

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2010/2020
PERMIT APPLICATION NO.262/2020/02P

CATCHWORDS

APPLICANTS	Adrian Mugavin and Justyn Echaust & Others
RESPONSIBLE AUTHORITY	Nillumbik Shire Council
RESPONDENT	Happy L Group Pty Ltd
SUBJECT LAND	152 O'Deas Road STRATHEWEN Vic 3099
HEARING TYPE	Hearing
DATE OF HEARING	11 August 2021
DATE OF ORDER	4 November 2021
CITATION	Mugavin v Nillumbik SC [2021] VCAT 1308

ORDER

Amend permit application

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Mont Eltham Design
 - Drawing numbers: 1 to 6
 - Dated: 28 June 2021

Permit granted

- 2 In application P2010/2020 the decision of the responsible authority is varied.
- 3 In planning permit application 262/2020/02P a permit is granted and directed to be issued for the land at 152 O'Deas Road Strathewen VIC 3099 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Use of the land for horticulture and buildings and works to construct six greenhouses and a shed.



Joel Templar
Member

APPEARANCES¹

For Adrian Mugavin and
Justyn Echaust & Others

Mr Adrian Mugavin, in person and Ms Elena Tozer
and Mr Cameron Tozer both in person.

For Nillumbik Shire Council

Karen Macpherson, town planner of Nillumbik Shire
Council

For Happy L Group Pty Ltd

Mr Nick Crawford, lawyer of TP Legal. He called the
following witnesses:

- Mr John Galienne, agronomist of John Galienne and Associates.
- Mr Leigh Furness, traffic engineer of Traffix Group.
- Mr Warwick Bishop, engineer of Water Technology.

¹ All appearances were via an online platform.



INFORMATION

Description of proposal	Use of the land for horticulture and buildings and works to construct six (6) greenhouses and a shed.
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Nillumbik Planning Scheme
Zone and overlays	Rural Conservation Zone Schedules 4 and 5 Bushfire Management Overlay Environmental Significance Overlay Schedule 1
Permit requirements	Clause 35.06-1 – to use land for horticulture. Clause 35.06-5 – to construct a building or construct or carry out works. Clause 35.06-5 – to construct a building which is within 100 metres from a waterway. Clause 42.01-2 – to construct a building or construct or carry out works.
Land description	The subject site is an irregular shape, is approximately 100 hectares in area and is located to the east and north of O’Deas Road in Strathewen. The site has varying slope and two waterways running through it and is adjacent to a more substantial waterway known as Arthurs Creek abutting the western boundary. The western portion of the site has gentler slope.
Tribunal inspection	1 November 2021

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 This proceeding concerns a review by the applicant of the decision of the council to grant a permit for the use and development of the land for horticulture.
- 2 The council received a planning permit application in June 2020 and as part of its assessment process, notified surrounding land owners and occupiers. As a result, 16 objections were received. The council determined to grant a planning permit and some of those objectors lodged an appeal against that decision of the council.
- 3 The key issues raised by the objectors relate to:
 - The visual impact of the proposed greenhouses on the rural character of the area;
 - Impacts from the operation of the use including traffic; and
 - Environmental impacts.
- 4 All parties made oral and written submissions and the respondent (permit applicant) also relied on expert evidence from three witnesses.
- 5 I have decided to vary the council's decision and grant a permit subject to conditions. My reasons are set out below.

WHAT IS PROPOSED?

- 6 The proposal has a number of components but which are mostly associated with each other.
- 7 The permit application seeks the construction of six greenhouses to enable the use of those for the purpose of horticulture (growing of vegetables). A new building (shed) is also proposed as part of the horticultural operation and an existing shed is to be internally reconfigured to provide amenities for farm works, with an associated effluent disposal field.
- 8 Five of the six greenhouses measure 64.1 metres x 48.1 metres while the sixth measures 64.1 metres x 32.1 metres. All are 5.4 metres in height, although due to some cut and fill, the overall heights from natural ground level vary up to 7.624 metres. The greenhouses are proposed to be constructed from steel frame with clear polycarbonate cladding. Water tanks are also proposed along the northern side of the greenhouses.
- 9 A new shed is also proposed and will measure 30.02 metres x 21.34 metres and a maximum height of 6.555 metres. The site for the proposed shed will

² The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



also include some excavation (up to 1.5 metres) and fill (up to 1.146 metres).

