



PLANNING COMMITTEE MEETING

AGENDA

Wednesday 12 February 2020

at 4:00 pm

COPACC

95 - 97 Gellibrand Street, Colac Victoria



COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

Wednesday 12 February 2020

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COLAC OTWAY SHIRE COUNCIL PLANNING COMMITTEE MEETING

NOTICE is hereby given that the next **PLANNING COMMITTEE MEETING OF THE COLAC OTWAY SHIRE COUNCIL** will be held at COPACC on Wednesday 12 February 2020 at 4:00 pm.

AGENDA

1 DECLARATION OF OPENING OF MEETING

OPENING PRAYER

*Almighty God, we seek your
blessing and guidance in our
deliberations on behalf of the
people of the Colac Otway Shire.
Enable this Council's decisions to be
those that contribute to the true
welfare and betterment of our community.*

AMEN

2 PRESENT

3 APOLOGIES AND LEAVES OF ABSENCE

4 WELCOME AND ACKNOWLEDGEMENT OF COUNTRY

Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past, present and emerging and welcomes any descendants here today.

Please note: All Council and Committee meetings will be audio recorded, with the exception of matters identified as confidential items in the Agenda. This includes the public participation sections of the meetings.

By participating in open Council meetings, individuals consent to the use and disclosure of the information they share at the meeting (including any personal and/or sensitive information).

Audio recordings of meetings will be available to the public on Council's website as soon as practicable following the meeting and may be circulated by other means also. Audio recordings are also taken to facilitate the preparation of the minutes of open Council and Committee meetings and to ensure their accuracy. Original audio recordings will be retained by Council for a period of four years.

As stated in Local Law 4, other than an official Council recording, no video or audio recording of proceedings of Council Meetings will be permitted without specific approval by resolution of the relevant Council Meeting.

5 DECLARATIONS OF INTEREST

A Councillor who has declared a conflict of interest, must leave the meeting and remain outside the room while the matter is being considered, or any vote is taken.

6 CONFIRMATION OF MINUTES

- **Planning Committee Meeting held on 11 December 2019.**

Recommendation

That the Planning Committee confirm the minutes of the Planning Committee Meeting held on 11 December 2019.

7 VERBAL SUBMISSIONS FROM APPLICANTS/OBJECTORS

The Mayor is to read out the names of those applicants and objectors who have confirmed in writing that they wish to make a verbal submission. These verbal submissions will be made in relation to each respective agenda item and must be directly relevant to the respective agenda item. A time limit of five minutes will apply.

