

1.1.1.1 PLANNING PERMIT APPLICATION PInApp23/167 - 2-lot re-subdivision AT 64 Grahams Lane HANSONVILLE VIC 3675,

Author: PInApp23/167
Reviewed by:

Background

Applicant: Terrence W Tanner, Estate of Judith H Tanner and North East Survey Design
Owner: Estate of JH Tanner & TW Tanner
Subject Land: PC 363779 Vol 10765 Fol 343
CA 1 Sec 35 Par Greta Vol 3986 Fol 80
64 Grahams Lane HANSONVILLE VIC 3675
Zone/s: Farming Zone
Overlay/s: None

Recommendation

It is recommended that Council issue a Notice of Refusal for the 2-lot re-subdivision of land at 64 Grahams Lane Hansonville.

Site & Context

The subject site is located approximately 30km to the south of Wangaratta, on the south-west corner of Wangaratta-Kilfeera Road and Grahams Lane. The site contains a land area of 64ha between two title allotments (PC363779 and CA1~35). PC363779 is split into two parts, with a total land area of 44ha (41.6ha and 2.4ha), with CA1~35 containing a land area of 19ha. PC363779 contains an existing dwelling, with CA1~35 being vacant. The land is generally clear grazing land, with the topography of the site being undulating. A revegetated waterway traverses the site diagonally through the site and discharges into Fifteen Mile Creek which borders the site to the west. The land is currently leased out for grazing.

It is important to note that PC363779 was consolidated as a requirement of Planning Permit PIn03/052, which permitted the use and development of the land for a dwelling on a small lot to the south of the subject site. Essentially, the approval for that dwelling was justified via the consolidation of smaller lots then in common ownership to create a larger balance lot that could be used for agricultural purposes. The dwelling approved as part of PIn03/052 has since been sold off from the farm holding.

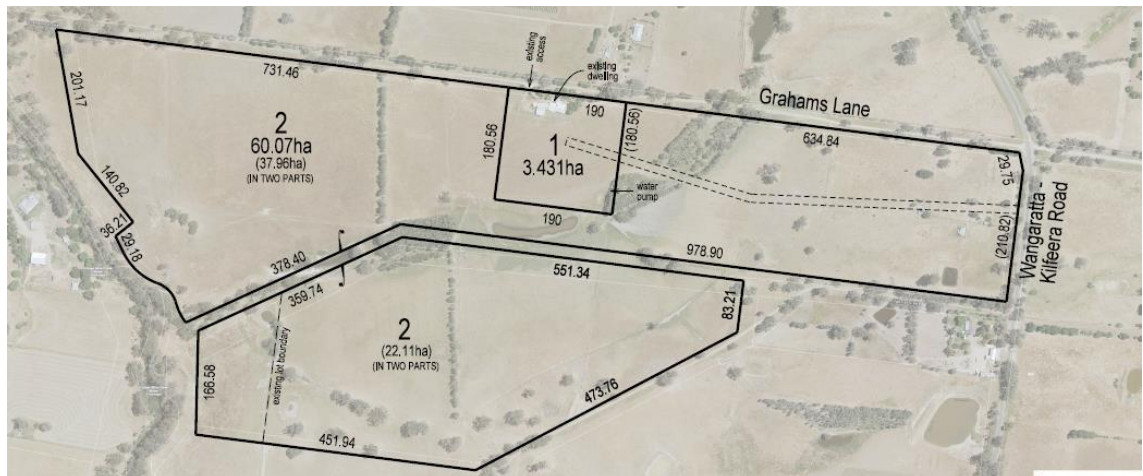


Aerial image of the subject site and surrounds.

Proposal

The application seeks approval for the re-subdivision of the land into 2-lots to effectively excise the dwelling on PC363779. The details of the proposal are as follows:

- Proposed Lot 1 to contain the existing dwelling and cover a land area of 2.004ha.
- Proposed Lot 2 to be vacant and cover a land area of 61.51ha over two parts (split by the unmade government road).



Proposed re-subdivision.

The planning report supplied with the application states that the proposal is to allow the current landowner to retire in place and create a larger balance lot for agricultural purposes. The report identifies the subject site as being of moderate to high agricultural versatility and that the balance of the land could be used for a variety of purposes.

The report states the following:

In summary, this proposed re-subdivision of lots should be supported because:

- The creation of a small dwelling lot allows a local farmer to retire in the family home and be supported by his local community in the short term whilst providing long term options for rural workers and their families to locate on a small lot in an area close to agricultural employment.
- The creation of a large balance lot will provide opportunity and incentive for a new landowner to make improvements to pasture, fencing and other farming infrastructure and consider more sustainable management practices to advance agriculture in this area. Ongoing leasing of the land to tenants will stifle investment in the property.

