

5.4 T230120 PA - Re-subdivision of the land (house lot excision) at 1670 & 1690 Main Drain Road, Vervale

File Reference: {file-reference}
Responsible GM: Lili Rosic
Author: Evie McGauley-Kennedy

Recommendation(s)

That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T230120 for Re-subdivision of land (house lot excision) CA 8 SEC N Parish of Koo-Wee-Rup East, 1670 Main Drain Road, and CA 9 SEC N, CA 20 SEC N and CA 21 SEC N, Parish of Koo-Wee-Rup East 1690 Main Drain Road, Vervale VIC 3814 on the following grounds:

1. The proposal is inconsistent with Planning Policy Framework and Local Planning Policy Framework, that aim to preserve and protect rural land for its resources and features, protect important agricultural land such as those in Westernport, avoid the subdivision of productive agricultural land and avoiding the permanent loss of agricultural land, specifically:
 - a. Clause 11.01-1S - Settlement
 - b. Clause 11.01-1R - Green Wedges – Metropolitan Melbourne
 - c. Clause 13.07-1S – Land Use Compatibility
 - d. Clause 14.01-1S - Protection of Agricultural Land
 - e. Clause 14.01-1R - Protection of Agricultural Land – Metropolitan Melbourne
 - f. Clause 21.04-2 – Agriculture
 - g. Clause 22.05 – Western Port Green Wedge Policy
2. The proposal is inconsistent with relevant purposes and decision guidelines of the Schedule 1 to the Special Use Zone as it compromises the horticultural preservation of the land and fails to protect the area from the encroachment of urban and rural residential uses which has the potential to cause conflict between residents and normal farming practices.
3. The proposal is inconsistent with Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions), which aims to protect metropolitan green wedge land from uses and development that would diminish its agricultural values, and to protect productive agricultural land from incompatible uses and development.
4. The proposal is inconsistent with the relevant considerations of Clause 65 Decision Guidelines and does not represent orderly planning.

Attachments

1. T230120 PA Council Report Refusal [5.4.1 - 17 pages]
2. T 230120 PA - Locality Map [5.4.2 - 1 page]
3. T 230120 PA - Subdivision plans [5.4.3 - 4 pages]

Executive Summary

APPLICATION NO.:	T230120
APPLICANT:	Nobelius Land Surveyors
LAND:	CA 8 SEC N Parish of Koo-Wee-Rup East, 1670 Main Drain Road, Vervale VIC 3814; and CA 9 SEC N, CA 20 SEC N and CA 21 SEC N, Parish of Koo-Wee-Rup East 1690 Main Drain Road, Vervale VIC 3814
PROPOSAL:	Re-subdivision of land (house lot excision)
PLANNING CONTROLS:	Zone: <ul style="list-style-type: none"> Special Use Zone (Schedule 1) Overlay/s: <ul style="list-style-type: none"> Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	Notice of the application was given pursuant to Section 52 of the <i>Planning and Environment Act, 1987</i> . Council has not received any objections to date.
KEY PLANNING CONSIDERATIONS:	Horticultural preservation Fragmentation of agricultural land Inconsistent with Special Use provisions Potential for land use conflicts – ‘right to farm’
RECOMMENDATION:	The application is recommended for Refusal

Executive Summary

Planning permission is sought for the re-subdivision of two (2) contiguous parcels of land, with the purpose being to facilitate a house lot excision and the on-going operations of an existing soil-based food producer (currently being undertaken over multiple lots) by consolidating the crop onto one (1) lot.

This proposes to create a fragmented, ‘residential’ lot within the Special Use Zone (Schedule 1), zone specifically established to preserve high quality soil on agricultural land for horticultural and other farming activities.

The allotments proposed to be re-subdivided (depicted above) are as follows:

- CA 8 SEC N Parish of Koo-Wee-Rup East (1670 Main Drain Road, Vervale)
 - This allotment currently measures approximately 8.06 hectares in area.
 - The re-subdivision proposes to reduce this allotment to 1.118 hectares.

- CA 9 SEC N, CA 20 SEC N and CA 21 SEC N Parish of Koo-Wee-Rup East (1690 Main Drain Road, Vervale)
 - This land currently comprises of three (3) allotments with a total combined area of approximately 24.14 hectares.
 - The re-subdivision proposes to increase the combined area of these allotments to 31.25 hectares.
 - It also proposes to consolidate the three (3) allotments along with the land gained in the re-subdivision into one (1) parcel of land.

The creation of a smaller lot via this re-subdivision is considered to be at odds with the purpose of the Zone (Schedule 1).

Whilst it is not disputed that the proposed consolidation of agricultural land for the purposes of farming is considered to be a good planning outcome and consistent with the purpose of Schedule 1 to the Special Use Zone, this should not come at the expense of the creation of a small (1.118 hectare), fragmented, 'rural lifestyle' or 'residential' parcel.

The proposed creation of this smaller allotment has the real potential to create land use conflicts and detrimentally impact the 'right to farm' for the land surrounding it, which is not consistent with the purpose of Schedule 1 to the Special Use Zone.

In considering the overall intent, purpose and decision guidelines of Schedule 1 to the Special Use Zone, for the reasons outlined above, the proposed re-subdivision is considered, on balance, to be:

- Detrimental to the horticultural significance of the area
- Will have detrimental impact on the character and appearance of the area; and
- Is incompatible with adjoining and nearby farming land uses.

Based on this, it is recommended that the proposal be refused based on the grounds listed above.

Relevance to Council Plan

4.1 We support our productive land and employment land to grow local industries

4.1.1 Facilitate better planning for our agricultural land to support industry, innovation, local food economy and local job growth.

5.1 We practise responsible leadership

5.1.1 Build trust through meaningful community engagement and transparent decision-making.

APPLICATION FOR CONSIDERATION
RECOMMENDATION FOR REFUSAL
COUNCIL REPORT



Application Details:

Proposal	Re-subdivision of land (house lot excision)		
Applicant	Mrs Renee O'Brien Nobelius Land Surveyors		
Date Received:	21 March 2023		
Statutory Days:	87 days as of 23/10/23		
Section 50/50A/57A Amendment	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes, date:	
Application Number	T230120		
Planner	Evie McGauley-Kennedy		
Land/Address	CA 8 SEC N Parish of Koo-Wee-Rup East, 1670 Main Drain Road, Vervale VIC 3814; and CA 9 SEC N, CA 20 SEC N and CA 21 SEC N, Parish of Koo-Wee-Rup East 1690 Main Drain Road, Vervale VIC 3814		
Property No.	4511204800		
Zoning	Special Use Zone - Schedule 1		
Overlay/s	Land Subject to Inundation Overlay		
Permit Trigger(s)	<p>Pursuant to Clause 37.01-3 (SUZ1) a planning permit is required to subdivide land (each lot must be at least 25 hectares). However, a permit may be granted to create smaller lots if the subdivision is the re-subdivision of existing lots provided:</p> <ul style="list-style-type: none"> • No additional lots are created. • The potential to create new lots is not increased. • The potential for the number of dwellings is not increased. • The proposed lots do not compromise the purpose of the zone. <p>Pursuant to Clause 44.04-3 (LSIO) a planning permit is required to subdivide land.</p>		
Aboriginal Cultural Sensitivity	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes; a CHMP is: <input checked="" type="checkbox"/> Not required The proposed boundary realignment is not classified as a high	
		<input type="checkbox"/> Required	

		impact activity under Regulation 49 of the Cultural Heritage Regulations 2018	
Section 55 Referrals	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Yes, list below:	
	<ul style="list-style-type: none"> Melbourne Water 		
Registered restrictions on Title	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes, list below:	
Recommendation	<input type="checkbox"/> Permit <input type="checkbox"/> NOD <input checked="" type="checkbox"/> Refusal		
Ward Councillor communications	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes, item in Councillor Bulletin	
Documents relied on	<ul style="list-style-type: none"> Subdivision Plans & Concept Plan prepared by Nobelius Land Surveyors Plan of Survey prepared by Nobelius Land Surveyors Town Planning Submission prepared by Nobelius Land Surveyors Septic Report prepared by Grants Plumbing Solutions Pty Ltd Title Documents 		

Proposal

Planning permission is sought for the re-subdivision of two contiguous parcels of land, with the purpose being to facilitate a house lot excision and the on-going operations of an existing soil-based food producer (currently being undertaken over multiple lots) by consolidating the crop onto one lot.



