

Delegate Report

File Number: DA7799
Planning Application No. P101/22
Responsible Officer: Melissa Crane
Attachments:

Conflict of Interest

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 ☒

| <i>Application Details</i> | |
|-------------------------------|--|
| APPLICANT | Central Vic Planning Consultants |
| PROPOSAL | Construction of a dwelling in Farming Zone |
| APPLICATION LODGED | 19 May 2022 Further information requested on 1 June 2022 Further information provided on 23 June 2022 Elapsed days as at 18 October 2022: 117 |
| NOTICE AND SUBMISSIONS | Notice was provided. No objections were received. |
| <i>Property Details</i> | |
| PROPERTY ADDRESS | 827 Dry Creek Road, Ancona |
| LAND DESCRIPTION | Lot 4 on Plan of Subdivision 112510, Certificate of Title Volume 09044 Folio 872 |
| RESTRICTIVE COVENANTS | No |
| LAND AREA | 19.4 hectares |
| EXISTING USE | Farm |
| <i>Planning Provisions</i> | |

| | |
|------------------------------------|---|
| ZONE | Clause 35.07 Farming Zone |
| OVERLAYS | Clause 42.01 Environment Significance Overlay Schedule 1 Clause 44.06 Bushfire Management Overlay |
| MUNICIPAL PLANNING STRATEGY | Clause 02.03-2 – Environmental and landscape values (Landscape) Clause 02.03-3 – Environmental risks and amenity (Bushfire) Clause 02.03-4 – Natural resource management (Water and Declared Special Water Supply Catchments) Clause 02.03-6 – Housing |
| PLANNING POLICY FRAMEWORK | Clause 11.03-6S - Regional and local places Clause 12.01-2S Native vegetation management Clause 12.05-2S – Landscapes Clause 12.05-2L Significant landscapes, ridgelines and alpine approaches Clause 13.02-1S Bushfire planning Clause 14.01-1S Protection of agricultural land Clause 14.02-1S Catchment planning and management Clause 14.02-2S – Water quality Clause 15.01-6S – Design for rural areas |
| PARTICULAR PROVISIONS | Clause 52.17 Native Vegetation Clause 52.29 Land adjacent to the principal road network. Clause 53.02 Planning for Bushfire |
| <i>Permit Triggers</i> | |
| CLAUSE 35.07-1 (FZ) | A permit is required to use the land smaller than 40 hectares for dwelling. |
| CLAUSE 35.07-4 (FZ) | A permit is required for building or works associated with section 2 of Clause 35.07-1. A permit is required for building within 100 m from a waterway. |

| | |
|---------------------------------------|--|
| CLAUSE 42.01-2 (ESO1) | A permit is required for buildings and works associated with the construction of a new dwelling where new wastewater is generated. |
| CLAUSE 44.06-2 (BMO) | A permit is required to construct a building or construct or carry out works associated with accommodation. |
| <i>Other</i> | |
| CULTURAL SENSITIVITY | The subject land is identified as partially affected by areas of Aboriginal Cultural Heritage Sensitivity. |
| DWMP RISK RATING (IF RELEVANT) | High Risk |

Background

Subject site, neighbourhood and environs

The subject land is 19.42 hectares in area. The western part of the site contains extensive vegetation and steep slopes and adjoins a timber plantation further to the west and south. A cleared area to the east of the site of approximately 4ha in area and is used for grazing (sheep). Various sheds and structures (barns and shelters) are located towards the east of the site.

A number of watercourses and drainage lines traverse the property. Dams are located on property nearest the eastern and southern boundaries. An electrical easement runs north/south and bisects the property. Existing access to the property is via a driveway adjacent to the easement. The driveway connects with Dry Creek Road to the east.

The surrounding environment is defined by its rural setting approximately 6km north of Bonnie Doon and 13km east of Merton. Adjacent to the site to the east is the Tullangallook Bushland Reserve. Perimeter vegetation is located along the northern and eastern boundaries. The nearest dwelling is located approximately 120m to the north-east. Other dwellings are scattered amongst the surrounding rural landscape.

Refer to the following maps depicting the site and surrounds:

- *Figure 1* shows the location of the site within its regional context.
- *Figure 2* shows the zoning of the site and surrounds.
- *Figure 3* provides as aerial photo of the site and surrounds.

