

Delegation Report

Application No: 2017/19

Application Type: Subdivision 3 or more Lots

Received: 8 February 2017

The Applicant:

Name: Brosnan Engineering Solutions Pty Ltd
Address: PO BOX 865
Wonthaggi VIC 3995

The Proposal:

Proposal: Subdivide land into six lots

The Land:

Land Address: 30 Brown Street Leongatha VIC 3953
Land Description: L1 TP157404K Parish of Leongatha Township

Assessment:

By: Tanya Cooper

Planning Scheme and/or Planning and Environment Act Definition

Land Use

NA

Development

Subdivision of the land into 6 lots

Zone and Overlays:

Zones:

- Low Density Residential (part)
- General Residential Zone - Schedule 1 (part)

Overlays: Nil

Why is a Permit Required?

Zone

Use

NA

Development

Clause 32.03-3 (LDRZ) – A permit is required to subdivide land.

Clause 32.08-3 (GRZ) – A permit is required to subdivide land.

Overlay

NA

Particular provisions

NA

Particular provisions that are relevant but do not trigger a permit

Clause 56 - All except Clauses 56.02-1, 56.03-1 to 56.03-4, 56.05- 2, 56.06-1, 56.06-3 and 56.06-6.

Size of the Land (Square meters or hectares):

The land is approximately 1.05ha

Is there a registered restrictive covenant or a Section 173 Agreement on the title? If so, does the proposal comply with the restriction or Section 173 Agreement?

No. There are no restrictive covenants or section 173 agreements noted on the copy of title submitted with the application dated 24 November 2016.

Does the land abut a Road Zone Category 1 or a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road?

No.

Is there a designated waterway on the land?

No.

Is the land within a Special Water Supply Catchment Area listed in Schedule 5 of the Catchment and Land Protection Act 1994?

Yes. The land is within the Tarwin River (Meeniyar) Water Supply Catchment (ID no: 118) as proclaimed by the Victoria Government Gazette (No. G17 2 May 1990).

Does the application require car parking / bicycle facilities?

No car parking or bicycle facilities are required by Clauses 52.06 or 52.34 of the Planning Scheme.

Is an Aboriginal Cultural Heritage Management Plan required?

No, a CHMP is not required because the proposed development is not in an area of cultural heritage sensitivity.

Was Further Information Requested under Section 54?

Further information was required regarding the following:

- Current copy of title (less than 60 days)
- Neighbourhood site context in accordance with 56.01
- LCA – or advice about sewerage

Inspections:

Date Inspected	Observations
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15 February 2017	<p>The site is a corner allotment with a frontage to Brown Street of 59m and to Worthy Street of approximately 180m. There is currently no constructed access to the land from either road.</p> <p>Brown Street is a sealed Council road. Worthy Street is an unsealed Council road.</p> <p>The land is generally flat at one end of the site and has a moderate to steep slope on the section that faces Brown Street.</p> <p>There are no waterways on the subject land or within 100m of the site.</p> <p>There is some planted native vegetation located along the zone boundary between General Residential Zone and the Low Density Residential Zone.</p> <p>There are wooden stockyards adjacent Brown Street and the rest of the lot is vacant and has been used for horse paddocks.</p> <p>The site appears to have access to reticulated power, telecommunications, water and sewer.</p>
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Was notice of the application given under Section 52(1), 52(1AA), 52(3) or 57B?

The application was notified to adjoining/adjacent owners and occupiers. The application was also notified by placing a sign on the land.

Were there any objections received?

Five (5) written submissions were received. Key concerns raised in the submissions are summarised as follows:

- Major concern with flooding on neighbouring properties due to being flooded numerous times in the past and that Council works to resolve the drainage issues have not been effective.
- Concern that the drainage infrastructure in Worthy Street is inadequate and that the subdivision will cause more flooding to Worthy Street and Gibson Street.
- It was a condition of subdivision planning permit 2008/32 to install crossover pipes in Worthy Street to Council's satisfaction. Owners have since spent thousands of dollars buying pipes and materials to repair the problems but still suffer flooding due to the Shires lack of due diligence.

