



**Southern Grampians**  
SHIRE COUNCIL

# Planning Committee Minutes

13 August 2019

Held at 2.45pm in the  
Martin J Hynes Auditorium  
5 Market Place, Hamilton

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PARK Crown Allotment 3 Section 8, Crown Allotment 4 Section 5 Parish of  
KANAWALLA**

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**1. PRESENT**

Cr Colin Dunkley, Chair

Cr Katrina Rainsford

Mr Andrew Goodsell, Director Planning and Development

Mr Rhassel Mhasho, Manager, Planning and Regulatory Services

Ms Ros Snaauw, Coordinator Planning

Henry Booth

Andrew Lacey

Mark Dore

**Minutes**

Mrs Sharon Clutterbuck, Executive Assistant – Director, Planning and Development

**2. WELCOME – CHAIR**

**Introductions were made by those present.**

**3. APOLOGIES**

David Moloney, Director Shire Infrastructure

**4. CONFIRMATION OF MINUTES**

Minutes of the Meeting held on 19 June 2019 have been circulated

**RECOMMENDATION**

**Moved: Cr Colin Dunkley**

**Seconded Cr Katrina Rainsford**

That the Minutes of the Planning Committee meeting held on 19 June 2019 be confirmed as a correct record.

**Carried**

## 5. DECLARATION OF INTEREST

Nil

## 6. MATTERS FOR DECISION

### 6.1 TP/33/2019 Two lot subdivision 369 Noskes Subdivision Road HENSLEY PARK Crown Allotment 3 Section 8, Crown Allotment 4 Section 5 Parish of KANAWALLA

**Author:** Kerri-Anne Tatchell, Senior Planner

#### Attachments

1. **Application package, request for and response to further information**
2. **Section 52 Notice (Form 2)**
3. **Delegate Report**
4. **Relevant Planning Scheme Zone and Policy**
5. **Relevant VCAT decisions**

These documents were made available to all members present at the meeting and copies are available upon request.

#### Executive Summary

Council has received a planning permit application for a two lot subdivision at 369 Noskes Subdivision Road Hensley Park. Council Officers are recommending refusal as the proposal does not respond to state and local planning policy. It does not meet the requirements for development in rural areas and will result in land use conflict, land fragmentation and rural residential use by stealth. Council's Instrument of Delegation requires that the application be referred to the Planning Committee for decision.

It is proposed to re-subdivide agricultural land into two lots resulting in a rural residential lot and a balance agricultural lot. Proposed Lot 1 has an area of 1.013 hectares and contains a dwelling and outbuildings. Proposed Lot 2 has a total area of 81.22 hectares in two parts. The large balance lot wraps around the proposed residential lot on three sides. It includes a hay shed, machinery shed and dams and is generally improved with fencing, internal access tracks and windrows consistent with animal grazing.

A planning permit is required to subdivide land pursuant to Clause 35.07-3 of the Farming Zone and each lot must be at least 40 hectares. Council may consider the grant of permit to create smaller lots if the subdivision is the re-subdivision of existing lots and the number of lots is not increased, subject to satisfactory assessment against the relevant provisions of the Southern Grampians Planning Scheme.

The first section of the report outlines the development proposal and introduces the subject land. The report contains an assessment section that measures the proposal against planning policy and provisions. The application has been assessed against the purpose and relevant decision guidelines of the Farming Zone and Clause 65 and the planning policy framework as it relates to sustainable agriculture and non-agricultural uses in farming areas and small lot

rural excisions. The final section summarises the key issues and identifies relevant VCAT decisions that support the recommendation that the Planning Committee refuse to grant a permit for the proposal.

**Proposal**

It is proposed to subdivide the land into two lots as per **figure 1**. The subdivision is a re-subdivision of two existing Crown Allotments. The applicant submits that *‘if the allotments...were acquired by a neighbouring farming enterprise in their current configuration the dwelling would be unoccupied and will be left to fall into a state of disrepair. The restructure of the existing allotments provides the opportunity for the existing dwelling to be occupied and maintained; and also effectively creates a large allotment which can be used sustainably and productively for agricultural purposes’*.

- Proposed Lot 1, a rural residential lot that is an irregular, ‘lollypop’ shape with an area of 1.013 hectares. An existing 260 metre long by 14 metre wide track from Noskes Subdivision Road to a single storey brick dwelling and two outbuildings will be utilised as access.
- Proposed Lot 2, the balance lot, will be used for agricultural purposes, and has a total area of 81.22 hectares in two parts due to the unmade road running north to south through the lot. This lot wraps around the proposed Lot 1 on three sides and is otherwise rectangular in shape. It includes the hay shed, machinery shed and dams and is generally improved with fencing, internal access tracks and windrows consistent with animal grazing. No access is identified to the proposed Lot 2 though it does have extensive frontage to Noskes Subdivision Road.