However, through this process it creates a fragmented, 'rural-residential' lot within the Special Use Zone (Schedule 1).

Figure 1: Aerial photo of subject sites

The allotments proposed to be re-subdivided (depicted above) are as follows:

- CA 8 SEC N Parish of Koo-Wee-Rup East (1670 Main Drain Road, Vervale)
 - This allotment currently measures approximately 8.06 hectares in area.
 - The re-subdivision proposes to reduce this allotment to 1.118 hectares.
- CA 9 SEC N, CA 20 SEC N and CA 21 SEC N Parish of Koo-Wee-Rup East (1690 Main Drain Road, Vervale)
 - This land currently comprises of three allotments with a total combined area of approximately 24.14 hectares.
 - The re-subdivision proposes to increase the combined area of these allotments to 31.25 hectares.
 - It also proposes to consolidate the three allotments along with the land gained in the re-subdivision into one parcel of land.

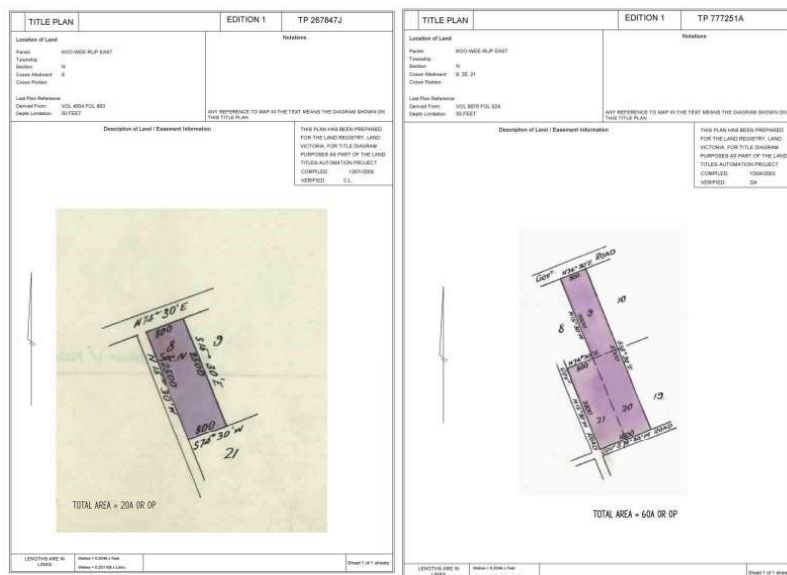


Figure 2: Existing titles
(CA 8 SEC N, CA 9 SEC N, CA 20 SEC N and CA 21 SEC N Parish of Koo-Wee-Rup East)

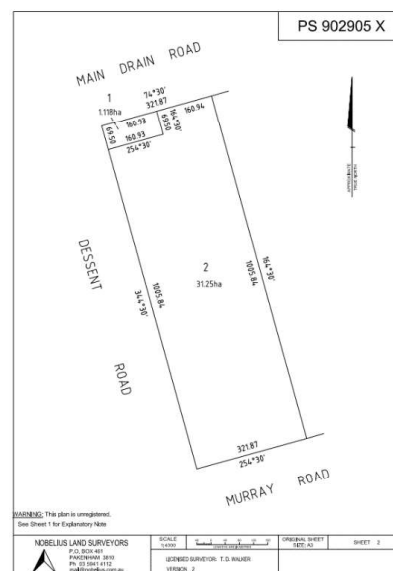
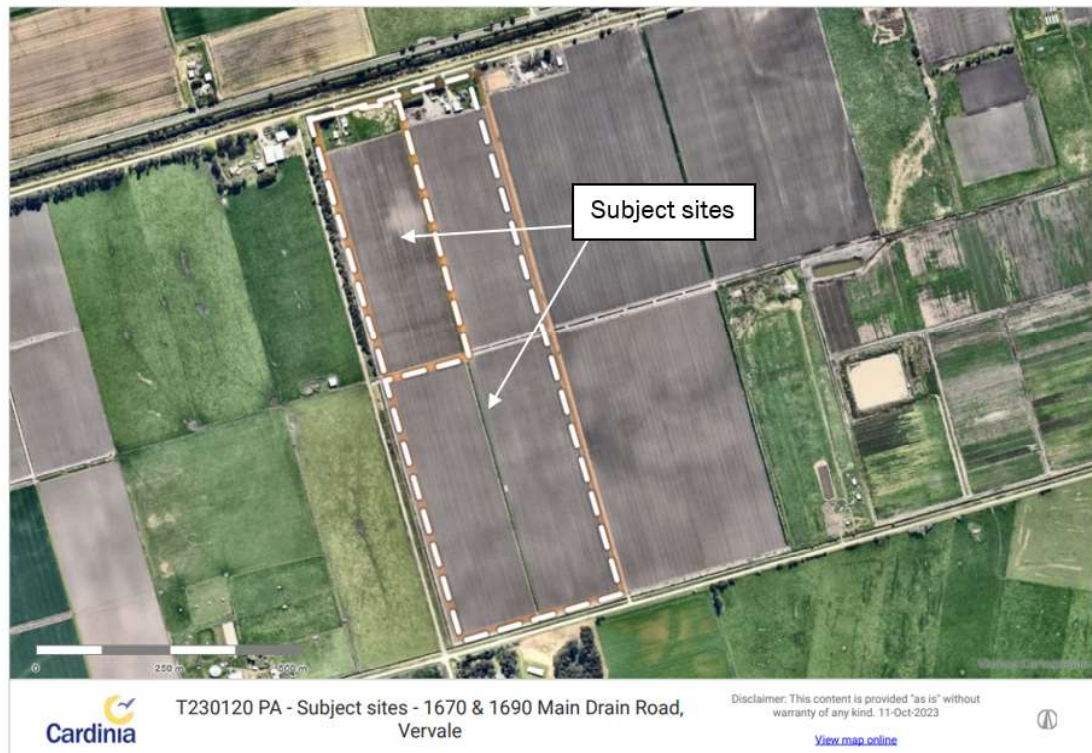


Figure 3: Proposed title
(Lot 1 and 2 on PS902905X)

Subject site & locality



An inspection of the site and the surrounding area has been undertaken.

The sites are located on the southern side of Main Drain Road, the eastern side of Dessent Road and the northern side of Murray Road.

There are crossovers located on Main Drain Road for each parcel. There are no easement affecting either parcel of land.

1670 Main Drain Road currently contains a small dwelling and outbuildings situated on approximately 1 hectare of land, with the remainder of the 8.06 hectare site being used (leased by neighbour at 1690 Main Drain Road) for crop raising.

1690 Main Drain Road currently contains a small dwelling, outbuildings and other sheds situated on approximately 1 hectare of land, with the remainder of the 24.14 hectare site being used for crop raising.

The topography of the land is relatively flat with approximately 1 metre of fall across the 1000 metre site.



