

YR-2022/944 - 59 Morris Road, Upwey – Planning Report

APPLICATION DETAILS

Site Address	59 Morris Road, Upwey
Application No.	YR-2022/944
Proposal	To use the land for a plant nursery and for a reduction of car parking requirements
Existing Use	Single dwelling and associated outbuilding
Applicant	Tapir Design and Planning Pty Ltd
Zone	Clause 32.03 - Low Density Residential Zone (LDRZ) Clause 42.03 - Significant Landscape Overlay Schedule 22 (SLO22)
Overlays	Clause 44.01 - Erosion Management Overlay (EMO) Clause 44.06 - Bushfire Management Overlay Schedule 2 (BMO2)
Permit trigger/s	Clause 32.03 - Low Density Residential Zone <ul style="list-style-type: none">- A permit is required to use land for a plant nursery. Clause 52.06 - Car Parking <ul style="list-style-type: none">- A permit is required to reduce the area of the land allocated to carparking for “landscape gardening supplies” to less than 10 percent.
Submissions	16 objections and 16 letters of support
Encumbrances on Title (Covenants/Section 173 Agreements)	Nil
Reason for Council Decision	More than 10 objections
Ward	Streeton

SUMMARY

The application proposes to introduce a commercial plant nursery use to a residential area, within the existing outbuilding on the site. Three car parking spaces are designated, setback one metre from the front boundary to accommodate customer parking and provide an area for nursery deliveries and picks-up. The applicant

anticipates that no more than five members of the public will be on site at any one time and no more than twenty persons over an entire day.

There are amenity concerns with the scale of the commercial use operating in a residential setting, safety concerns regarding the customer vehicle access and egress. There are also concerns with the impact of inadequate car parking provision on the site, as well as the location of carparking in the front setback and the offsite traffic safety risks and impacts on the street network to support the use.

The proposal is inconsistent with a number of planning policies relating to non-residential uses in residential areas and out of centre development.

Sixteen objections and sixteen letters of support were received.

It has been assessed that given a number of particular site constraints, officers conclude that the site is not suitable for what is proposed. Overall, the application is considered to be inconsistent with the Yarra Ranges Planning Scheme and as such, it is recommended that the application be refusal.

RECOMMENDATION

That Council resolve to refuse Planning Application YR-2022/944 for Use of a plant nursery and reduction of car parking requirements at 59 Morris Road, Upwey and issue a Notice of Refusal subject to the grounds in Attachment 1 to the report.

DISCLOSURE OF CONFLICT OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

CULTURAL HERITAGE SIGNIFICANCE

The application has been checked against the requirements of the *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2007 (Vic)* as to the need for a Cultural Heritage Management Plan (CHMP). It has been assessed that a CHMP is not required.

EXTRACTIVE INDUSTRY

The subject site is not located within 500 metres of land on which a work authority has been applied for or granted under the *Mineral Resources (Sustainable Development) Act 1990*.

HUMAN RIGHTS CONSIDERATION

The application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Yarra Ranges Planning Scheme), reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

ENCUMBRANCES ON TITLE

There are no encumbrances on the Certificate of Title.

SITE LOCATION AND DESCRIPTION

The subject site at 59 Morris Road Upwey, (Lot 4 on Lot Plan 11820) is 1,837 square metres in area. The site is on the north-west side of Morris Road, opposite the Thompson Road intersection. (Figure 1 and Figure 2).



Figure 1 - Subject Site



Figure 2 - Broader site context (aerial)

The subject site is developed with a recently constructed single storey dwelling and a 55.21 square metre outbuilding. The land is moderately vegetated along the northern side boundary and Morris Road frontage. Vehicle access to the site is from an existing concrete crossover and driveway off Morris Road. The internal driveway provides access to the garage. The nature strip in front of the subject site is occupied by six mature street trees (Figure 3).



Figure 3 - Street view of subject site



Figure 4 - The outbuilding to be used for the nursery sales.

There is no pedestrian path on the west side of Morris Road. Pedestrian movement along Morris Road is via a sealed footpath along the east side of Morris Road. Given the particular characteristics of the road, no on-street parking is available to supplement the on-site car parking arrangement, and there is no parking verge along the roadside.

SURROUNDING AREA

The surrounding area consists predominantly of low-density residential lots ranging from approximately 1,200 square metres to 7,500 square metres in area. More conventional residential lots are located to the east of the site in the Neighbourhood Residential Zone (Figure 5).

