

354 extons road, kinglake central

application for a two lot subdivision

prepared by hansen partnership on behalf of owner

march, 2016

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1 introduction

Hansen Partnership have been engaged by Jason and Catherine King to lodge a planning permit application for a two lot subdivision of 354 Extons Road, Kinglake Central.

This report provides details of the subject site, relevant planning controls and policies, a discussion of relevant planning matters and an analysis of similar cases determined via the Victorian Civil and Administrative Tribunal (VCAT).

To summarise, the proposed subdivision is considered appropriate for the following reasons:

- The subdivision of land will not result in increased development or additional dwellings on the site.
- It will not alter the existing neighbourhood character or streetscape of Extons Road.
- The current use of the site will not be changed with modification of allotment boundaries.
- It will not impact, alter or affect the soil quality of the agricultural land currently used within subject site.
- The proposed subdivision will not fragment any land that is not already used for residential purposes on the site.

Further details which outline the reasons for making the above conclusions are contained throughout the balance of this planning report.

2 subject site and environs

2.1 subject site

The subject site is located on the east side of Extons Road, Kinglake, approximately 3.5 km from Kinglake Primary School and 7.6 km from Kinglake Town Centre.



Figure 1: subject site aerial

Key features that make up the subject site are as follows:

- The site is rectangular in shape with a frontage of to Extons Road of 179.84 metres. The site has a depth of 1504.84 metres at its longest distance and a total site area of 26.79 Ha.

- Topographically, the land has a gentle rolling slope and falls 100 metres from the front to the rear of the site.
- An approximate 9000 sq. metre area located at the front of the site can be defined as the 'residential precinct' of the subject site as it is occupied by two existing separate and self-contained dwellings and associated buildings and works. None of the land within the 'residential precinct' are used for agricultural purposes i.e. grazing.
- The existing dwellings are described in detail below:
 1. The existing dwelling 2 located to the north of the property is set back approximately 11 metres from Extons Road and 24 metres from the north common boundary. This owner of the property (applicant) resides within this dwelling. An existing garage and shed are located to the south of the dwelling. Access to the dwelling is obtained via a crushed rock driveway located on the north boundary of the site. Access to the garage is obtained via a crushed rock boundary located in the centre the frontage. This driveway continues through the centre of the site providing access to the grazing land and forested area at the rear of which the owner uses and maintains.
 2. The existing dwelling 1 located to the south of the property is set back approximately 22 metres from Extons Road and 16 metres from the south common boundary. This dwelling is currently rented out by the owner of the property. An existing carport is located on the west side of the dwelling. Access to the site is obtained by a gravel driveway located on the north side of the dwelling.



Figure 2: zoomed in site aerial of 'residential precinct'

- The central area of the site to the rear of the residential area is used for livestock grazing. This area makes up approximately half of the remainder of the site and the purpose of keeping cattle on this area is primarily to maintain the property for future use, rather than a commercial livestock operation. It is also highlighted that the subject site is on inadequate size and dimension to accommodate a commercial livestock operation, and that half the site is effectively unusable for agricultural activity due to the expanse of tree and vegetation cover accommodated on the rear half of the land.
- Further east located towards the rear of the site is a large dense forested area. This vegetation makes up approximately half of the site and consequently is un-suitable for agricultural use unless this area of the site were to be fully cleared.
- The site is also occupied by scattered vegetation along the frontage and part of the northern boundary. The second dwelling is surrounded by scattered vegetation to the north and south. This existing vegetation allows for reduced amenity impacts on neighbouring dwellings and enhanced neighbourhood character.
- Existing timber and wire fencing, approximately 1.5 metres in height, is located around the property boundaries. An existing fence is located around the residential area of the two dwellings, providing an existing division between residential and agricultural land and also to separate the area surrounding the two dwellings. Existing fences are also located across the agricultural land to separate the various paddocks.

Photos and aerial of the subject site to follow on the following pages.



Figure 3: dwelling 2 located at the north of the site



Figure 4: dwelling 1 and carport located at the south of the site



Figure 5: existing garage located in the centre of the property associated with dwelling 2



Figure 6: entrance to dwelling 2 located on the north boundary



Figure 7: entrance to garage associated with dwelling 2 located in the centre of the frontage



Figure 8: entrance to the dwelling 1



Figure 9: view west of the agricultural land from approx. half way east into the subject site

