



Rural City of
Wangaratta

This report has been prepared to document the statutory planning processing and assessment pursuant to the *Planning and Environment Act 1987 (the Act)*.

WANGARATTA PLANNING SCHEME – OFFICER REPORT

PlnApp22/136

Two lot re-subdivision and variation of a restriction (“the Proposal”)

25 Pin Oak Drive WANGARATTA VIC 3677

Lot A PS701885W Vol 10762 Folio 957 and Lot 10 PS744667Q Vol 11833 Folio 512

KEY DETAILS

Land owner	JR Dalton
Applicant	Jeffrey Ronald Dalton Oxley & Company
Consultant	Oxley & Company
Zone	LOW DENSITY RESIDENTIAL ZONE - SCHEDULE 1 PUBLIC PARK AND RECREATION ZONE
Overlays	Design & Development Overlay Schedule 6 (Area 3) Flood Overlay Land Subject to Inundation Overlay
Property ID	19191
Site inspection	The site was visited on 1/8/2023

DATE OF ASSESSMENT 23/01/2024

PROPOSAL AND SITE DETAILS

Subject land

- Lot 10/PS 744667 (25 Pin Oak Drive) is located on the north side of the Pin Oak Drive and 6660 square metres in size. The land is currently vacant. The access to the site is from Pin Oak Drive.
- Lot A/PS 701885 is a long narrow allotment, bounded by the One Mile creek to the west and abutting the rear of properties in Pin Oak Drive and Tathra place to the east. The lot is 5.87 Hectares and contains the riparian zone of the One Mile creek. The site is accessed from Tathra place.

Surrounding area

- The land is located in the Low Density Residential Zone of the Wangaratta Planning Scheme.

Proposal

- The proposal is for a 2 lot resubdivision of the land and to vary a restriction on title (Lot 10/PS744667) which specifically relates to the building envelope which exists on the title to the land.
- The restriction was created by Planning Permit 08-205a.01 and is contained over Lots 1-6 and Lots 8-14 within subdivision plan PS744667Q. The covenant provides following description:
- *“A building shall not be constructed on Lots 1-6 (B-1) and Lots 8-14 (B-1) within subdivision plan PS 744667Q outside the building envelope, (Shown below)”*
- The application to vary the building envelope proposes to increase the size of the building envelope to align with the revised declared flood levels (FO & LSIO extent) in the Pin Oak Drive area.

The Wangaratta planning scheme Amendment C81, amended the floodway and land subject to inundation overlays in December 2021 in accordance with the recommendations of the Wangaratta Urban Waterways Flood investigation study 2017.

This change affected the proposed land. The land no longer floods in the way that the former mapping suggested. Therefore, it is proposed to change the building envelope to match the revised flood overlay and land subject to inundation overlay. The proposed building envelope is shown in the below Image 1.

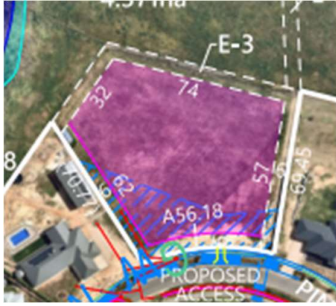


Image 1

- The application for Two lot re-subdivision proposes to reduce the size of lot A from 5.787 Ha to 2.082 Ha, and to consolidate the remainder of Lot A with the land at 25 Pin Oak Drive. 25 Pin Oak Drive would increase in size from 6660m² to 4.371 Ha. The proposed re-subdivision is shown below in Image 2.

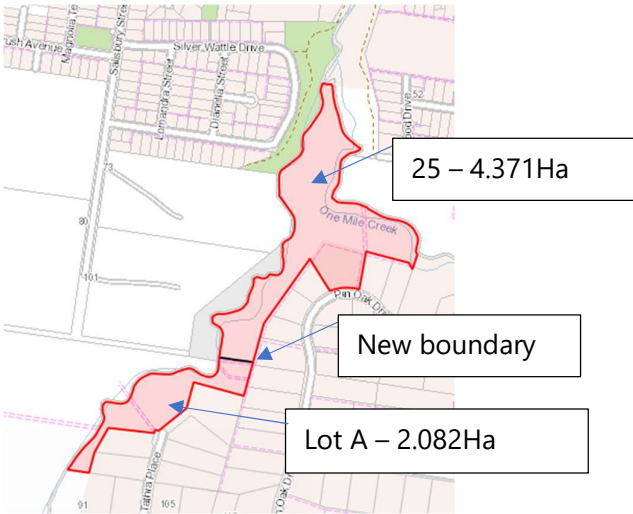


Image 2

PLANNING CONTROLS & TRIGGERS

Control	Clause(s)	Consideration
Zone	32.03 - Low Density Residential Zone – Schedule 1	A permit is required to subdivide land.
	36.02 - Public Park and Recreation Zone	A permit is required to Subdivide land.
Overlay	44.03 - Flood Overlay	A permit is required to subdivide land. A permit may only be granted to subdivide land if the following apply:

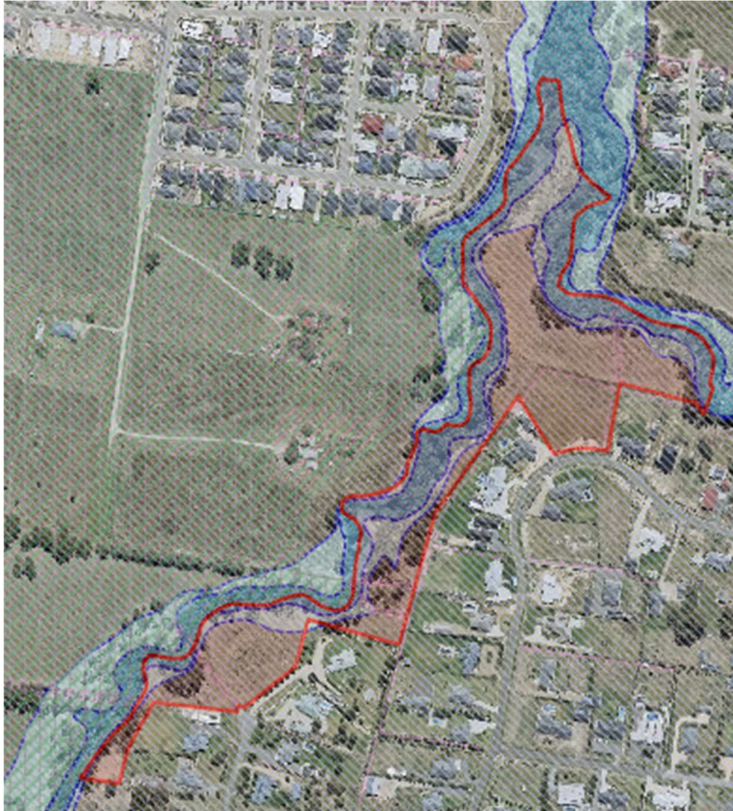
		The subdivision is the re-subdivision of existing lots and the number of lots is not increased
	44.04 - Land Subject to Inundation Overlay	A permit is required to subdivide land.
	43.02 - Design and Development Overlay – Schedule 6 (Wangaratta Aerodrome – obstacle Heigh Area 6)	A permit is required to subdivide land.
Particular Provisions	Clause 52.02 Easements, Restrictions and Reserves	A permit is required to vary or remove a restriction under Section 23 of the Subdivision Act 1988.

Planning Scheme Mandatory Requirements

- Deletion or variation of restriction on title



Zone Map - LDRZ & PPRZ



Overlay Map  DDO LSIO FO

Cultural sensitivity

Pursuant to the *Aboriginal Heritage Regulations 2018*, a Cultural Heritage Management Plan (CHMP) is not required:

- the proposed development is an exempt activity or is a low impact activity as defined by the regulations.

Restrictions on Title (Covenants, S173 agreements and easements)

25 Pin Oak Drive - Lot 10 PS744667Q Vol 11833 Folio 512

The following restrictions are registered to the title:

- Covenant PS744667 Q
- Covenant AR266975 X
- Agreement section 173 *Planning and Environment Act 1987* AM918981Q
- Agreement section 173 *Planning and Environment Act 1987* AR041279A

AM918981Q - The restriction states:

It is now agreed

That the applicant, its successors and transferees and the registered proprietor for the time being of all the land designated as Lot C on Plan of Subdivision 519308D Parish of Wangaratta South being the land in the Certificate of Title Volume 10762 Folio 957 ("the land") covenants with Wangaratta Rural City Council that:

DATE OF ASSESSMENT 23/01/2024

- (a) No clearing of native vegetation is permitted on the subject land;
- (b) The responsibility of active management of the riparian zone in accordance with the Riparian Zone Management Plan is the responsibility of the owners of said lots;
- (c) No further subdivision of Lot A as to create additional lots and no dwellings on Lot A pursuant to NECMA condition 64; and
- (d) The Easement of Way (E-5) over Lot 6 in favour of Lot 7 must be removed once stage 2 has been completed to the satisfaction of the Responsible Authority.

