

<b>REPORT TO</b>	Development Assessments Committee	<b>ITEM NO. 2.1.3</b>
<b>MEETING DATE</b>	Monday, 13 December, 2010	
<b>SUBJECT</b>	<b>Application for Planning Permit P10/0147 – 102 Coolart Road, Tuerong</b>	
<b>PREPARED BY</b>	Lucas Gardiner, Statutory Planner	
<b>AUTHORISED BY</b>	Manager – Statutory Planning	
<b>ATTACHMENT(S)</b>	YES	
Application No.	P10/0147	
Proposal	The use and development use of a single storey dwelling and associated works including a dam and alter access to a Road Zone Category 1	
Melway Reference	153J12	
Zoning	Green Wedge Zone – Schedule 2	
Applicant	Waldo Apse	
Date received	3 February, 2010	

### EXECUTIVE SUMMARY

<b>Proposal</b>	The application is for the use and development of a dwelling, and associated works on the site.
<b>Zoning and Overlays</b>	<p>Impacts all of the site:</p> <ul style="list-style-type: none"> <li>• Green Wedge Zone – Schedule 2 (GWZ2); and</li> <li>• Environmental Significance Overlay – Schedule 4: Eastern Peninsula (ESO4)</li> </ul> <p>Impacts part of the site:</p> <ul style="list-style-type: none"> <li>• Vegetation Protection – Schedule 2: Significant Treelines (VPO2); and</li> <li>• Environmental Significance Overlay – Schedule 28: Mornington Peninsula Bushland (ESO28).</li> </ul> <p>Impacts Coolart Road:</p> <ul style="list-style-type: none"> <li>• Road Zone Category 1 (RDZ1); and</li> <li>• Significant Landscape Overlay – Schedule 3: Scenic Roads (SLO3).</li> </ul>
<b>Lot Area</b>	2.02 hectares.
<b>Permit Triggers</b>	<ul style="list-style-type: none"> <li>• Green Wedge Zone – Clause 35.04: A permit is required to use the land for a dwelling; and</li> <li>• Environmental Significance Overlay – Clause 42.01: A permit is required to construct buildings and works associated with a Section 2 Use (dwelling), since the applicable schedule to the Overlay (ESO4) does not specifically exempt the works from requiring approval.</li> </ul>

EXECUTIVE SUMMARY (CONT'D)

<b>Advertising</b>	<p>Notice was given pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> (the Act) by:</p> <ul style="list-style-type: none"> <li>• Letter to owners and occupiers of land in the surrounding area; and</li> <li>• A sign placed on the site.</li> </ul>
<b>Submissions</b>	No submissions have been received.
<b>Referrals – Section 55</b>	VicRoads.
<b>Referrals – Other</b>	Environmental Health and Strategic Planning.
<b>Key Issues</b>	<p>The key issues involve:</p> <ul style="list-style-type: none"> <li>• Whether the use of the land for a dwelling in conjunction with agriculture in the GWZ is appropriate;</li> <li>• The effect of the use and development on the landscape and environmental values of the site;</li> <li>• Whether the establishment of a new dwelling in close proximity to an operational broiler farm is appropriate (from both an amenity point of view as well as the potential impact on the broiler farm operations); and</li> <li>• Consistency with the State Planning Policy Framework (SPPF) and Local Planning Policy Framework (LPPF).</li> </ul>
<b>Recommendation</b>	It is recommended that Council grant a permit for the use and development of a single storey dwelling and associated works, subject to the attached conditions.

**BACKGROUND**

At the outset it is noted that this site is located near 108 Coolart Road, which was subject to the appeal (*Brown v Mornington Peninsula Shire Council* [2009]).

The Victorian Civil and Administrative Tribunal (VCAT) refused to grant a permit to authorise the use and development of a dwelling. VCAT held that the application failed on the following two grounds:

- The location of a dwelling on this lot was not encouraged by the GWZ provisions; and
- The risk associated with the proximity of the property to a broiler farm.

VCAT was of the view that the construction of the dwelling would result in a loss of valuable agricultural land. VCAT was also concerned that had it approved the application, it may have created an expectation that the owners of the other 10 vacant lots surrounding the property would expect that they too would be able to construct a dwelling on their lots, leading to a fragmentation of these lots.

**BACKGROUND (CONT'D)**

In Brown, VCAT formed the view that if the Responsible Authority wanted: “ ... *to make it possible for people with small lots within the GWZ to develop these dwellings, on the grounds that the impact by way of loss of farming land and land prices etc. was acceptable, then it is my view they need to make that clear by way of an amendment to the Planning Scheme*”.

Whilst VCAT decisions are not binding as a precedent for future applications, the decision in respect of 108 Coolart Road has relevance to the consideration of this application.

That said, the previous approach taken by Council in the assessment of 108 Coolart Road is considered to remain valid, with conditional support being recommended. This is especially the case as the proposed dwelling is further away from the poultry farm and the owners of 102 Coolart Road intend to conduct crop raising (grapes) on the majority of the land parcel as an adjunct to their future home.

Also noted in the previous report on 108 Coolart Road, the subject site is one of 11 lots on the western side of Coolart Road, both north and south of Wonderland Avenue. The lots were subdivided into their current layout over 90 years ago and had been held in common ownership, most recently operating as a rural property for horse agistment purposes, with one dwelling and stables located towards the rear of the site.

In 2009 the landowner commenced the marketing of the individual allotments under the name ‘Coolart Rising’, with lots ranging in size from 2.05 hectares to 6.95 hectares.

Finally by way of background, it is noted that Permit P09/1113 for a dwelling on 7 Wonderland Avenue was issued in August 2010. The permit was issued at the direction of VCAT following the consent of all parties (comprising Council, the Applicant and the Objector).

