

South Gippsland Shire Council**Planning Delegation Report**

2021/391 - 9 Wanke Road Mirboo North VIC 3871

Application Details	
Application No	2021/391
Proposal	Develop land with a dwelling and shed
Applicant	David Trease Design & Drafting Solutions
Application lodged	1 October 2021
Plan Details	Plans prepared by David Trease Design and Drafting Solutions reference number 21-2102 dated September 2021
Officer:	Laura Acreman
Property Details	
Property Address	9 Wanke Road Mirboo North VIC 3871
Land Description	L1 LP130423K Parish of Allambee East
Land Area	1.52 hectares
Restrictions on title	Nil
Existing Use	Vacant
Planning Provisions	
Zone	Rural Living Zone (RLZ)
Overlays	Bushfire Management Overlay (BMO) Environmental Significance Overlay - Schedule 5 (ESO5)
Particular Provisions	Clause 52.06 Car Parking Clause 53.02 Bushfire Planning
General Provisions	Clause 65 - Decision Guidelines
CHMP	Not required
Permit Triggers	
BMO	Clause 44.06-2 A permit is required to construct a building or carry out works associated with accommodation (dwelling).
ESO5	Schedule 5 to Clause 42.01-2 A permit is required to construct a building with a total resultant floor area exceeding 200m ²
Notifications	
Advertising	Advertising was undertaken by way of notice to all adjoining land owners and occupiers.
Number Objections	Twenty nine (29)
Recommendation	
Notice of decision to grant a permit	

THE PROPOSAL

The application seeks approval to construct a dwelling and ancillary outbuilding at 9 Wanke Road, Mirboo North. The dwelling comprises a kitchen with butler's pantry, open plan meals and living rooms, formal lounge room, laundry, main bathroom with separate toilet, dual purpose games and office space and two bedrooms, the master with a walk-in robe and ensuite in the western half of the dwelling. The dwelling incorporates a detached habitable outbuilding comprising 4 additional bedrooms (each with an ensuite) to the eastern side of the dwelling; the buildings are connected via decking that extends along the length of the eastern part of the dwelling. A smaller additional deck features on the northern elevation.

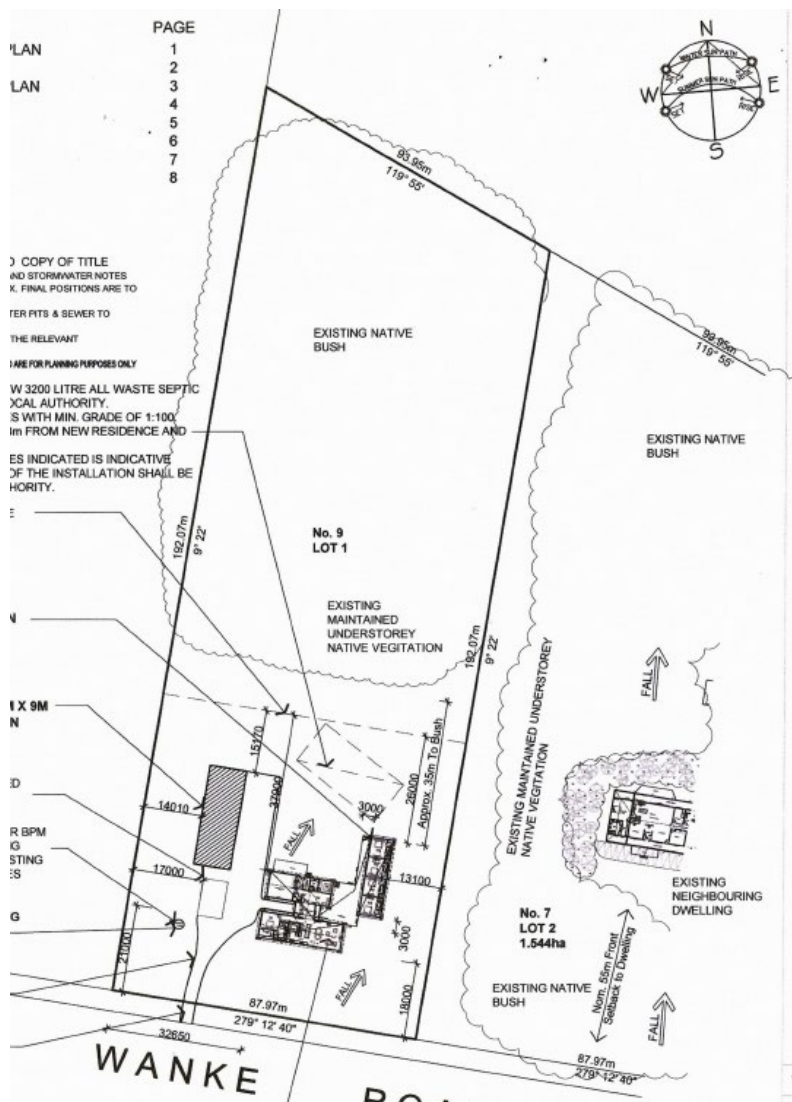
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The dwelling is to be set back 13.1 metres from the eastern property boundary and 18 metres from the front (southern) property boundary. It will be constructed of Colorbond materials, *Dark Grey* in colour for the walls and the roofing, with naturally stained timber decking.

