

Mr. [REDACTED] addressed Council in writing in support of the recommendation to refuse the granting of a planning permit for the application associated with Item 7.4

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#### **7.4 PA2019141 - SEVEN LOT STAGED SUBDIVISION AND VEGETATION REMOVAL AT [REDACTED] O'DONNELL STREET, GORDON**

**Author:** Thomas Tonkin, Statutory Planner  
**Authoriser:** Henry Bezuidenhout, Executive Manager Community Planning & Economic Development  
**Attachments:** 1. Proposed plan of subdivision (under separate cover)  
2. Bushfire Management Plan (under separate cover)

#### **APPLICATION SUMMARY**

**Permit No:** PA2019141  
**Lodgement Date:** 21 June 2019  
**Planning Officer:** Tom Tonkin  
**Address of the land:** [REDACTED] O'Donnell Street Gordon  
**Proposal:** Seven Lot Staged Subdivision and Vegetation Removal  
**Lot size:** 1.024 ha  
**Why is a permit required?** Clause 32.09 Neighbourhood Residential Zone, Schedule 1 - Subdivision  
Clause 42.01 Environmental Significance Overlay, Schedule 1 – Subdivision and Vegetation Removal  
Clause 42.03 Significant Landscape Overlay, Schedule 2 – Vegetation Removal  
Clause 43.02 Design and Development Overlay, Schedule 5 - Subdivision  
Clause 44.06 Bushfire Management Overlay - Subdivision  
Clause 52.17 Native Vegetation – Native Vegetation Removal

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#### **MOTION**

**Moved:** Cr Lawry Borgelt  
**Seconded:** Cr Tonia Dudzik

That Council, having considered all matters as prescribed by the Planning and Environment Act 1987, issue a Notice of Decision to Grant Planning Permit PA2019141 for Staged

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Subdivision and Vegetation Removal at Lot 1 on PS 729816L known as [REDACTED] O'Donnell Street, Gordon 3345, subject to the following conditions:

Endorsed plans:

1. Before the plan of subdivision is certified under the Subdivision Act 1988, 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 then form part of the permit. The plans must be generally in accordance with the Plan of Proposed Subdivision ref. 1500287, Version 05 dated 07/06/19 prepared by Beveridge Williams but modified to show:
  - (a) The number of lots fronting Corbetts Road reduced to three (3) and the overall number of lots reduced from seven (7) to six (6).
  - (b) Retention of the three (3) Blackwood trees and vegetation removal otherwise minimised.
2. The formal plan of subdivision lodged for certification must be generally in accordance with the endorsed plan and must not be modified except to comply with statutory requirements or with the written consent of the Responsible Authority.

Subdivision:

3. 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.
4. Before the statement of compliance is issued under the Subdivision Act 1988, the applicant or owner must pay to the responsible authority a sum equivalent to 5 per cent of the site value of all the land in the subdivision for public open space purposes. The permit holder/developer must pay the reasonable costs of Council in having the land valued for this purpose.
5. The plan of subdivision submitted for certification must include a creation of restriction. The wording of the creation of restriction shall be as follows:

Description of Restriction:

- (a) Land to be Burdened: All lots on this plan.
- (b) Land to Benefit: All lots on this plan.
- (c) Creation of restriction: Upon registration of this plan, the following restriction is created.
- (d) Description of Restriction: No fencing within 20 metres of the front property boundaries shall be of any construction except for post and wire, post and rail or at least 50 per cent transparent and shall be no higher than 1.5 metres. No dwelling or ancillary outbuildings shall be constructed within 15 metres of the front property boundaries of lots fronting Corbetts Road.
- (e) Variation: The restriction can only be varied with the written consent of Moorabool Shire Council.

Telecommunications:

6. The owner of the land must enter into agreements with:
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- (a) A telecommunications network or service provider for the provision of telecommunication service 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 provide by optical fibre.
7. Before the issue of 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 an area where the National Broadband Network will not be provided by optical fibre.