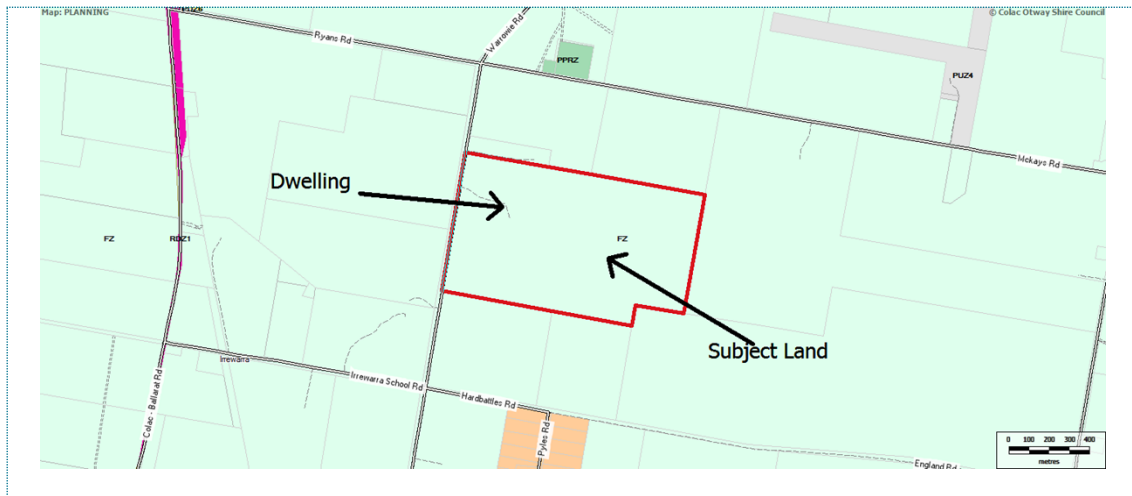
Item: 8.1

PP142/2019-1 - 260 Warrowie Road Irrewarra

ADDRESS AND PROPERTY DETAILS	260 Warrowie Road Irrewarra	APPLICATION NUMBER	PP142/2019-1
PROPOSAL	Two Lot Subdivision of Land		
PERMIT TRIGGERS	Clause 35.07-3 – Farming Zone – Subdivision Clause 45.02-3 – AEO2 – Subdivision		
TRIGGER FOR DETERMINATION BY COMMITTEE	Officer recommendation for refusal of excision of dwelling in Farming Zone		
ZONE	Farming Zone	OVERLAYS	Airport Environs Overlay – Schedule 2
COVENANTS	Nil		
CULTURAL HERITAGE	The site is partially within an area of cultural heritage sensitivity, with the dwelling and its driveway entirely within this area; however the proposal is not classed as a high impact activity.		
OFFICER	Helen Evans	GENERAL MANAGER	Ian Seuren
DIVISION	Development & Community Services		
ATTACHMENTS	1. PP142/2019-1 - 260 Warrowie Road IRREWARRA - Application [8.1.1 - 3 pages]		

1. LOCATION PLAN / AERIAL PHOTO

LOCATION PLAN



AERIAL PHOTO



2. RECOMMENDATION

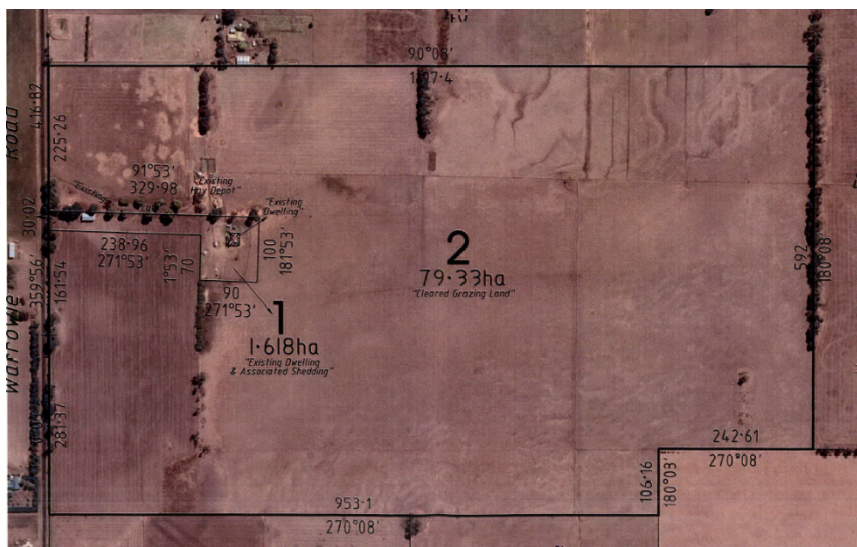
That Council resolves to issue a Notice of Decision to Refuse to Grant a Permit for the Subdivision of Land into Two (2) Lots at 260 Warrowie Road Irrewarra, known as C/A 42 Parish of Irrewarra, on the following grounds:

- 1. The proposed subdivision, which would create a 1.618 hectare lot projecting into a large agricultural landholding, is contrary to Clause 14.01-1S (Protection of Agricultural Land) of the Colac Otway Planning Scheme, which discourages development of isolated small lots in the rural zones from use for dwellings, and seeks to protect strategically important agricultural and primary production land from incompatible uses.***
- 2. The proposed subdivision is contrary to Clause 21.05-1 (Agriculture) of the planning scheme which seeks, inter alia, to limit the fragmentation of rural land by subdivision, to protect the rural and agricultural areas of the Shire from the proliferation of dwellings not associated with agriculture, and to discourage the subdivision of rural land that creates small lots for existing dwellings.***
- 3. The proposal, which would result in the fragmentation of productive agricultural land, does not accord with the purpose and relevant decision guidelines of the Farming Zone, set out in Clause 35.07 of the planning scheme which seek, inter alia, to ensure proposals are compatible with adjoining and nearby land uses, and require matters such as the potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses, and the potential for a proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture, to be taken into account.***
- 4. The proposed subdivision would result in the creation of a small 'battle-axe' shaped lot extending over 300m into an agricultural landholding that would abut the entire length of its northern, southern and eastern boundaries. The excision of the dwelling as proposed would create the potential for land use conflicts and would not represent orderly planning, contrary to Clause 65 of the planning scheme.***

