



**Southern Grampians**  
SHIRE COUNCIL

# Planning Committee

## Minutes

18 December 2024

Held at 10.00 am in the  
Martin J Hynes Auditorium  
5 Market Place, Hamilton

## Contents

1. MEMBERSHIP .....	3
2. WELCOME AND ELECTION OF CHAIR .....	3
3. APOLOGIES .....	3
4. CONFIRMATION OF MINUTES .....	3
5. DECLARATION OF INTEREST .....	4
6. MATTERS FOR DECISION.....	5
7. NEXT MEETING.....	30
8. CLOSE OF MEETING .....	30

**1. ATTENDEES**

**Councillors**

Cr Jayne Manning  
 Cr Katrina Rainsford

**Officers**

Mr Rory Neeson, Director Wellbeing Planning and Regulation  
 Mr Juan Donis, A/g Director Infrastructure and Sustainability  
 Mr Daryl Adamson, Manager Shire Strategy and Regulation  
 Ms Anita Collingwood, Senior Principal Planner  
 Mr Rhys Oatley, Statutory Planner

**Minutes**

Sharon Clutterbuck, Executive Assistant - Director Wellbeing Planning and Regulation

**2. ELECTION OF CHAIR**

Cr Rainsford nominated Cr Manning as Chair  
 Cr Manning accepted the nomination

**3. APOLOGIES**

Marg Scanlon, Director Infrastructure and Sustainability

**4. CONFIRMATION OF MINUTES**

Minutes of the Meeting held on 16 September, 2024 have been circulated.

The minutes of the previous meeting held on 16 September, 2024 were confirmed as being a true record of the meeting by the previous Planning Committee.

**RECOMMENDATION**

That the Minutes of the Planning Committee meeting held on 16 September 2024 be confirmed as a correct record.

**RESOLUTION**

That the Minutes of the Planning Committee meeting held on 16 September 2024 be confirmed as a correct record

**Moved**            **R Neeson**  
**Seconded**      **J Donis**

**Carried**

**5. DECLARATION OF INTEREST**

Nil

## **6. MATTERS FOR DECISION**

### **6.1 TP-33-2024 Application for Subdivision of land into two lots (dwelling excision) and creation of an easement - 198 Partridges Road, Hamilton**

#### **Summary**

Planning application TP-33-2024 seeks a permit under Clause 35.07 Farming Zone for the subdivision of land at 198 Partridges Road Hamilton, and the creation of an easement. The application presents a dwelling excision from the existing parcel of land. The proposal is inconsistent with policy objectives related to the protection of agricultural land (Clause 14.01-1S Protection of agricultural land and Clause 14.01-1L Small lot subdivisions, house lot excisions and dwellings) and is inconsistent with the purposes of the Farming Zone (Clause 35.07). It does not adequately support or promote the use of the land for agriculture and presents a risk in terms of environmental and amenity impacts. It is recommended the Planning Committee refuse the application for a planning permit.

#### **Proposal**

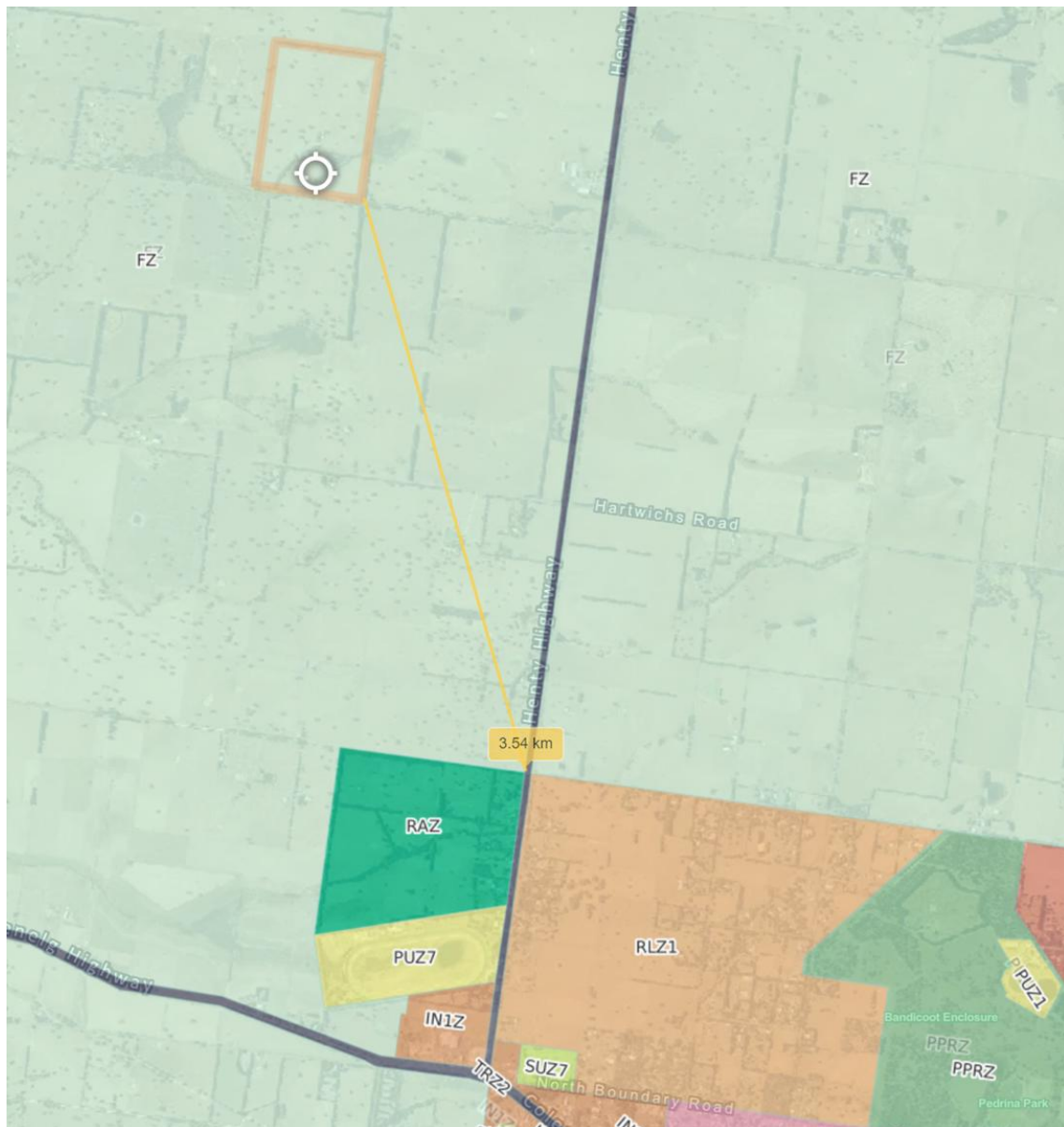
The proposal seeks to excise the existing dwelling, dam, and several outbuildings from the surrounding land by way of a two-lot subdivision. The proposed subdivision will result in Proposed Lot 1 (house lot) of 5.29 hectares and the balance of land known as Proposed Lot 2 of 49.4 hectares.