- 10 Four areas of proposed riparian zone conservation planting are also proposed around the existing waterways located on the review site. Three of the four zones are upstream/upslope of the proposed greenhouses, whilst one is directly adjacent to the area of the greenhouses, on the western side. The permit applicant confirmed that the three zones upstream of the greenhouse site are not as a direct result of the proposal, but are an 'additional benefit'.
- 11 The use of the land for horticultural operations is for the proposed growing of vegetables. The varieties would differ according to market demands and seasonal influences. The operation is not proposed to offer sales direct from the site, rather, harvested produce will be transported off-site.
- 12 It is proposed to grow the produce in beds and pots/tubs within the greenhouses. Water will be obtained from the site including water tanks, dams and water recycled from the operation. Mr Galienne's evidence was that little or no herbicides and pesticides would need to be used given the containment of the operation within greenhouses. It was also his evidence that much of the growing media will need to be imported and will have already been treated to reduce the occurrence of weeds and pests. It was also his evidence that there will also need to be turnover, or replenishment of growing media over time, depending on the crops grown.
- 13 The number of staff to enable the horticultural operation will include 4 full time equivalent as well as casual staff that will vary between two at some times of the year and up to 10 at peak times.
- 14 Mr Furness' evidence was that he was instructed that deliveries will require up to two delivery trucks per day, plus up to 3 other delivery vehicles per week, equating to up to 17 delivery vehicles per week visiting the site at peak times. He also stated that:

Vehicle access will continue to be from O'Deas Road, using the existing site access point and internal driveway. A network of paths will be created to service the greenhouses.³

PHYSICAL CONTEXT

- 15 The review site sits within the locality of Strathewan, which is approximately 41 kilometres north-east of the Melbourne CBD and 23 kilometres north-east of the township of Eltham.
- 16 It is irregular in shape, approximately 100 hectares in area and contains a dwelling with outbuildings. The vast majority of the site is cleared of trees and utilised for grazing of animals. However, there are also some large tracts of the site that are covered in dense vegetation, along the northern boundary and also along a number of small waterways that run through the

³ Page 6 Mr Furness' evidence statement, dated 26 July 2021.



site. The waterways generally run from the east and north-east of the site to the western edge, and are tributaries of Arthurs Creek which runs along the western boundary of the site.

- 17 There are also three dams on the site of varying sizes. Two of these are larger and located in the eastern part of the site. The third is smaller and in the western part of the site, close to the proposed location of the greenhouses.



Aerial photograph of the subject site outline in red.⁴

- 18 The northern and north-eastern parts of the site are moderately sloped, with the southern and western parts more gently undulating.
- 19 The site was previously used as an orchard and the mounded rows are still evident on the site although the trees have been removed.
- 20 The sole vehicular access point to the site is at the western boundary where the site abuts O'Deas Road. This provides the main access through the site and runs in a north-east, south-west alignment.

⁴ Source: Mr Bishops evidence statement, page 11.



Angled aerial view of part of the site looking north-east. Site for the proposed greenhouses is partly shown in the bottom right-hand corner.⁵

- 21 Abutting the southern boundary of the review site is a dwelling and outbuilding which are located approximately 17 metres and 4 metres respectively, from the common boundary with the review site.
- 22 The northern boundary of the site abuts Beales Road, which is a gravel road and which provides access to the Kinglake area further to the east. However, this road provides limited access due to its condition.
- 23 O'Deas Road is a gravel road which provides access to the review site and has a carriageway of approximately 3 metres⁶.

PLANNING SCHEME CONTEXT

- 24 The review site is zoned Rural Conservation Zone Schedules 4 and 5. The part of the review site that is the subject of this permit application is in Schedule 5 area (RCZ5).
- 25 A permit is required under the RCZ5 to use the land for horticulture.
- 26 The proposed greenhouses are also in part of the site affected by the ESO1.
- 27 A permit is required under the RCZ5 and ESO1 for the proposed greenhouses. The proposed new shed is outside the ESO1 area and therefore does not require a planning permit under this provision.

⁵ Source: Permit Applicant's slide show tabled as part of pre-filed submissions.

⁶ According to Mr Furness, page 24 of his evidence statement.

