

Officer Report

Application Details:

Application is for:	Use and Development for a Dwelling
Applicant's/Owner's Name:	Tomkinson
Date Received:	15 June 2022
Statutory Days:	More than 60 days due to being a refusal and prior to delegations would have been going to Council. The delegations, having been revised at 20 September Council Meeting would mean this could be issued by delegate. However this application has been called in by a Councillor and will be presented at the October Council Meeting.
Application Number:	P2022-071
Planner: Name, title & department	Gillian Williamson Principal Planner Planning and Investment Department
Land/Address:	V11456 F114 CA 2A SEC B Parish of Wondoomarook Merton-Strathbogie Road, Strathbogie VIC 3666
Zoning:	Farming Zone
Overlays:	Erosion Management Overlay Heritage Overlay Schedule 4 (VHR – HO961)
Is a CHMP required?	No There is no ACHS over the site
Is it within an Open Potable Catchment Area?	Yes Referral to GMW required
Under what clause(s) is a permit required? (include description)	<p>Permit Triggers</p> <p><u>Farming Zone</u> Pursuant to Clause 35.07-1 a permit is required to use the land for a dwelling. Pursuant to Clause 35.07-4 a permit is required to construct and carry out works associated with a Section 2 use.</p> <p><u>Erosion Management Overlay</u> Pursuant to Clause 44.01-2 a permit is required to construct a building and carry out works. A proposal is exempted from notice requirements and review rights. No Geotech will be provided as advised by the applicant.</p> <p>Other Considerations</p> <p><u>Heritage Overlay Schedule 4</u> There is a small area of HO on the site that pertains to Strathbogie Aerial Navaid. A permit is not triggered as</p>

	the proposed buildings and works are not within it, however it still needs to be considered given it is on the land. HO4 pertains to Strathbogie Aerial Navaid and this is on the Victorian Heritage Register (H961). This was constructed by the community in 1936 to assist pilots flying the Melbourne to Sydney route.
Restrictive covenants on the title?	No
Current use and development:	A building on site not a dwelling
Adjacent to the Principal Road Network	R2 Council Road Constructed
Status of Road on Road Register	R2 constructed
Adjacent to Public Land	No

Application Checklist:

Application form	<input checked="" type="checkbox"/>	Title enclosed	<input type="checkbox"/>	Fee paid	<input type="checkbox"/>
Site Plan	<input type="checkbox"/>	Plans of Proposal	<input type="checkbox"/>	Planning Report	<input type="checkbox"/>
Supporting Information	<input type="checkbox"/>	Effluent Disposal	<input type="checkbox"/>	Other	<input type="checkbox"/>

Disclosure of Conflicts of Interest in relation to advice provided in this report

After reading the definitions of a general or material conflict of interest as defined by the *Local Government Act 2020*, do you have a conflict of interest?

Yes ☐

(if YES, please complete a Conflict of Interest and Declaration Making Declaration form)

