

Delegate's Report

Application No: 2017/78

Application Type: 2 Lot Subdivision

Received: 3 April 2017

The Applicant:

Name: Minns Consulting
Address: PO BOX 249
Korumburra VIC 3950

The Proposal:

Proposal: Subdivision of the land into two lots

The Land:

Land Address: 85 Treases Lane Mirboo North VIC 3871 and 70 Pincini's Lane
Mirboo North VIC 3871

Land Description: L1 TP680003K Parish of Mardan, L1 TP680233R Parish of
Mardan

Assessment:

By: Tanya Cooper

Planning Scheme and/or Planning and Environment Act Definition

Land Use

NA

Development

Subdivision of the land into 2 lots

Zone and Overlays:

Zone: Farming

Overlays:

- Environmental Significance Overlay Schedule 2 (Special water supply catchment areas)
- Environmental Significance Overlay - Schedule 5 (Areas susceptible to erosion)

Why is a Permit Required?

Zone

Use

N/A – Use for agriculture and dwellings is existing.

Development

Clause 35.07-3 – A permit is required to subdivide land.

Overlays

Clause 42.01-2 – A permit is required to subdivide land. This does not apply if a schedule to this overlay specifically states that a permit is not required.

- The Schedule 2 (Water supply catchment areas) to this overlay does not contain a relevant exemption because the land is not connected to reticulated sewer and is not a subdivision by a public authority.
- The Schedule 5 (areas susceptible to erosion) to this overlay does not contain a relevant exemption for subdivision.

Particular provisions

NA

Particular provisions that are relevant but do not trigger a permit

NA

Size of the Land (Square meters or hectares):

Lot 1 TP680233R – 63.15ha

Lot 1 TP680003K – 66.56ha

The total land area is approximately 129.71ha

Proposed Lot 1 – approximately 116ha

Proposed Lot 2 – approximately 12ha

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 registered covenants or section 173 agreements on either of the copies of titles submitted with the application dated 3 March 2017.

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. The land adjoins two Council roads - Treases Lane is an unsealed Council road; Pincini's Lane is also an unsealed Council road.

Is there a designated waterway on the land?

Yes. There is are a number of designated waterways running through the property, affecting both of the existing lots.

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?

No further information was required.

Inspections:

| Date Inspected | Observations |
|----------------|---|
| 3 May 2017 | <p>The land contains two lots that have been developed as a dairy and beef farm known as Seven Streams Farm.</p> <p>Lot 1 TP680233R – 63.15ha - The lot has frontage to Treases Lane of approximately 315m. There is an existing constructed gravel driveway to Treases Lane and a second, unconstructed access (farm gate opening) onto Treases Lane. The lot has an existing single storey weatherboard dwelling and a number of Zincalume sheds, and a water tank. The balance of the lot is developed with grazing paddocks and farm tracks and contains a number of dams.</p> <p>Lot 1 TP680003K – 66.56ha – The lot has a frontage to Pincini Lane of approximately 480m. There is an existing constructed gravel driveway to Pincini's Lane and a separate farm access gate at the end of Pincini's Lane. The lot has an existing single storey weatherboard dwelling, a dairy building with feeding trough, feed silo and effluent ponds and two large Zincalume sheds near the dairy as well as smaller sheds near the dwelling. The lot contains a dam close the northern property boundary as well as part of a dam near the centre of the lot. The balance of the land has been developed as grazing paddocks, with established pastures, fenced paddocks and farm tracks.</p> <p>There are a number of designated waterways on the land from which the farm derives its name. The largest waterway runs from south to north through the centre of the land. This waterway has been dammed. A number of smaller waterways running from both the east and the west into the central waterway, meeting close to the centre of the land. Some of these smaller waterway have also been dammed to provide stock crossing points. There are also a number of smaller waterways that are primarily non-permanent drainage channels.</p> <p>There are extensive areas of native vegetation that has been established along the waterways and along fences and property</p> |

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| | boundaries as windbreaks. There is non-native vegetation established around each of the dwellings as domestic gardens. The balance of the land has been developed as grazing pasture. |
| | Both lots appear to have access to reticulated power, telecommunications but not water or sewer. |

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.

Were there any objections received?

No objections/submissions were received during the notification period.