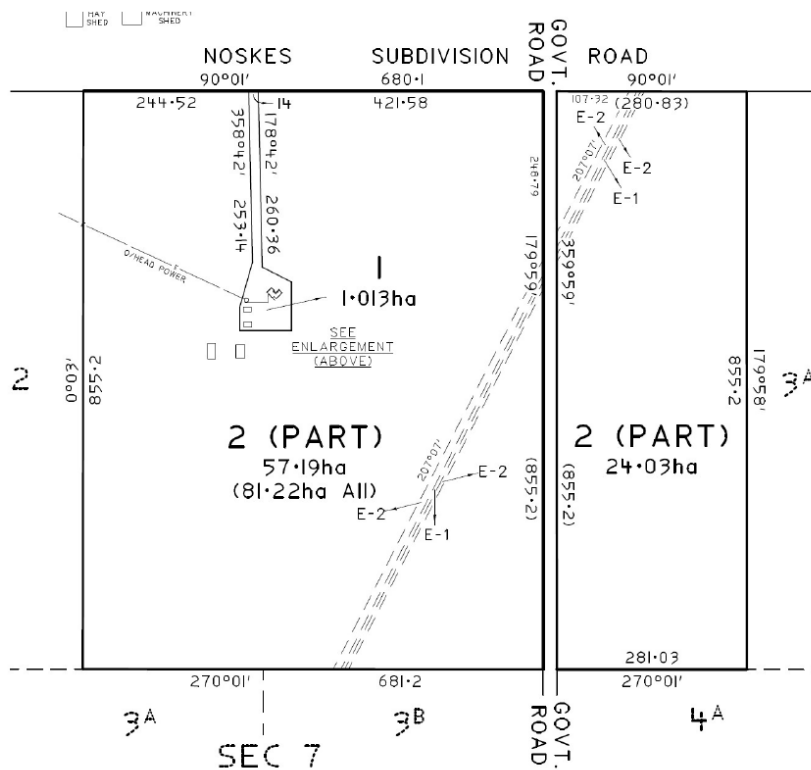


Figure 1

**Subject site and locality**

An inspection of the site and the surrounding area has been undertaken. The subject site as per **figure 2**, is situated on the southern side of Noskes Subdivision Road approximately 15 kilometres north east of Hamilton, 25 kilometres north west of Dunkeld and 12 kilometres south of Cavendish.

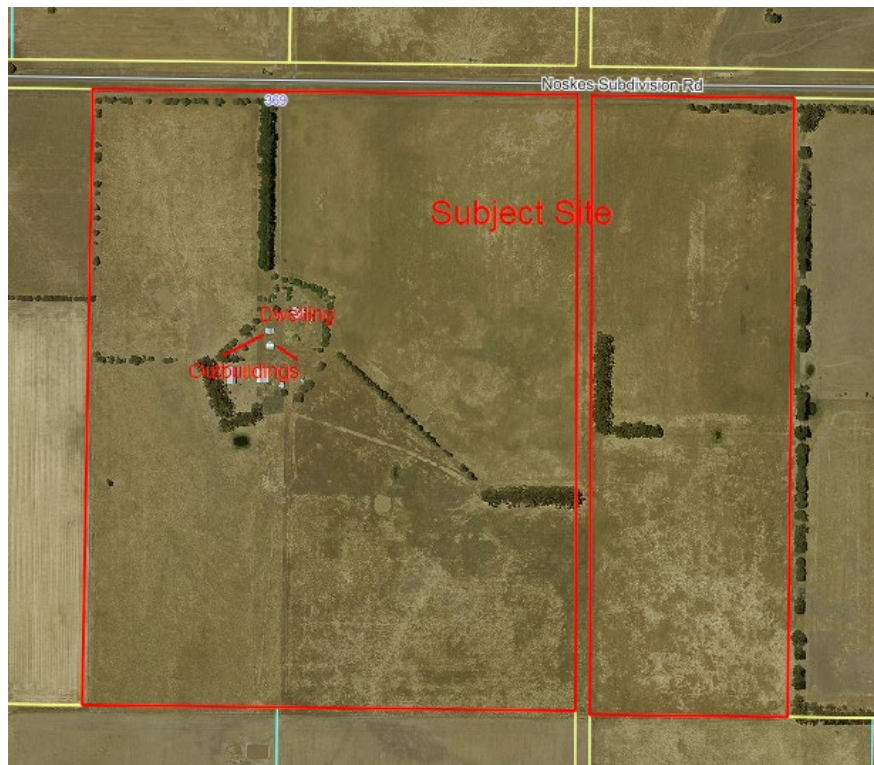


Figure 2

It is rectangular in configuration and has a total area of 82 hectares consisting of two Crown Allotments.

- Crown Allotment 4 Section 5 is a fenced grazing paddock containing a dam and has an area of 24 hectares, and
- Crown Allotment 3 Section 8 has an area of 58 hectares and is developed containing a single storey circa 1985 three bedroom brick dwelling located midway through the lot, dams, grazing paddocks, access tracks, and significant outbuildings (four) including hay shed and machinery shed and other smaller outbuildings (numbered 1 and 2) that are clustered in close proximity to the dwelling as per **figure 3**.



Figure 3

There are easements across the land in favour of Hamilton Water Board (Wannon Water) and there is a constructed all-weather track used to access the dwelling and farm infrastructure from Noskes Subdivision Road.

Vegetation on the land comprises windrows, small plantation and established native vegetation along sections of the frontage of both allotments.

Noskes Subdivision Road is a sealed road running east west with junctions at Hensley Park Road to the west and Skene Woolshed Road to the east. The surrounding area as per **figure 4a** is rural in character and relatively flat being dominated by farming operations (sheep and cattle grazing). Where there are dwellings these are in association with agriculture **figure 4b**. Adjacent land consists of large farms as follows:

- West: 159 hectares consisting of two parcels (92.63 and 66 hectares) of grazing land containing a dwelling and outbuildings.
- South: 206 hectares consisting of six parcels (approximately 35 hectares each) and a further 264 hectares consisting of eight parcels to the south that is part of the same holding.

- East: 145 hectares of broad acre grazing land containing a dwelling and outbuildings.
- North: 201 hectares of grazing land including house and farm infrastructure and adjacent to this further east is a 95 hectare holding containing a dwelling and outbuildings.