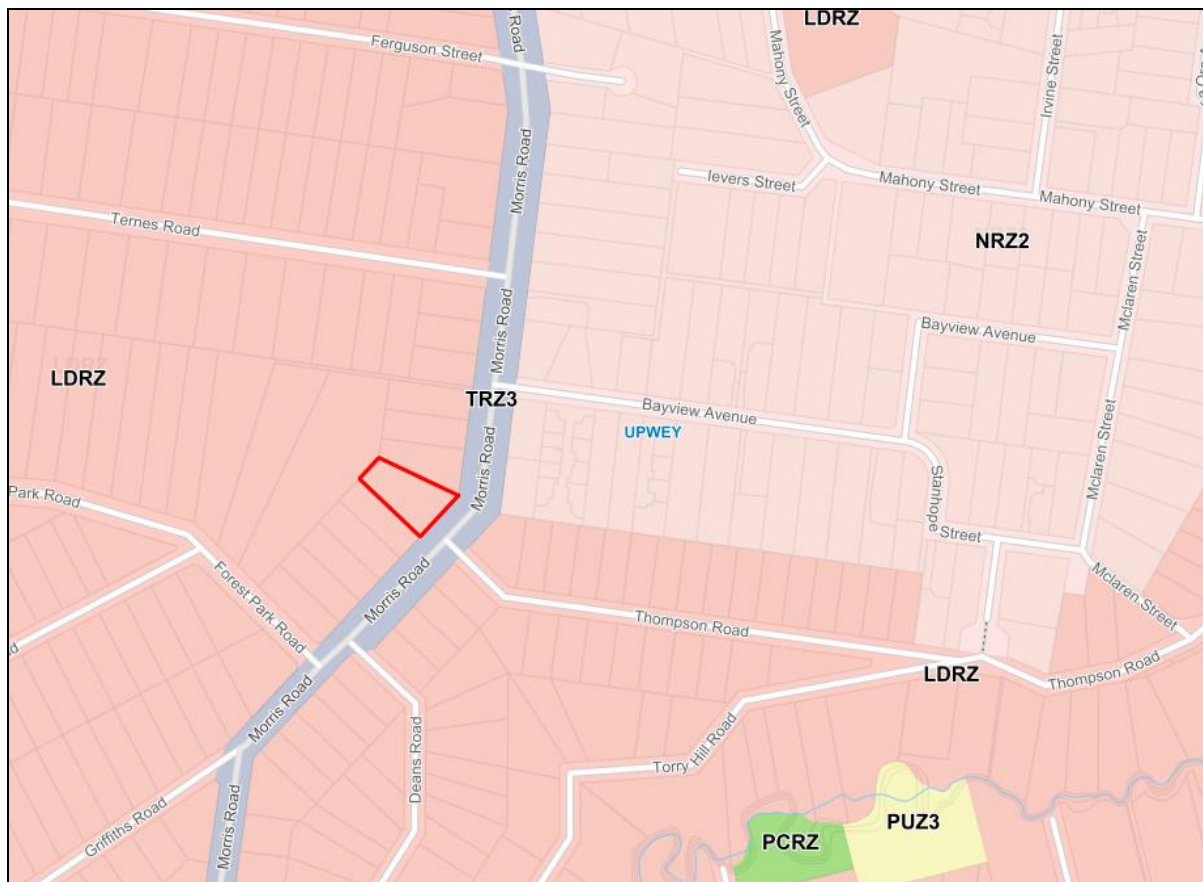


Figure 5 - Planning zones of the site and surrounds

Immediately adjoining the subject site are:

- To the north (at 57 Morris Road) is a detached dwelling on a lot of approximately 1,446 square metres in area and is accessed by a crossover along Morris Road. The dwelling is setback approximately 11.4 metres from the site's frontage. The site is well vegetated throughout.
- To the south (at 61 Morris Road) is a detached dwelling on a lot of approximately 1,300 square metres in area and is accessed by a crossover along Morris Road. The dwelling is setback approximately 6.5 metres from the site's frontage. The site is well vegetated throughout.

- To the west (at 89 Forest Park Road) is a detached dwelling on a lot of approximately 7,200 square metres in area and is accessed by a crossover along Forest Park Road. The dwelling is located more than 70 metres away from the shared boundary. The site is densely vegetated.
- To the east (beyond Morris Road) at 42 Morris Road is a detached dwelling. The lot is approximately 1,307 square metres in area. The site is accessed from Thompson Road.

PROPOSAL

It is proposed to:

- convert the existing shed into a plant nursery to create a storage and retail area (total of 55.21 square metres in area) for the sale of plants.
- create a plant care area (31.74 square metres in area) behind the existing shed.
- operate the plant nursery between 9.00am and 5.00pm Tuesday to Saturday.
- provide a crushed rock car park in the front setback capable of accommodating three vehicles. According to the applicant no cut or fill would be required. The car park would be setback one metre from the front (east) boundary and one metre from the south boundary.
- carry out day to day activities which would include potting and repotting plants, watering plants and stocking shelves. No bulk fertilisers or soils would be stored on the land, as this is stored off-site and brought to the shop as demand requires.



Figure 6 - Proposed site layout

The applicant has stated no staff who do not reside on the premises would be employed and only the residents of the dwelling will be involved in the running of the business.

The applicant has estimated that there would be no more than five members of the public at any one time on the land purchasing items and no more than twenty persons over an entire day.

There will be no heavy machinery required for the running of the business. A domestic mower, whipper snipper and power tools would suffice to maintain the land for both the proposed use and the domestic use of the land.

The submission states that there would be minimal waste so domestic Council bins and recycling services would be adequate to support the commercial use of the land.

There would be one to two small delivery vans per week and small box truck deliveries once a fortnight or month depending on sales and purchases. Most deliveries would be sent to an off-site storage facility then brought to the property in a personal vehicle.