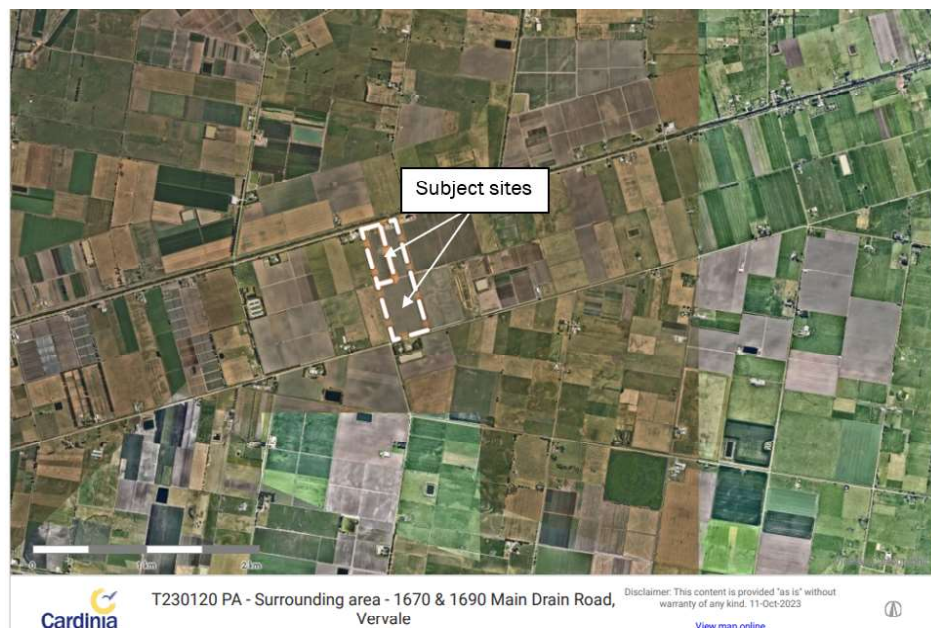
Figure 4: Dwelling and shedding on 1670 Main Drain Road



Figure 5: Dwelling and shedding on 1690 Main Drain Road

The main characteristics of the surrounding area is farmland, with many lots being used for horticulture. More specifically:

- North: Directly north of the site are Main Drain Road and Bunyip River. Across the road and river are a number of large agricultural properties which appear to be used for crop raising and other agricultural pursuits (i.e. grazing). Most of these properties are made up of multiple lots, with crop raising being conducted across multiple lots.
- South: Directly south of the site is Murray Road. Across the road are a number of large agricultural properties which also appear to be used for crop raising and other agricultural pursuits.
- East: Directly east of the site is another large farm also located on Main Drain Road used for crop raising. Further east there is a mixture of agricultural lots used for crop raising and other agricultural purposes.
- West: Directly west of the site is Dessent Road. Across the road again are a number of large agricultural properties being used for a mixture of agricultural purposes, with many being used for crop raising.



With the exception of approximately 16 lots, the majority of lots within the immediate area remain intact and untouched by Subdivision (including re-subdivision) and most are in excess of 8 hectares in area. An audit of these smaller lots identified that they were predominately created through 'house lot excisions' between the 1970's through to the early 1990's under the old Cranbourne Planning Scheme or have existed this way since their creation as Crown Allotments. Only 4 lots have been created under the Cardinia Planning Scheme, with all of these approvals being granted nearly 10 years ago (between 2003 and 2014).

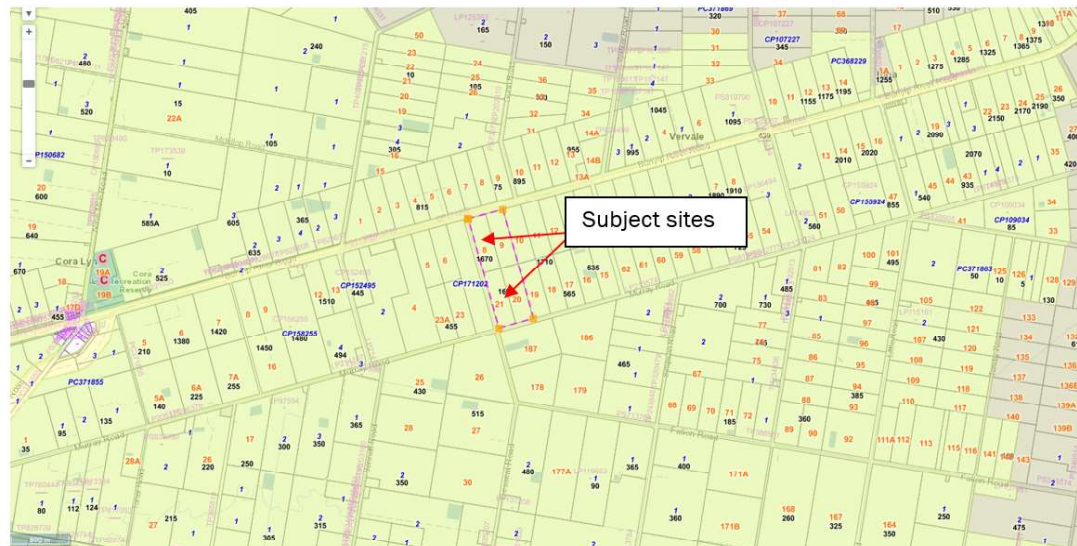


Figure 6: Subdivision pattern of the surrounding area (Source: Lassi – Land and Survey Spatial Information Tool, 2023)

Permit/Site History

The history of the site includes:

- Planning Permit T210621 for the re-subdivision of the land into 2 lots was lapsed on 12 May 2022.
 - It is noted that this current application is a re-submission of this previous application.

Planning Scheme Provisions

Zone

The land is subject to the following zones:

- Special Use Zone - Schedule 1

Overlays

The land is subject to the following overlays:

- Land Subject to Inundation Overlay

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11.01-1S Settlement
- Clause 11.01-1R Green Wedges - Metropolitan Melbourne
- Clause 13.03 Floodplains

- Clause 13.07-1S Land use compatibility
- Clause 14.01-1S Protection of agricultural land

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.01-3 Key Issues
- Clause 21.02 Environment
- Clause 21.04-2 Agriculture
- Clause 22.05 Western Port Green Wedge Policy

Relevant Particular/General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions
- Clause 65 Decision Guidelines
- Clause 66 Referral and notice provisions
 - Clause 66.03 Referral of permit applications under other state standard provisions
- Clause 71.02-3 Integrated decision making
- *Cardinia Western Port Green Wedge Management Plan (May 2017)*
- *Land Capability Study for the Cardinia Shire (February 1997)*

Planning Permit Triggers

The proposal requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 37.01-3 (SUZ1) a planning permit is required to subdivide land (Each lot must be at least 25 hectares). However, a permit may be granted to create smaller lots if the subdivision is the re-subdivision of existing lots provided:
 - No additional lots are created.
 - The potential to create new lots is not increased.
 - The potential for the number of dwellings is not increased.
 - The proposed lots do not compromise the purpose of the zone.
- Pursuant to Clause 44.04-3 (LSIO) a planning permit is required to subdivide land.

Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing signs on site.

The notification has been carried out and the statutory declaration has been submitted to Council on 22 September 2023.

Council has not received any objections to date.

