

ADVERTISED

Planning Report

23 MADDENS LANE, GRUYERE



Use & Development of a Winery (cellar door), Licenced Premises, Small Second Dwelling and Signage

Reference: 30138

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Site Address:

23 Maddens Lane, Gruyere

Formal Land Description:

Lot 3 on LP84111

Proposal:

Use & Development of a Winery (cellar door), Licenced Premises, Small Second Dwelling and Signage

Responsible Authority:

Yarra Ranges Council

Document Status:

Version: Date	Description	Prepared by	Checked by
No 1: December 2023	Submitted to Council	M Edwards	
No 2: Feb 2024	Change to proposal	M Edwards	
No 3. May 2024	Minor updates	M Edwards	

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EXECUTIVE SUMMARY

Millar Merrigan have been engaged to lodge this planning application for a ***Use & Development of a Winery (cellar door), Licenced Premises, Small Second Dwelling and Signage at 23 Maddens Lane, Gruyere.***

The land is home to the former Maddens Lane Winery which was closed prior to the applicant purchasing the land. They seek to re-open the cellar door and extend the existing building to improve the visitor experience.

The land is contained within the Green Wedge Zone whereby winery (cellar door) and Small Second Dwelling (SSD) are permissible uses. The building alterations seek to enhance the visitor experience and ensure that building regulations are met. The SSD is low scale and located in a lawn area that avoids tree impacts and is proximate to the car parking area and cellar door.

The only overlay applicable is the Significant Landscape Overlay – Schedule 6 and there are no trees to be removed. The intent of the overlay is met with retention of trees and low scale built form.

The land has no access to reticulated sewer and as such waste will be retained and treated on site. A Land Capability Assessment has been prepared to outline on site waste treatment requirements.

The existing parking area is utilised and widened to meet the requirements for Car Parking (52.06).

A liquor licence is sought under Licensed Premises (Clause 52.27) and no redline plan is required due to the type of licence (producers licence).

An advertising sign is proposed at the front of the property and accords with the requirements of Signs 52.05.

The application does not prejudice the Metropolitan Green Wedge Land: Core Planning Provisions (Clause 51.02).

This report seeks to demonstrate how the use and development is appropriate in terms of achieving State and Local planning objectives.

1 SITE & SURROUNDS

1.1 Site Description & Land Use

The site is an irregular shaped parcel of land located on the east side of Maddens Lane. It comprises an area of approximately 4ha and of this 1.2ha accommodates established vineyard which produces 6-10 tonnes of grapes per annum and creates 4,500 to 7,500 bottles of wine. The front part of the site currently comprises of pasture grass and can cater for a further +5000sqm of vines.

The land has been formerly used as a winery and cellar door, known as Maddens Lane Winery however we understand that the use has not been in operation for some time with the applicant purchasing the land a couple of years ago and there is no current liquor licence. The winery is located beneath the dwelling and the cellar door is at the western end of the building. There are no records of approvals on Councils tracker due to the age of the venue and there are no licensing details available on the VCGLR. Plans dated March 1980 with the Shire of Lilydale stamp show the 'public tasting room and cellar'.

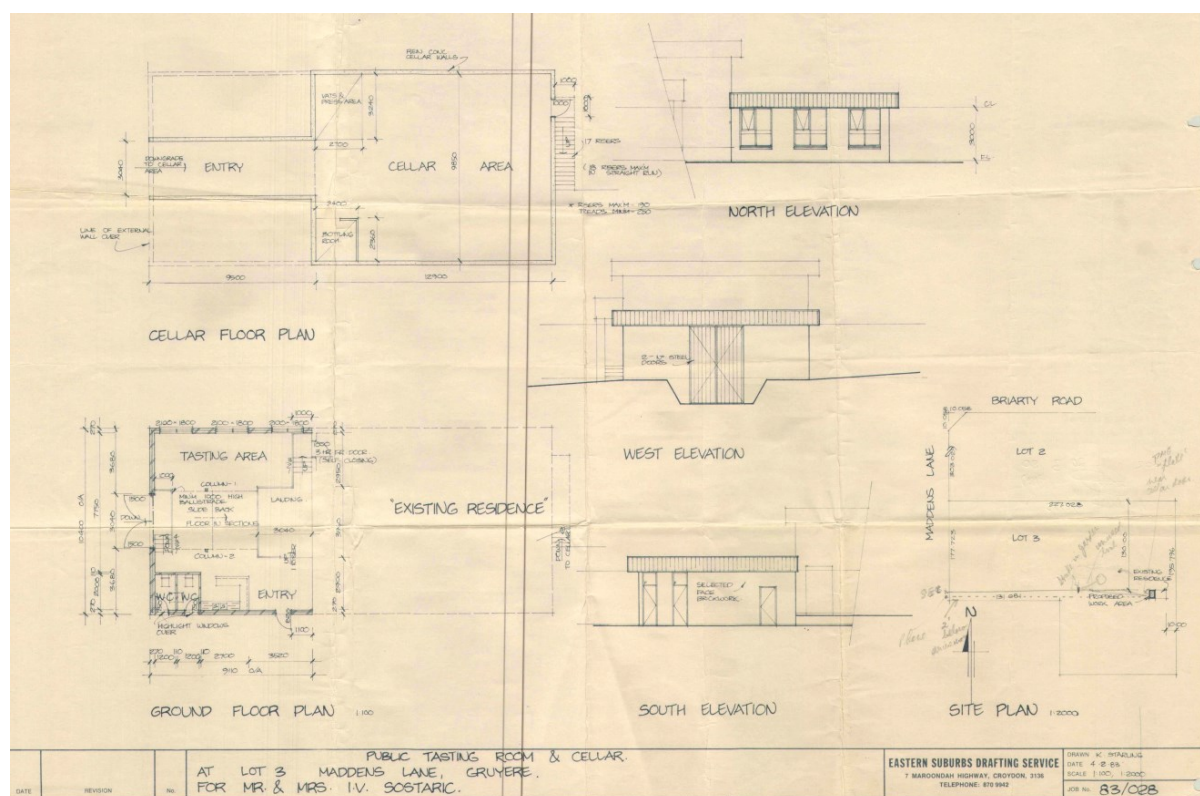


Figure 1: Original plans for cellar and tasting room

A large dam covers the south-eastern part of the site and the dwelling is located north-west of the dam.