28 The proposed buildings and works are also affected by the BMO, however, a planning permit is not triggered by the BMO.

29 The purpose of the RCZ is:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To conserve the values specified in a schedule to this zone.

To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.

To protect and enhance natural resources and the biodiversity of the area.

To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.

To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.

To conserve and enhance the cultural significance and character of open rural and scenic non-urban landscapes.

30 The Conservation Values of the RCZ5 are:

To conserve and permanently maintain the existing rural character of the area by encouraging suitable agricultural pursuits while conserving the environmental characteristics.

31 Key decision guidelines in the RCZ are:

- The capability of the land to accommodate the proposed use or development.
- How the use or development conserves the values identified for the land in a schedule.
- Whether use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.
- Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.
- The environmental capacity of the site to sustain the rural enterprise.
- The need to prepare an integrated land management plan.
- Whether the use or development will have an adverse impact on surrounding land uses.
- An assessment of the likely environmental impact on the biodiversity and in particular the flora and fauna of the area.

- The protection and enhancement of the natural environment of the area, including the retention of vegetation and faunal habitats and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge areas.
- How the use and development relates to sustainable land management and the need to prepare an integrated land management plan which addresses the protection and enhancement of native vegetation and waterways, stabilisation of soil and pest plant and animal control.
- The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.
- The need to minimise any adverse impacts of siting, design, height, bulk, and colours and materials to be used, on landscape features, major roads and vistas.
- The location and design of existing and proposed infrastructure services which minimises the visual impact on the landscape.
- The need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance.

32 The Purpose of the ESO is:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify areas where the development of land may be affected by environmental constraints.

To ensure that development is compatible with identified environmental values.

33 The basis for the ESO1 is the protection and enhancement of sites with faunal and habitat significance and to protect and enhance habitat links and has the following environmental objectives to be achieved:

- To protect and enhance sites of faunal and habitat significance identified in (Beardsell 1997) Sites of Faunal and Habitat Significance in North East Melbourne.
- To protect and enhance regional and strategic habitat links identified in (Beardsell 1997) Sites of Faunal and Habitat Significance in North East Melbourne

34 The planning policy framework (PPF) of the Nillumbik Planning Scheme seeks to achieve the following:

- Protection of significant landscapes and ensuring that development does not detract from the natural qualities of significant landscape areas.⁷

⁷ Clause 12.05-2S.



- Maintenance and enhancement of the landscape character of areas that sit outside the Urban Growth Boundary.⁸
- Development that sits below ridgelines and highly prominent locations, constructed of materials that are not reflective, screened with indigenous vegetation and in the least prominent location on a site.⁹
- Avoidance of development that potentially intensifies flooding through inappropriately located use and development.¹⁰
- Appropriately dealing with erosion or the potential for erosion¹¹ and design and locate development to reduce the impact of erosion including in the least sloping parts of a site¹².
- Locating and managing uses that have the potential for runoff to waterways to protect water quality.
- Ensure that development responds to its strategic and physical context.¹³
- Development that respects rural character and minimises visual impacts on natural features.¹⁴

35 The Municipal Planning Strategy (MPS) states the following:

- Nillumbik forms part of the metropolitan green wedge which is an area of environmental and agricultural importance to both Nillumbik and the wider metropolitan area.
- Much of Nillumbik is rural and is used for a combination of agriculture, rural living and conservation purposes.
- Nillumbik has a high landscape value and provides strategic habitat links.
- To preserve and nurture the natural environment of the Green Wedge for future and current generations.
- To develop a prosperous local economy consistent with our Green Wedge values.
- Protection of waterways from disturbance and pollution and adverse impacts.
- Minimise adverse impacts of land use changes and development on the landscape or strategic environmental values of the land.

⁸ Clause 12.05-2L. The review site is located outside the Urban Growth Boundary.

⁹ Ibid.

¹⁰ Clause 13.03-1S.

¹¹ Clause 13.04-2S.

¹² Clause 13.04-2L.

¹³ Clause 15.01-2S.

¹⁴ Clause 15.01-6S.

