

6.1.3 Use and Development of a Dwelling at Lot 4 Ropers Lane, Cora Lynn

File Reference: T190162
Responsible GM: Peter Benazic
Author: Emma Brennan

Recommendation(s)

That Council issue Planning Permit T190162 for Use and development of the land for a dwelling, generally in accordance with the endorsed plans at Ropers Lane, Cora Lynn VIC 3814.

Attachments

1. Locality Map [6.1.3.1 - 1 page]

Executive Summary

APPLICATION NO.:	T190162
APPLICANT:	Michael Tyler C/- John McCaffrey - Consultant Town Planner
LAND:	Ropers Lane, Cora Lynn VIC 3814 Lot 4 on LP222475 Vol 10094 Fol 145
PROPOSAL:	Use and development of the land for a dwelling
PLANNING CONTROLS:	Special Use Zone - Schedule 1 (Horticulture Preservation) Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	Advertised with no objections received
KEY PLANNING CONSIDERATIONS:	Compatibility of the proposed dwelling with the Special Use Zone and the other nearby existing farming activities
RECOMMENDATION:	Grant a Planning Permit

Background

A similar planning application T110045 was submitted to Council and refused in 2012 on the following grounds:

- *The location of the proposed dwelling results in inappropriate separation distances between conflicting uses to the detriment of the amenity of the residents of the proposed dwelling and the potential future expansion of the existing neighbouring broiler farm.*

The applicant appealed this decision at Victorian Civil and Administrative Tribunal (VCAT) and on 13 November 2012, Council's decision was upheld.

Planning Permit T100343 was refused by Council on 27 October 2010 for the use of the land for a caretakers dwelling.

Planning Permit T080621 was issued by Council on 1 December 2008 for the development of the land for the purpose of a farm shed.

Subject Site

The land is located on the north-east side of Ropers Lane, approximately 300m north-west of the Tynong- Bayles Road, Cora Lynn. Ropers Lane is an unmade road and the Tynong - Bayles Road is sealed. The subject land is flat with a number of trees along the southern part of the street frontage. It is approximately rectangular in shape with a total area of about 15.4 hectares. There are a number of outbuildings and farm buildings on the property.



The site is currently used for agricultural activities including racehorse agistment, horse-breaking, beef cattle grazing, cropping (hay), feeding hay and silage to cows and farm contracting services.

The surrounding area is also generally flat, with relevant features being:

- A free range chicken broiler farm adjoins the subject site to the west, known as Schembri farm. An amended planning permit has recently been issued (T950001-3) which permits a change in use of the land to a poultry farm (egg production) and associated buildings and works. The use has not commenced on site to date.
- An asparagus farm on the south-east corner of Ropers Lane and Tynong Bayles Road, which abuts the Schembri farm.

Relevance to Council Plan

Nil.

Proposal

It is proposed to construct a dwelling on the subject land. It is to be single storey, located 165 metres from the Ropers Lane frontage, 51.85 metres from the north-eastern boundary, approximately 335 metres from the northern boundary and 225 metres from the south-eastern boundary. The dwelling is proposed to comprise three bedrooms, a study, kitchen, living rooms and garage.



Planning Scheme Provisions

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11 Settlement
 - Clause 11.01-1R Green wedges -
- Clause 14 Natural Resource Management
 - Clause 14.01-1S Protection of agricultural land
 - Clause 14.01-2 Sustainable agricultural land use
- Clause 21.04 Economic Development
 - Clause 21.04-2 Agriculture

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 65 Decision Guidelines
- Cardinia Shire's Liveability Plan 2017-2029.

Zone

The land is subject to the **Special Use Zone - Schedule 1 (Horticultural Preservation)**

Overlays

The land is subject to the **Land Subject to Inundation Overlay**

Planning Permit Triggers

The proposal for the use and development of a dwelling requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 37.01-1, a planning permit is required for the use of a dwelling.
- Pursuant to Clause 37.01-1-4, a planning permit is required for buildings and works.
- Pursuant to Clause 44.04-1, a planning permit is required for buildings and works.

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 a sign on site.

■ The notification has been carried out correctly, and Council has received no objections to date.

It is noted that, pursuant to Clause 44.04 (LSIO), the proposal is exempt from third party notice and review rights. Should any objections have been made on grounds relating to this overlay, no appeal rights would apply.