Access is achieved via a gravel driveway along the southern boundary and this leads to a parking area that services the former cellar door.

A number of planted trees are located around the buildings and an Arboricultural Assessment has been undertaken on trees with potential to be impacted.

There is no reticulated water or sewer available, however mains electricity is connected.

There are no easements or restrictions applicable, refer to the attached Certificate of Title.

1.2 Site Photographs



Photograph 1: Aerial photograph



Photograph 2: Front of building – cellar door on left side, dwelling on right side



Photograph 3: Existing parking area



Photograph 4: Existing winery



Photograph 5: Access to winery



Photograph 6: Former cellar door

1.3 Surrounding Area

The site is located ~50km from Melbourne and ~11km from Healesville and ~14km from Lilydale. It is within a region that contains numerous tourist facilities including Soumah, Helen & Joey, Killara

Estate and Domaine Chandon. The dominant zoning is Green Wedge Zone and agricultural activities and tourism uses operate in conjunction with each other. Warramate Conservation Reserve is located within a public zone and vegetated private allotments around this are within the Rural Conservation Zone.

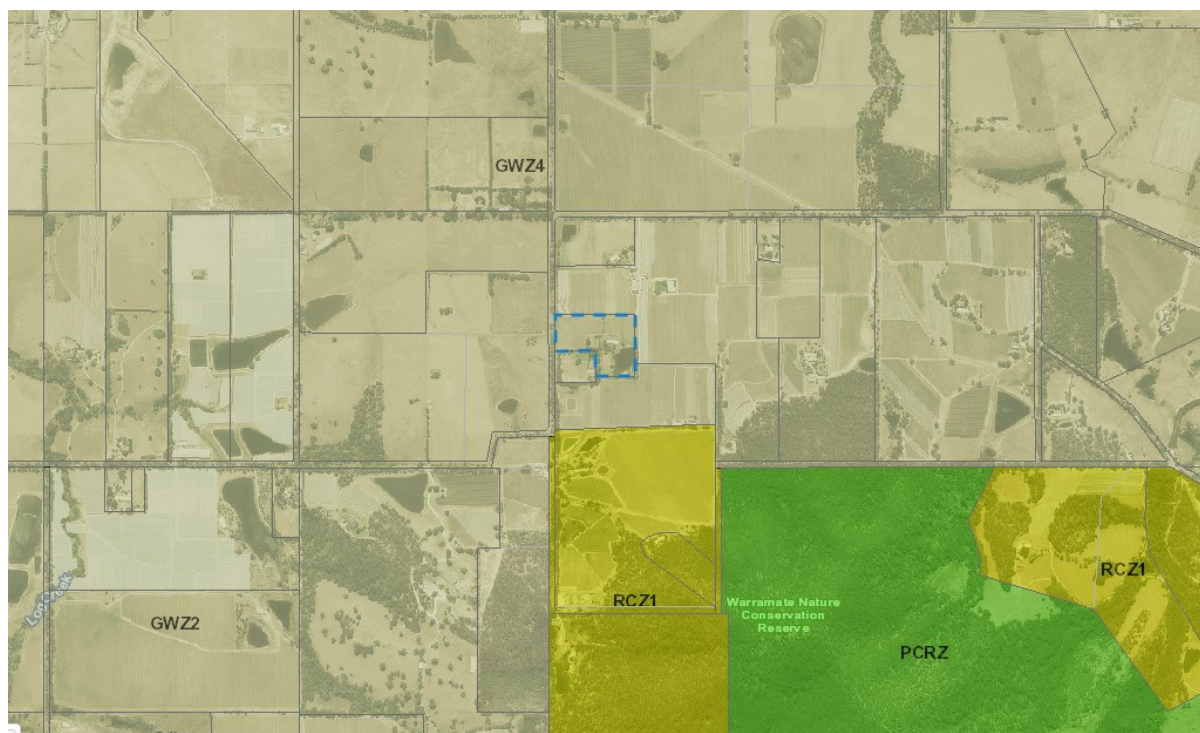


Figure 2: Surrounding land uses

2 PROPOSAL

The application seeks approval for land use and development with key details outlined in the following sections:

2.1 Cellar Door (Winery)

It is proposal seeks to re-instate the former winery and cellar door and whilst it is clear that the buildings and use were permitted in the 1980s the continued use in recent years is unclear and as such the application includes a land use element as follows:

Winery: Land used to display, and sell by retail, vineyard products, in association with the growing of grape vines and the manufacture of the vineyard products. It may include the preparation and sale of food and drink for consumption on the premises.

The business name Maddens Lane Winery has been registered and a contract has been entered into for the production of wine under this label from grapes grown on site by a nearby winery with wine making facilities. Barrels will be stored on site in the existing winery building. No outside wine external to the Maddens Lane Winery brand will be available at the cellar door.

Whilst the wine is made off site due to the unviable cost of installing wine making facilities on site, the 'manufacturer of vineyard products' is considered to be met in that grapes are grown and picked on site, barrels will be stored in the cellar for maturation and bottling/labelling will occur on site through use of a mobile botting service.

Given the age of the infrastructure, there are renovations proposed to the building and these are summarised as follows:

- Toilet doors relocated
- Various external steps and paths are to be removed
- Windows on northern side of building replaced with larger glazing and doors and an outdoor terrace added.

The proposed hours of operation are 7 days per week 10am to 5pm to cater for daylight saving hours.

The proposed patronage for the cellar door is 20 people.