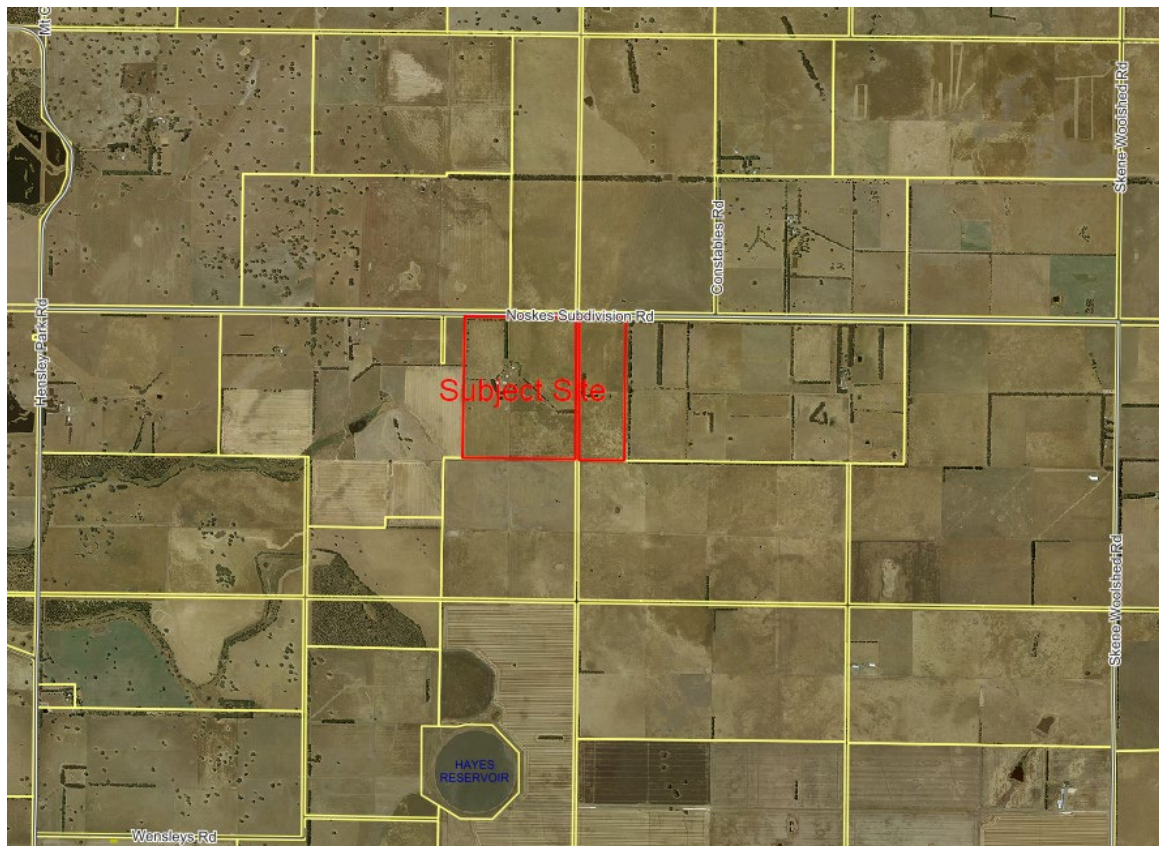


Figure 4a

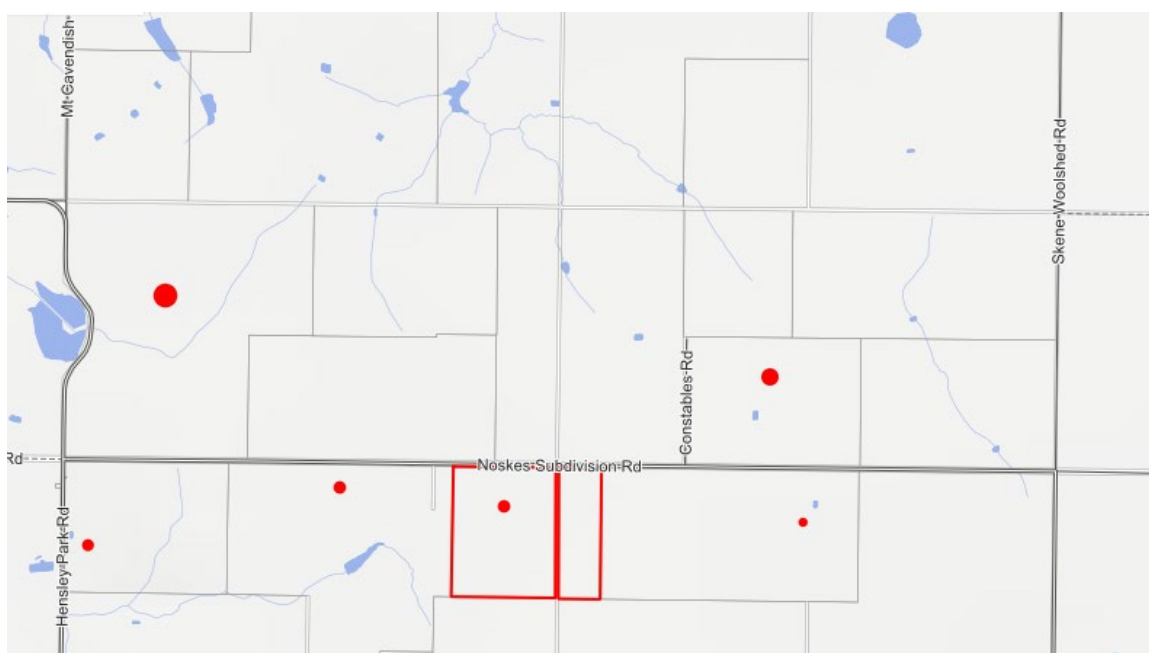


Figure 4b (red dots indicate dwellings)



## Permit/Site History

- No previous Planning Permits have been granted.
- A search of Council records did not locate septic permit to install or use. Inspection of the site identified waste water management infrastructure proximate to the dwelling. The applicant's response to a request for further information provides that a plumbing inspection 21 June 2019 found that the wastewater from the dwelling drains into a septic tank having a capacity of 3300 litres.

Further, it is submitted that the septic tank is located between the interlocking pavers at the rear of the house and the clothesline. The outlet from the septic tank flows into a concrete inspection/junction pit, located on the south side of the clothesline. From the junction pit the wastewater drains via an underground pipe to the west and the outlet is located within proposed Lot 2. Discussions with Council's Environmental Health Department provide that it is highly likely that the land is able to treat and retain wastewater within the proposed dwelling lot.

- Building permits were issued for the dwelling.

## ASSESSMENT

### ZONE

#### Clause 35.07 Farming Zone

It is the purpose of the zone:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

### Response

*The purposes above do not provide any direction to planning that would favour facilitation of the proposed re-subdivision.*

*The applicant contends that occupying a dwelling that may otherwise become vacant may achieve a limited population retention role and therefore meet the zone intent. But it is not clear that a future farm owner would not want the same dwelling for their own use. More fundamentally, the location of the dwelling and outbuildings towards the centre of the farm significantly impacts the configuration and usability of the balance lot with little or no regard to how the farm could be managed with such a large potential for interface issues. As such the proposal adversely impacts the core reasons for the Farming Zone in the first place. The creation of a rural residential lot permanently removes it from agricultural use and discourages the retention of productive agricultural land. The creation of a rural residential lot has no relationship to the rural activities conducted on adjoining and nearby land.*

*The proximity of the dwelling (a non-agricultural use) to the balance agricultural lot, particularly the two large sheds, will adversely affect and limit the use of land for agriculture and any future occupants of the dwelling will most likely have much higher amenity expectations.*

*The application does not include a land management plan to show how the re-subdivision is based on comprehensive and sustainable land management practices and the existing infrastructure and future farming practices will surely impact negatively on the quiet enjoyment of occupants of the rural residential lot.*

#### **Permit trigger: Clause 35.07-3 Subdivision**

A permit is required to subdivide land.