The consent was based on the permit including the following condition:

“ *Before the use and/or development starts, the owner must enter into an Agreement with the Responsible Authority made pursuant to Section 173 of the Planning and Environment Act 1987 to provide for the following:*

- (a) *That the use of the land for a dwelling must at all times be in association with the use of the land for agricultural purposes (other than for ancillary purposes) to the satisfaction of the Responsible Authority.*

*Before the development commences, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act.*

*The owner/operator under this permit may pay the Responsible Authority’s reasonable costs of the preparation, execution and registration of the Section 173 Agreement.”*

**OFFICER DIRECT OR INDIRECT INTEREST**

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

## PREVIOUS PERMITS

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

1. P07/1708: Vegetation removal and construction of a new access point for Wonderland Avenue at Coolart Road (permit issued on 21 November, 2007).

The eastern portion of Wonderland Avenue, which dissects the land, is unmade. This application granted permission for the removal of vegetation within the road reserve and to construct the access onto the RDZ1.

2. P08/0416: The re-subdivision of Lots 5 and 6 to realign the common boundary (permit issued at the direction of VCAT on 4 December, 2008 following an Objector appeal against Council’s decision to issue a Notice of Decision).

The Applicant sought to realign the common boundary between Lots 5 and 6 to allow the existing stables and tree line to be contained within the same lot as the existing dwelling. The boundary realignment was effectively a reversal of the existing lot sizes between Lots 5 and 6, as demonstrated in the table below.

Lot No.	Existing Area	Proposed Area	% Change
5	3.7 hectares	4.66 hectares	+21%
6	4.5 hectares	3.54 hectares	-21%

As noted above, Permit P09/1113 for a dwelling on 7 Wonderland Avenue was issued in August 2010.

## EXISTING CONDITIONS

The subject land is currently accessed via Coolart Road, which is designated as a RDZ1.

The land is rectangular in shape and has an area of approximately 2 hectares (20,240 square metres), with a gentle slope down to the east.

The site has approximately 100 metres of tree lined frontage to Coolart Road. With the exception of one small tree near the southern boundary, the remainder of the site is clear of vegetation.

A Locality Plan is provided as Attachment 1.

## SURROUNDING LAND

A review of the general locality reveals a mix of lot sizes and land uses in the area. This is shown at Attachment 1, as well as the table below.

## SURROUNDING LAND (CONT'D)

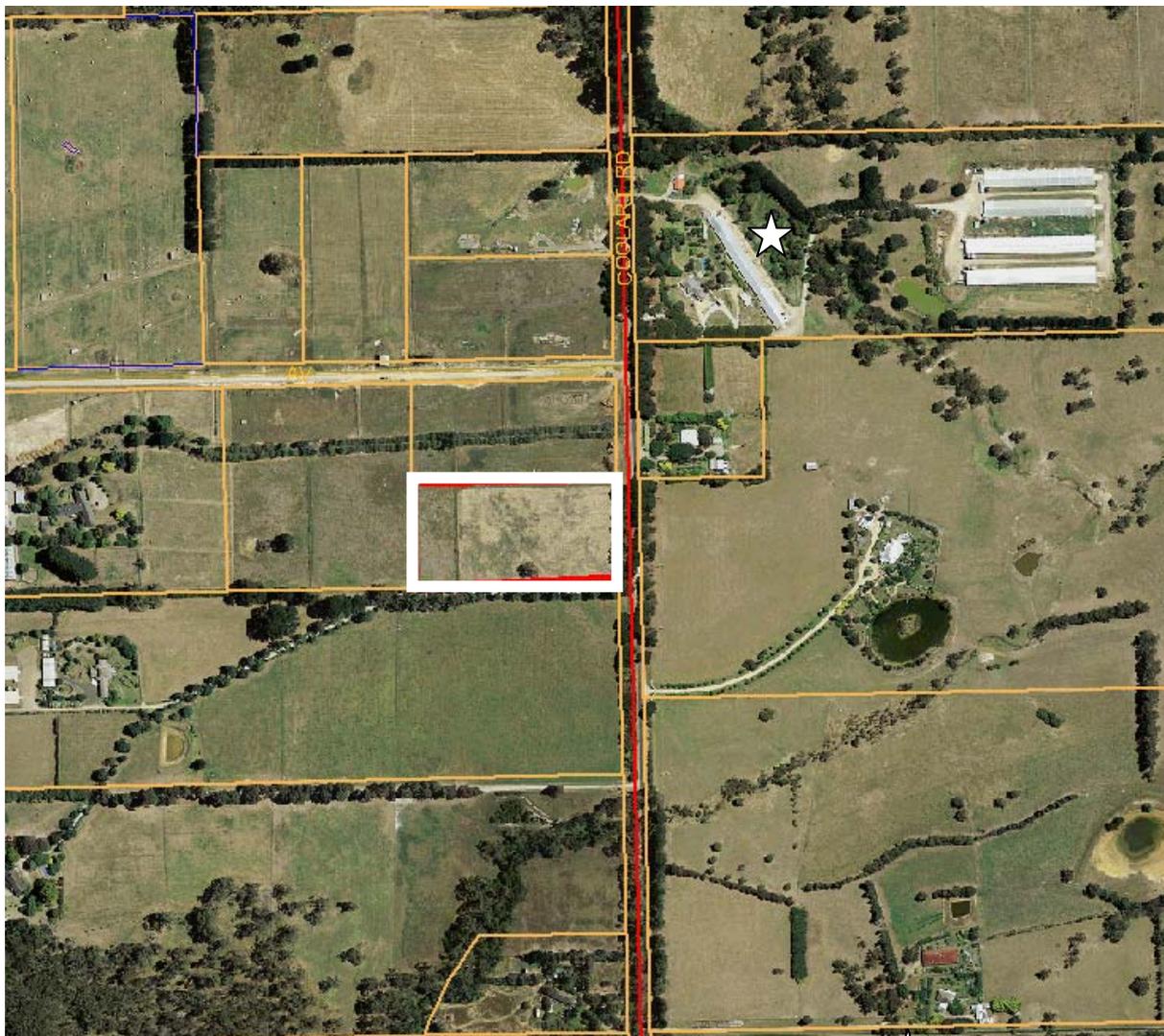
## Surrounding Properties and Setback of Existing Dwellings