Was the application referred under Section 55 or 57C?

| Authority | Which Clause? Determining or Recommending? | Date received and response |
|-----------------------|--|-------------------------------|
| South Gippsland Water | 66.02-5 Special water supply catchment - Determining | 30/5/17 – Conditional consent |

Were there any non-statutory or internal referrals?

| Authority | Which Clause / Overlay / Why? | Date received and response |
|------------------|---|---------------------------------|
| SGSC Waste Water | To determine if waste water can be treated and retained on-site in accordance with the SEPP (Waters of Victoria) under the Environment Protection Act 1970. | 25/5/17 – Unconditional consent |

Planning Scheme Requirements and policies:

SPPF

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

11 SETTLEMENT

- 11.01 Victoria
 - 11.01-1 Settlement networks
- 11.07 Regional Victoria
 - 11.07-1 Regional planning
 - 11.07-2 Peri-urban areas
- 11.10 GIPPSLAND
 - 11.10-1 A diversified economy
 - 11.10-3 Sustainable communities

13 ENVIRONMENTAL RISKS

- 13.03 Soil Degradation
 - 13.03-2 Erosion and landslip

14 NATURAL RESOURCE MANAGEMENT

- 14.01 Agriculture
 - 14.01-1 Protection of agricultural land

- 14.01-2 Sustainable agricultural land use
- 14.02 Water
 - 14.02-1 Catchment planning and management

16 HOUSING

- 16.02 Housing form
 - 16.02-1 Rural residential development

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

- 21.03-3 Environmental risks
- 21.03-4 Natural resource management
- 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

21.07 ENVIRONMENTAL RISKS

- 21.07-2 Land and catchment management

21.08 NATURAL RESOURCE MANAGEMENT

- 21.08-1 Agriculture

21.10 HOUSING

- 21.10-3 Rural residential development

21.12 TRANSPORT

- 21.12-1 Transport

21.13 INFRASTRUCTURE

- 21.13-1 Waste management and stormwater drainage

Clause 22 policies

The following Clause 22 policies are considered relevant to the assessment of this application:

- 22.06 Rural Subdivision

General Assessment:

State Planning Policy Framework

The proposal is not consistent with the relevant objectives and strategies of the SPPF clauses listed above. Specifically the proposal is not consistent with state policies:

- Clause 11.01-1 to preserve and protect features of rural land and natural resources and features to enhance their contribution to settlements and landscapes.
- Clause 11.07-1 to avoid development impacts on land that contains food production values.
- Clause 11.10-1 to avoid loss of areas of strategic significance (agriculture) and to protect productive land and irrigation assets that help grow the state as an important food bowl for Australia and Asia.
- Clause 14.01-1 to protect productive farmland which is of strategic significance in the local or regional context.
- Clause 14.01-2 to encourage sustainable agricultural land use.
- Clause 16.02-1 to manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.

Local Planning Policy Framework and Local policies

The proposal is not consistent with the relevant objectives and strategies of the LPPF clauses and Local policies listed above. Specifically the proposal is not considered consistent with the following policies:

- Clause 21.08-1
 - To protect high quality agricultural land for primary production;
 - To strongly discourage rural residential land use on lots over 4.1 hectares in agricultural areas;
 - To limit the impact of house lot excisions by strongly encouraging the maximum lot size of 2ha for a house lot;
- Clause 21.10-3

- to ensure that the resource of agricultural land is protected and retained in primary production;
- to strongly discourage dwellings not related to commercial scale agriculture in rural and high quality agricultural areas;
- to strongly discourage rural residential use of land on lots over 4.1 hectares in agricultural areas.

Clause 35.07-3 Farming Zone Subdivision Decision Guidelines

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. The schedule to the Farming zone specifies that each lot must have a minimum lot size of 80ha. Although proposed Lot 1 will exceed 80ha, proposed lot 2 does not meet the minimum lot size specified in the Farming zone.

Notwithstanding the minimum lot size provisions, the Planning Scheme also states that a permit may be granted to create lots smaller than 80ha if the subdivision is the re-subdivision of existing lots and the number of lots is not increased. In this case, the proposed subdivision is the re-subdivision of two existing lots and the number of lots is not proposed to increase. The proposal is therefore not prohibited by the Planning Scheme and can be considered having regard to the relevant decision guidelines of the Planning Scheme.