AR041279A - The restriction states:

It is now agreed:

That the applicant, its successors and transferees, and the registered proprietor for the time being of all the land designated on a Lot C on Plan of Subdivision 519308D Parish of Wangaratta South being the land in Certificate of Title Volume 11833 folio 512 ("the Land") covenants that with Wangaratta Rural City Council that:

1. Water tanks

Except with the written consent of the Responsible Authority.

- a) any building constructed on a lot must be connected to a rainwater tank or a series of tanks having a combined minimum storage capacity of at least 22,500 litres;
- b) the required rainwater tanks must be installed prior to commencement of the use of their respective dwellings or as directed by the responsible authority whichever occurs first;
- c) the tanks must be equipped with a fixed outlet, 50mm in diameter, installed in a manner that ensures that reserve capacity of 11,250 litres will be restored automatically after each rainfall event;
- d) the combined discharge from fixed from the fixed outlet and tank overflow must be collected and conveyed by pipes to the nominated legal point of discharge;
- e) works prescribed by this agreement are to be completed to the satisfaction of the responsible authority
- f) each rainwater tank system will be maintained to the satisfaction of the responsible authority; and
- g) a duly appointed officer of the responsible authority will be allowed to inspect the rainwater tank system at mutually agreed times to ensure compliance with this Agreement.

PS744667Q – Restriction shown on the Plan of Subdivision

The restriction is as follows:

CREATION OF RESTRICTION:

UPON REGISTRATION OF THIS PLAN THE FOLLOWING RESTRICTION IS TO BE CREATED;

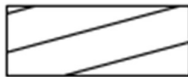
THIS RESTRICTION IS AUTHORISED BY RURAL CITY OF WANGARATTA PLANNING PERMIT No.Pln08-205a.01.

LAND TO BENEFIT: ALL LOTS ON THIS PLAN.

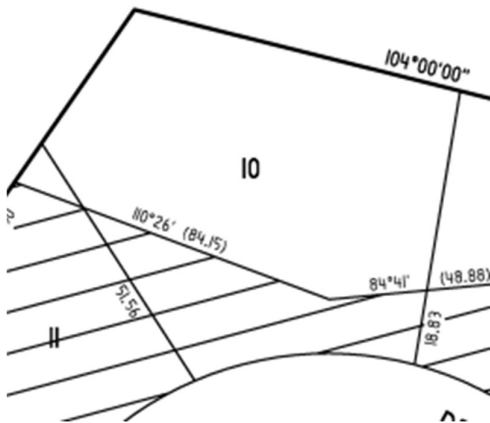
LAND TO BE BURDENED: ALL LOTS ON THIS PLAN.

DESCRIPTION OF RESTRICTION:

A BUILDING SHALL NOT BE CONSTRUCTED ON LOTS 1-6 (B.1) & LOTS 8-14 (B.1) WITHIN SUBDIVISION PLAN PS 744667Q OUTSIDE THE BUILDING ENVELOPE, (SHOWN BELOW).



BUILDING ENVELOPE



29A Pin Oak Drive - Lot A PS701885W Vol 10762 Folio 957

The following restriction is registered to the title:

- AM 918981Q

The restriction states:

It is now agreed

That the applicant, its successors and transferees and the registered proprietor for the time being of all the land designated as Lot C on Plan of Subdivision 519308D Parish of Wangaratta South being the land in the Certificate of Title Volume 10762 Folio 957 ("the land") covenants with Wangaratta Rural City Council that:

- (a) No clearing of native vegetation is permitted on the subject land;
- (b) The responsibility of active management of the riparian zone in accordance with the Riparian Zone Management Plan is the responsibility of the owners of said lots;
- (c) No further subdivision of Lot A as to create additional lots and no dwellings on Lot A pursuant to NECMA condition 64; and
- (d) The Easement of Way (E-5) over Lot 6 in favour of Lot 7 must be removed once stage 2 has been completed to the satisfaction of the Responsible Authority.

