable under the permit so further clarification is being sought from AusNet.

Melbourne Water

The application was referred to Melbourne Water as a statutory referral however it is acknowledged this was undertaken in error and no works are proposed with the flood prone area, therefore there's no mechanism for the authority to object.

Despite this authority objecting based on internal flood modelling data, this modelling differs from the data available to Council, which cannot be enforced under the Planning Scheme. The objection is therefore null.

Environmental Protection Authority

The application was referred to the EPA for comment pursuant to Section 52 of the Planning and Environment Act. The EPA has confirmed they are not a statutory referral, but recommend inclusion of eight conditions relating to dust and noise emission control, protection of ground water and operational controls.

DISCUSSION

Planning polices

Clause 13.07-1S (Land Use Compatibility)

Clause 13.07-1S has the objective to safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects.

The objectives include ensuring the compatibility of a use or development as appropriate to the land use functions and character of the area by:

- Directing land uses to appropriate locations and
- Using a range of operational and land use separation measures.

It is conceded that the Green Wedge Zone provides for a multitude of non-agricultural uses and often provides function for uses/developments that are not suitable for urban environments. However, Regional and Local policy also outline the value of Green Wedge land in their role of primary production and the dependency Greater Melbourne has on the finite lands.

The generation of fill from Greenfield urban growth is a recognised issue where Cardinia, and the State play a role through the expansion of growth boundaries, however the disposal of this fill should not come at the detriment of agricultural land and the functioning of neighbouring farms. Further, disposal of fill of this scale and its associated impacts are not compatible with the expected standard of living for established residential areas with which this property borders.

It is considered the proposal is contrary to this Clause given imbalance of benefits against the degree of amenity impact to residents.

Clauses 14.01-1S (Protection of agricultural land) and 14.01-1R (Protection of agricultural land – Metropolitan Melbourne)

Clauses 14.01-1S (Protection of agricultural land) and 14.01-1R (Protection of agricultural land – Metropolitan Melbourne) have objectives and strategies that seek to protect and support areas of agricultural production.

The objective of Clause 14.01-1S (Protection of agricultural land) is to protect the state's agricultural base by preserving productive farmland. Key strategies in this policy are:

- Protect productive farmland that is of strategic significance in the local or regional context.
- Protect strategically important agricultural and primary production land from incompatible uses
- The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.
- Balance the potential off-site effects of a use or development proposal (such as degradation of soil or water quality and land salinisation) against the benefits of the proposal.

Additionally, Clause 14.01-1R aims to protect agricultural land in Metropolitan Melbourne's green wedges and peri-urban areas to avoid the permanent loss of agricultural land in those locations.

The intention of the proposal is to improve land to increase stock rates and overall agricultural output to the property. However the proposal does not clearly outline the extent of expected improvement or projected timeframes, with a limited base of data to provide a degree of certainty.

When viewed against potential off-site impacts of unintended introduction of foreign soils to neighbouring farms in conjunction with sustained interruptions, the balance of net benefit for agricultural output is brought into question.

Further, whilst ever measure may be made to screen soil and minimise cross contamination, the sheer scale of the operation and the challenges of the enforcing will likely be consequential.

As such, the proposal does not clearly align with the strategies of the above policies.

Clause 14.01-2 (Sustainable agricultural land use)

Clause 14.01-2 aims to encourage sustainable agricultural land use with key strategies in the policy including:

- Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.
- Support the development of innovative and sustainable approaches to agricultural and associated rural land use practices.

Council has sought further professional advice through Agpath PTY LTD, an Agricultural Pathology and Biological Farming Service. Agpath have provided a review of the Agronomist report and details of the proposal to explore potential impacts and alternatives available for land improvement.

The analysis highlights the risk of the importation of fill on the existing soil quality (leading to anaerobic soil) and illustrates the importance of contouring of the land to address waterlogging and remediation the current soils through drilling and use of organic matters for long-term improvement. More appropriate stock management practices are also recommended.

The screening measures for fill is also highlighted is also raised as a concern, with recommendations for Pathogen testing of all fill to mitigate the spread of diseases.

With the assistance of this review, it is considered that the proposal does not sufficiently respond to the strategies of this Clause in ensuring the long-term use of the land for agricultural practice and management of the land.

Clause 21.04-2 (Agriculture)

Clause 21.04-2 (Agriculture) provides local content to support Clause 14.01 of the Planning Policy Framework. The objective of Clause 21.04-2 is to maintain agriculture as a strong and sustainable economic activity within the municipality.