No ☒

Recommendation

That Council –

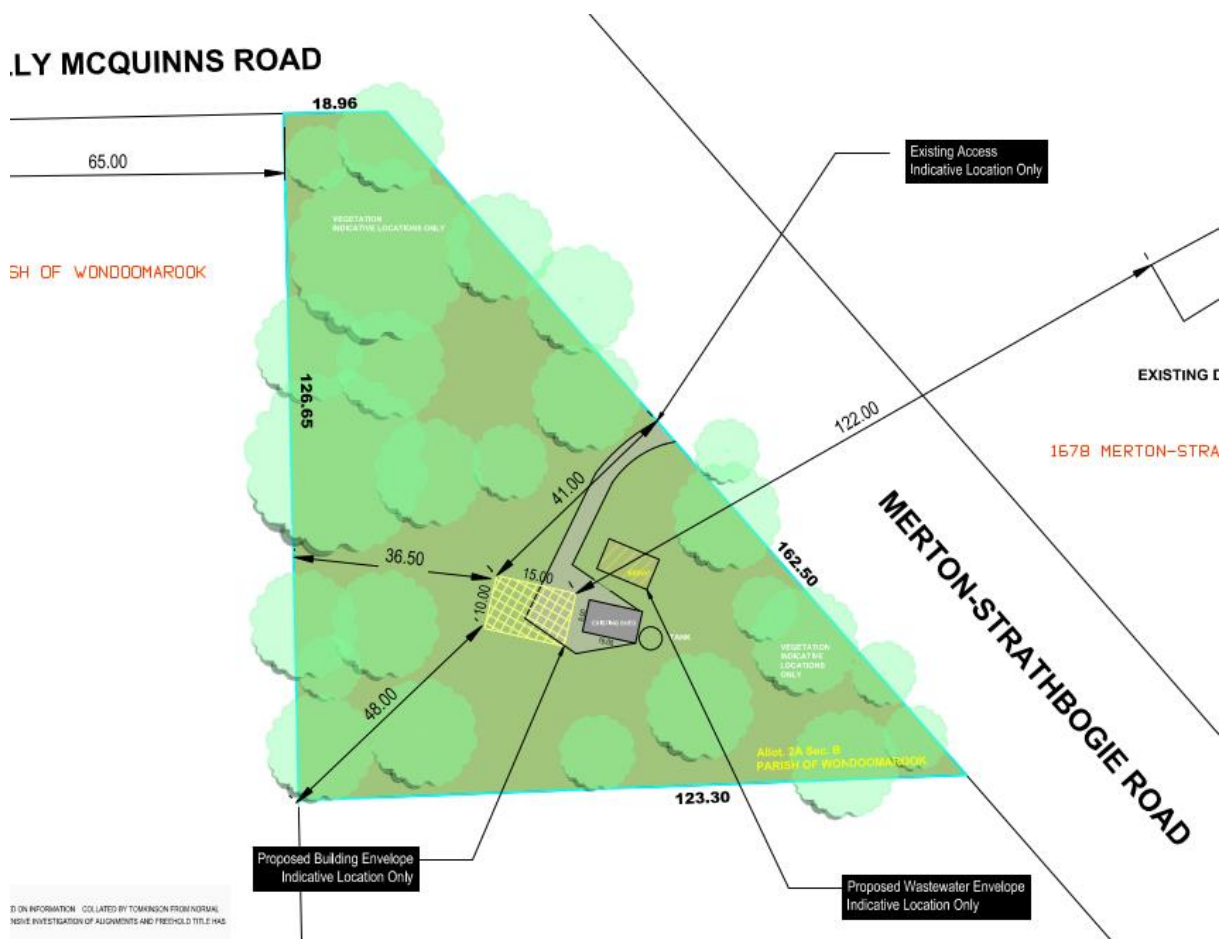
- having caused notice of Planning Application No. P2022-071 to be given under Section 52 of the *Planning and Environment Act 1987* and or the planning scheme;
- and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to issue a **Notice of Decision to Refuse to Grant a Permit** under the provisions of the Strathbogie Planning Scheme in respect of the land known as (V11456 F114 CA 2A SEC B Parish of Wondoomarook) **Crown Allotment CA2A Section B Merton-Strathbogie Road, Strathbogie VIC 3666**, for the **Use and Development for a Dwelling** for the following GROUNDS –

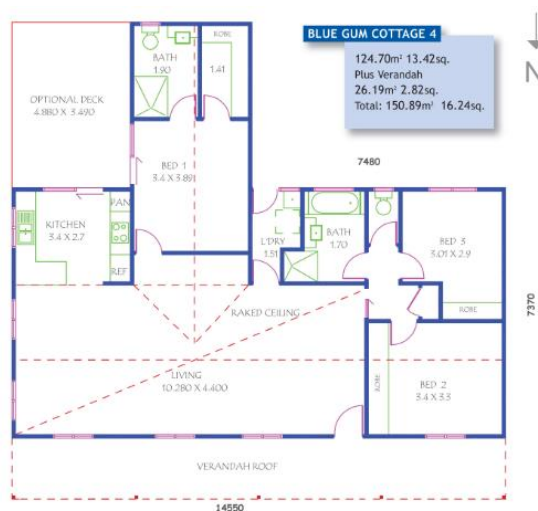
1. The proposal does not support the Purpose of the Farming Zone and does not weight in favour of support when assessed against the appropriate decision guidelines of the Farming Zone -
 - The proposal for a dwelling has no connection to farming.
 - The proposal has the potential to limit operation and expansion of adjoining and nearby agricultural uses.

