

# **CONFIRMED MINUTES**

**FOR THE  
GREATER SHEPPARTON CITY COUNCIL**

## **DEVELOPMENT HEARINGS PANEL**

**Meeting No. 1/2015**

**HELD ON  
WEDNESDAY 7 JANUARY 2015  
AT 10.00AM**

**IN THE BOARDROOM  
90 WELSFORD STREET**

**CHAIR  
Councillor Dinny Adem**

## **1. ACKNOWLEDGEMENT**

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors”.

## **2. RECORDING OF PROCEEDINGS**

The Chairperson advised the hearing that:

- the proceeding is being minuted but not recorded.
- that out of courtesy for all other attendees Any recording devices should be turned off during the course of the hearing, unless the Chair has been formally advised that a party wishes to record proceedings.

## **3. COMMITTEE MEMBERS PRESENT**

Councillor Dinny Adem (Chair), Ian Boyle, Robert Frame, Carl Byrne and Michael McDonagh

## **4. OFFICERS PRESENT**

Andrew Dainton – Principle Planner.

## **5. APOLOGIES**

Johann Rajaratnam, Colin Kalms, Jon Griffin & Braydon Aitken

**6. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

None

**7. DECLARATIONS OF CONFLICTS OF INTEREST**

None

**8. MATTERS FOR CONSIDERATION**

One item listed for consideration. Planning application 2014-301 for a two lot subdivision (house lot excision) and use and development of the land for a dwelling at 275 Labuan Road, Marionvale

**9. LATE REPORTS**

None.

**10. NEXT MEETING**

21 January 2015.

## I N D E X

<u>Application No.</u>	<u>Subject Address:</u>	<u>Proposal:</u>	<u>Page No.</u>
2014-301	275 Labuan Road, Marionvale	A two lot subdivision (house lot excision) and use and development of land for a dwelling in the Farming Zone 1, Floodway Overlay and Land Subject to Inundation Overlay	3

---

---

## Application Details:

Responsible Officer:	Tim Watson
Application Number:	2014-301
Applicants Name:	B White
Date Application Received:	10 October 2014
Statutory Days:	33(17/12/14)
Land/Address:	275 Labuan Road MARIONVALE VIC 3634
Zoning and Overlays:	Farming 1 Zone Pt. Floodway Overlay Pt. Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	35.07-1 – use of land for a dwelling in the Farming Zone; 35.07-3 – subdivision in the Farming Zone 35.07-4- buildings and works in the Farming Zone associated with a section 2 use 44.03-2 – subdivision in the Floodway Overlay 44.04-1 – buildings and works in the Land Subject to Inundation Overlay 44.04-2 – subdivision in the Land Subject to Inundation Overlay
Are there any Restrictive Covenants on the title?	No

---

---

## Executive Summary

The application for a planning permit comprises two components being:

- A dwelling excision of the existing dwelling on the land with a parcel of land of approximately 78 hectares, with a small vacant allotment of approximately 2 hectares to be created abutting Hudsons Lane.
- The use and development of the 2 hectare allotment for a dwelling.

The applicant has provided information with the application that the proposed dwelling is required to operate an existing and proposed agricultural operation revolving around the production of fodder for hay. The applicant has advised that the existing dwelling will remain in the ownership of the current land owner with their son to occupy the proposed dwelling. They have informed that the subdivision is required to allow for the son to acquire a loan from the bank.

The Council's Planning Officer does not dispute that the second dwelling will lead to improved agricultural outcomes on the land. The key concern is that by subdividing the small allotment with the newly created dwelling from the land, that the dwelling could easily become unrelated to an agricultural practice on surrounding allotments.

The Rural Regional Land Use Strategy, a reference document to the Greater Shepparton Planning Scheme specifies that no new dwellings are required to support agricultural growth in the Farming Zone 1.

The State Planning Policy lists as an objective that development of small isolated lots in rural zones should be discouraged for single dwellings and rural living situations. Furthermore the State Planning Policy references the importance of the Hume Regional Growth Plan, which stresses the importance of agricultural land within the municipality, identifying the Shepparton area as one of strategic agricultural importance.