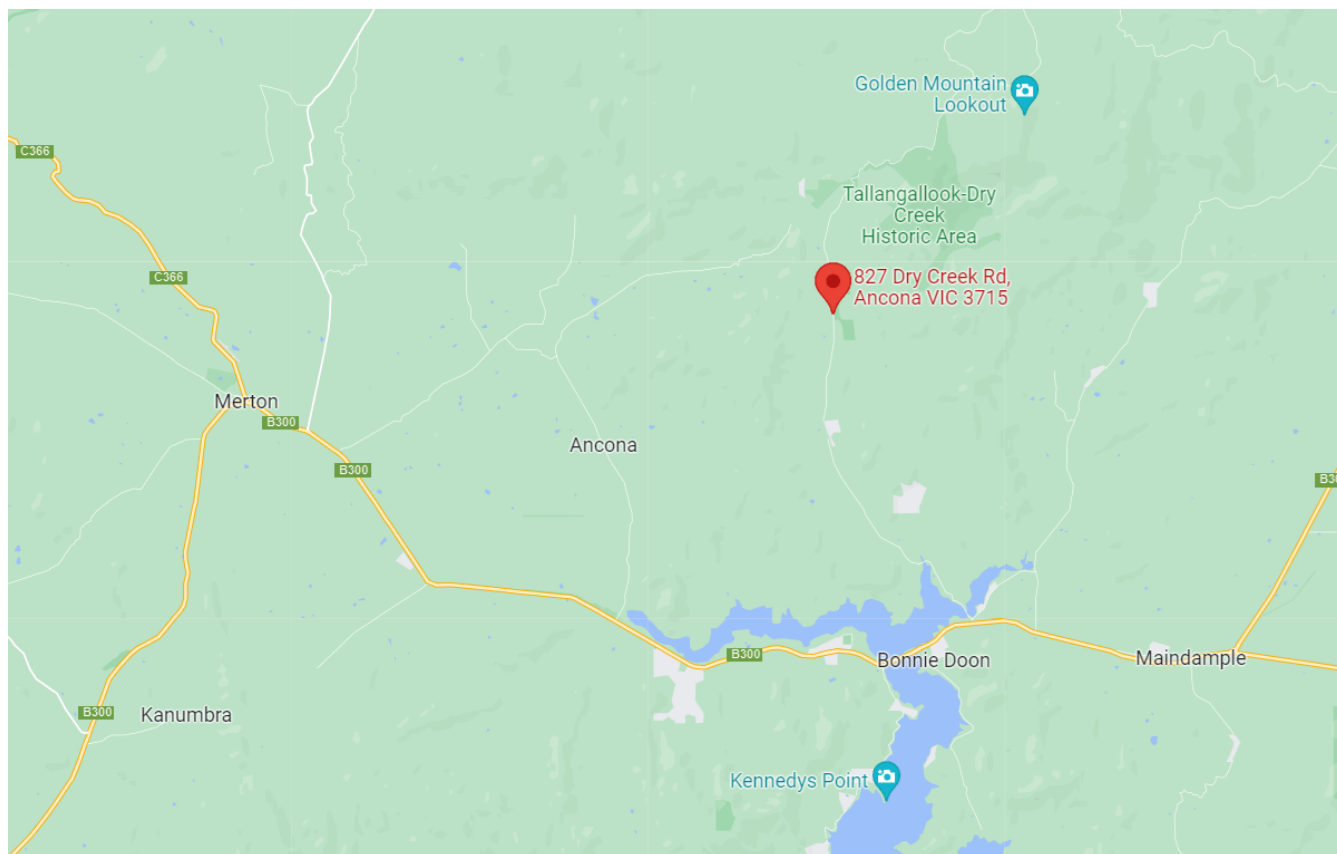


Figure 1: Location Map. Source: Google Maps

Planning Zones

FARMING ZONE (FZ)

SCHEDULE TO THE FARMING ZONE (FZ)