- The proposal will lead to proliferation of dwellings in the area which are not connected to farming, with potential for adverse impacts.
2. The proposal, when assessed against the policy throughout the Strathbogie Planning Scheme, is not weighted in favour of support. The relevant policy that provides direction are –
- a. Clause 02.03-4 – given the proximity to Melbourne and major regional centres, and the scenic nature of the area, there is a continual demand for rural lifestyle development not associated with farming. This leads to land use conflicts between farming and rural industries.
 - b. Clause 13 – the risk of the development for erosion and landslide has not been assessed and therefore is an unknown. The proposal cannot be supported without assessment of the risk.
 - c. Clause 14 – the proposal does not protect the state’s agricultural base as it an incompatible use with farming, in this location.

Proposal

The proposal is to use and develop the land for a dwelling on a site that measures approximately 0.8 hectares in an area that has a minimum lot size of 40 hectares for the as of right use for a dwelling. There is no associated farming activity proposed and this is considered a rural lifestyle development.

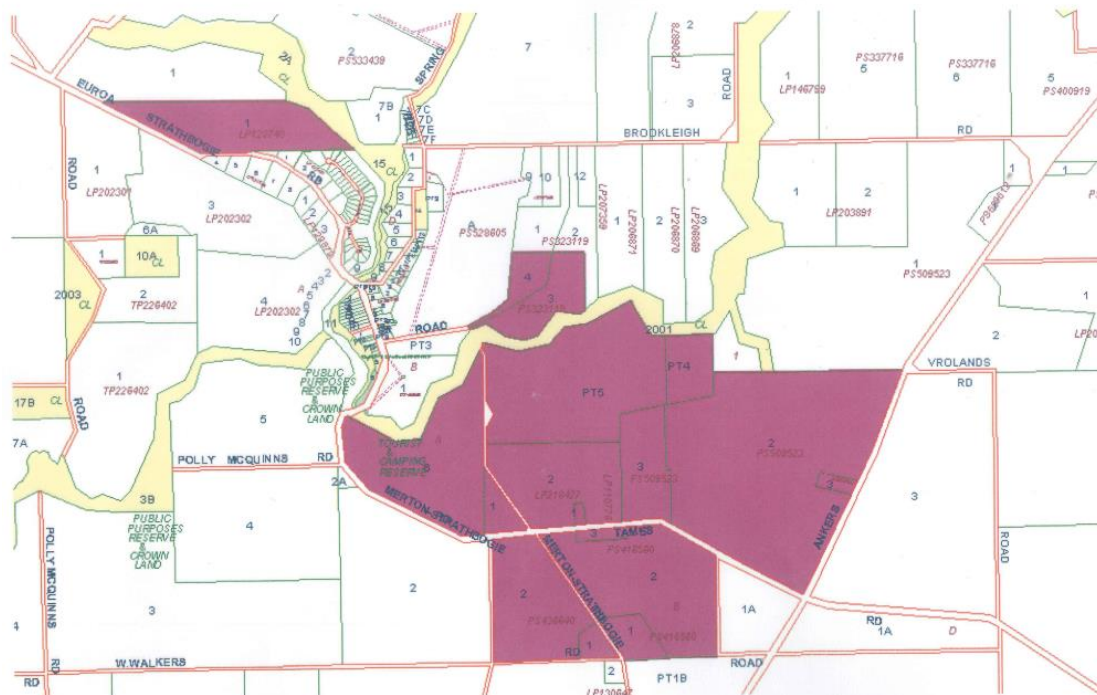




Subject site & locality

<p>Inspection date/s: undertaken a few times and with a colleague</p>	<p>Officer: G Williamson</p>	<p>Area of land: 8000 sqm located opposite an area identified in the RRS2004 for managed rural residential development and investigation for rezoning. However these are still paddocks on the outskirts of the settlement and surrounded by farms. Strategically this identified area is unlikely to be further investigated after consult with strategic planning. Although until such time as review of the RRS2004 is undertaken that is not a guarantee.</p>
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STRATHBOGIE



Above is an inset of the specifically identified lots for further investigation in the Rural Residential Strategy 2004. The subject site is not included in the pink shaded areas, rather it is opposite. This is Area 3 and is identified as being used for rural living purposes in some of the identified area. The strategic recommendations are to undertake a more detailed evaluation of specific planning and technical matters to identify rezoning potential for Rural Residential and Low Density. In consultation with Strategic Planning, it has been advised that this area may not be included in investigation for rural residential zoning as this is not the preferred direction for rural residential growth.

