

REPORT TO	Development Assessments Committee	ITEM NO. 2.1.1
MEETING DATE	Monday, 16 April, 2012	
SUBJECT	Application for Planning Permit P12/0092 – 2 Wonderland Avenue, Tuerong	
PREPARED BY	Emma Wakefield, Senior Statutory Planner	
AUTHORISED BY	Manager – Statutory Planning	
ATTACHMENT(S)	YES	
Application No.	P12/0092	
Proposal	The use and development of the land for a dwelling and a wholesale plant nursery and associated buildings and works	
Melway Reference	153 H11	
Zoning	Green Wedge Zone – Schedule 2	
Applicant	Beveridge Williams & Co Pty Ltd	
Date Received	31 January, 2012	

EXECUTIVE SUMMARY

Is the Dwelling in Association with a Rural Use?	Yes – Native wholesale plant nursery (Section 2 use in Green Wedge Zone (GWZ) – permit required) and crop raising, including growing of heritage apples and hydroponic strawberries (Section 1 use in GWZ – permit not required).
Has a Farm Management Plan been Provided?	Yes
Has a Building Envelope been Nominated?	Yes – approximately 1,575 square metres
Site Area of Buildings Associated with Dwelling	1.39%
Has the Applicant Volunteered a Section 173 Agreement Concerning Dwelling in the Green Wedge Zone?	Yes

Proposal	The application is for the use and development of the land for a dwelling and a wholesale plant nursery and associated buildings and works. It is also proposed to grow heritage apples and hydroponic strawberries.
Zoning and Overlays	Impacts all of the site: <ul style="list-style-type: none"> • Green Wedge Zone – Schedule 2 (GWZ2); and • Environmental Significance Overlay – Schedule 4: Eastern Peninsula (ESO4). Impacts part of the site: <ul style="list-style-type: none"> • Environmental Significance Overlay – Schedule 17: Streamlines (ESO17)
Lot Area	2.02 hectares

EXECUTIVE SUMMARY (CONT'D)

Permit Triggers	<ul style="list-style-type: none"> Green Wedge Zone – Clause 35.04: A permit is required to use the land for a dwelling (35.04-1) and for buildings and works associated with a Section 2 Use (dwelling) (35.04-5); and Environmental Significance Overlay – Clause 42.01: A permit is required to construct buildings and works associated with a dwelling (i.e. Section 2 Use), since the applicable Schedule to the Overlay (ESO4) does not specifically exempt the works from requiring approval.
Advertising	<p>Notice was given pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> (the Act) by:</p> <ul style="list-style-type: none"> Letter to owners and occupiers of land in the surrounding area; and A sign placed on the site.
Submissions	No submissions have been received to date.
Referrals – Section 55	None required.
Referrals – Other	<ul style="list-style-type: none"> Environmental Health; Rural Business Officer; and Strategic Planner.
Key Issues	<p>The key issues involve:</p> <ul style="list-style-type: none"> Whether the establishment of a new dwelling in close proximity to an operational broiler farm is appropriate (from both an amenity point of view as well as the potential impact on the broiler farm operations); How this proposal differs from the previous proposal refused by the Victorian Civil and Administrative Tribunal (VCAT); Whether the use of the land for a dwelling in conjunction with agriculture in the GWZ is appropriate; The effect of the use and development on the landscape and environmental values of the site; Consistency with the State Planning Policy Framework (SPPF) and Local Planning Policy Framework (LPPF); and Consistency with the recently adopted Interim Rural Dwellings Policy.
Recommendation	It is recommended that Council issue a planning permit for the use and development of the land for a dwelling and a wholesale plant nursery and associated buildings and works, subject to the attached conditions.

BACKGROUND

The application site was the subject of a previous planning application for the use and development of a dwelling and associated works (P09/2128). The application was refused by Council at its Development Assessments Committee Meeting held on 13 December, 2010.

That decision was subject to an appeal to VCAT – being *Miglioranza v Mornington Peninsula Shire Council* (2011).

VCAT upheld Council’s decision to refuse to grant a permit to authorise the use and development of the land for a dwelling, stating that they were “*not satisfied that the primary sustained use of the land will be for agriculture, or that the farming proposal is realistic and sustainable for this land so as to justify the use and development of a dwelling.*”

Whilst VCAT decisions are not binding as a precedent for future applications, the decision in respect of 2 Wonderland Avenue clearly has relevance to the consideration of this application.

That said, since that case was presented to the Tribunal, VCAT have overturned a decision by Council at its Development Assessments Committee Meeting held on 13 December, 2010 to refuse an application for the use and development of a dwelling and wholesale plant nursery on the land and associated works at 104 Coolart Road, Tuerong – being *Lyons v Mornington Peninsula Shire Council* (2011) which is of a similar nature to the current proposal. This case is discussed in more detail later in this report.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

PREVIOUS PERMITS

The following list details recent planning permits that have been issued for the ‘Coolart Rising’ land:

1. P08/3135 – 108 Coolart Road, Tuerong: The use and development of a dwelling and associated outbuilding (recommendation of Council to support the application following a Council Meeting on 21 September, 2009 overturned at VCAT on 27 January, 2010 – failure to determine appeal).
2. P09/1113 – 7 Wonderland Avenue, Tuerong: The use and development of a single storey dwelling and associated outbuildings and works (Consent Order issued at the direction of VCAT on 23 June, 2010 following an Objector appeal against Council’s decision to issue a Notice of Decision). It is noted that 7 Wonderland Avenue, Tuerong does not form part of the Coolart Rising Estate, however is located just to the west.
3. Subject site – P09/2128 – 2 Wonderland Avenue, Tuerong: The use and development of a dwelling and associated works (decision to refuse the application upheld by VCAT on 12 August, 2011 following an Applicant appeal against Council’s decision to issue a refusal following a Council Meeting on 13 December, 2010).

PREVIOUS PERMITS (CONT'D)

4. P10/0147 – 102 Coolart Road, Tuerong: The use and development of the land for a dwelling and associated works including a dam and altered access to a Road Zone Category 1 (refused following a Council Meeting on 13 December, 2010).
5. P10/0368 – 104 Coolart Road, Tuerong: The use and development of a dwelling and wholesale plant nursery on the land and associated works (permit issued at the direction of VCAT on 7 September, 2011 following an Applicant appeal against Council's decision to issue a refusal following a Council Meeting on 13 December, 2010).
6. P11/0287 – 108 Coolart Road, Tuerong: The use and development of the land for a dwelling and primary produce sales and associated works (Notice of Decision issued following a Council Meeting on 15 August, 2011. Awaiting the decision of an Objector appeal at VCAT on 6 June, 2012).