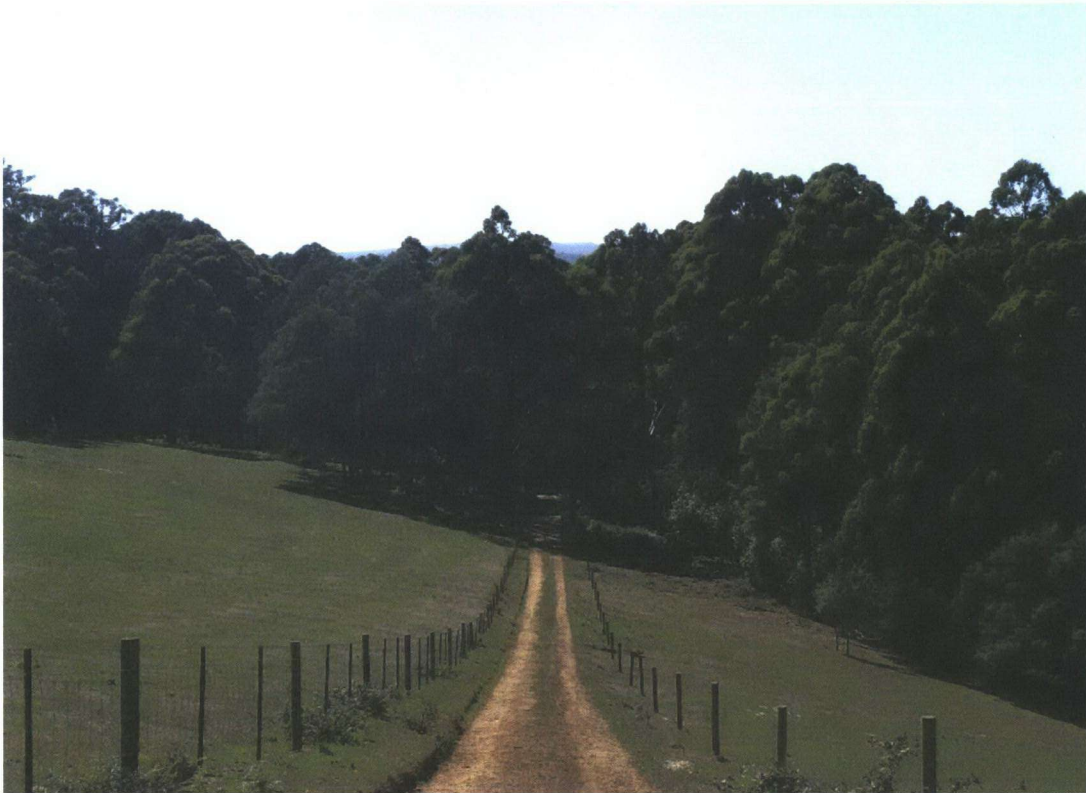


Figure 10: view east of the forested area located at the rear of the subject site



Figure 11: view west of the 'residential precinct' of the subject site



Figure 12: cattle grazing on a southern paddock of the subject site

2.2 environs

The subject site and surrounding area to the north, south and west is zoned for farming use. The area located to the east of the property is zoned for public conservation and resource. The subject site adjoins six rural properties to the north and south within the Farming Zone. The site is adjacent to two properties located on the opposite side of Extons Road. The surrounding properties vary in size, from 1680 sq. metres to 28 Ha. The adjoining properties are described as follows:

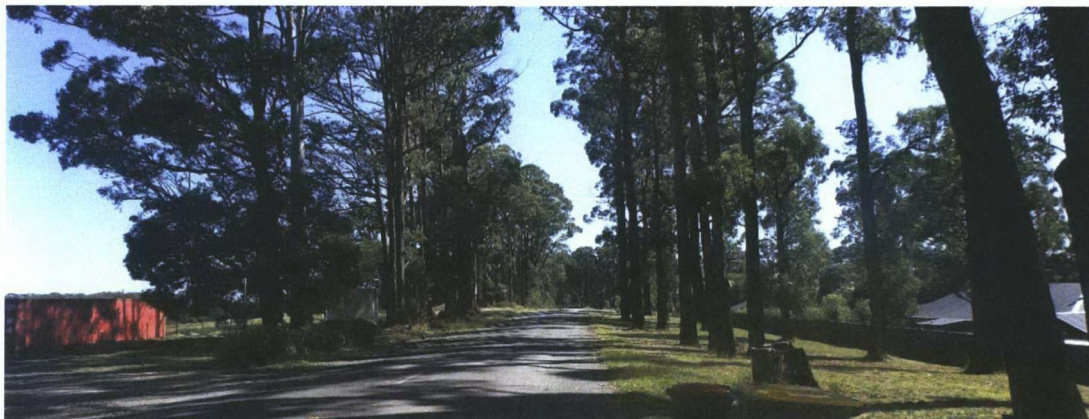


Figure 13: view north of Extons Road



Figure 14: view south of Extons Road

North

Located along the north boundary of the site are five rural properties of various sizes and uses. The majority of the north boundary is abutted by the property located at 40 Captains Creek Road. The agricultural land of this property, as noted from figure 15, is used for grazing use, similar to the subject site. Also located to the north is 370 Extons Road, a small property of approximately 1680 sq. metres. This site is occupied by a single detached dwelling and the use of this site is for residential purposes as seen in figure 16.