HISTORY

Application Number and Decision Date	Planning Permit YR-2019/111 was issued on 19 July 2019 for building and works to construct a dwelling. The endorsed plans have been amended once, under application YR-2019/111/1 to modify setbacks and reduce the size of the garage and outdoor living area to the dwelling.
VCAT History	N/A
Other History	N/A

PLANNING CONTROLS

Zoning:	Clause 32.03 - Low Density Residential Zone
Overlay:	Clause 42.03 - Significant Landscape Overlay Schedule 22 Clause 44.01 - Erosion Management Overlay Clause 44.06 - Bushfire Management Overlay Schedule 2
Planning Policy Framework:	Clause 13.07-1S – Land Use Compatibility Clause 13.07-1L – Non-residential uses in residential area Clause 17.02-1S – Business Clause 17.02-2S – Out of centre development
Clause 51.03:	Not Applicable

Schedule to Clause 51.03:	Not Applicable
Particular Provisions	Clause 52.06 – Car Parking
Other Requirements:	Clause 65 – Decision Guidelines

Of relevance to the proposal, whilst uses such as these can operate as a home based business without a planning permit, there are three reasons why this use does not meet the test to qualify for Home Based Business requirements under Clause 52.11:

- There is the display of goods visible from the street (which the applicant has not indicated will not continue);
- Goods offered for sale online are being collected from the property; and
- The scale and intensity of this operation is not consistent with requirement that the business not impact on the amenity provision.

They would need to scale back the number of customers, as well as removing the carparking areas so as to not have a detrimental impact on the amenity of the area. There were complaints regarding the amenity impacts as a result of the operation of the business. The subsequent lodgement of this application is as a result of that investigation.

Even if the operational arrangements were modified to deliver to online customers (not have pick up), and not display goods in the front setback, the number of customers anticipated per day and week, and the resultant demand for carparking provision and management of vehicle egress from the site to safely manage the impact requires a planning permit to control any detrimental amenity impact on the adjoining, and nearby properties, and the local road network.

If this application is not supported, the business operation would need to be reduced to a scale where there are no offsite amenity impacts. Given that the use has generated complaints related to the amenity impacts, which were confirmed as being present, this was the trigger for the requirement to lodge the use application and to demonstrate how the amenity issues would be resolved.

For further information on the planning policies and controls refer to Attachment 2.

PERMIT TRIGGERS

Zoning

The definition of “Plant nursery” in the Yarra Ranges Planning Scheme is:

“Land used to propagate, grow, and sell plants. It may include the sale of gardening equipment and horticultural products.”

Under the Low Density Residential Zone, “Plant nursery” is a Section 2 use therefore a permit is required to use the land for that purpose.

The plans show a crushed rock car park in the front setback, comprising three proposed car spaces. A site inspection revealed that the crushed rock surface is already existing. On this basis, a permit is not required for buildings and works under the Low Density Residential Zone.

Overlays

A planning permit is not required under the Significant Landscape Overlay, Schedule 22, the Erosion Management Overlay or Bushfire Management Overlay, Schedule 2, as the application does not propose any building and works. There are no use triggers within the overlay provisions.

CONSULTATION

External Referrals

This application was not required to be referred to any external authorities.

Internal Referrals

This application was referred to various business units within Council for advice on particular matters. The following is a summary of the relevant advice:

Department	Summary of Response	Conditions required
Waste	No objection and no conditions.	No conditions required.
Drainage Engineering	No objection and no conditions. A permit note is recommended to require stormwater to be discharged to the legal point.	The recommended note could be included if a planning permit were to be issued.
Traffic Engineering	No objection subject to conditions requiring the sealing of the internal parking area, a revised turning circle to show four (4) metres radius, and the requirement for left turn only from the site.	Recommending conditions could be included if a planning permit were to be issued.

Public Notification and Consultation

Notification of the application was undertaken by:

- Placing of one sign on the land
- Mailing notices to owners and occupiers of adjoining and/or nearby properties
- Placing the proposal on Council's website for a minimum of 14 days

A community consultation meeting was not held.

A total of 32 submissions have been received, comprising 16 objections and 16 submissions in support.

The main grounds of objection can be summarised as follows:

- Inappropriate use for Low Density Residential Zone. Retail outlets should be restricted to retail areas, as opposed to residential areas with families and children. This will change the amenity of the area.
- The proposal creates increased traffic and will exacerbate traffic issues in the area.
- The site is located just after a crest in the hill and increasing traffic to this site will be extremely dangerous.
- There are not sufficient sight distances to enter and exit the site in a safe manner.
- The Traffic Report fails to identify the gravel path frequented by children walking to and from school which is on the same side of the road as the proposed business.
- Devaluation of properties in the area.
- The business already appears to be operating without a permit.

The main grounds of support can be summarised as follows:

- The nursery will be an asset to the community of Upwey and surrounding areas.
- Have been long-standing customers of the business.
- Owners run a small family-based business which provides great service and is highly reputable in the industry.
- The business encourages both adults and children to take an interest in gardening and in being more connected with nature.
- Appropriately located as there is no other nursery locally.
- The health and wellbeing benefits of plants and gardening are widely documented and align with the long-term vision of greening our cities.
- The sector needs small, independent retail centres to have a strong presence to balance the large-scale commercial operators.

- The proposal will not impact or impede the local community. If anything, it will add a great diverse and aesthetically appealing small business that would enhance the local area in a positive and safe manner.

ASSESSMENT OF KEY ISSUES

The application proposes to introduce a commercial use to a residential area, by proposing a plant nursery within the existing shed on the site. Following a review of the application material, constraints of the subject site and the current relevant provisions of the Yarra Ranges Planning Scheme, Council officers conclude that the site is not suitable for what is proposed.

The assessment below discusses these concerns and the reasons for recommending refusal of the proposed application.