The proposed Lot 1 subdivision layout provides for a 20-metre-wide frontage to Partridges Road; however, it is also proposed that the creation of a carriageway easement following the existing driveway layout will provide legal ongoing access in favour of Lot 1.

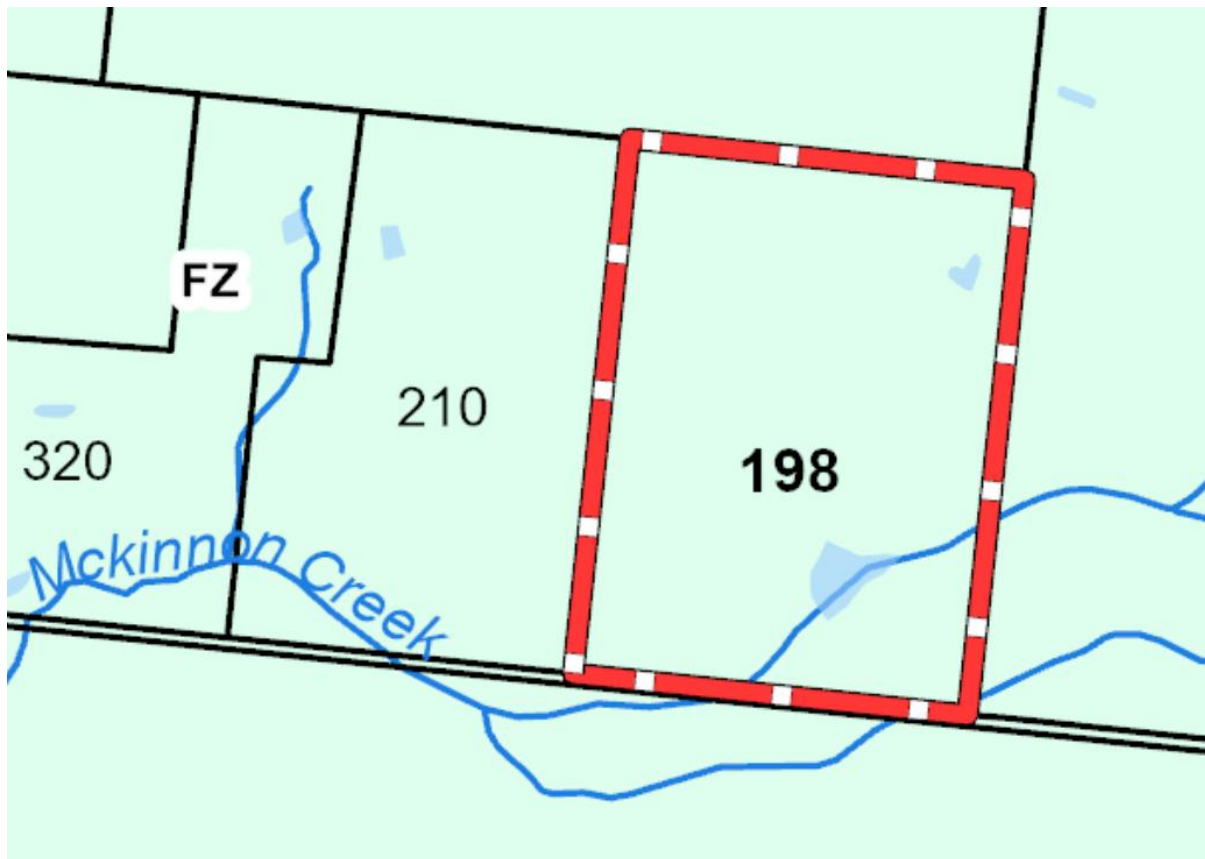
#### **Subject Site and Locality**

The site currently comprises of one parcel, known as Lot 4 on Plan of Subdivision 115656, and is 54.69 hectares in area. The lot is rectangular in shape, with the southern boundary fronting Partridges Road. The land is entirely within the Farming Zone and is abutted on all sides by Farming Zone land. The site is located approximately 3.54 kilometres (as the crow flies) north-west of the established township boundary of Hamilton, which is identified by the change in zoning – see *Figure 1*.

The site itself consists of agricultural land, currently used for broadacre animal grazing and hay production. The existing dwelling is located approximately 220 metres from the front boundary. Three additional outbuildings and sheds are located proximate to the dwelling, as is a large dam which is intercepted by a natural watercourse (Mckinnon Creek) which runs diagonally through the site – see *Figure 2*:



**Figure 1:** Subject site, shown in relation to the township of Hamilton.



**Figure 2:** Subject site shown bordered in red, showing watercourses.

**Site History**

There is no relevant site history.

**Public Notification**

The application underwent a minimum 14-day public notification process which concluded on 24<sup>th</sup> September 2024. One (1) letter of support was received.

**Referrals**

The application was referred to the following internal departments and external authorities:

Glenelg Hopkins Catchment Management Authority	<p>Pursuant to Section 56 of the Planning and Environment Act 1987, the CMA does not object to the granting of a permit. The CMA has no flooding information for this property. This does not mean that the property will not flood. The CMA recommends that council's infrastructure dept. records be checked for any historical record of flooding of the subject land. The CMA can make further recommendations regarding the proposal if any historical information is discovered.</p> <p>The proposed carriageway easement in favour of Lot 1 allows for access to the existing dwelling that does not cross the waterway on the property.</p>
--	---

	<p>Please include the following notation on a permit should one be granted.</p> <p>“Note: A Designated Waterway passes through the property. Any future works in, on or around a designated waterway require a licence from the Glenelg Hopkins CMA. Please visit their website at <a href="http://www.ghcma.vic.gov.au">www.ghcma.vic.gov.au</a> for more information.”</p>
<p>Biodiversity Department</p>	<p>No response received.</p>

**Assessment**

**Zone**

**Clause 25.07 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 of the zone do not align with the proposal in this instance.

The creation of the rural residential lot results in it being removed from agricultural use and does not encourage the retention of productive agricultural land.

Furthermore, the site includes a large dam which currently facilitates agricultural pursuits on the land. The proposal results in this dam being located within the rural residential lot, removing it from the remaining agricultural portion of the site. This directly contradicts the purpose of the zone.