A shed is sited between the dwelling and the western side boundary. The shed has a total length of 24 metres, a width of 9 metres, a total height of 5.2 metres with a floor area of 216 m². The shed is to be setback 14.01 metres from the western property boundary and 3.1 metres north of the existing shed on site. It will also be constructed of Colorbond materials, *Dark Grey* in colour.

Access to the site will be via the existing driveway and crossover to Wanke Road.



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SUBJECT SITE AND SURROUNDING AREA

The subject site is generally regular in shape, 1.52 hectares in size and is located on the northern side of Wanke Road in Mirboo North. The site, which is formally known as Lot 1 on LP130423, has a northern property boundary of 81 metres, an eastern boundary of 192 metres, a southern boundary (frontage to Wanke Road) of 76 metres and a western boundary of 221 metres. The land observes a slight fall to the north east property corner.

The land contains an existing shed and is otherwise undeveloped. It is extensively vegetated with native vegetation covering much of the northern portion of the land. It is proposed to locate the dwelling and outbuilding within the existing cleared section towards the front of the site.

The land is located approximately 1.1km north west of the Mirboo North CBD, in an area where land zoning is varied. To the north and east of the subject site, the land is zoned Rural Living; land sizes vary from 3590sqm to 4.2 hectares. To the south on the opposite side of Wanke Road is the Low Density Residential Zone where lot sizes range from 700 m2 up to 2.8 hectares. To the west is the Industrial 1 Zone where there are two smaller land parcels enjoy existing use rights for the purpose of a dwelling and large vacant land parcels.

The subject site and its surrounds are shown in the aerial image below (subject site shaded RED)



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The land immediately surrounding the subject land is described as follows:

- North: 31 Wells Road Mirboo North, a large 4.22 parcel of Rural Living Zoned land developed with a single dwelling, ancillary outbuilding and landscaped gardens. The land contains a large body of water which is fed by the Little Morwell River which is located to the east of the site. the land is densely vegetated.
- East: 7 Wanke Road Mirboo North- a similar sized Rural Living allotment developed with a single dwelling and ancillary outbuilding. The land is densely vegetated.
- South: Low density Residential zoned allotments each developed with a single dwelling .
- West: 66 Grand Ridge West Mirboo North: a large parcel of IN1Z land across two titles. The larger portion of the land is vacant, with the smaller land title developed with a dwelling and building used as an electricians workshop.

EASEMENTS

The subject land is not encumbered by any easements.

RESTRICTIVE COVENANTS, CAVEATS AND SECTION 173 AGREEMENTS

The subject land is not encumbered by any agreements, covenants, caveats or section 173 agreements.

BACKGROUND / PLANNING PERMIT HISTORY

The subject land was formally part of a larger allotment until 1981 when it was subdivided onto its own title; it has remained unchanged since. The balance lot has since undergone further subdivision where it has created the allotments abutting Wells Road and Gun Court to the north.