Referrals

External Referrals/Notices:

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55 Referrals	Melbourne Water [Determining]	Melbourne Water have given their unconditional support to the application.
Section 52 Notices	N/A	

Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
Strategic Planning	<p>Does not support the proposal and have objected to the grant of a permit for the following reasons:</p> <ul style="list-style-type: none"> ▪ <i>The creation of a small lot containing a single detached dwelling with a land area of 1.118 hectare has no strategic planning justifications and should not be supported as it would compromise the purpose of the zone.</i> ▪ <i>The proposed fragmented subdivision, comprising of a much larger agricultural lot and very small rural residential lot, is not orderly or in keeping with the intent of this high-quality agricultural area where a special use zone is placed to safeguard horticultural preservation.</i> ▪ <i>Effectively the proposal creates rural residential type lot primarily for rural living or hobby farm use which is contrary to the purpose of the zone. The ad hoc creation of a small lot with a single detached dwelling not associated or supporting a farming use within this productive farming region can cause problems including loss of agricultural land, limiting future options and potential for farming and potential land use conflicts. Whilst we recognise the merit in consolidating a large lot for the continuation of soil-based farming purposes, it does not justify the creation of a small lot in this locality.</i> ▪ <i>Small lot excision that is likely to lead to a residential lot / use is inconsistent with the purpose of the zone and should not be permitted. There are other options available to enable the asparagus farming to continue on the land such as longer lease terms and alternative subdivision and rental agreements.</i>
Engineering	<p>Support the proposal, subject to conditions including:</p> <ul style="list-style-type: none"> ▪ <i>Before a Statement of Compliance is issued, all services, including drainage and/or sewerage, servicing any existing dwelling or building on the lot(s), must be relocated (if required) to the satisfaction of the Responsible Authority, to ensure that they do not cross the boundaries between the proposed lots.</i>
Health	<p>Support the proposal, subject to conditions including:</p> <ul style="list-style-type: none"> ▪ <i>Before the statement of compliance is issued, any existing buildings which are discharging wastewater off-site must be connected to an EPA approved on-site wastewater treatment system, located and installed to the</i>

	<p><i>satisfaction of the Responsible Authority. Any discharge from that system must be retained within the boundaries of the land to the satisfaction of the Responsible Authority.</i></p> <ul style="list-style-type: none"> ▪ <i>Before the statement of compliance is issued, any discharge from an EPA approved on-site wastewater treatment system connected to any existing buildings must be retained within the property boundaries of the land to the satisfaction of the Responsible Authority.</i>
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Assessment

The application seeks approval for the re-subdivision of two contiguous parcels of land, with the purpose being to facilitate a house lot excision and the on-going operations of an existing soil-based food producer (currently being undertaken over multiple lots) by consolidating the crop onto one lot. However, through this process the application proposes to create a fragmented, 1.118 hectare, 'residential' style lot within the Special Use Zone (Schedule 1), a zone specifically established to preserve high quality soil on agricultural land for horticultural and other farming activities.

Schedule 1 to the Special Use Zone is a particularly important agricultural zone in the Cardinia Planning Scheme, and due to its high-quality soils is considered to be of state significance. According to Clause 22.05 (Westernport Green Wedge Policy) and *Cardinia Westernport Green Wedge Management Plan (2017)*, its soils are considered a finite resource, and given its proximity to Melbourne, this area plays an important role in the food based agricultural sector. The zone recognises that inappropriate subdivision will result in the permanent loss of this valuable resource.

Under the Special Use Zone – Schedule 1, an application to subdivide land that creates lots smaller than 25 hectares (re-subdivision) must demonstrate that:

- *No additional lots are created.*
- *The potential to create new lots is not increased.*
- *The potential for the number of dwellings is not increased.*
- *The proposed lots do not compromise the purpose of the zone.*

This burden is placed on applicants to prevent the incremental loss and fragmentation of this important agricultural land through inappropriate subdivision (and re-subdivision) that create the potential to increase the encroachment of rural residential development and other incompatible uses on the area.

Whilst the creation of the larger lot (proposed Lot 2) is considered an acceptable outcome when assessed against the purposes of the zone, the resulting creation of a 1.118 hectare parcel to achieve the outcomes sought on the larger lot is considered contrary to the provisions of the zone, as well as state and local policy. No value-adding agricultural activity is planned for proposed Lot 1 and the small size of the lot severely limits (if not eliminates) any future agricultural pursuits from occurring on this site. Along with the small size of the proposed lot, the existence of a dwelling on proposed Lot 1 will contribute to the potential for it to be permanently removed from agricultural production, relegating it to a rural residential or hobby farm lot.

Because of this potential outcome, the application proposes precisely what the Special Use Zone – Schedule 1 was designed to discourage.

By creating a small lot with the real potential of being relegated to a rural residential use, the proposal also presents a potential conflict between the current and future residents of the dwelling and the nearby farming activities 'right to farm'. The 'right to farm' is a position that there is a need for a planning system that:

- *Not only protects agricultural land but facilitates growth in production through support of modern farming systems.*
- *Ensures farmers right to farm is not eroded by secondary uses which create land use conflict.*

- *Does not adversely impact the future growth of farming enterprises through non-agricultural land uses (including dwellings not used in conjunction with agriculture) and fragmentation by subdivisions.*
- *Ensure that overlay controls have considered impacts on agricultural use and are designed with the purpose of the zone.*

(Source: Victorian Farmers Federation)

It is evident that this position closely aligns with principles that are enshrined in planning policies and zoning (such as Schedule 1 to the Special Use Zone) and must be given careful consideration and weight in the assessment of these types of applications.

As Melbourne's population continues to expand, protecting key agricultural land is more vital than ever to ensure Victoria's food security. This is recognised and reinforced by key state and local policies.

For these reasons, as discussed in detail below, a refusal to grant a permit should be issued.

Response to Planning Policy Framework and Local Planning Policy Framework

A number of Planning Policies (including Local Planning Policy) are relevant to this application, and further demonstrate that this application provides an inappropriate response to planning principles and supports the position that the application be refused.

Clause 11.01-1S (Settlement) seeks to "*deliver networks of high-quality integrated settlements that have a strong identity and sense of place*" whilst "*balancing strategic objectives to achieve improved land use and development outcomes*" and "*preserving and protecting features of rural land and natural resources and features to enhance their contribution to settlement and landscapes*".

This proposal does not preserve or enhance rural land and natural resources or achieve improved land use and development outcomes. Contrarily, this proposal has the potential to erode the rural land and its natural resources, as well as cause land use conflicts between what will likely become a 'rural residential lot' and the 'right to farm'.

Clause 11.01-1R (Green Wedges – Metropolitan Melbourne) seeks to "*to protect the green wedges of Metropolitan Melbourne from inappropriate development*" by "*promoting and encouraging the key features and related values of each green wedge area*", "*protecting important productive agricultural areas such as Westernport*" and by "*supporting existing agribusiness activities and food production*".

It is acknowledged that the re-subdivision proposal seeks to consolidate the existing farming operations on 1690 Main Drain Road onto one lot which can be viewed as aligning with the purposes of this policy. However, it must be acknowledged that in doing so it would create a small 1.118 hectare 'house excision' lot, which is not aligned with these policies. This outcome will not promote the horticultural features and values of this area or the important productive agricultural land in Westernport, rather it will compromise and detract from them.

Clause 13.03-1S (Floodplain management) seeks to assist the protection of:

- *Life, property and community infrastructure from flood hazard, including coastal inundation, riverine and overland flows.*
- *The natural flood carrying capacity of rivers, streams and floodways.*
- *The flood storage function of floodplains and waterways.*
- *Floodplain areas of environmental significance or of importance to river, wetland or coastal health.*

Melbourne Water as the relevant floodplain management authority were referred the application and raise no concerns with the proposal. Given that both lots are already developed with dwellings and the application is to re-subdivide boundaries, there is not considered to be any major inconsistencies with this application and this policy framework.