The subject site is located to the south west of Strathbogie township. The site measures approximately 8000 square metres in area or 0.8 hectares. It is located within a 40ha minimum area for the as of right use for a dwelling and is located adjacent to large farming businesses.

The site previously housed a school from 1879 to 1968. There is a building on site that looks like a shed as shown below in the insert -

Permit/Site History

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

There is nil planning permit history associated with the subject site on Council's current systems.

Further Information

Further Information Required: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
What was requested?	
Geotechnical Report	
FI Requested: 21 June 2022	FI Received: Geotechnical Report not provided as required by the FI. Due to proposed refusal the application was progress through advertising/referrals. This does mean that the erosion landslide risk has not been assessed.

Advertising/Public Notification

Is notification/advertisement required under section 52? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Exempt					
Please provide comment					
Advertised by:	<input checked="" type="checkbox"/> Council	<input type="checkbox"/> Applicant			
Site plan selected:	<input checked="" type="checkbox"/> Plans for advertising	790369 790370 790366			
	<input checked="" type="checkbox"/> Advertising list	797471			
	<input checked="" type="checkbox"/> Supporting docs for referrals	LCA 796827 Site plan 790369 Elevations 790370 Planning report 790366			
Add Instructions on Spear	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No			
Letters: Yes	Signs: No	Paper: No	Website: Yes	Sent: 02/08/2022	Stat Dec Rec: N/A
Objections received?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Number:	

Consultation

No consultation has been required to be undertaken.

Referrals

External Referrals/Notices required by the Planning Scheme:

REFERRALS					
Add instructions on SPEAR:				<input type="checkbox"/> Yes	<input type="checkbox"/> No
Referrals Authority	Type of Referral	Referral Clause and Description	Additional Instructions	Date sent	Date received including Advice/Response/Condition
GMW	Section 55 - Determining	Clause 66.02-5 - Special Waer Supply Catchment	Dwelling in SWCA	Doc 799498 Sent 2/8/22	08/08/2022 No objections, subject to conditions Doc ID 800834

HEALTH	Internal		LCA	02/08/2022 Doc Id 789539 sent via workflow	No objections subject to standard conditions. Doc ID 806408
ENGINEER	Internal		Drainage/Stormwater Access	02/08/2022 Doc Id 789539 sent via workflow	No objections subject to standard condition. Doc ID 805932
OTHER – Please specify					

Assessment

Zones and Overlays

Farming Zone

Purpose:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

Pursuant to Clause 35.07-1 a permit is required to use the land for a dwelling on a lot smaller than the area specified in a schedule or 40-hectares. In this area the minimum lot size is 40-hectares.

Pursuant to Clause 35.07-4 a permit is required to construct a building and carry out works for a use associated with a Section 2 use and within setbacks (20m from any road, 100m from another dwelling not in the same ownership).

The use of the land 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.*
- *Each dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available all wastewater from each dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.*
- *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.*
- *The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.*

An application to use a lot for a dwelling must be accompanied by a written statement which explains how the proposed dwelling responds to the decision guidelines for dwellings in the zone.

Appropriate decision guidelines are considered to be –

- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*
- *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.*
- *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 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.*

Officer Response:

The subject site is located outside the existing Strathbogie settlement (which is determined by the extent of the Township Zone) and within Farming Zone to the south.

This small lot is surrounded directly by three large farming enterprises – all over the 40 hectare minimum and all carrying out grazing and animal production. The farms range in size from 61 hectares to 237 hectares. It is known that where lifestyle dwellings are set amongst farming activities, there is the potential for conflict between the two uses, with the lifestyle lots introducing adverse effects on the farms by way of complaints about the farming activities (due to noise, dust, chemical use, scare guns, firearms use, non urban working hours etc regardless of an agreements on title about not complaining), expectations of road upgrades, increase in farming land prices due to lifestyle lots being allowed, introduction and exacerbation of pests and impact on biosecurity and the inability to expand and / or change the farming activities.