There is no additional planning history associated with the land.

PLANNING SCHEME CONTROLS & PERMIT TRIGGERS

Zone/Overlays/Particular Provisions		
Provision	Trigger?	Rationale
RLZ	No.	A permit is not required to use the land for a dwelling as the lot size exceeds 1 hectare; A permit is not required to construct a dwelling that meets all the relevant setback distances.
ESO5	Yes.	A permit is required to construct a building where the total resultant floor area exceeds 200sqm.
BMO	Yes.	A permit is required to construct a building associated with accommodation.

SPECIAL WATER SUPPLY CATCHMENT AREA

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The subject land is not located within a Special Water Supply Catchment Area.

ABORIGINAL CULTURAL HERITAGE MANAGEMENT PLAN (CHMP)

The land is not located within any area of Aboriginal Cultural Heritage Sensitivity, and the use is not a high impact activity.

FURTHER INFORMATION

No further information was required for this proposal.

NOTIFICATION OF THE PROPOSAL

The application was placed on notice in accordance with Section 52 of the *Planning and Environment Act 1987* by:

- Letters to all adjoining owners and occupiers

Twenty nine (29) objections were received as a result of the notification period. The key areas of concern raised by the objectors are as follows:

Objection	Planner Response
The house will be a commercial venture	The dwelling is proposed to be a family residence for the applicants. There is no intention to use the dwelling as a commercial venture.
No secure fencing surrounding the dwelling	The land is fenced with post and wire. There is no planning requirement that this needs to be upgraded or changed to facilitate the dwelling.
Unsealed road is insufficient for the use and increase in traffic.	The development of a dwelling is not expected to increase the traffic load on Wanke Road.
Domestic wastewater concerns with the number of toilets	The application has been referred to Council's wastewater team who have determined that the land can retain and treat the domestic wastewater. This will be included as a condition on any permit to issue.
Removal of vegetation	A small portion of vegetation will be removed to create defensible space which is unavoidable, and is specifically exempt in accordance with Clause 52.12 (Bushfire Protection Exemptions). An amended site plan will be required as a condition on any permit to issue that is updated with the vegetation required to be removed to create the required defensible space.
The dwelling will create an increase in the potential of:	This is not a planning consideration.

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<ul style="list-style-type: none"> • Vandalism; • Theft; • Crime; • Antisocial behaviour <p>To surrounding properties</p>	
This facility should be located within a larger community with access to medical care	The proposed dwelling is a section 1 use of the land and conforms to the surrounding residential land use. It is not an institutional type and use that requires a separate use permit or consideration.
The application wasn't advertised widely enough.	The application was notified to all adjoining land owners and occupiers in accordance with Section 52 of the Act.
Drop in potential neighbouring land values	This is not a planning consideration.
The dwelling will increase fire risk to the area.	The dwelling is to be constructed to BAL 29 and the submitted Bushfire Management Plan will be endorsed to form part of the permit. It includes the appropriate measures to reduce the risk of bushfire in accordance with the CFA requirements.
The dwelling has 4 self-contained units.	It has four detached bedrooms connected to the main dwelling by decking. They do not have kitchen or food preparation facilities and are therefore not considered to be separate dwellings or "self-contained" in any way.
Mirboo North doesn't have the facilities to support at risk people including a 24-hour police station.	This is not a planning consideration.
Drug rehabilitation is not usually associated with a house	The proposal is to construct a dwelling, not a drug rehabilitation facility.
Not enough sufficient public transport	This is not a relevant planning consideration for this proposal.
Retirements and safety/wellbeing of all abutting residents is at risk	This is not a planning consideration.
The detached bedrooms could easily be equipped with kitchenettes and used as studio apartments resulting in 5 dwellings on the allotment	The use of the bedrooms as dwellings is not a part of this proposal.
<p>The application is inconsistent with the planning scheme:</p> <ul style="list-style-type: none"> • clauses 13.07-15- The size and nature of the development strongly suggest it is not compatible with the low density rural living zone, regardless of any commercial activities that are planned for the site • 16.01-1L- The location of this type of development on the edge of Mirboo North, 	<p>The following comments are made on each point:</p> <ul style="list-style-type: none"> • The development of a dwelling conforms with the surrounding land use and is appropriate for the Rural Living Zone; • The land is zoned for the purpose of rural lifestyle living and the development of