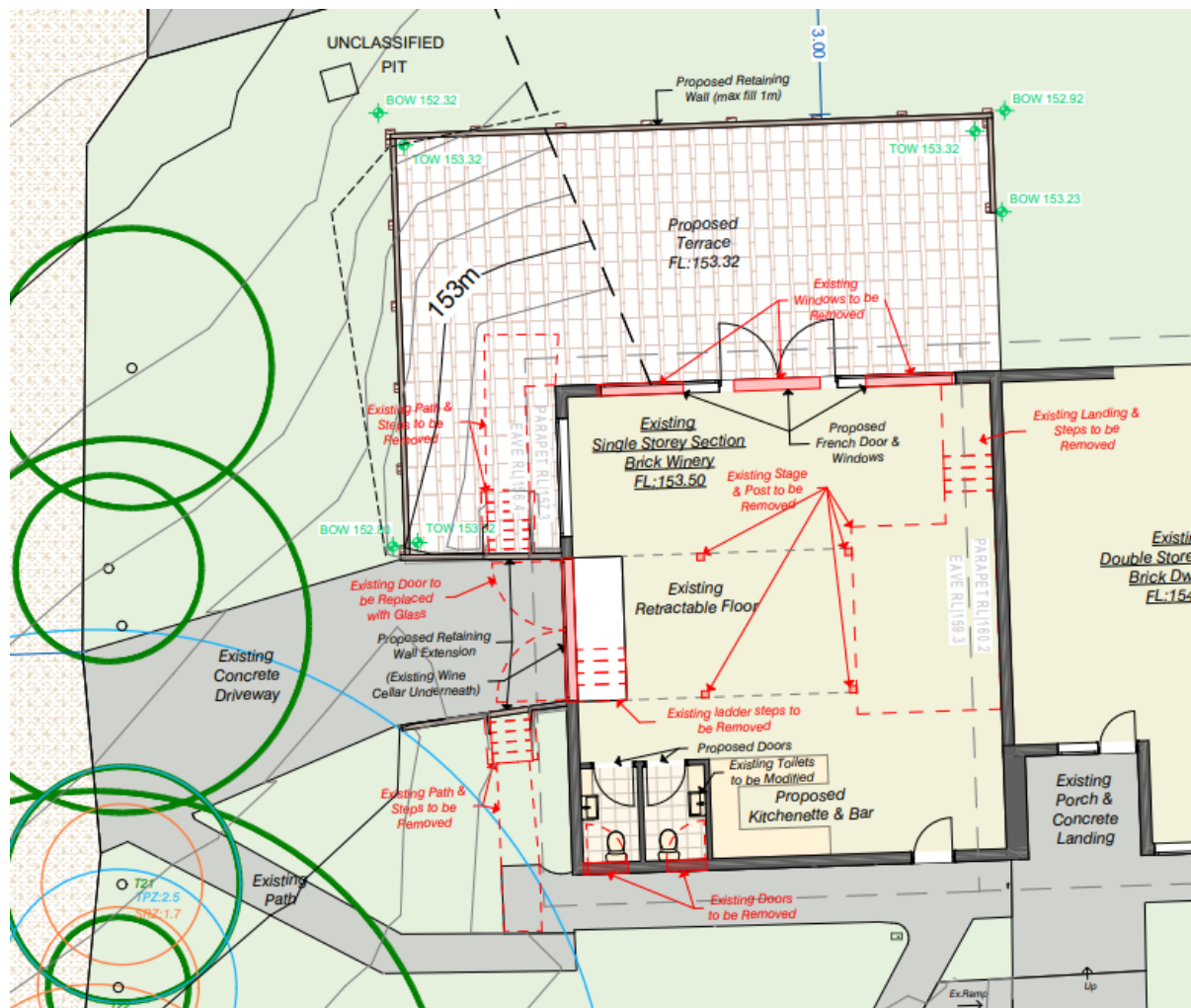


Figure 3: Proposed floor plan

2.2 Small Second Dwelling (SSD)

A SSD is proposed to the west of the parking area on an area of existing lawn. The building is 4m x 15m (60sqm) and has a deck on the north side. The floor plan offer a living room, kitchen, two

bedrooms and a bathroom. It is low scale with an overall height of 4.322m and the materials/colours are muted earthy tones that blend with the surrounding landscape.

SSD is defined as a building with a gross floor area of 60 square metres or less, on the same lot as an existing dwelling and used as a self-contained residence, which must include:

- a kitchen sink;
- food preparation facilities;
- a bath or shower; and
- a toilet and wash basin.

This proposed building is consistent with this definition.

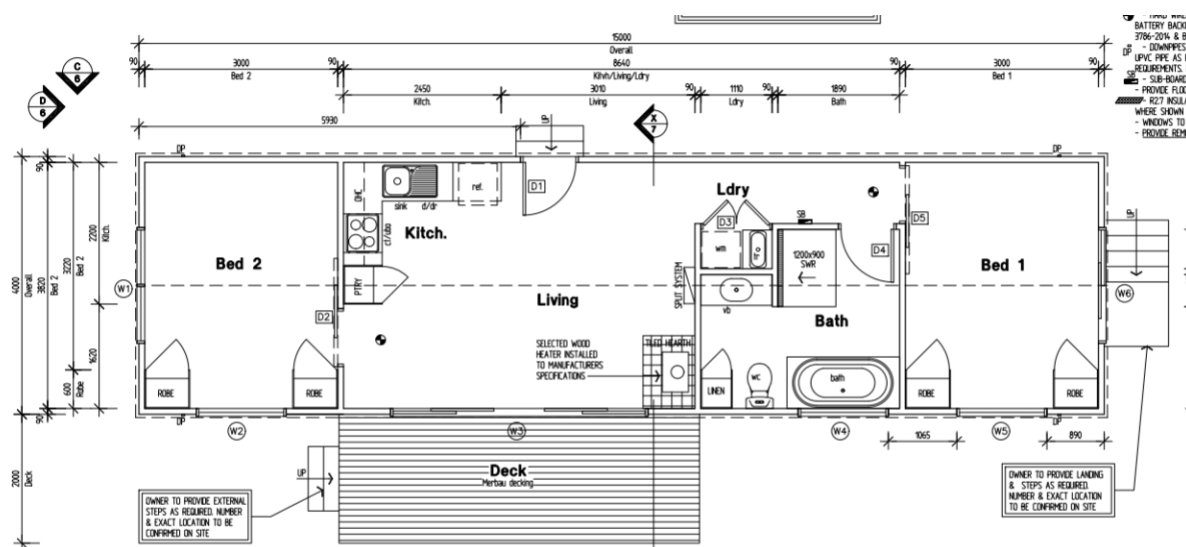


Figure 4: Floor Plan

2.3 Access Arrangement & Car Parking

Access to the site remains unchanged and the existing gravel parking area will be utilised with an extension to the gravel as required. There are currently no marked spaces and the site plan shows 9 compliant car spaces, including one handicapped space that can be marked as required. Given the scale of the cellar door, it is not anticipated that vehicles larger than a mini van would be required.