Was the application referred under Section 55 or 57C?

Authority	Which Clause? Determining or Recommending?	Date received and response
Comdain/Multinet (Gas)	66.01 Subdivision referrals - Determining	6/6/17- Unconditional consent
South Gippsland Water	66.01 Subdivision referrals - Determining 66.02-5 Special water supply catchment - Determining	19/6/17 – Conditional consent
SP Ausnet	66.01 Subdivision referrals - Determining	2/6/17 – Conditional consent

Were there any non-statutory or internal referrals?

Authority	Which Clause / Overlay / Why?	Date received and response
SGSC Engineering	To determine if provision of access / parking / stormwater facilities is acceptable and complies with the Planning Scheme / IDM / Australian Standards.	1/8/17 – Conditional consent 24/11/17 – Conditional consent

Planning Scheme Requirements and policies:**SPPF**

The following SPPF clauses are considered relevant to the assessment of this application:

SETTLEMENT

- 11.02 Urban growth
 - 11.02-1 Supply of urban land
 - 11.02-2 Planning for growth areas
 - 11.02-3 Structure planning
 - 11.02-4 Sequencing of development
- 11.05 Regional development
 - 11.05-1 Regional settlement networks
 - 11.05-2 Melbourne's hinterland areas
 - 11.05-4 Regional planning strategies and principles
- 11.08 Gippsland regional growth
 - 11.08-2 Planning for growth
 - 11.08-3 Sustainable communities
 - 11.08-4 Infrastructure

14 NATURAL RESOURCE MANAGEMENT

- 14.02 Water
 - 14.02-1 Catchment planning and management

15 BUILT ENVIRONMENT AND HERITAGE

- 15.01 Urban environment
 - 15.01-1 Urban design
 - 15.01-2 Urban design principles
 - 15.01-3 Neighbourhood and subdivision design
 - 15.01-4 Design for safety
 - 15.01-5 Cultural identity and neighbourhood character

16 HOUSING

- 16.01 Residential development
 - 16.01-1 Integrated housing
 - 16.01-2 Location of residential development
 - 16.01-3 Strategic redevelopment sites
 - 16.01-4 Housing diversity
 - 16.01-5 Housing affordability

18 TRANSPORT

- 18.02 Movement networks
 - 18.02-4 Management of the road system

19 INFRASTRUCTURE

- 19.03 Development infrastructure
 - 19.03-2 Water supply, sewerage and drainage
 - 19.03-3 Stormwater
 - 19.03-4 Telecommunications

LPPF

The following LPPF clauses are considered relevant to the assessment of this application:

21.02 MUNICIPAL PROFILE

- 21.02-1 Location
- 21.02-2 History
- 21.02-3 People and settlement
- 21.02-4 Environment
- 21.02-5 Natural resource management
- 21.02-6 Built environment and heritage
- 21.02-8 Transport
- 21.02-9 Infrastructure

21.03 KEY ISSUES

- 21.03-1 Settlement
- 21.03-2 Environmental and landscape values
- 21.03-3 Environmental risks
- 21.03-5 Built environment and heritage
- 21.03-6 Housing
- 21.03-8 Transport
- 21.03-9 Infrastructure

21.04 VISION

- 21.04-1 South Gippsland Shire Council – Council Plan 2010 – 2014
- 21.04-2 Vision

21.05 SETTLEMENT

- 21.05-1 Growth of towns

21.07 ENVIRONMENTAL RISKS

- 21.07-2 Land and catchment management

21.09 BUILT ENVIRONMENT AND HERITAGE

- 21.09-2 Urban environment
- 21.09-3 Signage and infrastructure

21.10 HOUSING

- 21.10-1 Housing choice and diversity
- 21.10-2 Housing design

21.12 TRANSPORT

- 21.12-1 Transport

21.13 INFRASTRUCTURE

- 21.13-1 Waste management and stormwater drainage

21.15 LOCAL AREAS

- 21.15-1 Leongatha

Clause 22 policies

There are no Clause 22 policies considered relevant to the assessment of this application.