3. PROPOSAL

The proposal seeks to excise an existing dwelling and shedding from the existing lot to create a separate lot with an area of 1.618 hectares. The dwelling was until recently unoccupied and in poor physical condition and, at the time of writing this report, was being renovated. The proposed rural residential lot, (Lot 1), would require new access to Warrowie Road. An existing shed, located 60m from the road frontage, would be in the narrow section of the lot that would provide vehicle access to the dwelling, which is situated around 280m from the front (west) boundary. There are also outbuildings associated with the proposed dwelling in the square/eastern section of the proposed rural residential lot.

Agenda Planning Committee Meeting - 12 February 2020



4. SUBJECT LAND & SURROUNDINGS

The subject lot has an area of 80.9ha, with a frontage of 698m to Warrowie Road. The land is used for grazing.

The site is located on the east side of Warrowie Road, approximately 2km north of the Princes Highway. The land is generally flat grazing land, with several shelter belts and minimal vegetation along the property boundary. There is an open-sided hay shed located 60m from the road, adjacent to the existing vehicle access. The vehicle access leads into the property to further shedding, stock yards, a hay storage area and a dwelling that was in a poor state of repair at the time of the application being lodged. It became apparent from site inspections to the property during the processing of the application that the dwelling is being renovated.

The following photographs provide evidence of its condition at the time of application and during the application processing:

Photo provided as part of application - June 2019



Officer site inspection - July 2019



Officer site inspection - September 2019





The applicant has advised that the dwelling was occupied until the previous owner died in January 2018. The land was purchased by the current owner in June 2018. The applicant further states that a relative has occasionally stayed in the dwelling; that the dwelling has an existing working septic system to the west of the dwelling; and that power is connected both for when the owner's father stays and for use by the builders whilst carrying out restoration. (See discussion about septic system later in this report.)

The nearest dwelling from the building being renovated is 300 metres to the north. Surrounding land is used for agricultural purposes, with the Irrewarra Bakery being located to the southwest of the site.

5. PLANNING SCHEME PROVISIONS

Planning Policy Frameworks

The state-wide Planning Policy Framework (PPF) seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development policies. The policies considered relevant to this application are identified below:

- 11.01 – Victoria
- 11.01-1S – Settlement
- 11.03-5R – The Great Ocean Road Region
- 14.01-1S – Protection of Agricultural Land
- 14.01-2R – Agricultural Productivity - Geelong G21

The Local Planning Policy Framework sets a local and regional strategic policy context for the Shire. The policies considered relevant to the application are identified below:

- 21.02 – Vision
- 21.03 – Settlement
- 21.05-1 – Agriculture

Zone

The subject site is located within the Farming Zone (FZ). The key purpose of this zone is to provide for the use of land for agriculture, and to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture. Under Clause 35.07-3, a planning permit is required for subdivision. The minimum specified lot size for this area is 80ha. A permit *may* be granted to create smaller lots in a limited number of other circumstances, including if the subdivision is to create a lot for an existing dwelling and the subdivision is a two-lot subdivision.

Overlays

A small portion on the northeast corner of the subject site is impacted by the Airport Environs Overlay Schedule 2 (AEO2). A key purpose of this overlay is to identify areas which are, or will be, subject to high levels of aircraft noise, including areas where the use of land for uses sensitive to aircraft noise will need to be restricted. A permit is required for subdivision under Clause 45.02-3 and an application is required to be referred to the airport owner.

Particular Provisions

There are no particular provisions relevant to this application.