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<p>about 1.2 km from the town centre is inconsistent with the scheme</p> <ul style="list-style-type: none"> 35.03- there is no mention of protecting native vegetation. Further degradation will occur if the property is development without appropriate controls in place. The heavy clay soils in this area mean that failure of on-site domestic wastewater systems is likely unless they are appropriately designed. This is concern because the wastewater disposal field is less than 150 m from a dam that is used for primary contact recreation and forms the headwaters of the Little Morwell River 13.02-1S- the proposal is at odds with clause 13.02-1S which describes a strategy of directing population growth and development to low risk locations. The proposed development is for a residence of 12 people in a high risk location. 	<p>dwelling complies with this.</p> <ul style="list-style-type: none"> The vegetation that is to be removed is exempt from planning approval. An amended site plan will be required which clearly identifies the vegetation to be removed to facilitate defensible space and a condition will be included on any permit to issue that any further vegetation removal will require additional planning approval. The dwelling will be required to be connected to a suitable domestic wastewater service which will be included as conditions on any permit to issue. The proposed dwelling will be the permanent residence of the land owner and the children placed in their care. The application will infill a vacant allotment within the RLZ within the Mirboo North Settlement Boundary, and accords with the intent of the zone.
there is insufficient information in the application to allow me to accurately assess the impact of the development on me and my property	The application has submitted all of the required application documents.
Social media shows the applicants make a living by taking in disadvantaged youth recently released from prison	This is not a planning consideration.
The construction of boundary fences will disrupt local wildlife corridors.	There are no proposed changes to the existing fencing as part of the application.
The proposal does not address clause 52.17	Assessment under clause 52.17 is not applicable as the vegetation to be removed is exempt to create defensible space.
The dwelling will be next to a large dam, putting vulnerable youths next door to a property with a large body of water is a very dangerous situation.	This is not a planning consideration.

For the sake of clarity, it must be emphasised that the reason this development triggers a planning permit is due to bushfire and erosion control, and Council's assessment has been confined to these permit triggers. Council has no ability to consider the appropriateness of the use of the land as a dwelling – as noted previously in this report, the use is as of right, and the future occupants of that dwelling is not a matter that the Planning Scheme seeks to regulate.

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There is a common theme amongst the objections that the proposed dwelling (by virtue of its design attributes) is to be used for purposes other than a dwelling (e.g. a commercial venture such as a bed and breakfast or AirBnB, or alternatively some form of institutional use). The applicant has applied for a single storey dwelling as a permanent place of residence for the land owner. The proposed development is properly characterised as a Dwelling under the Planning Scheme, which defines a dwelling as:

A building used as a self-contained residence which must include

- a) A kitchen sink*
- b) Food preparation facilities*
- c) A bath or shower; and*
- d) A toilet and wash basin*

It includes outbuildings, and works normal to a dwelling.

There is nothing in the design response to suggest that the above definition has not been met.

It is worth noting that, to the extent that the proposed development may (at some future time) be associated with a Bed and Breakfast type use, that any such use would not require a planning permit in any case. Similar to a dwelling, the use of the land for a Bed and Breakfast falls within Section 1 (no permit required) of clause 35.03-1 of the South Gippsland Planning Scheme; it is not something that the zoning seeks to regulate.

Similarly, if the landowner were to seek to incorporate any other land use(s) that required a further planning approval under the South Gippsland Planning Scheme, an application would need to be made to and assessed by Council. Any such application would be assessed in accordance with the Act and advertised in accordance with the planning controls at the time. Council is bound to consider the application as presented, and cannot make assumptions as to how the land may or may not be used at some future point.