Infrastructure:

8. Prior to the issue of a Statement of Compliance for each stage of the subdivision, each new lot must be provided with standard rural residential vehicle crossing with culvert as required on O'Donnell Street and Corbetts Road to the satisfaction of the Responsible Authority. Any redundant vehicle crossings must be removed, and the kerb and channel and nature strip reinstated to the satisfaction of the Responsible Authority. A vehicle crossing permit must be taken out for the construction of the vehicle crossing.
  9. The property access and the internal driveways must be constructed in accordance with the requirements specified in Table 5 of Clause 53.02-5 of the Moorabool Planning Scheme, to the satisfaction of the responsible authority.
  10. Prior to the commencement of the development, the "Stormwater Management Strategy ■ O'Donnell Street Gordon" dated August 2019, submitted by Beveridge Williams must be modified to reflect the following:
    - (a) Overland flows from the Northern side of O'Donnell Street must be determined and included in calculation of overland flow through the subject land.
    - (b) The surface flow paths in Corbetts Road must be corrected to reflect the actual gradients in the road reserve.
    - (c) The use of oversize pipes to create detention storage in residential subdivisions is not recommended in current practice. The method of stormwater detention must be reviewed to recommend alternative methods.
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- (d) An assessment of the downstream flowpath to the south of Corbetts road must undertaken to determine the impact of the fully developed site on the land to the south of Corbetts Road.
  - (e) An assessment of the suitability of the Stormwater Treatment system proposed given the limited space within the road reserve adjacent to the property.
  - (f) The approval of the relevant catchment authority for the use of proprietary stormwater treatment systems within the catchment.
  - (g) If necessary, the layout of the subdivision must be altered to reflect any changes required by the modifications to the Stormwater Management Strategy.
11. Prior to the issue of a Statement of Compliance for the subdivision, the development must be provided with a drainage system constructed to a design approved by the Responsible Authority, and must ensure that:
- (a) the development is self-draining;
  - (b) volume of water discharging from the development in a 10% AEP storm shall not exceed the 20% AEP storm prior to development. Peak flow must be controlled using a detention system located and constructed to the satisfaction of the Responsible Authority;
  - (c) each lot must be provided with a stormwater legal point of discharge at the low point of the lot, to the satisfaction of the Responsible Authority; and
  - (d) stormwater runoff meets the “Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)”.
12. Prior to the commencement of the development design computations for drainage of the whole site must be prepared and submitted to the Responsible Authority for approval.
13. Storm water drainage from the development must be directed to a legal point of discharge to the satisfaction of the Responsible Authority. A Stormwater Point of Discharge permit must be obtained from the responsible authority prior to the commencement of the works associated with the permit.
14. Sediment discharges must be restricted from any construction activities within the property in accordance with relevant Guidelines including Construction Techniques for Sediment Control (EPA 1991).
15. Unless otherwise approved by the Responsible Authority there must not be any buildings, structures, or improvements located over proposed drainage pipes and easements on the property.
16. Prior to the commencement of the development and post completion, notification including photographic evidence must be sent to Council’s Asset Services department identifying any existing damage to Council assets. Any existing works affected by the development must be fully reinstated at no cost to and to the satisfaction of the Responsible Authority.
17. Plans and specifications of all road, traffic and drainage works must be prepared and submitted to the responsible authority for approval prior to the commencement of
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such works and all such works must be carried out in accordance with the approved plans to the satisfaction of the Responsible Authority.

18. Prior to the issue of Statement of Compliance for each stage, street lighting must be provided in accordance with the requirements of AS1158 – Lighting for Roads and Public Places, to the satisfaction of the Responsible Authority. All lighting fittings must be “Standard” fittings maintained by the electricity network provider at no additional cost to Council. All lights must utilise LED type luminaires where available.
19. Prior to the issue of a Statement of compliance for each stage of the subdivision, the developer must pay:
  - (a) 0.75 % of the total estimated cost of works for the checking of engineering plans associated with that stage of the development.
  - (b) 2.50 % of the total estimated cost of works for the supervision of works associated with that stage of the development.
20. Prior to the issue of a Statement of Compliance for the relevant stage of the subdivision, after all engineering works pertaining to the stage have been completed, the following “as constructed” details must be submitted in the specified format to the Responsible Authority:
  - (a) Drainage construction details in “D-Spec” format.
  - (b) Roadworks construction details in “R-Spec” format.