General Provisions

Clause 65 - Decision Guidelines states that:

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

Clause 65.01 - Approval of an Application or Plan

This clause states, inter alia, that:

“Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- *The matters set out in section 60 of the Act.*
- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.”*

Clause 65.02 - Approval of an Application to Subdivide Land

This clause states that, before deciding on an application to subdivide land, the responsible authority must also consider, amongst other things:

- *The suitability of the land for subdivision.*
- *The existing use and possible future development of the land and nearby land.*
- *The availability of subdivided land in the locality, and the need for the creation of further lots.*
- *The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.*
- *The density of the proposed development.*
- *The area and dimensions of each lot in the subdivision.*

Other Relevant Provisions

Clause 71.02-3 - Integrated Decision Making

This clause states that:

“Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.”

Relevant Planning Scheme Amendments

Nil

6. REFERRALS

Internal Referrals

The application was referred internally to Council’s Health Protection, Infrastructure and Building Units, and the Airport Manager.

Health Protection Unit

Council’s Health Protection Unit carried out an inspection of the site in early September 2019 and concluded that the current septic tank is a ‘legacy system’ and appears not to be functioning. It was found that the house plumbing is not connected to the septic tank, the terracotta pipes are cracked and broken, and the trenches were unable to be located. Concern was expressed about whether there

are any trenches. The primary concern raised was that, due to the age of the building, the septic system may not be functioning as expected.

July 2019



September 2019



Council's Health Protection Unit commented that it may be inappropriate for Council to allow a subdivision, knowing that the house is not connected to a septic system. It was considered unclear whether the house had been lived in recently.

The Health Protection Unit noted that the house was under renovation and advised that it would therefore expect an application to install/alter a septic tank to be submitted. To date no such application has been received.

Infrastructure Unit

The application was referred to Council's Infrastructure Unit, which raised no objection subject to conditions relating to drainage and vehicle access.

Building Unit

Council's Building Unit advised that it does not have any issues with the subdivision on the basis that all existing buildings comply with building setback regulations from boundaries.

Airport Manager

Council's Airport Manager raised no objection to the proposal.

External Referrals

No external referrals were required. Clause 66.01 (Subdivision Referrals) of the planning scheme applies to applications for the subdivision of land, and referral is not required to servicing authorities for two lot subdivisions providing the conditions at Clause 66.01-1 are included on any permit issued.

7. PUBLIC NOTIFICATION & RESPONSE

Public notice was given for this application to all adjoining landowners/occupiers and a sign was erected on the site for 14 days. One objection was received. A letter of support was also received which commented, inter alia, on planning policy, the number of objections, potential controls to protect the right to farm and previous decisions by Council.

A Consultation Meeting (i.e. a meeting between the applicant and objector, facilitated by Council) was offered but the applicant declined this. The grounds of objections are summarised as follows:

- Impact on land values.
- Subdivision will cause fragmentation of viable agricultural land which is not consistent with Planning Policy Framework.
- Does not provide for orderly or sustainable planning and is not consistent with purpose of the Farming Zone.
- Subdivision is prohibited as it creates a lot below the minimum lot size specified in the schedule to the Farming Zone. The dwelling which is relied upon is not a dwelling which can be resided in.

Response

The issues raised are considered relevant planning considerations and are discussed in the assessment section below.

8. OFFICER'S ASSESSMENT

Before considering the merits of the proposal, it is necessary to consider whether the proposal is prohibited or not. It is noted that the objector has raised issues about whether the subdivision is prohibited, and this was also an issue of concern to officers when the state of disrepair of the building came to light during site inspections. The building must have existing use rights as a dwelling (prior to the subdivision being allowed) for this application to be considered; the refurbished building cannot claim such rights, nor can the proposed subdivision be allowed unless, at the time the permit is issued for the subdivision, the building's use is classed as a dwelling. Clause 63.06 (Expiration of Existing Use Rights) states that *"an existing use right expires if...the use has stopped for a continuous period of 2 years, or has stopped for two or more periods which together total 2 years in any period of 3 years"*. If the occupation of the building as part of the 80ha lot has ceased for either of those time periods, it is not considered that the building can be classed as a dwelling. If the building currently being renovated does not have existing use rights as a dwelling, the proposed subdivision is prohibited.

Whilst it is the understanding of officers that the dwelling on the site has not been lived in recently, the applicant has advised that it was occupied until January 2018. Council's records do not contradict this. As such, given that the occupation occurred less than two years ago and there is no evidence that the dwelling was unoccupied for 2 years in any period of 3 years, it is not challenged that the building has an existing use right as a dwelling under Clause 63 of the planning scheme.