EXISTING CONDITIONS

The subject land is Lot 9 on PS 8673, with an area of 2.023 hectares. The land is located on the north side of Wonderland Avenue, one lot removed from Coolart Road and is rectangular with a width of 100.58 metres and a depth of 201.17 metres. The land is clear of vegetation save for a row of mature pines along the rear boundary, with the only improvements being a small drainage retention basin and a shed located in the south-east corner. A recently constructed crushed rock driveway leads to the centre of the site.

The Town Planning Report submitted with the application summarises the works undertaken on the land by the owner to date, as follows:

- “
- *Installed 110 metres of driveway centrally located to the frontage of the property (including provision of a concrete pipe under the driveway to maintain natural water flow across the property frontage;*
 - *Built approximately 300 metres of post and rail fence;*
 - *Planted approximately 350 native plants on the property;*
 - *Cleaned out the drainage retention area to ensure appropriate water flow;*
 - *Installed a concrete pipe at the lowest point beneath the driveway to ensure disruption does not occur to the natural flow of water across the property;*
 - *Sprayed for capeweed; and*
 - *Kept the property in a clean manner.”*

A minor streamline (which is included in the ESO17) passes through the subject land from the mid-point of the eastern boundary through to the south-western corner, but is barely discernible. The subject dwelling is to be located outside of the area affected by this Overlay.

EXISTING CONDITIONS (CONT'D)

The Register Search Statement reveals the land is affected by a Covenant (AG476080T dated 28 April, 2009). This applies to all 11 lots shown on LP8673 and requires that transferees (owners) must:

- Not build more than one dwelling on the land;
- The dwelling is to be constructed of not less than 75% new building materials, and have a minimum floor area of 185 square metres (20 squares) excluding verandas and/or garage; and
- Not build, construct or erect or cause to be constructed or erected or remain on the land any previously constructed building or dwelling, mobile home or relocatable building save and except for a granny flat.

The application complies with the above requirements.

A Locality Plan is provided as Attachment 1.

SURROUNDING LAND

The land is surrounded in all directions by land in the GWZ. Beyond the GWZ land to the east is land in the Low Density Residential Zone. A review of the general locality reveals a mix of lot sizes and land uses in the area. This is shown at Attachment 2, as well as the table below.

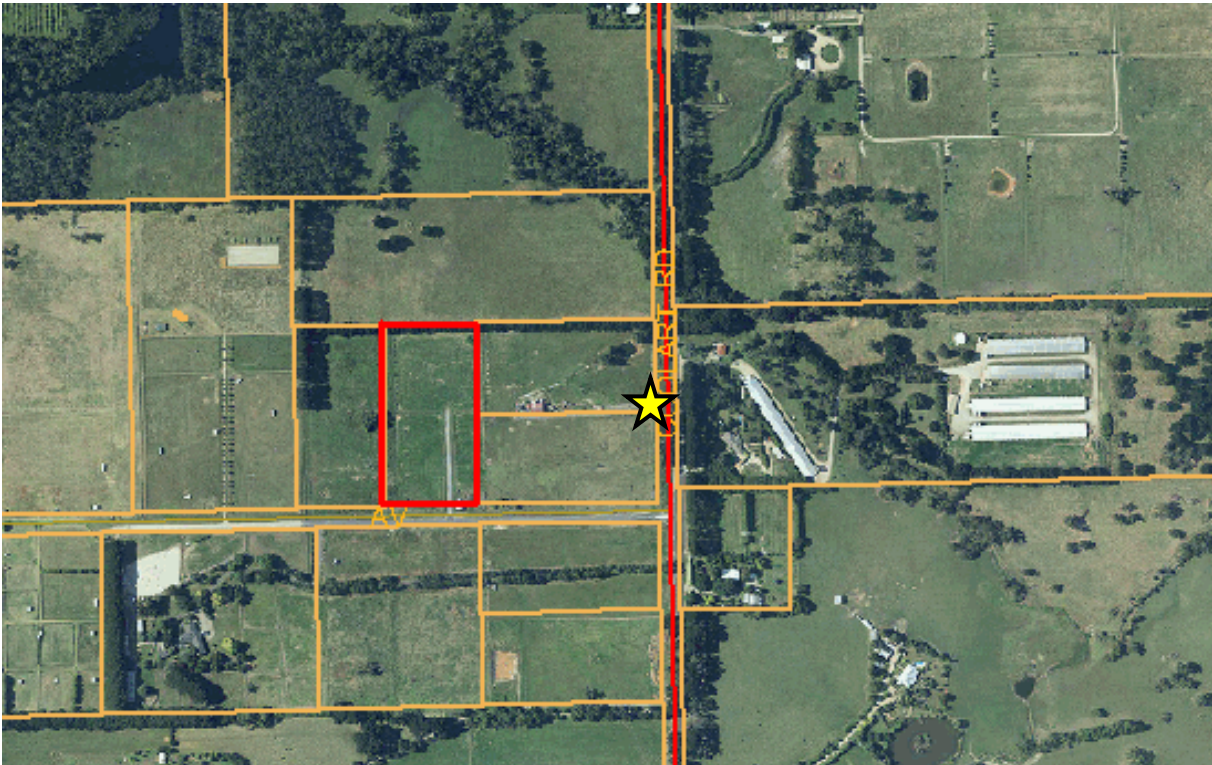
Surrounding Properties and Setback of Existing Dwellings

Address	Lot Size	Dwelling	Setback of the Proposed Dwelling from Adjoining Lot (Approximate)	Setback of the Existing Dwelling from the Proposed Dwelling (Approximate)
North				
118 Coolart Road	5.7 hectares	No	41.5 metres	N/A
South				
1 Wonderland Avenue	3.7 hectares	No	150 metres	N/A
East				
106 Coolart Road	2.0 hectares	No	65 metres	N/A
108 Coolart Road	2.0 hectares	No	49 metres	N/A
West				
4 Wonderland Avenue	2.0 hectares	No	41.5 metres	N/A

An aerial photo detailing the pattern of surrounding development and lot sizes is provided in Attachment 2.

SURROUNDING LAND (CONT'D)

There are several broiler farms (and one pullet farm) located within a 2 kilometre radius of the subject site. The nearest to the subject site is located at 173 Coolart Road (on the eastern side of Coolart Road). This farm comprises five sheds housing approximately 190,000 birds. The closest shed is approximately 340 metres from the proposed dwelling, with the remaining four sheds being in excess of 550 metres from the proposed dwelling. The relationship between the application site and the nearest broiler farm is indicated on the following aerial photograph.