The general reasons for refusing the application are summarised as follows:

- Inappropriate use in a Low Density Residential Zone.
- Traffic and carparking issues due to the scale and intensity of the use.
- Amenity impacts caused by customer numbers and hours of operation.

PLANNING POLICY AND ZONE

The proposal has been assessed as not being in accordance with the applicable provisions of the Yarra Ranges Planning Scheme. These include Clause 32.03- Low Density Residential Zone, Clause 13.07-1S - Land Use Compatibility, Clause 13.07-1L - Non-residential uses in residential area, Clause 17.02-1S - Business and Clause 17.02-2S - Out of centre development.

Clause 32.03 - Low Density Residential Zone

The purpose of the Low Density Residential Zone seeks to create areas which support low density residential development on larger lot sizes, with spacious setbacks, a sense of space and preserved peaceful amenity. The application has failed to demonstrate how the amenity of this low density residential area will be protected, which leads to the conclusion that the intensity of the proposed activity is inconsistent with the purpose of the zone.

The applicant has proposed the hours of operation to be 9:00am to 5:00pm, Tuesday to Saturday, with a maximum number of five customers on site at any one time, a maximum of twenty customer across the day and approximately 100 customers weekly.

This is considered to be an excessive number of customers visiting a site in a low density residential area. At this intensity, the land use exceeds what would reasonably be associated with a dwelling in a low density residential zone. This would result in a detrimental impact on the amenity of the area through both the movement of customers and traffic (generating both noise and visual disruption), as well as the associated car parking issues discussed below.

The applicant has not confirmed how their proposed customer numbers will be managed or ad-hoc visitation prevented. As there is no certainty on how customer numbers will be controlled (or whether they can be), and no assurance on how customer levels will not exceed the maximum stated. Controlling the number of customers on-site through planning permit conditions would be difficult for Council.

Furthermore, deliveries, using a van, are proposed to occur one to two times per week as well as small truck deliveries to occur once a fortnight or once a month (depending on sales and purchases). This level of activity and movement to and from the site is inconsistent with a residential use and this will have detrimental amenity impacts on the neighbourhood and the surrounding area in terms of traffic and car parking.

Clause 13.07-1L Non-Residential Uses in Residential Areas

The strategies of Clause 13.07-1L Non-Residential Uses in Residential Area are to:

- Discourage the dispersal of medical facilities into residential areas.
- Discourage the incremental encroachment of commercial uses into residential neighbourhoods.
- Encourage non-residential uses to adjoin an activity centre or abut a Transport Zone.
- Discourage non-residential uses from forming ribbon development along land abutting a Transport Zone and forming a quasi-commercial area.

The design strategies are to:

- Design use and development to be compatible with the surrounding character and amenity of residential neighbourhoods.
- Set back non-residential development from common boundaries and provide effective landscaping and screening buffers to protect residential amenity of abutting and nearby residential land.
- Provide off-street car parking and design access to minimise the need for cars to travel through local residential streets.

The policy guideline to consider is:

- Whether a proposed non-residential land use or development demonstrates a need to locate in a residential area.

The proposal is not in accordance with Clause 13.07-1L Non-Residential Uses in Residential Area as it introduces a commercial use into a low-density residential area.

As stated above in the report the proposed use is not compatible with the surrounding character and amenity of the low density residential neighbourhood due to the impacts from vehicles and the number of customers attending the property.

The proposed car park is setback one metre from the front boundary and one metre from the south-west (side) boundary. Schedule 22 of the Significant Landscape Overlay seeks for proposals to retain an inconspicuous profile and not to dominate the landscape. Considering this, car parking areas must be designed to be inconspicuous and to integrate into the development. The proposal does not achieve this given the car parking is proposed to be, not only in front of the existing dwelling, but also within one metre of the front and side boundaries.

The submitted plans do not show any planting or landscaping which would provide screening of the activity from abutting land. A proposed one metre setback is not sufficient to allow for adequate screening to be planted, and while the roadside does have planting, this planting is mature, with elevated overstorey canopies, do not offer any screening to the site at a pedestrian level. The proposal results in a large hard stand area for car parking within the front setback on a residential lot. This is not consistent with the landscape character of this area and the Upwey township, or the Significant Landscape Overlay Schedule 22. Given the size and location of the shed and dwelling, as well as the size and shape of the site, there is no alternative location for the car park.

The commercial area of Upwey is located only 670 metres to the north of the site along Main Street and this has been designated as the appropriate location for retail uses where it can service the community. Given the incompatibility of the non-residential use, the proposal does not demonstrate the need to locate the nursery in a low density residential area outside of this designated commercial area in Upwey.

Clause 13.07-1S Land Use Compatibility

The objective of Clause 13.07-1S is to:

- To protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts.

The strategies of Clause 13.07-1S are to:

- Ensure that use or development of land is compatible with adjoining and nearby land uses.
- Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.
- Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
- Protect commercial, industrial and other employment generating uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.

The proposal is inconsistent with Clause 13.07-1S - Land Use Compatibility as the proposal is not compatible with the existing surrounding residential uses.

The area can be described as a quiet, low-scale, low-density residential area consisting of dwellings and outbuildings on larger lots. The introduction of a retail component creates adverse amenity impacts on adjoining residential land through the proposed hours of operation, the number of customers and associated vehicle movements anticipated with this proposed.