REFERRALS UNDER SECTION 55 OR 57C AND INTERNAL REFERRALS

Authority	Rationale	Date received and response
CFA	An application to construct a building or carry out works associated with a dwelling.	Response received 29 November 2021 providing for conditional consent to the proposal subject to the inclusion of the following conditions on any permit to issue: 1. Before the development starts, the Bushfire Management Plan prepared by Euca Planning Version 1.0 dated 28/09/2021 must be endorsed by the Responsible Authority. Once endorsed the plan must not be altered unless agreed to in writing by CFA and the Responsible Authority.
SGSC Wastewater	To determine the lot's capability to accommodate, retain and	Response received 29 November 2021 providing for conditional consent to the proposal subject to the

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	treat all domestic wastewater produced on site.	inclusion of the following conditions on any permit to issue: 1. The on-site wastewater system must be sized to address the approved Dwelling Usage to the satisfaction of the Responsible Authority.
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ASSESSMENT**PLANNING POLICY FRAMEWORK (PPF)**

The following Victorian Planning Policies and Local Planning Policies are relevant to this proposal:

PPF	Clause 11 Settlement Clause 11.01-1S Settlement Clause 11.01-1R Settlement-Gippsland Clause 11.01-1L-06 District Towns (Mirboo North) Clause 13 Environmental Risks and Amenity Clause 13.02 Bushfire Clause 13.02-1S Bushfire planning Clause 13.04 Soil degradation Clause 13.04-2S Erosion and Landslip Clause 16.01-3S Rural Residential development
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The proposal responds positively to the relevant PPF. The dwelling will create the infill development of a vacant rural living allotment within the settlement boundary of Mirboo North where the landscape and built form strategies include the encouragement of development that is low rise and detached residential development. The building has been appropriately sited away from the vegetation on site while replicating a similar street setback to the abutting allotments.

The area surrounding the subject site can be classified as forest, grassland and low threat vegetation. The dwelling will be appropriately constructed to BAL rating 29 and with appropriate water supply provided for CFA use and emergency management measures implemented through the endorsed Bushfire Management Plan, it is considered the proposal meets the policy guidelines and objectives as set out in Clause 13.02. How the dwelling and outbuilding appropriately responds to the Bushfire Management Overlay and Clause 53.02 is discussed in more detail below.

The subject site is relatively flat with an approximate 7 degree downslope towards the north east of the site. There are no visible signs of erosion. The dwelling has been appropriately sited to ensure that it is to be constructed on cleared flat land, and has been built to the contours of the land, limiting site cut to minimise the risk of landslip and erosion. The shed will require minimal cut and fill to level the site for the construction. It is considered minor and as the slope is minimal, it is not expected to cause any land degradation.

Overall the proposal is consistent with the relevant objectives and strategies of the relevant PPF clauses listed above.

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OVERLAYS**Schedule 5 to Clause 42.01 Environmental Significance Overlay**

The statement of environmental significance is to Schedule 5 to Clause 42.01 is as follows:

Erosion is recognised as a land management concern with diverse causes that may affect any property. Therefore it is important to encourage best practices for farming, building and associated land disturbances and to increase awareness of the issues that may exacerbate the process such as earthworks, control of water run-off and removal of vegetation.

As mentioned above, the dwelling has been sited appropriately to ensure the risk in regard to erosion and landslip is minimised. This siting within the cleared part of the land ensures maximum retention of established vegetation.

A condition on any permit to issue will ensure that the construction is carried out in accordance with Construction Techniques for Sediment Pollution Control (EPA 1991) and the background document Control of Erosion on Construction Sites (Soil Conservation Authority). This will be required as a condition on any permit to issue, along with stormwater catchment requirements.

Clause 44.06 Bushfire Management Overlay

The proposal is considered to meet all the requirements as set out in Clause 53.02 which will be discussed in more detail below. The proposal was referred to the CFA who assessed the Bushfire Management Plan and Bushfire Management Statement, and determined the proposal was appropriate given the vegetation threat on site and within the immediate vicinity of the subject land. The Bushfire Management Plan will be endorsed to form part of the permit which will continue to have effect after the permit is completed.