Subject site — Nearest Broiler Farm Shed ★

A broader aerial photograph of the subject site and surrounds is provided at Attachment 2, showing the pattern of development in the vicinity of the application site.

PROPOSAL

The proposal is for the use and development of a single storey dwelling with detached garage and use of the land for the purpose of native wholesale plant nursery and associated buildings and works, including a shed central to the northern (rear) boundary of the site. It is also proposed to grow heritage apples and hydroponic strawberries. The Applicant has supplied information in the form of a Farm Development and Management Plan which outlines the details of the horticultural activities proposed for the site (refer to Attachment 3).

PROPOSAL (CONT'D)

The Town Planning Report submitted with the application provides details of the proposed agricultural use as follows (refer to Attachment 4):

“ *The Farm Development and Management Plan outlines the details of the horticultural activities proposed for the site. These being a wholesale nursery, hydroponic strawberries and heritage apples. The proposal entails approximately one hectare of heritage apples to be planted, strawberries to be grown hydroponically and a range of indigenous native plants to be propagated for sale thus enabling the workload and risk to be spread across these three elements providing production of year long produce. The Farm Development and Management Plan, provides a detailed account of the enterprise, an economic overview, site considerations and gives a fair assessment of the strengths and weaknesses of the proposal.*

The buildings and works required to carry out this enterprise are as follows –

- *A propagating shed, soil bays, two large water storage tanks and two igloos.*

The proposed layout of the farm has been designed to maintain the open rural vistas and also seeks to utilise the land to its maximum capacity. Appendix 1 of the Farm Development and Management Plan details the layout, in summary it comprises rows of heritage apple trees to be planted at the front of the property, the area at rear of the dwelling to be used as one of the growing areas for the nursery stock and also provides the location for the soil bays and the shed (immediately at the end of the driveway). Adjoining this to the east are the two water tanks with the two igloos located in front of these. A second growing out area is located south of the igloos and the hydroponics located to the east of the dwelling so as to enable access to power and water.

Provision has been considered for trucks accessing the site so that a forward exit is possible, thereby maximising safety.

A spoon drain is required adjacent to the proposed growing area of the tube stock to capture any runoff to re-use within the enterprise. This allows for efficiency and eliminates any waste water or nutrient run off issues. Other than this there is minimal site preparation required.

As detailed in the Management Plan there will be no offsite impacts as all waste materials and run-off will be re-utilised. The farm has been designed to operate efficiently within the site. Good management practices will ameliorate any offsite impacts of spray drift associated with the agricultural chemicals.

The management activities required to operate this intensive enterprise have been clearly documented in the Farm Development and Management Plan and demonstrate the need for an onsite dwelling.

To allow efficient and practical management and operations of the proposed enterprise the Applicant seeks approval of a dwelling. The proposed new dwelling has been sited and designed to minimise impact on the surrounding landscape. The design comprises a dwelling of 224.85 square metres and detached garage of 56.25 square metres located to the west of the dwelling. The dwelling has a maximum overall height of 7.5 metres to the ridgeline. The dwelling comprises four bedrooms, study, rumpus and other facility rooms; open plan kitchen/meals/living areas, which overlook the northerly orientated decking. The design includes a 2.4 metre deep verandah, in part, to the northern and eastern elevations and additional decking area”.

PROPOSAL (CONT'D)

The single storey dwelling is designed with four bedrooms, two bathrooms, living and family/dining areas, rumpus room and study. A detached double garage is sited to the west of the dwelling and a shed is located central to the northern (rear) boundary of the lot.

Key details of the dwelling are summarised in the following table.

Item	Description
Roof Materials	Dwelling and garage – Colorbond (of a muted and non-reflective tone).
Wall Materials	Dwelling and garage – weatherboard cladding (Antique White U.S.A.).
Overall Building Height	<ul style="list-style-type: none"> • Dwelling – 7.5 metres maximum; • Garage – 5.2 metres maximum; and • Shed – Not specified.
Front Setback	To Wonderland Avenue (south): Dwelling – 134 metres.
Side Setbacks	<ul style="list-style-type: none"> • East Boundary: Dwelling – 49 metres; and • West Boundary: Dwelling – 20 metres.
Rear Setback	North Boundary: Dwelling – 41.5 metres.
Site Area	20,233 square metres.
Building Area	Dwelling – 224.85 square metres, garage – 56.25 square metres and shed – 160 square metres. Total – 441.1 square metres.
Site Coverage	1.9%.
Parking	Provision for parking bays for nursery clients has been indicated on the Landscape Plan.
Driveway	Existing gravel driveway centrally located to the frontage to be extended to the proposed garage and parking area for nursery clients.
Fencing	Existing post and rail.
Water Tanks	Two water storage tanks with a combined 544,000 litre capacity.
Vegetation Clearance	N/A.
Earthworks	Maximum cut of 900 millimetres and fill of 600 millimetres.

The Plans have been provided at Attachment 5.

NOTIFICATION

The application was advertised in March 2012 by way of letters to nearby owners and occupiers and the display of a sign on the site. The statutory notification period concluded on 9 March, 2012.

SUBMISSIONS

No submissions have been received to date.

CONSULTATION

No referrals to external authorities under Section 55 of the Act were required.

REFERRALS

The application was referred internally and externally as noted below.

External Referrals

No external referrals were required as part of this application.

Internal Referrals

The application was referred to the Environmental Health Officer who advised of the below comments and conditions:

“ *A Section 173 Agreement should be entered into so that current and all future landholders are aware of the broiler farm operations. The following conditions as suggested in the Victorian Code for Broiler Farms – Strategic Land Use Planning Considerations:*

- *The dwelling should be placed as far away as practicable from the eastern boundary;*
- *Vegetation should be planted and used as a screen along the eastern boundary;*
- *All sewerage and sullage waste from the proposed development must be discharged into an onsite wastewater septic tank system that is approved by the Environment Protection Unit, retains all effluent within the boundaries of the subject land, is located to the satisfaction of the Responsible Authority and meets the required setback distances;*
- *No polluted waters, or any other liquid wastes shall be discharged into the stormwater system, or any other watercourse; and*
- *Works on the proposed dwelling must not commence until a permit to install a septic tank wastewater system is issued by Council’s Environmental Health Team.”*

Council’s Rural Business Officer provided the following comments:

“ *A detailed and succinct Farm Management Plan has been provided regarding detailed information for each of the proposed enterprises to be undertaken on this site.*

I have no concerns regarding the proposed agricultural activities.”