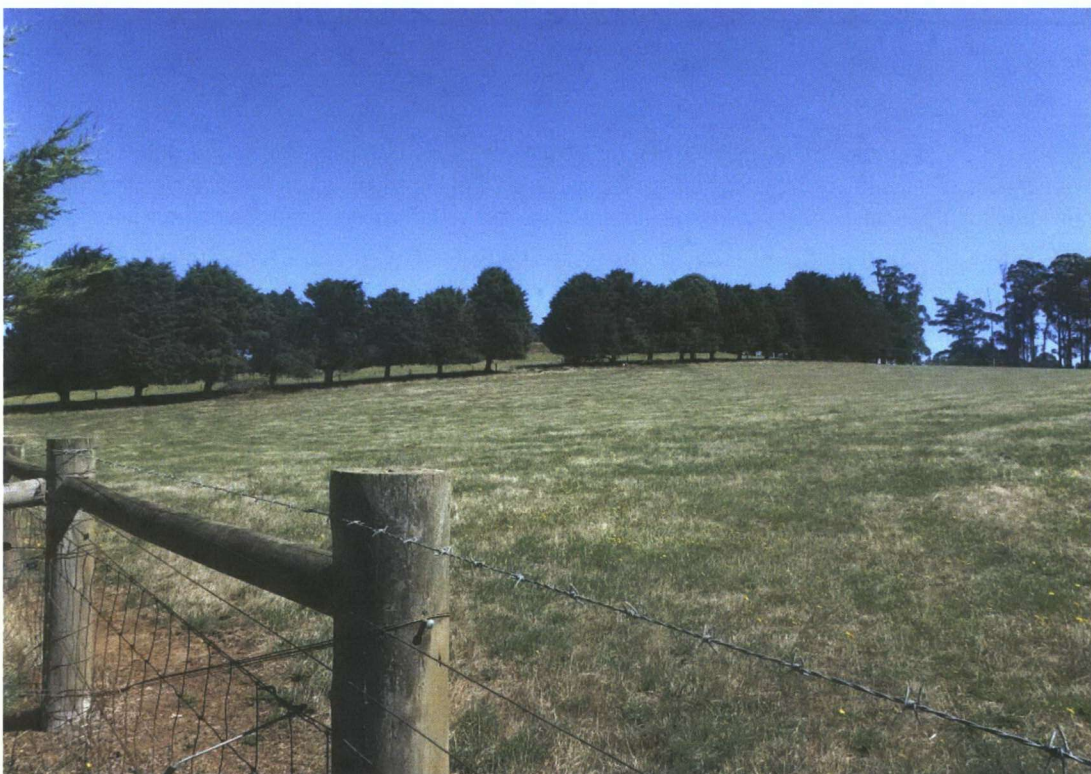


Figure 15: view north of the grazing land of 40 Captains Creek Road



Figure 16: view north of dwelling located on 370 Extons Road

South

Land to the south, 348 Extons Road, is occupied by a single detached dwelling. This site as noted in figure 17, the main use of the site is for growing small crops. The area of the site in which the dwelling is located extends further to the east than that of the subject site, therefore encroaching further onto agricultural land.



Figure 17: view south of 348 Extons Road

East

Land to the east is zoned for public conservation and resource.

West

Land to the west located opposite Extons Road (see figure 18), 347 and 359 Extons Road, are zoned for farming use. The property of land, 359 Extons Road, has an area of approx. 2490 sq. metres. This small property is surrounded to the north, west and east by 347 Extons Road. This larger property, with an area of approx. 19 Ha, is used for grazing land.



Figure 18: view of grazing land of 347 Extons Road with 359 Extons Road in the distance

3 proposal

The proposal is for two lot subdivision of the subject site. The key features are outlined below:

Lot 1 is to be located at the south western corner of the subject site. The lot would be occupied by the existing dwelling 1, surrounding vegetation and effluent treatment area located in the south west corner of the site. As per the existing conditions of the site, Lot 1 will be fenced off and not have access to the agricultural land to the east.

Lot 1 would be square in shape with a frontage to Extons Road of 64.97 metres and a maximum depth: 50.52 metres. Lot 1 would have a total area of 3242 sq. metres.

Lot 2 would form the remainder of the subject site, and would be occupied by the existing dwelling 2 to the north west, garage and shed located in the centre of the residential area, agricultural land and forested area at the rear.

Lot 2 would be a battle axe shape with a frontage to Extons Road of 114.27 metres and a depth at the north boundary of 1504.84 metres. Lot 2 would have a total area of 26.47Ha.

No alterations will be made to the existing dwellings or fencing, no additional constructions or works are required and there will be no change to the existing use of the site.

No vegetation removal is required for the two lot subdivision.

4 the planning context

Clause 65 identifies the relevant decision guidelines that a Responsible Authority must consider in assessing a planning permit application. The following are relevant to the proposed development:

- *The matters set out in Section 60 of the Act.*
- *The State Planning Policy Framework and the Local Planning Policy Framework including the Municipal Strategic Statement and the local planning policies.*
- *The purpose of the zone, overlay and other provisions.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the amenity of the area.*

These matters form the framework of the following sections of this submission.

4.1 state planning policy framework

The following provisions of the State Planning Policy Framework (SPPF) are relevant to this application:

- Clause 11 – Settlement;
- Clause 12 – Environment and Landscape Views;
- Clause 16 – Housing;
- Clause 17 – Economic Development.

These policies encourage urban consolidation and infill housing that will complement and enhance neighbourhood character through complementary architecture.

4.2 municipal strategic statement

- 21.03 Economic Development
- 21.03-2 Agriculture
- 21.04 Housing
- 21.05 Environment

Council's LPPF recognises the need for the provision of a mix and range of housing types, while maintaining the productive agricultural land.

4.3 land use zoning

This site is within the Farming Zone.

The purpose of the Farming Zone is to:

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

- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

Pursuant to Clause 35.07 (Farming Zone) a permit is required to subdivide land. Though the zone states each lot must be at least 40 Hectares, it also states a permit may be granted for a two lot subdivision if *'the subdivision is to create a lot for an existing dwelling'*. The current planning permit application is made pursuant to this specific clause.

4.4 overlays

This site is affected by the Environmental Significance Overlay – Schedule 1 (ESO1).

The Environmental Significance Overlay seeks:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To identify areas where the development of land may be affected by environmental constraints. To ensure that development is compatible with identified environmental values.*

Pursuant to Clause 42.01 (Environmental Significance Overlay) a permit is required to subdivide land.

Schedule 1 to the Environmental Significance Overlay incorporates a statement of environmental significance which highlights:

"Murrindindi Shire has extensive high quality agricultural areas located along the Great Dividing Range at Toolangi and Kinglake and along the Goulburn River floodplain. The attributes of these areas consist of a combination of well-drained red soils, high rainfall and access to water".

Schedule 1 further highlights environmental objectives to be achieved, including:

- *Recognise the finite nature of high quality agricultural land.*
- *Protect high quality agricultural land because of its versatility, productivity and ability to sustain a wide range of agricultural uses without degradation.*
- *Protect the potential production from high quality agricultural land.*
- *Prevent the unsustainable development of high quality agricultural land that may result in the loss of the quantity or quality of the land and limit the full productive potential of the land.*
- *Prevent the conversion of high quality agricultural land to non-soil based development.*

The decision guidelines associated with Schedule 1 nominate:

- *Maintain the productive potential of high quality agricultural land.*
- *Consider the suitability of high quality agricultural land in the assessment of development proposals. Buildings or works are to be sited to avoid or minimise loss of good quality agricultural land.*
- *In considering any proposal, the responsible authority may consider the need for:*
 - *The preparation and approval of a whole farm plan to outline proposed and future development, identify agricultural opportunities on the land, and protect future agricultural potential of the land*
 - *The need to forward the application for comment to the Department of Primary Industries if the proposal may result in a major loss of productive agricultural land.*

The above quoted statement of environmental significance and associated objects and decision guidelines are relevant to the consideration of the current planning application and will be specifically addressed throughout the balance of this planning report.