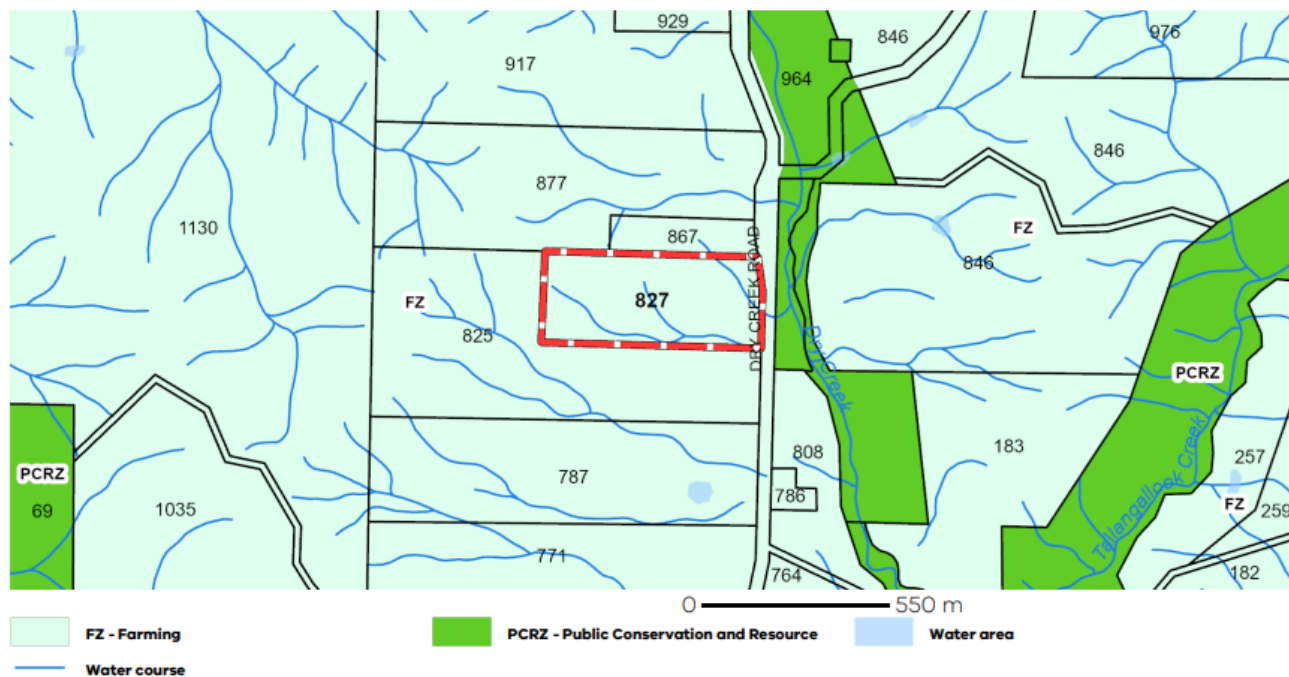


Figure 2 – Zoning Map. Source: <https://www.planning.vic.gov.au>



Figure 3– Aerial Photo. Source: Pozzi

Site History

A search of Council's records indicates no previous planning permits have been issued for the property..

Proposal

It is proposed to construct a small two-bedroom dwelling on the site and to convert an existing building on the site to a shed. The application indicates that the proposed dwelling is required to support the development of a small-scale farm, including olive grove, sheep, chickens and blueberries along with a small fruit orchard and market garden. No native vegetation removal is proposed.

The proposed dwelling is to be located 25m from the northern boundary of the site. Access to the dwelling is proposed via an all-weather driveway along the northern boundary of the site. The location was selected so as to provide the shortest possible access to the proposed dwelling location and other structures/infrastructure on the site.

The proposal is supported by:

- Planning Report
- Copy of Title
- Farm Management Plan
- Bushfire Management Statement
- Land Capability Assessment
- Plans

The Farm Management Plan included with the proposal provides a staged, five-year plan to improve the site. The Plan asserts that an on-site dwelling is required to maintain and improve the farm. The Plan also contends that all vegetation on the site will be retained.

The Bushfire Management Statement (BMS) provided in support of the proposal proposes the dwelling be constructed to BAL40 and sited to achieve defensible space around the dwelling. The BMS indicates that defensible space and balance of the property would require ongoing management to reduce bushfire risk.

The subject land is not connected to reticulated services. The Land Capability Assessment identifies that sufficient space exists for the retention of all wastewater on the allotment and is achievable by using the principle of sub-surface irrigation after secondary treatment. The assessment indicates the proposed on-site wastewater management system is sustainable, with minimal risk to the environment and human health as required by state environment protection policies.

Water tanks are proposed to provide domestic water supply. Power is proposed to be provided via rooftop solar panels.