2.4 Signage

A double sided sign is proposed at the front of the property. It is 2m x 2m and angled to face the road. The appearance simply lists the winery name and further detail will be provided once the logo for the winery is developed.

2.5 Vegetation Removal

No trees are required to be removed and proposed works do not encroach more than 10% into and tree protection zone.

2.6 Infrastructure Servicing

Mains electricity is connected.

Water tanks service the existing building and a new tank is proposed adjacent to the SSD.

There is no reticulated sewer available and as such waste water will be retained and treated on site. Septic Systems Australia have assessed the existing system on site and advise that it is +40 years old and a new system is recommended.

A Land Capability Assessment has therefore been prepared and it recommends installation of two waste water treatment systems with capacity for 1200 litre/day. Three land application areas are required and these are shown on the site plan.

3 PLANNING ASSESSMENT

The following is an outline of the planning policy framework relevant to the site. A comprehensive analysis of the proposal against this matrix of applicable policy is provided below.

Zoning

Clause 35.04 Green Wedge Zone

Overlays

Clause 42.03 Significant Landscape Overlay – Schedule 6

Municipal Planning Strategy

Clause 2.01 Context

Clause 2.02 Vision

Clause 2.03 Strategic Directions

Planning Policy Framework

Clause 11 Settlement

Clause 12 Environmental & Landscape Values

Clause 13 Environmental Risks & Amenity

Clause 14 Natural Resource Management

Clause 15 Built Environment & Heritage

Clause 17 Economic Development

Clause 19 Infrastructure

Particular Provisions

Clause 51.02 Metropolitan Green Wedge Land

Clause 52.05 Signs

Clause 52.06 Car Parking

Clause 52.27 Licenced Premises

General Provisions

Clause 63 Existing Uses

Clause 65.01 Approval of an Application or Plan

3.1 Permit Triggers

The following table outlines the permit triggers that apply to the proposal:

Planning control	Permit trigger
Green Wedge Zone	Use of land, buildings & works
Signs	Business identification signage

3.2 Zoning

The property is contained within the Green Wedge Zone – Schedule 4 (Clause 35.04) which seeks:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for the use of land for agriculture.*
- *To recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources.*
- *To encourage use and development that is consistent with sustainable land management practices.*
- *To encourage sustainable farming activities and provide opportunity for a variety of productive agricultural uses.*
- *To protect, conserve and enhance the cultural heritage significance and the character of open rural and scenic non-urban landscapes.*
- *To protect and enhance the biodiversity of the area.*

Pursuant to Clause 35.04-1 Table of Uses a permit is required to use land for a SSD and the following conditions apply:

- *Must be no more than one dwelling existing on the lot.*
- *Must be the only small second dwelling on the lot.*
- *Reticulated natural gas must not be supplied to the building, or part of a building, used for the small second dwelling.*
- *Must meet the requirements of Clause 35.04-2.*

Clause 35.04-2 outlines the following requirements:

- *Access to the dwelling or small second dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.*
- *The dwelling or small second dwelling must be connected to reticulated sewerage, if available. If reticulated sewerage is not available, all wastewater from the dwelling must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.*
- *The dwelling or small second 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.*
- *The dwelling or small second dwelling must be connected to a reticulated electricity supply or have an alternative energy source.*

Winery is not a listed use and as such it comes under 'any other use not in section 1 or 3' which triggers a permit.

Schedule 4 does not specify any relevant requirements.

Pursuant to Clause 35.04-5 Buildings and works a permit is required for the following:

- *A building associated with a section 2 use;*
- *Earthworks specified in a schedule*
- *A building within the following setbacks:*
 - *100m from a Transport Zone 2*
 - *40m from a transport Zone 3*
 - *20m from any other road*
 - *5m from any other boundary*
 - *100m from a dwelling not in the same ownership*

- 100m from a waterway, wetlands or designated flood plain

The schedule states the following with respect to earthworks:

Permit requirement for earthworks	Land
Earthworks which change the rate of flow or the discharge point of water across a property boundary.	All land if the earthworks exceed 1 metre in height or depth
Earthworks which increase the discharge of saline groundwater.	All land if the earthworks exceed 1 metre in height or depth

Pursuant to Clause 35.04-7 Signs, the zone is in Category 3.

The following decision guidelines apply:

General issues

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *Any Regional Catchment Strategy and associated plan applying to the land.*
- *The capability of the land to accommodate the proposed use or development.*
- *How the use or development relates to rural land use, rural diversification, natural resource management, natural or cultural heritage management, recreation or tourism.*
- *Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.*
- *Whether the use or development is essential to the health, safety or well-being of the State or area but is not appropriate to locate in an urban area because of the effect it may have on existing or proposed urban areas or the effect that existing or proposed urban areas may have on the proposed use or development.*
- *The need to minimise adverse impacts on the character and appearance of the area or features of architectural, scientific or cultural heritage significance, or of natural scenic beauty.*
- *The potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.*

Rural issues

- *The maintenance of agricultural production and the impact on the rural economy.*
- *The environmental capacity of the site to sustain the rural enterprise.*
- *The need to prepare an integrated land management plan.*
- *The impact on the existing and proposed rural infrastructure.*
- *The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agriculture and other land uses.*
- *The protection and retention of land for future sustainable agricultural activities.*

Environmental issues

- *The impact of the use or development on the flora and fauna on the site and its surrounds.*
- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.*
- *How the use or development relates to sustainable land management and the need to prepare an integrated land management plan.*
- *The location of on site effluent disposal areas to minimise impact of nutrient loads on waterways and native vegetation.*

Design and siting issues

- *The need to minimise any adverse impacts of siting, design, height, bulk, and colours and materials to be used, on landscape features, major roads and vistas.*
- *The location and design of existing and proposed infrastructure services which minimises the visual impact on the landscape.*
- *The need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance.*
- *The need to locate and design buildings used for accommodation to avoid or reduce the impact from vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.*

Response – Green Wedge Zone:

The proposal accords with the intent of the GWZ in that the primary land use remains committed to agriculture and the use/development facilitates tourism. There are no conditions associated with winery and the SSD conditions are met as follows:

- **There is only one dwelling on the lot**
- **There is no existing SSD**
- **Gas is not available**
- **The requirements of 35.04-2 are met as follows:**
 - **All weather access is existing**
 - **Wastewater will be retained on site in accordance with the LCA**
 - **A water tank is proposed adjacent to the building**
 - **Electricity is available**

There are no substantial earthworks required and as such no permit trigger for this element.