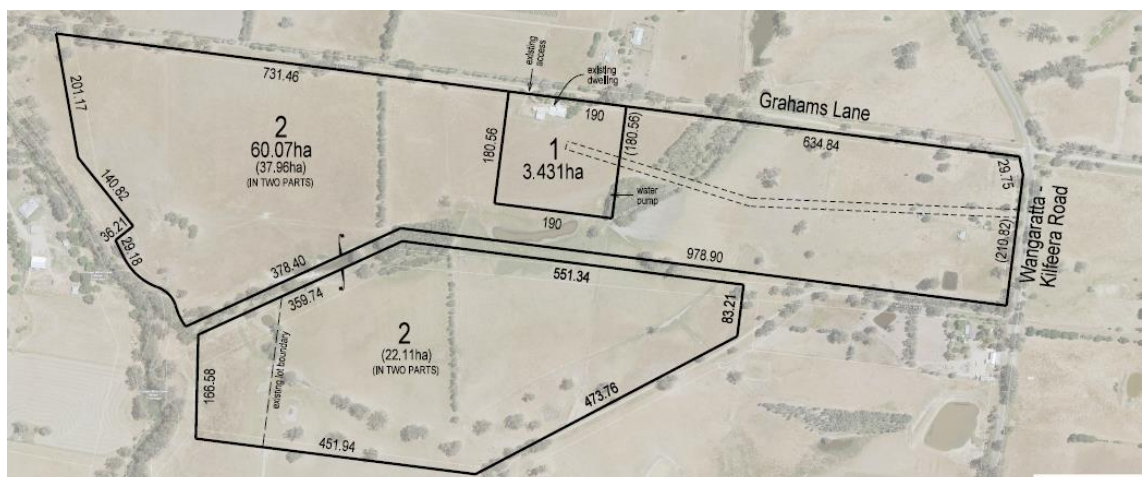
Extract from the planning report submitted by the applicant.

Previous planning application

A previous application was made on the subject site seeking to re-subdivide the land to effectively excise the dwelling on PC363779. Planning application PInApp22/213 was refused on the following grounds:

1. *The application is fundamentally inconsistent with, and at odds with, the objectives of planning in Victoria and sound land use planning decision making.*
2. *The proposal is inconsistent with the rural land use and agricultural policies of the Wangaratta Planning Scheme, most notably Clauses 02.03-4, 14.01-1S and 14.01-1L.*
3. *The application is not supported by the purpose or decision guidelines of the Farming Zone.*
4. *The proposal has not adequately demonstrated why or how the proposed subdivision is associated with, necessary to, or will support and improve agricultural production.*
5. *The proposal results in the fragmentation and permanent loss and removal of productive agricultural land.*

That application was refused under delegation in May 2023 following a briefing to Councillors. Pre-application meetings were held with the landowner and their planning consultant prior to the lodgment of the application herein.



Proposed re-subdivision as part of PInApp22/213.

Planning Permit Trigger

- Clause 35.07-3: Subdivision of land.

Relevant Planning Provisions

The following provisions of the Wangaratta Planning Scheme are relevant to this proposal:

| Policy: | Objective/Strategy: |
|---------------------------------|--|
| Clause 02.03-4 (Agriculture) | <p>Council seeks to protect the viability of agriculture by:</p> <ul style="list-style-type: none">• Maintaining the productivity and versatility of agricultural land, particularly in higher agricultural 'versatility' areas.• Protecting the primacy of rural land for agricultural purposes.• Minimising potential amenity impacts between agricultural uses and rural lifestyle uses.• Ensuring that dwellings and subdivision meet the principle of 'right to farm' in rural areas, where existing agricultural and rural uses in the area have a right to legally continue.• Ensuring that dwellings and subdivisions do not adversely impact on the agricultural activities carried out on the land and the general area.• Directing rural lifestyle development to existing Rural Living and Low Density Residential Zones. |