Clause 13.07-1S (Land use compatibility) seeks to "*protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts*" by "*a voiding or otherwise minimising adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and*

operational measure” and by “protecting commercial, industrial and other employment generating uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively”.

This proposal has potential to exacerbate conflicts between farming activities (i.e. noise, odours, spraying) on the larger lot and the residential uses relegated to the smaller lot. This is in conflict with the purpose of the zone and the protection of agricultural land uses of the land and surrounds, as well as the ‘right to farm’.

Clause 14.01-1S (Protection of agricultural land) and Clause 14.01-1R (Protection of agricultural land – Metropolitan Melbourne) seeks to “*protect the state’s agricultural base by preserving productive farmland*” by (in particular):

- *Protecting productive farmland that is of strategic significance in the local or regional context.*
- *Protecting productive agricultural land from unplanned loss due to permanent changes in land use.*
- *Preventing inappropriately dispersed urban activities in rural areas.*
- *Protecting strategically important agricultural and primary production land from incompatible uses.*
- *Limiting new housing development in rural areas by:*
 - *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.*
- *In considering a proposal to use, subdivide or develop agricultural land, consider the:*
 - *Desirability and impacts of removing the land from primary production, given its agricultural productivity.*
 - *Impacts on the continuation of primary production on 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.*
- *Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.*
- *Give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land.*

The application fails to align with almost all of these strategies outlined above. On balance these strategies seek to do the opposite of what is proposed.

The subject land is within the Special Use Zone (Schedule 1) an area of Cardinia Shire Council strategically zoned to protect and enhance agricultural activities, in particular, soil-based agriculture from inappropriate and incompatible land uses. Contrary to what is sought by this application, this policy also seeks to consolidate isolated, small lots in rural zones and re-structure inappropriate subdivisions of productive farming land, whereas this proposal seeks to create one. Additionally, the proposed re-subdivision of land is likely to diminish the long-term productive capacity of the land and the land surrounding it.

The application also fails to appropriately respond to planning policy at a local level. Many Local Planning Policy Frameworks seeks similar outcomes as those outlined above. In particular Clause 21.01 Cardinia Shire key issues and strategic vision which identifies Western Port as a major landscape feature and that a key influence within the Shire is urban growth, including urban pressures on the rural hinterland and management of green wedge areas. The following relevant key issues are identified:

- The protection of the Koo Wee Rup swamp area which contains important groundwater reserves and horticultural soils in the Western Port basin.
- The management of urban growth, including urban pressures on the rural hinterland.

- The protection and sustainable use of agricultural land.

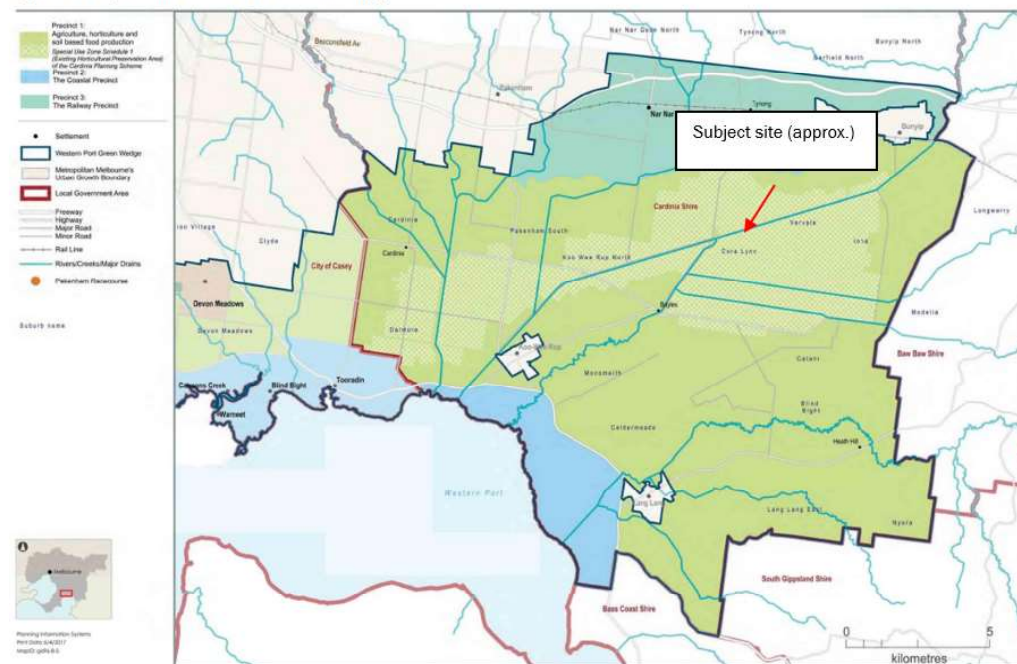
The proposed re-subdivision raises conflict with these key issues because it will result in the degradation and loss of agricultural land in the Koo Wee Rup Swamp area.

The proposal has not identified how State significant Green Wedge and agricultural land is supported or enhanced as part of the proposed re-subdivision which creates a rural-residential / lifestyle lot and increases future potential for land use conflicts between rural-residential uses and the right to farm.

Because of this, it is also considered that the proposal does not appropriately respond to Clause 22.05 Western Port Green Wedge Policy. This Policy identifies this site as being in Precinct 1, the main objective of which is to prioritise the protection of agricultural lands. In particular it recognises that the peaty soils located in Schedule 1 to the Special Use Zone are a finite resource and must be protected from inappropriate uses, development or subdivisions which would result in the permanent loss of this valuable resource.

The Policy encourages the protection of the existing vegetable industry and other horticultural activities by discouraging fragmentation of rural land through subdivisions, boundary realignments and excisions. It states that a significant threat to the sustainability of the highly productive land is fragmentation and that the retention of larger lots is a significant factor supporting the longevity of agricultural businesses and the potential for agricultural diversification and production in the future.

Figure 9. Map 9: Cardinia Western Port Green Wedge precincts



The proposal compromises the purpose of the Metropolitan Green Wedge Land: Core Planning Provisions (Clause 52.01) which seeks to protect productive agricultural land from incompatible uses and development by creating a rural residential lot amongst an active agricultural use.

Based on the above policy assessment, on balance the application should not be supported as it fails achieve the objectives of both state and local planning policy that seeks to protect and enhance important agricultural land from inappropriate subdivision and, in particular the long-term effects of creating a small, 1.118 hectare 'residential' parcel in the heart of Schedule 1 to the Special Use Zone.

Response to Clause 37.01 (Special Use Zone – Schedule 1)

The Site is within the Special Use Zone – Schedule 1. The zone was specifically established within an area of the Koo Wee Rup Swamp that contains a soil recognised as being of high quality, making it agricultural land of state significance.

This highly productive agricultural and horticultural area plays a vital role in providing food for Victoria's population and food security.

Pursuant to Clause 37.01-3 (SUZ1) a planning permit is required to subdivide land and each lot created must be at least 25 hectares. However, a permit may be granted to create smaller lots if the subdivision is the re-subdivision of existing lots provided:

1. *No additional lots are created.*
2. *The potential to create new lots is not increased.*
3. *The potential for the number of dwellings is not increased.*
4. *The proposed lots do not compromise the purpose of the zone.*

A similar requirement is contained at Clause 51.02-3 of the Metropolitan Green Wedge Land: Core Planning Provisions.