The following strategies give effect to the policy objective:

- Protect agricultural land, particularly areas of high quality soils, from the intrusion of urban uses, inappropriate development and fragmentation which would lead to a reduction in agricultural viability, the erosion of the right of farmers to farm land, and ultimately the loss of land from agricultural production.
- Recognise the growing demand for food, both domestically and internationally, and capitalise on opportunities to export fresh produce and processed food products.

The application demonstrates a need for soil rehabilitation but does not sufficiently justify the intended process. Where it appears more low-risk and environmental conscious approaches have not been adequately explored.

As stated in the assessment of 14.01-1 and 14.01-2, demonstration of the increase to agricultural output and fill importation as a genuine method of soil enhancement is not clearly evidenced. As such, the proposal does not align with the protection of agricultural land from inappropriate use/development and this policy as a whole.

Clause 22.05 - Western Port Green Wedge Policy and Westernport Green Wedge Management Plan

The proposal is inconsistent with Clause 22.05 (Western Port Green Wedge Policy). This policy was introduced to give guidance in relation to the protection and management of the Western Port Green Wedge. A key vision contained in Clause 22.05 provides:

The Cardinia Western Port Green Wedge will be a permanent green and rural area. It will remain an internationally significant biodiversity habitat, while also strengthening its agricultural and horticultural role to become a truly innovative and productive farming district. Agriculture, horticulture and soil based food production for the long-term food security of Victoria is at the heart of this vision.

The relevant objectives include:

- To give effect to Council's vision for the Cardinia Western Port Green Wedge.
- To provide guidance and clear direction for preferred land uses for each of the 3 precincts.

Further, relevant policies include that all use and development within the green wedge should:

- Ensure that green wedge soils and their versatility are recognised as a finite resource and are protected accordingly.
- Maintain and protect the highly productive agricultural land from incompatible uses including non-soil based farming.

The subject site is located within Precinct 3: Railway Precinct, with guidance provided to encourage and support the use of the precinct for agriculture and biodiversity to ensure that land use is compatible with the adjacent Precinct 1.

The proposal is not consistent with sound agricultural use of the land where it appears the re-location of Greenfield subdivision fill, in proximity to the urban growth areas, is prioritised over rehabilitation of the soils.

The importation of these soils further is contrary to the protection of these soils where large volumes of foreign matter pose a risk to the vitality of the subject site as well as any existing horticultural uses or the capacity for those uses.

Holistically, the introduction of large volumes of non-agricultural fill undermines the protective purpose of this Management Plan and rides contrary to its vision.

Green Wedge Zone – Schedule 1

The Green Wedge Zone (GWZ) primarily provides for agricultural uses and sustainable farming practices while encouraging the protection of environmental, historic, cultural and landscape assets and facilitating recreational and tourism opportunities.

CHARACTERISATION OF LAND USE

The proposal seeks consent for 'works' associated with the earthworks to be undertaken. It is Council's position that the proposal should also be assessed for the 'use' component of the proposal in the 'disposing of' clean fill given the scale and duration of the works that exceed what would typically be expected in the rehabilitation of farm lands. This position is supported through a number of VCAT cases including:

- Red Dot decision of Calleja v Hume CC (2016) VCAT 253 that recognised the placement of fill can require two permissions – one as an innominate use described as ‘disposal of fill’ and the other for development by way of ‘earthworks’.
- Similarly, Creative Earthworks V Hume CC (2016) VCAT 1075 identifies a large scale proposal for clean fill disposal and earthworks as a being “a form of commercial use of land and a form of industry, being disposal of waste or excess fill earth materials.”

As it is considered that the proposal requires consent for both use and development, the following is an assessment against the applicable decision guidelines:

DESIGN AND SITING

- *The need to minimise adverse impacts on the character and appearance of the area*

Based on the final form of the proposal, the impact to landscape character is potentially significant given the scale of works and extent of altered topography.

The final form of the proposal however, will not result in unreasonable visual impact to the area which is positioned on the fringe of the Nar Nar Goon township, surrounded by a mixture of residential and diverse agricultural uses that create a mixed semi-rural character.

- *The need to minimise any adverse impacts of siting, design, height, bulk and colours and materials to be used*

The ‘siting’ of the works is not considered applicable to the assessment of this type of proposal as fill is distributed with intent to improve pasture quality.