Referrals

Melbourne Water

The application was referred to Melbourne Water as a statutory referral. No objection to the proposal subject to conditions.

Discussion

Special Use Zone (Schedule 1 – Horticultural Preservation)

The land is zoned Special Use Zone – Schedule. 1. This is a unique zoning to Cardinia Shire and differs from other Green Wedge farming zones in relation to permit triggers and the purpose of the zone. In essence, the SUZ1 is specifically designed to preserve land of high agricultural quality for soil-based agricultural pursuits.

The purposes of the SUZ1 are:

- *To preserve land of high agricultural quality for horticulture and other farming activities.*
- *To discourage non-agricultural and non-soil-based uses establishing on soil of high agricultural value.*
- *To protect the area from the encroachment of urban and rural residential type development.*
- *To minimise the potential for conflict between residents and normal farming practices that are related to the conduct of agricultural activities.*
- *To encourage sustainable farming activities based on whole farm and catchment planning principles on an individual and community basis.*

An assessment against the decision guidelines of the SUZ1 as to whether it is appropriate to locate a dwelling within this zone is required.

The Land Capability Study for the Cardinia Shire (February 1997).

The proposal is consistent with this study and will not contribute towards land degradation or detrimentally impact upon protected areas of conservation and agricultural importance. Further discussion regarding agriculturally significant land is below.

Whether the land is liable to flooding and any advice received from Melbourne Water.

The land is subject to the Land Subject to Inundation Overlay. Melbourne Water did not object to the proposal, subject to conditions which primarily related to the LSIO. It is noted that there are no third party notice or appeal rights under the LSIO as it applies here.

Whether the use, building, works or subdivision will be detrimental to the horticultural significance of the area.

The applicant was requested to undertake a soil test report to demonstrate whether or not horticultural activities could be supported on site. The report, (prepared by aDama Consulting, dated 28 October 2019) concluded that 35-40% of the site consists of deep, coarse-textured sand (a Class 3 soil) with considerable constraints to any form of intensive agricultural or horticultural production. The balance of the soil on site (60-65%) is considered a Class 2 soil, provided appropriate drainage works are undertaken to rectify imperfect drainage on site. The report recommends that the dwelling be located between the two soil types as to preserve the Class 2 soil for agricultural and horticultural activities.

Given the size of the land, being 15.4 hectares, the footprint of the dwelling is quite small relative to the area of the whole property and as such, the removal of this footprint from the balance of the land will be inconsequential. It is noted that the proposal is not for horticultural activities to be undertaken on site, which is discussed later in this report.

Whether the dwelling is reasonably required for the operation of the rural activity being conducted on the land.

In the November 2012 hearing, the land was being used for agricultural activities including racehorse agistment, horse-breaking, beef cattle grazing, cropping (hay), feeding hay and silage to cows and farm contracting services. The following assessment was made by the Tribunal with respect to the uses on site requiring a 'living on site' presence on the farm, as part of a viable and genuine agricultural purpose:

- *[para 18] ... In particular we note that in the course of the cross-examination of Mr Tyler and Ms Goodall during the hearing, they indicated that their total gross income*

in recent years was approximately \$50 - \$90,000 p.a. from the various activities undertaken. However it was not clear to us how much of this figure related to actual farming of the review site, as opposed to Mr Tyler as a contractor working on other properties.

Since this time, the applicant has submitted additional information throughout the planning process to address the Tribunal's concerns. The applicant submits that since the time of the Tribunal's decision, the agricultural activities have altered such that a dwelling is required on site as part of a viable agricultural operation:

- A mixed thoroughbred enterprise, comprising racehorse agistment and foaling down/boarding of brood mares. Beef cattle would also run primarily for pasture management purposes.
- Foaling of mares occurs almost exclusively at night, with the applicant submitting that a dwelling on the property being essential.
- The applicant has submitted that the total gross annual income from the above agricultural activities would range from approximately a \$120,000 to \$133,000pa.

These figures directly relate to actual farming activities carried out on the subject site. These figures provide an overview in response to the Tribunal's concern that the operation results in 'sustainable farming activities.' Therefore it is considered that a dwelling on this property is reasonably required for the operation of the farming activities.

Whether the use utilises the high quality soils for horticultural or agricultural pursuits. The impact of the use, building, works or subdivision on the character and appearance of the area.