The Greater Shepparton City Council's Local Planning Policy is clear in the direction it provides for decision makers when assessing an application for dwellings and subdivisions in the Farming Zone. The policy objectives seek to discourage new dwellings unless it can be demonstrated that they are required for the agricultural use of the land and to avoid potential amenity impacts between rural activities and dwellings in rural areas. With the creation of a small lot for the dwelling, there will be no formal link between the proposed dwelling and an agricultural use, thus the proposal is at variance with all direction of the Greater Shepparton Planning Scheme for dwellings in the Farming Zone in which they must be related to an agricultural use.

The facts surrounding the proposed use, development and subdivision do not warrant a departure from the strong policy position that plainly discourages dwellings on small allotments and subdivisions to meet personal circumstances, therefore making the recommendation on this application a clear one for refusal.

---

## Summary of Key Issues

- Application for a planning permit proposes a dwelling excision of the existing 81 hectare allotment to create a large dwelling parcel and small vacant allotment. As part of the same application it is then proposed to construct a dwelling on the small allotment.
- The application was notified to surrounding neighbours, with no objections received.
- The application was referred to the Goulburn Broken Catchment Management Authority, who do not object to the issue of a permit, subject to conditions.
- The application was notified to Goulburn Murray Water, who do not object to the issue of a permit subject to conditions.
- The application was referred internally to the Council's Health Department, who do not object to the issue of a permit subject to conditions.
- The applicant has submitted information that the proposed dwelling is required to support the existing and proposed agricultural operation on the land being the harvesting of crops for hay.
- The applicant has submitted that the dwelling is required to be subdivided in order for a bank loan to be acquired and for the owners son to purchase their own allotment.

---

---

## Recommendation

### Refusal

That the Council having caused notice of Planning Application No. **2014-301** 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 **35.07-1, 35.07-3, 35.07-4, 44.03-2, 44.04-1 and 44.04-2** of the Greater Shepparton Planning Scheme in respect of the land known and described as **275 Labuan Road MARIONVALE VIC 3634**, for the **two lot subdivision (house lot excision) and use and development of land in the Farming Zone 1, Floodway Overlay and Land Subject to Inundation Overlay for a dwelling.**

### For the following reasons:

- a) The proposed use, development and subdivision of the land for a dwelling and small allotment of approximately 2 hectares does not provide an acceptable outcome or a net community benefit in terms of the State and Local Planning Policy Frameworks and the purpose and decision guidelines of the Farming Zone, and
  - is likely to impact on the continuation of primary production now or into the future on adjacent land, with particular regard to land values;
  - removes land from agricultural production, and has the potential to limit the use of adjacent land;
  - has considerable potential for conflict between the ongoing farming activities and the rural living use;
  - the lot resulting from the subdivision is not of a sufficient size to be of a benefit to agricultural production;
  - is proposed to meet a personal and financial circumstances;
  - it has not been demonstrated that the dwelling is required for an agricultural use on the small lot; and
  - will result in the loss and fragmentation of productive agricultural land.
- b) The application does not comply with the Rural Regional Land Use Strategy (C121) which states that no new dwellings are required to support agricultural growth.

### Moved by Ian Boyle

### Seconded by Carl Byrne

That the Council having caused notice of Planning Application No. **2014-301** 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 **35.07-1, 35.07-3, 35.07-4, 44.03-2, 44.04-1 and 44.04-2** of the Greater Shepparton Planning Scheme in respect of the land known and described as **275 Labuan Road MARIONVALE VIC 3634**, for the **two lot subdivision (house lot excision) and use and development of land in the Farming Zone 1, Floodway Overlay and Land Subject to Inundation Overlay for a dwelling.**

### CARRIED

## Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken.

Date: **24/3/14**

The site has a total area of **approximately 80 hectares** and currently contains:

- An existing dwelling and associated sheds in the north west corner of the site.
- The remainder of the land is used for agricultural production (pasture propagation), with the eastern half having been laser levelled in accordance with a whole farm plan to assist with irrigation.

The main site/locality characteristics are:

- Predominately agricultural land used for grazing and pasture propagation.
- The surrounding allotments are of similar area to the subject land, most of which contain a dwelling.

The Photos below show the existing site:



---

## Permit/Site History

The history of the site includes:



- There is no previous planning permit history on record for this site.