- Each lot must be at least 40 hectares.
- A permit may be granted to create smaller lots if the subdivision is the re-subdivision of existing lots and the number of lots is not increased.

#### **Response**

*Importantly, just because a permit may be granted does not mean a permit should be granted. The proposed subdivision is not 'as of right'. It is considered that the application has failed to demonstrate that the re-subdivision will achieve an appropriate planning outcome as measured against the planning policy framework and the relevant provisions of the zone.*

*Planning must consider the merits of the proposal and whilst it replicates the number of lots it represents a significant change to how the land will be used. These matters are discussed in detail in the following section of the report.*

#### **Clause 35.07-6 Decision guidelines**

Before deciding on an application, in addition to the decision guidelines at Clause 65, the responsible authority must consider the decision guidelines of the zone. Each of the relevant decision guidelines have been considered as follows:

#### **General issues**

#### **The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.**

*The proposal is not consistent with planning policy frameworks and it is contrary to Council's Municipal Strategic Statement. The proposal is an unsatisfactory planning outcome that is not supported at Clause 11, Settlement, Clause 14, Agriculture and Clause 16, Housing. The proposal is inconsistent with local policy at Clause 21.04 that seeks to limit development incompatible with agriculture, Clause 21.04 that seeks to discourage rural residential development and Clause 21.06 that specifically emphasises 'right to farm' and to minimise impacts from inappropriate small lot excisions. These policies are responded to in detail in the policy section below.*

#### **Any Regional Catchment Strategy and associated plan applying to the land.**

*Not relevant to the proposal.*

#### **The capability of the land to accommodate the proposed use or development, including the disposal of effluent.**

*A Land Capability Assessment (LCA) was not submitted with the application that demonstrates the land is capable of accommodating on-site disposal of effluent although it is highly likely that this can be achieved on the dwelling lot.*

#### **How the use or development relates to sustainable land management.**

Clause 73.01 of the Scheme defines sustainable agriculture as, 'the use of farming practices and systems which maintain or enhance:

- a) The economic viability of agricultural production;
- b) The natural resource base; and
- c) Other ecosystems which are influenced by agricultural activities.'

*The Southern Grampians Planning Scheme provides that in a Farming Zone a permit is required for a dwelling on lots under 40 hectares. Although no land management plan was submitted with the application it is clear that the small lot is unable to produce a farming outcome. The small lot has the potential to restrict the agricultural use of the balance lot.*

**Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.**

*The primary purpose of the land is to provide for agricultural uses and to ensure that dwellings do not adversely affect the use of the land for agriculture. A rural residential use is not compatible with adjoining or nearby land uses. There are five dwellings nearby that are used in association with agriculture. There are no rural residential lots nearby.*

*The dwelling lot will be surrounded on three sides by farming land and any future occupants would have amenity expectations in line with a rural lifestyle. It is submitted that the balance lot would eventually be included with neighbouring land to create a larger enterprise. This application does not require support for that to happen.*

**How the use and development makes use of existing infrastructure and services.**

*It is proposed that the two large sheds would be included with the balance lot. The existing access would be used for the dwelling. There is no additional access from Noskes Subdivision Road to the two sheds and a new access would need to be created that would remove yet more land from agricultural use.*

**Agricultural issues and the impacts from non-agricultural uses**

**Whether the use or development will support and enhance agricultural production.**

*A key issue is whether the proposed subdivision supports the long term maintenance of the land for agricultural production. Essentially the basis of justification put forward by the applicant is that the subdivision does not increase the number of lots and that the creation of the smaller dwelling lot does not prejudice the on-going farming on the large balance lot. The land as currently configured supports agricultural production (sheep grazing) and it is considered that the actual purpose of this application is to create a rural residential lot and this will reduce the opportunity to enhance agricultural production. A dwelling will limit opportunities for more intensive agricultural uses.*

**Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.**

*The use of the land for a rural residential lot as the applicant proposes, permanently removes the land from agricultural production. There will be flow on effects for the balance lot with the need to provide buffers from the residential use.*

*There is no access identified to the large sheds on the balance lot and the additional access that would need to be created will (to a lesser extent) remove further land from agricultural production.*

**The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.**

*There is real potential that the rural residential use will lead to land use conflict that would see limitations placed on operation and expansion of the adjoining and nearby agricultural uses.*

*There are two large outbuildings on the balance lot that are within 80 metres of the dwelling. It is unlikely that future occupants would be satisfied with the amenity impacts of heavy machinery operating in such close proximity.*

**The capacity of the site to sustain the agricultural use.**

*The small rural lot has no capacity to sustain an agricultural use and the balance lot would be significantly impacted by the establishment of a rural residential lot. The applicant submits that farming activity would continue on the large lot. It is reasonable to expect a future dwelling and other infrastructure would be constructed on the balance lot that would result in a further reduction of productive land.*

**The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.**

*The agricultural qualities of the land outweigh the need to establish a rural residential use.*

**Any integrated land management plan prepared for the site.**

*The application has not been supported by a land management plan that would demonstrate any benefits that might be gained from the subdivision.*

**Dwelling issues****Whether the dwelling will result in the loss or fragmentation of productive agricultural land.**

*No new dwelling is proposed. The applicant submits that this is a re-subdivision of land. This is not strictly correct as the proposal would facilitate the introduction of a new residential use on the land. This will cause fragmentation of the land.*

*It is policy to protect land to allow for possible further consolidation. The location of the dwelling cannot achieve any orderly or sensible subdivision due to its central location and it is this challenge which is fatal to the proposal and why it cannot meet the Scheme zone purposes.*

**Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.**

*All adjacent and nearby land is used for agriculture. It is foreseeable that adverse amenity impacts; dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation will occur as a result of legitimate farming activities. These impacts would not be in keeping with the amenity expectations of future residents. The close proximity of major farm sheds and the ongoing probability of highly mechanised operations upon the nearby farming enterprises makes the protection of amenity for any new resident not associated with the adjoining farm highly susceptible to loss of amenity complaints.*

**Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.**

*There is significant potential that the dwelling will lead to land use conflict that would see limitations placed on operation and expansion of the adjoining and nearby agricultural uses.*

*There are two large outbuildings on the balance lot that are within 80 metres of the dwelling. It is unlikely that future occupants would be satisfied with the amenity impacts of heavy machinery operating in such close proximity.*

**The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.**

*There are several large holdings adjacent and nearby that include parcels that could be seen as attractive for rural lifestyle opportunities that would impact on the use of the land for agriculture.*

*What is proposed is a lot layout distinctly different to that which has evolved to date. In facilitating an approach where any existing dwelling, no matter where located on a property can be severed, will likely generate further interest in similar patterns in future across the wider area (where houses were genuinely built for farm owners) thereby achieving an outcome contrary not only to the planning scheme as well as Council's goal of facilitating agricultural investment.*

*There is a distinct trend towards farms increasing in size, for economies of scale for example, and when the land is valued for the home and not the farming output the 'right to farm' is diminished and the opportunity to consolidate reduced.*

*Agriculture and forestry industries are key elements in Council's plan for stimulating growth, attracting investment and retaining population. Support for the industry includes 'protecting agricultural land to provide confidence for industry to invest in new technology and respond to market trends and to recognise the trend towards increased farm sizes.*

*Council has recently prepared a shire-wide Rural Land Use Strategy (RLUS) that states, 'unfettered dwelling development in rural areas can have a number of significant consequences on agriculture including increased land prices and land use conflicts'. Whilst the RLUS is yet to be formally adopted, some weight must be given to this contention.*

**The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.**

*The introduction of this rural residential use would have minimal impact.*

**The impact of the use or development on the flora and fauna on the site and its surrounds.**

*No impact is anticipated, save from the introduction of weeds or noxious plants from unsympathetic residents occupying the dwelling.*

**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.**

*No vegetation is proposed to be removed.*

*There is a risk that future residents could introduce poor land use practices for example the possibility of being absentee owners and introduction of weeds and attacks from dogs.*

**The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.**

*As previously, no Land Capability Assessment was submitted although it is highly likely that impact would be minimal.*

**Design and siting issues**

*The decision guidelines relating to design and siting issues have not been considered as the development is for a subdivision only and no buildings are proposed.*

*It is noted however, the design of the subdivision and resultant 'lollypop' shaped dwelling allotment is an inefficient use of the land.*

**OVERLAY****Clause 43.02 Design and Development Overlay****Planning trigger: Clause 43.02-3 Subdivision**

A permit is required to subdivide land.

Schedule 4 to the overlay, Hamilton Airport does not specifically state that a permit is not required and the Schedule is silent in respect of lot sizes.

**Schedule 4 to the Design and Development Overlay****Hamilton Airport****Clause 1.0 Design objectives**

- To maintain the efficiency and safety of the Hamilton Airport.
- To prevent development that is incompatible with airport operations.
- To ensure that development is appropriately sited with respect to the operation of the Hamilton Airport.
- To ensure that all buildings and works are sited to take account of and minimise any off site effects on the Hamilton Airport.
- To recognise and implement any approved Obstacle Surface Limitation chart.

Clause 3.0 to the overlay provides decision guidelines that Council must consider before deciding on an application.

**Response**

*The land is located north east of the Hamilton Airport and the overlay only applies to a small section of land in the south west corner. It is not considered that the proposal will affect the operation of the Hamilton Airport or interfere with or cause a safety hazard to aircraft.*

**PLANNING POLICY FRAMEWORK****Clause 11 Settlement**

Clauses 11.01-1S Settlement, 11.01-1R Great South Coast, 11.03-5R Great South Coast Region, 11.03-6S Regional and local places.

- It is policy that planning prevents environmental and amenity problems created by siting incompatible land uses close together.
- Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns and investment in transport, utility, social and commercial infrastructure and services.

**Clause 14 Agriculture****Clause 14.01-1S Protection of agricultural land**

The objective of this clause is *'to protect the state's agricultural base by preserving productive farmland'*

Relevant strategies to achieve this are:

- 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 agricultural land from unplanned loss due to permanent changes in land use.
- Limit new housing development in rural areas by:

- Directing housing growth into existing settlements.
- Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses.

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.
- Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.

### **Clause 16 Housing**

#### Clause 16.01-5S Rural residential development

This objective of this clause is *'to identify land suitable for rural residential development'*.

Relevant strategies to achieve this are:

- Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.
- Ensure planning for rural residential development avoids or significantly reduces adverse economic, social and environmental impacts by:
- Maintaining the long-term sustainable use and management of existing natural resource attributes in activities including agricultural production, water, mineral and energy resources.
- Protecting existing landscape values and environmental qualities such as water quality, native vegetation, biodiversity and habitat.
- Minimising or avoiding property servicing costs carried by local and state governments. Maintaining an adequate buffer distance between rural residential development and animal production.
- Discourage development of small lots in rural zones for residential use or other incompatible uses.
- Encourage consolidation of existing isolated small lots in rural zones.

#### Clause 16.01-5R Rural residential development – Great South Coast

Regional strategy provides that rural residential development can be supported in locations that are *'adjacent to towns with limited growth demand to sustain population levels and communities'*, and that *'are not strategically identified for standard density urban growth'*.

#### Response

*It is noted that the application does not seek to develop a new dwelling however the subdivision, if approved, would result in an introduction of a rural residential use that is not supported by the above state or regional planning policy.*

*Relevant policy as detailed above provides clear guidance on preferred development outcomes for rural residential development and the protection of agricultural land and this application is contrary to those directions.*

*The Hamilton Structure Plan (2012), Dunkeld Structure Plan (2014) and Tarrington Structure Plan (2014) provide further strategic responses to where rural residential development is supported, closer to Hamilton or established settlement boundaries on land that is specifically zoned either Rural Living Zone or in some instances Low Density Residential Zone.*

*It is considered that there is sufficient policy to support a recommendation for refusal of the application.*

## **LOCAL PLANNING POLICY**

### **Clause 21.02-2 Urban growth**

Planning for urban growth in the Shire must take account of various opportunities and constraints, and seek to provide effective and efficient development outcomes.