Address	Lot Size	Dwelling	Setback of the Proposed Dwelling from the Abutting Site (Approximate)	Setback of the Existing Dwelling from the Proposed Dwelling (Approximate)
<b>North</b>				
104 Coolart Road	2 hectares	No	34.6 metres	n/a
<b>South</b>				
100 Coolart Road	14 hectares	Yes	330 metres	350 metres
<b>East</b>				
169 Coolart Road	1.6 hectares	Yes	120 metres	250 metres
165 Coolart Road	20 hectares	Yes	280 metres	440 metres
<b>West</b>				
1 Wonderland Avenue	3.7 hectares	No	57 metres	n/a

There are no offensive uses on immediately adjoining land, however there are several broiler farms located within a 2 kilometre radius of the subject site. The nearest to the subject site is located at No. 173 Coolart Road (on the eastern side of Coolart Road). This farm comprises five sheds housing approximately 190,000 birds. The closest shed is approximately 380 metres from the proposed dwelling, with the remaining four sheds being in excess of 570 metres from the proposed dwelling. The relationship between the application site and the nearest broiler farm is indicated on the following aerial photograph.

SURROUNDING LAND (CONT'D)

Surrounding Properties and Setback of Existing Dwellings (Cont'd)



Subject Site 

Nearest Broiler Farm Shed 

As stated in the Council Report for the application concerning 108 Coolart Road:

“ A review of the general locality reveals a mix of lot sizes and land uses in the area. It is evident that surrounding land includes uses such as broiler farms and crop raising on larger lots (in the order of 12 to 26 hectares), as well as smaller allotments used for rural lifestyle living, with the latter being particularly evident along the western part of Wonderland Avenue and Stumpy Gully Road (with lots typically ranging between 2 and 4.5 hectares). Wonderland Avenue is presently unmade and is dissected by a row of mature pines just to the west of the ‘Coolart Rising’ land. Of the seven lots, which comprise the western portion of Wonderland Avenue, all but two have been developed with a dwelling.”

An aerial photograph of the subject site and surrounds is attached as Attachment 2, showing the pattern of development in the immediate vicinity of the application site.

**PROPOSAL**

The proposal is for the use and development of a single storey dwelling and associated works (the plans are provided in Attachment 3). It is also proposed to grow grapes on the site and to establish a dam (less than 1 mega litre [ $<1\text{megL}$ ]) towards the front of the site.

The Land Use Suitability and Whole Farm Plan submitted on 28 September, 2010 provide details as to the proposed agricultural use as follows:

- “
- *Total percentage of property used for agriculture purpose 97%;*
  - *The vineyard will be developed using modern viticultural practices i.e. trellising, vine spacing and canopy management, and will look very similar to other professionally managed vineyards on the Mornington Peninsula;*
  - *A native vegetation buffer will run along the front of the property to provide a shelter belt for native animals;*
  - *The production and sale of wines made in the Chilean style – Chicha (there are currently no producers of these wines in Australia) will also add significant social and tourist value to the Mornington Peninsula;*
  - *Chicha will be sold via the Chilean Festival – minimum of 5,000 litres of Chicha each year. Sales will also be made to private buyers as a result of this exposure and also through social contacts; and*
  - *The catchment is adequate to fill the proposed small dam several times during the year and will provide adequate water for the vineyard. Varieties and rootstocks have been selected for drought tolerance and capacity to explore the soil profile. Soil moisture holding capacity (RAW values), variety and rootstock selection and seasonal rainfall will mean that irrigation will only be required during low rainfall years as a supplement to maintain full yield levels. In extreme circumstances low water availability may have some impact on yield but will not threaten vine survival.”*

The single storey dwelling is designed with four bedrooms, two bathrooms, living and family/dining areas, workshop and rumpus room and a two car garage.

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

Item	Description
<b>Roof Materials</b>	Colorbond – ‘Wilderness’.
<b>Wall Materials</b>	Dwelling: Cement blocks – ‘Dune’ colour and Gutters: ‘Bushland’ colour
<b>Garage Door</b>	Roller shutter doors x two: Colorbond ‘Bushland’.
<b>Building Height</b>	Dwelling: 5.4 metres maximum and Garage: 4.7 metres to top of gable.
<b>Wall Height</b>	Dwelling: 2.5 metres maximum and Garage: 2.9 metres.
<b>Front Setback</b>	To Coolart Road (east): Dwelling – approximately 160 metres.
<b>Side Setbacks</b>	To 104 Coolart Avenue (north): Dwelling – 37.6 metres and South boundary: Dwelling – approximately 33 metres.
<b>Rear Setback</b>	West boundary: Dwelling – 7 metres (minimum).
<b>Site Area</b>	20,240 square metres.

PROPOSAL (CONT'D)

Item	Description
Building Area	Approximately 280 square metres.
Site Coverage	3%.
Parking	Attached double garage – 35 square metres.
Driveway	Driveway from Coolart Road along southern side boundary to provide access to dwelling – 3.5 metres wide with sealed bellmouth as per VicRoads requirements.
Fencing	Existing post and wire perimeter fencing.
Water Tanks	Two tanks combined 50,000 litre capacity.
Vegetation Clearance	None.
Earthworks	Minor earthworks associated with the dam.

NOTIFICATION AND CONSULTATION

The application was advertised on 31 May, 2010 by way of letters to nearby owners and occupiers and the display of one sign on the site. The statutory notification period concluded on 17 June, 2010.

SUBMISSIONS

No submissions were received.

REFERRALS

External Referrals

The application was referred to VicRoads under Section 55 of the Act who advised that they:

“ ... would have no objections to the granting of a planning permit for the development and use of the subject property, generally in accordance with the details and plans attached to you letter, if the following condition is included in the permit:

1. Prior to the commencement of use and development, a 3.5 metre wide sealed vehicular access must be constructed with a sealed bellmouth generally in accordance with the attached VicRoads' Guidelines for the Typical Rural Driveway Access to Residential Areas.”