---

## Further Information

Was further information requested for this application? **yes**

What additional information is required? **A full recent copy of title**

What date was the information requested?: **28/10/14**

What is the lapsed date? **28/11/14**

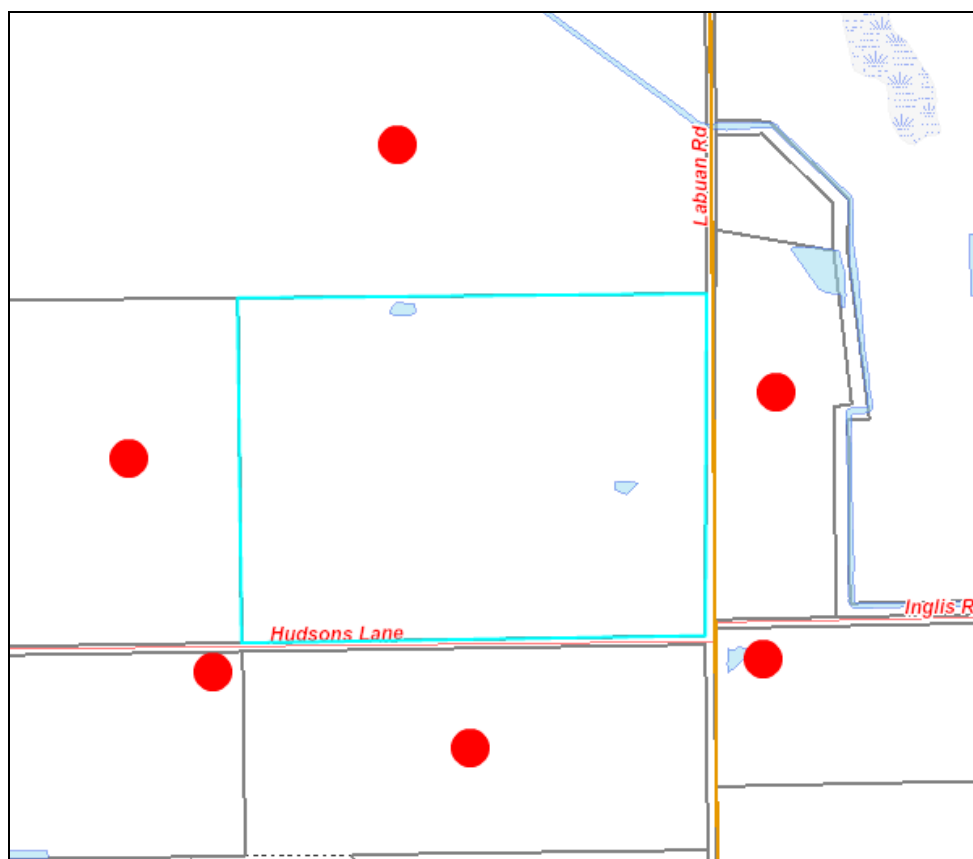
What date was the information received?: **3/11/14**

---

## Public Notification

The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description **Two lot subdivision (house lot excision) and use and development of land in the Farming Zone 1 for a dwelling**, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.



The FO and LSIO components of the application are exempt from being advertised in accordance with Clause 44.03-4 and **44.04-4** of the planning scheme.

---

## Objections

The Council has received **no** objections to date.

---

## Title Details

The title does not contain a Restrictive Covenant or Section 173 Agreement

---

## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- An onsite meeting followed up with a letter from Council officers to the applicant with the following details:

### Contents from letter sent to applicant

The subject land is zoned Farming and partially affected by the Floodway Overlay and Land Subject to Inundation Overlay.

I wish to confirm that you are enquiring about the potential for a second dwelling and possible subdivision of the subject land.

Pursuant to clauses 35.07-1 and 35.07-4 a planning permit will be required for the use and development of the land for a second dwelling. A planning permit would also be required for the subdivision of land in the Farming Zone.

### Subdivision in the Farming Zone

As I understand it, your proposal is to create one large lot comprising the existing dwelling and a small allotment in the south east corner of the land in which a new dwelling can be constructed. Further investigation of this proposed subdivision layout, shows that it is permissible in the Farming Zone subject to the grant of a planning permit.