General Assessment:State Planning Policy Framework

The proposal is consistent with the relevant objectives and strategies of the SPPF clauses listed above.

Local Planning Policy Framework and Local policies

The proposal is consistent with the relevant objectives and strategies of the LPPF clauses and Local policies listed above.

General Residential Zone Schedule 1 Decision Guidelines

The General Residential zoned part of the land is proposed to be subdivided to create 3 lots (proposed Lots 1, 2, 3).

- *The pattern of subdivision and its effect on the spacing of buildings*
The proposed subdivision to create 3 lots in the General Residential Zone will not significantly affect the spacing of buildings on the land. The proposed lots are vacant and each lot has sufficient area and dimensions to contain a future dwelling. The lot sizes are generally consistent with existing general residential zoned lots in Leongatha.
- *The objectives and standards of Clause 56*

The application has been assessed against the relevant objectives and standards of Clause 56. The assessment is at Attachment 1.

Clause 32.03-3 Low Density Residential Zone Subdivision Decision Guidelines

The Low Density Residential zoned part of the land is proposed to be subdivided to create 3 lots (proposed Lots 4, 5, 6).

The Planning Scheme requires that each lot must be at least the area specified for the land in a schedule to this zone. Any area specified must be at least:

- 0.4 hectare for each lot where reticulated sewerage is not connected. If no area is specified each lot must be at least 0.4 hectare.
- 0.2 hectare for each lot with connected reticulated sewerage. If no area is specified each lot must be at least 0.2 hectare.

Each of the proposed lots (4, 5 and 6) are able to be connected to the existing sewer network. Each of the proposed lots exceeds 0.2 ha (2000m²) being:

- Proposed Lot 4 – 2258m²
- Proposed Lot 5 – 2446m²
- Proposed Lot 6 – 3154m²

Decision Guidelines	Response
The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.	The proposal is considered to be consistent with State and Local Planning policies for urban and low density residential development.
The protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.	There are no significant features on the land, having been previously cleared of native vegetation and used and developed as grazing pasture. There are no waterways on the land.
The availability and provision of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.	Each of the proposed lots is able to be connected to reticulated water, sewer, power, telecommunications and gas networks. Each of the proposed lots will be able to drain to the existing drainage system in Worthy Street.
In the absence of reticulated sewerage: <ul style="list-style-type: none"> • The capability of the lot to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970. 	NA – reticulated sewer is available to the land.

<ul style="list-style-type: none"> • The benefits of restricting the size of lots to the minimum required to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria). 	
<p>The benefits of restricting the size of lots to generally no more than 2 hectares to enable lots to be efficiently maintained without the need for agricultural techniques and equipment.</p>	<p>NA – each of the proposed lots is less than 2ha in area.</p>
<p>The relevant standards of Clauses 56.07-1 to 56.07-4; being:</p> <ul style="list-style-type: none"> • 56.07-1 Drinking water supply objectives • 56.07-2 Reused and recycled water objective • 56.07-3 Waste water management objective • 56.07-4 Urban run-off management objective 	<p>Each of the proposed lots will be able to be connected to the reticulated drinking water system in accordance with the requirements of the relevant water authority, South Gippsland Water Corporation.</p> <p>No reused and recycled water supply systems are proposed.</p> <p>Each of the proposed lots will be able to be connected to the existing reticulated sewerage network in accordance with the requirements of the relevant sewerage authority, South Gippsland Water Corporation.</p> <p>Council's Engineering Department has assessed the proposed subdivision and the proposed stormwater design.</p> <p>The proposed subdivision design demonstrates stormwater from the land will be directed to the existing drain in Worthy Street. This is expected to ensure that stormwater flows through the existing easement to the south of the land (through 40, 44, 48 Worthy Street and 88 Gibson Street) do not exceed pre-development flows and this is supported.</p> <p>The subdivision design as submitted is expected to contribute to an existing flooding problem in Worthy Street and Gibson Street, by channelling all run-off from the subdivision into Worthy Street. However, the impact of the post-development flow from the site is considered minor in the context of the Worthy Street drainage catchment. This minor impact is proposed to be dealt with by requiring onsite detention of stormwater at pre-development flows. Council's Engineering Department have determined that there is sufficient area within</p>