A planning permit is required to subdivide land in the Farming Zone and in the AEO2. Under the provisions of the Farming Zone, the minimum specified lot size for subdivision in this location is 80ha. The application seeks to excise the dwelling (which is currently being renovated) from the land, creating a battle-axe shaped lot of 1.618ha, with improvements including the dwelling and shedding. The grazing land, vehicle access and stock yards would occupy the balance of the land, on a lot of 79.33ha. The site is within an area identified as medium agricultural capability in Council's Rural Land Strategy 2007 and is not in an area identified as Farmland of Strategic Significance.

The AEO2 only affects a small portion of the land in the northeast corner of the lot and the Airport Management raised no objection to the proposal.

The applicant considers that the proposal would be consistent with Clause 14.01-1S (Protection of Agricultural Land), as the land within proposed Lot 1 has already been taken out of agricultural production and has in the past been used for residential purposes. However, it is noted that the dwelling would historically have been occupied in association with the agricultural landholding.

It is considered that the proposal is incompatible with the following State and local planning policies in the Colac Otway Planning Scheme:

Clause 14.01-1S (Protection of Agricultural Land)

- *Protect strategically important agricultural and primary production land from incompatible uses.*
- *Limit new housing development in rural areas by:*
 - *Directing housing growth into existing settlements.*
 - *Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses.*
 - *Encouraging consolidation of existing isolated small lots in rural zones*

Clause 21.05-1 (Agriculture)

- *To limit the further fragmentation of rural land by subdivision.*
- *To protect the rural and agricultural areas of the Shire from the proliferation of dwellings not associated with agriculture.*
- *To ensure that lots resulting from subdivision are of a sufficient size to be of benefit to agricultural production or environmental protection.*
- *Discourage the subdivision of rural land that creates small lots for existing dwellings or vacant lots for the purposes of a dwelling.*

The application states that an inflated price had to be paid for the land as a result of having to compete with the lifestyle market. It is considered that this argument is one reason why the current proposal should not be supported, as rural lifestyle market pressure can impact on agricultural land values even when, as in this case, a dwelling is in a dilapidated state requiring significant renovation. The owner has elected to renovate the dilapidated dwelling notwithstanding the fact that it is stated in the application that it is superfluous to their needs. Whilst they are entitled to renovate the dwelling without the need for a planning permit, in this case it is being done with the clear intention of excising it from the agricultural land and selling it as a rural lifestyle property. It appears that the renovation works are being undertaken (with associated expenditure to make the dwelling liveable) to benefit

from the inflated land prices for rural living lifestyle properties. On the contrary, it may also be viewed as realising the capital opportunity of the dwelling to invest into farming enterprises.

The physical land separation between the dwelling and the proposed lot boundary around the dwelling would range between 24 and 53 metres. Whilst it is considered that this would be sufficient space to provide landscaping to screen the farmland from the dwelling, it is not considered it would be enough to negate other amenity concerns such as noise, dust and smell from the nearby agricultural activities. This lack of separation could result in conflict in the future.

The applicant submits that the dwelling is not required for the viable farming activity. It is acknowledged that this may be the case for the current landowner, who is restoring the dwelling solely to sell it off on a separate rural living lot. The current lot is a little over 80ha and a dwelling is an 'as-of-right' use and development (subject to setbacks) on a lot of at least 80ha in area. The current owner submits that the dwelling is not required for the agricultural activity; however, when determining this application, it is the responsibility of Council to have regard to future landowners that may require a dwelling to operate agricultural activity on the land. Further to this, the opportunity for the balance lot of 79ha to provide for a more intensive agricultural activity in the future would potentially be limited due to the proposed dwelling lot being located 300 metres into the proposed agricultural lot (Lot 2). In addition, it is conceivable that an application could be submitted in the future for a dwelling on Lot 2, which would be only 0.67ha below the land size on which a dwelling would be 'as-of-right'.

Clause 14.01-2S (Sustainable Agricultural Land Uses) encourages sustainable agricultural land use. It is considered that the owner would be able to continue his genuine farming activities without the creation and sale of a rural living style lot occupied by the renovated dwelling. The separation and potential sale of the dwelling into separate ownership through the creation of a small rural living style lot could limit or otherwise affect the operation of the farmland due to the potential conflict of land uses, particularly given the location of the dwelling enveloped by agricultural land.