On 15 June 2022, Council wrote to the applicant to request further information. Preliminary concerns with the proposal were also identified with the application, particularly that the proposal appeared to represent a residential development on Farming Zoned land, with minimal connection to agricultural production. Further information was later submitted on 23 July 2022. This included a written response to the information sought by Council and referral authorities (CFA) and revised documentation and plans. The proposed lot layout as follows:

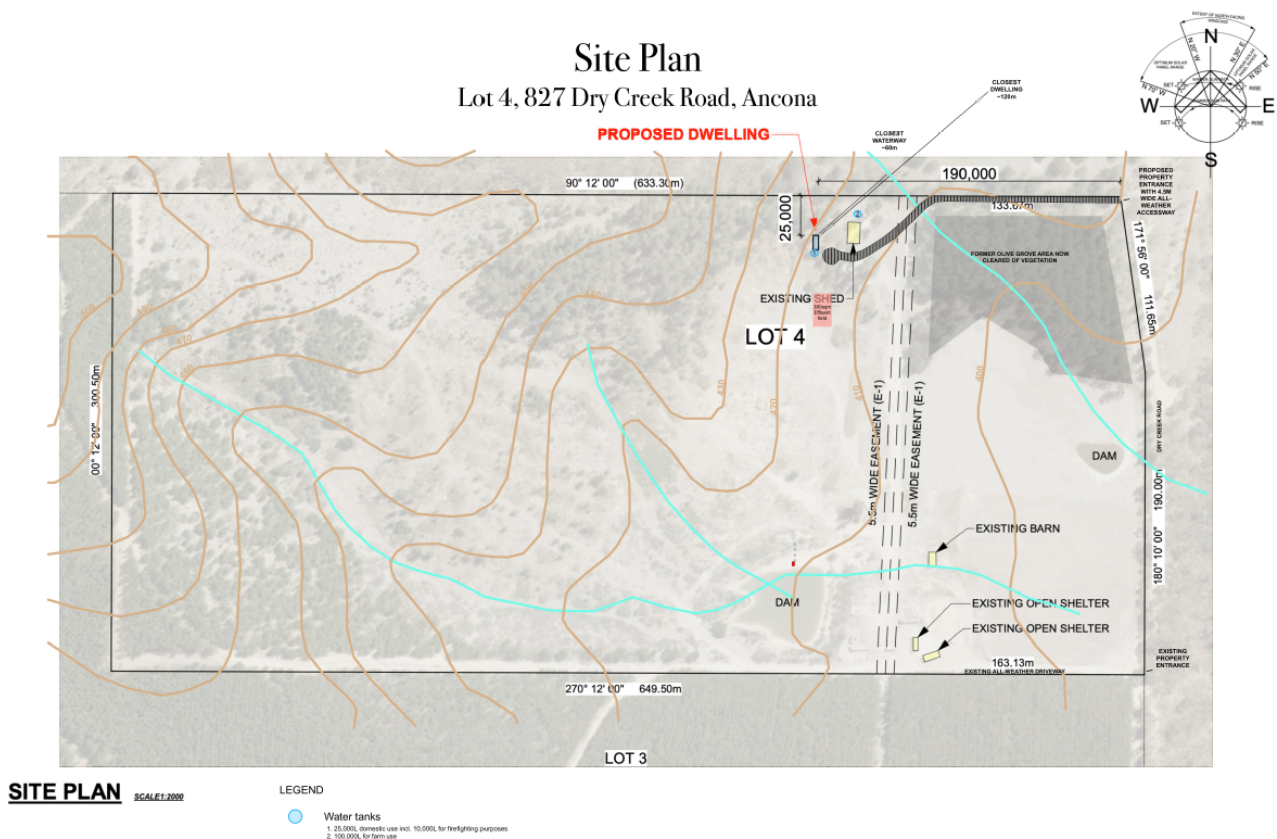


Figure 4– Proposed Site plan

Consultation

Referral Responses

| <i>Referral Agency</i> | <i>Response</i> |
|-------------------------------------|---|
| GOULBURN MURRAY WATER (GMW) | No objection, subject to conditions. |
| COUNTRY FIRE AUTHORITY (CFA) | No objection, subject to conditions. |
| ENGINEERING | No objection, subject to conditions. |
| ENVIRONMENTAL HEALTH | No objection, subject to conditions. |
| AGICULTURE VICTORIA | Provided comment on the Farm Management Plan. |

Advertising

Advertising was carried out in accordance with the requirements of the *Planning and Environment Act 1987*. No objections were received.