The layout of the proposed subdivision creates a residential lot which is surrounded on all sides by the agricultural lot, which increases the potential for future conflicts between the two land uses, hindering the ability of the agricultural land to be utilised.



The layout of the subdivision results in the residential lot being closely located to the two existing agricultural buildings, which will adversely affect and limit the use of land for agriculture. The higher amenity requirements and expectations for quiet enjoyment which the occupants of the dwelling lot should expect will be in direct conflict with the amenity impacts caused by agricultural uses.

It is important to consider that while the dwelling and farm buildings are all currently in situ, while they remain within the one lot it is expected that the occupants are directly involved with the agricultural uses of the land, and in control of their level of amenity, whereas the subdivision must consider the potential that separate ownership will have on the future dynamic between the two land uses.

The easement is proposed to provide legal access rights to the proposed residential lot. The interception of the easement through the agricultural land creates additional complications to the ability for ongoing agricultural use.

### **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 to create a lot for an existing dwelling. The subdivision must be a two-lot subdivision.

### 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 is for a subdivision of an existing dwelling, the layout and positioning of the dwelling lot within the wider site and the potential for land use conflict as explained above do not result in an appropriate planning outcome.

### **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. 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.**

*The rural residential lot includes an existing dwelling, and it is expected that this dwelling includes an existing septic system. This has not been identified on the plans, and as such any permit issued will require amended plans which demonstrate that the septic system is to be located within the proposed 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 site is located within an established agricultural area, with all surrounding land zoned Farming Zone. 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. The nearest dwelling is approximately 500m (west) from the subject dwelling site. There are a total of six dwellings within 2kms of the site. All nearby dwellings are used in association with agriculture. There are no rural residential lots nearby, with all surrounding dwelling being sited on large parcels.*

*The proposed subdivision layout in this instance will result in the rural residential lot being surrounded almost entirely by the agricultural lot. The expectation of the residential lot to have quiet enjoyment of the site is compromised by the surrounding agricultural uses.*

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

*It is proposed that the large dam, machinery shed and shearing shed will be included within the rural residential lot, while the remaining shedding will be included in the agricultural lot. The removal of the dam from the agricultural land in particular is a poor outcome for the ongoing use of the land for agriculture.*