Restrictions

DATE OF ASSESSMENT 23/01/2024

The current re-subdivision proposal before Council also seeks to vary the restriction PS744667Q to alter the building envelope.

Other Covenants, Agreements and Easements are not affected by the current proposal.

Special Water Supply Catchments

The land is not within a declared Special Water Supply Catchment listed in Schedule 5 of the *Catchment and Land Protection Act 1994*.

Agricultural versatility

The land is within an urban setting – agricultural versatility is not a relevant consideration in this application.

REQUEST FOR FURTHER INFORMATION

Pursuant to Section 54(1) of the Act, additional information was sought by Council during the assessment of the application.

The information sought was:

- Plan showing indicative future subdivision layout.
- A Land Capability Assessment

The applicant submitted the required information and satisfied the request.

APPLICATION HISTORY

The applicant originally lodged two concurrent applications on the site.

- PInApp 22/136 - Two lot re-subdivision and variation of a restriction (the “Current Application”)
- PInApp 22/136A - Amend a Section 173 agreement (the “Concurrent Application”)

PInApp22/136A was to Amend section 173 agreement AM 918981Q (“the Agreement”) to “remove restriction C which precludes a dwelling on the lot and subdivision to create (sic) additional lots”

Restriction c in the agreement reads:

- (c) No further subdivision of Lot A as to create additional lots and no dwellings on Lot A pursuant to NECMA condition 64; and

Officers previously briefed Councillors on this proposal in November 2023. The applicant has since modified their original proposal by withdrawing PInApp 22/136A to Amend a Section 173 agreement and the consequential addition of a dwelling entitlement on the proposed Lot 2.

REFERRALS & PUBLIC NOTIFICATION**Referrals**

The application was referred to the following authorities:

Authority	Referral trigger(s)	Section and status	Response
North East Catchment Management Authority	44.06 (Dwelling in the BMO)	S55 – Recommending	No objection Subject to Condition*
North East Water	For Information only		No Objection

* NECMA originally objected to part o of the Concurrent Application. The Current Application was re referred to NECMA who now advise that they have no objection conditions.

Internal advice (including verbal advice)

Unit	Reason for advice	Response
Technical Services	Drainage & access	Conditional consent**
Environmental Health Department	Sewerage and Wastewater treatment	Conditional consent**

** Conditional consent from Councils Environmental Health and Technical Services Departments included conditions relevant to the concurrent application and these conditions do not need to be included on a permit for the Current application.

Condition 6 in the referral response from Technical Services relates to finished surface levels of the building envelope, fencing requirements and warrants further discussion. Refer to Conditions Discussion below.

Public Notice

Public notice of both the original proposal and the current proposal was carried out by Council in accordance with Section 52 of the Act.

Notice was given in the form of:

Letters to adjoining and adjacent owners and occupiers.

A total of 5 objections were received in response to the original proposal which are considered later in this report.

No objections were received nor revised in response to the current proposal.

PLANNING CONSIDERATION**Planning Policy Framework**

The following clauses of the PPF are relevant to the assessment of this application:

DATE OF ASSESSMENT 23/01/2024

Clause 11.01-1R Settlement-Hume.
Clause 11.02-1S Supply of Urban Land
Clause 12.03 Water bodies and wetlands
Clause 13 Environmental Risks and Amenity
Clause 14.02-2S Water quality
Cause 15 Built Environment and Heritage

Local Planning Policy Framework

The following clauses of the PPF are relevant to the assessment of this application:
N/A

Zone

Low Density Residential Zone – Schedule 1

32.03

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

Decision guidelines

Subdivision

- The protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.
- The availability and provision of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.
- In the absence of reticulated sewerage:
 - The capability and suitability of the lot to treat and retain all wastewater as determined by a Land Capability Assessment on the risks to human health and the environment of an on-site wastewater management system constructed, installed, or altered on the lot in accordance with the requirements of the Environment Protection Regulations under the *Environment Protection Act 2017*.
 - The benefits of restricting the size of lots to generally no more than 2 hectares to enable lots to be efficiently maintained without the need for agricultural techniques and equipment.

The relevant standards of Clauses 56.07-1 to 56.07-4. (Integrated Water Management)

Public Park and Recreation Zone

36.02

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas for public recreation and open space.
- To protect and conserve areas of significance where appropriate.

DATE OF ASSESSMENT 23/01/2024

- To provide for commercial uses where appropriate.