Strategic Planner provided the following comments in relation to the previous Planning Application P09/2128 for the subject site:

“ ***The Provisions of the Victorian Broiler Code***

The Victorian Broiler Code was introduced in 2001 primarily to provide a regulatory framework for the establishment of new broiler farms. The Code included minimum mandatory setback requirements between new broiler sheds and property boundaries and mandatory minimum separation distances between new sheds and existing sensitive uses, primarily dwellings and dwelling sites on adjoining properties. For a proposed farm with a capacity of between 160,000 and 200,000 birds the minimum separation distance was 550 metres. Farms which could not achieve this separation distance were prohibited. The separation distance is also referred to as the buffer distance or simply ‘the buffer’.”

REFERRALS (CONT'D)

Internal Referrals (Cont'd)

“ *The 2001 Code did include provisions regarding appropriate consideration of applications which would locate a new dwelling in proximity to an existing farm, stating that inter alia: ‘The Responsible Authority should not support any application for a planning permit which would allow the possibility of a new dwelling or other sensitive use being built within the separation distance of an existing broiler farm’ (page 45).*

This requirement to maintain the existing separation distance is also referred to as the ‘reverse buffer requirement’. Despite the language in which the reverse buffer requirement was expressed, this was not a mandatory requirement and arguably the Code did not formally apply to the consideration of dwellings, only to the construction of broiler farms.

The Broiler Code was reviewed in 2007/2008 and a revised version of the Code was approved and incorporated into Planning Schemes in September 2009.

Important changes in the revised 2009 Code are as follows:

- *The separation distances have been varied. Under the 2009 Code the separation distance is calculated on the specific (bird number) capacity of the farm. Separation distances are now measured from the nearest point of any shed rather from the ‘centroid’ of a group of sheds. For a 200,000 bird farm the required separation distance is 472 metres; and*
- *The provisions in relation to applications for sensitive uses in proximity to existing farms have been completely re-written. Notably, odour modelling is not required where it is proposed to construct a dwelling in the vicinity of an existing broiler farm. Given the significance of these provisions to the Wonderland Avenue area, a relevant extract is included as an Attachment to these comments. (This is provided as Attachment 7 to this report.)*

In terms of the provisions of the 2009 Code, recent history demonstrates a very low level of complaint. There have been only three complaints regarding the farm at 173 Coolart Road in the last 10 years, with complaints originating from the area to the south-east (having regard to prevailing summer wind direction). Some of these complaints also relate to bird disposal rather than shed odour per se. The other farms most likely to affect the lots in the Coolart Rising area have also received complaints at a rate of less than one per year for the last 10 years – and these complaints have originated from sites much closer to farms than the likely dwelling sites within the Coolart Rising area.

The argument that no dwellings should be approved in proximity to existing broiler farms on the basis of the ‘precautionary principle’ raises many issues of equity, particularly where the farms in question were established pre-Code at a time when buffer requirements were much lower and the implications of a farm establishing on nearby land were less significant i.e. there was no notion that ‘reverse buffer’ considerations might effectively exclude the opportunity to construct a dwelling on an adjoining lot.”

REFERRALS (CONT'D)

Internal Referrals (Cont'd)

“ *In some cases, objections assert dwellings should not be built because this might result in more complaints and constraints on farm operators, however it is important to recognise that no farm on the Peninsula has been compelled to close due to odour complaints and there is an obligation on most uses to operate so as to avoid the creation of nuisance to adjoining properties – not simply to claim a ‘reverse buffer’ over them. This applies with particular force where the area surrounding broiler farms already contains a substantial number of dwellings, many of which were in existence prior to the construction of these farms.*

The revised Code clearly puts forward a more balanced approach to the issue of new dwellings in proximity to existing farms – requiring consideration of the actual track record of farms and requiring separation distance to be maximised. In the case of the Coolart Rising area, the above assessment indicates a low level of potential risk in terms of unreasonable exposure to odour, above and beyond that which can normally be expected in a rural area. In addition, in the main the recommended separation distances can be met, or at least be met to a substantial degree.

In these circumstances, it is considered that the proposal for a dwelling at 2 Wonderland Avenue meets the Strategic Planning Guidelines set out in the current Broiler Code.

Dwellings on Lots within the Green Wedge Zone

Council has been engaged in a significant policy development process in relation to this issue. It is clear that Melbourne 2030 and even more recent changes to the SPPF have ‘raised the bar’ in relation to the level of assessment required to ensure proposals are consistent with State (and Local) Planning Policy objectives. For example, Melbourne 2030 indicates that applications for isolated rural dwellings should not be supported and that the consolidation of small isolated lots in rural areas should be encouraged. These directions are now included in the SPPF (Clause 11.05-3) and are reinforced in Clause 16.02-1 which relates to rural residential development and rural living.

In considering an appropriate response to these policy directions Council has had regard to the existing conditions in the rural Peninsula, where there is already a wide range of lot sizes and a relatively high level of occupation, with landowners engaged in various degrees of rural production, from a low level associated with rural living, through life style farming to specialised production up to full scale commercial agriculture. The diversity and productivity of the Peninsula’s rural area is highlighted in the recent Agricultural Audit report.

Council’s current position is essentially framed in terms of requiring new dwellings, that is, new proposals to occupy rural land in the Green Wedge, to demonstrate:

- a) *That the impact on potential agricultural use, conservation and landscape values of a site (and exposure to environmental risks, such as bushfire) are minimised by the choice of house location and the area of land committed to ‘residential purposes’;*
- b) *That the occupation of the site will contribute to achieving core Green Wedge objectives in terms of conservation and/or opportunities for agricultural production. This should be demonstrated through a whole Farm/Land Management Plan.”; and*

REFERRALS (CONT'D)

Internal Referrals (Cont'd)

- “ c) *That the prospective occupants are fully aware of the implications of living in a rural area, in terms of their obligations, such as control of domestic animals, and their potential exposure to normal odour, noise, dust etc. emissions from rural activities.*

It is fair to note that not all remaining vacant lots within the GWZ will necessarily be able to satisfy these requirements to an acceptable level. Equally, many proposals will be subject to a higher level of control e.g. in terms of siting to maximise the area of land available for agriculture now and in the future, than was previously the case.