The decision guidelines are met as follows:

- **The MPS and PPF are met as detailed in this report;**
- **The land is more than sufficient in size to cater for the scale of the proposed uses;**
- **The development has been located and designed to protect amenity of the nearby dwelling to the south through generous setbacks;**
- **The use is not suitable for an urban area given its inherent link with agriculture occurring on site;**
- **There are no Works Authority approvals within 500m of the land;**
- **The development does not cause any detriment to agriculture and has been located to avoid the need for any vine removal;**
- **The development covers a small area of the site and causes negligible loss of farming land;**
- **There are no detrimental environmental impacts as a result of the proposal;**
- **Character and visual impacts have been well considered.**

3.3 Overlays

Significant Landscape Overlay – Schedule 6 (Clause 42.03)

Schedule 6 identifies the Rolling Hills and Bushy Agriculture Landscape and seeks:

- *To maintain a comparatively open rural landscape of farmland and bushland patches in which houses, farm buildings and tourist facilities are generally inconspicuous.*

- *To ensure that the siting and design of new buildings complements their setting and reinforces the rural landscape character of the area.*
- *To retain established trees and patches of indigenous vegetation as an important element of the rural landscape and habitat for wildlife.*
- *To allow middle and long distance views from the valley to the surrounding ranges.*
- *To maintain the appearance of an uninterrupted forested backdrop to views.*

A permit is required to construct a fence (except rural style fencing) and remove, destroy or lop:

- *Native vegetation that occurs naturally in the Shire of Yarra Ranges*
- *A substantial tree with a trunk circumference greater than 1.1 metres (0.35 metre diameter) at a height of 1.3 metres above the ground*

This does not apply to the removal of vegetation that is one of the species listed in the Incorporated Document *Yarra Ranges Council - List of Environmental Weeds 2019*.

A permit is not required to construct a building or carry out works except for:

- *A new building or extensions to an existing building where the floor area of the construction is more than 100 square metres*
- *Buildings or works with a height of more than 7 metres*
- *Buildings or works that would be within 4 metres from the trunk of a tree protected under this planning scheme*

The decision guidelines are as follows:

Building siting

- *The visual impact on views from adjoining roads and other publicly accessible viewing points.*
- *Whether buildings and associated works are sited to avoid visually prominent sites such as exposed hilltops or ridgelines.*
- *The impact of the siting of large buildings on their visual bulk, particularly if close to roads or in open settings where there are no other buildings or mature trees nearby.*
- *Whether buildings are designed to reflect the topography of the site and minimise the extent of earthworks.*
- *Whether farm buildings and related structures are clustered with existing buildings on the same land.*

Building appearance

- *Whether the profile of buildings do not break the skyline or ridgeline behind the building as seen from nearby roads or other publicly accessible viewpoints.*
- *How the height of buildings relates to the heights of any surrounding tree canopy and nearby development.*
- *Whether external finishes of buildings use muted tones and non-reflective surfaces and incorporate natural elements such as timber and stone.*
- *The visual impact of new development on the landscape having regard to the size of frontage setbacks of buildings.*
- *Whether farm buildings such as storage sheds, water tanks, wine storage tanks and related infrastructure are a visual intrusion in the rural setting and whether they are finished in muted colours, screened by planting or otherwise merged into the landscape.*
- *Whether the design and materials of large buildings such as storage and equipment sheds reflect the rural environment and the traditions of farm buildings.*

- *The building mass and form of larger buildings used for visitor accommodation or other tourist related activities.*
- *Whether the development includes large signage and advertising, including internally illuminated signs.*

Dwellings and outbuildings

- *How far dwellings and associated outbuildings are set back from the road.*
- *The height of dwellings and whether it responds to the topography of the site.*
- *How the design of dwellings addresses factors such as views and outlook and protection from sun, rain and wind.*

Vegetation

- *The retention of established trees and patches of indigenous vegetation.*
- *The extent of vegetation removal and proposed land management improvements such as replacement vegetation.*
- *The use of indigenous species and including canopy trees in landscaping and screening of new buildings.*
- *The integration of landscaping with the design of the development and whether it complements the vegetation on any adjoining public land.*

Fence and boundary treatments

- *Whether the front fence and boundary treatments avoid formal landscape design (such as geometrically aligned/spaced tree avenues or garden beds) and hard surfaces and hard edges in landscaping.*
- *The appearance of entrance gates and adjacent walls or fences and how they relate to the character of the remainder of the property boundary fence and the landscape.*

Other buildings and works

- *Whether earthworks will remove the option of future use of the soil resource for productive agriculture.*
- *Whether the proposal includes urban style road infrastructure such as concrete kerbing, paved footpaths and roundabouts.*

Response – Significant Landscape Overlay:

There is no trigger for the proposed buildings and works under this clause and there is no tree removal.

The objectives and decision guidelines are considered to be met as follows:

- **The proposed building is low profile and not in a prominent location;**
- **Earthworks are limited;**
- **The proposed building is clustered with existing built form on site and is screened by existing vegetation;**
- **The building is well setback from the road;**
- **The carpark is existing not a prominent feature in the landscape;**
- **Colours and materials are muted earthy tones.**

3.4 Municipal Planning Strategy

2.01-3 Economy – Tourism

Yarra Ranges is a significant tourist destination with major attractions for local, interstate and overseas visitors, with major attractions including Puffing Billy, the wineries and landscapes of the Yarra Valley, national parks, State trails, golf courses and rural towns such as Healesville and Warburton and the Dandenong Ranges. Tourism related businesses are significant contributors to local employment in Yarra Ranges in particular in Green Wedge areas.

2.02 Vision

The vision in the Yarra Ranges Council Plan 2017-2021 (2017) is The Shire of Yarra Ranges will be a vibrant and dynamic Shire based on strong local communities living in a place of great natural beauty. Our world class Shire will be sustained by a strong local economy and rich social fabric that is consistent with and supports its environmental values.