When assessing an application in the Farming Zone for a subdivision, the application will be assessed against key objectives, strategies and policy guidelines of the Local Planning Policy which include the following:

- To limit the further fragmentation of rural land by subdivision.
- To discourage “small lot” subdivision unless the balance lot is at least the minimum lot size and is of a size sufficient to support a viable agricultural enterprise.
- To prevent small lot subdivision to meet personal and financial circumstances or to create lots for ‘rural lifestyle’ purposes.

- It is policy to require the applicant to enter into an agreement under Section 173 of the Act which prevents:
  - The construction of a dwelling on the 'balance' lot unless, when combined with other land, the area satisfies the minimum lot size for the construction of a dwelling in the zone.

When considering the approve policy the Council's Planning Department would not support an application for a proposed subdivision for the following reasons:

- The proposed subdivision would create a small allotment in the Farming Zone that is not suitable for agricultural purposes;
- The proposed small lot has the potential to create a 'rural lifestyle allotment' in the Farming Zone, which is strongly discouraged;
- The creation of a small lot and subsequent dwelling has the potential to create conflict between the residential use on the small lot and surrounding agricultural uses.

### **Dwelling**

As informed, an application for a planning permit would be required for a second dwelling on the land. An application made for the use of the land for a second dwelling would need to provide justification as to how a dwelling would support and enhance the existing agricultural activities on the land and must address the decision guidelines for dwellings in the Farming Zone.

### **Dwelling and Subdivision**

- As previously discussed the Council's Planning Department would consider an application for a two-lot subdivision creating two 40 or above hectare allotments and a dwelling of the vacant allotment to have some merit. Such application would still need to substantiate that the dwelling and subdivision would provide agricultural benefit without the potential to impact on existing agricultural uses or create a possible 'rural lifestyle' allotment.

A meeting was held between Council officers Andrew Dainton and Tim Watson, on 5 December 2014 in which the applicant and parents were informed that officers would recommend that the application in its current form would be refused at the Council's Development.

The applicants informed that they wish to proceed with the application in its current form. The officer's informed the applicants of the process from then on and that should the application be refused, how they could appeal the decision through VCAT.

---

## **Referrals**

External Referrals/Notices Required by the Planning Scheme:

<b>Referrals/Notice</b>	<b>Advice/Response/Conditions</b>
Section 55 Referrals	The application was referred to the Goulburn Broken Catchment Management Authority, who do not object to the issue of a permit, subject to the following condition:

	a) The finished floor level of the proposed dwelling must be constructed at least 300 millimetres above the 100-year ARI flood level of 114.75 metres AHD, i.e. 115.05 metres AHD, or higher level deemed necessary by the responsible authority.
Section 52 Notices	<p>The application for a planning permit was notified to Goulburn Murray Water, who do not object to the issue of a permit subject to the following conditions:</p> <p>a) No buildings are to be constructed within 30 metres of any waterways or on any drainage lines.</p> <p>b) All wastewater from the proposed dwelling must be treated and disposed of using an EPA approved system, installed, operated and maintained in compliance with the relevant EPA Code of Practice and Certificate of Approval.</p> <p>c) Where the following features are present in proximity to the subject land, the wastewater disposal area must be located:</p> <ul style="list-style-type: none"> <li>• Above the 1 in 100 year flood level.</li> <li>• At least 60 metres from any waterways</li> <li>• At least 40 metres from the nearest drainage line</li> <li>• At least 60 metres from any dams</li> <li>• At least 20 metres from any bores.</li> </ul>

Internal Council Notices	Advice/Response/Conditions
Health Department	The application was referred to the Council's Health Department, who do not object to the issue of a permit subject to the standard installation of septic tank condition.

## Assessment

### The zoning of the land

Farming Zone – Clause 35.07

The purpose of the Farming Zone is to:

- Provide for the use of land for agriculture;
- Encourage the retention of productive agricultural land;
- 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; and
- Encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

Subdivision 35.07-3

A permit is required to subdivide land.

Each lot must be at least the area specified for the land in a schedule to this zone.