Clause 21.02-2 (Land Use Vision) states that rural living development *"will occur in areas associated with settlements and established rural residential precincts where there are fewer environmental, social, land use and servicing constraints and impacts on productive farming uses are minimised"*. Whilst it is acknowledged that this site is not within the farmland of strategic significance, the area is not highly fragmented and approval of this application would potentially lead to pressure on Council to permit the excision of other dwellings and result in further fragmentation of the area.

Clause 21.05-1 (Agriculture) is Council's local policy which seeks to protect agricultural land with the following relevant strategies:

- *Discourage the subdivision of rural land that creates small lots for existing dwellings or vacant lots for the purposes of a dwelling.*
- *Discourage the realignment of boundaries which create small lots for existing dwellings unless the re-subdivision contributes to the restructure and/or consolidation of agricultural holdings into larger farming units.*
- *Encourage the consolidation and restructure of agricultural land into larger parcels that meet the subdivision minimum under the zone or schedule to the zone.*
- *Ensure that small lot subdivisions or excisions facilitate sustainable rural production and do not prejudice surrounding rural activities.*

The applicant has submitted that:

We have here a 'real life' example of why Councils above strategy is hampering our agricultural industry as opposed to assisting as we believe it was intended to do when drafted. In this instance our client was given the opportunity to consolidate his farming operation closer to the home farm, but in doing so has also been required to purchase a dwelling superfluous to his requirements. The dwelling and proximity to the township of Colac and its associated facilities has placed the value of this farm in the lifestyle market.

Should our client choose to invest the money themselves into bringing the dwelling back to its former glory to then rent it out, results in a significant change in direction of our clients core business as renting the dwelling is a skill set not required for farming and a liability many farmers are not prepared to take on.

As noted above, when the land was bought it contained a dilapidated dwelling that had historically been associated with the agricultural landholding (as is evident by its location within the existing lot). The location of the former dwelling is not considered to lend itself to excision, due to its position on the land. The proposed subdivision layout is considered to clearly demonstrate that the proposal would not represent orderly planning, as required by clause 60 of the planning scheme.

The proposal is considered, in particular, contrary to the policy strategies of discouraging “the subdivision of rural land that creates small lots for existing dwellings or vacant lots for the purposes of a dwelling”, and ensuring “that small lot subdivisions or excisions facilitate sustainable rural production and do not prejudice surrounding rural activities”.

Allowing this proposal is likely to lead to further pressure to allow the creation of small rural living lots in farming areas.

The applicant also acknowledges that:

the house lot excision does create a small lot for an existing dwelling, we contend this is necessary to enable our client to purchase this farm which immediately abuts additional land to the east which they also farm, albeit via a lease at this stage and is across the road from their home farm.

The land referred to is 160 McKays Road, which the owner of the subject land is leasing. This land is 105ha in area and is also developed with a dwelling. In terms of the potential pressure for other excisions that the current proposal could create it is not inconceivable that, should the proposed subdivision at 260 Warrowie Road be allowed, the current (or future) owner of that land may apply to excise the dwelling on 160 McKays Road. Whilst each application is assessed on its merits, such a subdivision arguably could be difficult to resist if the current proposal is allowed and, if permitted, would result in further fragmentation of farmland.

It is considered that this application is not consistent with the following purposes of the Farming Zone:

- *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.*

The Victorian Civil and Administrative Tribunal (VCAT) in *Alford v Corangamite SC [2018] VCAT 853* considered a proposed excision of a dwelling in the Farming Zone, similar to the subject site. The Tribunal refused the excision and made the following comments in this recent decision:

23. *The proposal will create a small lot within a Broadacre farming area. The larger Lot 2 will comprise the farming activity, while the dwelling is excised. While the land is north of the area identified in the Shire's framework plan as the most significant agricultural land, the area forms part of the rural assets of the Shire as well as part of the lakes landscape.*
24. *I accept that the land uses that presently exist will not alter on the land because of this subdivision. I also find that the dwelling is habitable, waste water can be managed and the lot is close to the preferred size set out in the local policy. I also accept that the excision will not necessarily lead to a proliferation of dwellings in the area and there is no existing clustering of dwellings, although I note that there is a small title associated with a former school site opposite the review site.*
25. *These positive aspects must be weighed against the overall objectives of policy and the zone to protect agricultural land and to prevent land use conflict. I find that the proposal is not supported by the State and local policy relating to agriculture or the objectives of the Farming Zone as set out below.*

(Note: this case was also cited by the objector and a full copy of the decision is attached to the objector's submission).