2.03-1 Settlement

The land is consistent with Productive Agricultural Areas where are characterised as follows:

- *Lots are generally greater than 4 hectares in intensively cultivated areas, or 10 hectares in other areas*
- *Most lots are cleared and sown with pasture grasses or managed for horticulture*
- *Most lots are currently used for agriculture or have realistic potential to be used for horticulture, livestock grazing or other forms of productive agriculture.*

2.03-3 Environmental risks and amenity

The combination of Yarra Ranges' natural topography, its urban fringe location and projected climate changes has resulted in many communities being exposed to environmental hazards including bushfire, landslip, flooding and soil contamination. Priority should be given to the protection of human life in the management of areas that are affected by environmental hazards.

2.03-4 Natural Resource Management

Agriculture in Yarra Ranges will continue to evolve in response to changes in economic and climate conditions. The areas of potentially productive agricultural land will need to be managed to retain long term opportunities.

2.03-5 Built Environment & Heritage

Council's strategic directions for the built environment and heritage are to:

- *Protect and respect sensitive environments, significant landscapes and cultural and natural heritage.*
- *Incorporate best practice environmental design to contribute to sustainable building form.*
- *Encourage development that contributes to a sense of place and adds to the character and identity of the distinct localities in Yarra Ranges.*

2.03-7 Economic Development

The Green Wedge also includes a variety of businesses linked to tourist related activities including visitor accommodation, wineries, restaurants and cafes.

Many tourist related businesses have a direct association with their setting especially in the wine growing regions and areas of forestry activity.

The Green Wedge and its proximity to the metropolitan region will attract ongoing interest in providing tourism and hospitality services. This sector will provide new economic opportunities in the region. However, it needs to be managed to protect the primary values and characteristics of the Green Wedge.

Council's strategic directions for tourism are to:

- Support commercial land uses associated with tourist activities to create business opportunities that broaden the economic base of rural towns.
- Encourage tourism activity that supports overnight stays and a diversity of tourist experiences.
- Support tourism development in the green wedge that protects biodiversity, agriculture and valued landscapes.

Response – MPS:

The proposed development reinvigorates the former tourism activities on site and will provide a positive contribution to the economy. The primary values and characteristics of the green wedge area are maintained through maintenance of agricultural production and appropriate design and siting that responds to site features.

Environmental risks are suitably considered as discussed in section 4.5 below.

3.5 Planning Policy Framework

The Planning Policy Framework is structured around the following themes; those relevant to this application are discussed below:

3.5.1 Settlement (Clause 11)

11.01-1R Green Wedges – Metropolitan Melbourne

To protect the green wedges of Metropolitan Melbourne from inappropriate development.

11.01-1L -04 Green Wedge

General Strategies:

Protect the green wedge by ensuring use and development complements or enhances the primary values of the Green Wedge:

- *Maintaining a healthy biodiversity.*
- *Protecting valued rural landscapes.*
- *Supporting sustainable agriculture.*

Design development to have direct access to a suitably constructed road that can accommodate the level of traffic likely to be generated by the proposed use. Integrate development into the rural landscape and avoid the removal of significant vegetation.

Non agricultural use and development Strategies:

Locate, site and design development for golf courses, education centres, places of worship or other non-agricultural, tourist or dwelling use to:

- *Avoid adverse impacts on productive agricultural land use on adjoining or nearby land.*
- *Retain the predominant rural character of an area.*
- *Appear as an unobtrusive element in the rural landscape.*
- *Be located on a site large enough to provide a rural landscape setting for the proposed development.*
- *Avoid adverse impacts on the amenity of nearby residential development.*

- *Retain any significant habitat for native flora and fauna on the site and make sustainable improvements to the quality of that habitat.*
- *Treat and contain all effluent on the site.*
- *Have direct access to a sealed or road adequate for the anticipated traffic levels.*
- *Avoid fire and flood prone locations where vehicle access during bushfire and flood Avoid sites with landslip risk.*

11.03-5S Distinctive areas and landscapes

To recognise the importance of distinctive areas and landscapes to the people of Victoria and protect and enhance the valued attributes of identified or declared distinctive areas and landscapes.

Response – Settlement:

The proposed use and development is considered to meet the relevant settlement policies as there is an inherent link to agriculture and this remains the primary land use. The policies for non-agricultural uses are met and there are no significant trees impacted.

3.5.2 Environmental & Landscape Values (Clause 12)

12.05-2S Landscapes

To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.

12.05-2L Rural Landscapes

- *Design and site development sensitively having regard to the natural physical features of the land including slope, existing vegetation and view lines.*
- *Discourage non-farm related commercial buildings that adversely impact on valued rural landscapes.*

Response – Environment & Landscape:

The works don't impact native vegetation or biodiversity values and the proposed development results in an appropriate outcome with respect to the rural landscape given its low scale and positioning on the site.

3.5.3 Environmental Risks & Amenity (Clause 13)

13.02-1S Bushfire Planning

To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

Response – Environmental Risks & Amenity:

The building is predominantly surrounded by low threat features such as vineyard, driveways, manicured gardens and existing buildings. It is clear that an acceptable Bushfire Attack Level will apply and a BAL Report will be prepared as part of the building permit process. A Bushfire Emergency Plan can be prepared as a condition of permit if required.

3.5.4 Natural Resource Management (Clause 14)

14.01-1S Protection of Agricultural Land

To protect the state's agricultural base by preserving productive farmland.

Strategies include:

- *Identify areas of productive agricultural land, including land for primary production and intensive agriculture.*
- *Consider state, regional and local, issues and characteristics when assessing agricultural quality and productivity.*
- *Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors.*
- *Protect productive farmland that is of strategic significance in the local or regional context.*
- *Protect productive agricultural land from unplanned loss due to permanent changes in land use.*
- *Prevent inappropriately dispersed urban activities in rural areas.*
- *Protect strategically important agricultural and primary production land from incompatible uses.*
- *Identify areas of productive agricultural land by consulting with the Department of Energy, Environment and Climate Action and using available information.*
- *Balance the potential off-site effects of a use or development proposal (such as degradation of soil or water quality and land salinisation) against the benefits of the proposal.*

In considering a proposal to use, subdivide or develop agricultural land, consider the:

- *Desirability and impacts of removing the land from primary production, given its agricultural productivity.*
- *Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.*
- *Compatibility between the proposed or likely development and the existing use of the surrounding land.*
- *The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.*
- *Land capability*

14.01-1R Protection of Agricultural Land – Metropolitan Melbourne

Protect agricultural land in Metropolitan Melbourne's green wedges and peri-urban areas to avoid the permanent loss of agricultural land in those locations.