Clause 35.07-6 Farming Zone Decision Guidelines

| General issues | Response |
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| The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies. | The proposed subdivision is not considered consistent with state and local planning policies to protect valuable agricultural land from inappropriate development. The proposal results in a lot of a 12ha that is not suitable for agriculture in its own right and this is not supported. The proposal results in the net loss of agricultural land and this is not supported. |
| Any Regional Catchment Strategy and associated plan applying to the land. | NA – None apply. |
| <ul style="list-style-type: none"> • The capability of the land to accommodate the proposed use or development, including the disposal of effluent. • How the use and development makes use of existing infrastructure and services. | <p>The land is considered capable of accommodating the proposed subdivision and making use of the existing service infrastructure.</p> <p>Each of the proposed lots has an existing driveway and crossover to a public road and each proposed lot is able to be connected to reticulated electricity and telecommunications networks.</p> <p>There is no reticulated water, however each of the proposed lots has sufficient area for water storage tanks within the lot boundaries.</p> |

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| | Each of the proposed lots has sufficient area to contain the existing buildings and effluent treatment and disposal areas wholly within the lot boundaries. |
| How the use or development relates to sustainable land management. | <p>It is considered the proposed subdivision is not consistent with the long term sustainable management of the land for agriculture.</p> <p>The proposed subdivision removes a 12ha portion of the farm from the historic farm tenement. The proposal also removes one of the existing farm dwellings and a number of farm sheds from the existing farm holding. The proposed subdivision also removes one of the established farm access points from Treases Lane.</p> <p>The proposed subdivision creates a reduced farm tenement of 116ha, with a single farm dwelling, farm sheds and dairy infrastructure, with primary access from Pincini's Lane.</p> <p>The applicant has submitted that the part of the farm that is proposed to be removed has not previously been used for dairy grazing and that therefore there will be no net loss of farm land or productivity.</p> <p>Although the land may not have been used for dairy grazing, the land and second dwelling have still been used in association with the larger farm, providing a basis for the farm management activities occurring on the balance of the farm and supplementing the diversity of production on the farm. The loss of 12ha of land and a second dwelling on the farm is therefore likely to limit the potential of the land to be run in the same way it has historically been run.</p> <p>In support of the application, the applicant has submitted that the proposed 12ha lot is large enough to support a farm enterprise producing organic eggs, sheep and pigs.</p> <p>The applicant has submitted a Profitability Report prepared by OnFarm Consulting. The Profitability Report assumes:</p> <ul style="list-style-type: none"> • 6ha grazing area for sheep/lamb production • 4ha grazing area for pig production • 2ha grazing area (including around existing sheds) for free-range egg production <p>The report concludes the 12ha farm enterprise will return a gross margin total of \$111,343.</p> <p>The applicant has not submitted any evidence that this</p> |