Decision guidelines

Before deciding on an application to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

Overlays

Land Subject to Inundation Overlay

44.04

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify flood prone land in a riverine or coastal area affected by the 1 in 100 (1 per cent Annual Exceedance Probability) year flood or any other area determined by the floodplain management authority.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To minimise the potential flood risk to life, health and safety associated with development.
- To reflect a declaration under Division 4 of Part 10 of the *Water Act, 1989*.
- To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.
- To ensure that development maintains or improves river, marine, coastal and wetland health, waterway protection and floodplain health.

Decision guidelines

- Any local floodplain development plan.
- Any comments from the relevant floodplain management authority.
- The existing use and development of the land.
- The susceptibility of the development to flooding and flood damage.
- The effect of the development on river, marine and coastal health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality, estuaries and sites of scientific significance.

Floodway Overlay

44.03

Purpose

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify waterways, major floodpaths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by flooding.
- To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.
- To reflect any declarations under Division 4 of Part 10 of the *Water Act, 1989* if a declaration has been made.
- To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.
- To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

Decision guidelines

- The local floodplain development plan or flood risk report.
- Any comments of the relevant floodplain management authority.
- The Victorian River Health Strategy (2002) and any relevant regional river health strategy and associated wetland plan.
- Any other matters specified in a schedule to this overlay.

Design and Development Overlay-Schedule 6 (DDO6). Wangaratta Aerodrome-Obstacle height areas 1,2 and 3

43.02

The objectives of the DDO6 are as below,

- To ensure that all buildings and works are within specified height limits.
- To ensure that appropriate external building materials are used, to avoid creating a hazard to aircraft flight paths in the vicinity of airport.
- To ensure that flight paths associated with airport are protected from the encroachment of inappropriate obstacles which may affect the safe and effective operation of the airport.

Decision guidelines

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

- The Municipal Planning Strategy and the Planning Policy Framework.
- The design objectives of the relevant schedule to this overlay.
- The provisions of any relevant policies and urban design guidelines.

DATE OF ASSESSMENT 23/01/2024

- Whether the bulk, location and appearance of any proposed buildings and works will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- Whether the design, form, layout, proportion and scale of any proposed buildings and works is compatible with the period, style, form, proportion, and scale of any identified heritage places surrounding the site.
- Whether any proposed landscaping or removal of vegetation will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- The layout and appearance of areas set aside for car parking, access and egress, loading and unloading and the location of any proposed off street car parking
- Whether subdivision will result in development which is not in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- Any other matters specified in a schedule to this overlay.

Particular provisions

Easements, Restrictions and reserves.

52.02

Purpose

- To enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered.

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

Integrated Water Management

56.07

Drinking water supply objectives

To reduce the use of drinking water.

Standard C22

The supply of drinking water must be:

- Designed and constructed in accordance with the requirements and to the satisfaction of the relevant water authority.
- Provided to the boundary of all lots in the subdivision to the satisfaction of the relevant water authority.

56.07-2

Reused and recycled water objective

To provide for the substitution of drinking water for non-drinking purposes with reused and recycled water.

Standard C23

Reused and recycled water supply systems must be:

- Designed, constructed and managed in accordance with the requirements and to the satisfaction of the relevant water authority, Environment Protection Authority and Department of Health.
- Provided to the boundary of all lots in the subdivision where required by the relevant water authority.

56.07-3

Waste water management objective

To provide a waste water system that is adequate for the maintenance of public health and the management of effluent in an environmentally friendly manner.

Standard C24

Waste water systems must be:

- Designed, constructed and managed in accordance with the requirements and to the satisfaction of the relevant water authority and the Environment Protection Authority.
- Consistent with a domestic waste water management plan adopted by the relevant council.

Reticulated waste water systems must be provided to the boundary of all lots in the subdivision where required by the relevant water authority.

56.07-4

Stormwater management objectives

To minimise damage to properties and inconvenience to residents from stormwater.

To ensure that the street operates adequately during major storm events and provides for public safety.

To minimise increases in stormwater and protect the environmental values and physical characteristics of receiving waters from degradation by stormwater.

To encourage stormwater management that maximises the retention and reuse of stormwater.

To encourage stormwater management that contributes to cooling, local habitat improvements and provision of attractive and enjoyable spaces.

Standard C25

The stormwater management system must be:

- Designed and managed in accordance with the requirements and to the satisfaction of the relevant drainage authority.
- Designed and managed in accordance with the requirements and to the satisfaction of the water authority where reuse of stormwater is proposed.