Mansfield Planning Scheme and Context Assessment

Mansfield Planning Scheme seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

Municipal Planning Strategy (MPS)

Clause 02.03-3 – Environmental risks and amenity

Bushfire

Bushfires are a risk to life, property and community infrastructure. Risk is most significant in and around forested areas in mountainous topography. Other hazardous areas include extensive grassland areas, particularly along the urban and rural interface of existing settlements.

Development pressure near forested land, often in locations where there is only one access road is a major risk. The bushfire risk is increasing in areas that are popular for residential and rural residential development, areas where there is a high number of non-resident landowners and where property maintenance can be variable, and in areas that may introduce vulnerable people to a location close to bushfire hazards.

Comment:

The subject land is located within the Bushfire Management Overlay. The subject land is located in an area of high fire risk. Much of the surrounding landscape is forested with steep topography.

Access opportunities are limited. The application does not specifically include an assessment against Clause 02.03-3 but does acknowledge the environmental risk.

Clause 02.03-4 – Natural resource management

Water and Declared Special Water Supply Catchments

Council's strategic directions for catchment planning and management are to:

- *Protect the environmental significance and visual amenity of local water sources and Special Water Supply Catchments.*
- *Avoid development in catchments that is detrimental to water quality.*
- *Minimise the cumulative impact of onsite wastewater treatment systems on the water quality of Declared Special Water Supply Catchments.*

Comment:

The proposed buildings are within 100m of the waterway traversing the property (54m). The effluent area is proposed to be located to the south of the proposed dwelling, as shown in the submitted Land Capability Assessment. The application was referred to GMW who provided conditional consent to the proposal.

Clause 02.03-6 – Housing

Council's strategic directions for the built environment and heritage are to:

- *Provide for housing needs to be met within townships and designated rural living areas.*
- *Maintain housing affordability and increase the diversity of housing choices, including opportunities for rural living.*

Comment:

The subject land is in the Farming Zone. The purpose of the zone is to support the use of land for agriculture and to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture. Land within the Farming Zone (including the subject land) is not identified in policy to provide for future housing needs. There is no policy or direction within the Mansfield Planning Scheme identifying the land as a rural living/residential area or rural settlement.

Planning Policy Framework (PPF)

Clause 13.02-1S – Bushfire planning

Objective

- *To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.*

Comment:

Clause 13.02-1 requires that consideration to protection of human life is prioritised above all other planning considerations. In particular, directing population growth and development to low-risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.

The subject land is located within an area that has been the subject of significant bushfire history. Access to an appropriate place that provides shelter from bushfire is 11.6km (12-minute drive) away.

The Bushfire Hazard Assessment submitted with the proposal indicates *“the closest likely threat to the dwelling is forest to the north, west and south and grassland to the north-east, south and east.”* In other words, the proposed location of the dwelling is at threat from bushfire from most directions. The report relies upon the application of BAL40 construction standards and associated defensible space to manage the risk from bushfire.

Clause 14.02-1S Catchment planning and management

Objective:

To assist the protection and restoration of catchments, water bodies, groundwater, and the marine environment.

Strategies to address this objective include to:

- *Ensure the continued availability of clean, high-quality drinking water by protecting water catchments and water supply facilities.*
- *Undertake measures to minimise the quantity and retard the flow of stormwater from developed areas.*
- *Ensure planning is coordinated with the activities of catchment management authorities.*
- *Ensure that water quality infrastructure is designed to minimise risk of harm to surface waters and groundwater.*

Officer response:

The proposal would result in the construction of a dwelling. A wastewater management system is proposed and is supported by a Land Capability Assessment. Wastewater can be satisfactorily managed. It is considered that the proposal will not risk the protection and restoration of catchments, water bodies and ground water. The application has received conditional consent from Goulburn Murray Water. Additional stormwater will be managed through permit conditions by requiring the stormwater to be directed into water tanks and overland flow be minimised and directed appropriately.

Clause 15.01-6S – Design for rural areas

Objective

To ensure development respects valued areas of rural character.

Comment:

The proposed dwelling will be low scale, with a maximum height of 2.95m. Whilst located only 25 metres from the northern boundary of the site, the location is well screened by mature vegetation. The proposed dwelling is modest in size. The proposed location will not impede any views or intrude within the rural landscape. Given these factors, the proposal is commensurate with the reasonable expectations of development forms in a rural landscape.