14.01-2S Sustainable Agricultural Land Use

To encourage sustainable agricultural land use.

Strategies include:

- *Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.*
- *Support the development of innovative and sustainable approaches to agricultural and associated rural land use practices.*

- Support adaptation of the agricultural sector to respond to the potential risks arising from climate change.
- Encourage diversification and value-adding of agriculture through effective agricultural production and processing, rural industry and farm-related retailing.
- Assist genuine farming enterprises to embrace opportunities and adjust flexibly to market changes.
- Support agricultural investment through the protection and enhancement of appropriate infrastructure.
- Facilitate ongoing productivity and investment in high value agriculture.

14.01-2L-02 Sustainable Agriculture

To provide a secure, long term future for productive and sustainable agriculture that remains adaptable to the evolving needs of agriculture.

Strategies include:

- Retain agricultural production as the predominant land use on cleared land in established farming areas where there are no over-riding environmental values that impose a greater priority.
- Encourage intensive horticulture where intensive farming is characteristic of the local landscape and where abundant water supply is readily available.
- Protect water resources that are potentially available for agricultural use and maximise opportunities to use recycled wastewater for agricultural purposes.
- Allow buildings and structures required for the sustainable operation of productive agricultural enterprises.
- Protect and restore soil condition, reduce the threats of erosion and salinity.

Response – Natural Resource Management:

The proposal does not impact existing agricultural activities and is consolidated on a small part of the site whereby no impacts to farming activities occurs. The existing vineyard covers 1.2ha of the site and the front part of the land can accommodate a further +5,000sqm of vineyard. A large dam covers the south-eastern corner of the site and the grassed area west of this is required for effluent treatment. The winery works are associated with an existing building and the SSD is located within an existing cultivated garden with mature trees, that contains a bbq area and has obviously been used as part of the residential use of the land. This does not impact agricultural activities on site or adjacent lots and given the small and modular nature of the proposed building it is not considered to permanently remove land from potential future agricultural use. The primary use of the land is maintained as agriculture, being vineyard and the associated water storage.

3.5.5 Built Environment & Heritage (Clause 15)

15.01-1S Urban Design

To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity

15.01-2S Building Design

To achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development.

15.01-2L Environmentally Sustainable Development

To achieve best practice in environmentally sustainable development from the design stage through to construction and operation.

15.01-6S Design for Rural Areas

- Ensure that the siting, scale and appearance of development protects and enhances rural character.
- Protect the visual amenity of valued rural landscapes and character areas along township approaches and sensitive tourist routes by ensuring new development is sympathetically located.
- Site and design development to minimise visual impacts on surrounding natural scenery and landscape features including ridgelines, hill tops, waterways, lakes and wetlands.

Response – Built Environment and Heritage:

The built form is attractive and functional and has considered sustainable design features. A Sustainability Management Plan is not required given the size of the development.

3.5.6 Economic Development (Clause 17)16.01-1S Diversified Economy

To strengthen and diversify the economy.

17.04-1S Facilitating Tourism

To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.

Strategies

- Encourage the development of a range of well-designed and sited tourist facilities, including integrated resorts, accommodation, host farm, bed and breakfast and retail opportunities.
- Seek to ensure that tourism facilities have access to suitable transport.
- Promote tourism facilities that preserve, are compatible with and build on the assets and qualities of surrounding activities and attractions.
- Create innovative tourism experiences.
- Encourage investment that meets demand and supports growth in tourism

17.04-1L Tourism in the Yarra Ranges Green Wedge

To provide for sustainable tourism in the Green Wedge.

Strategies

Support tourist development that will:

- Not result in the significant loss of productive agricultural land.
- Retain the predominant rural character of the area.
- Be located on a site large enough to provide a rural landscape setting for the proposed development.
- Avoid adverse impacts on the amenity of adjoining or nearby residential development and or farming operations.

- *Minimise the threat to flora and fauna habitat by managing public access and visitor numbers.*
- *Treat and contain all effluent on the land.*
- *Have direct access to a sealed or otherwise suitably constructed road that is adequate for the anticipated traffic levels. Provide visitor accommodation, restaurants, cafes and function centres in established towns.*

Discourage tourist development on sites that are subject to significant environmental hazards including:

- *Fire and flood prone locations where vehicle access during bushfire and flood events would be unsafe.*
- *Sites with landslip risk.*

Productive agricultural areas

Locate tourist development in Productive Agricultural Areas (as defined in Table 1 to Clause 02.03-1) with:

- *Farming activities conducted on a site or adjoining land.*
- *Other tourist facilities on a site.*

Encourage development in Productive Agricultural Areas to maintain the overall appearance of land as a farming property and directly support agriculture.

Response – Economic Development:

The development enhances the tourist offering in this location and reinvigorates the former cellar door use. It will support the Yarra Valley region as a domestic and international tourist destination and enhance the local economy.

3.5.7 Infrastructure (Clause 19)

19.03-3S Integrated Water Management

To sustainably manage water supply and demand, water resources, wastewater, drainage and stormwater through an integrated water management approach.

19.03-3L Water Management

- *Incorporate Water Sensitive Urban Design principles and best practice stormwater management standards in development proposals.*
- *Support the use of drought proof landscaping and retention of existing vegetation to reduce water consumption.*
- *Minimise the impacts of reticulated services infrastructure on the landscape and environment.*

Response – Infrastructure:

Parking areas are permeable and runoff from roof areas will be captured in rain water tanks.

3.6 Particular provisions

3.6.1 Metropolitan Green Wedge Land: Core Planning Provisions (Clause 51.02)

This Clause seeks:

- *To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values.*
- *To protect productive agricultural land from incompatible uses and development.*
- *To ensure that the scale of use is compatible with the non-urban character of metropolitan green wedge land.*
- *To encourage the location of urban activities in urban areas.*
- *To provide transitional arrangements for permit applications made to the responsible authority before 19 May 2004.*
- *To provide deeming provisions for metropolitan green wedge land.*

Clause 51.02-2 Use of Land does not include any conditions for winery (cellar door) and those for a SSD are consistent with the zone provisions outlined above.