- Protect and enhance rural landscape character through vegetation retention and respectful siting and design of development in rural areas.
- Protect and enhance agricultural land for both its productive potential and environmental value.
- Retain existing agricultural land for soil based agricultural production.
- Promote land use in rural areas in accordance with the capability and productive potential of the land.
- Promote sustainable agricultural activities and land management practices that minimise adverse impacts on the primary production and environmental values of surrounding land and the catchment.
- Promote economic development opportunities that build on and respect the cultural and physical characteristics and rural focus of the Shire.

36 The planning scheme does not seek ideal or perfect outcomes. It seeks acceptable outcomes based on the decision guidelines at clause 65:

The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

37 In reaching a decision about whether the proposal is acceptable, the planning scheme¹⁵ also seeks that competing policy is balanced to arrive at a preferable decision. That is, the planning scheme and case law¹⁶ recognises that a proposal might not meet every single policy aspiration that is relevant to a particular proposal, but even so, the proposal may still be worthy of approval.

IS THE USE ACCEPTABLE IN THIS LOCATION?

38 Most of the issues raised by the objectors related to impacts of the proposed development, rather than any specific issues raised with having such a use operate on the site, aside from amenity impacts such as traffic.

39 Some of the issues raised by the objectors in this case go to management issues of the proposed operation, rather than the planning merits. Issues such as adequate water supply, are not matters that I find are necessary to ‘drill into’ in a matter such as this and are for the operator to manage on site.

40 However, I set out my findings below on whether I find the proposed use is an acceptable one, given it triggers a planning permit and therefore consideration of this aspect of the proposal. Matters such as the visual impact and traffic are matters I deal with in separate sections below.

¹⁵ At clause 71.02-3.

¹⁶ See *Knox City Council v Tulcany Pty Ltd [2004] VSC 375*



- 41 The RCZ5 contemplates that agricultural uses can be acceptable uses. The purpose of the zone specifically contemplates agricultural uses, provided they are in keeping with the environmental and landscape values of the area.
- 42 In my view, the strategic context for consideration of the proposed use taking into account the RCZ5 and relevant PPF and MPS policy, is that agricultural uses should be encouraged but where they do not have adverse environmental and visual impacts.
- 43 The RCZ5 is silent in respect of consideration of amenity impacts on surrounding residential properties. That is not to say that there might not be any impacts on nearby residential properties and that such impacts are not important to those residents, but that the scope of consideration by the council, and now the Tribunal, is limited in that respect. The RCZ and Schedule 5 of the RCZ have a different focus.
- 44 I also find that in areas where agricultural production is encouraged, even if such encouragement is qualified as it is in this case, such operations should be prioritised over residential amenity. That is not to say that residential amenity has no relevance, but it must be viewed through the lens of the relevant provisions and policy of the planning scheme giving preference to other considerations.
- 45 The proposed use is one that I find is an acceptable response to the relevant provisions and policy of the scheme, notwithstanding the proposed development. That is, if the proposed greenhouses were not required for the horticultural operation, I would find that the proposed use is acceptable, as relevant policy encourages uses such as this, in a location such as this. The planning scheme recognises that large agricultural parcels of land are limited in this municipality. A use such as this that requires a relatively large area is therefore suitable to the strategic planning and physical context.
- 46 The proposed greenhouses are distant enough (in the order of 180-300 metres away) from the nearest residential property such that the day-to-day operations would have limited, if any, impact upon that residential property, in my view. Vehicles accessing the site may have a potentially greater impact, as well as the visual impact of the proposed buildings, and I deal with those in separate sections below.
- 47 However, in this case, the proposed use requires the construction of a new building and a series of large greenhouses. Without these, the use would not be able to operate. I now turn to the issue of whether the visual impact of the proposed greenhouses will be acceptable.

WILL THE VISUAL IMPACT OF THE PROPOSAL BE ACCEPTABLE?

- 48 The review site has two road frontages, both of which are relatively narrow gravel roads.