The proposal will result in higher traffic volumes to a site that is in a hazardous location. The site access is at the crest of a hill with vehicles travelling at 60 kilometres per hour and at the junction of two roads (Morris Road and Thompson Road) immediately opposite the site, as shown images provided in **Error! Reference source not found.7** and **Error! Reference source not found.8**:



Figure 7 - View along Morris Road looking north.



Figure 8 - View along Morris Road looking south.

The Traffic Consultant confirms that the proposal does not comply with sight distance requirements for safe vehicle exit movements from the site (due to visibility being reduced by large trees and the existing vehicle crossing being on the inside of a bend in Morris Road). The applicant's Traffic Consultant has suggested that egress from the site be restricted to 'left turn only' turn onto Morris Road.

Whilst Council's Traffic Engineers have not specifically stated that the left turn only cannot be supported, a left turn only from a residential property is highly unusual, and poses an unreasonable burden and will constrain both the customers and also the residents/visitors of the dwelling. Council would also have to enforce this requirement.

As the site is surrounded by existing low density residential land, the separation of this land use is not an option. The nursery is proposed within the existing shed on the site, therefore alternative siting and building design considerations are not possible. To ensure the amenity of adjoining residential properties is not detrimentally impacted, would require restrictive permit conditions around hours of operation, number of customers and delivery times, which is likely to impact the effective operation of the business as it would be difficult for the operator to adhere to, and for Council to enforce.

Entry and Exit of Vehicles

The submitted traffic report states:

"Egress from the land can be performed in a forward direction onto Morris Road. The sight distance north of the land does not satisfy the sight distance requirements of Australian Standard 2890.1. However, those requirements

are generally not satisfied for multiple properties along Morris Road including some intersections. When approaching the land from the north drivers would be travelling downhill likely causing them to inadvertently accelerate. Under such circumstances drivers would require a greater distance to stop thereby exacerbating sight line non-compliance. Driver sightlines are restricted by mature street trees. Given the proposed use of the land drivers are unlikely to be familiar with the road conditions along Morris Road. It is recommended that "Left Only" signage be installed within the subject land to restrict vehicle movements to "left only" when egressing the land."

Figure 9 shows the limited sightlines on the approach from the north along Morris Road, beyond the corner. The site is just beyond the corner, where the angled tree is shown in the photo. Any vehicle not obeying a left turn only manoeuvre leaving the site will likely create point of conflict with oncoming vehicles:



Figure 9 -Constrained sightlines approaching the site from the north.

Council's Traffic Engineer has cited the consultant traffic report and does not object to the use of 'left turn only' signage to address sightline concerns, as it functionally removes the potential point of conflict between a passing car and a car exiting the site.

However, whilst the 'left turn only' restriction functions to prevent cars turning right out of the site onto Morris Road, and creating this direct point of potential collision,

there are a number of unreasonable practical and human-dependent behaviours to also consider when considering this as a solution.

For vehicles exiting the site and wanting to travel south back along Morris Road, the driver will turn left onto Morris Road and then need to make a U-turn within the surrounding side streets (i.e., Bayview Avenue, Ternes Road, Ferguson Street or View Street) and then turn back onto Morris Road in order to travel south. Alternatively, they will drive north approximately 670 metres to the roundabout at the junction of Morris Road and Main Street and will do a U-turn to travel south along Morris Road. Both rely on customers having local road network knowledge to function, and impose a series of vehicle manoeuvres within the local road network.

This is demonstrated at Figure 10:

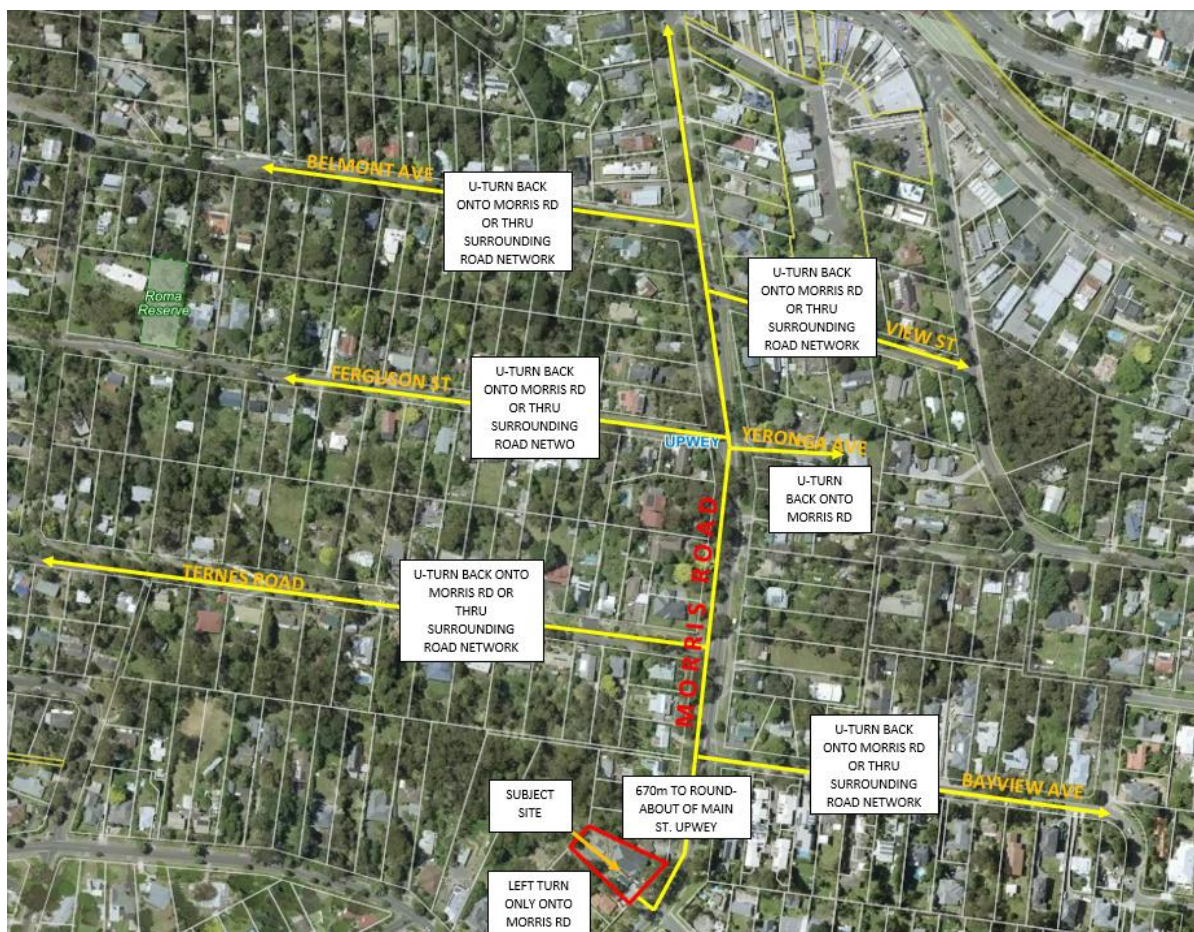


Figure 10 - Map of local road network required to support left turn only egress.

This relies on local road network knowledge by the customer to succeed, to understand the options and risks to be willing to obey the left turn only signage.

In situations such as this, human nature is that the driver who is unaware of the reasons for the restriction, and does not have local knowledge of the alternative routes, is more likely to opt for a convenient easy solution, and to turn right illegally rather than lawfully turn left.

Given the majority of customers won't be repeat, regular (daily or weekly) visitors, this requirement relies on an unreasonable expectation that occasional customers will comply with this for it to succeed. Occasional customers have no local road knowledge, as well limited appreciation for the safety risk which is being mitigated.

In addition, there is a condition which burdens the permit holder to ensure their customers comply with the permit. Whilst a 'left turn only' sign may be displayed, it will be difficult for the permit holder to enforce that their customers adhere to this restriction when exiting the site, which would result in the permit holder/s being in breach of the condition each time an illegal turn is completed.

There is a road safety risk of vehicle collisions if the customer does not comply. There is also the risk for the permit holder in not being able to comply with permit

conditions, and difficulties for the permit holders to communicate and enforce the need to obey.

Formal enforcement of this permit condition would fall to Council. This is an unreasonable impost on resources, as surveillance would be challenging given the irregularity of customers (times and days), the limited opportunity for on street surveillance opportunities, the fact that customers would not be regular (daily or weekly) customers (as would be the case in other situations where attendees are repeat regular customers such as a child care centre).

As such, with a 'left turn only' sign and condition that is unlikely to be met, and which is difficult to enforce, it is not appropriate to include the requirement as it is of limited value as controlling traffic movements where safety of road users is an issue.

The alternative is to allow a vehicle to turn left or right from the site. given the proposal does not comply with sight line requirements and therefore will have limited visibility, this is not an acceptable alternative as this results in dangerous traffic movements and likely collisions between vehicles. The resultant risk could be on Council for allowing a use which results in these significant traffic safety issues.

As well as vehicle movements leaving the site, there are also issues of vehicle movements within the site. The turning circles required to exit the site in a forward direction are so precise that it would require an exact 'full wheel lock' to 'full wheel lock' manoeuvre to perform a three or five point turn. It also relies on one car parking space being available for the vehicle to successfully manoeuvre within the site, or the area in front of the garage to be empty.

Council's Traffic Engineer comments confirm this, with the following comments:

- *The proposal to widen the vehicle crossing from three (3) to four (4) metres is unnecessary and not supported.*
- *The submitted swept path analysis relies on vehicles being stationary when turning wheels from full lock to full lock, straight to full lock and full lock to straight which is unrealistic. The car park needs to be re-designed to enable a four (4) metre turning radius and the pavement in front of the garage of the dwelling must be available for occupiers of the three car spaces to use when exiting the car spaces.*
- *The car spaces and accessway must be fully sealed in accordance with Clause 52.06-11. If all three spaces are occupied, the applicant has not demonstrated how a customer who enters the site would be able to perform a three point turn and exit the site in a forward direction. The most likely scenario is that vehicles will reverse onto Morris Road to leave the site and find an alternate place to park.*

Supply of on-site Car Parking

A plant nursery is not a specific land use listed within the car parking provisions of Clause 52.06. As such, to determine an appropriate car parking requirement, we can use the nesting diagrams in Clause 73.04, where a plant nursery is nested under landscape gardening supplies.

Landscape gardening supplies is listed in the car parking provisions of Clause 52.06. On this basis, 'landscape gardening supplies' is the most suitable land use term to apply when considering what is an appropriate car parking provision.

A breakdown of the car parking requirements under Clause 52.06 and calculation of the car parking reduction is provided below.