4.5 particular provisions

The subject site is located within an area of Aboriginal Cultural Heritage Sensitivity. The proposal is to subdivide an existing dwelling, without conducting any development or works. On this basis the proposal would not be deemed to constitute a 'high impact activity' therefore the requirement for a Cultural Heritage Management Plan would not be triggered/ is not required.



Figure 19: map showing the surround Aboriginal Cultural Heritage Sensitivity areas.

5 key planning considerations

Based on the provisions of the Murrindindi Planning Scheme and the decision guidelines of Clause 65, the following questions are considered to be the key planning considerations relevant to the proposed development of the subject site.

- Is there strategic policy support for the proposal?
- Is the proposal an acceptable response for the area in which it is located?
- Will the proposal affect the quality of land?
- Will the proposal fragment the land?
- Does the proposal affect the neighbourhood character?

5.1 strategic justification for subdivision

State and Local planning policy strongly supports the generation of housing and residential diversity while maintaining the agriculture sector as one of the Shires main economic activities.

The State and Local planning policy outlines the need to boost the Murrindindi area an increase in housing and lifestyle while at the same time protecting the productive agricultural land. This is evident in Clause 21.04-1 and the objective to *'attract and promote an increase in population, housing, residential diversity and lifestyle options'*.

Clause 21.04-1 then states the strategy as part of Objective 1 is to *'facilitate housing and population growth and development in a manner that balances and protects the natural environment.'*

The proposed subdivision seeks to create residential diversity within the Shire without the actual need to develop the subject site with an additional dwelling, given that two dwellings already exist on site. Therefore, the two lot subdivision is considered to be appropriate as it will not create any differing impact the surrounding natural environment than already exists.

In general terms the proposal supports the objectives of Clause 21.03-2 (Economic Development – Agriculture) by *protecting and maintaining the productive land for future use. The proposal would support agricultural use by retaining the larger balance of agricultural land of the existing allotment within Lot 2 (see figure 19), therefore conserving this section of land for future agricultural use.*

The proposal supports *Objective 1 (Agricultural production, growth and diversity)* of Clause 21.03-2 which emphasises the need to: *"support and grow agriculture as one of the Shire's principal economic activities"*. The proposal achieves the strategies outlined in Objective 1 and are described below.

| | |
|--|---|
| <p><i>Retain and expand existing agricultural production activities, including beef and sheep grazing, horticulture, cropping, vegetable growing, aquaculture, timber production and niche products.</i></p> | <p>The proposed two lot subdivision will retain the existing agricultural land within Lot 2 to allow the owner to continue to maintain the land through cattle grazing as a land management technique. The land however is not of adequate size and dimension for it to accommodate a viable commercial scale farming activity (noting also that half of the land is covered by native vegetation).</p> |
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| <p><i>Develop the agricultural economic base through the attraction of value adding agricultural industries.</i></p> | <p>As stated above the owner will continue to use the land for cattle grazing as a land management technique. The excision of dwelling 1 will also not negatively impact the economic prosperity of any future agricultural land use (should it be deemed viable), particularly as the existing dwelling to be excised will remain on the land regardless of its proposed excision.</p> |
| <p><i>Encourage agricultural diversity and expand opportunities for emerging and new farming enterprises.</i></p> | <p>The subdivision will not limit the opportunity for future changes in the type of agricultural activities taken place on the site.</p> |
| <p><i>Facilitate diversification of agricultural industries that are compatible with existing agricultural practices, including horticulture, intensive animal husbandry, agroforestry, farm gate agricultural sales, boutique, niche agriculture, agricultural processing and value adding industries.</i></p> | <p>The two lot subdivision will not limit the potential diversification of future agricultural industries. As stated above the owner will continue to maintain the land in its current state, thereby allow the evolution for any future use.</p> |
| <p><i>Encourage the production of high quality and value agricultural product for the export and niche markets.</i></p> | <p>The continued maintenance of the land for cattle grazing will allow for any future use to produce high quality products, should this become viable in future.</p> |
| <p><i>Encourage new rural and agricultural uses that meet the challenge of climate change and facilitate carbon farming initiatives.</i></p> | <p>The continued maintenance of the land for cattle grazing will allow for any future use to address climate change (as appropriate) and potentially implement carbon farming initiatives.</p> |
| <p><i>Establish appropriate settlement boundaries that help to define the character of both agricultural areas and townships, improve safety and avoid dispersed development that detracts from the agricultural viability of the area.</i></p> | <p>The proposed subdivision will not alter the character of the surrounding area, not detract from the localities agricultural viability, as there will be no further development on site, rather it only constitutes a 'paper subdivision' to excise the existing allotment.</p> |

The proposal also supports *Objective 2 (Rural and agricultural land use and development)* of Clause 21.03-2 which emphasises the need to: "support and grow agriculture as one of the Shire's principal economic activities". The proposal achieves the strategies outlined in Objective 2 and are described below.