Zoning**Clause 35.07 Farming Zone**

Purposes include:

- *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.*

Decision guidelines include:

- *Any Regional Catchment Strategy and associated plan applying to the land.*
- *The capability of the land to accommodate the proposed use or development, including the disposal of effluent.*
- *How the use or development relates to sustainable land management.*
- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*
- *How the use and development makes use of existing infrastructure and services.*
- *Whether the use or development will support and enhance agricultural production.*
- *Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.*
- *The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.*
- *The capacity of the site to sustain the agricultural use.*
- *The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.*
- *Any integrated land management plan prepared for the site.*
- *Whether the dwelling will result in the loss or fragmentation of productive agricultural land.*
- *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.*
- *Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.*
- *The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.*
- *The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.*
- *The impact of the use or development on the flora and fauna on the site and its surrounds.*

- *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.*
- *The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.*
- *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.*
- *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.*
- *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.*
- *The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.*

Officer Response:

The use and development of the land for a dwelling requires planning approval due to the subject site being located within the Farming Zone and on a lot of less than 40 hectares in size.

Clause 65 of all planning schemes in Victoria states:

“Because a permit can be granted 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 decision guidelines of this clause.”

The provisions of the Farming Zone also direct that consideration be given to the decision guidelines of the Zone which consider the question of how rural dwellings fit within these purposes. The decision guidelines referred above provide a means by which to assess such applications.

Common to the purposes of the Farming Zone and the decision guidelines is the question of whether the proposal is consistent with the planning policy framework. At a State-wide planning level, Clause 14.01-1S relating to the protection of agricultural land has the objective to “protect the State’s agricultural base by preserving productive farmland”. Some of the main strategies in response to this objective seek to ensure the State’s agricultural base is protected from the unplanned loss of productive land, prevent inappropriately dispersed urban activities in rural areas, and to limit new housing in rural areas.

To summarise the above, current planning scheme policy seeks to ensure that new dwellings in the Farming Zone are only approved in instances where they are genuinely required to support or enhance agriculture. In making such a determination, consideration should be given to why there is a need to live on site and how that would support or enhance agricultural use/production, whether agriculture would remain the primary land use, whether it is likely that the land would remain in agricultural use into the future following development of the dwelling, etc.

In responding to these requirements, the applicant has provided a Farm Management Plan and Land Capability Assessment. A number of questions relating to these plans were raised in Council’s request for further information. Comment regarding Farm Management Plan was also sought from Agriculture Victoria.

The Planning report and Farm Management Plan provided by the applicant advise that the land is currently used to graze 14 sheep without an onsite presence. The Farm Management Plan includes the following details:

- Increasing the number of sheep from 14 to 25 ewes, to be used to produce 25 lambs per annum.
- Planting 1 acre of blueberries
- 200 olive trees for fruit and oil production
- A 1.2 acre market garden and fruit orchard
- Keeping 30 chickens for egg production

The Farm Management Plan was assessed by Agriculture Victoria, who made the following comments in relation to the sheep proposed:

The Dorper is predominantly a meat breed of sheep and considered to be low maintenance. Its "fleece" is short, loose and has a light covering of hair and wool. The "wool" is considered low quality, comprising wool and kemp. The Dorper sheds the fleece if not shorn, is highly medullated, and has high pigmentation.

And in relation to the horticultural enterprises and their water requirements:

The roof area of the proposed dwelling is 30.6 m². With an average annual rainfall of 690 mm, the roof area would capture 21,000 L annually. A fully occupied 2 bedroom dwelling (2 + 1 people) would be expected to use 450 L per day or 164,250 L annually. The undefined existing shed near the proposed dwelling looks to be approximately 120 m² which if plumbed to tanks could capture a further 85,000 L, still not enough to service the domestic use.

The application states that the blueberries will "require approximately 3-5 ML water per hectare, which can easily be achieved via the water tanks connected to the dwelling. Should water become an issue, the applicant will consider a bore be installed in future, or additional rainwater tanks". It is assumed that the olives may also require some irrigation from time to time. The irrigation of commercial agriculture crops may also require approval and licensing from the relevant authority. Roof capture alone does not seem to be enough for the dwelling, let alone the irrigation of crops.

Despite efforts to improve the proposal, a number of shortcomings remain. The Land Capability Assessment maintains that *"The existing shed (former 'weekender') will be utilised for processing olives, and preserves, packing blueberries and eggs and will contain a cool room for storage of the produce, and for storing other farm equipment."*

In this regard, it should be noted that:

- A "weekender" (dwelling) on the site has not been approved. While the application proposes to repurpose the building for a shed, this should not give rise, nor elevate expectation to an existing condition or use right on the land.
- The existing shed is of relatively small size. Plans submitted with the application do not show how or where food processing, cool room storage or farm equipment storage will be located. It is unlikely that these activities could be wholly accommodated within this building.