- 49 The road to the north, Beales Avenue, is a narrow gravel road which leads to the Kinglake area to the east and traverses hilly, forested terrain between the review site and its intersection with Whittlesea-Kinglake Road to the north-east. The applicant submitted that this road is largely unsuitable for most traffic and this is evidenced by the signage at either end of the road indicating it is a fire access track and recommended only for four-wheel-drive vehicles. From my inspection, this road was in reasonable condition but narrow and quite steep in sections, although flattens towards the eastern end. The review site is visible from this road but only from limited aspects given the cuttings and vegetation.
- 50 O'Deas Road abuts the review site to the west and provides the existing access to the review site. It is a relatively narrow and winding gravel road.
- 51 The review site is visible from both of these roads, although the proposed location of the shed and greenhouses is limited from O'Deas Road, given the curved alignment and intervening vegetation, both on the southern side of O'Deas Road and along the boundary of the property that adjoins the review site.
- 52 Beales Avenue offers views towards the proposed greenhouses. However, the nature of Beales Avenue being relatively narrow, steep and of gravel construction would give rise to it being a less frequently used road.
- 53 Concerns were raised by the objectors about the visual impact of the proposed greenhouses in a more general sense, as well as from the directly adjoining property to the south, from which direct views will be possible, given the proximity of the dwelling on that land to the proposed greenhouses.
- 54 The proposed greenhouses will be expansive, yet not substantially tall, structures in an otherwise rural type landscape, where buildings are not frequent impositions on the rural vista. Buildings are certainly visible, including dwellings and farm buildings, as are rural type structures such as bird netting. Other built form such as concrete water tanks and high-voltage overhead electricity transmission lines are also evident. Again, however, such features are not frequent and do not appear as dominant features in the landscape, aside from the overhead lines.
- 55 The greenhouses are proposed to be located on part of the site that is cleared of large trees and has been used as pasture for some years. This obviously avoids the need to remove trees which might expose the site where it has not been exposed before. The greenhouses are also on a relatively small portion of the site. They are not proposed to be located on a ridgeline or highpoint of the site or surrounding area. The fact they will be located at a lower elevation than other parts of the site will reduce the potential visibility of the greenhouses.
- 56 I am not persuaded that the proposed greenhouses will be an unacceptable visual impact to the adjoining property to the south, subject to additional

screen planting being included along the western elevations of greenhouses 5 and 6 and southern elevation of greenhouse 5. I find that screen planting along the southern edge of greenhouses 4 and 5 will be necessary for this purpose, given the existence of vegetation along Arthurs Creek and the fact that greenhouse 2 is 'inset' from the southern edges of greenhouses 4 and 5. I accept that they will be visible, however, they will be some distance from the dwelling on this property and suitable screen planting will assist in ameliorating the visual impact, as it matures.

- 57 However, as they will be visible from some locations to the west and north-west, from public land, as well as from the adjoining property to the south, I will require some additional screen planting along the western side of greenhouses 5 and 6.
- 58 I am also not persuaded that the broader visibility of the proposed greenhouses will be unacceptable. Whilst there are vantage points from two road frontages as well as longer distance views, I am satisfied that additional screen planting along the southern and western sides of the buildings will be sufficient to ensure an acceptable outcome is achieved, albeit such screen planting may not completely block all views to the greenhouses. Further, the views from public land are limited and one could describe them as fleeting opportunities, rather than open views offering longer term visibility from passing traffic.

WILL THERE BE ANY UNACCEPTABLE TRAFFIC IMPACTS?

- 59 The objectors were concerned about the level of increased traffic travelling along O'Deas Road and the curved alignment and narrow carriageway width of this road and associated safety issues.
- 60 Concerns were also raised about the level of vehicular traffic accessing the site and travelling nearby the existing dwelling adjacent to the southern boundary of the review site.
- 61 It was Mr Furness' evidence that the features and dimensions of O'Deas Road mean it is capable of accommodating up to 50 vehicles per day, based on the VicRoads supplement to the Austroads Guide to Road Design. The Austroads Guide to Road Design also sets out that for roads that have a volume 51-150 vehicles per day, a carriageway width of 4 metres is usually required.
- 62 It was also Mr Furness' evidence that O'Deas Road carriageway width varies between 3-4 metres and that informal passing opportunities are provided between the site and Beales Avenue.