| | |
|---|--|
| <p><i>Discourage the fragmentation of rural land into lots that are not capable of productive agricultural and rural use.</i></p> | <p>The proposed two lot subdivision will not result on the fragmentation of rural land as it will retain the existing agricultural land within Lot 2 to allow the owner to continue to maintain the land through cattle grazing as a land management technique. The land however is not of adequate size and dimension for it to accommodate a viable commercial scale farming activity (noting also that half of the land is covered by native vegetation).</p> <p>Additionally the land to be excised as Lot 1 does not currently accommodate any productive agricultural activity as it accommodates the existing dwelling to be excised on Lot 1. As the minimum area necessary for the excision of the existing dwelling is proposed, there will be no change to the current landuse arrangement.</p> |
| <p><i>Ensure that the use and development of rural land protects and enhances agricultural potential and the productive capacity of the land.</i></p> | <p>The two lot subdivision will not limit the potential diversification of future agricultural industries. As stated above the owner will continue to maintain the land in its current state, thereby allow the evolution for any future use, should a viable commercial agricultural use be identified in future.</p> |
| <p><i>Ensure that the use and development of rural land is compatible with surrounding agricultural activities.</i></p> | <p>The use and development of land resulting from the proposed 2 lot subdivision is inherently compatible with surrounding landuse given it already exists on site. The proposed 2 lot subdivision will not result in any further development on site, given it only constitutes a 'paper subdivision' to excise the existing allotment.</p> |
| <p><i>Ensure that agricultural land is not developed for primarily residential purposes.</i></p> | <p>Although the intent of this strategy is clear, it is not specifically applicable to the current application, particularly as 2 dwellings already exist on the subject site and are currently occupied. Noting the proposal seeks to excise them onto two separate allotments, there will be no outwardly visible modification to the use and development of the land.</p> |
| <p><i>Discourage the development or conversion of land to uses incompatible with productive agriculture.</i></p> | <p>The proposal will not result on the conversion of the use of the land, as this current use/s already actively exist.</p> |

| | |
|--|--|
| <i>Identify and protect high quality agricultural land, ensuring that it is protected from unplanned long term loss and is available for ongoing agricultural use.</i> | As highlighted the active agricultural use of the land for cattle grazing is primarily as a land management technique, rather than a commercial scale operation, which is simply not viable based on limited land size and extent of vegetation cover. But regardless of this, the proposed 2 lot subdivision will in no way diminish the area of available land for such agricultural activity. |
| <i>Ensure that small lot subdivisions or any excision of an existing dwelling protects and maintains the productive agricultural capacity of land and general area or supports the conservation of an identified heritage place to which the Heritage Overlay applies.</i> | The land to be excised as Lot 1 does not currently accommodate any productive agricultural activity as it accommodates the existing dwelling to be excised on Lot 1. As the minimum area necessary for the excision of the existing dwelling is proposed, there will be no change to the current landuse arrangement and will leave the balance of the land and second dwelling to maintain existing agricultural use. |
| <i>Protect water catchments and areas of high landscape, biodiversity, conservation and heritage value.</i> | The proposed 2 lot subdivision will have no negative impact over water catchments nor areas of high landscape, biodiversity, conservation or heritage value. |

The policy guidelines of Clause 21.03-2 outlines policy guidelines for the excision of an existing dwelling. The proposed subdivision is assessed against the guidelines as follows:

| | |
|---|---|
| <i>Any excision of an existing dwelling will not create 'rural living' style vacant lots that are used for residential lifestyle rather than productive rural purposes.</i> | The existing lot already contains two dwellings, therefore the proposed two lot subdivision will not create a new vacant lot. The subdivision is simply a 'paper subdivision' of the two dwellings which currently are located on the land and will remain in active use. |
| <i>Any excision of land will have a relationship with and be required for the continuing operation of the rural and agricultural use of the land.</i> | It is proposed to retain the portion of land for agriculture use with associated dwelling within one lot, and for the separate second dwelling to exist on its own title. |
| <i>Any proposal for excision is compatible with and will not have an adverse impact on and not reduce the potential for farming and other rural land uses on the land, adjoining land and the general area.</i> | The proposed excision will not fragment the land currently used for cattle grazing (as a land management technique) and will not limit any future agricultural opportunities. The excision is also compatible with the surrounding location as there are a number of other existing dwelling excisions within close proximity of the subject site (refer to Section 5.3). |

| | |
|---|---|
| <p><i>Any proposal for excision will meet the principle of 'right to farm' in rural areas, where existing agricultural and rural uses in the area have a legal right to continue.</i></p> | <p>The intended future owner of dwelling 1 currently resides in the dwelling and is fully aware of the operations involved with ongoing operations of agricultural activities within the locality. However should it be deemed appropriate, a note on title could potential be included to alter this issue to all current and future owners of the land.</p> |
| <p><i>Subdivision that is likely to lead to a concentration of lots that would change the general use and character and limit the productive capacity of the rural area is discouraged.</i></p> | <p>This two lot subdivision can only be described as a 'paper subdivision' to excise the two existing dwellings onto two separate allotments. Therefore it will not create a concentration of lots, more than what already exists through existing dwellings. As such no further dwelling development will take place on site.</p> |
| <p><i>No more than one lot may be excised from a lot that existed on the date that the Murrindindi Planning Scheme was gazetted.</i></p> | <p>The proposed excision of the two existing dwellings constitutes the first allotment excision on the subject site.</p> |
| <p><i>An adequate distance should be maintained around a dwelling within any existing lot to limit impacts of agricultural activity.</i></p> | <p>Existing fencing is located around existing dwellings already provide a clear separation between residential and agricultural land. The smaller allotment to be excised for the existing dwelling will follow the existing fence lines, thereby existing separation distances will be maintained.</p> |
| <p><i>Subdivision within proclaimed water supply catchment areas is discouraged to protect water quantity and quality.</i></p> | <p>The proposed subdivision will not result in further development of the site, therefore, there will be no further impacts on water supply.</p> |
| <p><i>Ongoing sustainable use of the land is provided, including consideration of environmental constraints and protection and enhancement of the natural environment.</i></p> | <p>The proposed subdivision will not impact the surrounding natural environment. As stated above, the agricultural land will remain within Lot 2 to preserve the land for agricultural use, whilst the northern sections which currently accommodate native vegetation will remain unaltered.</p> |
| <p><i>Any excision for an existing dwelling should generally provide:</i></p> <ul style="list-style-type: none"> ▪ <i>A maximum area of 2 hectares for the lot with the existing house located on it, or if existing buildings and dwelling infrastructure covers a large area, as near as practicable to this area;</i> ▪ <i>An area of at least 40 hectares for any balance of land;</i> ▪ <i>A minimum setback of 30 metres from the dwelling on the land to be excised from any agricultural activity or rural industry on any adjoining land.</i> | <p>Noting the subject site has a total area of 29.79ha, therefore it cannot meet all the general requirements for an excision of an existing dwelling. Despite this, the proposed area for Dwelling 1 will be 3242 sq. metres which clearly complies with the requirement of a maximum of 2ha, by minimise the size of the land to be excised. The dwelling on this allotment also has sufficient setbacks from any adjoining agricultural land. The area of the balance of the land will be 26.47ha, which will contain the existing Dwelling 2. The area is considered acceptable as it allows the main dwelling and portion of agricultural land to remain within one lot without causing further fragmentation of the land.</p> |