The proposed activities on site do not utilise the soil for horticultural or agricultural pursuits. Instead, the site is currently used for other farming activities including racehorse agistment, horse-breaking, beef cattle grazing, cropping (hay), feeding hay and silage to cows and farm contracting services. 'Other farming activities' is entertained in the purpose of the zone and it is not considered that these activities would preclude horticultural activities from occurring on the land should the current farming activities cease to operate.

Whether the site is suitable for the use, building, works or subdivision and the compatibility of the proposal with adjoining and nearby farming and other land uses.

The site is a large, 15.4 hectare parcel of land located within the Special Use Zone (Schedule 1 – Horticultural Preservation). The overarching purpose of the zone is for proposals to have a strong focus on agricultural pursuits, specifically horticultural in nature and other farming activities as appropriate. Dwellings are to be considered secondary to these activities and should only be approved where they are reasonably required for the operation of rural activities to be conducted on site.

It is acknowledged that there are other dwellings in closer proximity to the existing broiler farm than the proposed dwelling, however as the Tribunal determined, '*we do not accept that this in itself justifies the proposal. The proposal needs to be worthy on its own merits*'. This continues to apply in the assessment of this application.

As identified earlier in this report, a similar application for this site was previously refused by Council and the application being upheld at the Tribunal on 23 November 2012 (being application T110045 (VCAT reference P3350/2011) on the following grounds:

- *The location of the proposed dwelling results in inappropriate separation distances between conflicting uses to the detriment of the amenity of the residents of the proposed dwelling and the potential future expansion of the existing neighbouring broiler farm.*

The key differences between the previously refused application and this current application of T190162 are outlined as follows:

T110045	T190162
Application for the use and development of a dwelling and use of an existing building as a temporary dwelling (to be decommissioned once dwelling is constructed).	Application for the use and development of a dwelling. The temporary dwelling has been removed from the application.
Broiler farm located to the west with 300,000 birds on site.	The broiler farm operates as a free range chicken farm (assessed as a broiler farm under the Victorian Broiler Code as amended in 2018), reducing the number of birds on site to 270,000. Planning permission was also provided in June 2020 for a change in use to an egg production farm. This use has not commenced on site to date.
A Farm Management Plan had not been prepared.	A 'property plan' and a 'farm business plan' were provided with the application (together to be read as a Farm Management Plan). Further details pertaining to the farm operations were provided at the end of the planning process.
A soil test report has not been prepared.	A soil test report has been submitted (prepared by aDama Consulting, dated 28 October 2019, which concludes that intensive agricultural or horticultural activities could operate on 60-65% of the site with appropriate drainage works being undertaken.
The proposed dwelling was sited in the north eastern portion of the site, 93 metres from the Ropers Lane frontage.	The proposed dwelling is proposed to be sited in the north eastern portion of the site, 165 metres from the Ropers Lane boundary.

As mentioned above, there an existing use for a free-range chicken broiler farm on the adjoining subject site to the west, known as Schembri farm. An amended planning permit has also recently been issued for this same property in June 2020 (T950001-3) which permits a change in use of the land to a poultry farm (egg production) and associated buildings and works. The use has not commenced on site to date.

Given existing use rights continue for Schrembi farm (free range broiler farm, Clause 53.09 Poultry Farm of the Cardinia Planning Scheme is still relevant to the proposal. The purpose of this provision is:

To facilitate the establishment and expansion of poultry farms, including broiler farms, in a manner that is consistent with orderly and proper planning and the protection of the environment.

The Victorian Code for Broiler Farms 2009 ('Code') was amended in 2018 to include free range chicken farms. The Code sets out the appropriate separation distances for new broiler farms, which is calculated using the following formula:

$$D = 27 \times N^{0.54}$$

D = Separation distance

N = number of chickens/1000

The calculation is therefore as follows:

$$27 \times ((270,000/1000)^{0.54}) = 554.85 \text{ metres separation distance.}$$

The Code advises that although separation distance requirements apply to only the development or expansion of broiler farms, they can also be used as a guide to identify locations where a future sensitive use (including a dwelling) may be adversely affected by the broiler farm emissions. Given existing use rights are active for this free range broiler farm, the above 554 metre separation distance could still be considered.