	<p>the proposed lots to install an on-site stormwater detention system that will ensure post-development stormwater flows into Worthy Street do not exceed pre-development flows. This will ensure that the existing flooding problem in Worthy Street is not worsened by the proposed subdivision.</p> <p>A condition of any planning permit will require an amended plan of subdivision to be submitted that demonstrates how stormwater detention will be achieved to Council's satisfaction.</p> <p>The stormwater plan is expected to rely on restricting the location of future buildings in order to allow stormwater to drain to Worthy Street. It is therefore recommended that it be a condition of any planning permit for the owner/applicant to enter into a section 173 agreement that requires future dwellings on proposed Lots 4, 5 and 6 to be constructed within the designated building envelopes.</p> <p>It is not expected there will be any requirement for building envelopes on the 3 proposed General Residential zone lots.</p>
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Public Submissions

Submission: Major concern with flooding on neighbouring properties due to being flooded numerous times in the past and Council works to resolve the drainage issues have not been effective.

Response: The submissions include photos that demonstrate flooding of a number of low-lying properties adjacent Worthy Street.

Following flooding of this area in 2011, Council received complaints from 3 landowners in Worthy Street (40, 44 and 48).

Upon investigation it was found that stormwater run-off from land to the south was entering the properties through a previously constructed open swale drain that runs through a drainage easement on the lots. It was also found that most of the privately installed internal culverts within the drainage easement were either non-existent or undersized. Council initiated further engineering assessment of the catchment to determine the appropriate sizes of culverts within the easement. It was recommended that culverts within the easement should be larger (with a minimum diameter of 525mm). The landowners have not installed the pipes as recommended, but have installed pipes that have an equivalent capacity.

The assessment also made recommendations in relation to the size of driveway culverts in Worthy Street. While two of the owners opted to increase the size of their driveway culverts in Worthy Street on a cost share basis with Council (owner paid for the pipes and Council installed the pipes), one owner chose not to increase the size of the driveway culvert on the basis the owner considered it was a Council responsibility. As a consequence of one pipe in the road reserve remaining undersized, there is a “bottle-neck” that may occasionally cause stormwater in the drain to back-up and flood into the road way and then spill over onto adjoining land.

This issue pre-dates the current application for subdivision. It has been demonstrated to Council's satisfaction that the proposed subdivision and future development of the land for housing will not make this existing situation any worse. It is not appropriate to require the permit applicant to construct drainage works downstream of 30 Brown Street Leongatha as there is no nexus between the current subdivision and the existing drainage problem.

Submission: Concern that the drainage infrastructure in Worthy Street is inadequate and that the subdivision will cause more flooding to Worthy Street and Gibson Street.

Response: The land is on the western edge of the township of Leongatha and surrounding land is zoned for Farming, Low Density Residential and Residential purposes. The level of road and drainage infrastructure in Worthy Street and Gibson Street is considered consistent with other low density rural locations in the Shire.

Part of the subject land and adjoining land in Worthy Street and Gibson Street is low lying and flat compared to the majority of land in Leongatha. Due to the flat nature of the surrounding land, run-off from this location to the south is slow, and the area can become saturated and flood during high rainfall events. Worthy and Gibson Street are narrow, unsealed Council roads, with open swale drains on either side of the road. Both roads are cut into the surrounding land and the road formation acts as an overland flow path for stormwater during extreme rainfall events.

Stormwater from the subject land currently runs off through the land at 40, 44 and 48 Worthy Street and 88 Gibson Street via a drainage easement that was created when those lots were subdivided.