#### **Key issues**

- Limiting development that is incompatible with agriculture.

It is strategy to 'protect land in agricultural production from adjoining uses and developments that are inconsistent with normal farming practices'.

### **Clause 21.04-1 Agricultural and rural land use**

#### **Key issues**

- Maintaining the significance of agriculture to the local economy.

It is the objective 'to support agricultural production'.

The following strategies will be used to achieve the objective:

- Discourage residential development in rural areas which does not relate to or directly support the use of land for agriculture, horticulture or timber production.
- Protect land in agricultural production from adjoining uses and development that are inconsistent with normal farming practices.

### **Clause 21.06-1 Small lot subdivisions, house lot excisions and dwellings in the Farming Zone**

Agriculture is fundamentally important to the economic wellbeing of the Shire. Dwellings and small lot subdivision in the Farming Zone can impact detrimentally on agricultural activity, especially where as in this case the dwelling is integrated into the heart of the farming operations near the centre of the property. They can also be incompatible with the agricultural function and rural character of an area.

#### **Key issues**

- Protecting the on-going operation of agriculture.
- Protecting the character of rural and farming areas.
- Responding to the increasing emphasis on the 'right to farm'.
- Minimising the impacts of dwellings and small lot subdivisions in rural and farming areas.

**Objective 1** To ensure that residential development in the Farming Zone does not compromise the existing and on-going agricultural use of land.



**Strategies**

- Prevent residential development and subdivision that will be incompatible with the utilisation of land for sustainable agriculture.
- Discourage subdivision that is not for the purposes of excising an existing dwelling that is excess to the requirements of a rural use, following the consolidation of titles.

**Objective 2** To ensure that dwellings which are constructed on small lots in the Farming Zone are properly sited and designed.

**Strategies**

- Ensure that lots created under the provisions of Clause 35.07-3 have a maximum size of 2 hectares unless;
  - it can be demonstrated this is not practical; or
  - a larger lot is needed to provide for the on-site collection of water for a dam for domestic purposes; or
  - it can be demonstrated it is to be used for agricultural purposes.
- Require that lots created under the provisions of Clause 35.07-3 contain a dwelling that is in a habitable condition that complies with the Building Code of Australia.
- Preference will be given to restructuring of lots to create a smaller lot for a dwelling to avoid creation of additional lots.

**Response**

*Local planning policy supports state and regional planning policy. Local policy is clear on the need to protect agricultural land and on when small lot excision could be considered.*

*The proposed dwelling lot does not directly relate to or support the use of the land for agriculture and there is a real concern that agricultural activities will be detrimentally impacted on should a rural residential use be introduced. It is relevant that the lot will be surrounded by farming activities on three sides. The most sensible outcome in avoiding land use conflict is to avoid creation of a smaller dwelling lot.*

*In consideration of local policy objectives and strategies, on balance, there is a lack of support for the application.*

**RELEVANT PARTICULAR PROVISIONS****The decision guidelines of Clause 65**

Clause 65 states that, 'because a permit can be granted does not imply a permit should be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of the clause'. The decision guidelines of that clause include section 60 of the *Planning and Environment Act 1987*, planning policy and decision guidelines among other matters. It should be noted that subdivision is a form of development.

**Clause 65.01 Approval of an application or a plan**

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.

#### **Clause 65.02 Approval of an application to subdivide land**

Before deciding on an application to subdivide land, the responsible authority must consider, as appropriate:

- The suitability of the land for subdivision
- The existing use and possible future development of the land and nearby land.
- The availability of subdivided land in the locality, and the need for the creation of further lots.

#### **Response to the decision guidelines**

*The proposal is not consistent with the purpose of the zone and the risk is that potential land use conflicts will occur. The primacy of the land for agricultural activities should be maintained and the opportunity for enhancement retained.*

#### **Relevant incorporated or reference documents**

- Great South Coast Regional Growth Plan
- Hamilton Structure Plan (2012)

#### **Relevant Planning Scheme amendments**

- VC103 Amendment to Farming Zones

### **SUMMARY OF KEY ISSUES AND RELEVANT VCAT DECISIONS**

#### **Land use**

The current and preferred use of the land is *Agriculture*, specifically broad acre animal grazing. Agriculture is a Section 1 use in the Farming Zone, meaning it is *as of right*. By introducing a rural residential lot a fundamental change will occur that is not consistent with planning policy.

The current land owner may reasonably expect the land to continue to be farmed the way it is. It is however reasonable to expect that the farming activities will intensify over time. If a residential element is introduced this intensification will be limited.

The shire has an abundance of rural residential land supply and is it counter to planning policy to introduce this use where proposed.

#### **Land fragmentation and permanent removal of agricultural land**

If supported, this proposal will establish a rural residential land use that will fragment rural land and permanently remove that land from agricultural use. The amenity impacts on future residents will cause detriment to the operation of adjacent and nearby farms.

#### **Rural residential development**

It is reiterated that subdivision is development. Local policies (Clauses 21.02-2, 21.04-1 and 21.06-1) explicitly discourage rural residential development that does not directly support the use of the land for agriculture and planning is directed to protect land in agricultural production *'that are inconsistent with normal farming practices'*.