From the above assessment tables of the proposal against the strategies and policy guidelines of *Objectives 1 & 2 of Clause 21.03-2 Agriculture*, it can be surmised that the formalisation of two dwellings on separate allotments will allow for lifestyle options and choice, without changing the use of the site or negatively impacting on agricultural land. As such the agricultural land within Lot 2 would continue to be grazed and maintained as it is on the existing site. Likewise noting that the proposal will reduce the area of the existing allotment by 0.3 of a hectare. It will not further reduce or fragment that area of the subject site accommodating farming activities.

Furthermore the proposal supports Objective 3, '*Protect and enhance biodiversity and native vegetation assets and values*', of Clause 21.05-1, noting that the forested area at the rear of the property will not be impacted by the two lot subdivision and will remain an asset within the proposed Lot 2.

The subdivision will not impact on the owner's ability to continue to use the land for current cattle grazing use. The subdivision will in fact create economic opportunities for the owner which in turn will be of assistance with ongoing maintenance of the site. This proposal directly aligns with both State and Local policies objectives and strategies. It is therefore submitted that the subject site can easily accommodate the proposed two lot subdivision without undermining the relevant planning policies relating to the protection of high quality agricultural land.

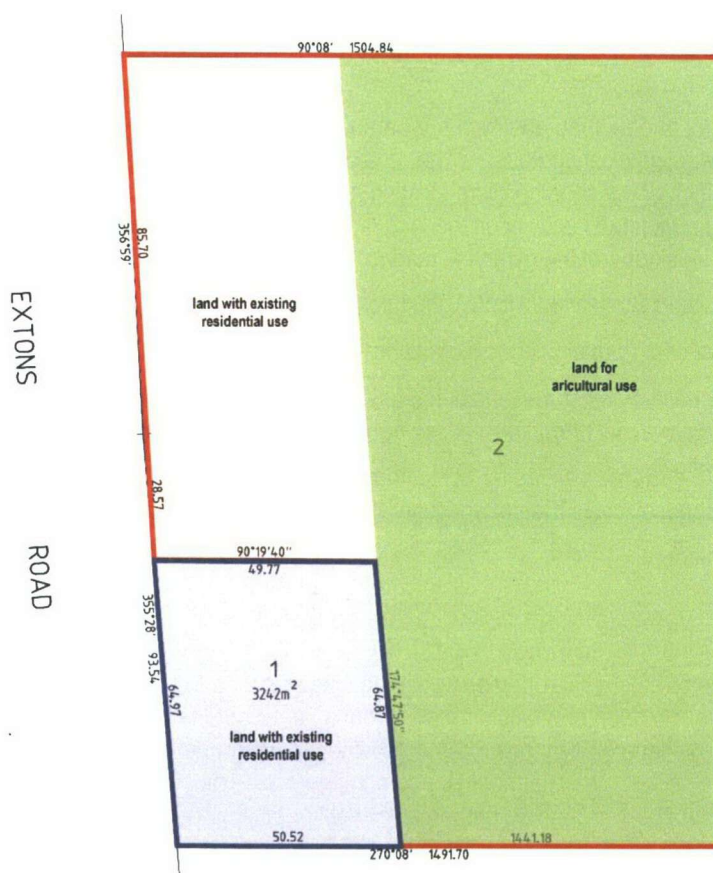


Figure 20: aerial of subdivision

5.2 farming zone and environmental significance overlay

The Farming Zone states that a permit may be granted for a two lot subdivision if there is an existing dwelling. Where it is highlighted, the subject site is occupied by two existing dwellings that function as separate and self-contained dwellings on specific areas of the site, including separate road frontage and access. The dwellings are sufficiently set back from the frontage and common boundaries and fit seamlessly into the neighbourhood character of Extons Road. The subdivision of the subject site into 2 separate allotments will not have any outwardly visually impact, therefore it is considered to be wholly acceptable in context.

Clause 35.07-6 (Decision Guidelines) of the Farming Zone states the follow points must be considered before deciding on a subdivision:

- *Whether the use or development will support and enhance agricultural production.*
- *Whether the use or development will adversely affect soil quality or 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.*

The proposed subdivision will not impact or effect the quality of the productive agricultural land in any way as the subject site is already developed with two existing houses. The area of the subject site which will form Lot 1 is located within the 'residential precinct' of the site, therefore existing agricultural land will not be further fragmented in any way, but also noting agricultural activity on the land is based on land management practices and not as a commercial livestock operation, given the land is of inadequate size.

As such the proposal supports the Decision Guidelines within Schedule 1 of Clause 42.01 which are to:

- *Maintain the productive potential of high quality agricultural land; and*
- *Consider the suitability of high quality agricultural land in the assessment of development proposals. Buildings or works are to be sited to avoid or minimise loss of good quality agricultural land.*

To re-iterate, the area of the subject site currently utilised for agricultural purposes will remain within Lot 2 and will not be further fragmented by the proposal. This area of agricultural land will continued to be owned and maintained by the current owner of the site, whereby the keeping of livestock as a land management practice will remain.