Volume	Carriageway Width	Seal	Shoulder
0-50 vehicles per day	3.0m	Gravel	2.0m
51-150 vehicles per day	4.0m	Seal	1.5m

Table 3 from Mr Furness' evidence¹⁷, VicRoads Supplement to the Austroads Guide to Road Design

- 63 It was also his evidence that O'Deas Road current carries in the order of 30 vehicles per day and that the proposal will increase this to between 47 and 63 vehicles. These increased figures relate to both employees and supply and delivery vehicles and the variation is due to the seasonal nature of the proposed use, with the higher figure of 63 vehicles at peak harvest times. Mr Furness also explained that these figures are 'conservative' and do not take into account potential car sharing and the ability for some staff to reside in the existing dwelling on the site.
- 64 These figures were based on instructions Mt Furness received from the permit applicant and includes a maximum of 4 full time employees, up to 3 casual staff in winter and up to 10 casual staff in summer/peak season.
- 65 The maximum figure of a total of 63 vehicles per day using O'Deas Road was, in Mr Furness' opinion, still a low level of traffic using the road and given the attributes of the road, traffic is likely to be travelling at relatively low speeds. It was also his evidence that whilst it was possible that vehicles could meet at narrow points in the road, the likelihood of this occurring was low due to the low volume of traffic and number of such points along the road.
- 66 I accept that the likely increase in vehicles will still result in a relatively low level of vehicular use of the surrounding road network. I am not persuaded that the traffic generation by this use will be so great that unacceptable safety and operation outcomes will result on the existing road network.
- 67 Any increase in traffic would naturally increase the potential for collision risk, and other amenity impacts. However, any increase does not equate to an unacceptable impact. On the material and evidence before me, I am not persuaded that such impacts would be unacceptable. I also note that the council did not raise any concerns from a traffic impact perspective.
- 68 I accept that the proposed use may have some impacts on the nearby residential property to the south, particularly through dust, noise and headlights associated with vehicles using the internal access driveway of the site.

¹⁷ Page 24.



- 69 This property has a dwelling that is located approximately 14 metres from the existing driveway on the site and habitable rooms are located on the near side of the dwelling to the driveway. This property is also in the RCZ5.
- 70 As I set out earlier in this decision, the RCZ and relevant policy gives little regard to residential amenity in these settings. However, the existence of this dwelling is something that I have taken into consideration. In this instance, I find that the lack of reference to residential amenity gives greater weight to a use that I have found to be an acceptable one on the site, being favoured. This means that amenity impacts of additional noise, dust and headlights from vehicles might be impacts that will be felt by the residents of this property. However, I also find that there should be some limitation on this given the relatively close proximity of the dwelling to the driveway of the review site. Accordingly, I will include conditions limiting hours of access to the review site by vehicles making deliveries and picking up materials and produce and require speed management along the first 100 metres eastwards of the front farm gate.

WILL THE PROPOSAL RESULT IN ANY UNACCEPTABLE ENVIRONMENTAL IMPACTS?

- 71 Submissions were made that the location of the site and surrounding area has high biodiversity and the proposed greenhouses are an area where fauna traverses between biodiversity links. It was further submitted that the ESO1 covers the entire area where the greenhouses are proposed to be constructed and that this would interrupt the ability for native fauna to travel and pass through the site.
- 72 The location of the proposed greenhouses is in open, cleared pasture used for animal grazing. Although parts of the site had historically been used for orchards, there were no submissions or evidence that the location of the greenhouses had ever been used for that purpose.
- 73 I accept that native fauna may utilise the greenhouse site and that the greenhouses may interrupt native fauna from traversing the site. However, I am satisfied that there are significant setbacks between the proposed greenhouses and the boundaries of the site, as well as from more heavily vegetated corridor links that would likely be used by native fauna. The greenhouse site will effectively be an 'island' still surrounded by open pasture on all sides.
- 74 I am therefore satisfied that the proposal will not have an unacceptable impact on native fauna.

Farm impacts

- 75 Concerns were also raised with respect to runoff from the proposed horticultural operation into local waterways.
- 76 The permit applicant, in submissions and through Mr Galienne's evidence, contended that there would be little runoff from the operation, due to the

desire to ensure that excessive amounts of fertilizer and other inputs were not required. This is due to the cost of such inputs and there being little benefit in requiring such inputs only to have them runoff into waterways and that doing so is not a costs effective way of running the operation.