*The proposed access point to Partridges Road has not demonstrated any clear way of providing access to the existing dwelling. From this location, any proposed driveway would need to cross McKinnon Creek.*

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

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

*While the existing format of the land includes both agricultural land and an associated dwelling, this layout supports agricultural land through providing the land holder accommodation to facilitate ease of management of the land by residing directly on the land. The proposed subdivision seeks to separate these two functions. This acts to inhibit agricultural production, as it provides the opportunity for the rural residential lot to be sold to occupants with no direct connection to the surrounding agricultural land. It further results in the balance lot of agricultural land having no dwelling. It is noted that upon subdivision, the balance agricultural lot will be greater than 40 hectares, and being so, no planning permission is required for a dwelling on this land.*

#### **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.*

#### **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 40 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 compromised with the establishment of a rural residential lot. It is understood 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 separate rural residential lot.

The main objective of this policy, as it applies to this application, is to ensure that the subdivision of land is required to increase the productive use of land for agricultural purposes and to ensure that subdivision will not result in the fragmentation or loss of good quality agricultural land. In this instance, the proposal will lead to the loss of a key water supply (dam) from the agricultural land and loss of existing agricultural infrastructure which will be included in the rural residential lot. The removal of the dwelling from the existing agricultural lot increases the chances of a further dwelling being constructed on the balance lot.

**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. It is clear that the small lot would not support agricultural uses and would be used for rural residential purposes with land use conflict a reality at some point.

**Dwelling issues**

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

The proposal will result in the fragmentation of productive agricultural land through the excision of the house lot from the surrounding agricultural land and facilitates the further development of a dwelling on the balance agricultural lot.

**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.

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

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

Regardless of whether the dwelling is initially occupied by occupants related to the operators of the surrounding land, the subdivision creates future opportunity and risk for occupants who are unrelated to the surrounding farming enterprise.

There are two large outbuildings on the balance lot that are within 40 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. The excision would result in a small lot or rural living dwelling in the Farming Zone surrounded by large, productive farms. There are a number of impacts the dwelling on a small lot may have on the adjoining agricultural uses.

Firstly, a permit may now be triggered for previous as-of-right buildings and works given a setback if 100 m is required from a dwelling not in the same ownership otherwise a permit is triggered. This can also impact on uses including primary produce sales and rural industry which also requires setbacks from dwellings not in the same ownership.

Productive working farms result in a number of by-products impacting amenity including dust, noise, and smells from animals, cropping, spraying etc. This can often be at odds with the amenity expectations of people residing in rural lifestyle allotments as detailed within the VCAT cases below. It is a common occurrence for lifestyle allotments to raise concerns or object to non-conventional agricultural applications e.g., chicken farms, intensive animal husbandry, solar farms etc.

**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 applicant has not provided any detail as to how the excision would result in a more comprehensive and sustainable land management model. Council therefore cannot determine if the proposal would result in agricultural and productive rural land use activities that are managed to maintain a long-term sustainable use and management of existing natural resources of the area.

**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.**

The proposed boundaries pass within proximity of a number of clusters of native vegetation. However, it remains unclear whether, and to what extent the impact is, as limited information has been provided to council to date.

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

It is understood that the on-site effluent disposal system is existing, and there would be no additional impact on the nutrient loads on waterways directly as a result of this proposal.

**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.

**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.

**Response**

Fragmentation of farmland occurs when traditional farming areas are broken up by the introduction of alternative, predominately non-farming. Uses such as lifestyle dwellings and rural residential subdivisions, tourism and boutique industries. These changes may limit agricultural intensification, diversification or expansion and restrict current farming practices or even make them untenable. This may result in irreversible land use change.

Introduction of sensitive uses, such as housing, can compromise opportunities for growth and investment in productive rural areas. Conflicts can arise as a result of noise, dust, spray drift, water usage and odours from farming activities. Considering the right to farm in these areas and providing for strategically located rural residential developments many help to minimise conflict between sensitive land uses and agricultural activities in rural areas.

Non-agricultural uses unproductive rural areas need to be managed to minimise biosecurity risks and support ongoing agricultural production.

**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.

### Response

State planning policy is very clear on the need to protect agricultural land and on when small lot excision could be considered.

The proposed subdivision 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 lot be created. 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.

## Clause 14.01-1L Small lot Subdivisions, house lot excisions and dwellings

### Policy application

This policy applies to an application for subdivision or accommodation in the Farming Zone.

### Objective

To ensure that subdivision and accommodation do not compromise the existing and ongoing agricultural use of land.

### Strategies

Discourage subdivision and accommodation that do not relate to or directly support the use of land for agriculture.

Response: *If supported, this proposal will establish a rural residential land use that will fragment rural land and permanently remove that land from agricultural use.*

Retain agricultural land in parcels of sufficient size that can allow viable agriculture.

Response: *The proposed subdivision would not facilitate a viable agricultural use and is most likely to be used for lifestyle property.*

Discourage subdivision unless it is to excise an existing dwelling that is excess to the requirements of a rural use.

Response: *House lot excision is strongly discouraged in the Farming Zone. If approved the proposal would potentially set a precedent for surrounding parcels of land and potentially lead to a further proliferation of dwellings in the Farming Zone. This can occur indirectly through balance lots created greater than 40 hectares not requiring planning permission for dwellings.*

Site and design dwellings to minimise impacts on agriculture.