5.3 neighbouring dwellings: existing land excisions

In close proximity to the subject site are three small properties which are similar in size to Lot 1 of the proposed subdivision, which have obviously been previously excised from a larger rural land holding. These neighbouring properties are located at 370 and 359 Extons Road, in addition to the property located further north at 16 Captains Creek Road, are all small rural allotment as noted in figure 20. The allotment sizes range from 1680 – 3053 sq. metres, therefore these surrounding properties are either smaller or equivalent to Lot 1 of the proposed subdivision.



Figure 21: surrounding small allotments

All three properties are located within the Farming Zone and have the same Environmental Significance Overlay that affects the subject site. In effect the conditions of these comparable sites are identical to that of the subject site. These small properties are noted used purely for residential purposes and not of a size to accommodate agricultural activities. These properties are highlighted to illustrate that the proposed subdivision is in no way incongruent with existing land use and subdivision patterns within the immediate vicinity of the subject site.

Therefore, the design and allotment size of the proposed two lot subdivision is considered to be an acceptable outcome for the subject site and surround area based in existing land use and subdivision patterns.

6 VCAT case examples

In order to frame the consideration of the current 2 lot subdivision, some VCAT case examples are highlighted for reference, and particularly VCAT cases where the subdivision of 2 existing dwellings within a rural location have been considered. Details of relevant case examples include:

6.1 Zreikia v Greater Geelong CC (2015)

The relevant details of this case can be summarised as follows:

- Subject site is located in the Farming Zone and is occupied by one existing dwelling.
- The applicant was seeking a two lot subdivision.
- Lot 1 would be 1.6 ha and be occupied by the existing dwelling. Lot 2 would make up the remaining 13.9 ha.
- The applicant was granted a permit with a condition that no dwelling is to be built on the vacant Lot 2.

Firstly it is acknowledged that the details of this case of slightly different to the current proposal, in that the site did not contain two dwellings such as is the case with the current permit application. Notwithstanding this, the Tribunal made some very relevant statements to the consideration of the current matter as follows:

“Agricultural issues and the impacts from non-agricultural uses

- *The subdivision may well enhance agricultural production in that the land will be more cost effective, and as such, more likely to be utilised for farming. I say that the land will be more cost effective due to the excision of dwelling lot which would increase the price of the land.*
- *The subdivision will have no impact on soil quality.*
- *There is limited, and appropriately minimised, increases in potential for the use of the dwelling to limit the operation and expansion of adjoining and nearby agricultural uses. However, this is essentially an existing condition that will be maintained. The remainder of the land will be far more able to sustain agricultural production, and on balance, this results in a better outcome for the land as a whole, in line with the purposes of the Farming Zone.*
- *The excision of the dwelling from the farming land increases the capacity of the site to sustain the agricultural use, due to the increased cost effectiveness.*
- *The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure will not be impacted upon”.*

“Dwelling issues

- *The excision of the dwelling will result in the loss or fragmentation of land that is not productive agricultural land.*
- *The maintenance of the status quo with regard to the number of dwellings on the land limits the effect of agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.*
- *Similarly, maintenance of the status quo with regard to the number of dwellings on the land*
- *Limits the effect of the subdivision on the operation and expansion of adjoining and nearby agricultural uses”.*

“Environmental issues

- *There will be no impact of the proposed two lot subdivision on the natural physical features and resources of the area, in particular on soil and water quality.*
- *Similarly, there will be no impact on the flora and fauna on the site and its surrounds.*
- *Biodiversity of the area will not be unreasonably impacted upon.*
- *The subdivision will not impact on nutrient loads on waterways and native vegetation”.*

The above comments of the Tribunal area specifically relevant to the current planning application given that it highlights the maintenance of the 'status quo' as a consequence of the subdivision, and that agricultural and environmental issues do not result in negative impacts for the site and surrounds. As such the Tribunal's comments are directly applicable to the circumstances of the of the subject site based on the details outlined within this report.

6.2 Widdicombe v Colac Otway SC (2010)

The relevant details of this case can be summarised as follows:

- Subject site is located in the Farming Zone and is occupied by one existing dwelling.
- The proposal involves the re-subdivision of two lots. The existing Lot 1 had an area of 36.4 ha and contained the existing dwelling and Lot 2 had an area of 12.3 ha. The proposed Lot 1 would become 2.3 ha and contain the dwelling and Lot 2 would become 46.25 ha.
- The applicant was granted a permit with the condition of an agreement to no further subdivide the land. Another condition stated there was to be no further use and development on Lot 2 for 15 years.

Again it is acknowledged that the details of this case of slightly different to the current proposal, in that the site did not contain two dwellings such as is the case with the current permit application. Notwithstanding this, the Tribunal made some relevant statements to the consideration of the current matter as follows:

"6. The policies in the Scheme are clear about the objectives of encouraging and maintaining farming and agricultural activities in farming areas in the Farming Zone. As part of this overarching intent, it is policy to discourage ad hoc residential development in smaller lots, because residential development is likely to result in inflating farm land prices at the detriment of agricultural pursuits and farm expansion, causing conflict and friction between residents and farming operations due to the impact on residential amenity from farming operations such as noise, dust and traffic, and result in dwellings being distant from services and facilities.

15. On paper, the proposal to create a small lot with a house and conferring a house entitlement on the larger lot should be considered negatively. However, there is a set of circumstances here that warrant further consideration".

Comments made at paragraph 6 by the Tribunal highlights the typical issues raised when considering a subdivision in a rural location, however paragraph 15 outlines that there can be circumstances where further detailed consideration is required, rather than immediately defaulting to a refusal of a planning application.