A permit may be granted to create smaller lots if any of the following apply:

- The Subdivision is to create a lot for an existing dwelling. The subdivision must be a two lot subdivision.

- The subdivision is the re-subdivision of existing lots and the number of lots is not increased.
- The subdivision is by a public authority or utility service provider to create a lot for a utility installation.

Clause 35.07 (Farming Zone) requires a permit for use and development of a dwelling on a lot of less than 60 hectares, and for Buildings and works associated with a section 2 use.

#### Farming Zone Decision Guidelines

The decision guidelines which are relevant to this application and which the Council must consider when assessing an application to construct a dwelling or subdivide land are:

#### **General issues**

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Any Regional Catchment Strategy and associated plan applying
- The capability of the land to accommodate the proposed use or development, including the disposal of effluent.
- How the use or development relates to sustainable land management.
- Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.
- How the use and development makes use of existing infrastructure and services.

#### **Agricultural issues**

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will permanently remove land from agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- The capacity of the site to sustain the agricultural use.
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.
- Any integrated land management plan prepared for the site.

#### **Dwelling issues**

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

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

### **Design and siting issues**

- The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.
- The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.
- The impact on the character and appearance of the area or features of architectural historic or scientific significance or of natural scenic beauty or importance.
- The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.
- Whether the development will require traffic management measures.

### Response

The application for a planning permit proposes the use and development of the land for a dwelling and a two lot subdivision (house lot excision). The applicant has advised that the small allotment to be created and for which the dwelling is proposed is part of a farm succession plan.

The applicant has informed that the land is used for cropping of lucerne and wheat for small square bale production. They have informed that this process of converting the land from a dairy farm (previous use) to this form of specialty cropping has slowly occurred over a period of time and is not yet complete. This process has involved the levelling of the paddocks and slow introduction of new crops to the land.

To assist with this process the applicant has advised that they are required on the land to support their father and would need a dwelling of their own. It has been submitted that the bank would not support a second dwelling on the one allotment and for a loan to be provided, the dwelling must be constructed on its own separately transferrable lot.

The Council's Planning Officer does not dispute that the second dwelling will not lead to improved agricultural outcomes on the land. The key concern is that by subdividing the small allotment with the newly created dwelling from the land, that the occupants could easily become unrelated to an agricultural practice on surrounding allotments.

This leads to the application not achieving an acceptable planning outcome against the above decision guidelines as outlined below:

- The creation of a small dwelling allotment would not be considered compatible with the adjoining agricultural use.
- The creation of a small dwelling allotment which could be easily sold to occupants unrelated to agriculture would not lead to the support and enhancement of agricultural production on the subject land.
- The use of a small lot in the Farming Zone for a dwelling unrelated to agriculture has the potential to limit the operation and expansion of adjoining and nearby agricultural uses.
- The dwelling on the small lot will result in the loss and fragmentation of productive agricultural land.
- There is the potential for the dwelling on the small lot to be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemical and farm machinery, traffic and hours of operation given the small size of the allotment and its proximity to agricultural land.

#### **Relevant overlay provisions**

##### **Floodway Overlay 44.03**

---

The overlay identifies waterways, major flood paths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by flooding. The overlay's purpose is to ensure that development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard and local drainage conditions.

##### **Land Subject to Inundation Overlay 44.04-4**

---

The Overlay identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority. The Overlay's purpose is to ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

The application for a planning permit was triggered for a dwelling in the Land Subject to Inundation Land pursuant to Clause 44.04-1 and subdivision in the Floodway Overlay and Land Subject to Inundation Overlay pursuant to Clauses 44.03-2 and 44.04-2.

The GBCMA, do not object to the issue of a permit, provided the dwelling is constructed to a minimum floor level.

## **The State Planning Policy Framework (SPPF)**

### **Rural Productivity 11.05-3**

---

#### Objectives and strategies

- To manage land use change and development in rural areas to promote agriculture and rural production
- Prevent inappropriately dispersed urban activities in rural areas.
- Limit new housing development in rural areas, including:
  - Directing housing growth into existing settlements.
  - Discouraging development of isolated small lots in the rural zones from use for single dwellings, rural living or other incompatible.
  - Encouraging consolidation of existing isolated small lots in rural zones.