The Coolart Rising area has presented particular issues in that as a cluster of relatively small lots – it is something of an anomaly in a rural area, and is contrary to Council’s policy of avoiding the further fragmentation of rural land, on the basis that, all things being equal, larger lots have a wider range of potential agricultural uses.

However, it is also recognised that small lots can be used productively and the impact of this and other ‘anomaly areas’ on the overall availability of land for rural production on the Peninsula is relatively small. In other situations, some form of rural cluster re-subdivision may be considered but given the existing ownership pattern this is unlikely to be relevant to these lots. If dwellings are excluded it is arguably more likely to remain as vacant land, rather than adding to agricultural production and potentially would attract long term speculation. In these circumstances it is considered that applying the principles identified above, in proportion to the scale of each property, is a more constructive approach to resolving the future use of this area i.e. ensuring that applications:

- a) Do not unreasonably constrain rural use on the land and in the surrounding area; and*
- b) Demonstrate a proportional contribution to achieving Green Wedge objectives.”*

PLANNING SCHEME PROVISIONS

The following table summarises the key applicable State and Local Policies.

State Planning Policy Framework	11.04-6: Green Wedges
	11.05-3: Rural Productivity
	12.04-2: Landscapes
	14.01-1: Protection of Agricultural Land
	16.02-1: Rural Residential Development
Local Planning Policy Framework	21.02: Profile of the Mornington Peninsula
	21.03-1: The Regional Role of the Mornington Peninsula
	21.04: Mornington Peninsula Strategic Framework Plan
	21.06: Strategic Framework and the Peninsula’s Settlement Pattern
	21.09: Planning for Rural Areas
	22.03: Dwelling Density, Excisions and Realignment in Rural Areas
Other	22.14: Mornington Peninsula Land Units
	57: Metropolitan Green Wedge Land
	65: Decision Guidelines

PLANNING SCHEME PROVISIONS (CONT'D)

The relevant objectives and strategies of these provisions are provided in Attachment 6. A review against the provisions of Council's recently formulated *Interim Policy in Relation to Rural Dwellings* has been provided within the Consideration and Assessment section of this report.

CONSIDERATION AND ASSESSMENT

As noted in the Executive Summary, the key issues affecting this application are considered to be:

- Whether the establishment of a new dwelling in close proximity to an operational broiler farm is appropriate (from both an amenity point of view as well as the potential impact on the broiler farm operations);
- How this proposal differs from the previous proposal refused by VCAT;
- Whether the use of the land for a dwelling in conjunction with agriculture in the GWZ is appropriate;
- The effect of the use and development on the landscape and environmental values of the site;
- Consistency with the SPPF and LPPF; and
- Consistency with the recently adopted Interim Rural Dwellings Policy.

Relevant Victorian Civil Administrative Tribunal Decisions

Prior to considering the key issues it is appropriate to note recent VCAT decisions.

As stated in recent Council reports, there have been several recent VCAT decisions which point to a precautionary approach being taken when exercising discretion in respect to dwellings within the Green Wedge.

Recent decisions which relate to the Mornington Peninsula Shire include:

- *Brown v Mornington Peninsula Shire Council* (2009) – 108 Coolart Road, Tuerong;
- *Bourantanis v Mornington Peninsula Shire Council* (2011) – 107 Arthurs Seat Road, Red Hill;
- *Miglioranza v Mornington Peninsula Shire Council* (2011) – Subject site – 2 Wonderland Avenue, Tuerong; and
- *Lyons v Mornington Peninsula Shire Council* (2011) – 104 Coolart Road, Tuerong.

The case referred to in the third dot point above is the previous decision from the Tribunal in relation to the subject site and is discussed further in a following section of this report under the heading 'How this proposal differs from the previous proposal refused by VCAT'.

CONSIDERATION AND ASSESSMENT (CONT'D)

Relevant Victorian Civil Administrative Tribunal Decisions (Cont'd)

Also, the final dot point above is the most recent decision from the Tribunal and is of a similar nature to the current application being for the use and development of a dwelling and wholesale plant nursery on the land and associated works at 104 Coolart Road, Tuerong. The application was refused at a Council Meeting on 13 December, 2010 on the grounds that:

1. The proposed dwelling is incompatible with the purpose of the GWZ and State and Local Planning Policies, such as Clauses 21.09 and 22.03, which seek to maintain Green Wedge land for rural purposes.
2. The use and development of a dwelling on this lot facilitates a 'rural residential' or 'lifestyle' property which will take productive rural land out of agricultural use.

The permit was issued at the direction of VCAT on 7 September, 2011 following an Applicant appeal. The Tribunal considered "*that it is reasonable for Applicants to 'think outside the square' to propose new agricultural (including horticultural) models to respond to the challenges presented by small (high value) rural sites*" and "*that the proposal has a high level of consistency with the purpose of the zone and a high number of the decision guideline.*"

Also, the Tribunal regarded "*the plant nursery proposal in particular as a legitimate primary land use*" and was "*satisfied that this use generates dependency on a dwelling on the same land.*"

Given the similarities of the current proposal with that issued at the direction of VCAT for 104 Coolart Road Tuerong, Council should support the current application subject to conditions including requiring the owner to enter into a Section 173 Agreement to give effect to the Farm Management Plan and to provide for responsible land management and certain acknowledgements about the setting and surrounding land uses (as offered by the Applicant).

Whether the Establishment of a New Dwelling in Close Proximity to an Operational Broiler Farm is Appropriate (from both an amenity point of view as well as the potential impact on the broiler farm operations)

The proposed dwelling and ancillary structures are positioned outside the separation distances required by the 2009 Broiler Code (as accepted by the Tribunal in relation to the previous decision for the subject site – see *Miglioranza v Mornington Peninsula Shire Council*).

It was also determined by the Tribunal that "*it is unlikely that odour emissions would be of a strength or regularity such as to make the use of the review land for a dwelling inappropriate.*"

It was noted in the previous Officers report for 108 Coolart Road that in respect of the current proposal, the Applicants engaged Environmental Science Associates (ESA) to provide an assessment of the likely impact of air emissions from the existing broiler farms on the Coolart Rising land, having regard for the guidelines contained within the Broiler Code, and the most recent advice on the matter received from the Environment Protection Authority (EPA).