Whilst the Farming Zone allows the opportunity for the excision of existing dwellings to be considered, the creation of small lots in broadacre agricultural areas is generally discouraged under policy in the State and Local Planning Policy Frameworks as described earlier in this report and reflected in Tribunal decision above. The land currently has an area of 80.9 hectares, consistent with the minimum lot size in the schedule to the Farming Zone. It is not considered that the fragmentation of the land through creation of a 1.6 hectare rural living style lot, with a balance 79 hectare lot, would assist with the broader agricultural opportunities on the land or the adjoining area. The proposed excision appears to be based on the potential sale of the dwelling lot, rather than delivering a specific outcome to support the existing farming operation. Such an outcome would create opportunity for land use conflicts between potential owners of the proposed Lot 1 and adjacent farming uses given the 'battle axe' shape arrangement of the lot and the expectations that may come with new owners.

Clause 35.07-2 (Use of Land for a Dwelling) states that a lot used for a dwelling must meet the following requirements:

- *Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.*
- *The dwelling must be connected to a reticulated sewerage system or if not available, the waste water must be treated and retained on-site in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.*
- *The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for fire fighting purposes.*
- *The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.*

The applicant states that the dwelling has an existing working septic system to the west of the dwelling, that power is connected and that access to the site is also available. No reticulated potable water supply is available to site and therefore it would be reliant on water tanks. Whilst the applicant's comments are noted, Council's Health Protection Unit inspected the site in early September 2019 and concluded that the current septic tank is a 'legacy system' and appears not to be functioning. Therefore, should this application be allowed, it would be necessary to require that the wastewater treatment system be updated to meet today's regulations.

The applicant has also offered the registration of an agreement under Section 173 of the *Planning and Environment Act 1987* on the title of proposed Lot 2, thus making it transparent into the future that no further subdivision of the land so as to create additional lots would be allowed, nor would the construction of any additional dwellings. Should the application be allowed, a permit condition requiring the applicant to enter into such an agreement is recommended. However, whilst it is considered that a s173 agreement would have to be required if the current subdivision proposal is allowed, to prevent further dwellings being erected due to the proposed excision, this approach is not considered the preferred planning outcome. Preventing a future owner of the agricultural portion of the subject land from being able to apply to have a dwelling would, in officers' view, be unreasonable and contrary to policies relating to the Farming Zone, given that proposed Lot 2 would have an area only 0.67ha less than that at which a dwelling would be 'as-of-right'. Such a restriction would be of particular concern as the reason for preventing the future construction of a dwelling on the 79.33ha lot (i.e. the reason for the s173 agreement) would be to allow the creation of a rural living style lot surrounded by the agricultural landholding.

The applicant has advised that the owners are prepared to negotiate with Council about the location of the lot boundaries for the dwelling. However, given the fact that the dwelling would be located well within the existing 80ha lot, and not on the perimeter where it could arguably be easier to excise a dwelling from the balance of the land, it is not considered that the location of the boundaries would alter the policy conflict with Clauses 14.01-1S and 21.05-1, and the objectives of the Farming Zone. The proposal is also considered contrary to those decision guidelines of Clause 65.02 related to subdivision in context of the size of lots created, the impacts of a smaller lot for a dwelling and the creation of a balance lot less than the minimum lot size.

Other planning decisions in the area

At a meeting convened between Councillors and the other parties prior to the Planning Committee meeting, the applicant provided a map which purported to show a range of subdivision and dwelling decisions made in recent years, as support for the current proposal (ie providing precedent). That map did not accurately reflect planning decision making over the past 10 years or so.

Below is a map with Council data relating to planning applications within a 4 kilometre radius ('study area') of the application site since the mid-2000s. This information provides details of:

- the location of planning applications for subdivisions and dwellings;
- whether the site is within the 40ha or 80 ha minimum lot size area.