Map 6 at Clause 11.10-4, the Hume Regional Growth Plan identifies the land within the locality as one of Strategic Agricultural importance.

#### Protection of Agricultural Land 14.01-1

---

Clause 17.05 Agriculture – objective is to minimise loss of productive farmland.

The objective for agriculture in this Clause is:

- To protect productive farmland which is of strategic significance in the local or regional context.

It is State policy:

- Permanent removal of productive agricultural land from the State's agricultural base must be undertaken without consideration of its economic importance for the agricultural production and processing sectors.

In considering a proposal to subdivide or develop agricultural land, the following factors must be considered:

- The desirability and impacts of removing the land from primary production, given its agricultural productivity;
- The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to viability of infrastructure for such production;



- The compatibility between the proposed or likely development and the existing uses of the surrounding land; and
- Assessment of land capability.

### Response

As identified in the Farming Zone assessment section of this report, the proposed dwelling given the small lot size has the potential to impact on the surrounding agricultural activities.

The subject land is identified as land of strategic agricultural importance for the State within the Hume Region Strategy. The creation of a small lot for a dwelling to be constructed on will provide no agricultural benefits and the proposed use and subdivision of the land for a dwelling on a small lot should therefore be discouraged.

### **The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans**

#### Subdivision in rural areas 21.06-2

---

#### Objectives:

- To limit the further fragmentation of rural land by subdivision.
- To ensure that lots resulting from subdivision are of a sufficient size to be of a benefit to agricultural production.
- To encourage consolidation of rural lots
- To provide for the incremental growth of farming enterprises
- To discourage “small lot” subdivision unless the balance lot is at least the minimum lot size and is of a size sufficient to support a viable agricultural enterprise.
- To ensure that small lot subdivisions do not prejudice surrounding agricultural activities.
- To ensure that small lots have access to adequate infrastructure including access to all weather roads.
- To prevent small lot subdivisions to meet personal and financial circumstances or to create lots for ‘rural lifestyle’ purposes.
- To prevent the creation of irregular shaped lots.
- To prevent “serial’ small lot subdivision from the one lot.

### Strategies:

- Discourage small lot subdivisions except where:
  - Restructure is an outcome;
  - No new opportunities for additional dwellings below the minimum specified in the schedule to the Farming Zone; and
  - The impact on neighbours and existing or potential agricultural use of nearby land is minimised.
- Discourage small lot subdivision, except where the proposal assists in the use, sale, reduction in number of lots, transfer or preservation of the land for agricultural purposes.

### Policy guidelines for small lot subdivisions

#### Criteria

An application for a small lot subdivision of a lot containing a dwelling or the re-subdivision of existing lots should meet the following criteria:

- The lot containing the dwelling is to be no greater than 2ha in area unless there is a need for a larger parcel to take account of natural or public infrastructure features;
- The “balance” lot is of an area that complies with the minimum lot size for the zone;
- The existing dwelling habitable; and
- The dwelling has existing use rights pursuant to Clause 63.

#### Exercise of discretion

It is policy to:

Require the application to enter into an agreement under Section 173 of the Act which prevents:

- The construction of a dwelling on the ‘balance’ lot unless, when combined with other land, the area satisfies the minimum lot size for the construction of a dwelling in the zone; and
- The further subdivision of any lot created other than in accordance with the minimum lot size for subdivision in the zone.

### Response

The proposed subdivision to create a small lot in which to construct a dwelling is clearly at variance with the objectives and strategies of the desired direction for the Farming Zone as outlined above. The proposed subdivision will fragment the large agricultural allotment, with the small allotment created of no benefit to agriculture.

As identified in the applicants report the subdivision is to allow for the transfer of land from one family member to another as part of a farm succession plan. The Policy clearly directs to prevent small lot subdivisions to meet personal and financial circumstances or to create lots for 'Rural lifestyles' purposes.

---

#### Dwellings in Rural Areas 21.06-3

---

While it is acknowledged that a dwelling will often be needed to properly farm land, these must be limited to those that genuinely relate to agricultural production. The number of dwellings that a farm can economically sustain relates to its rural land capability, the labour needs of the farming practice, the intensity of the farm activity and the volume of rural output. Development of dwellings at a density greater than is required for the rural use of land can give rise to conflicts with legitimate farming practices. Isolated dwellings in the rural areas have the potential to disrupt agricultural activities and should not impinge on the appropriate use of farming land.