CONSIDERATION AND ASSESSMENT (CONT'D)

Whether the Establishment of a New Dwelling in Close Proximity to an Operational Broiler Farm is Appropriate (from both an amenity point of view as well as the potential impact on the broiler farm operations) (Cont'd)

The report includes copies of correspondence to Council from the EPA in which they confirm that an analysis of existing complaint data held by the Shire and EPA is the most appropriate method of assessing rather than the use of predictive odour modelling studies. A summary of complaint data over the past 10 years is provided, which demonstrates that the frequency of odour complaints attributed to nearby broiler farms have declined substantially over the past decade. The EPA letter also suggests that the use of a Section 173 Agreement would be useful in alerting future land owners to the presence of the broiler farms.

The report concludes that the Coolart Rising Estate is unlikely to be affected from emissions from either of the two nearby broiler farms under worst case atmospheric dispersion conditions.

How This Proposal Differs From the Previous Proposal Refused by VCAT

The key difference between this proposal and the one previously considered by the Tribunal is that:

- The associated agricultural use of the land (plant nursery) is a Section 2 Use in the GWZ;
- The primary sustained use for this land will be for agriculture and that the farming proposal is realistic and sustainable (in terms of land use) for this land so as to justify the use and development of a dwelling;
- The EPA issues have now been resolved (noting that one of Council's Grounds of Refusal related to the proximity to the broiler farms); and
- No objections have been received to the current proposal.

It is acknowledged that agricultural production may be somewhat limited given the relatively small size of the lot, however there is no requirement in the Planning Scheme that requires the primary income to be derived from such activities. This point was made by the Tribunal in a recent decision regarding boundary realignment at 107 Arthurs Seat Road, Red Hill which involved a realignment to create new lots of between one and three hectares, and creation of building envelopes on each lot (Bourantanis v Mornington Peninsula Shire Council – 2011).

In deciding to overturn Council's original refusal, the member accepted the evidence of the expert agricultural witness that the land was too small to sustain a commercial agricultural enterprise. Paragraphs 47 and 48 of that decision are included below to highlight the presiding member's views in regard to the lot's inability to support a sustainable agricultural enterprise:

“ *This does not, however, preclude the future use of the land for ‘agricultural or rural activities’. As Mr. Phillips points out, the context will be the enjoyment of ‘living in a rural environment while practising some form of agricultural interest’.*

While the size of many rural properties in Red Hill may preclude sustainable agriculture, I concur with Mr. Phillips’ observation that ‘management practice can therefore be directed at preserving the landscape, environmental and agricultural features of the property without being concerned with financial outcomes’.”

CONSIDERATION AND ASSESSMENT (CONT'D)

How This Proposal Differs From the Previous Proposal Refused by VCAT (Cont'd)

It is apparent from this decision that the Tribunal do not consider that smaller lots located in the Green Wedge are unable to be developed with dwellings, and that there will be circumstances whereby such use is appropriate. The proviso should be, however, that the objectives of the GWZ are advanced by any residential use and development proposal. Indeed, it is this outcome that Council's recently adopted Interim Policy on Rural Dwellings seeks to achieve. In this regard, the application as presented is considered capable of achieving this outcome.

Whether the Use of the Land for a Dwelling in Conjunction with Agriculture in the Green Wedge Zone is Appropriate

As has been stated in recent Council Reports, prior to the introduction of the GWZ, a dwelling was an 'as of right use' that applied to non-urban land within the Shire. The use of the land for a dwelling became discretionary upon the introduction of the GWZ.

Whilst the proposed residential use is not one which is specifically identified or encouraged by the purposes of the GWZ, this does not necessarily mean that it is a use which is incompatible within the Zone. The GWZ seeks among other things, "... to recognise, protect and conserve Green Wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources."

Whilst it may be considered that the purpose of the GWZ is to solely protect the agricultural potential of the land, this is not the case.

The GWZ makes no specific reference to residential land use in its stated purpose. However, this does not mean that the use of the land for a dwelling is not contemplated by the Zone. It can be argued that the use of a dwelling on the land in the manner in which it is recommended for approval can be linked to a number of the objectives of the Zone.

It is also noted that the subject land has existed in its current title configuration for a significant period of time, and notably prior to the introduction of the GWZ.

Allotments of this size on the Peninsula have generally been used for rural residential living associated with some low key agricultural or grazing use, or to provide accommodation for contractor machinery used by the dwelling owner in the locality.

Whilst noting the VCAT decision in respect to the original application for a dwelling at 2 Wonderland Avenue, Tuerong, the Applicant submitted a Whole of Farm Plan which includes details concerning the growing and sale of heritage apples and hydroponic strawberries, as well as the propagation and sale of native plants from the land. This is a more considered approach than the original application, which was essentially viewed by the Tribunal as being unrealistic and unsustainable for this land so as to justify the use and development of a dwelling. The current practice in terms of recent approvals granted by the Shire has been to establish the intended use of the land (even if that use does not require a permit) at the outset of an application, and to use this information to establish whether a dwelling should be supported in connection with that land use. In order to ensure that the land is ultimately used as proposed, Farm and Land Management Plans form part of the approval, and owners are obligated (via the use of a Section 173 Agreement) to implement the land use initiatives prior to the occupation of the dwelling and thereafter continue the use. In this manner, current and future land owners are aware of their ongoing obligations in terms of maintaining the values and objectives of the Green Wedge.

CONSIDERATION AND ASSESSMENT (CONT'D)

Whether the Use of the Land for a Dwelling in Conjunction with Agriculture in the Green Wedge Zone is Appropriate (Cont'd)

It is apparent that given the limited land size and the nature of the intended use, the native wholesale plant nursery and crop raising (heritage apples and hydroponic strawberries) production and sales cannot be viewed as a significant commercial enterprise providing the primary source of income for the occupants. The cash flow projections in the Farm Development and Management Plan indicate that a significant income can be achieved once established (with the plant nursery deriving the majority of this income), though it is noted that this assumes a best case scenario which may not ultimately be achieved. Regardless, there is no obligation for the Applicant to demonstrate that the primary source of income will be generated from the land, as has been noted by the Tribunal (in *Bourantanis v Mornington Peninsula Shire Council* 2011). The proposal is seen to support the intentions of the Planning Scheme in terms of land use and preserving the agricultural and landscape values of the Green Wedge.