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| | <p>level of production is currently occurring on the land or has previously occurred. The application also does not include a Farm Plan demonstrating how the land will be used to produce the animals referred to in the Profitability Report.</p> <p>Notwithstanding the applicant's statements about the existing or proposed use of the land, there is no mechanism that can be used to successfully bind the applicant to continue using the land for the proposed agricultural activities. The land may be bought and sold with no on-going conditions associated with land use being enforceable through the Planning Scheme.</p> <p>Council must therefore consider how it is likely that a 12ha parcel of land, with an existing dwelling and outbuildings will be used.</p> <p>The land is not likely to be affordable to be reincorporated back into any nearby farms, due to the premium price a lot under 40ha with a dwelling usually obtains.</p> <p>It is most likely that in the short term (5-10 years) that the land will continue to be farmed intensively to produce income to the landowners as they have proposed. However it is also reasonably likely that when the land changes ownership at some point in the future, the land is more likely to be used and developed as a rural lifestyle property.</p> <p>As the proposed 12ha lot is of a size that is not easily managed as a lifestyle property without special equipment and knowledge of farming, it is reasonable to assume that over time the land will not be managed to the same high quality that is required to sustain a commercial grazing property. Problems arising from poorly managed lifestyle properties can negatively impact adjoining farming activities in the surrounding area (through spread of weeds) as well as have other amenity impacts (noise from animals and machinery use, chemical use). These activities may also affect the adjoining dairy's organic status.</p> <p>The applicant has submitted the proposed 116ha lot is of a size that is suitable for agriculture. As a premium organic dairy farm this may be likely, however the trend for dairy farms in Victoria has been towards larger farms (Ref: Dairy Industry Profile Agriculture Victoria December 2014).</p> |
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| | <p>The average size of dairy farms in 2016-2017 in the State Dairy Farm Monitor Project undertaken by Dairy Australia, was 268ha. This is more than twice as large as proposed farm lot (Ref Dairy Farm Monitor Project Report Victoria Annual Report 2016-2017 (DEDJTR/Dairy Australia/Agriculture Victoria)).</p> |
| <p>Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.</p> | <p>As discussed above, each of the proposed lots is not considered suitable for the most likely use of the land. The 116ha lot is considered too small to support commercially viable dairy farming unless the property retains its premium organic certification.</p> <p>The proposed 12ha lot is not considered suitable for rural residential purposes, being too large to manage without special equipment and techniques. The land is also not considered large enough to support commercial farm production.</p> <p>The proposed 116ha farm lot will be larger than immediately adjoining lots, however, is not out of character with the size of farming lots in the local area.</p> <p>The proposed 12ha rural residential lot is smaller than nearby farming lots and is generally larger than rural lifestyle lots in the local area.</p> |
| Agricultural issues and the impacts from non-agricultural uses | |
| <p>Whether the use or development will support and enhance agricultural production.</p> | <p>It is considered that the proposed re-subdivision does not support and enhance agricultural production of the whole farm.</p> <p>The land has historically been operated as a tenement of 129ha, with two farm dwellings and associated infrastructure.</p> <p>Although a reasonable sized farm lot will be created the farm lot will be smaller than the original farm operation.</p> <p>In addition the proposal creates a 12ha lot that is not considered large enough to support a farming enterprise in the long term.</p> |
| <p>Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.</p> | <p>The proposal is not expected to affect soil quality, as each lot has sufficient area for on-site effluent disposal. The dwellings and shedding are existing on each lot and no other development that may affect soil or water quality is proposed.</p> |

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| | <p>The proposal will permanently remove a portion of approximately 12 ha of the usable farm land from agricultural production by incorporating it into a lot that cannot sustain farming in the longer term and which is unlikely to be re-incorporated into the larger farm once it is has been subdivided.</p> |
| <p>The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.</p> | <p>The creation of a rural residential lot in close proximity to a farm has the potential to limit the operation and expansion of the farm, due to amenity impacts and land management conflicts arising from having a rural lifestyle property in close proximity to a dairy farm.</p> <p>However, the proposed lot is at the edge of the farm and is will be partly separated from the farming activity by established vegetation and the waterways. The lot has sufficient area for further screen planting around the dwelling if required to reduce amenity impacts.</p> |
| <p>The capacity of the site to sustain the agricultural use.</p> | <p>The farm has traditionally been farmed as a tenement. The proposed subdivision reduces the overall size of the farm and this limits the capacity of the land to sustain the agricultural use.</p> |
| <p>The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.</p> | <p>The whole farm is considered to be comprise good agricultural land.</p> <p>The farm has access to two rural roads, good soil, excellent on-farm water resource (dams) and existing farm infrastructure including 2 dwellings, herring bone dairy and associated shedding, established gravel farm tracks and established paddocks and fencing suitable for dairy and beef farming.</p> <p>The removal of a 12 ha portion of the land, represents a loss of 9.3% of the total farm area.</p> <p>The permanent loss of this amount of farm land from productive agriculture is not supported.</p> <p>The applicant submits the 12ha parcel has previously been used and developed for agricultural purposes (beef calves, sheep, pork and eggs) separate to the dairy farm and that the proposed lot is large enough to be able to support continued farming. However, no supporting evidence of the scale of the existing or proposed farming activity has been submitted with the application to support this statement.</p> |
| <p>Any integrated land management plan prepared for the site.</p> | <p>NA- None applies.</p> |