GENERAL ISSUES

- *The capability of the land to accommodate the proposed use or development*

From the perspective of property size, the land is considered capable of accommodating the works however these works are not considered compatible with the site or surrounds

- *How the use or development relates to rural land use, rural diversification, natural resource management, natural or cultural heritage management, recreation or tourism*

The proposal does not support sound agricultural land management, encourages degradation of the soils, and introduces an increased risk to the capacity of neighbouring farms to operate or commence.

- *Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses*

As discussed against the policy direction of Clause 13.07-1S there is no conclusive benefits to rural productivity from the proposal at a highly probably expense to broader community amenity and wellbeing. The site is situated in a constrained location with proximity to residential land and other sensitive land uses such as school grounds.

- *Whether the use or development is essential to the health, safety or well-being of the State or area, but is not appropriate to locate in an urban area because of the effect it may have on existing or proposed urban areas or the effect that existing or proposed urban areas may have on the proposed use or development*

The proposal supports the re-purpose of a by-product of the urban development industry from subdivisions that is not appropriate to be redistributed at scale in urban areas. Despite this, the subject site is located on the fringe of Nar Nar Goon Township, resulting in increased health/safety impacts to nearby residents. The distribution of fill on farmland also acts to compromise the integrity of farming within the area undermining a vital part of the regional economy.

RURAL ISSUES

- *The maintenance of agricultural production and the impact on the rural economy*
The need and ability to farm is recognised as the primary purpose of the Green Wedge Zone however, the balance of evidence that supports increased output on the subject land against potential permanent off-site impacts suggests this is not an appropriate commercial use of this land.
- *The impact on the existing and proposed rural infrastructure*
The impacts are considered extensive to the surrounding area and existing infrastructure systems.
- *The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agriculture and other land uses*
Through the support of the proposed use and development, a precedent may be set to allow further fill on the subject site and within the peri-urban areas that will further diminish the capacity and quality of output in the region.

ENVIRONMENTAL ISSUES

- *The impact of the use or development on the flora and fauna on the site and its surrounds*
There is an unknown impact to the biodiversity of the area as a result of the mixed sources of fill. Despite the proposal screening process it is recognised this use will heighten the risk to vulnerable crops and native vegetation.
- *How the use or development relates to sustainable land management and the need to prepare an integrated land management plan*
As discussed against Clause 14.01-2, the proposal does not demonstrate sustainable land management practices, and has been identified through the planning submission and Council's soil science review that sound management practices are not employed on this site at present.

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

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

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

As discussed in the assessment against relevant policies and zone, the proposal does not adequately protect the viability of agricultural in the immediate area nor provide confidence of improvement on the subject site.

OBJECTIONS

Amenity impacts

A large volume of objections sight the unreasonableness of off-site impacts including the generation of dust in addition to increased heavy vehicle traffic associated noise and safety concerns.

Council is generally in agreement with these concerns given the proximity of the works to nearby residences and the wider township of Nar Nar Goon.

It is noted that the applicant has suggested limiting access to Oakview Lane however the use of these roads is governed by the relevant roads management act/s that allow public use of these roads and therefore

restriction of access will be difficult to enforce. The absence of footpaths along Latta Road further exacerbate potential safety issues.

Further, dust suppression measures and Construction Environmental Management Plans are suggested in the proposal, however the shear area of exposed fill will likely create management issues through the duration of the proposal, especially during dry and wind periods.

Incompatible with agricultural land practice

Some submissions have raised existing land management issues with the site and suitable alternatives to foster improved pastures on the land.

Whilst current use of the land is not directly assessed against the proposed use/development, based on the assessment provided by AgPath Pty Ltd, inappropriate management practices appear to have formed the basis of the proposal that has created an opportunity for the disposal of fill.

Use of the land for temporary storage of fill

There is no indication there is any intention for the disposal to be temporary; should this be intended, further planning consent would be required.