VCAT determined in the previous decision for the subject site (being for the use and development of the land for a dwelling in conjunction with animal husbandry – Boer goat farming) that *“the proposed stocking rates and therefore the likely cost/return figures are likely to be unachievable on this land. The proposed stocking and breeding rates do not represent industry standard in Australia even on more sizable holdings, noting other additional risks such as worm burden and increased management responsibilities.”*

Also, the previous VCAT decision stated that *“it is relevant that the Applicant is a novice operator although he has farming experience with cattle and that the financial figures are not adequately researched or substantiated.”*

Finally, the previous VCAT decision stated *“even allowing for the fact that many farming enterprises make marginal or negative financial returns, this deficiency has the effect of making it likely that the farming enterprise will become a physical and cost burden over time. It is likely to result in abandonment or conversion of the fully fledged farming activity to a ‘hobby farm’ activity (i.e. of a confined scale such that it would be ancillary to a dwelling). This type of land occupation is an identified threat in Green Wedge Zone policy.”*

The proposed use of the land for a native wholesale plant nursery is consistent with the outcome of the VCAT decision for 104 Coolart Road, Tuerong, as well as the principles of development of smaller rural land holdings as outlined in VCAT’s approval of 107 Arthurs Seat Road, Red Hill.

Taking into account the above, approval of the dwelling associated with the native wholesale plant nursery and crop raising operations will not cause the fragmentation of agricultural land, and the amount of land to be utilised by the dwelling (1.9%) is not such that there is a cause for concern regarding the loss of productive agricultural land.

The use of the land for a native wholesale plant nursery is considered to be appropriate within the Zone, and is not expected to be of an intensity that would give rise to concerns in terms of traffic, noise and general amenity. Conditions will be included on the permit to limit the hours of loading and/or deliveries, rather than sales to be consistent with the previous VCAT decision for 104 Coolart Road, Tuerong (refer to *Lyons v Mornington Peninsula Shire Council*).

CONSIDERATION AND ASSESSMENT (CONT'D)

Assessment of the Development Requirements of the Environmental Significance Overlay and the Green Wedge Zone

In respect to the GWZ, the dwelling must be the only dwelling on the lot and this requirement is met.

Clause 35.04-2 requires that a lot used for a dwelling must meet the following requirements:

- Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles;
- The dwelling must be connected to a reticulated sewerage system or if not available, the waste water must be treated and retained on-site in accordance with the State Environment Protection Policy (Waters of Victoria) under the *Environment Protection Act 1970*;
- 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; and
- The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

Appropriate access can be provided to the dwelling and a reticulated electricity supply is available.

The allotment is of a size where on-site treatment of waste water is possible, and a condition of permit will include relevant Environmental Health requirements.

The setback requirement of at least 20 metres from a road and 5 metres from any other boundary has been met.

The siting and design of the proposal is considered to be responsive to the landscape and topography of the land to the extent that the dwelling will not be visually obtrusive in the landscape when viewed off-site. The substantial front setback of the dwelling and proposed tree planting is also considered to provide a significant buffer to any views from Wonderland Avenue.

In summary, the proposed dwelling is designed to ensure that it integrates appropriately with the surrounding landscape.

Environmental Significance Overlay 4

The ESO4 is considered to be the only relevant Overlay in respect to this application, since development falls outside of the parts of the land affected by ESO1 and ESO28.

In respect to the ESO4, the statement of environmental significance indicates that *“This area forms part of the catchment of the Warringine Creek, and other streams and waterways discharging to Westernport Bay. It is also an area of strategic landscape importance, with an open undulating terrain that defines part of the rural edge to the townships of Somerville, Tyabb, Hastings, Bittern, Crib Point and Balnarring.”*

This site is not in the public view in a major way and does not impact on any landscapes that have strategic importance. Significant tree planting is proposed as part of this application and a Landscape Plan will form a condition of any permit granted requiring additional screening of the built form when viewed from surrounding properties.

CONSIDERATION AND ASSESSMENT (CONT'D)

Consistency with the Interim Policy in Relation to Rural Dwellings

Council has recently formulated an Interim Policy in relation to Rural Dwellings including bed and breakfast accommodation. It is appropriate to provide an assessment of the proposal against the provisions of this Interim Policy. Key assessment criteria of the Policy for this planning application are considered to be:

Siting	
Policy Element	Comment
All built form must be contained within a building envelope of no more than 2,000 square metres or 10% of site area whichever is lesser.	The dwelling and effluent disposal field can be contained within an approximately 1,575 square metre building envelope, and this has been shown on the Plans submitted with the application.
Siting of the dwelling to minimise the impact on existing and future agricultural use of the land.	The siting of the proposed dwelling and garage will not cause the fragmentation of agricultural land given the low percentage of land utilised by the dwelling and close proximity to each other.
Siting of the dwelling to avoid removal of vegetation.	The land is not affected by the Bushfire Management Overlay, and requires no vegetation removal to facilitate the dwelling as proposed.
Siting of the dwelling to protect existing native vegetation.	The dwelling does not impact on existing native vegetation and a Landscape Plan has been submitted with the application to demonstrate planting in the vicinity of the dwelling and eastern side boundary.
Siting of the dwelling to provide minimal landscape impact, avoiding ridgelines.	The dwelling is not sited on a ridgeline and will be well setback from Wonderland Avenue. The siting will not detrimentally impact view lines of nearby properties.
Siting of the dwelling to maximise the distance from any nearby existing use that has a risk of emitting offensive off site noise, light or air emissions.	As noted in this report, the dwelling falls outside the buffer areas as noted in the Broiler Code. Further, the Section 173 Agreement specifically acknowledges broiler farms, at 173 Coolart Road and 748 Stumpy Gully Road, Tuerong.
Design	
Buildings and works sited and designed to complement each other and protect the landscape character of the area.	The dwelling and garage generally present as a single built form given their close proximity to each other – no additional detached residential buildings have been proposed.
All habitable rooms (including those included in a habitable outbuilding or used for provision of bed and breakfast accommodation) contained in a single building, or connected by a covered walkway less than 10 metres in length.	All habitable rooms are contained within a single building.
Bed and breakfast accommodation designed with a substantial functional reliance on other parts of the dwelling and appear secondary in nature, such as by having a floor area of 60 square metres or less (or no more than 30% of the floor area of the dwelling, whichever is the lesser).	No bed and breakfast accommodation proposed.

CONSIDERATION AND ASSESSMENT (CONT'D)

Consistency with the Interim Policy in Relation to Rural Dwellings (Cont'd)

Design (Cont'd)	
Policy Element	Comment
An application should be accompanied by a Landscaping Plan.	A Landscape Plan has been submitted with the application and a condition of the permit required the planting to be undertaken within 6 months of the occupation of the development.
Living in the Mornington Peninsula Green Wedge	
Section 173 Agreement.	Condition 12 includes a Section 173 Agreement as required under policy. It is noted that the Applicant has also agreed to this.