The application was also referred to the Environment Protection Authority (EPA) as a non-Section 55 referral to provide some advice. They provided the following comments:

1. The proposed residential dwelling is located on Green Wedge land with proximity to a nearby broiler farm located at 173 Coolart Road (Broiler Farm) and surrounded by a broiler farm cluster.”

REFERRALS (CONT'D)

External Referrals (Cont'd)

- “
2. *The proposed building has an approximately 380 metre buffer from the nearest broiler shed at the front of the Broiler Farm and 570 metre from the remaining four sheds clustered at the rear of the Broiler Farm.*
  3. *Within the Broiler Farm, the total bird numbers are 190,000, of which there are 44,000 birds in a single shed and 146,000 birds in a cluster of four sheds.*
  4. *EPA considers that the buffer distance should be calculated based on one single source with a total bird number of 190,000, rather than separating the farm into two distinct sources farms. This is because the latter method is not covered by the Victorian Code for Broiler Farms Code 2009 ('Broiler Code') and is not consistent with the State Environmental Protection Policy (Air Quality Management).*
  5. *Using the buffer distance calculation method outlined in the Broiler Code, EPA advises that the required buffer distance should be at least 460 metres and that the existing buffer of 380 metres is not adequate.”*

Internal Referrals

Council's Environmental Health Officer advised of no objection, subject to conditions regarding disposal of wastewater from the development. The response further advised that in regard to the nearby broiler farm:

- “
- A Section 173 Agreement should be entered into so that current and all future landholders are aware of the broiler farm operations. The following conditions as suggested in the Victorian Code for Broiler Farms – Strategic Land Use Planning Considerations:*
- *The dwelling should be placed as far away as practicable from the surrounding chicken farms; and*
  - *Vegetation should be planted and used as a screen along the affected boundaries.”*

Council's Strategic Planner provided the following comments:

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

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

REFERRALS (CONT'D)

Internal Referrals (Cont'd)

“ *The Provisions of the Victorian Broiler Code* (Cont'd)

*The 2001 Code did include provisions regarding appropriate consideration of applications which would locate a new dwelling in proximity to an existing farm, stating that inter alia ‘The Responsible Authority should not support any application for a planning permit which would allow the possibility of a new dwelling or other sensitive use being built within the separation distance of an existing broiler farm’ (page45).”*

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

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

*Important changes in the revised 2009 Code are as follows:*

- *The separation distances have been varied. Under the 2009 Code the separation distance is calculated on the specific (bird number) capacity of the farm. Separation distances are now measured from the nearest point of any shed rather from the ‘centroid’ of a group of sheds. For a 200,000 bird farm the required separation distance is 472 metre; and.*
- *The provisions in relation to applications for sensitive uses in proximity to existing farms have been completely re-written. Notably, odour modeling is not required where it is proposed to construct a dwelling in the vicinity of an existing broiler farm. Given the significance of these provisions to the Wonderland Avenue area, a relevant extract is included as an Appendix to these comments. (This is provided at Attachment 6 to this report.)*

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

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

REFERRALS (CONT'D)

Internal Referrals (Cont'd)

“ *The Provisions of the Victorian Broiler Code* (Cont'd)

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

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

*In these circumstances, it is considered that the proposal for a dwelling at 102 Coolart meets the Strategic Planning Guidelines set out in the current Broiler Code.*

***Dwellings on Lots within the Green Wedge Zone***

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

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

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

- a) *That the impact on potential agricultural use, conservation and landscape values of a site (and exposure to environmental risks, such as bushfire) are minimised (by the choice of house location and the area of land committed to ‘residential purposes’.*”

**REFERRALS (CONT'D)**

**Internal Referrals (Cont'd)**

“ *Dwellings on Lots within the Green Wedge Zone (Cont'd)*

- b) *That the occupation of the site will contribute to achieving core Green Wedge objectives in terms of conservation and/or opportunities for agricultural production. This should be demonstrated through a whole Farm/Land Management Plan.*
- c) *That the prospective occupants are fully aware of the implications of living in a rural area, in terms of their obligations, such as control of domestic animals, and their potential exposure to normal odour, noise, dust etc emissions from rural activities.*

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

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

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

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

An extract from the 2009 Broiler Code is attached as Attachment 6.

**PLANNING SCHEME PROVISIONS**

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

<b>State Planning Policy Framework</b>	11.04-6: Green Wedges
	11.05-3: Rural Productivity
	12.04-2: Landscapes
	13.05-1: Wildfire Risks
	14.01-1: Protection of Agricultural Land
	16.02-1: Rural Residential Development

**PLANNING SCHEME PROVISIONS (CONT'D)**

<b>Local Planning Policy Framework</b>	21.02: Profile of the Mornington Peninsula
	21.03-1: The Regional Role of the Mornington Peninsula
	21.04: Mornington Peninsula Strategic Framework Plan
	21.06: Strategic Framework and the Peninsula's Settlement Pattern
	21.09: Planning for Rural Areas
	22.03: Dwelling Density, Excisions and Realignments in Rural Areas
	22.11: Mornington Peninsula Fire Protection Policy
	22.14: Mornington Peninsula Land Units
<b>Other</b>	57: Metropolitan Green Wedge Land
	65: Decision Guidelines

The relevant objectives and strategies of these provisions are attached in Attachment 4.

**CONSIDERATION AND ASSESSMENT**

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

- Whether the use of the land for a dwelling in conjunction with agriculture in the GWZ is appropriate;
- The effect of the use and development on the landscape and environmental values of the site;
- Whether the establishment of a new dwelling in close proximity to an operational broiler farm is appropriate (from both an amenity point of view as well as the potential impact on the broiler farm operations); and
- Consistency with the SPPF and LPPF.