Use	Clause 52.06 - Car parking rate	Amount of site area required to be set aside for car parking purposes	Amount of site area proposed to be set aside for car parking purposes	Number of car spaces being reduced
Landscape gardening supplies	10 percent of the site area to be set aside for car parking	The land area is 1,837 square metres, therefore 183 square metres in area is required for car parking.	84.48 square metres is set aside for car parking, which equates to 4.59 percent of the site area. <i>Note: includes three spaces and accessway (measuring at 10.8 metres by 7.8 metres).</i>	There is a shortfall of 98.52 square metres (5.41 percent), which equates to seven (7) car spaces. - A standard car space is 5.4 metres in length and 2.6 metres in width. - One car space equals 14.04 square metres.

On this basis, the proposal does not provide the required number of spaces stipulated under Clause 52.06 Car Parking of the Yarra Ranges Planning Scheme and a permit is needed to reduce this requirement. The impact of this needs to be assessed. To determine if a waiver/reduction is appropriate Council must consider what alternate opportunities exist, including on-street car parking, multi-purpose visitation to share the car parking demand, and public transport and alternate measures to visit a site.

In this case, three car spaces are provided for a maximum of five customers to attend the site. It is expected, given the site is not in a commercial/industrial area to share multipurpose trips, the limited public transport network servicing the site, and the out of town location (and the bulky nature of goods being sold), that walking access is unlikely, this will result in the demand for on-street car parking to supplement the shortfall on the site.

Whilst there are no 'no-standing' signs on the street, the road configuration does not allow opportunities for on-street car parking in front of the site, either on the roadside or nature strip. There is a single defined lane carriageway each way, which prevents cars crossing the double lines to deviate from the lane, and roadside parking opposite double lines is illegal. The dangerous road network explained above is managed this way due to the proximity of the site to the crest of the hill and its location on a bend, and opposite an intersecting street. There are also intermittent

traffic islands in the centre of the road which means no overtaking/lane departures are allowed. Illegal car parking on the nature strip in front of the site or along the roadside will impact the line of sight for both passing traffic, as well as customers leaving the site.

Parking on the nature strip is illegal, and there are a number of large trees along the nature strip which prevent customers from parking in this location.

The reduction in car parking area of seven spaces cannot be supplemented or absorbed through the use of on-street car parking in the event of the three on-site car parking spaces being utilised. If a customer were to attend the site, and not get a parking spot, there is a safety risk if they chose to park on the roadside. This would create further road safety issues on an already difficult section of road, and would unreasonably adversely affect the amenity of the area, its residents and generally result in an unreasonable traffic impact.

Clause 17.02-1S (Business) and Clause 17.02-2S Out-of-centre Development

The relevant objective of Clause 17.02-1S are:

- To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.

The relevant strategies of Clause 17.01-2S are to:

- Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.
- Locate commercial facilities in existing or planned activity centres.

The relevant objective of Clause 17.02-2S are:

- To manage out-of-centre development.

The relevant strategies of Clause 17.02-2S are to:

- Discourage proposals for expansion of single use retail, commercial and recreational facilities outside activity centres.
- Give preference to locations in or on the border of an activity centre for expansion of single use retail, commercial and recreational facilities.
- Ensure that out-of-centre proposals are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

Plant nurseries fall into the category of non-residential uses and is not an essential daily service. Plant nurseries are more appropriately located on larger Green Wedge or Green Wedge A Zoned land, or alternatively at a smaller scale in a commercial area, provided there is a strong justification for a local community need and benefit.

The proposal is inconsistent with the strategies of both Clauses 17.02-1S and 17.02-2S as the proposal is for a single use retail purpose, is located outside an existing

activity centre of Upwey and the applicant has not demonstrated a net community benefit nor demonstrated that there is a specific need for this use to be located outside of a commercial area.

The proposal fails to demonstrate a local need and benefit to the community sought by Clause 17.02-1S (Business), which emphasises the key words 'local' and 'need' in the context of community benefit.

Clause 71.03-2 Integrated decision making

A Plant Nursery is a Section 2 Use in the Low-Density Residential Zone. Whilst a permit may be granted, in appropriate circumstances, pursuant to Clause 71.03-2 of the Planning Scheme, it does not imply that a permit should or will be granted.

The Responsible Authority must decide whether the proposal will produce acceptable outcomes in terms of the Municipal Planning Strategy, the Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65.

Clause 71.02-3 (integrated decision making) of the Planning Scheme requires responsible authorities

'to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.'

In making this recommendation, it has been determined that:

- The subject site is not close or abutting the Upwey commercial area,
- the proposed plant nursery will result in a land use that will be inconsistent with the existing low density residential area;
- the use will cause an unreasonable disruption in the land use of the residential area of Upwey;
- the operation results in an unreasonable safety risk associated with the traffic movements, and relies on complex vehicle movements through the surrounding road network to support the safe egress of vehicles leaving the site. The immediate safety of road users would be unreasonably compromised for the benefit of the land use, but with minimal broader benefit.

Given the relatively small scale of the proposed operation, there is limited justification to require the permit holder to be required by condition to undertake works and the significant capital investment to improve the broader road network to ensure safe traffic movements from the site.

It is considered that the application will not provide a net community benefit at a scale which outweigh the issues of concern with the proposal. The proposal does not demonstrate a sufficient broader net community benefit that outweighs the detracting

local amenity and neighbourhood character impacts, or the potential safety and traffic impacts on the local road network.