The application is considered to meet the first, second and third limb of the Exemption to create smaller lots contained at Section 4.0 of Schedule 1 to the Special Use Zone as:

1. The first limb is met because the Proposal will result in two lots. The number of lots before the re-subdivision is four and after the re-subdivision is two. The number of lots is not increased.
2. The second limb is met as the Proposal will not create the potential for an increase in new lots. The minimum subdivision area of the Schedule 1 of the Special Use Zone is 25 hectares. Even though the land comprising 1690 Main Drain Road is proposed to increase in size to 31.25 hectares this number is not divisible by 2, and therefore, it would not be possible to subdivide this land as each new lot created would not meet the minimum lot size.
3. The third limb is met because there is no potential for the number of dwellings to be increased if the re-subdivision is granted as both lots currently contain dwellings and the Special Use Zone (Schedule 1) states that only one dwelling may be constructed on each lot.

Despite satisfying the first three limbs of this exemption, the application falls down when considering the fourth limb of this subdivision exemption, and subsequent consideration of the relevant decision guidelines of the Zone.

The fourth limb requires that the 'proposed lots do not compromise the purpose of the zone'. It is argued that whilst the larger of the two lots (proposed Lot 2) is considered consistent with the purpose of Schedule 1 to the Special Use Zone, the smaller lot (proposed Lot 1) is at odds with these purposes for the reasons set out below.

The purposes of the Special Use Zone – Schedule 1 are:

- *To preserve land of high agricultural quality for horticulture and other farming activities.*

As discussed at length throughout this report, despite the reasons put forward for the creation of the larger agricultural parcel, the creation of a 1.118 hectare parcel is not considered to preserve this high quality agricultural land for horticulture and other farming activities. In fact, it is likely the proposed creation of this smaller parcel will have the opposite effect and degrade the otherwise productive farm that currently exists across these parcels and other farms in the area by introducing a purely rural residential allotment and a legacy problem for the wider area.

- *To discourage non-agricultural and non-soil based uses establishing on soil of high agricultural value.*

Whilst not directly introducing a new land use as a dwelling already exists on the proposed smaller lot, because the existing site is currently 8 hectares in area, it is considered capable of sustaining some type of low scale agricultural pursuit or being incorporated into a larger farm, like what is currently occurring without creating the smaller lot. The re-subdivision will 'cut' or 'break' the existing agricultural nexus to the land on which it currently sits, therefore creating a

residential use. This is because the change in the size and lot layout of this lot decreases the lands potential to be utilized for agriculture and increases the potential for it to be used for more residential type purposes and introduce the potential for conflict with farms in the vicinity.

- *To protect the area from the encroachment of urban and rural residential type development.*

As discussed above, a dwelling already exists on the site, but by allowing the re-subdivision the nexus between the dwelling and agriculture will be lost, resulting in a residential use. The issue is that the changes in the size of the land and lot layout increases the potential for it to be used for residential / rural-residential purposes and introduce the potential for conflict with farms in the vicinity.

- *To minimise the potential for conflict between residents and normal farming practices that are related to the conduct of agricultural activities.*

As discussed above, the creation of a smaller, rural-residential lot in the heart of the Schedule 1 of the Special Use Zone has the potential to create conflict between farms and the residential use due to the higher amenity expectations (i.e. noise, dust, odours, spraying etc) of residential type land uses. The higher amenity expectations of residents on lots is a problem that has been encountered by farmers time and time again and complaints about amenity impacts directly impact their right to farm on agricultural land. Over time this fragmentation and introduction of residential uses and lot sizes degrades the importance and viability of the agricultural area.

- *To encourage sustainable farming activities based on whole farm and catchment planning principles on an individual and community basis.*

This purpose is not relevant to the consideration of this application.

In addition to the proposal being inconsistent with the purposes of the zone, it is also inconsistent with the following decision guidelines of the Special Use Zone – Schedule 1:

- *Whether the use, building, works or subdivision will be detrimental to the horticultural significance of the area.*
- *The impact of the use, building, works or subdivision on the character and appearance of the area.*
- *Whether the site is suitable for the use, building, works or subdivision and the compatibility of the proposal with adjoining and nearby farming and other land uses.*
- *The Land Capability Study for the Cardinia Shire (February 1997).*
- *Whether the land is liable to flooding and any advice received from Melbourne Water.*

For the same reasons outlined in the assessment of the purpose of the zone, the proposal is considered inconsistent with the decision guidelines of the zone because:

- The re-subdivision which creates a smaller, rural-residential lot within the heart of Schedule 1 of the Special Use Zone will be detrimental to the horticultural preservation of the area, by fragmenting important agricultural land and introducing the potential for land use conflicts described above.
- The re-subdivision which creates a small, 1.118 hectare parcel is not consistent with the character of subdivision in the area. As discussed previously, many lots remain in excess of 8 hectares in the surrounding area.
- The re-subdivision is not suitable as it has the real potential to create land use conflicts between the rural-residential lot and surrounding farmland because of the higher amenity expectations often associated with residential uses discussed above.
- This area is part of the alluvial plain which is situated in what once was part of the extensive Koo-wee-rup Swamp. According to the Land Capability Study for the Cardinia Shire (February 1997), this area has peaty clay soil, with organic peaty topsoils and peaty clay subsoils and is highly valued for intensive agriculture (including horticulture, dairy and grazing). The proposal does not align with this assessment because as discussed throughout this report, the re-subdivision of the land would detrimentally impact the capability of the land.

- The land is liable to flooding and the advice of Melbourne Water has been sought, with an assessment provided below. However, it is noted that this assessment does not mitigate against the overwhelming inconsistency of the application with the purpose and decision guidelines of Schedule 1 to the Special Use Zone.

Whilst it is difficult to find similar decisions relating to the Cardinia Special Use Zone (Schedule 1) as it is unique to our Shire and has not been tested in many instances, there are a number of comparable decisions in the Farming Zone.

Despite the lack of decisions testing the Cardinia Special Use Zone (Schedule 1), the Tribunal has reached a similar conclusion in many other refusals of permits for re-subdivisions in agricultural zones lacking a nexus between the creation of the smaller lot and the agricultural purpose of the area and the ongoing issues and conflict these 'excisions may cause', in particular in the Farming Zone. In *Irrewarra Estate Ltd v Colac-Otway SC [2021]* the Member concluded that:

- Based on Planning Policy at Clause 14.01-1S they were “*not satisfied on the material before me that the excision of proposed Lot 1 containing the existing dwelling will not diminish the long term productive capacity of the land. In my view, as the strategy is directed specifically to the effects of subdivision on productive agricultural land, its object is directed to the effect of the subdivision on something other than merely the agricultural capacity of the soil on the land. As proposed Lot 1 will effectively be an isolated island of land within a balance lot of less than 80 hectares I am of the view that the creation of Lot 1 could make Lot 2 less desirable for agricultural use by anyone other than the respondents.*”
- The Member also added “*The proposed subdivision will not support or enhance agricultural production*” and “*The proposed subdivision will not facilitate sustainable rural production*”.
- f. They concluded that “*Approval of the proposed subdivision would create a rural lifestyle lot in the Farming Zone which is an outcome not preferred under the planning scheme. While the proposed subdivision will not adversely affect soil quality, it will remove an area of land (proposed Lot 1) permanently from agricultural production and while that area of land is relatively small, its removal constitutes the fragmentation of agricultural land sought to be avoided. Further, there is the potential for the use of proposed Lot 1 as a rural lifestyle block, or predominantly for the use of the dwelling, to limit the operation of nearby agricultural uses. I am not satisfied, given the particular and unavoidable shape and depth of proposed Lot 1, that there would not arise conflict regarding amenity issues between the owners/occupiers of proposed Lot 1 and the continued use of proposed Lot 2 and other nearby land used for agricultural purposes.*”

Additionally, the horticultural activities are currently occurring on the land, and could continue to occur on the land without the need to create a smaller lot. This could be achieved through other means (such as lease agreements or providing land in perpetuity) without permanently changing the size and layout of the land.