Subject to the consent of the responsible authority, the data may be provided prior to the end of the maintenance period for the relevant stage of the subdivision.

21. All road and drainage works must be maintained in good condition and repair for a minimum of 3 months after completion of the works, to the satisfaction of the Responsible Authority.
22. Prior to the issue of a Statement of compliance for each stage of the subdivision, a security deposit of 5% of the total value of engineering works for that stage as approved by the Responsible Authority must be lodged with the Responsible Authority, to cover the maintenance of all works. The deposit will be returned after the final inspection of works, 3 months after the completion of works, subject to the satisfactory completion of all required maintenance and rectification works.

Environmental Planning:

23. To offset the removal of 0.254ha of native vegetation, including four large trees, the permit holder must secure a native vegetation offset, in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (DELWP 2017) as specified below:
  - (a) A general offset of 0.089 general habitat units:
    - (i) located within the Corangamite Catchment Management Authority boundary or Moorabool Shire municipal district;
    - (ii) with a minimum strategic biodiversity score of at least 0.384, including four (4) large trees.

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24. Before any native vegetation is removed, evidence that the required offset for the project has been secured must be provided to the satisfaction of Council. This evidence is one or both of the following:
- (a) an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site; and/or
  - (b) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.

25. In the event that a security agreement (first party offset) is entered into as per condition 24(a), the applicant must provide the annual offset site report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.

Vegetation Removal:

26. Except where exempt under the Moorabool Planning Scheme, no vegetation other than that approved for removal on the endorsed plans shall be removed without further planning approval.

Central Highlands Water:

27. Any plan lodged for certification will be referred to the Central Highlands Region Water Corporation pursuant to Section 8(1)(a) of the Subdivision Act.
28. Reticulated sewerage facilities must be provided to each lot by the owner of the land (or applicant, in anticipation of becoming the owner) to the satisfaction of the Central Highlands Region Water Corporation. This will include the construction of works and the payment of major works contributions by the applicant.
29. A reticulated water supply must be provided to each lot by the owner of the land (or applicant, in anticipation of becoming the owner) to the satisfaction of the Central Highlands Region Water Corporation. This will include the construction of works and the payment of major works contributions by the applicant.
30. The owner will provide easements to the satisfaction of the Central Highlands Region Water Corporation, which will include easements for pipelines or ancillary purposes in favour of the Central Highlands Region Water Corporation, over all existing and proposed sewerage facilities within the proposal.
31. If the land is developed in stages, the above conditions will apply to any subsequent stage of the subdivision.

Barwon Water:

32. The following shall be undertaken to the requirements of Barwon Water and to the satisfaction of the responsible authority:
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- (a) Each lot created in the development must be connected to a reticulated sewerage system.
  - (b) No stormwater is to be discharged less than 100 metres from a waterway unless into an approved drainage system.

Country Fire Authority:

- 33. The Bushfire Management Plan prepared by Regional Planning & Design Pty Ltd, (Bushfire Management Statement – [REDACTED] O'Donnell Street, Gordon Ref No.19.139 – Report Version D, Figure 10, dated 5/07/2019) must be endorsed to form part of the permit and be included as an annexure to the section 173 agreement prepared to give effect to Clause 44.06-5 of the Moorabool Shire Planning Scheme. The plan must not be altered unless otherwise agreed in writing by the CFA and the Responsible Authority.
- 34. Before the statement of compliance is issued under the Subdivision Act 1988 the owner must enter into an agreement with the responsible authority under Section 173 of the Planning and Environment Act 1987. The agreement must:
  - (a) State that it has been prepared for the purpose of an exemption from a planning permit under Clause 44.06-2 of the Moorabool Planning Scheme.
  - (b) Incorporate the plan prepared in accordance with Clause 53.02-4.4 of this planning scheme and approved under this permit.
  - (c) State that if a dwelling is constructed on the land without a planning permit that the bushfire protection measures set out in the plan incorporated into the agreement must be implemented and maintained to the satisfaction of the responsible authority on a continuing basis.
  - (d) Explicitly exclude Lot 7 from the following exemption under Clause 44.06-2 of the Moorabool Planning Scheme: 'A building or works consistent with an agreement under section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of clause 44.06-5'.
  - (e) The land owner must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.