Clause 65.02 Subdivision Decision Guidelines

| Decision Guidelines | Response |
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| The suitability of the land for subdivision. | The land currently comprises two lots and the re-subdivision of land will not increase the number of lots. |
| The existing use and possible future development of the land and nearby land. | <p>The surrounding land is used and developed for farming and rural living purposes.</p> <p>The proposed subdivision creates a large lot (116ha) with an existing dwelling and dairy farm infrastructure suitable for continued use for dairy farming.</p> <p>The subdivision creates a smaller lot (12ha) with an existing dwelling. The proposed lot is not considered large enough to support continued use of the land for commercially viable cattle grazing. The subdivision will therefore result in a change of use of the small lot to either a more intensive form of farming or a rural residential lifestyle property.</p> |
| The availability of subdivided land in the locality, and the need for the creation of further lots. | <p>There is currently a wide range in sizes of farm lots in the Mirboo North area. It is not considered that there is a need for smaller farm lots.</p> <p>There are also many existing small lots suitable for rural residential purposes. It is not considered that there is a need for any additional rural lifestyle lot. In particular, it is considered that a lot of 12ha is not ideally suited to either the rural lifestyle market or the farming market.</p> |
| The effect of development on the use or development of other land which has a common means of drainage. | The proposal will not directly impact on land that has a common means of drainage as no development is proposed. |
| The subdivision pattern having regard to the physical characteristics of the land including existing vegetation. | <p>The proposed subdivision pattern generally has regard to the physical characteristics of the land, including existing vegetation.</p> <p>The proposed lot boundary follows the waterways and established tree corridors.</p> |
| The density of the proposed development. | The subdivision does not increase the density of dwellings or lots. |
| The area and dimensions of each lot in the subdivision. | Proposed Lot 1 will have an area of 116ha. Proposed Lot 2 will have an area of 12ha. |
| The layout of roads having regard | NA – no new roads are proposed. |

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| to their function and relationship to existing roads. | |
| The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots. | Each proposed lot has existing vehicular access from a public road. |
| The provision and location of reserves for public open space and other community facilities. | NA |
| The staging of the subdivision. | NA |
| The design and siting of buildings having regard to safety and the risk of spread of fire. | NA |
| The provision of off-street parking. | NA |
| The provision and location of common property. | No common property is proposed. |
| The functions of any body corporate. | NA |
| The availability and provision of utility services, including water, sewerage, drainage, electricity and gas. | Each of the lots is able to be connected to existing power and telecommunications networks. There is no reticulated water or sewerage or gas available to the land. |
| If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot. | Each of the proposed lots has sufficient area to treat and retain effluent associated with each of the existing dwellings, wholly within the boundaries of the lot. |
| Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas. | The proposed subdivision is not expected to impact existing vegetation. |

Clause 22.06 Rural Subdivision Policy Decision Guidelines

This policy applies to applications to subdivide land and to re-subdivide land in the Farming zone. The application proposes the re-subdivision of 2 existing lots into 2 new lots and the policy therefore applies to the proposal. The objectives of the Rural Subdivision Policy are discussed below:

| Objective | Response |
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| To limit the further fragmentation of rural land by subdivision | Although the proposal does not result in an increase in the number of lots, the proposal creates a lot of 12ha that is not suitable for farming in the long term and in this respect, the proposal contributes to the fragmentation of rural land. |
| To ensure that lots resulting from subdivision are of a sufficient size to be of benefit to agricultural production | <p>Proposed Lot 1 has an area of 116ha and is considered suitable to support continued agricultural production. However, the trend for dairy farms is towards larger lots and it is possible that in the longer term the land will not be large enough to support dairy production in its own right.</p> <p>Proposed Lot 2 will have an area of 12ha and a lot of this size is not considered large enough to support long term agricultural production. The land is also considered too large for rural residential purposes, being too large to be easily maintained without special equipment and farming knowledge.</p> |
| To encourage the consolidation of rural lots | The proposal consolidates some of the land into a larger parcel, however also creates a small parcel of land that cannot be easily consolidated into a farm in future. |
| To limit the cumulative impact of house lot excisions, including serial small lot subdivisions | <p>The proposal seeks to excise one of the existing dwellings from the existing farm tenement.</p> <p>There is no evidence the land has previously had a dwelling or house lot excised from the farm and therefore the proposal is not considered a serial small lot subdivision.</p> |
| To ensure that house lot excisions are undertaken for legitimate reasons related to agriculture | <p>The proposed re-subdivision has been proposed to enable the existing landowners to retire from farming, sell the majority of the farm and retaining their existing home and farm lifestyle on a smaller lot.</p> <p>House lots excisions can be of benefit to agriculture, by removing excess dwellings from a farm and creating transferrable land parcels that are unencumbered by dwellings.</p> <p>However, in this case it is considered the extent of land proposed to be excised is excessive and the removal of additional land from the farm is not of benefit to agriculture in the long term.</p> |