The RRLUS identified new categories of Farming Zone and has included objectives and policies for each with respect to rural dwellings.

#### Objectives – Dwellings in Rural Areas

- To discourage new dwellings unless it can be demonstrated that it is required for the agricultural use of the land.
- To ensure that new dwellings support rural activities and production and are not to meet lifestyle objectives, which may conflict with the rural use of the land.
- To avoid potential amenity impacts between rural activities and dwellings in rural areas.

#### Strategies – Dwellings in Rural Areas

- Discourage the establishment of dwellings not associated with or required for the agricultural use of the land.
- Discourage dwellings on old and inappropriate lots where amenity may be negatively impacted by farming activities, or where dwellings may inhibit rural activities.
- Discourage dwellings which are proposed to meet personal or financial circumstances or to create dwellings for 'rural lifestyle' purposes.

- Discourage the clustering of new dwellings unless they do not limit the productive use and development of surrounding land.

## Policy Guidelines – Dwellings in Rural Areas

### Criteria

An application for a dwelling in Farming Zone, Schedule 1 and Farming Zone, Schedule 2 should meet the following criteria:

- The dwelling is required for the operation of the rural use of the land.
- The agricultural use is established on the land prior to the construction of a dwelling (or an Integrated Land Management Plan under Clause 35.07-6 in place).
- The dwelling is located on a lot of at least 2 ha in area.
- The dwelling is located on a lot created after 1<sup>st</sup> January 1960.

### Exercise of Discretion

It is policy to:

- Discourage the construction of new dwellings on any land that is not suitable for the onsite disposal of septic tank effluent.
- Discourage the construction of new dwellings on any land with a water table within one metre of the surface when waste water is to be treated and retained on site.
- Require the applicant to enter into an agreement under section 173 of the act to:
  - Ensure that the dwelling is used in conjunction with agricultural production;
  - Prevent the subdivision of the lot containing the dwelling where the proposed lot size is less than the minimum lot size for subdivision specified in the zone; and
  - Acknowledge the impacts of nearby agricultural activities.

### Decision Guidelines

---

When deciding on an application for a dwelling, and in addition to the decision guidelines in the zone, the responsible authority will consider the following matters:

- The relationship between the proposed dwelling and the agricultural activity on the land.

- Evidence including an Integrated Land Management Plan under Clause 35.07-6 (or similar) addressing the relationship between agricultural activities on the land and the proposed dwellings.
- The agricultural productive capacity or the agricultural potential of the land.
- The nature of the existing agricultural infrastructure and activity on the land and any new proposed agricultural infrastructure and activity at the land.
- The nature of the agricultural activities on the land and whether they require permanent and continuous care, supervision or security.
- The proposed sitting of the dwelling and whether it minimises impacts on existing and potential agricultural operations on nearby land.
- Whether the dwelling will result in a rural living or rural residential outcome in the area.
- The planning history of the land.
- The potential for land to be consolidated with other land to enhance agricultural productivity.
- Whether the planning scheme identifies a 'non-agricultural' future for the land and the implication of development on future development options.

### Response

The applicant has submitted substantial information on why the dwelling is required to assist in the farming operation on the land and states that significant investment has been and will continue to be put into the operation. The Council officer does not dispute this, however with the subdivision of the proposed dwelling from the large agricultural allotment, there is no control as to who the small allotment may be transferred to. The small allotment therefore has the likely potential to be easily transferred to someone with no connection with the agricultural operation.

### **Relevant Particular Provisions**

There are no relevant Particular Provisions that relate to this application for a planning permit.

### **The decision guidelines of Clause 65**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

The relevant decision guidelines of Clause 65 have been considered and addressed when assessing this application for a planning permit.

The proposed use and development of the land is not considered to meet the purpose of the zone, whereby there is the potential for the dwelling on a small lot to adversely affect the use of land for agriculture. The use and development is at variance with the direction of the State and Local Planning Policies, both of which place strong emphases on the protection of important agricultural land from non-agricultural use. The Council's Local Policy is strong and clear on this matter, and identifies that dwellings should only be supported where there is a clear need for the dwelling to support the agricultural use and that the dwelling will not impact surrounding agricultural uses.