The particular problems associated with small rural lot excisions, the encroachment of rural residential land uses and development in the Farm Zone are well recognised in several VCAT decisions (**Attachment 5**). It is considered that the detrimental circumstances identified are applicable to this application. Excerpts are provided as follows:

**Parkworth Pty Ltd v Casey CC [2002] VCAT 1594**

*“Rural planning policy recognises that farming land is a very important economic asset of the state, quite apart from its value to the individual owners. However, its value for farming purposes can be compromised or lost if it is fragmented into small pieces that are not useful for farming purposes. The demand for rural houses and rural subdivisions comes from people wanting to exploit the residential value, as opposed to the farming value, of such land. There is a demand from people who like to live in the country on rural residential lots or hobby farms. Such use is essentially residential, rather than farming, in nature. Fragmentation into small holdings makes the land unuseful for genuine farming. It also inflates the per hectare value by endowing it with a residential rather than a farming value. The land value so inflated often means that farming activities cannot justify farming investment in it. Hobby farmers are not genuine farmers and contribute little or nothing in terms of primary production. Genuine farmers complain that the introduction of these amateurs is detrimental to genuine farming. The amateurs frequently have little skill, aptitude and desire to farm properly. They don’t have the same incentives of genuine farmers to keep down vermin and noxious weeds and dogs, other than genuine farm working dogs, often present a danger to stock and wildlife. Furthermore, rural residents frequently start demanding town services which are uneconomic to provide to scattered houses or scattered hamlets in what is supposed to be farming land. These demands involve seeking to have other ratepayers, whether real farmers or urban dwellers, subsidise rural residential lifestyles. The inefficiency of trying to provide urban services in such areas is obvious enough.”*

*“The bad planning implicit in the loss of the best farming lands in the state to rural residential occupation and hobby farms is obvious enough. That does not mean that the concern is limited only to the best farming land. The best farming land in Victoria amounts to only a small percentage of the total farming land in the state. Medium quality and other grades of farming land are also of great importance. In fact, medium or lower grades can less bear the ill effects of residential use and fragmentation, and are more readily rendered unproductive by such development.”*

**Smith v Baw Baw Shire Council [2016] VCAT 611**

VCAT upheld Council’s decision to refuse the grant of permit for a two lot subdivision.

*“There is now, and for decades past has been, a desire by some people to capitalise on the residential value of farming land but this is to the detriment of farming purposes. It is thus that policies against the fragmentation of farming land by subdivision into small less useful of useless pieces (useless, that is to say from a farming point of view) have been formulated. Indeed, the tendency over 50 years or so has been for the areas needed for viable farming to increase rather than decrease, notwithstanding the advantages of advanced farming techniques, machinery, fertiliser and so on.”*

*“Fragmentation into little bits is strongly contraindicated (in policy).”*

**Graham v Surf Coast [2016] VCAT 883**

*“The planning loss in this case is less about the loss of productive land, because the proposed house lot is relatively small...the loss relates to the creation of a small house lot that can only be used for rural living or lifestyle purposes. It is not proposed to contribute to agricultural production and is not intended to have any link with the balance lot that will continue in agricultural production. The current owners may have no issue with farming on abutting land...that is not necessarily the case for new occupants.”*

**King v Murrindindi SC [2017] VCAT 298 (7 March 2017)**

VCAT upheld Council's decision to refuse to grant a permit for a two lot subdivision with two existing dwellings. Member Birtwistle could not find support in the provisions of the Scheme for the proposed subdivision stating,

*"...indeed there is express support for avoidance of fragmentation of land. I find that the proposal fails to respond appropriately to the Scheme."*

*"The subdivision is likely to have negative impacts on primary production on adjacent land, a relevant consideration under state policy. Conflict between farming operations and residential amenity expectations are a frequent issue that are expressly identified in Council's policy support of the need to protect the 'right to farm'."*

**Alford v Corangamite SC [2018] VCAT 853 (12 June 2018)**

Member Carew overruled the decision of Council and no permit was granted for a two lot subdivision to excise a dwelling. The decision rested on land use conflict and fragmentation.

*"At the outset, I do not consider the personal circumstances of the applicant are a relevant planning consideration. While the sale of the dwelling may be more convenient than continuing the leasing arrangement, it is not a key planning consideration. The excision is not required to support the existing farming operation and merely allows the sale of a separate asset. As set out by the tribunal in Widdicombe v Colact Otway SC [2010] VCAT 1595."*

*"Applicants no longer wish to have what they submitted was the problems associated with non-farm related tenants in the dwelling on the subject land. Their solution to that problem is the excision of the dwelling. It is a poor response to policy."*

*"I find that the excision does create the potential for land use conflict. The dwelling, while close to Steeles Road is surrounded by Lot 2 and is only about 65 metres from the larger shed and other agricultural assets to be retained on the farming lot. I am not persuaded that Council's conditions reconfiguring the allotment and placing the larger shed with the dwelling is the solution which will protect a dwelling from the activities that may occur within this farming zone. In addition, the reconfiguration would remove the southern existing vegetation buffer."*

**McGrath v Mornington Peninsular SC [2003] VCAT 1816 and corrected [2016]**

*"Excisions that create rural residential type lots not only contribute to a shift away from the rural land use, they also heighten expectations and pressure for this to occur on other land. As noted by Senior Member Byard, this expectation works towards inflating land values so that farming becomes unviable."*

**Financial and Resource Implications**

Nil

**Legislation, Council Plan and Policy Impacts**

*Planning and Environment Act 1987*

- (1) The objectives of planning in Victoria are:
- (a) To provide fair, orderly, economic and sustainable use, and development of land;
  - (b) To provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
  - (c) To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
  - (d) To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
  - (e) To protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
  - (f) To facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);

To support the application would be counter to the objectives of planning in Victoria.

## Risk Management

Nil

## Environmental and Sustainability Considerations

As relevant to this application it is considered that the introduction of a rural residential lot will detrimentally impact on surrounding agricultural land uses.

## Community Consultation and Communication

A pre-application meeting between the applicant and Council was not requested.

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjacent and proximate land.
- Placing one sign on site.

Notification has been carried out correctly and no objections have been received.

## External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	Not required.

Internal Council Referrals	Advice/Response/Conditions
Building	No objection.
Environmental Health	Who did not provide a response.
Engineering	Who did not provide a response.

## Disclosure of Interests

All Council Officers involved in preparing this Report affirm that no direct or indirect interests are held in relation to this application.

## Conclusion

The applicant submits that the subdivision is necessary as the dwelling is 'surplus' to needs and limits the opportunity to sell the balance land to neighbours. It is submitted that the dwelling would be unoccupied and left to fall into a state of disrepair. These are not matters that planning is required to consider when charged with the responsibility of planning for orderly land use and development.