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| <p>Clause 14.01-1S (Protection of agricultural land)</p> | <p>To protect the state's agricultural base by preserving productive farmland.</p> <p>Strategies include:</p> <ul style="list-style-type: none"> • Avoid permanent removal of productive agricultural land from the state's agricultural base without consideration of the economic importance of the land for the agricultural production and processing sectors. • Protect productive farmland that is of strategic significance in the local or regional context. • Protect productive agricultural land from unplanned loss due to permanent land changes. • Prevent inappropriately dispersed urban activities in rural areas. • Protect strategically important agricultural and primary production land from incompatible uses. • Limit new housing development in rural areas by: <ul style="list-style-type: none"> ○ Directing housing growth into existing settlements. ○ Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses. ○ Encourage consolidation of existing isolated small lots in rural zones. • In considering a proposal to use, subdivide or develop agricultural land, consider the: <ul style="list-style-type: none"> ○ Desirability and impacts of removing the land from primary production, given its agricultural productivity. ○ Impacts on the continuation of primary production of adjacent land, with particular regard to land values and the viability of infrastructure for such production. ○ Compatibility between the proposed or likely development and the existing use of the surrounding land. |
|--|--|

| Policy: | Objective/Strategy: |
|----------------|---|
| | <ul style="list-style-type: none"><li data-bbox="820 275 1394 412">• Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.<li data-bbox="820 423 1406 521">• Give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land. |

| Policy: | Objective/Strategy: |
|---|--|
| <p>Clause 14.01-1L (Dwellings and subdivisions in rural area)</p> | <p>Strategies include:</p> <ul style="list-style-type: none"> • Ensure any dwelling and subdivision, particularly in higher agricultural productivity and versatility areas: <ul style="list-style-type: none"> ○ Is directly linked to an agricultural use. ○ Supports the continuing operation of an existing rural use conducted on the land. ○ Is compatible with and will not have an adverse impact on farming and other rural land uses on the land, adjoining land and the general area. ○ Retains the productive agricultural use of the land and surrounding area. ○ Protects the economic potential of the land and surrounding area for agriculture or other rural activity. ○ Is not used or created for rural lifestyle purposes. • Discourage house lot excisions in 'high' or 'very high' agricultural versatility areas and ensure that any excision of land in all other rural areas are linked to and required for the ongoing rural and agricultural use of the land. • Discourage house lot excisions if the existing dwelling on the lot to be excised is required to maintain the ongoing agricultural production and rural use of the land. <p>Consider as relevant:</p> <ul style="list-style-type: none"> • Whether there is the need to consolidate land in a 'high' or 'very high' agricultural versatility area, if consolidation would protect the existing and future productive use of rural and agricultural land. • Whether a dwelling or subdivision (other than a minor realignment of boundaries) in 'high' and 'very high' agricultural versatility areas can be substantiated by a 'whole farm plan'. |

| Policy: | Objective/Strategy: |
|---|---|
| Clause 16.01-1L (Housing supply) | Strategies include: <ul style="list-style-type: none"> • Avoid residential development in areas of environmental significance, landscape significance and agricultural value. • Avoid residential development in rural settlements. |
| Clause 16.01-3S (Rural residential development) | Strategies include: <ul style="list-style-type: none"> • Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development. • Encourage the consolidation of new housing in existing settlements where investment in physical and community infrastructure and services has already been made. • Discourage development of small lots in rural zones for residential use or other incompatible uses. • Encourage consolidation of existing isolated small lots in rural zones. |

Zone

Clause 35.07 – Farming Zone

The purpose of the Farming Zone is as follows:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- 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.
- To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

The following decision guidelines of Clause 35.07-6 are relevant to this application:

- 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.
- Any integrated land management plan prepared for the site.

General Provisions

Clause 65.02 – Approval of an application to subdivide land

The following decision guidelines are relevant to this application:

- 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.

Referrals

The application was referred to the following referral authorities:

| Authority | Section | Response |
|--------------------------|------------------------------------|---|
| Ausnet | External Section 52 Referral | No objection subject to conditions relating to service connection. |
| Goulburn Murray Water | External Section 55 Referral | No objection subject to conditions regarding wastewater management for the existing dwelling. |

Internal Departmental Advice

| Department | Response |
|--------------------|---|
| Technical Services | No objection subject to conditions regarding drainage and access. |

Advertising

The application was advertised to adjoining landowners and occupiers. No objections were received. (It is noted that no objections were received to PInApp22/213 either).

Planning Assessment

Subdivisions in rural areas

The purpose of the Farming Zone seeks to encourage the retention of productive agricultural land and ensure that non-agricultural uses, including dwellings, do not adversely affect the use of the land for agriculture. The proposal seeks to effectively excise the existing dwelling onto a 2ha lot and create a vacant balance lot that could be used for agricultural purposes. The purpose of the re-subdivision is to allow the landowner to retire in place in the existing dwelling.