In summary, whilst it could be argued that the larger lot (proposed Lot 2) proposed by this application is consistent with the purpose and decision guidelines of the zone listed above, the smaller lot (proposed Lot 1) proposed is considered to be overwhelmingly at odds with the purpose and decision guidelines of the Zone (Schedule 1), and these inconsistencies warrant the refusal of the application.

Response to Clause 44.04 (Land Subject to Inundation Overlay)

The purpose of the Land Subject to Inundation (LSIO) Overlay is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To identify flood prone land in a riverine or coastal area affected by the 1 in 100 (1 per cent Annual Exceedance Probability) year flood or any other area determined by the floodplain management authority.*
- *To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.*
- *To minimise the potential flood risk to life, health and safety associated with development.*
- *To reflect a declaration under Division 4 of Part 10 of the Water Act, 1989.*

- *To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.*
- *To ensure that development maintains or improves river, marine, coastal and wetland health, waterway protection and floodplain health.*

Pursuant to Clause 66.03 the application was referred to Melbourne Water as required by Clause 44.04-7 of the Land Subject to Inundation Overlay. Melbourne Water who had no objection to the proposal and did not provide any conditions.

As the application was approved by Melbourne Water it is considered to comply with the purpose and decision guidelines of the overlay.

Melbourne Water's consent to the application does not mitigate the assessment of the application against Planning Policy Framework, Local Planning Policy Framework, Schedule 1 to the Special Use Zone or any other particular provision of the Cardinia Planning Scheme that demonstrates that the application is inappropriate and should not be supported.

Response to Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions)

The proposal is contrary to the purposes of Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions). The relevant purposes within this particular provision are:

1. To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values, and
2. To protect productive agricultural land from incompatible uses and development.

As discussed above, the proposed re-subdivision would result in the permanent loss of agricultural land in a horticulturally significant area. The re-subdivision will introduce a lot only useful for rural residential use and is incompatible with agriculture because it would not only result in this loss, but it would also introduce a myriad of amenity conflicts with nearby farming enterprises. Therefore, the Application is inconsistent with Clause 51.02

Clause 65 Decision Guidelines

As discussed above the proposal fails to comply with the Municipal Planning Strategy, the Planning Policy Framework, the purpose of Schedule 1 to the Special Use Zone and Clause 51.02 of the Cardinia Planning Scheme. The proposed re-subdivision will not contribute to the orderly planning of the area, being a fragmented design that creates a small 1.118 hectare lot which will be permanently taken out of agricultural production and relegated to a rural residential use with the potential to cause land use conflicts with the 'right to farm'.

Conclusion

Whilst it is not disputed that the proposed consolidation of agricultural land for the purposes of farming is considered to be a good planning outcome and consistent with the purpose of Schedule 1 to the Special Use Zone, this should not come at the expense of the creation of a small (1.118 hectare), fragmented, 'rural residential' parcel.

The proposed creation of this smaller allotment has the real potential to create land use conflicts and detrimentally impact the 'right to farm' for the land surrounding it, which is not consistent with the purpose of Schedule 1 to the Special Use Zone.

Additionally, the horticultural activities are currently occurring on the land, and could continue to occur on the land without the need to create a smaller lot. This could be achieved through other means (such as lease agreements or providing land in perpetuity) without permanently changing the size and layout of the land.

In considering the overall intent, purpose and decision guidelines of Schedule 1 to the Special Use Zone, for the reasons outlined above, the proposed re-subdivision is considered, on balance, to be:

- Detrimental to the horticultural significance of the area
- Will have detrimental impact on the character and appearance of the area; and

- Is incompatible with adjoining and nearby farming land uses.

Based on this, it is recommended that the proposal be refused based on the grounds listed above.

Recommendation

Refusal to Grant a Planning Permit

That Council having caused notice of Planning Application No. T230120 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to Refuse to Grant a Permit in respect of the land known and described as CA 8 SEC N Parish of Koo-Wee-Rup East, 1670 Main Drain Road, and CA 9 SEC N, CA 20 SEC N and CA 21 SEC N, Parish of Koo-Wee-Rup East, 1690 Main Drain Road, Vervale VIC 3814 for the Re-subdivision of land (house lot excision) under the following grounds:

Refusal Grounds:

1. The proposal is inconsistent with Planning Policy Framework and Local Planning Policy Framework, that aim to preserve and protect rural land for its resources and features, protect important agricultural land such as those in Westernport, avoid the subdivision of productive agricultural land and avoiding the permanent loss of agricultural land, specifically:
 - a. Clause 11.01-1S - Settlement
 - b. Clause 11.01-1R - Green Wedges – Metropolitan Melbourne
 - c. Clause 13.07-1S – Land Use Compatibility
 - d. Clause 14.01-1S - Protection of Agricultural Land
 - e. Clause 14.01-1R - Protection of Agricultural Land – Metropolitan Melbourne
 - f. Clause 21.04-2 – Agriculture
 - g. Clause 22.05 – Western Port Green Wedge Policy
 2. The proposal is inconsistent with relevant purposes and decision guidelines of the Schedule 1 to the Special Use Zone as it compromises the horticultural preservation of the land and fails to protect the area from the encroachment of urban and rural residential uses which has the potential to cause conflict between residents and normal farming practices.
 3. The proposal is inconsistent with Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions), which aims to protect metropolitan green wedge land from uses and development that would diminish its agricultural values, and to protect productive agricultural land from incompatible uses and development.
 4. The proposal is inconsistent with the relevant considerations of Clause 65 Decision Guidelines and does not represent orderly planning.
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T230120 PA - Locality Map