Powercor:

- 35. The plan of subdivision submitted for certification under the Subdivision Act 1988 shall be referred to the Distributor in accordance with Section 8 of that Act.
  - 36. The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards. Notes: Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make such supplies available, with the cost of such works generally borne by the applicant.
  - 37. The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR). Notes: Where electrical works are required to achieve VSIR
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compliance, a registered electrical contractor must be engaged to undertake such works.

38. The applicant shall, when required by the Distributor, set aside areas with the subdivision for the purposes of establishing a substation or substations. Notes: Areas set aside for substations will be formalised to the Distributor's requirements under one of the following arrangements:

RESERVES established by the applicant in favour of the Distributor.

SUBSTATION LEASE at nominal rental for a period of 30 years with rights to extend the lease for a further 30 years. The Distributor will register such leases on title by way of a caveat prior to the registration of the plan of subdivision.

39. The applicant shall establish easements on the subdivision, for all existing Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements. Notes:

Existing easements may need to be amended to meet the Distributor's requirements

Easements required by the Distributor shall be specified on the subdivision and show the Purpose, Origin and the In Favour of party as follows: Easement Reference; Purpose: Power Line; Width (Metres); Origin: Section 88 - Electricity Industry Act 2000; Land Benefited / In Favour Of: Powercor Australia Ltd.

Permit Expiry:

40. This permit will expire if one of the following circumstances applies:
- (a) The first stage of the plan of subdivision is not certified within two (2) years of the date of issue of the permit;
  - (b) Each subsequent stage is not certified within two years of the date of certification of the previous stage.

Statement of Compliance must be achieved and certified plans registered at Titles office within five (5) years from the date of certification of each stage.

**LOST**

Cr. Bingham foreshadowed the officers' recommendation.

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### **COMMITTEE RESOLUTION**

**Moved:** Cr Jarrod Bingham

**Seconded:** Cr Tonia Dudzik

That Council, having considered all matters as prescribed by the *Planning and Environment Act 1987*, issues a Refusal to Grant Permit PA2019141 for Seven Lot Staged Subdivision and Vegetation Removal at Lot 1 on PS 729816L known as ■ O'Donnell Street, Gordon 3345, on the following grounds:

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1. The proposed subdivision and vegetation removal is inconsistent with State and local planning policy in the Moorabool Planning Scheme for the protection and enhancement of neighbourhood character and landscape character.
2. The proposed subdivision does not satisfy the purpose of the Neighbourhood Residential Zone, Schedule 1, in the Moorabool Planning Scheme.
3. The proposed subdivision does not meet the relevant design objectives or subdivision requirements under the Design and Development Overlay, Schedule 5, in the Moorabool Planning Scheme.
4. The proposed vegetation removal does not meet the landscape character objectives of the Significant Landscape Overlay, Schedule 2, in the Moorabool Planning Scheme.
5. The proposed native vegetation removal does not meet the purpose of Clause 52.17 of the Moorabool Planning Scheme to avoid the removal of vegetation.
6. The proposed subdivision does not meet the objectives of Clause 56 of the Moorabool Planning Scheme in relation to neighbourhood character and vegetation retention.

**CARRIED**

<b>PUBLIC CONSULTATION</b>	
Was the application advertised?	Yes.
Notices on site:	Yes.
Notice in Moorabool Newspaper:	No.
Number of objections:	14 objections.
Consultation meeting:	No. The applicant did not wish to participate in a consultation meeting. The Council officer offered objectors the opportunity to individually discuss their objections.