- Designed to meet the current best practice performance objectives for stormwater quality as contained in the *Urban Stormwater - Best Practice Environmental Management Guidelines* (Victorian Stormwater Committee, 1999).
- Designed to ensure that flows downstream of the subdivision site are restricted to pre-development levels unless increased flows are approved by the relevant drainage authority and there are no detrimental downstream impacts.
- Designed to contribute to cooling, improving local habitat and providing attractive and enjoyable spaces.

The stormwater management system should be integrated with the overall development plan including the street and public open space networks and landscape design.

For all storm events up to and including the 20% Average Exceedence Probability (AEP) standard:

- Stormwater flows should be contained within the drainage system to the requirements of the relevant authority.
- Ponding on roads should not occur for longer than 1 hour after the cessation of rainfall.

For storm events greater than 20% AEP and up to and including 1% AEP standard:

- Provision must be made for the safe and effective passage of stormwater flows.
- All new lots should be free from inundation or to a lesser standard of flood protection where agreed by the relevant floodplain management authority.
- Ensure that streets, footpaths and cycle paths that are subject to flooding meet the safety criteria $d_a V_{ave} < 0.35 \text{ m}^2/\text{s}$ (where, d_a = average depth in metres and V_{ave} = average velocity in metres per second).

The design of the local drainage network should:

- Ensure stormwater is retarded to a standard required by the responsible drainage authority.
- Ensure every lot is provided with drainage to a standard acceptable to the relevant drainage authority. Wherever possible, stormwater should be directed to the front of the lot and discharged into the street drainage system or legal point of discharge.
- Ensure that inlet and outlet structures take into account the effects of obstructions and debris build up. Any surcharge drainage pit should discharge into an overland flow in a safe and predetermined manner.
- Include water sensitive urban design features to manage stormwater in streets and public open space. Where such features are provided, an application must describe maintenance responsibilities, requirements and costs.

Any flood mitigation works must be designed and constructed in accordance with the requirements of the relevant floodplain management authority.

65.01 Approval of an application or plan

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.

- Any significant effects the environment, including the contamination of land, may have on the use or development.
- 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 effect on the environment, human health and amenity 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.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- 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.
- The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.
- The impact the use or development will have on the current and future development and operation of the transport system.

65.02 Approval of an Application to subdivide land

Before deciding on an application to subdivide land, the responsible authority must also consider, as appropriate:

- The suitability of the land for subdivision.
- The existing use and possible future development of the land and nearby land.
- The availability of subdivided land in the locality, and the need for the creation of further lots.
- The effect of development on the use or development of other land which has a common means of drainage.
- The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.
- The density of the proposed development.
- The area and dimensions of each lot in the subdivision.
- The layout of roads having regard to their function and relationship to existing roads.
- The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.
- The provision and location of reserves for public open space and other community facilities.
- The staging of the subdivision.
- The design and siting of buildings having regard to safety and the risk of spread of fire.
- The provision of off-street parking.
- The provision and location of common property.
- The functions of any body corporate.

DATE OF ASSESSMENT 23/01/2024

- The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.
- If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.
- Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas.
- The impact the development will have on the current and future development and operation of the transport system.

Planning and Environment Act 1987

Section 52(1AA) requires that all occupiers of land who benefits from the restrictive covenant must be given notice of the application.

Section 60 requires that the responsible authority consider the following matters:

- (1) Before deciding on an application, the responsible authority must consider—
 - (a) the relevant planning scheme; and
 - (b) the objectives of planning in Victoria; and
 - (c) all objections and other submissions which it has received and which have not been withdrawn; and
 - (d) any decision and comments of a referral authority which it has received; and
 - (e) any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development; and
 - (f) any significant social effects and economic effects which the responsible authority considers the use or development may have.

(1B) For the purposes of subsection (1)(f), the responsible authority must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.
- (2) The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer—
 - (a) financial loss; or
 - (b) loss of amenity; or
 - (c) loss arising from change to the character of the neighbourhood; or
 - (d) any other material detriment—

as a consequence of the removal or variation of the restriction.

Pre-Application Advice

The applicant sought pre application advice prior to lodging these applications.

Council acknowledged that a changed circumstance on the land had occurred with a reduced extent of flood prone land. Council also acknowledged that it was yet to be determined if large parts of lot A are suitable for development given the land was of sufficient size to fit several lots meeting the minimum lot size of the low density residential zone of the land.