Other issues:

- Although horticulture and grazing animal production systems require regular supervision and management, the need for a permanent dwelling on site is not justified, especially given the relative proximity to Mansfield and other population centres.
- The supplied Title does not have any encumbrances, caveats or notices in place to protect against further subdivision or further dwellings. This presents a risk that the dwelling may be sold and further fragmented from surrounding farmland.
- Plans contain limited detail regarding farm operation and environmental management.
- Clause 35.07-2 requires electricity supply or alternate energy source. The application has relied upon the use of roof mounted solar panels (as per those currently installed on site). A sewerage treatment plant and sub-surface irrigation lines will be installed, which will require a permanent and ongoing power supply. Based on the information submitted, officers cannot be satisfied that a suitable alternative energy source can be provided.

Information submitted to support the proposal is not considered to satisfactorily address the purposes and decision guidelines of the Farming Zone.

It is also noted that the application documents state that “the proposed dwelling is being stored onsite but not yet installed” and should the application be refused, Council officers would need to ensure this building is removed from the site.

Overlays**Clause 42.01 Environmental Significance Overlay- Catchments at High Risk of Water Quality Impacts- ESO1****Purpose:**

- *To identify areas where the development of land may be affected by environmental constraints.*
- *To ensure that development is compatible with identified environmental values.*
- *In catchments identified as being at high risk of water quality impacts, the environmental objective to be achieved is to discourage development and works that potentially contribute to the degradation of water quality and quantity.*

Officer Response:

The property is located in the Upper Goulburn Special Water Supply Catchment. ESO Schedule 1 has been applied to the site. The ESO has been applied to identify areas of high risk of water quality impact. The Land Capability Assessment submitted with the proposal recommends that wastewater is treated to a secondary standard and disposed of via sub-surface irrigation.

The application was referred to GMW under Section 55 of the *Planning and Environment Act 1987*. GMW provided no objection to the proposal subject to conditions. This includes specifications for wastewater disposal.

Overall, it is considered that the proposal can address policy requirements to reduce the potential for domestic wastewater, particularly in un-sewered areas, to cause cumulative impacts on public health, water quality and catchment health. The proposal will result in an outcome where on site wastewater management can be satisfactorily addressed within the boundaries of the site.

Clause 44.06 Bushfire Management Overlay**Purpose:**

- *To implement the Municipal Planning Strategy and the Planning Policy Framework*
- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.*
- *To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

Officer Response:

The subject land is situated within the Bushfire Management Overlay and Bushfire Prone Area. A Bushfire Management Statement (BMS) was submitted with the application. The applicant has made a number of improvements to the proposal to respond to questions comments and issues raised by the CFA. The CFA later responded issuing consent to the proposal, subject to conditions. This includes the adjusted Bushfire Management Plan V2 dated 11 2022 being endorsed to form part of the permit and the inclusion of mandatory conditions specified within the Planning Scheme.

Particular Provisions**Clause 53.02 Bushfire planning**

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To ensure that the location, design and construction of development appropriately responds to the bushfire hazard.*
- *To ensure development is only permitted where the risk to life, property and community infrastructure from bushfire can be reduced to an acceptable level.*
- *To specify location, design and construction measures for a single dwelling that reduces the bushfire risk to life and property to an acceptable level.*

Clause 53.02-4.5 – Decision Guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider:

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The bushfire hazard landscape assessment, the bushfire hazard site assessment and the bushfire management statement submitted with the application.*
- *The impact of any State, regional or local bushfire management and prevention actions occurring around the site and in the wider area on the bushfire hazard and the level of risk to the proposed development.*
- *Whether the proposed development meets the objectives of Clause 53.02-4 regardless of other measures which may be available, including private bushfire shelters, community shelters and the presence of places of last resort.*

- *Whether the proposed measures can be practically implemented and maintained in conjunction with the ongoing use of the land.*
- *Whether the use of an alternative measure meets the relevant objective having regard to the bushfire hazard and the nature of any constraint that prevents the applicable approved measure from being implemented.*
- *If one or more of the objectives in Clause 53.02-4 will not be achieved in the completed development, whether the development will, taking all relevant factors into account, reduce the bushfire risk to a level that warrants it proceeding.*
- *Whether the risk arising from the broader landscape can be mitigated to an acceptable level or warrants the development not proceeding.*

Officer response:

Accompanying this application is a Bushfire Hazard Landscape Assessment, Bushfire Hazard Site Assessment and Bushfire Management Statement as required by Clause 44.06. The assessment has characterised surrounding vegetation as ‘forest’, with subsequent impacts on the defensible space and BAL construction standards required.