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

Rural Regional Land Use Strategy

The Rural Regional Land Use Strategy formed the Basis of Council Amendment C121, which implement the majority of the current Local Policies which address the use and development of Farming Zoned land. The document was made a reference document at the time of amendment.

The direction of the document is clear that new dwellings not required to support an agricultural use in the Farming Zone 1, should not be approved.

#### **Other relevant adopted State policies or strategies policies**

There are no other relevant adopted State or strategic policies that relate to this application for a planning permit.

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

There are no relevant Planning Scheme amendments that relate to this application for a planning permit.

#### **Are there any significant social & economic effects?**

There are no relevant significant social or economic effects that relate to this application for a planning permit.

#### **Discuss any other relevant Acts that relate to the application?**

There are no other relevant Acts that relate to this application for a planning permit.

#### **The Aboriginal Heritage Act 2006**

The *Aboriginal Heritage Act 2006* provides protection for all Aboriginal places, objects and human remains in Victoria, regardless of their inclusion on the Victorian Aboriginal Heritage Register or land tenure.

The *Aboriginal Heritage Act 2006* introduces a requirement to prepare a Cultural Heritage Management Plan (CHMP) if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance.

The 'Area of Cultural Heritage Sensitivity in Victoria' does not include the land within an area of cultural heritage sensitivity; therefore the proposed use does not trigger the need for a CHMP.

The proposed use and development is an exempt activity under regulation 8, being the development of a single dwelling.

### **Charter of Human Rights and Responsibilities**

The Charter of Human Rights and Responsibilities has been considered when assessing this application and it is not considered that the application impinges on the Charter.

---

## **Conclusion**

The creation of a small lot in the Farming Zone 1 for a dwelling to be constructed on will not provide acceptable outcomes when assessed against the Local Planning Policies of Clauses 21.06-2 and 21.06-3 of the Greater Shepparton Scheme. The proposed use, development and subdivision has the potential to be completely unrelated to an agricultural operation despite the application stating that it will be used in conjunction with the abutting agricultural operation.

For this reason the application for the use and development of a dwelling and subdivision in the Farming Zone 1 is not considered to be supported by the strongly weighted and specific agricultural policies of the Greater Shepparton Planning Scheme.

The proposed use and development of the land for a dwelling on a small lot is at variance with the policies of the Greater Shepparton Planning Scheme, and it is therefore recommended that it be refused.

# DRAFT REFUSAL TO GRANT A PERMIT

---

**APPLICATION NO:** 2014-301

**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME

**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL

**ADDRESS OF THE LAND:** 275 Labuan Road MARIONVALE VIC 3634

**WHAT HAS BEEN REFUSED:** A two lot subdivision (house lot excision) and use and development of land for a dwelling in the Farming Zone 1, Floodway Overlay and Land Subject to Inundation Overlay

## WHAT ARE THE REASONS FOR THE REFUSAL?

---

- a) The proposed use, development and subdivision of the land for a dwelling and small allotment of approximately 2 hectares does not provide an acceptable outcome or a net community benefit in terms of the State and Local Planning Policy Frameworks and the purpose and decision guidelines of the Farming Zone, and
- is likely to impact on the continuation of primary production now or into the future on adjacent land, with particular regard to land values;
  - removes land from agricultural production, and has the potential to limit the use of adjacent land;
  - has considerable potential for conflict between the ongoing farming activities and the rural living use;
  - the lot resulting from the subdivision is not of a sufficient size to be of a benefit to agricultural production;
  - is proposed to meet a personal and financial circumstances;
  - it has not been demonstrated that the dwelling is required for an agricultural use on the small lot; and
  - will result in the loss and fragmentation of productive agricultural land.
- b) The application does not comply with the Rural Regional Land Use Strategy (C121) which states that no new dwellings are required to support agricultural growth.



Development Hearings Panel  
Meeting Number: 01/2015  
Date: 7 January 2015

---

Meeting closed at 10.30am