Of the 18 sites shown (excluding the subject site), 5 applications were for the subdivision of land (shown green on the map). Three were approved – two of these were for the re-subdivision of land (not creating any additional lots); one of these was in the Low Density Residential Zone; one lapsed; and the other was refused.

No dwelling excisions or subdivisions (excluding the aforementioned re-subdivisions) have been approved within this study area since the Rural Land Strategy was adopted in 2007.

Applications for dwellings are shown blue on the map. All of these were approved, with 3 being replacement dwellings. It is noted that a number of dwellings were allowed on existing small lots south of the Princes Highway, and that this area south of the Highway is not comparable to the area north of the Highway for the following reasons:

1. The area south of the highway, with the 40ha minimum lot size for subdivision, is already lost to agricultural farming due to the smaller historical subdivisions and the encroachment of dwellings on the smaller lots. This is why it has been considered reasonable to allow dwellings on these smaller landholdings, as nearly each lot now has a dwelling. It is noted that this area was reviewed during the Rural Living Strategy and considered for rezoning to Rural Living Zone due to its existing fragmentation.
2. North of the highway the minimum subdivision area is 80ha. This area is not as fragmented with dwellings and it is considered that it should be retained to ensure opportunity for farmers to continue to farm without the intrusion of dwellings on smaller lots unrelated to agricultural use.

Applications shown red on the map below relate to dwellings on lots within the 80ha minimum lot size area, all of which were permitted. Of the 4 applications received, two were for replacement dwellings; one was on a site partially within the 40ha site (and was allowed subject to consolidation of lots); and one was on 17.9ha.



Legend:

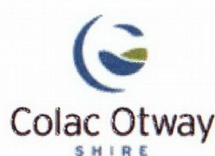
	Dwelling related applications within 80ha
	Dwelling related applications within 40ha
	Subdivision related applications in both areas

In summary it is not considered that any decisions made by Council in the past decade could be argued to create a precedent for allowing the proposed dwelling excision on the subject land.

9. OFFICER DIRECT OR INDIRECT INTEREST

No officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

D19/85455



Application for Planning Permit for a Subdivision

Supplied by Anthony Bright
Submitted Date 28/06/2019

Application Details

Application Type	Planning Permit for a Subdivision Version 1
Applicant Reference Number	19-28
Application name or Estate name	Buchanan
Responsible Authority Name	Colac Otway Shire
Responsible Authority Reference Number(s)	(Not Supplied)
SPEAR Reference Number	S143121S
Application Status	Submitted
Planning Permit Issue Date	NA
Planning Permit Expiry Date	NA

The Land

Primary Parcel	260 WARROWIE ROAD, IRREWARRA VIC 3249 Volume 6874/Folio 790 SPI 42\PP2775 CPN 11640 Zone: 35.07 Farming Overlay: 45.02 Airport Environs
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The Proposal

Plan Number	(Not Supplied)
Number of lots	2
Proposal Description	Excision of existing dwelling and associated farm shedding to enable expansion of an existing farming operation
Estimated cost of the development for which a permit is required \$	0

Existing Conditions

Existing Conditions Description	Existing Dwelling and associated Shedding on the Proposed Lot 1, with the Proposed Lot 2 being the balanced cleared grazing land.
Title Information - Does the proposal breach an encumbrance on Title?	The proposal does not breach an encumbrance on title, such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope.

Applicant Contact

Applicant Contact	Mr Anthony Bright Rod Bright and Associates Pty Ltd 26 Murray Street, Colac, VIC, 3250 Business Phone: 03 5231 4883 Email: rodbright@iprimus.com.au
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Applicant

SPEAR S143121S

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Applicant	L.C. & M.E. Buchanan 205 Warrowie Road, Irrewarra, VIC, 3249 Australia Mobile Phone: 0428 511 250 Email: lmbuchanan@hotmail.com
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Owner	
Owner	(Owner details as per Applicant)
<hr/>	
Declaration	
	I, Anthony Bright, declare that the owner (if not myself) has been notified about this application.
	I, Anthony Bright, declare that all the information supplied is true.
Authorised by Organisation	Anthony Bright Rod Bright and Associates Pty Ltd

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