- 77 Further, it was Mr Galienne's evidence that the soil used for the operation would likely have to be imported and is already treated for pests and diseases, minimising the need for pesticides and herbicides to be used on site. In addition, the constructions of the greenhouses is such that the polycarbonate walls are inserted into the ground and therefore minimise the ability for runoff in higher rainfall intensity events.
- 78 I am satisfied that with an appropriate management plan for runoff, the proposal will not create any unacceptable off site environmental impacts. I will include a condition requiring a management plan to set out how this will occur and that the plan must be implemented and followed whilst the use is in operation.

WHAT CONDITIONS ARE APPROPRIATE?

- 79 Mr Bishop suggested that water quality monitoring downstream of the proposal should occur every 2-3 and that a baseline test should be undertaken prior to the use commencing. I will therefore include a condition to that effect.

CONCLUSION

- 80 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

Joel Templar
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	262/2020/02P
LAND	152 O'Deas Road STRATHEWEN Vic 3099

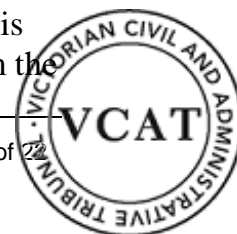
WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Use of the land for horticulture and buildings and works to construct six greenhouses and a shed.

CONDITIONS

- 1 Before the development and use commences, copies of amended 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 this permit. The plans must be generally in accordance with the plans by Mont Eltham Drafting Sheets 1 to 6 dated 28 June 2021 but modified to show:
 - (a) An amended Land Management Plan in accordance with Condition 2;
 - (b) A Business Management Plan in accordance with condition 6;
 - (c) A Stormwater Management Plan to demonstrate compliance with Condition 18.
 - (d) A Land Capability Assessment Report as required by Condition 15.
 - (e) Any modifications required by conditions 1(a) to 1(d).
 - (f) The location of the existing gate at the front of the site.
 - (g) Traffic control devices along the access road for the first 100 metres within the site from the front gate eastwards to ensure vehicles are not able to travel more than 10 kilometres per hour for that section.
 - (h) Indigenous planting along the western elevations of greenhouses 5 and 6 and southern elevation of greenhouse 5 capable of growing at least as high as the proposed greenhouses to form an effective visual screen along those elevations.
- 2 The following water testing must be undertaken:
 - (a) Before the development and use commence, baseline testing of water quality upstream and downstream of the proposed construction site but within the subject site and prior to the confluence of any on site waterway with waterways to the south. The waterway to be tested is that which runs centrally through the site and which emanates from the



large triangular dam towards the north eastern corner of the site. The water quality testing must test for:

- i Nitrogen;
 - ii Nitrate;
 - iii Nitrite;
 - iv Total Kjeldahl Nitrogen;
 - v Phosphorus;
 - vi Ammonia;
 - vii Biological Oxygen Demand;
 - viii Total Suspended Solids; and
 - ix Total Dissolved Solids.
- (b) Water quality testing must be undertaken every two years to ensure excessive nutrient loads are not dispersed into any waterways. The testing must be undertaken at the same location and for the same outputs as in condition 2(a) and if excessive nutrient loads are identified, measures must be undertaken to ensure levels do not exceed those detected in the baseline testing required in condition 2(a).

All of the above must be undertaken to the satisfaction of the responsible authority.

- 3 No vehicles associated with the proposed horticultural operation may make deliveries or pick up goods between the hours of 10:00pm and 7:00am on any day.
- 4 Before the development and use commences, an amended Land Management Plan shall be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and form part of this permit. The plan must be in accordance with the existing plan dated June 2020 but amended to show:
 - (a) Ongoing mitigation measures for the runoff of stormwater to the adjoining waterway;
 - (b) Section 5.2 amended to include the provision of an agronomist to oversee the fertilizer regime.
 - (c) Inclusion of a written reporting requirement back to Council of the implementation and progress of the detailed works schedule at a minimum of year 1, 3 and 5 intervals.
 - (d) The approved Land Management Plan must be commenced, carried out and completed to the satisfaction of the Responsible Authority.
- 5 Before the development and use commences, including any works or earthworks, the Land Management Plan hereby approved must be



commenced in accordance with Action 1.01 of the detailed works schedule, to the satisfaction of the Responsible Authority.