Additional pressure on drainage systems

The proposal is expected to alter to rate and overflow however these issues can be managed through appropriate stormwater management conditions

Impact to property value

This is not applicable to the assessment of a planning proposal

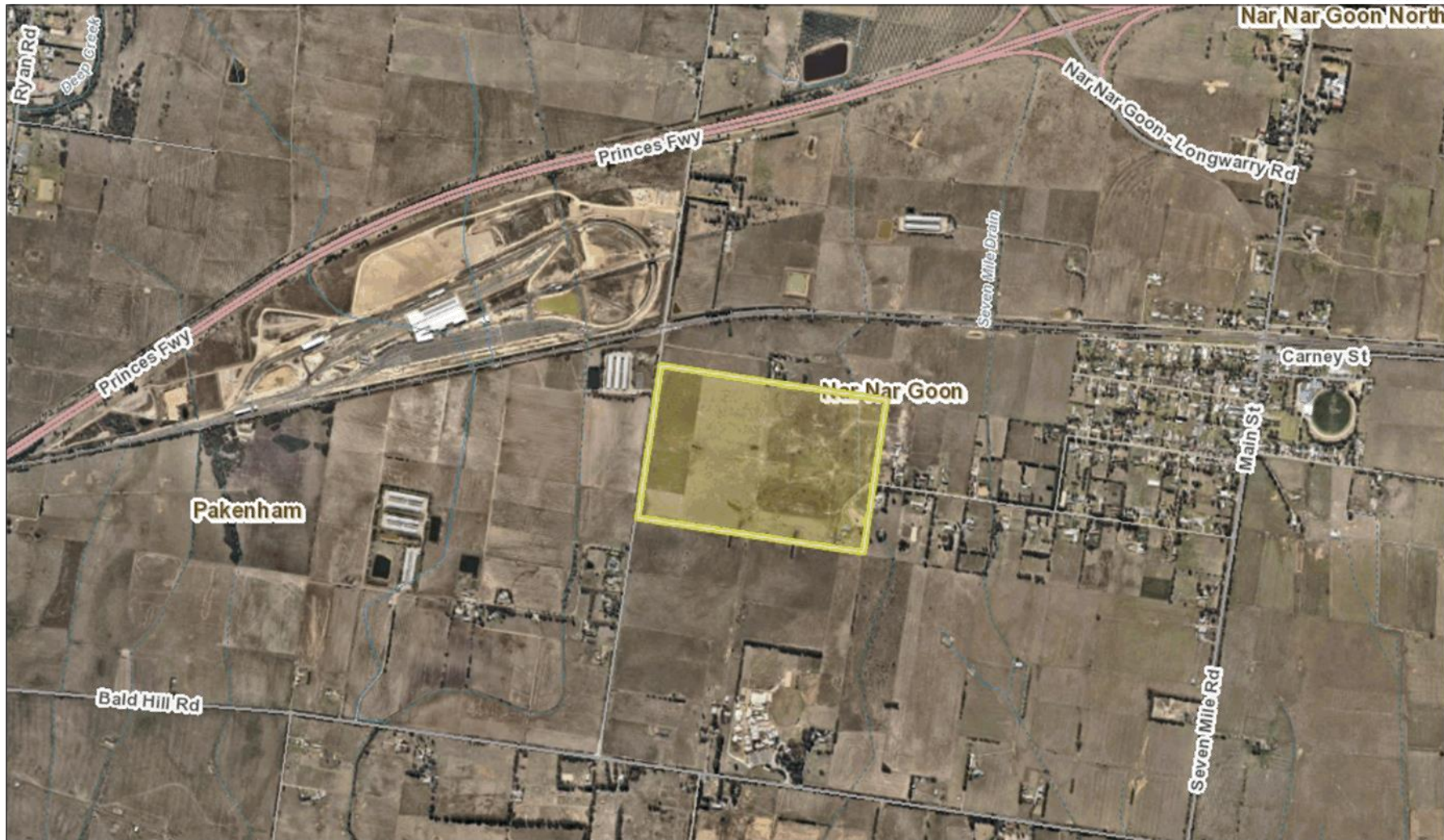
Source of fill and contaminant procedure

A Planning Permit cannot control the source of fill but can implement testing conditions in accordance with relevant EPA requirements.