Defensible space and BAL construction standards can be met in accordance with Clause 53.02-5. The Bushfire Management Plan specifies that a BAL of 29 is appropriate for the site, having regard to the vegetation types around the development site and associated risk. However, the applicant is proposing to construct the dwelling at BAL 40 to provide increased protection from Bushfire.

A static water supply is proposed in close proximity to the dwelling, with vehicle access provided via an all-weather road. As the subject land is located within the Farming Zone, the requirements of Clause 53.02-4 (Pathway 2) apply. This requires the Responsible Authority to consider the following measures:

Clause 53.02-4 – Bushfire protection objective

Clause 53.02-4.1 – Landscape, siting and design objectives

- *Development is appropriate having regard to the nature of the bushfire risk arising from the surrounding landscape.*
- *Development is sited to minimise the risk from bushfire.*
- *Development is sited to provide safe access for vehicles, including emergency vehicles.*
- *Building design minimises vulnerability to bushfire attack.*

Through the course of the application, the CFA requested additional information indicating that *“the site is located in quite a complex bushfire hazard landscape with regards to slope and the vegetation mix. Access to places of safety should a building fail during a bushfire fire event is not certain.”* In turn, the CFA recommend the applicant consider CFA’s Guideline *“Applying the bushfire hazard landscape assessment in BMO”*.

The applicant provided a response to the matters required by the CFA. This included an adjustment to the point of access, an increased setback to vegetation to provide defensible space around the proposed dwelling, and a reclassification of the vegetation on the site. The CFA

later responded issuing consent to the proposal, subject to conditions. This includes the adjusted Bushfire Management Plan V2 dated 11 2022 being endorsed to form part of the permit and the inclusion of mandatory conditions specified within the Planning Scheme.

Conclusions

In summary, the proposal does not present an acceptable planning outcome with regards to the purposes of the Farming Zone, the relevant planning policies for rural dwellings, or the protection of agricultural land.

The application proposes the use and development of the land for a dwelling, which runs contrary to planning policy relating to the rural dwellings and the Farming Zone. The applicant has failed to produce a compelling argument that the proposed dwelling would support or enhance agriculture, or that any genuine agricultural land use is intended for the site. If approved, the proposal would likely result in a reduction in the current agricultural land area available to support a meaningful enterprise.

There is no policy or direction within the Mansfield Planning Scheme identifying the land as a rural living or a rural settlement. If a dwelling were approved, the land could be sold at any time with no obligation to continue carrying out agriculture. The proposed dwelling would contribute to the incremental shift towards rural living, which is to be avoided under the Planning Scheme so as to support the maintenance of an economically viable rural sector.

It is recommended that a Notice of Decision to Refuse to Grant a Permit be issued.

Officer Recommendation

Pursuant to Section 61 of the *Planning and Environment Act 1987*, Council issue a Notice of Decision to Refuse to Grant a Permit for use and development of the land for a dwelling within the Farming Zone on land commonly addressed as 827 Dry Creek Road, Ancona on the following grounds:

1. The proposal is not in accordance with Clause 02.02-6 *Housing* as the land is not identified in policy to provide for future housing needs.
2. The proposal is not in accordance with Clause 14.01-1S, Protection of Agricultural Land, as the proposal:
 - a. Will result in the permanent removal of agricultural land for primary production purposes and will detract from the long – term capacity of productive agricultural land to continue production.
 - b. Fails to protect farming and other agricultural practices from the encroachment of urban growth.
 - c. Fails to retain productive land for agricultural purposes.
3. The proposal is not in accordance with Clause 35.07, Farming Zone as it will lead to the further fragmentation of agricultural land by limiting the ability of the parcel to become consolidated with adjoining or nearby land and will not protect or enhance agriculture and will create a residential use in a farming environment.
4. The proposal is not in accordance with the decision guidelines at Clause 65.01 of the

Mansfield Planning Scheme as the proposal does not advance the objectives of planning in Victoria and would not result in an orderly planning outcome.