COMMUNITY CONSULTATION - RESPONSE TO SUBMITTERS

The following is a response to the submissions made:

Objections	
Grounds of Objection	Council Officer response
Inappropriate location.	The main purpose of this zone is to provide low density residential development, which is often valued for the lifestyle opportunities it provides. The introduction of a retail component to this area will have detrimental amenity impacts on the immediate and surrounding properties as discussed in this report. For this reason, it is considered that the proposed retail nursery use is inappropriate.
The proposal creates increased traffic and will exacerbate traffic issues in the area.	Whilst Council's Traffic Department has not identified any particular concerns relating to traffic, Council Planning Officers are concerned that this is a high risk area being that the site is at the crest of a hill with vehicles travelling at 60 kilometres per hour and the access point is at the junction of two roads (Morris Road and Thompson Road). Introducing a use that will increase the number of vehicle movements to and from a site in a high risk area is irresponsible, particularly given the application does not demonstrate how customer numbers will be managed.
The site is located just after a crest in the hill. Increasing traffic to this site will be extremely dangerous. There are not sufficient sight distances to enter and exit the site in a safe manner	As stated above in the report the proposal will ultimately result in higher traffic volumes to a site that is, at the crest of a hill with vehicles travelling at 60 kilometres per hour and the access point being at the junction of two roads (Morris Road and Thompson Road). Whilst the 'left only' restriction may appear to be acceptable at face value, it does not address the accessibility issue. This, in turn with the effects of higher traffic volumes associated with the new use, will only further exacerbate an already dangerous traffic safety situation.
The Traffic Report fails to identify the gravel path frequented by children walking to and from school	Whilst the Traffic Report submitted by the Applicant fails to identify the gravel path, Council engineers have considered the pedestrian movements occurring outside the site and not

which is on the same side of the road as the proposed business.	identified any concerns.
Devaluation of properties in the area.	VCAT have determined multiple times that this is not a planning consideration nor a valid reason to refuse the application.
The business already appears to be operating, without a permit.	This planning application for the plant nursery has been lodged with intention of resolving this non-compliance. It is noted that rectification works have occurred on site that has removed all the plants from view and a fence erected to screen the plants on site, if the proposal met the numerical Home Based Business requirements under Clause 52.11, the use could operate without a planning permit.
Submissions in Support	
Grounds of support	Council Officer response
The nursery will be an asset to the community of Upwey and surrounding areas.	Whilst there may be a 'need' for a plant nursery in Upwey, this is not the right location for it. A commercially zoned site would be appropriate as the proposal would be consistent with the purpose and intent of the zone. At times, businesses outgrow their location, and the scale and intensity of this particular proposed use is not appropriate in this particular location.
Have been long-standing customers of the business.	Operating the business locally in a more appropriate commercial location set aside for this purpose would not prevent repeated customers from returning. In this location, the proposal does not comply with the Planning Scheme on a number of aspects and would result in unreasonable localised detrimental impacts which cannot be overcome.
Owners run a small family-based business which provides great service and is highly reputable in the industry.	As above.
The business encourages both adults and children to take an interest in gardening and in being more connected with nature.	As above.
Appropriately located as there is no other nursery locally.	It is considered to be an inappropriate location for a retail nursery. The site is in a Low Density Residential Zone, the purpose of which is to create areas which support low density residential

	<p>development on larger lot sizes, with spacious setbacks, a sense of space and preserved peaceful residential amenity.</p> <p>The application has failed to demonstrate how the residential amenity of this area will be protected. It is anticipated that, at this scale, the operation will be an unreasonable burden on the area, and is inconsistent with the purpose of the zone.</p>
<p>The health and wellbeing benefits of plants and gardening are widely documented and align with the long-term vision of greening our cities.</p>	<p>Operations to support the vision must be done in an appropriate location.</p>
<p>The sector needs small, independent retail centres to have a strong presence to balance the large-scale commercial operators.</p>	<p>This could be the case, but this is not the right location for a retail nursery. The proposal will have detrimental amenity impacts on the area. A retail nursery is more appropriately located in an area where off-site amenity impacts are reduced and where the site does not adjoin sensitive residential land. The commercial area of Upwey would be suitable.</p>
<p>The proposal will not impact or impede the local community. If anything, it will add a great diverse and aesthetically appealing small business that would enhance the local area in a positive and safe manner.</p>	<p>As detailed throughout this report, the retail nursery is proposed in an inappropriate area; the proposal will have a detrimental impact on the amenity of the area, particularly due to the number of customers proposed, hours of operation, lack of car parking and traffic and safety issues. The proposal also does not comply with car parking requirements, there is a shortfall of seven car spaces.</p>

CONCLUSION

The use application has been assessed in accordance with Section 60(1) of the *Planning and Environment Act 1987* all relevant instruments and policies.

The proposal is considered to be inconsistent with the objectives of the relevant planning policies and zone provisions of the Yarra Ranges Planning Scheme.

As such, refusal is recommended.

ATTACHMENTS

- 1 Appendix 1 – Grounds of Refusal
- 2 Appendix 2 – Planning Scheme Policies
- 3 Appendix 3 – Development Plans
- 4 Appendix 4 –Town Planning Report
- 5 Appendix 5 –Traffic Report
- 6 Appendix 6 – Business Plan