**Relevant Victorian Civil Administrative Tribunal Decisions**

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

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

Recent decisions which relate to the Mornington Peninsula Shire include:

- Bowden v Mornington Peninsula Shire Council (2009);
- Brown v Mornington Peninsula Shire Council (2009); and
- Mount Eliza Action Group Inc. v Mornington Peninsula Shire Council (2010).

The Brown decision has been commented upon in the Background section of this report.

CONSIDERATION AND ASSESSMENT (CONT'D)

Relevant Victorian Civil Administrative Tribunal Decisions (Cont'd)

Comments on the other decisions have been provided in other Green Wedge dwelling application reports and are not repeated here.

It is also to be noted that since the VCAT decisions had been handed down, the State sections of the Planning Scheme (SPPF) have been changed in respect to rural land.

The SPPF objectives and strategies are implemented through the LPPF and specific Zones and Overlays and, as these have not changed, in essence the approach to be taken for assessment remains much the same.

At the same time it is appropriate to acknowledge that there is a new Clause 11.05-3 relating to rural productivity which includes the objective: “ ... *to manage land-use change and development in rural areas to promote agriculture and rural production*”. Strategies to achieve this objective are as follows:

- Prevent inappropriately dispersed urban activities in rural areas;
- Limit new housing development in rural areas, including:
  - Directing housing growth into existing settlements;
  - Discouraging development of isolated small lots in the Rural Zones from use for single dwellings, rural living or other incompatible uses; and
  - Encouraging consolidation of existing isolated small lots in Rural Zones.
- Restructure old and inappropriate subdivisions.

It is also noted that Clause 17.05: Agriculture has been changed to Clause 14.01: Agriculture.

Implementation strategies remain essentially the same with the main change being the wording of the objective which has been changed from:

“ *To ensure that State’s agriculture base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive farmland which is of strategic significance in the local or regional context.*”

To:

“ *To protect productive farmland which is of strategic significance in the local or regional context.*”

The third strategy of Clause 14.01-1 is that:

“ *Permanent removal of productive agricultural land from the State’s agricultural base must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors.*”

CONSIDERATION AND ASSESSMENT (CONT'D)

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

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

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

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

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

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

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

Here, the position has not changed from that considered to apply to 108 Coolart Road. As stated in the Council report for that site:

“ *The purpose of the GWZ has been provided earlier in the report. The purpose is to protect and conserve Green Wedge land for a range of purposes (whilst it may be considered that the purpose of the GWZ is to solely protect the agricultural potential of the land, this is not case). In fact, with the exception of a number of rural activities, agriculture itself is not an 'as of right' entitlement in the Zone, since it requires a planning permit for the use (i.e. agriculture is a Section 2 Use).*

*As correctly noted in the objections received, the GWZ makes no reference to residential land use in its stated purpose. This does not necessarily mean that the use of the land for a dwelling (or any other Section 1 or 2 Use for each Zone) is not contemplated by the Planning Scheme. To apply that logic to all Zones in the Scheme, the only Zones within which a dwelling could be considered would be the Residential, Low Density Residential and Mixed Use Zones, since these are the only Zones to make specific reference to residential land use in their respective states purposes. Clearly, this is not the intent of the Scheme.”*

CONSIDERATION AND ASSESSMENT (CONT'D)

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

“ *The subject land has existed in its current configuration since 1920. Its limited land area restricts the land owner’s options in terms of ‘traditional rural activity’. It is acknowledged that the land could be used as a tenement unit in association with adjoining land. Indeed, the subject lot has historically been used in this manner prior to the sale of individual allotments. However, the situation as it stands is that the land forms part of an historic subdivision layout, and individual allotments have been on sold. It is Council’s role as the Responsible Authority to assess the proposal as submitted, rather than speculate on scenarios that are beyond Council’s control and the control of the current landowner. Council’s Planning Scheme does not provide any tenement controls.*

*Whilst information submitted with the current application does not specifically indicate an intention to use the land for agricultural purposes, the Applicant has verbally indicated that the lot will be used for rural-residential type living with a number of animal paddocks to be established. The owner is presently grazing cattle on the land and has gained planning approval for a rural shed to facilitate storage of feed and equipment in association with that use. Rural living (on lots of various sizes) is one feature of the Mornington Peninsula. This type of living is recognised in the Municipal Strategic Statement (MSS) at Clause 21.09. Rural living is particularly common on smaller allotments closer to the Shire’s townships and activity centres. A review of the smaller Green Wedge allotments in the immediate area of the subject land identifies that dwellings exist on land parcels of similar size to the proposed site. In this regard, the proposal is not seen to be introducing a substantially different pattern of development and land use than that which presently exists.*

*The relatively low impact nature of rural-residential use will not compromise or prejudice existing or future agricultural type uses on surrounding land, and is consistent with the use of allotments in the immediate vicinity of the land.”*

Whilst noting the VCAT decision in respect to 108 Coolart Road, in this case the Applicant has submitted a whole of Farm Plan which includes details concerning the growing of grapes which utilises 97% of the site. The application notes that there are currently no producers of Chicha wine in Australia.

It is apparent that given the limited land size and the nature of the intended use, the vineyard cannot be viewed as a significant commercial enterprise providing the primary source of income for the occupants. However, the figures provided in the budget and cash flow projections of the Farm Plan would suggest the proposal to be a legitimate low key agricultural activity capable of providing a source of income. In this regard, the proposal is seen to support the intentions of the Planning Scheme in terms of land use and preserving the landscape values of the Green Wedge.

Taking into account the above, approval of the dwelling associated with the vineyard will not cause the fragmentation of agricultural land and the amount of land to be utilised by the dwelling (approximately 3%) is not such that there is a concern regarding the loss of productive agricultural land.