Response: *The proposed subdivision results in the existing dwelling being located in close proximity to the surrounding agricultural land, including agricultural shedding which will be within 40 metres of the dwelling.*

Provide adequate separation distances from dwellings to agriculture.

Response: *There are two large outbuildings on the balance lot that are within 40 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 dwelling could be used by the farm owner or staff with reasonable amenity impacts since they would be familiar with those impacts.*

Restructure lots to create a smaller lot for a dwelling instead of creating additional lots

Response: *The proposed subdivision creates a lot for an existing dwelling.*



## Policy guidelines

Consider as relevant:

Encouraging the consolidation of titles prior to any dwelling excision.

Response: *The site is currently one (1) title and so further consolidation is not considered an option in this proposal.*

Requiring any lots created for an existing dwelling to have a maximum size of 2 hectares unless any of the following apply:

- It can be demonstrated that this is not practical.
- A larger lot is needed to provide for the on-site collection of water for a dam for domestic Purposes.
- It can be demonstrated that the lot is to be used for agricultural purposes.

Response: *The proposal seeks a rural residential lot of 5.29 hectares in size. This is due partly to the proposed subdivision seeking to include the dam and nearby shedding within the residential lot. It has not been sufficiently justified why the lot could not have been proposed to include an alternative layout, which could have been closer to 2 hectares in area. It has also not been demonstrated that the lot is to be used for agricultural purposes.*

Requiring any lots created for an existing dwelling to contain a dwelling that is in a habitable condition that complies with the Building Code of Australia.

Response: *The existing dwelling is understood to be in habitable condition.*

The need to provide for the upgrading of roads and drainage to ensure that traffic and runoff generated by the development is effectively managed.

Response: *There is no need for upgrading of any road or drainage associated with the proposed re-subdivision.*

The need to require any roads created in association with a subdivision or dwelling to allow all weather access to the following standards:

- Formation width of 6 metres or passing bays every 200 metres.
- Pavement width of 4 metres.
- Pavement depth of 150 millimetres of compacted road making gravel.
- Minimum grade of 1 in 8, unless sealed.

Response: *No roads are being created by the proposed subdivision.*

**Clause 14.01-2s Sustainable Agricultural land uses****Objective**

To encourage sustainable agricultural land use.

**Assessment of Clause 14.01-2s Sustainable Agricultural land uses**

Strategies to achieve the above objective relate to the agricultural land use activities, including intensive animal husbandry, and are not relevant to a subdivision application.

**Clause 14.01-2L Sustainable agricultural land use****Strategies**

Support intensive and productive use of rural land for higher value products, including timber plantations, horticulture, intensive animal industries and agroforestry.

Encourage use and development that value adds to local produce and creates local employment opportunities.

**Assessment of Clause 14.01-2L Sustainable Agricultural land uses**

The agricultural use of the land is not proposed to change. No development is being Proposed

**Clause 16 Housing****Clause 16.01-3S 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.

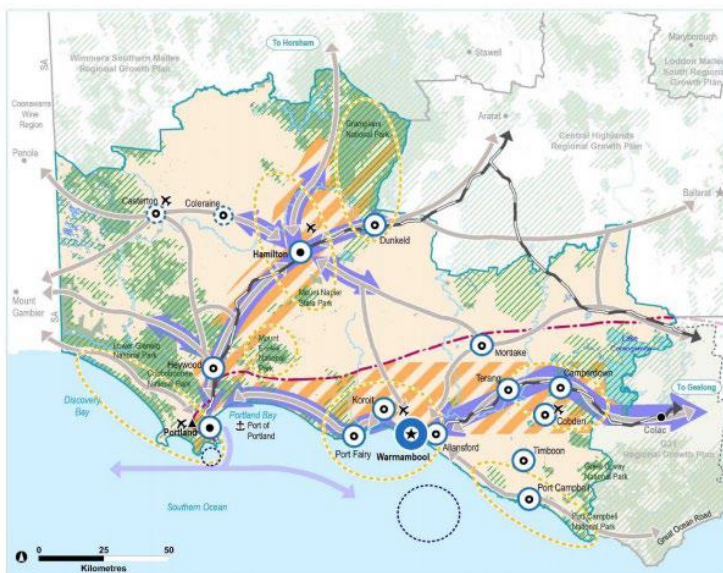
Maintaining an adequate buffer distance between rural residential development and animal production.

Discourage development of small lots in rural zones for residential use or other incompatible uses. The proposal creates a small lot with an incompatible use.

Encourage consolidation of existing isolated small lots in rural zones. The proposed subdivision would create an isolated small lot.

**Clause 16.01-3R 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 while the application does not seek to develop a new dwelling as such, the separation of the existing dwelling from the lot through subdivision will allow further development of the balance lot for a dwelling, and introduces a separate dwelling use that is

not directly connected to the surrounding agricultural use of the land. This 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.

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

A review of relevant VCAT cases have also been undertaken to determine any relevant case applies for dwelling excisions within the Farming Zone which are detailed below. There is a VCAT case law precedent to prevent new housing on small lots within the Farming Zone where it cannot be demonstrated that a house is required to support the agricultural activities on the land.