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| To provide a consistent basis for considering planning permit applications for the subdivision of land | Having regard to previous decisions in relation to re-subdivision of farming lots, the proposal is not supported. |
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The proposal is considered to be a subdivision of land to accommodate an existing dwelling. The relevant decision guidelines of Council's Rural Subdivision Policy are discussed below:

| Decision Guidelines | Response |
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| <p>Any proposal for the subdivision of land to accommodate an existing dwelling must demonstrate that:</p> <ul style="list-style-type: none"> The existing dwelling is no longer reasonably required for the carrying out of agricultural activities in the long term There are beneficial agricultural outcomes for the land by excising the dwelling The excision of the dwelling is compatible with and will not reduce the potential for farming or other legitimate rural land uses on the land, adjoining land and the general area | <ul style="list-style-type: none"> The applicant has not demonstrated that 2 dwellings are no longer required to carry out agricultural activities in the long term. Dairies often require more than one dwelling to support farm workers. However, as the size of the dairy farm is comparatively small and the increasing use of technology in farming, it is considered reasonable that the 2nd dwelling could now be surplus to the needs of the farm. The applicant has not demonstrated how the existing agricultural activities on the land will be benefited by removing one of the dwellings. The proposal removes 12ha of land, an existing dwelling, farm infrastructure and a road access connection from the existing tenement and will reduce the potential for farming on the balance land. The potential amenity conflicts arising from rural lifestyle properties have the potential to impact farming on the adjoining land and general area. |
| <p>Any proposal for the excision of an existing dwelling must be undertaken by the re-subdivision of existing land titles where that potential exists. Former road reserves, lots under 49 hectares created by consolidation or other subdivision process not requiring a planning permit, and historic lots on former inappropriate Crown settlements and townships, may not be used for this purpose.</p> | <p>The dwelling excision is proposed by the re-subdivision of the existing land titles and this is supported by the Policy.</p> <p>The land to be re-subdivided does not comprise former road reserve, lots under 40 hectares that were created by consolidation or other subdivision processes that did not require a planning permit. The lots are not history lot on former inappropriate Crown settlements and townships.</p> |
| <p>A permit that approves the excision of an existing dwelling by re-subdivision where the balance (remaining) lot is less</p> | <p>NA - The proposed balance lot is 116ha and exceeds 40 hectares. It is not considered necessary to limit the potential for a future dwelling to be constructed on the land, as the land already contains an existing dwelling.</p> |

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| than 40 hectares will contain a condition requiring that the land owner enter into an agreement under section 173 of the Act that prevents the development of any additional dwelling on the balance lot | |
| <p>Where the application seeks to excise a dwelling by increasing the number of lots:</p> <ul style="list-style-type: none"> • There must be no opportunity available for re-subdivision of the balance lot(s) • The subject dwelling proposed for excision must have existed on the land on or before 16 December 1999 • The balance (remaining) lot must be greater than 40 hectares in area • Where a dwelling has been excised from the land since 29 May 2009, further subdivision (by any method) to accommodate another existing dwelling from that land will be strongly discouraged | NA – the proposal does not seek to increase the number of lots. |
| An application proposing an area of greater than 2 hectares for the dwelling lot will be strongly discouraged | <p>It is proposed to create a lot for the dwelling of 12 hectares. The size of the lot exceeds the recommended lot size by 10ha.</p> <p>The option to reduce the size of the lot for the dwelling has been put to the permit applicant, however that option has not been pursued.</p> |
| Excisions that result in 'axe-handle' or island style lots will be strongly discouraged | <p>The proposal does not result in an axe-handle or island style lot.</p> <p>The proposed lot is not regularly shaped, as it proposes using waterways to form the proposed northern, eastern and western property boundaries. The lot boundaries are based on geographic features and may be supported if the application were otherwise supported.</p> |
| A house lot excision that is likely to lead to a concentration of lots that would change the general use and character of the rural | <p>No new dwellings are proposed.</p> <p>The proposal changes the use of the existing dwelling from a dwelling in support of an on-going farm, to a</p> |