CONSIDERATION AND ASSESSMENT (CONT'D)

**Whether the Establishment of a New Dwelling in Close Proximity to an Operational Broiler Farm is Appropriate (from both an Amenity Point of View as well as the Potential Impact on the Broiler Farm Operations)**

***Broiler Farm Located at 173 Coolart Road***

The comments from the Council report in respect to 108 Coolart Road are noted as follows:

“ *There are numerous decisions by VCAT with regards to the use and development of dwellings adjacent to existing broiler farms. Whilst VCAT has not made a definitive ruling on the issue, the decisions have highlighted that each application must be assessed on its own individual merits. As previously mentioned, the Broiler Code aims to control the development and use of new farms and the extension of existing farms. Its scope does not extend to controlling uses on adjoining land, recognising that often such land will be in separate ownership. However, the Scheme (specifically Clause 16.03) requires Council to have regard to the Broiler Code when considering applications for proposed residential development in the vicinity of Broiler Farms.*

*Whilst the Broiler Code makes reference to separation distances for new broiler farms and the expansion of existing broiler farms, there is no statutory requirement that the setbacks be reverse applied when assessing uses on adjoining land. That is not to say that the principle of maximising the separation between sensitive uses and broiler sheds should not be encouraged where possible. Although the buffer distances identified in the Broiler Code cannot be strictly enforced as part of this application, it is still considered appropriate that sensitive uses such as that being proposed have due regard to the existing broiler operations, and be sited as far away as possible whilst still satisfying siting requirements of the Scheme.*

*A review of the layout of development on the broiler farm at No. 173 Coolart Road, four of the five broiler sheds at 173 Coolart Road are set well back from the front boundary (in excess of 300 metres), with just one shed located towards the front of the lot. Assuming the proposed dwelling would be sited in accordance with the revised plans, a separation distance in the order of 540 metres is able to be achieved from four of the five broiler sheds at No. 173. The dwelling would achieve a separation distance of approximately 280 metres from the remaining (fifth) shed. The considerable front boundary setback of the dwelling combined with increased landscaping treatment will further serve to reduce the impact of uses associated with the operation of the broiler farm (e.g. vehicle deliveries and the loading/unloading of birds). The proposed minimum setback of 280 metres also compares favourably to the setback of other dwellings from broilers throughout the Peninsula.*

*In terms of the siting of the proposed dwelling, there are no other broiler sheds within the 500 metre separation distance recommended by the Broiler Code. A review of the surrounding area reveals that there are presently 13 dwellings within a 500 metre separation distance of the broiler sheds at No. 173. These dwellings are sited within both the GWZ along Coolart Road, as well as Low Density Residential Zoned land along Carpenters Lane, east of No. 173. Given that residential land use is already a dominant feature within the vicinity of the broiler shed at No. 173, the proposal will not introduce a new element of land use (i.e. residential) to the area. It is difficult to draw a conclusion that the approval of an additional dwelling within the separation distance of the sheds would prejudice the ongoing operation of the broiler farm.”*

CONSIDERATION AND ASSESSMENT (CONT'D)

**Whether the Establishment of a New Dwelling in Close Proximity to an Operational Broiler Farm is Appropriate (from both an Amenity Point of View as well as the Potential Impact on the Broiler Farm Operations) (Cont'd)**

*Broiler Farm Located at 173 Coolart Road (Cont'd)*

Suffice to state in respect to the proposal at 108 Coolart Road it was concluded that: “ ... *it is difficult to draw a conclusion that the approval of an additional dwelling within the separation distance of the sheds would prejudice the ongoing operation of the broiler farm*”.

This conclusion was not agreed with by VCAT. Among other things it stated that: “ ... *in my view it would therefore be inadvisable to allow for a dwelling to be constructed in such close proximity to an older style broiler farm*”.

In the case of poultry farms, buffer distances are established under the Victorian Code for Broiler Farms 2009 which operates as part of Clause 52.31 as follows:

“ *The purpose of this clause is to facilitate the establishment and expansion of broiler farms in a manner that is consistent with orderly and proper planning and the protection of the environment.*

*The clause applies to land permit applications to use or develop land to establish a new broiler farm or to increase the farm capacity of an existing broiler farm.*

*It is a requirement of this clause that a permit application to use or develop land to establish a new broiler farm, or to increase the farm capacity of an existing broiler farm, must comply with the Victorian Code for Broiler Farms 2009.”*

In respect to the applicability of the Code, it is useful to note some of the comments that were made in respect to a dwelling application near a poultry farm in 130 Males Road, Moorooduc (Permit No. P08/2244). Although these comments were made under the 2001 Code, the general principles in terms of maximising separation distances continue to apply:

“ *Whilst the Code makes reference to separation distances, there is no statutory basis for its formal consideration in respect to an application for a dwelling on an adjoining site. That is not to say that the principle of maximising the separation between sensitive uses and the poultry sheds (particularly from air exhaust equipment) should not be followed.*

*It is also appropriate to note that the Code's provisions do not apply to existing farms where there is no intention to expand their facilities or operations.*

*On balance, the principle to be followed here is to try and increase the separation to the maximum reasonable extent.*

*In respect to the overall compatibility of the proposed dwelling with the poultry farm it is also noted that there are dwellings existing on surrounding lots that are located a similar distance from the broiler farm as the proposed dwelling.*

*It is also noted that the owners of the poultry farm have withdrawn their objection on the understanding that appropriate conditions will be placed on any permit that is issued. Of note is the suggested condition relating to a Section 173 Agreement.”*

CONSIDERATION AND ASSESSMENT (CONT'D)

**Whether the Establishment of a New Dwelling in Close Proximity to an Operational Broiler Farm is Appropriate (from both an Amenity Point of View as well as the Potential Impact on the Broiler Farm Operations) (Cont'd)**

*Broiler Farm Located at 173 Coolart Road (Cont'd)*

“ *Even without that condition any future occupant of the dwelling would not be entitled to prevent the ongoing existing use which occurs with some amenity disbenefits normally associated with the running of a broiler farm. Setting aside the issue of the entitlement to a dwelling on Green Wedge land, to be discussed in the next section of this report, it would not be appropriate to refuse an application for a dwelling because it was feared that there would be increased complaints about the poultry farm operation in the future.*”

The separation distance involved in this proposal is greater than was the case for 108 Coolart Road (280 metres for No. 108 vs approximately 380 metres for the current proposal at No. 102).