CONCLUSION

The proposed use of the land and works associated with the disposal of clean fill is considered to be inconsistent with the provisions of the Cardinia Planning Scheme. It is therefore recommended that a Refusal to Grant Planning Permit **T180774** be issued for the proposal at 21 Latta Road, Nar Nar Goon, **for the following reasons:**

1. The proposal is contrary to Clause 13.07-1S which aims to ensure land use and development is compatible with the area
2. The proposal is does not clearly align with Clause 14.01-1S of the Cardinia Planning Scheme, which aims to protect land for agriculture and the capacity of adjacent land for agriculture while also ensuring potential off-site impacts are suitably balanced
3. The proposal is contrary to Clause 14.01-1R of the Cardinia Planning Scheme, which aims to protect agricultural land in Metropolitan Melbourne's green wedges and peri-urban areas to avoid the permanent loss of agricultural land in those locations.
4. The proposal is contrary to Clause 14.01-2 of the Cardinia Planning Scheme which aims to ensure the long-term sustainable use of agricultural land
5. The proposal is contrary to Clause 22.05 of the Cardinia Planning Scheme, which aims to protect agricultural land from incompatible uses and restrict opportunities for development that compromise its use.
6. The proposal is contrary to Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions), which aims to protect metropolitan green wedge land from uses and development that would diminish its agricultural values, and to protect productive agricultural land from incompatible uses and development.
7. The proposal is incompatible with regional and local planning policies that aim to protect agricultural land from inappropriate use and development and protecting residential land from unreasonable amenity impact.