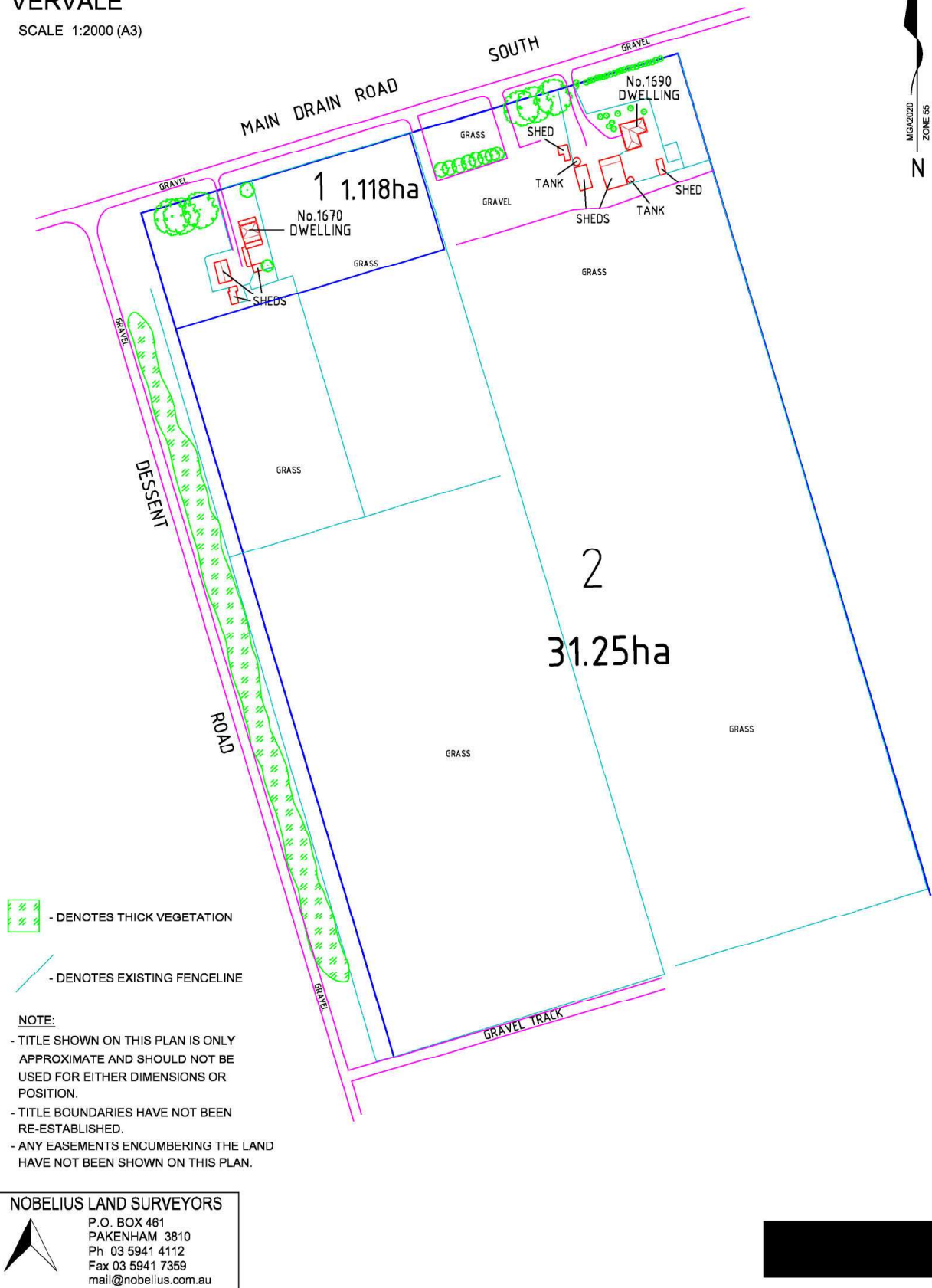


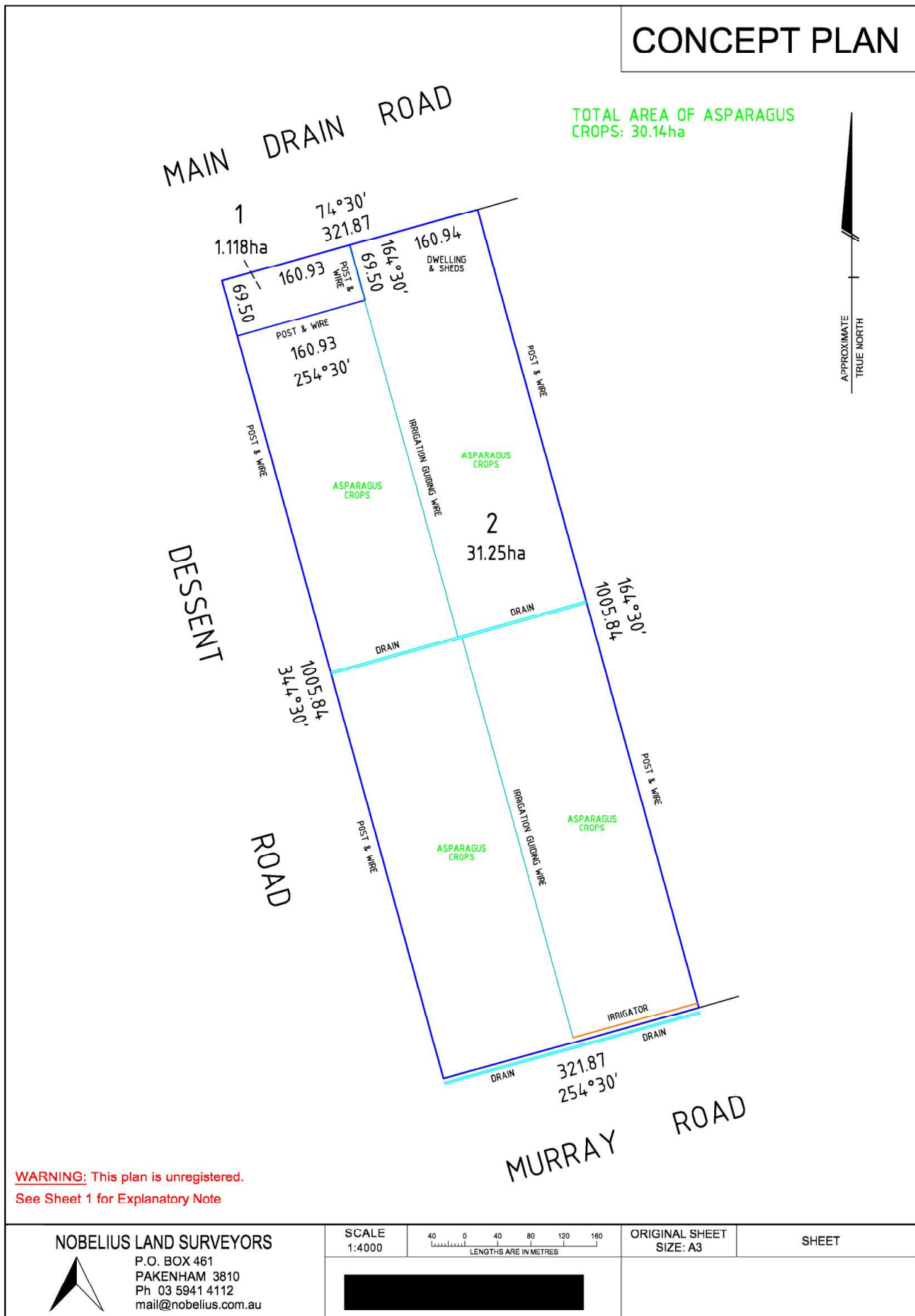
PLAN OF SURVEY


1670 & 1690 Main Drain Road

VERVALE

SCALE 1:2000 (A3)





PLAN OF SUBDIVISION			EDITION 1	PS 902905 X	
LOCATION OF LAND PARISH: Koo-Wee-Rup East TOWNSHIP: --- SECTION: --- CROWN ALLOTMENT: 8, 9, 20 & 21 CROWN PORTION: --- TITLE REFERENCE: Vol. 6076 Fol. 024 & Vol. 4004 Fol. 693 LAST PLAN REFERENCE: TP777251A & TP267847J POSTAL ADDRESS: 1670 & 1690 Main Drain Road, Vervale 3814 (at time of subdivision) MGA CO-ORDINATES: E: 381 550 ZONE: 55 (of approx centre of land N: 5 777 950 GDA 2020 in plan)			Council Name: Cardinia Shire Council <u>EXPLANATORY NOTE:</u> WARNING: This plan is unregistered. Alterations may be required by Council and the Registrar of Titles prior to Registration, Nobelius Land Surveyors accepts no responsibility whatsoever for any loss or damage suffered.		
VESTING OF ROADS AND/OR RESERVES			NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON				
Nil	Nil				
NOTATIONS					
DEPTH LIMITATION: DOES NOT APPLY					
SURVEY: This plan is based on survey. STAGING: This is not a staged subdivision. Planning Permit No. This survey has been connected to permanent marks No(s). In Proclaimed Survey Area No.					
EASEMENT INFORMATION					
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)					
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	
NOBELIUS LAND SURVEYORS  P.O. BOX 461 PAKENHAM 3810 Ph 03 5941 4112 mail@nobelius.com.au		SURVEYORS FILE REF: 19754 <div style="background-color: black; width: 200px; height: 20px; margin-top: 10px;"></div>		ORIGINAL SHEET SIZE: A3	SHEET 1 OF 2