While the Applicant is proposing an 80 metre ‘relaxation’ to the recommended 460 metre buffer distance under the Code, the EPA advice received was not based on an assessment of the expected risks/amenity impacts of the Broiler Farm ( and shed configuration/location) on the proposed dwelling. Rather, the advice derived entirely from the Broiler Code and as such, the EPA does not support any variation of the buffer distance as set out in the Code.

The proposed dwelling is set back approximately 380 metres from the closest chicken shed at 173 Coolart Road and approximately 570 metres from the four sheds at the rear of the site. Although it is acknowledged that the Code does not make provision for the splitting up of the farm for the purpose of calculating separation distances, it is considered appropriate to do so in this case, given the unique nature of this broiler farm with regards to the separation distances of the sheds. It is also noted that Council’s Environmental Health Department did not object to the proposed dwelling.

In addition to the above, what appears to have been overlooked in respect to the previous matter concerning 108 Coolart Road, is that rural residential living within a rural area does not bring about entitlement for the level of amenity protection similar to that expected for a low-density residential area. As has been stated in a number of VCAT cases where owners of rural residential allotments within rural areas have objected to the establishment of rural uses, the amenity expectations must be quite different.

In other words, residents of these small allotments must accept that there may be greater noise and activity associated with such rural areas and of course there will be, from time to time, smells associated with activities such as the fertilisation of land and of course exhaust emissions from broiler farms. These are all legitimate parts of rural life.

With this taken into account, the Applicant has volunteered the inclusion of a Section 173 Agreement in which:

- Future landowners are fully aware of the potential emissions associated with the agricultural activities and proceed with the use and development of their dwelling in full knowledge that one of the objectives of the Green Wedge is to accommodate productive agricultural use; and

CONSIDERATION AND ASSESSMENT (CONT'D)

**Whether the Establishment of a New Dwelling in Close Proximity to an Operational Broiler Farm is Appropriate (from both an Amenity Point of View as well as the Potential Impact on the Broiler Farm Operations) (Cont'd)**

*Broiler Farm Located at 173 Coolart Road (Cont'd)*

- The owner of the land and any successor in title, to include a clause in every future contract of sale of the land that informs each prospective purchaser that the lot is located in close proximity to an operational broiler/chicken farm for as long as these activities are operating at 173 Coolart Road, Tuerong.

The above wording is consistent with the Section 173 Agreements that were required for 130 and 130A Males Road, in which dwellings were approved within close proximity to an operational broiler farm (130A Males Road was approved by Council at its meeting held on 6 April, 2009). In summary, having regard to the provisions of the 2009 Code which seek to increase separation distances and the volunteered Section 173 Agreement, it is considered that the proximity of the poultry farm would not form a proper basis for the refusal of the application.

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

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

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

- Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles;
- The dwelling must be connected to a reticulated sewerage system or if not available, the wastewater must be treated and retained onsite in accordance with the State Environment Protection Policy (Waters of Victoria) under the *Environment Protection Act 1970*;
- The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for fire fighting purposes; and
- The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

Appropriate access can be provided to the dwelling which will meet the standards set out by VicRoads by way of conditions. A reticulated electricity supply is available.

The allotment is of a size where onsite treatment is possible and a condition of permit will include relevant Environmental Health standards.

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

CONSIDERATION AND ASSESSMENT (CONT'D)

**Assessment of the Development Requirements of the Environmental Significance Overlay and the Green Wedge Zone (Cont'd)**

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

The following table addresses a number of other relevant considerations concerning the application.

Key Principles – Green Wedge Zone	Comment
Siting so as to maximise buffer distances to agriculture.	Maintains an adequate buffer distance from the closest broiler farm.
Siting and design to minimise landscape and environmental impact.	<p>Appropriate setbacks are provided to Coolart Road and adjoining properties which allows for appropriate planting to provide visual screening and enhance environmental values.</p> <p>The proposed wall colour ‘Dune’ is not considered to be a muted tone and a condition shall be included which requires a schedule of muted non-reflective colours to be submitted prior to the commencement of construction.</p>
Clustering of development for landscape impact minimisation and efficient service provision.	The dwelling is single storey and is sited with substantial setbacks from boundaries. Services are accessible to the dwelling location subject to conditions.
No more farm dams, roads and infrastructure supplied.	<p>A dam is proposed which will store less than 1 mega litre. Given that:</p> <ul style="list-style-type: none"> <li>• There is no existing dam on the site;</li> <li>• The dam is functional and not for ornamental purposes; and</li> <li>• It strengthens the viability of the proposed agricultural activity,</li> </ul> <p>it is considered acceptable.</p>
Transfer costs from Council to land owner.	There is no adverse impact on Council expenditure.
Environmental gain negotiated from development approvals.	There will be an improved environmental gain through additional tree planting and management of weeds. There will be plant propagation to the benefit of the community.

CONSIDERATION AND ASSESSMENT (CONT'D)

Assessment of the Development Requirements of the Environmental Significance Overlay and the Green Wedge Zone (Cont'd)

Key Principles – Green Wedge Zone	Comment
Site specific responses rather than generic provisions.	The proposal responds to location advantages by establishing a relationship with surrounding land use. The relatively low impact nature of residential use of the land will not compromise or prejudice existing or future agricultural type uses on surrounding land and is largely consistent with the use of other small rural allotments in the immediate vicinity of the site.

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

*Environmental Significance Overlay – Schedule 4 (ESO4)*

The ESO4 is considered to be the only relevant Overlay in respect to this application.

In respect to the ESO4, the Statement of Environmental Significance indicates that:

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

This site is not in the public view in a major way and does not impact on any landscapes that have strategic importance. A Landscape Plan will form a condition requiring additional screening of the built form when viewed from surrounding properties.