The further details of his VCAT case have not been quoted here as they are contextual different, however what is highlighted is the circumstances of the current planning application which warrants Council undertaking further consideration of the specific details of the current matter, to determine whether the proposal meets the objectives and decisions guidelines of the planning policy framework. As discussed throughout the balance of this report, we strongly believe that the proposal does accord with relevant policies to warrant the support of Council.

6.3 McDonald v Moyne SC (2008)

- Subject site is located in the Farming Zone and is occupied by one existing dwelling.
- The applicant is seeking excise the existing dwelling and surround 1.6 ha which would become Lot 1 and Lot 2 would form the remaining 10.6 ha. The applicant had the intension of building a dwelling on the proposed Lot 2 in the future.
- The applicant was granted a permit.

Once again it is acknowledged that the details of this case of slightly different to the current proposal, in that the site did not contact two dwellings such as is the case with the current permit application. Notwithstanding this, the Tribunal still made some relevant statements to the consideration of the current matter as follows:

"5. Having viewed the subject site and considered all submissions received, I consider that the proposed subdivision is an acceptable outcome having regard to the existing subdivision pattern, extent of housing on rural residential type lots, the nature of existing land use activities and the planning scheme and related planning policy.

26. I am satisfied the subdivision is appropriate having regard to the layout of the subdivision and the draft farm plan that demonstrates most of the land is still capable of supporting a farming activity. I acknowledge that it would not be of sufficient size or extent to fully support a family, but it will support some agricultural productivity particularly the growing of hay and also some livestock.

27. I have also considered the existing subdivision pattern surrounding the site. For all intent and purpose surrounding lots are rural residential allotments, most of which have a detached dwelling. Some properties have livestock or horse grazing. In many respects the subject site is atypical in that it is much larger than all surrounding properties but that does not mean it is inappropriate to excise on dwelling from the main lot.

30. I am satisfied that the excision does not reduce the ability of the site to support some form of (albeit modest) farming purpose,"

The above statement is relevant to the circumstances of the current application, as it highlights matters of existing subdivision patterns, of which as is highlighted in Section 5.3 of this report, has a number of small lot excisions within the immediate vicinity of the subject site. It also makes commentary regarding *"most of the land is still capable of supporting a farming activity"* which is again specifically applicable to the details of the current site.

6.4 Roberts v Greater Geelong CC (2006)

- Subject site is located in the Farming Zone and is occupied by two existing dwellings.
- The applicant was seeking a two lot subdivision. Lot 1 would have an area of 4 ha and contain one dwelling and Lot 2 would have an area of 4 ha and contain the second dwelling.
- The applicant was granted a permit.

Although this case dates for 2006, its details and context are specifically relevant to the current planning permit application, in that it involved the subdivision of two separate dwellings onto two separate allotments. In further reading the details of the case, the issues are slightly different in that the site did not accommodate any agricultural activity, rather accommodated vegetation of environmental significant. In this context relevant comments made by the Tribunal in their favourable determination of the application include:

"36. Whilst rural zoned land is to be protected for rural uses, there was no dispute that this site will not be used for rural purposes. This block has exceptional circumstances which allow for approval of the subdivision. It is a lot that is environmentally significant in the area. Planning policy directs that the lot should be protected. The subdivision will not interfere with the significance of the land.

37The visual impact of the subdivision will not change. It will remain a bush block with two dwellings".

The above statements are relevant to the circumstances of the current application, as it highlights matters of the subdivision not interfering with the significance of the land and that the visual impacts will not change, given that the two dwelling will be retained.

For specific reference, copies of each of the above quoted VCAT case are included in Appendix 1.

7 conclusion

To summarise, the proposed two lot subdivision is considered appropriate for the following reasons:

- The proposed two lot subdivision will not alter the existing 'residential precinct' and associated residential use of the subject site for two separate and self-contained dwellings.
- The main portion of the site (the agricultural/ livestock area and forested land sections) will remain within one allotment, being proposed Lot 2.
- The subject site currently accommodates the grazing of livestock as a land management technique, but this does not constitute a commercial scale operation as the land is of inadequate size for this. Regardless, this existing agricultural activity will remain on the land following the proposed 2 lot subdivision.
- The proposed subdivision does not require construction or works to be undertaken to the existing dwellings.
- The proposed subdivision will not alter the appearance of the subject site from Extons Road.
- Via the proposed subdivision each dwelling will accommodate its own frontage and access to Extons Road, which is suitable for the provision of appropriate site access.
- No fencing will be required due to existing fencing surrounding the proposed Lots.
- The agricultural land will not be fragmented through the approval of the proposed 2 lot subdivision.
- The two lot subdivision is deemed an acceptable outcome for the surrounding area, as it is merely allowing the subdivision of two existing dwellings onto their own separate land titles.
- Other small lot land excisions have occurred within the immediate vicinity of the subject site, therefore the proposal cannot be considered to be creating a precedent for the locality.
- The proposal will not result in the creation of a vacant allotment, which might otherwise create pressure for an additional dwelling to be developed.
- The proposal is highly compliant with intent of the strategies and policy guidelines of *Objectives 1 & 2 of Clause 21.03-2 Agriculture*, where it can be concluded that the formalisation of two dwellings on separate allotments will allow for lifestyle options and choice, without changing the use of the site or negatively impacting on agricultural land.
- VCAT have issued many decisions in favour of similar subdivisions for the subdivision of rural land, including the excision of 2 existing dwellings.

Based on the details provided within this planning report, it is submitted that the proposal represent a two lot 'paper only' subdivision, as it will retain the status quo of the use and activity already conducted on the land. Based on the details outlined within this planning application report it is considered that the proposal warrants Council support and it suitable for approval. It is therefore respectfully requested that Council supporting the proposal through the issue of a Planning Permit.