Given amended planning permit T950001-3 has been issued to change the use to an egg production farm, the risk of Schrembi's broiler farm re-activating the use within the two-year existing use right timeframe afforded to them is considered low. Given we are located within an agricultural area, it is also expected that residents (current and future) will be aware that their standard of living will not be that of residentially-zoned areas and should expect that there could be impacts derived from surrounding agricultural pursuits. Given the risk of the broiler farm use re-activating is low, and not eliminated solely due to T950001-3 being issued for egg production, a note upon any planning permit issued will bring the land owner's attention to the current circumstances of Schrembi farm. It will then become the responsibility of any future landowner of this subject site to undertake any due diligence relating to surrounding land uses.

It is noted that a comparable, recent application for a dwelling was refused by Council in relation to Bottomley Drive in Emerald (T170301-1), on the grounds of the proposal being inconsistent and in conflict with an existing broiler farm. The key differences between these two decisions are that the dwelling was located within the Emerald township environment and within the buffer distances of an existing and on-going use of a broiler farm. The objection received for this application farm was also from the broiler farm itself who had no permits or intentions in changing their operation and had concerns that any approved dwelling within the buffer distances would unreasonably impact upon the dwelling. As there are clear distinctions between this application and Bottomley Drive, it is considered appropriate to approve the use and development of a dwelling in this instance.

Conclusion

Given the above assessment, it is therefore considered that the use and development of a dwelling is consistent with the relevant zoning, overlays and supporting policies of the Cardinia Planning Scheme and it is recommended that a planning permit be issued.

Conditions

1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Once the development has commenced it must be continued and completed to the satisfaction of the Responsible Authority.
3. The exterior colour and cladding of the development must not result in any adverse visual impact on the environment of the area and all external cladding and trim of all of the buildings, including the roof, must be of a non-reflective nature.
4. All stormwater must be conveyed by means of drains to satisfactory points or areas of discharged approved by the Responsible Authority so that it will have no detrimental effect on the environment or adjoining property owners.
5. Stormwater works must be provided on the subject land to prevent overflows onto adjacent properties.
6. All wastewater from the dwelling must be treated and contained on site in accordance with the EPA Septic Tank Code of Practice and Council requirements. No part of the septic tank system may be located within the fill pad.
7. All wastewater from the dwelling must be discharged into the reticulated sewerage system, to the satisfaction of the Responsible Authority, within 3 months of the sewerage system becoming available to the property.
8. All earthworks must be undertaken in a manner that minimises soil erosion, and any exposed areas of soil must be stabilised to prevent soil erosion to the satisfaction of the Responsible Authority.
9. Before occupation of the dwelling, the dwelling must:
 - a) have access provided via an all-weather road to the satisfaction of the responsible authority.
 - b) be connected to a septic tank system to ensure wastewater is treated and retained on site in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.
 - c) be connected to a reticulated potable water supply or have an alternative potable water supply, with appropriate storage capacity for domestic use, to the satisfaction of the Responsible Authority.
 - d) be connected to a reticulated electricity supply or have an alternative energy source

Melbourne Water

10. The dwelling must be constructed with Finished Floor Levels set no lower than 450mm above the natural ground level which is 300mm above the applicable flood level.
11. The garage must be constructed with finished surface level a minimum of 150mm above the applicable flood level and no lower than 300mm above the natural surface level.

Expiry

A permit for the development and use of land expires if.

- a) the development does not start within two (2) years after the issue of the permit; or
- b) the development is not completed within four (4) years after the issue of the permit; or
- c) the use does not start within two (2) years after the completion of the development; or
- d) the use is discontinued for a period of two (2) years.

In accordance with Section 69 of the Planning and Environment Act 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition. Melbourne Water.

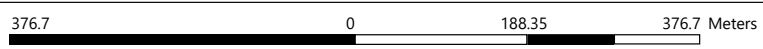
Melbourne Water Notes:

- i) The property is located within zone 3 of the Koo Wee Rup Flood Protection District and is subject to flooding. The applicable flood level for the property is approximately 300mm above the natural ground surface levels.
- ii) For general development enquiries, contact our Customer Service Centre on 131 722.

Council Notes:

- iii) It is noted that the subject site is within the buffer distances of a former broiler farm which, at the time of issuing this permit, ceased to exist. It is noted however that existing use rights could be active if the use has not ceased to exist for a period of two years. It is recommended any landowner carries out appropriate due diligence in relation to this by contacting Council's Planning Department.

Lot 4 Ropers lane, Cora Lynn



1: 7,415

Data Source: State & Local Government. © CARDINIA SHIRE COUNCIL

5-May-2020

Notes