The proposed dwelling will not support or enhance agricultural production, however it is acknowledged that this parcel has already been permanently removed from agricultural production, but it does not mean it should be supported, particularly given that it is outside the areas identified in the Rural Residential Strategy 2004. Allowing a dwelling on this small lot will be proliferation of dwellings not associated with agriculture. If supported, given the proximity to an area identified in the RRS2004 for future investigation for rural residential zoning, this will open the flood gates potentially for further demand and pressure for small lots to be sold off. This may be in conflict with what future investigations for rural lifestyle areas conclude, which at this time are thought may be more to the north of the waterway and not to include this southern area.

Erosion Management Overlay

Pursuant to Clause 44.01-2 a permit is required to construct a building and carry out works.

A proposal is exempted from notice requirements and review rights.

No Geotech will be provided as advised by the applicant. The risk is not able to be assessed. It is considered given the application is recommended for refusal that requiring this would be an added cost unfairly imposed upon the owner at this time.

Heritage Overlay Schedule 4

The HO does not trigger the need for a planning permit given there is no development proposed in the area. This identifies a Navaid constructed by the community in 1936 to aid the flight path between Sydney and Melbourne. The Navaid is listed on the Victorian Heritage Register.

Municipal Planning Strategy and Planning Policy Framework

Clause 02.01 sets a context which informs that the majority of the Shire is used for a variety of agricultural enterprises with a rural economic base of wool, grain, cattle production, vineyards and horticultural enterprises.

Clause 02.02 sets a Vision that directs planning to facilitate the provision of infrastructure and sustainable economic and community development.

Clause 02.03 identifies Strathbogie as growing as a food and wine region with many natural features. It directs planning to encourage development to be responsive to potential environmental risks.

Clause 02.03-4 informs that given the Shire's proximity to Melbourne and regional centres and the picturesque nature of the area, there are often land use conflicts between lifestyle properties and rural industries. Small allotments are prominent and there continues to be demand for development of dwellings not consistent with the primary purpose of the Farming Zone. Council's strategic direction for agriculture are to retain areas of high quality land for farming, encourage consolidation of small lots, encourage value adding rural industries and protect, maintain and grow intensive agriculture.

Clause 13.04-2S Erosion and Landslip – the objective is to protect areas prone to erosion, landslip or other land degradation processes.

Clause 14 – Natural Resource Management – Planning should ensure agricultural land is managed sustainably, while acknowledging the economic importance of agricultural production.

Clause 14.01-1S – Protection of Agricultural Land – The objective is to protect the state's agricultural base by preserving productive farmland.

Planning is directed to avoid permanent removal, protect productive farmland, prevent inappropriately dispersed urban activities in rural areas and protect agriculture and primary production from incompatible uses. Planning is also directed to limit new housing in rural areas by directing housing growth into existing settlements and discouraging small, isolated lots with dwellings. Planning is directed to consider the impacts of removing productive land, the compatibility of the rural lifestyle lot on the existing surrounding farming uses and to potential impacts on the surrounding farming land from the spread of plant and animal pests.

Clause 14.01-1L – This policy applies to all land within the Farming Zone and the objective is to discourage proliferation of dwellings on lots less than the minimum lot size as specified.

Officer Response:

This proposal is not considered to be in an area suitable or identified for rural lifestyle development given it is in the Farming Zone, surrounded by large farming enterprises, nor is it identified for controlled rural residential development within the Rural Residential Strategy 2004.

Council recognises the pressure to develop farming land for rural residential lifestyle and has made available, and continues to make available, land for rural lifestyles in appropriate locations, away from farming areas, but also allows for managed development on farming land if identified in the Rural Residential Strategy 2004.

This proposal introduces a new rural lifestyle dwelling that has the potential to create conflict between the rural lifestyle use and the existing, surrounding farming activities. This

potentially leads to complaints and unrealistic expectations, all of which can cost council money in energy and resources and can cause stress to the existing farming community. These types of dwellings can create urban encroachment into active farming areas. Proposals such as this also give rise to potential for impacting the right to farm on Farming Zoned land.