The proposed subdivision does not propose any building works on the land and so the subdivision will not change the existing land surface. The subdivision will therefore not have any impact on the existing pattern of drainage in the local area. However, when each of the lots is developed with houses and other buildings, there will be less open ground area on the land to absorb rain and more of the rain will therefore run-off. This has the potential to contribute to the amount of flooding downstream.

The proposed subdivision proposes limiting the location of buildings on the lots in order to ensure that all stormwater run-off from any new buildings can be directed into Worthy Street by new drains installed within each lot, rather than run-off over the neighbouring land. This has been proposed in order to minimise the impact of the subdivision on the neighbouring lots that contain the drainage easement. Some stormwater will continue to run through the easement on the affected properties, although this will be less than the existing amount. Directing the majority of stormwater to Worthy Street will increase the amount of stormwater run-off in Worthy Street. In the context of the amount of stormwater that drains into Worthy Street, the increase is considered minimal and will not significantly contribute to the incidence or extent of flooding that is occasionally experienced in Worthy Street.

In response to the concerns raised by the objectors, Council's Engineering Department have considered ways to ensure the situation of flooding is not made worse by the subdivision and future development of the subject land. Slowing down the rate of stormwater run-off from the land into Worthy Street is considered an effective way to ensure the proposal does not contribute to the existing flooding situation. There is capacity within the subject land to detain stormwater on-site so that it is delayed in entering Worthy Street, which allows more time for any downstream water to drain away. Council's Engineering Department have therefore recommended it be a condition of any planning permit to require a Stormwater Management Plan that shows how stormwater will be detained within the site, before being discharged into Worthy Street.

Due to its low-lying position in the landscape and the amount of water draining towards the area from the western side of Leongatha, the neighbouring land to the west (40, 44 and 48 Worthy Street and 88 Gibson Street) may still flood from time to time, however the extent of flooding will not be made worse by the proposed subdivision and future development.

This is consistent with the objective of the Planning Scheme at Clause 56.07-4 for urban run-off management which states that stormwater systems must be designed to ensure that flows downstream of the subdivision site are restricted to pre-development levels unless increased flows are approved by the relevant drainage authority and there are no detrimental downstream impacts.

Submission: It was a condition of subdivision planning permit 2008/32 to install crossover pipes in Worthy Street to Council's satisfaction. Owners have since spent thousands of dollars buying pipes and materials to repair the problems but still suffer flooding due to the Shires lack of due diligence.

Response: Planning Permit 2008/32 was a 4 lot subdivision that created the lots that are now know as 40, 44, 48 Worthy Street and 88 Gibson Street. The subdivision permit included a number of conditions, including the need for 2 new driveway crossovers with concrete culverts and end walls and creation of a drainage easement through the lots. The permit condition did not specify a minimum design standard for the culvert works. The works were completed and

inspected by Council and were considered to satisfy Council's requirements, before the titles for the new lots were issued.

Following receipt of complaints about flooding in 2011, Council officers' initiated an investigation into the size of the pipes in the easement and Worthy Street. Two of the affected properties chose to increase the size of the culverts in Worthy Street on a cost-share basis proposed by Council in 2011. One affected property did not pursue this option. As a consequence, one pipe in the road reserve remains undersized. This creates a "bottle-neck" as previously discussed and this may occasionally cause stormwater in the drain to back-up and flood into the road way and spill over onto adjoining land.

As discussed above, this issue pre-dates the current application for subdivision. It has been demonstrated to Council's satisfaction that the proposed subdivision and future development of the land for housing will not make this existing situation any worse. It is not appropriate to require the permit applicant to construct drainage works downstream of 30 Brown Street Leongatha as there is no nexus between the current subdivision application and the existing drainage problem.

Conclusion and Recommendation:

Council has considered the matters under Section 60 of the Planning & Environment Act 1987. It considers that the proposed subdivision is appropriate having regard to the relevant matters and can be managed through appropriate conditions.

That a report be written to Council recommending the issue of a Notice of Decision for subdivision of the land into six lots in accordance with the endorsed plans and subject to appropriate conditions.