Other issues raised included Road access, Minimising battle axe blocks, orderly subdivision, providing appropriate road frontages, reticulated sewerage capacity and that a piece meal approach to subdivision would not be accepted.

Council raised concerns regarding management of the riparian zone and protection of the One Mile Creek and also noted that the section 173 agreement presented an obstacle to any proposal and that the proposal may not be well perceived by existing residents who are party to the agreement.

ASSESSMENT AGAINST PLANNING POLICY

Variation of a Restriction

- The proposal is to vary a restriction on title (Lot 14 PS744667 and Lot 13 PS744667) to align with property boundary / easements and the revised declared flood levels in the Pin Oak Drive area.
- The existing drainage easement marked E3 is to remain on the land.

NECMA have advised that they have no objection Subject to the following condition:

- The amended envelope shall be constrained to land with an existing surface level above RL 148.4 m AHD

It is also considered unlikely that the owner of any land benefited by the restriction will suffer—

- (a) financial loss; or
- (b) loss of amenity; or
- (c) loss arising from change to the character of the neighbourhood; or
- (d) any other material detriment—

as a consequence of the removal or variation of the restriction.

It is considered appropriate to support a proposed change to the restriction / building envelope in line with the recommended condition from NECMA and their most up to date flooding advice.

Re-subdivision:

S173 Obligations

AM918981Q -requires *"no further subdivision of Lot A as to create additional lots ..."*.

The re-subdivision proposal is considered to be consistent with this restriction.

Low Density Residential Zone (LDRZ)

The LDRZ requires consideration as to how proposals for the use, development and subdivision of land provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

The proposed lots meet the 0.4 ha min lot size of unsewered lots (Proposed Lot 2) and 0.2 ha for sewerer properties (Proposed Lot 1). Each lot must be at least the area specified for the land in a schedule to this zone.

For unsewered lots, the LDRZ requires consideration of lots the benefits of restricting the size of lots to generally no more than 2 hectares to enable lots to be efficiently maintained without the need for agricultural techniques and equipment. The unsewered Lot 1 is being reduced in size and is considered to meet this requirement.

The above discussion highlights that the proposed re-subdivision is generally consistent with the objectives of the relevant PPF and LPPF and is suitable for support.

CONDITIONS DISCUSSION

In addition to stand commencement and expiry conditions and NECMA referral conditions previously discussed, Clause 66.01-1 - Mandatory conditions for subdivision permits a permit granted to subdivide land in a manner that does not require referral under Clause 66.01 be included on any permit issued.

Councils Technical Services department recommends that the following condition be applied to protect future occupants of a dwelling on Lot 1

LAND SUBJECT TO INUNDATION

6. Prior to the issue of a statement of compliance / commencement of the use the permit holder must satisfy the Responsible Authority that:
- a. The finished surface levels of all building envelopes are 300mm above the peak water level in nearby waterways, floodways or water bodies in a 1% AEP rainfall or flood event.
 - b. All fencing installed between the Lot and an adjacent waterway or area subject to inundation is of open construction and does not obstruct natural surface flows.

It is considered that requirement a. is duplication of the NECMA condition and should be omitted. Part b. should be included on any permit issued.

Consideration of submissions

A total of 5 objections was received, their grounds for objection and the Officer response is as follows:

Ground of objection:	Response:
Objection from agreement beneficiary	
<ul style="list-style-type: none"> • Additional traffic on Pin Oak drive and Elm Avenue • Much of the estate does not have footpath, resulting in people walking, riding and playing on roads. • Low number of properties and quiet lifestyle attracted them to the area. • Precedent of further subdivision. 	<p>The proposal would not generate any additional traffic on Elm or Pin Oak Drive.</p> <p>The proposal does not increase the properties in the estate.</p> <p>The proposal is unlikely to lead to further subdivision in the future owing to the Section 173 agreement restrictions.</p>
Other Objectors	