PARTICULAR PROVISIONS**CLAUSE 52.06 CARPARING**

In accordance with Clause 52.06, a dwelling with three or more bedrooms is required to demonstrate it can accommodate 2 carparking spaces. The proposal includes a large ancillary outbuilding that can accommodate a minimum of two vehicles. This requirement is satisfied.

CLAUSE 53.02 BUSHFIRE PLANNING

The subject land is located within the Settlement boundary of Mirboo North, and therefore is subject to Clause 53.02-3 Dwellings in existing settlements - Bushfire protection objectives and approved measures 1.1 to 1.3. These are discussed below:

Measure	Assessment
AM 1.1 A building is sited to ensure the site best achieves the following: <ul style="list-style-type: none"> The maximum separation distance 	Complies. The dwelling has been sited to best

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<p>between the building and the bushfire hazard.</p> <ul style="list-style-type: none"> The building is in close proximity to a public road. Access can be provided to the building for emergency service vehicles. 	<p>achieve the maximum separation distance from the bushfire hazard.</p> <p>Complies. The lot has a frontage to a public road (Wanke Road)</p> <p>Emergency Services access is achieved by the construction of a new crossover which will be constructed to meet the requirements.</p>
<p>AM 1.2 A building providing the defensible space in accordance with Table 1 Columns A, B, C, D or E and Table 6 to Clause 52.47-3. Adjoining land may be included as defensible space where there is a reasonable assurance that the land will remain or continue to be managed in that condition as part of the defensible space.</p> <p>A building is constructed to the bushfire attack level:</p> <ul style="list-style-type: none"> That corresponds to the defensible space provided in accordance with Table 1 to Clause 53.02-5, or 	<p>Complies. The proposed dwelling is provided with defensible space to 50 metres or the boundary of the lot, whichever is the lesser.</p> <p>Complies. The proposed dwelling will be constructed to BAL-29.</p>
<p>AM 1.3 A building is provided with:</p> <ul style="list-style-type: none"> A static water supply for firefighting and property protection purposes specified in Table 4 to Clause 53.02-5. The water supply may be in the same tank as other water supplies provided that a separate outlet is reserved for firefighting water supplies. Vehicle access that is designed and constructed as specified in Table 5 to Clause 53.02-5. 	<p>Complies. A 10,000L non-combustible Colorbond water tank (with 10,000L of static water supply reserved for firefighting) with a remote CFA outlet provided (meets the requirements in Table 4 to Clause 53.02-5).</p> <p>Complies. The proposed vehicle access is proposed to be 3.5 metres in width, which complies with the requirements set out in Table 5 to Clause 53.02-5 for vehicle accessways that are less than 30m in length. The water supply outlet abuts the driveway access and is located within 4 metres.</p>

GENERAL PROVISIONS**Clause 65 Approval of an Application or Plan**

It is considered that the proposal responds favourably to the relevant planning policy framework under consideration, being the Environmental Significance Overlay Schedule 5 and the Bushfire Management

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Overlay. The proposal meets the objectives of the ESO5, which aim to protect areas prone to erosion by minimising land disturbance and vegetation loss.

With regard to bushfire risk, the siting of the dwelling and shed is appropriate having regard to the constraints of the site in terms of the existing vegetation. The dwelling and shed can achieve its best defensible space by being located forward on the allotment. Emergency vehicles can easily access the dwelling and water supply from Wanke Road. The CFA have consented to the outcome as shown on the applicant's Bushfire Management Plan.

The proposal adequately meets the purpose of the planning controls, and will not detrimentally impact the orderly planning of the area.

Declaration of Conflict of Interest:

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

Conclusion and Recommendation:

Council has considered the matters under Section 60 of the *Planning and Environment Act 1987*. It considers that the proposed development is appropriate having regard to the relevant matters, and can be managed through appropriate conditions.

It is recommended that Council issue a notice of decision to grant a permit for the Development land with a dwelling and ancillary outbuilding, in accordance with the endorsed plans.