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| area will be strongly discouraged | <p>dwelling in support of a rural lifestyle purpose.</p> <p>The proposed subdivision is therefore expected to change the character of the surrounding rural area.</p> <p>There is an existing rural residential property near proposed Lot 2 in Treases Lane and the proposed subdivision will create an additional rural lifestyle property in that area.</p> |
| An adequate distance must be maintained around dwellings to limit impacts on agricultural activities | Proposed Lot 2 has sufficient area around the dwelling to limit impacts on agricultural activities (being more than 100m from the proposed property boundaries to the dwelling). |

Clause 42.01 – Environmental Significance Overlay Schedule 2 Decision Guidelines

| Decision Guidelines | Response |
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| The likely impacts of the proposed development on water quality and quantity in the water supply catchment. | The proposed subdivision is not expected to impact the water quality or quantity in the Tarwin water supply catchment as no development is proposed. |
| The potential cumulative impact of development on the quality and quantity of water in the water supply catchment over extended periods of time. | The proposal does not increase the number of lots or the number of dwellings and will not result in any change to the quality and quantity of water in the catchment over time. |
| Whether new development proposals will lead to an increase in the amount of nutrients, pathogens or other pollutants reaching streams, surface water bodies and groundwater. | No new development is proposed. |
| Whether subdivision and intensive farming activities in water supply catchments, especially in the lower areas of water supply catchments near take-off points are appropriate. | The subdivision is not in the lower part of the Tarwin Catchment and is not near a water take-off point (nearest one is at Dumbalk). |
| Any relevant catchment management plan, policy, strategy or Ministerial Direction, including the Ministerial Guideline for Planning Permit Applications in Open Potable Water Supply Catchment Areas or any | <p>The proposal is consistent with the Ministers Guideline for Planning Permit Applications in Open Potable Water Supply Catchment Areas as follows:</p> <ul style="list-style-type: none"> • Guideline 1 – The proposal does not increase the density of dwellings. • Guideline 2 – The existing dwellings are connected to existing effluent disposal systems. |

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| superseding document. | <ul style="list-style-type: none"> • Guideline 3 – No vegetation needs to be removed. • Guideline 4 – No development is proposed within 30m of a waterway. • Guideline 5 – No new agricultural use is proposed. |
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Clause 42.01 Environmental Significance Overlay Schedule 5 Decision Guidelines

The proposed subdivision is the re-subdivision of existing lots. No building or construction works are proposed or required, as the proposal utilizes existing roads and vehicular crossovers. The proposed subdivision will therefore not affect the risk of erosion or landslip.

Conclusion and Recommendation:

Council has considered the matters under Section 60 of the Planning & Environment Act 1987. It considers that the proposed development is not appropriate having regard to the relevant matters and cannot be managed through appropriate conditions.

It is recommended that a notice of refusal be issued for subdivision of the land into two lots, for the following reasons:

1. The proposal is not consistent with State Planning Policies in relation to agricultural land and rural development, specifically policies at Clauses 11.01-1, 11.07-1, 11.10-1, 14.01-1, 14.01-2 and Clause 16.02-1, which aim to manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.
2. The proposal is not consistent with the objectives and decision guidelines of the Farming Zone which seek to encourage the retention of productive agricultural land and to ensure development will support and enhance agricultural production.
3. The proposal is not consistent with Local Planning Policies in relation to agricultural land and rural development, specifically Clauses 21.08-1 and 21.10-3, which strongly discourage rural residential land use on lots over 4.1 hectares and which encourage a maximum lot size of 2ha for a house lot.
4. The proposal is not consistent with the objectives and decision guidelines of Council's Rural Subdivision Policy at Clause 22.06 which aim to ensure that lots resulting from subdivision are of sufficient size to be of benefit to agricultural production and to limit the cumulative impacts of house lots excisions by strongly discouraging lots greater than 2ha for a dwelling lot.