- 6 The approved Land Management Plan must be commenced, carried out and completed to the satisfaction of the Responsible Authority.
- 7 The progress reporting required by the Land Management Plan hereby approved must be undertaken and completed by an appropriately qualified and experienced consultant to the satisfaction of the Responsible Authority.
- 8 Before the development and use commences, a Business Management Plan must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and form part of this permit. The plan must provide details of:
 - (a) Outline the days and hours of deliveries to and from the land;
 - (b) Outline the days and hours for waste collection from the land;
 - (c) Waste storage area;
 - (d) Provision and location of staff car parking;
 - (e) Any alarm systems to be silent.
- 9 The approved Business Management Plan must be commenced, carried out and completed to the satisfaction of the Responsible Authority.
- 10 Unless with the prior written consent of the Responsible Authority, no retail premise, retail sales, group accommodation or host farm use may occur on or from the land, to the satisfaction of the Responsible Authority.
- 11 The development and use hereby permitted must be managed so that the amenity of the area is not detrimentally affected, through the:
 - (a) Transport of materials, good or commodities to or from the land;
 - (b) Appearance of any building, works or materials;
 - (c) Emissions of noise, artificial light, vibration, smell, fumes, smoke, vapour,
 - (d) steam, soot, ash, dust, waste water, waste products, grit or oil;
 - (e) Presence of vermin; and
 - (f) Or in any other way.to the satisfaction of the Responsible Authority.
- 12 All noise emanating from the development must comply with the State Environment Protection Policy N-1 and in the event of the Responsible Authority receiving justifiable complaints regarding noise from such sources, the onus will be on the owner of the development site to prove compliance with the relevant policy to the satisfaction of the Responsible Authority.

- 13 The subject land must be kept neat and tidy at all times to the satisfaction of the Responsible Authority and its appearance must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality.
- 14 All external lighting must be designed, baffled and located so as to prevent adverse effect on adjoining and nearby land, to the satisfaction of the Responsible Authority.
- 15 The nature and colour of building materials employed in the construction of the buildings and works hereby permitted must be muted, natural tones, to the satisfaction of the Responsible Authority.
- 16 The materials to be used in the construction of the buildings and works hereby permitted shall be of non-reflective type, to the satisfaction of the Responsible Authority.
- 17 Prior to the development or use commencing on the site a Land Capability Assessment Report must be submitted to and approved by the Responsible Authority. This report must assess the proposed amenities in the existing shed and the proposed use of the existing dwelling as accommodation for seasonal workers in terms of what wastewater disposal facilities are required.
- 18 All sewage and sullage waters shall be treated in accordance with the requirements of the *Environment Protection Act 1970*. All wastewater shall be disposed of within the curtilage of the land and sufficient area shall be kept available for the purpose of wastewater disposal to the satisfaction of the Responsible Authority.
- 19 No wastewater shall drain directly or indirectly onto an adjoining property, street or any watercourse or drain to the satisfaction of the Responsible Authority.
- 20 The development hereby permitted, including any new paved areas, must be drained so as to prevent the uncontrolled discharge of stormwater from the subject site across any road or footpath or onto any adjoining land. Stormwater must not cause any nuisance or loss of amenity in any adjacent or nearby land

Stormwater from the roof of the shed must be directed to a holding tank for storage and detention purpose and absorbed on-site in accordance with the Shire of Nillumbik's "Drainage of Unserviced Allotments" document.

Stormwater from the greenhouses must be directed to a holding tank for storage and detention purpose and absorbed on-site in accordance with the Shire of Nillumbik's "Drainage of Unserviced Allotments" document.

All works are to be carried out to the satisfaction of the Responsible Authority.
- 21 Water in the holding tank storage area may be used for one or more of the following purposes: toilet flushing; property irrigation; vehicle washing and any other purpose approved by the Responsible Authority.



- 22 Before the development and/or use commences, sediment fencing must be installed on site, serviced accordingly, and remain in place until the completion of the development, in accordance with the approved Land Management Plan and to the satisfaction of the Responsible Authority.
- 23 This permit will expire if one of the following circumstances applies:
- (a) The development is not commenced within 2 years of the date of this permit.
 - (b) The development is not completed within 4 years of the date of this permit.
 - (c) The horticultural use approved by this permit is not commenced within 2 years of the completion of the development.
 - (d) If the use of the land for horticulture as approved by this planning permit ceases.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within 6 months afterwards if the development has not commenced, or 12 months after if the development has commenced but is not yet completed.

– End of conditions –