CONCLUSION

The proposal has been assessed against the applicable provisions of the Planning Scheme and it is considered appropriate to approve this application for the following reasons:

- The proposal satisfactorily meets the requirements of the Planning Scheme as outlined in this report including the State and Local Planning Policies and the requirements of the Zone and Overlay;
- The location, design and type of building proposed are consistent with properties located in the surrounding area and further afield;
- The proposal is consistent with previous approvals for dwellings on small rural lots located within the Mornington Peninsula;
- The proposal will not compromise the operation of the broiler farm on the adjoining land or significantly impact on the agricultural potential of the site and adjoining allotments; and
- Sufficient site area is clear of buildings, and has the potential to be used for future rural activities.

RECOMMENDATION

That Council, being the Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all matters in respect of Planning Application P09/2128 for the use and development of a single storey dwelling and associated works, hereby resolves that Planning Application P12/0092 for the use and development of the land for a dwelling and a wholesale plant nursery and associated buildings and works at 2 Wonderland Avenue, Tuerong be supported and that a Planning Permit be issued subject to the following conditions:

RECOMMENDATION (CONT'D)

Amended Plans

- 1. Prior to the commencement of any use and development approved by this permit, Plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Plans will be endorsed and will then form part of the permit. The Plans must be drawn to scale with dimensions and three copies must be provided. The Plans must include:**
 - A. A schedule of external materials and colours for all buildings on the land, which are to be in muted and non-reflective tones.**
 - B. The finished floor level of the proposed dwelling to be at least 300 millimetres above the designated flood level of 62.50 metres AHD.**
 - C. The Site Plan to show the location of all built form, including setbacks from relevant lot boundaries.**
 - D. The Site Plan to show a dimensional domestic building envelope, generally in accordance with the notional building envelope as shown on the Landscape Plan.**
 - E. Elevations of the proposed shed and igloos to be provided.**
 - F. A Water Management Plan to include the following:**
 - i. Provision for water supply of at least 10,000 litres stored for fire fighting purposes, with such supply annotated on the Plans to have Country Fire Authority approved connections and fittings; and**
 - ii. The proposed source of supply and expected utilisation of water on the property.**

Layout Not To Be Altered Without Consent

- 2. The layout and use of the land, the size and type of the proposed buildings and works, including the materials of construction, on the endorsed Plan must not be altered or modified without the consent of the Responsible Authority.**

Materials and Colours

- 3. The materials and colour of the exterior finish of the buildings must be in accordance with the endorsed Plans unless with the further permission of the Responsible Authority.**

Wastewater Disposal

- 4. All sewerage and sullage waste from the proposed development must be discharged into an onsite wastewater septic tank system that is approved by the Environment Protection Unit, retains all effluent within the boundaries of the subject land, is located to the satisfaction of the Responsible Authority and meets the required setback distances.**

RECOMMENDATION (CONT'D)

Wastewater Disposal (Cont'd)

5. No polluted waters, or any other liquid wastes shall be discharged into the stormwater system, or any other watercourse.

Note: Works on the proposed dwelling must not commence until a permit to install septic tank wastewater system is issued by Council's Environmental Health Team.

Stormwater

6. All stormwater discharging from the development/use on the land must be contained within the boundaries of the land to the satisfaction of the Responsible Authority.

Hours of Operation

7. Unless with the further written consent of the Responsible Authority, deliveries to/from and other vehicle movements associated with the native wholesale plant nursery must only occur between 7:00 a.m. and 7:00 p.m. on any day.
8. The amenity of the area must not be detrimentally affected by the use or development, 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, waste water or other waste products.
 - D. Presence of vermin.

Revegetation and Stabilisation

9. All disturbed surfaces on the land resulting from the development must be revegetated and stabilised to the satisfaction of the Responsible Authority.

Implementation of the Farm Management Plan

10. Prior to the initial occupation of the dwelling (or other such time as approved in writing by the Responsible Authority), the land owner/occupier must demonstrate commencement of the Farm Management Plan as approved (or as varied by the written consent of the Responsible Authority) to the satisfaction of the Responsible Authority.

RECOMMENDATION (CONT'D)

Implementation of the Landscaping Plan

11. **Within six months of the occupation of the dwelling hereby approved (or other such time as approved in writing by the Responsible Authority), planting as shown on the endorsed Landscape Plan must be completed and then maintained in a healthy condition, to the satisfaction of the Responsible Authority. Any dead or diseased trees or shrubs must be replaced as soon as possible. The area set aside for landscaping must be used for no other purpose.**

Section 173 Agreement

12. **Prior to the occupation of the dwelling and the commencement of the dwelling use, the owner must enter into an Agreement with the Responsible Authority pursuant to Section 173 of the *Planning and Environment Act 1987*. The Agreement must be prepared and registered on the title to the land to the satisfaction of the Responsible Authority. The Agreement must require the owner or occupier to undertake the following to the satisfaction of the Responsible Authority:**
 - A. **Implement and maintain in perpetuity, the endorsed Farm Management Plan, or other approved Plan to the satisfaction of the Responsible Authority.**
 - B. **Construct fencing or freestanding walls that have a rural character and allow for the free passage of native indigenous animals.**
 - C. **Not plant any new hedges to ensure scenic views across the site are not obscured.**
 - D. **Not construct any bund wall or similar earthworks or artificial barriers that obstruct view lines.**
 - E. **The permit holder indicates that they are fully aware of the potential emissions (visual, noise and odour) associated with agricultural activities in the locality including the broiler farms located at 173 Coolart Road and 748 Stumpy Gully Road, Tuerong and proceed with the use and development of their dwelling in full knowledge that one of the objectives of the Green Wedge is to accommodate productive agricultural use and that this activity should be expected and that they are aware of their obligations in relation to proper land management.**
 - F. **All dogs and cats must be responsibly managed to prevent attacks on livestock and native fauna.**
 - G. **All costs associated with the drafting and registration of this Agreement on title, are to be borne by the permit holder.**
 - H. **The permit holder shall responsibly manage farming practices including spray drift so as not to impact on neighbouring properties farming practices.**
 - I. **This Agreement must be registered by the Applicant on title, prior to the commencement of the use of the dwelling, pursuant to Section 181 of the *Planning and Environment Act 1987*.**

RECOMMENDATION (CONT'D)

Expiry of the Permit

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

- A. The development is not completed within two years of the date of this permit;
or**
- B. The use is not commenced within two and a half years of the date of this
permit.**

The Responsible Authority may extend the above periods if a request is made in writing before the permit expires or within the following three months.