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

*The application for review proposed a two-lot subdivision to excise a dwelling resulting in Lot 1 being 3.01ha and Lot 2 being 286.6ha. Whilst a slightly different proposal as consolidation of adjoining land was not proposed, it is considered the application had many similar elements to the proposal before Council.*

*In her findings to refuse the application Member Carew stated:*

*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.*

*This is relevant in the current proposal as the permit application has stated the dwelling is surplus to the farming practices and the sale of the land would allow funds to be reinvested back into the farm. It is clear from Member Carew that Council cannot take into consideration the personal circumstances of the land owner and whether the dwelling is surplus or not, it is not a valid planning consideration.*

*Furthermore, use of land for farming is well established, and noting the above, the excision is not required to support or assist the farming enterprise.*

*The proposal also allows for the construction of a new dwelling on the remnant larger lot, potentially without planning approval. The Section 173 requirement is intended to prevent further dwelling excisions from this larger lot in the future, but the proposal would still allow an increase in the number of dwellings on the land. While the permit applicant indicated that their intention was not to construct a new dwelling but to continue farming as at present, there is nothing to require this.*

*The above extract also provides a level of certainty for Council and the use of Section 173 Agreements. Whilst a permit could be imposed requiring an agreement prevent excisions, the consolidated lot would total 107.8ha and could have a dwelling as-of-right, increasing the number of dwellings on the land.*

*Member Carew also noted that the permit applicant owns adjoining land within a separate title however this land was not included in this permit application.*

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

*This application related to a farm with a total of 26.76ha that contained two dwellings with the proposal to excise off one dwelling on a 3,242sqm lot with the remaining lot containing the other dwelling and used for agriculture. In this case Member Birtwistle upheld Councils decision and found:*

*The applicant asserts that the excision of the “house lot” from the “farm lot” is merely a form of “paper subdivision”, as in real terms two dwellings exist on the land, and the dwelling on the “house lot” is currently not functionally linked to the “farm lot” as it is occupied by a tenant with no relationship to the land.*

*Be that as it may, I cannot find support in the provisions of the Scheme for the proposed subdivision and indeed there is express support for avoidance of fragmentation of the land. I find that the proposal fails to respond appropriately to the Scheme as:*

*a. The subdivision, as acknowledged by the applicant, is not required to increase agricultural productivity of the land and will not support or enhance agricultural production, which are outcomes sought by the Planning Scheme. The subdivision will merely allow a small lot to be excised and sold separately with no ongoing potential for it to be used for agricultural purposes. In my view this is a determinative issue, given the zoning of the land and policy as expressed in Clause 21.03-2.*

*b. 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’.*

*c. I agree with the findings of the Tribunal in McGrath v Mornington Peninsula SC that: 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.*

*d. While the approval for the second dwelling on the land has to some extent removed the “house lot” from potential agricultural production, a subdivision that will permanently remove the land from agricultural production is contrary to the clear direction of the Scheme to protect productive farmland.*

*e. I agree with Council that the subdivision will allow for a new landowner in a Farming Zone and this has the potential to result in land use conflict with nearby agricultural uses based on perceived residential amenity rights, an outcome that is less likely if the land remains in one Ownership.*

*f. The “house lot” excision has no relationship with, or is required for, the continuing*

*operation of the agricultural use of the land. It will merely allow the lot to be sold to another unrelated party.*

*This is considered extremely relevant as in the current proposal excises a 1.885ha allotment which does not support or enhance agricultural production on the site noting this proposed allotment would also contain a Goulburn Murray Water main channel which occupies approximately 0.6ha of the 1.885ha. The excised lot would not have any relationship with agriculture or contribute to the production of the surrounding area but has the potential to create conflict with the adjoining farm use.*

*Whilst it is difficult to measure as it depends on the future owner/residents of the excision, there may be conflict between the rural residential use and ongoing farming practices through noise, odour, spray drift, lights and vehicle access.*

*The Council disputes that the subdivision will not impact on the agricultural production that is capable on the land, and considers that the creation of a rural residential lot has the potential to limit the operation of the adjoining and nearby agricultural uses... They similarly provided a number of Tribunal decisions that dealt with these issues. In *Graham v Surf Coast SC*, the Tribunal found:*

*The planning loss in this case is less about the loss of productive land, because the proposed house lot is relatively small (and even though it may be cropped/grazed). Rather, 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 because of their own experience but that is not necessarily the case for new occupants. Mr Forbes acknowledges issues can and do arise when "urban romantics" take issue with agricultural activities even though his evidence is that the impacts are not significant and the concerns were not well founded.*

*The exert above reinforces the need for excised dwellings or small lots in farming areas to contribute to agricultural as detailed previously.*

*I agree that the subdivision as proposed will not assist in supporting the continued viability of surrounding agricultural land as strongly supported by policy. The creation of a small rural residential lot will allow its occupation by persons that do not reside there for a farming purposes and likely result in conflict between its occupation and surrounding farming practices, such as through spraying, dust, noise and the movement of machinery.*

*I find that the subdivision does not encourage the retention of productive agricultural land as:*