Response – Metropolitan Green Wedge Land:

The proposal does not prejudice the intent of this clause and the conditions for a SSD are met as outlined above at the zone provisions.

3.6.2 Signs (Clause 52.05)

This Clause seeks:

- *To regulate the development of land for signs and associated structures.*
- *To ensure signs are compatible with the amenity and visual appearance of an area, including the existing or desired future character.*
- *To ensure signs do not contribute to excessive visual clutter or visual disorder.*
- *To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.*

Category 3 – High Amenity Areas seeks to *ensure that signs in high-amenity areas are orderly, of good design and do not detract from the appearance of the building on which a sign is displayed or the surrounding area.*

A permit is required for Business Identification Signage and a series of decision guidelines apply, including character of the area, impacts on views and vistas, relationship to the streetscape, setting or landscape, the relationship to the site and building, the impact of structures associated with the site, the impact of any illumination, the impact of any logo box associated with the sign, the need for identification, the impact on road safety.

Response – Signs:

A single double sided sign is proposed at the front of the site and it will not be illuminated. It is of appropriate scale and will not cause detriment to the character of the area or impact road safety.

3.6.3 Car Parking (Clause 52.06)

This Clause seeks:

- To ensure that car parking is provided in accordance with the State Planning Policy Framework and Local Planning Policy Framework;
- To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality;
- To support sustainable transport alternatives to the motor car;
- To promote the efficient use of car parking spaces through the consolidation of car parking facilities;
- To ensure that car parking does not adversely affect the amenity of the locality; and
- To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

This clause outlines parking requirements and design standards which cover accessways, car parking spaces, gradients, urban design, safety and landscaping.

A parking rate of 0.4 spaces to each patron is specified for winery use. This clause does not specify a rate for SSD.

Response – Car Parking:

Whilst the existing parking area serviced the former cellar door it does not comply with parking space and access dimensions and as such a small gravel extension is proposed. A total of 9 parking spaces at 4.9m x 2.6m with a 6.4m aisle width as required by the design standards. 20 patrons are proposed for the cellar door which equates to the need for 8 spaces (0.4x 20). The ninth space is then available for the SSD, noting that there is no requirement to provide parking for a SSD.

3.6.1 Licensed Premises (Clause 52.27)

This Clause seeks:

- To ensure that licensed premises are situated in appropriate locations.
- To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.

A permit is required to use land to sell or consume liquor where a licence is required under the Liquor Control Reform Act 1998.

Response – Licensed Premises:

The cellar door is to be licensed with a producers licence. A redline area is therefore not required.

4 GENERAL PROVISIONS

4.1 Existing Uses (Clause 63)

Clause 63.01 Extent of Existing Use Rights states:

An existing use right is established in relation to use of land under this scheme if any of the following apply:

- *The use was lawfully carried out immediately before the approval date.*
- *A permit for the use had been granted immediately before the approval date and the use commences before the permit expires.*
- *A permit for the use has been granted under Clause 63.08 and the use commences before the permit expires.*

- *Proof of continuous use for 15 years is established under Clause 63.11.*
- *The use is a lawful continuation by a utility service provider or other private body of a use previously carried on by a Minister, government department or public authority, even where the continuation of the use is no longer for a public purpose.*

Clause 63.06 Expiration of Existing Use Rights states that an EUR expires if either:

- *The use has stopped for a continuous period of 2 years, or has stopped for two or more periods which together total 2 years in any period of 3 years.*
- *In the case of a use which is seasonal in nature, the use does not take place for 2 years in succession.*

Response – Existing Uses:

As noted above, the land has been formerly used as a winery and cellar door, known as Maddens Lane Winery however we understand that the use has not been in operation for some time with the applicant purchasing the land a couple of years ago and there is no current liquor licence. The winery is located beneath the dwelling and the cellar door is at the western end of the building. There are no records of approvals on Councils tracker due to the age of the venue and there are no licensing details available on the VCGLR. Plans dated March 1980 with the Shire of Lilydale stamp show the ‘public tasting room and cellar’. It has therefore been assumed that there are no existing use rights for the winery and as such this application seeks approval for this use.

Regarding the dwelling on site, this has been used for residential purposes since the applicant settled on the land in 2022. The owner advises that to their knowledge the house was not unused for any extended lengths of time with the former owner residing there until passing away in December 2020. They understand that relatives resided in the dwelling part time until the purchase in May 2022 and they still receive mail for these residents. The dwelling was fully furnished at the time of inspection for sale, including personal items and food. Accordingly, it is believed that the dwelling has existing use rights.

4.2 Decision Guidelines (Clause 65)

Before deciding on an application or approval of a plan, the responsible authority must consider a series of matters and these seek to ensure good decision making. In addition to consideration of applicable policies and strategies as outlined in this report, the responsible authority must make a judgement on whether a proposal presents an appropriate outcome with respect to amenity, land use conflicts, environmental aspects and the orderly planning of the wider area.

It is submitted that this proposal responds to policy requirements and specific opportunities and constraints to offer an outcome that will make a positive contribution to the municipality. There are no fundamental shortfalls in the matters to be considered and as such we consider approval of this application to be an example of good decision making.

5 CONCLUSION

We submit that the proposed use and development is appropriate for the following reasons:

- The objectives, decision guidelines and specific conditions of the Green Wedge Zone are met and the proposal simply sees reinvigoration of a former cellar door. The Small Second Dwelling is a permissible use and meets the conditions outlined;
- The intent of the Significant Landscape Overlay is met given the low scale nature of built form, the grouping of buildings in a location that is well setback from boundaries and in an established garden setting, and the fact that no vegetation is impacted;
- A Land Capability Assessment has been prepared to outline on site waste treatment requirements;
- The existing parking area is utilised and widened to meet the requirements for Car Parking (52.06);
- An advertising sign is proposed at the front of the property and accords with the requirements of Signs 52.05;
- The application does not prejudice the Metropolitan Green Wedge Land: Core Planning Provisions (Clause 51.02);
- Local and State policies are met;
- The proposed use and development will assist in maintaining the Yarra Ranges as a tourist destination.

Millar I Merrigan