The subject site is unlikely to be incorporated into a larger farm or ever be used for farming practices to any practical scale, however, given matters such as –

- a dwelling in isolation not associated with agriculture;
- site not identified within the Rural Residential Strategy 2004;
- incompatible uses located together;
- potential for introduction of plant and animal pests (dogs, cats, weeds);
- accessibility and bushfire risk;
- the potential for pressure on surrounding farms to sell off pieces due to the price rise from demand;
- and therefore incremental loss of farming land, particularly in this area identified as being of strategic significance; and
- eventual possible loss of productive farming to the economy;

the proposal is clearly weighted as not able to be supported.

This site is also in an area identified as being of risk to erosion and landslide and that has not been assessed so any risk is unknown.

Relevant Particular Provisions

Nil

The decision guidelines of Clause 65

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- *The matters set out in section 60 of the Act.*
- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The proximity of the land to any public land.*
- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*

Officer's Response

The proposal is not weighted in favour of support when assessed against the planning scheme policy. The proposal does not support the purpose of the zone or accord with appropriate decision guidelines. The EMO exposes a risk to human life and development that has not been satisfactorily assessed. Therefore the proposal is also considered to be disorderly planning given it does not weight in favour of support.

Other relevant adopted State policies/strategies – (e.g. Melbourne 2030.)

Hume Regional Growth Plan 2014 – The Executive Summary identifies agriculture as important industry sectors and goes on to explain that the Hume Region relies heavily on

agriculture. To protect farming the Plan direct that rural residential uses will be provided for in defined areas close to existing settlements to ensure this form of development does not impact adversely on productive agriculture or other broad scale rural uses.

Relevant incorporated, reference or adopted documents

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

Relevant Planning Scheme amendments

There are no relevant planning scheme amendments.

Risk Management

The author of this report considers that there are no significant Risk Management factors relating to the report and recommendation.

Strategic Links – policy implications and relevance to Council Plan

The author of this report considers that the report is consistent with Council Policies, key strategic documents and the Council Plan.

Summary of Key Issues and Assessment

- Protection of productive farming land and farming activities.
- Impact of rural residential development not associated with farming, in farming areas.

Officer Response:

The proposal is for a dwelling on a small lot in the Farming Zone. The lot is not identified in the Rural Residential Strategy 2004 for managed rural lifestyle development. The lot is located outside the settlement of Strathbogie and surrounded by large farming lots that undertake grazing and cropping activities. There is no support in the planning scheme for this proposal given it will be lend itself to proliferation of dwellings not associated with farming activities, potentially set up non farming expectations with impacts on the dwelling as well as the farms surrounding, and also put further demand on surrounding farms to make available small parcels for rural lifestyle development, particularly given the scenic area and the prices associated with rural lifestyle lots.

The assessment of the risk of erosion and landslide has not been able to be assessed and therefore the risk is unknown at this time.

Conclusion

After due assessment of all the relevant factors, it is considered no planning permit should be granted.

Decision:

Delegate Report - Yes		Council Report Yes	
Determination:	Delegate Permit	Determination Date:	October 2022

Endorsed Plans:

Date:	Plan Numbers:

Declaration:

In making this decision as a delegated Officer, I declare that I have had regard to the decision-making requirements of the Strathbogie Shire Council's Governance Rules 2020 outlined by Rule 6 and have:

Made a fair, balanced, ethical and impartial decision - Sub Rule 6(c)(i)	<input checked="" type="checkbox"/>
Made a decision based on merits, free from favouritism or self-interest and without regard to irrelevant or unauthorised considerations- Sub Rule 6 (c)(ii)	<input checked="" type="checkbox"/>
Applied the principles of natural justice to my decision, ensuring any person whose rights will be directly affected by the decision has been entitled to communicate their views and have their interests considered - Sub Rule 6(d)	N/A
Identified the person or persons whose rights will be directly affected Sub Rule 6(e)(i)	<input checked="" type="checkbox"/>
Given notice of the decision Council must make under Sub Rule G(e)(i)	N/A
Ensured that such person(s) have had an opportunity to communicate their views and have their interests considered before I made the decision - Sub Rule 6(e)(i)	N/A
Included information about how I've met these Sub Rules in my delegate report- Sub Rule 6(e)(iv)	<input checked="" type="checkbox"/>

Attachments

Plans for endorsement

Assessing Officer:	G Williamson Principal Planner	Reviewing Officer:	Braydon Aitken Manager
Signature:		Signature:	
Date:	24 August 2022	Date:	20 September 2022

Copy of permit to:

Nil

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