- a. There was no evidence put to me that the subdivision will result in any additional enhancement to the existing agricultural land, through either reinvestment in infrastructure or alternative farming practices.*
- b. The creation of a rural residential type lot (with its consequent occupation by a person with a different amenity expectation) will introduce the potential to limit or impact upon nearby agricultural operations.*

c. *The creation of a rural residential type lot will permanently remove it from any future agricultural production.*

*I find that the Farming Zone purposes are clearly not directed at facilitating non-agricultural uses. While two dwellings exist, these clearly relate to the sites use for farming purposes. The creation of a separate “house lot” will permanently remove this land from agricultural production. It will also allow the sale of the “house lot”, as expressly sought by the applicant, to an individual that has no relationship to the agricultural nature of the land or its surrounds. To support the subdivision will be viewed as support for fragmentation of farming land and diminish the Council’s resolve to retain land in larger holdings that are desirable for agricultural production.*

*As part of the currently application, concerns were put to the applicant as part of the Further Information Request and no further justification was put forth and without further justification Council cannot conclude that the proposal would enhance the existing agricultural land. The applicant has stated that the funds from the sale would be reinvested into the farming enterprise but no detail was provided of what this would entail and there is no way to ensure this would occur.*

*This VCAT case found that the excision of the dwelling does not support or facilitate agriculture and would permanently remove land from agricultural purposes and would ultimately result in the fragmentation of farming land and be counterintuitive to the retention of agricultural land as supported by the Planning Policy.*

*Zandstra v Greater Shepparton CC [2016] VCAT 1900 (10 November 2016)*

*The application involved the re-subdivision of four allotments totalling 49ha and containing two dwelling to create two allotments of a 46.6ha farm and a 0.72ha excised lot containing one dwelling.*

*It is considered a similar application to the current proposal as Greater Shepparton has also adopted the Regional Rural Land Use Strategy similar to Moira. The hearing was presided by Member Bennett who set aside Council’s decision and granted a permit.*

*It is considered important to understand why this excision was support and why it differs from the proposal currently being assessed. In the Zandstra v Greater Shepparton CC decision, Member Bennett concluded:*

*The existing dwelling is not required by Mr Zandstra or his family as they occupy other houses at the southern end of the property.*

*The dwelling to be excised has been rented for the past 15 years to the Thomas family. The reason behind the consolidation and excision is to allow the house to be sold to the Thomas family.*

*I acknowledge that there can be no guarantee that the dwelling when excised will be retained by the Thomas family. However, ownership is not relevant to my consideration of whether the land should be consolidated and resubdivided based on the controls and*



*policies of the Shepparton Planning Scheme.*

*Member Bennett placed significant emphasis and weighting on the occupation of the excised dwelling and the purchases that had lived within that dwelling for over 15 years but determined that the ongoing occupation was not a relevant consideration.*

*This is a different approach to the more recent decision of Alford v Corangamite SC which found the personal circumstances of the application are irrelevant which is considered a more appropriate response as there is no sensible or practical way of ensuring the owner or occupier of the excised dwelling does not create conflict resulting from the agricultural uses. The minimum subdivision lot size and minimum size for dwellings in the Farming Zone 1 are aimed at protecting land from smaller lot subdivision and the use of land for rural residential or rural lifestyle purposes. However the subdivision provisions at clause 35.07-3 do allow for a two lot subdivision to create a lot for an existing dwelling or for the resubdivision of existing lots provided the number of lots is not increased. Decision Guidelines at clause 35.07-6 provide a list of issues to consider. These are largely worded to be of relevance to the consideration of new use and development, rather than a small lot subdivision for an existing dwelling where the impacts, and potential conflicts, of the dwelling on nearby agricultural uses are already known.*

*As detailed within the assessment against the Farming Zone, the provision that allows dwelling excisions is a mechanism and doesn't result in these application being supported – the proposal must still comply with the relevant Planning Policy Framework.*

*It is also considered, and reinforced by more recent VCAT cases, that the existence of a dwelling on a small lot in the Farming Zone does not limit conflicts between the agricultural and rural living uses which is determined by future occupants. Member Bennett determined that the future owners of the excision were unlikely to complain about the adjoining agricultural operation as they had rented the dwelling for 15 years however it could be argued that given their landlords were undertaking the farming use, they expected a lower level of amenity then as opposed to owning the land.*

*Given the amenity expectation of rural residential allotments is solely reliant on the residents of the dwelling, it is not a relevant consideration as there is no way to understand or control future residents as the excised dwelling could be on sold at any time. This is a well-established VCAT principal, particularly in apartment or townhouse development cases, whereby objectors raise concerns about future residents and potential or increased crime. Clause 21.06-1 makes reference to the Regional Rural Land Use Strategy 2008 (RRLUS) and notes that the RRLUS has identified three new categories of farming areas in the municipality – Growth Areas, Consolidation Areas and New Areas. The review site and the area around Ardmona, west of Mooroopna is in a Consolidation Area. As the name suggests, these are areas that were subdivided into relatively small lots as former closer settlement areas, where lot sizes are no longer reflective of current farm sizes and where consolidation of lots will provide opportunities for the expansion of continuing agricultural businesses.*

*My assessment of the proposal against these strategies is as follow:*

*It results in a restricting of four lots into two.*

*Subject to the inclusion of a permit condition preventing construction of a dwelling on the large balance lot, there are no new opportunities for additional dwellings below the as-of-right minimum of 60 hectares specified within the Farming Zone 1.*