CONCLUSION

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

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

**CONCLUSION (CONT'D)**

- Sufficient site area is clear of buildings, and has the potential to be used for future rural activities.

**RECOMMENDATION**

**That Council, being the Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all matters in respect of Planning Application P10/0147 for the use and development of a single storey dwelling and associated works including a dam and altered access to a Road Zone Category 1 on the land at 102 Coolart Road, Tuerong, hereby resolves to grant a planning permit subject to the following conditions:**

**Conditions**

- 1. Before the development starts, Plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Plans will be endorsed and will then form part of the permit. The Plans must be drawn to scale with dimensions and three copies must be provided. The Plans must show:**
  - A. A revised Site Plan, generally in accordance with the Plan provided in the submitted Farm Plan but modified to show:**
    - i. Lot dimensions;**
    - ii. Setbacks of the proposed dwelling from lot boundaries;**
    - iii. The location of existing/proposed access to the site;**
    - iv. Site levels, including the finished floor level of the proposed dwelling; and**
    - v. Dimensions of the proposed dam.**
  - B. Elevations of the proposed dwelling from the north, south east and west.**
  - C. A schedule of external materials and colours, which are to be in muted and non-reflective tones.**
  - D. A Landscape Plan prepared by a suitably qualified landscape professional, which must include:**
    - i. A schedule of all proposed planting, including the location and size at maturity of all plants and their botanical names; and**
    - ii. More than 80% native species to the locality.**
  - E. Provision of a 3.5 metre wide sealed vehicular access to Coolart Road with a sealed bellmouth generally in accordance with VicRoads Guidelines for Typical Rural Driveway Access to Residential Areas.**

**RECOMMENDATION (CONT'D)**

**Layout**

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

**Materials and Colours**

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

**Vehicle Crossing**

4. The vehicular crossing to Coolart Road in accordance with the details shown on the Endorsed Plans must be provided prior to the commencement of the approved uses.

**Revegetation and Stabilisation**

5. All disturbed surfaces on the land resulting from the development must be revegetated and stabilised to the satisfaction of the Responsible Authority.
6. Within six months of the occupation of the dwelling hereby approved (or other such time as approved in writing by the Responsible Authority), landscaping works as shown on the Endorsed Plans must be completed and then maintained in a healthy condition, to the satisfaction of the Responsible Authority. Any dead or diseased trees or shrubs must be replaced as soon as possible. The area set aside for landscaping must be used for no other purpose.

**Wastewater**

7. All sewerage and sullage waste from the proposed development must be discharged into an onsite wastewater Septic Tank system that is approved by the Environment Protection Unit, retains all effluent within the boundaries of the subject land, is located to the satisfaction of the Responsible Authority and meets the required setback distances.
8. No polluted waters, or any other liquid wastes shall be discharged into the stormwater system, or any other watercourse.
9. Works on the proposed dwelling must not commence until a permit to install a septic tank wastewater system is issued by Council's Environmental Health Team.

**Stormwater**

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

RECOMMENDATION (CONT'D)

Section 173 Agreement

11. Prior to the commencement of the use and development hereby permitted, the Applicant must enter into an Agreement with the Responsible Authority, pursuant to Section 173 of the *Planning and Environment Act 1987*, providing for the following matters to the satisfaction of the Responsible Authority:
  - A. The permit holder indicates that they are fully aware of the potential emissions associated with the agricultural activities and proceed with the use and development of their dwelling in full knowledge that one of the objectives of the Green Wedge is to accommodate productive agricultural use and that this activity should be expected and that they are aware of their obligations in relation to proper land management.
  - B. The owner of the land and any successor in title, to include a clause in every future contract of sale of the land that informs each prospective purchaser that the lot is located in close proximity to an operational broiler/chicken farm for as long as these activities are operating at 173 Coolart Road, Tuerong.
  - C. The above section (B) relating to ‘an operational broiler/chicken farm’ will end at any time when the broiler/chicken farm permanently ceases to operate and any existing use right has expired.

All costs associated with the drafting and registration of this Agreement on title are to be borne by the permit holder. This Agreement must be registered by the Applicant on title, prior to the commencement of the development of the dwelling, pursuant to Section 181 of the *Planning and Environment Act 1987*.

Expiry

12. This permit will expire if one of the following applies:
  - A. The development is not completed within two years of the date of this permit.
  - B. The use is not commenced within two and a half years of the date of this permit.

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

VicRoads Condition

13. Prior to the commencement of the use of the development, a 3.5 metre wide sealed vehicular access must be constructed with a sealed bellmouth, generally in accordance with the Vicroads’ Guidelines for Typical Rural Driveway Access to Residential Areas.

**ALTERNATE MOTION – ALTERING THE SECTION 173 AGREEMENT**

**Section 173 Agreement**

11. Prior to the commencement of the use and development hereby permitted, the Applicant must enter into an Agreement with the Responsible Authority, pursuant to Section 173 of the *Planning and Environment Act 1987*, providing for the following matters to the satisfaction of the Responsible Authority:
  - A. The permit holder indicates that they are fully aware of the potential emissions associated with the agricultural activities and proceed with the use and development of their dwelling in full knowledge that one of the objectives of the Green Wedge is to accommodate productive agricultural use and that this activity should be expected and that they are aware of their obligations in relation to proper land management.
  - B. All dogs and cats must be responsibly managed to prevent attacks on livestock and native fauna.
  - C. The owner of the land and any successor in title, to include a clause in every future contract of sale of the land that informs each prospective purchaser that the lot is located in close proximity to an operational broiler/chicken farm for as long as these activities are operating at 173 Coolart Road, Tuerong.
  - D. The above section (C) relating to ‘an operational broiler/chicken farm’ will end at any time when the broiler/chicken farm permanently ceases to operate and any existing use right has expired.

All costs associated with the drafting and registration of this Agreement on title are to be borne by the permit holder. This Agreement must be registered by the Applicant on title, prior to the commencement of the development of the dwelling, pursuant to Section 181 of the *Planning and Environment Act 1987*.