Reliance upon the Section 173 agreement that restricts subdivision and dwellings on Lot A.	No longer relevant following the withdrawal of PInApp22/136A
Fill Placed on the land (alleged illegally) and its effect on Flood levels	From an inspection of the site, it is unclear if fill has been placed on the land. The area is covered in grass and does not appear to be new fill at this point in time. The matter of fill placement raised by objectors is considered to be a historical matter that given it appears to be older than 12 months old, is outside the time period for a Planning Compliance investigation.
Protection of the Riparian Zone of the One Mile Creek	It is not considered that the current proposal has any significant impact on the riparian zone of the Once Mile Creek. Owners of Lots encumbered by the Section 173 agreement are responsible for the maintenance of the Riparian Zone in accordance with the Riparian Zone Management plan.
New Southern Growth area and effect of discharge to the Creek	These technical & engineering matters are taken care of during the course of the of land releases
Discharge from the proposed new dwelling on Lot A and its effect on flooding of One Mile Creek	No longer relevant following the withdrawal of PInApp22/136A
Cumulative effect of Septic systems	No longer relevant following the withdrawal of PInApp22/136A
Devaluation of surrounding properties	Property Value are not considered by the planning scheme and perceived loss or gain is considered to be speculative

These objections were received prior to the applicant's withdrawal of the concurrent application to Amend a Section 173 agreement. The withdrawal of the agreement application largely resolves Objector concerns.

CONCLUSION

The application is consistent with the Wangaratta Planning Scheme and is suitable for support. All submissions have been considered but they are ultimately not strong enough to warrant a refusal of the application.

RECOMMENDATION

The Council issue a Notice of Decision to Grant a Permit in accordance with Section 64 (1) & (2) of the *Planning and Environment Act 1987*, and that the notice include the conditions set out in Appendix 1 below.

DATE OF ASSESSMENT 23/01/2024

Appendix 1 is below

Planner: Nadine Dowler – Principal Planner

Date: 30 January 2024

Appendix 1 – Proposed conditions

Commencement of Permit

- 1 This permit will operate from the issued date of this permit.

Endorsed subdivision plans – amended plans required

- 2 Before the plan of subdivision is certified under the Subdivision Act 1988, plans must be approved and endorsed by the responsible authority. The plans must:
 - (a) be prepared to the satisfaction of the responsible authority
 - (b) be drawn to scale with dimensions and submitted in electronic form
 - (c) be generally in accordance with the plans forming part of the application, but amended to show the following:
 - i. The amended envelope in accordance with NECMA condition 5.

Layout not altered

- 3 The subdivision as shown on the endorsed plans must not be altered or modified (for any reason) except with the prior written consent of the Responsible Authority.

Technical Services Condition

Land Subject to Inundation

- 4 Prior to the issue of a statement of compliance / commencement of the use the permit holder must satisfy the Responsible Authority that:
 - (a) All fencing installed between the Lots and an adjacent waterway or area subject to inundation is of open construction and does not obstruct natural surface flows.

NECMA Conditions

- 5 Prior to Certification of the Plan of Subdivision and prior to commencement of works, an amended plan of subdivision to the satisfaction of the Responsible Authority and the Authority must be submitted to and approved by the Responsible Authority and the Authority. When approved, the amended plan will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) The building envelope for proposed Lot 1 constrained to land with an existing surface level above RL 148.4 m AHD.

- 6 Prior to the Certification of the Plan of Subdivision the building envelope shown on the endorsed plan shall be shown as a restriction on the Plan of Subdivision, requiring that all future buildings (inclusive of sheds and outbuildings) shall be constructed only within the building envelope. The building envelope shall be recorded on the Register under the Transfer of Land Act 1958 in relation to the relevant allotment.

Mandatory Two Lot Subdivision Conditions

- 7 The owner of the land must enter into an agreement with:
- (a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - (b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
- 8 Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
- (a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - (b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
- 9 The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
- 10 All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
- 11 The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.

Subdivision expiry

- 12 This permit will expire if any of the following circumstances applies:
- (a) The plan of subdivision is not certified within two years of the original issue date of the permit.

- (b) The registration of the subdivision is not completed within five years of the date of the plan of subdivision being first certified.

In accordance with section 69 of the Planning and Environment Act 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in part (a) of this condition.

Note:

One Mile Creek (West Branch) is gazetted by the Authority to be a designated waterway under the Water Act 1989. A Works on Waterways permit must be obtained from the Authority in accordance with By-Law No 2014/01 Waterways Protection prior to commencing any works in, on or over designated waterways (such as landscaping, access crossings, storm water outlets, etc). Further information and an application form can be obtained from the Authority at: <http://www.necma.vic.gov.au/About-Us/Programs-Initiatives/Undertake-Works-on-Waterways>