*This is another significant area where the proposal differs from the VCAT case, whilst this application proposes the excision of a 1.885ha parcel and the consolidation of two allotments to total 107.8ha, the number of allotments remains unchanged. Member Bennett considered the consolidation of four allotments into two as appropriate as it resulted in two less allotments in the area.*

*Both the consolidated and excised allotments in the Zandstra case contained dwellings and would therefore need a planning permit for an additional dwelling on either allotment and is unlikely to be further developed with an additional dwelling. In the current proposal before Council, the consolidated allotment would total 107.8ha and could therefore construct a dwelling without the need for a planning permit (minimum lot size of 80ha for an as-of-right dwelling) and it is considered inappropriate to impose a condition or Section 173 restricting the development beyond the scope of the Planning Scheme.*

*Whilst there is an orchard to the north of the existing dwelling, I have not been provided with any information to suggest that conflict exists between the occupiers of the dwelling and the orchard operations. Indeed, the Thomas family have provided a letter dated 19 August 2015 which state that they have never complained to Council about orchard operations including spraying, gas guns, mowing, picking or pruning.*

*This is once again not considered a relevant matter as whilst the current land holder has no concerns with the agricultural use, there is no way to ensure future occupants have no concerns or expect a higher level of amenity.*

*I accept Mr Zandstra's submission that excising the existing dwelling assists in the use, sale and reduction in the number of lots and preserves the balance lot for agricultural purposes. In practical terms, it removes an unnecessary asset from the land being used for agricultural purposes. To that extent, it responds to one of the aims for consolidated areas which is:*

*The use of re-subdivision and excisions within consolidation areas will be considered in recognition that the excision of a dwelling from a farm can provide businesses an opportunity to consolidate property holdings based on the value of the land for agriculture.*

*As noted within the response to this VCAT case, the application does not result in a lesser amount of allotments within the Farming Zone and whilst the RRLUS applies in both applications, the Growth Area is distinctly different to the Consolidated Area and the strategy encourages larger landholdings. Furthermore, whilst the applicant has stated the funds generated by the sale of the excision would be reinvested into the larger allotment, no evidence has been supplied to substantiate this claim.*

## **Summary of key issues**

### **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.

### **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. State and Local policies 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.

### **Conclusion**

The applicant has submitted that the proposed subdivision will allow for a family member to reside in the excised dwelling lot. In the short term, there is no clear justification why this cannot occur while retaining the dwelling within the existing lot. There may be no direct conflict whilst the dwelling is occupied by an occupant directly related to the surrounding operator, however the act of subdivision facilitates the opportunity for the dwelling lot to be sold and occupied by occupants unrelated to the wider farming enterprises. It is this opportunity which presents the greater risk of land use conflict.

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

### **Rhys Oatley, Statutory Planner**

The application was outlined and reasons for recommending refusal of the permit application, as outlined in the report.

### **Andrew Lacey, Planning Consultant**

Proposal for a two lot subdivision in the farming zone. Proposal is to excise an area a little over 5 hectares.

There is a provision in the farming zone that allows for small lot subdivisions. This proposal is larger than the 2 hectares usually allowed due to the extensive landscaping that has been completed around the dam, which is part of the proposed subdivision.

The intended subdivision will remain part of the broader agricultural enterprise.

### **Victoria Hoffman, Landowner**

The family is made up of a 3<sup>rd</sup> and 4<sup>th</sup> generation farming enterprise. There is no intention for disposal of house to outside parties. Agreement will be made with owners that house would be returned to family business if circumstances changed.

### **Anita Collingwood, Senior Statutory Planner**

While the Planning Scheme allows for applications like this to be made, the officers do not support the granting of a permit due to the number of issues raised in the report.

## RECOMMENDATION

That Council having caused notice of Planning Application TP/33/2024 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 198 Partridges Road, Hamilton ; Lot: 4 PS: 115656 for a two-lot subdivision and creation of an easement 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 subdivision to create a rural residential lot is contrary to state planning policy, particularly Clause 14.01-1S protection of agricultural land as it relates to rural residential development and the protection of farming land.

The separation of the dwelling from the balance agricultural land increases the risk of an additional dwelling being proposed on the balance lot, thus further affecting the productivity of the remaining agricultural land.

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.

## RESOLUTION

That Council having caused notice of Planning Application TP/33/2024 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 198 Partridges Road, Hamilton; Lot: 4 PS: 115656 for a two-lot subdivision and creation of an easement 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 subdivision to create a rural residential lot is contrary to state planning policy, particularly Clause 14.01-1S protection of agricultural land as it relates to rural residential development and the protection of farming land.

The separation of the dwelling from the balance agricultural land increases the risk of an additional dwelling being proposed on the balance lot, thus further affecting the productivity of the remaining agricultural land.

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.

**Moved:** R Neeson  
**Seconded:** Cr Rainsford

**Carried**

**7. NEXT MEETING**

22 January 2025 (tbc). This meeting will be confirmed in early 2025 as to whether the meeting will proceed.

**8. CLOSE OF MEETING**

Meeting closed at 11.10am.