The proposal is completely contrary to explicit planning policy that discourages rural residential development and lot sizes below the minimum 40 hectares in a Farming Zone.

The risk of land use conflict together with the fact that the development will lead to fragmentation and additional rural lifestyle dwellings in the area would result in a poor planning outcome. To introduce a rural residential lot does not represent the highest and best use of the land.

For the reasons detailed in this report, the application should not be supported.

## MEETING PROCESS

The meeting was held in accordance with standard meeting procedures.

Applicant was invited to speak first on behalf of the landowner. Council officers would then be able to speak to the report.

Site visit was undertaken prior to the meeting commencing.

Application relates to the movement of boundaries on two lots that exist in the farming zone.

### Applicant

The application relates to a re-subdivision of two existing allotments. One allotment has a house on it and is currently 58.2 hectares in size. Second allotment is currently 24.2 hectares in size.

The proposal is to reconfigure the boundaries. Proposed lot 1 will accommodate the dwelling and outbuildings and be 1.013 hectares and proposed lot 2 will be 81.22 hectares in size. Purpose of subdivision is to enable the adjoining landowner to the south to purchase the land for farming purposes. Adjoining landowner has no use for dwelling.

Applicant noted that when enquiries are received from people around small lot excisions in the farming zone they rely on the planning scheme provisions and specifically the local planning policy that addresses small lot subdivision (clause 21.06-1). Objectives of that clause talk about ensuring that residential development in the farming zone doesn't compromise the agricultural use of the land and ensure that dwellings constructed on small lots are properly sited and designed.

The local planning policy states that it should be ensured that lots that are created under the small lot subdivision policy have a maximum size of 2 hectares. Policy also requires that lots created under this provision contain a dwelling that is in a habitable condition preference should be that restructure of lots should avoid the creation of additional lots.

The applicant was open to modifications to the layout, even to achieve a lot of 2 ha, if this would address the concerns of Council with respect to separation distances to farming operations.

### Council Officer

Planning Coordinator, Roslyn Snaauw summarised report presented in the meeting Agenda.

Council officers are recommending refusal as it is believed that the proposal does not respond to the state and local planning policy and it does not meet the requirements for the development in rural areas.

It is not felt that proposal will achieve an appropriate planning outcome as measured against the planning policy framework and the relevant provisions of the zone. The proposal is not consistent with planning policy in the State and is contrary to Council's Municipal Strategic Statement.

The proposal is inconsistent with local policy clause 21.04 that seeks to limit development that is incompatible with agriculture.

It is acknowledged that while there were a number of VCAT decisions that showed support for Council's recommendation there would also be potentially decisions that showed support for the current application.

### Applicant

Highlighted again that proposal was for a restructure of boundaries. There are no new houses being proposed. There may be other options to reconfigure boundary of smaller lot (eg removing all or including all the buildings with the house)

Chair asked if there was a format or structure or configuration that could satisfy the needs of both parties.

Planning scheme does allow for a host of different reconfigurations of lot sizes but focus was keeping the lot to maximum of 2 hectares or less in area. Application is not for an excision as there is no change to the number of lots.

- Planning Coordinator responded that re-subdivision of lot with house on it to 40 hectares would be considered in a better light.
- Applicant responded that lot 1 could be reconfigured to be larger (2 hectares) and it could include all the outbuildings and have buffer around the outbuildings to try to allay the concerns about loss of amenity for people living in the house. Officer's response that it would still be challenging given the location of the dwelling. Forty hectare proposal would be more favourable.
- Applicant felt two 40 hectare lots would not resolve the issue of having someone with genuine intent to purchase the land as they do not require the house.

Applicant acknowledged that discussion has taken place about the balance of the land being restricted for further dwelling. Owner would be open to this restriction being placed on future sale of the larger lot. Officers believe that you cannot put a restriction on a title. Restrictions can be place with regards to amenity.

Previously there were restrictions that could be placed but changes to the planning scheme have removed this option. Applicant questioned whether a covenant could be placed voluntarily by the owner by a section 173 agreement.

Council officers to investigate further.

Chair thanked parties for attending and advised that it is expected that written response on decision would be provided by close of business on 16 August 2019.

### Mark Dore, Brayley and Hayes

Large number of house lot excisions were processed during period of time when Bluegum companies were acquiring land and Shire previously allowed this to occur.

House lot excisions have been done in the Shire for over 20 years. Not a huge demand for these to be done and are driven by the owner/purchaser of property not having use for the house in question.

Applicant

Requested Committee to look at local planning policy clause 21.06-1 which forms the basis of advice to clients and believes that subdivision has been done to comply with this clause.

**RECOMMENDATION**

That Council having caused notice of Planning Application TP/33/2019 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to Refuse to Grant a Permit under the provisions of Southern Grampians Planning Scheme in respect of 369 Noskes Subdivision Road HENSLEY PARK formally known of Crown Allotment 3 Section 8, Crown Allotment 4 Section 5 Parish of KANAWALLA for a two lot subdivision for the following reasons:

**Reasons for refusal**

- The proposal does not comply with the purpose and provisions of Clause 35.07 Farming Zone in that the development will introduce a change in use from agriculture to rural residential and it does not maintain or enhance the sustainability of agriculture on the land. It will increase the risk of land use conflict and adversely impact surrounding agricultural practices. Future occupants will have vastly different amenity expectations than those that will be experienced in an agricultural setting.
- The re-subdivision to create a rural residential lot is contrary to state planning policy, particularly Clause 14.01-1S protection of agricultural land and Clause 14.01-2S sustainable agricultural use, and local policy as it relates to rural residential development and the protection of farming land at Clauses 21.02-2, 21.04-1 and 21.06-1.
- A rural residential lot with no connection to the balance lot does not produce a suitable planning outcome and will permanently remove land from agricultural production.
- The rural residential use will limit the operation and expansion of adjoining and nearby agricultural activities and there will be land use conflict.
- Southern Grampians Shire has an abundance of rural residential development opportunities with land specifically zoned for this purpose closer to townships.

**Moved:** Cr Katrina Rainsford

**Seconded:** Rhassel Mhasho.

**Carried**

**7. CLOSE OF BUSINESS**

Meeting Closed at 4.21pm