Whilst the planning report discusses the potential for the balance lot to be used for agricultural activities, and potentially more intensive farming uses, this is considered to be at odds with the creation of a very small rural lifestyle block. Whilst it is acknowledged that proposed Lot 2 could be used for agricultural purposes, the dwelling at proposed Lot 1 would be subject to highly reduced amenity and may impact on the ability of proposed Lot 2 to be used for a variety of agricultural activities. Many intensive animal production activities (such as feedlots, dairies, pig and poultry farms) would be restricted in their capacity and siting due to the proximity of a small rural lifestyle property. Therefore, the ability for the balance lot to be used more intensively would be unlikely to be achieved by virtue of the proposed lifestyle lot. Therefore, it is considered that the agricultural reasoning provided as part of the application is not achievable and inconsistent with the policy objectives of the Wangaratta Planning Scheme.

Further to the above, it is important to consider that the subject site (PC363779) has already been involved in the creation of rural lifestyle property previously. PC363779 was consolidated to justify the use and development of the land for a dwelling on neighbouring land. Therefore, the landowner has already “had a bite of the pie” and would be exploiting the re-subdivision pathway to obtain another rural lifestyle property (noting that the dwelling approved previously has been sold). Current planning policies for the protection of agricultural land seek to consolidate small inappropriate lots in the rural zones, therefore, it would be counterproductive to create a new inappropriate lot that would require consolidating in the future.

The application outlined that the balance of the subject site is already being leased out for grazing, whilst the dwelling is occupied by the landowner. No information has been provided to counter the argument that this can't continue and isn't a sustainable solution. It is common understanding that leasing paddocks for grazing is fairly popular and occurs across the state. Further, this point ignores the issue of long-term planning, whereby whilst the landowner may not wish to continue farming the land but wishes to remain in the dwelling, what will happen once the dwelling is no longer occupied? The excised lot would become a rural lifestyle asset not attached to a farming enterprise and would likely attribute to the inflation of land values which would impact on the feasibility of genuine farming land to either obtain more land or to retain larger holdings. This is in direct conflict of state policies for the protection of agricultural land, with personal circumstances being immaterial in considering any planning application.

The proposal is fundamentally at odds with state and local policy objectives and strategies, particularly as it is premised on personal and financial circumstances and not sound farming or land use planning outcomes. The proposal would

result in a fragmented parcel of land that would contribute to a concentration of dwellings and the issue of unplanned settlements in rural areas. Proposed Lot 1 is not of a sufficient size to accommodate or support any meaningful agriculture, despite the application outlining that it could be used for hobby activities. Proposed Lot 1 would become a rural lifestyle lot that is incompatible with agriculture and associated farming activities undertaken, or may be undertaken in the future, on surrounding land. This land use conflict has significant potential to limit or prevent agricultural activities and uses occurring (or expanding) on surrounding land.

Local policies in the Planning Scheme provide succinct and unambiguous guidance around these issues, particularly with the policy seeking to protect the primary use of rural land for agricultural purposes and directing rural lifestyle development to existing Rural Living and Low Density Residential Zones. The Planning Scheme facilitates suitable zones for rural lifestyle activities, of which the Farming Zone is not.

Further to the above concerns regarding proposed Lot 1, the proposal would also create an 'as of right' dwelling entitlement for proposed Lot 2 as it would have a land area greater than 40ha. The purpose of the minimum subdivision and use of the land for dwellings being 40ha seeks to ensure that the Farming Zone has a maximum dwelling density of 1:40ha. As such, the proposal is considered to result in a proliferation of dwellings which conflicts with state and local planning policy and the purpose of the Farming Zone.

Ultimately, the proposal cannot demonstrate how it achieves the objectives of relevant agricultural policy or the purpose and decision guidelines of the Farming Zone.

Conclusion

The proposal is not considered to represent an orderly planning outcome, particularly as the proposal would result in the fragmentation of agricultural land and result in a proliferation of dwellings in an area not designated for rural lifestyle purposes. The proposal has failed to provide sufficient agricultural justification and should not be supported.

Recommendation:

That Council issue a Notice of Refusal for 2-lot re-subdivision at 64 Grahams Lane Hansonville, on the below grounds.

Communication

That the applicant be advised of Council's decision.

Grounds of Refusal

1. The application does not represent an orderly planning decision and fails to consider the existing and future use of nearby land pursuant to Clause 65.02 of the Wangaratta Planning Scheme.

2. The proposal is inconsistent with the policy objectives and strategies of Clause 02.03-4, Clause 14.01-1S and Clause 14.01-1L of the Wangaratta Planning Scheme for the protection of agricultural land and preventing the fragmentation of farming land.
3. The proposal is contrary to the purpose and decision guidelines of Clause 35.07 (Farming Zone) of the Wangaratta Planning Scheme, as the proposal would result in the permanent loss of productive agricultural land and result in a proliferation of dwellings.
4. The proposal is contrary to the policy strategies of Clause 16.01-1L (Housing supply) which seeks to avoid residential development in areas of environmental significance, landscape significance and agricultural value.