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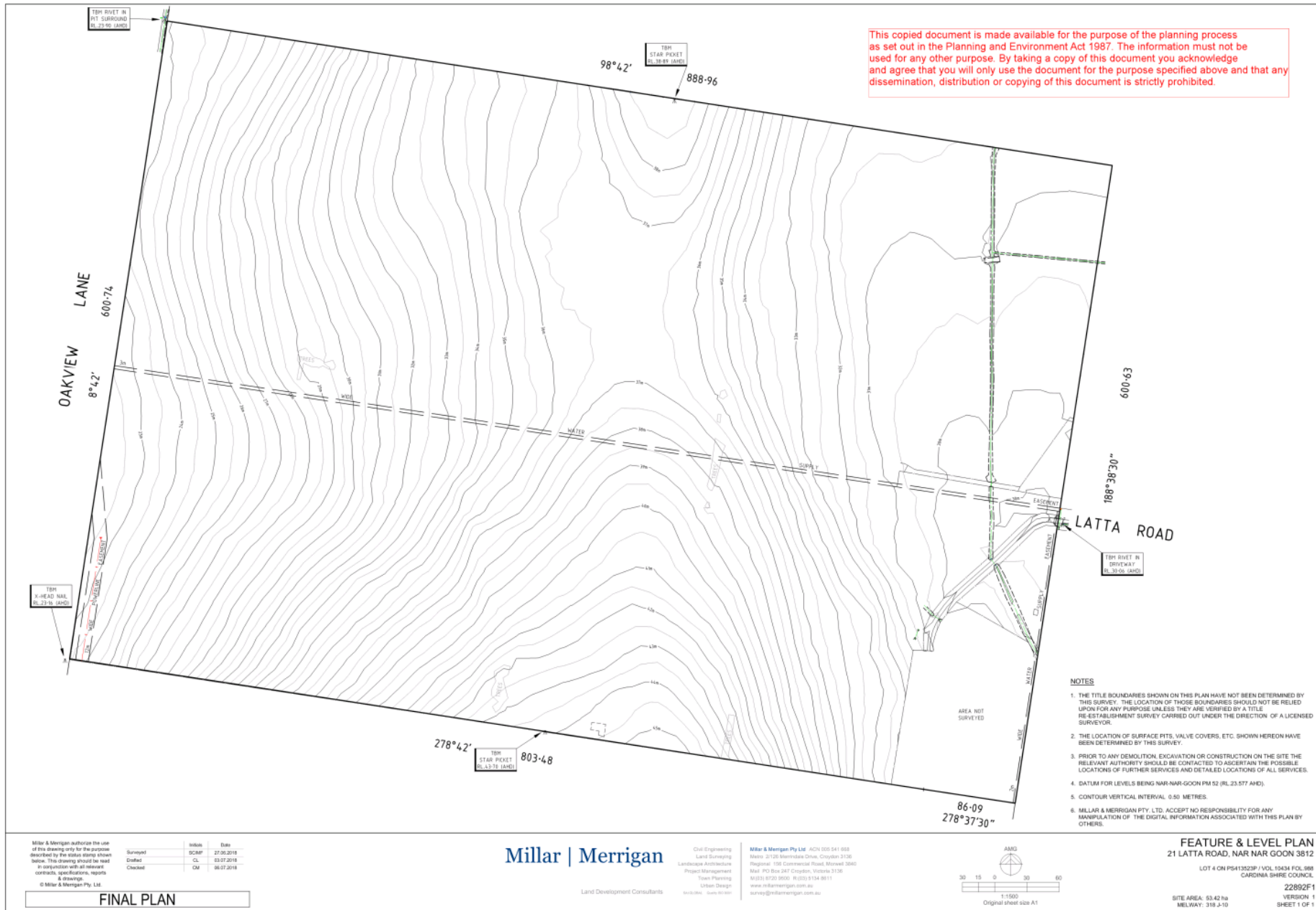
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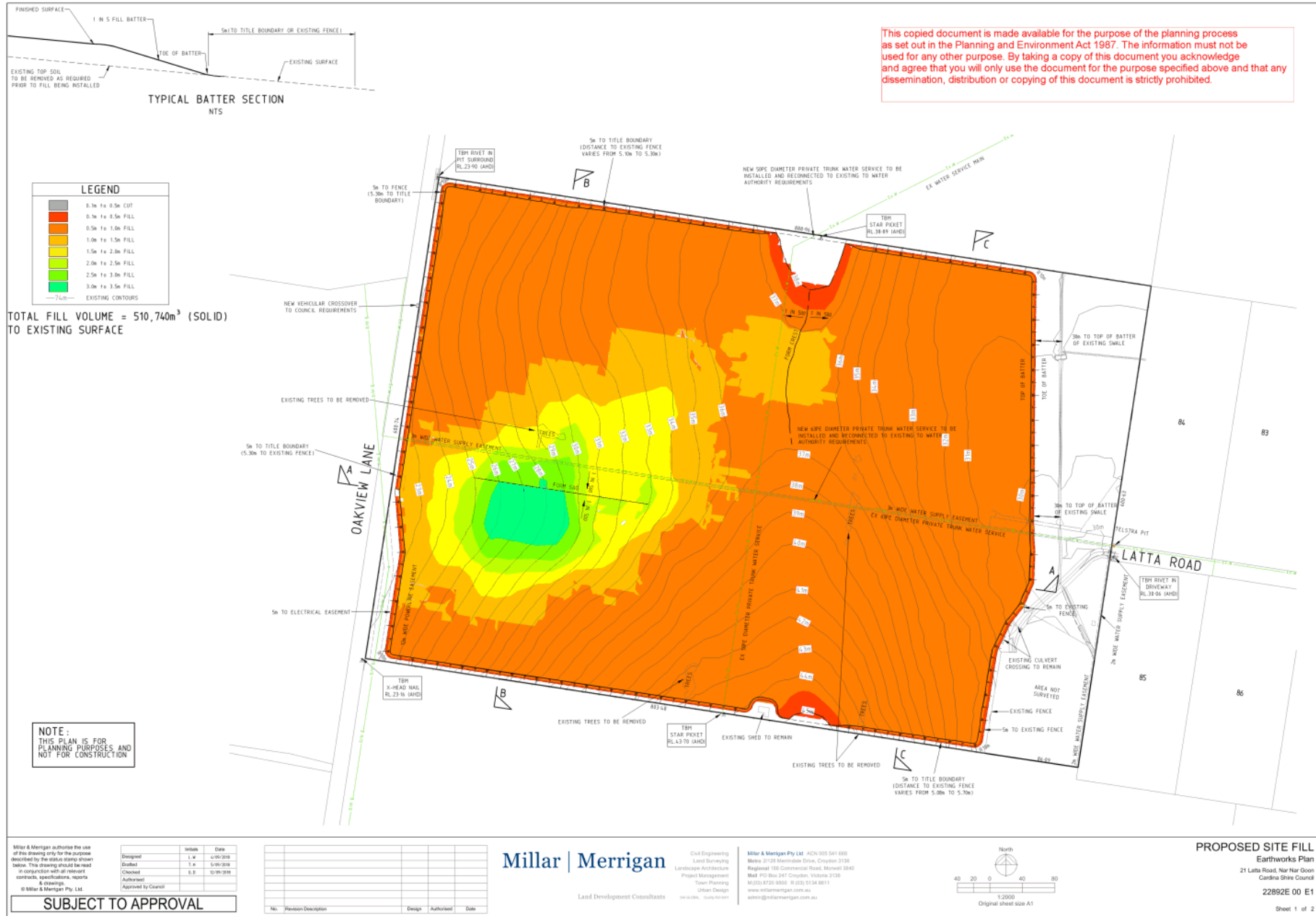
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