

5.5 T240285 PA - Two Lot Subdivision at 490 and 494 McGregor Road Pakenham 3810

Responsible GM: Debbie Tyson
Author: Sasha Savanovic

Recommendation

- A. That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T240285 for a *Two (2) Lot Subdivision (boundary realignment)* at 490 and 494 McGregor Road, Pakenham, on the following grounds:
1. The proposal is inconsistent with the Municipal Planning Strategy and Planning Policy Framework and Local Planning Policy Framework, specifically:
 - a. Clauses 11.01-1R Green Wedges – Metropolitan Melbourne;
 - b. Clause 14.01-1 Agriculture;
 - c. Clause 14.01-1S Protection of Agricultural Land;
 - d. Clause 17.01, Economic Development;
 - e. Clause 16.01-3S Rural Residential Development;
 - f. Clause 21.04-2 Agriculture; and
 - g. Clause 22.05 Western Port Green Wedge Policy.as the proposal does not protect valuable agricultural land, permanently removes land from primary production and is an incompatible land use.
 2. The proposed subdivision fails to meet the purpose and objectives of the Green Wedge Zone, which aims to discourage land fragmentation, maximise agricultural and horticultural output, and minimise the loss of high-quality productive land to other uses. The proposal results in the expansion of a small residential lot that is incompatible with adjoining and nearby agricultural land uses, compromising the protection and conservation of Green Wedge land for its agricultural resources, thereby limiting opportunities for future expansion.
 3. The proposal is inconsistent with and does not respond to the objectives, policies and decision guidelines of Clause 22.05 (Western Port Green Wedge Policy), as:
 - a. It does not maintain and protect highly productive agricultural land from incompatible uses;
 - b. It does not protect the values and assets of Green Wedge land by preventing encroachment of urban development into the Cardinia Westernport Green Wedge; and
 - c. It does not encourage or support the use of the land in Precinct 1 (Agriculture, horticulture and soil based food production).

AND

- B. That Council authorise the Manager Planning and Design/Coordinator Statutory Planning to instruct Council's Statutory Planners and/or Council's advocates on any future application for review at the Victorian Civil and Administrative Tribunal.

Attachments

1. T240285 PA - Locality Map [5.5.1 - 1 page]
2. T240285 PA - Proposed Plan of Subdivision [5.5.2 - 2 pages]
3. T240285 PA - Officer Report [5.5.3 - 13 pages]

Application Details

APPLICATION NO.:	T240285
APPLICANT:	Frank Perry Town Planning
LAND:	L1 PS520617 and L1 PS531529 490 and 494 McGregor Road Pakenham VIC 3810
PROPOSAL:	Two (2) Lot Subdivision (boundary realignment)
PLANNING CONTROLS:	Green Wedge Zone (Schedule 1) 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> , by placing one sign on site and posting notices to surrounding landowners. No objections were received.
KEY PLANNING CONSIDERATIONS:	Protection of agricultural land, fragmentation of green wedge land, Western Port Green Wedge Policy, Green Wedge Zone, appropriateness of expanding rural-residential land.
REASON FOR MEETING:	Recommendation to refuse to grant a planning permit
RECOMMENDATION:	Notice of Decision to Refuse to Grant a Permit

Executive Summary

The purpose of this report is to consider an application for a two (2) lot subdivision (boundary realignment).

The proposal involves the realignment of the title boundaries to effectively absorb 0.5 hectares of land from the larger lot (at 494 McGregor Road) and incorporate it into the smaller lot (at 490 McGregor Road). In detail:

- 490 McGregor Road currently has an area of 1.00 hectare and will increase to an area of 1.5 hectares; and
- 494 McGregor Road currently has an area of 31.32 hectares and will decrease to an area of 30.82 hectares.

This site is situated in Green Wedge Zone (Schedule 1) and within Precinct 1 of the Westernport region. The area is recognised in local policy for its potential for high-quality agricultural and horticultural production.

An assessment of the relevant policies indicates that the proposed subdivision is not an acceptable planning outcome, as it contradicts the directions of the Planning Scheme that seek to protect highly productive agricultural land.

Moreover, expansion of a residential allotment further fragments the Green Wedge Zone, which is intended for agriculture and other non-residential activities, conflicts with the rural character of the area and will permanently transform the land's use from agricultural to residential. This shift would negatively impact the rural economy and hinder the operation and establishment of agricultural activities on surrounding lands.

It is noted that a previous planning permit application (T220809) for a similar two (2) lot subdivision (boundary realignment) was lodged with Council on 8 December 2022. The application proposed the following:

- 490 McGregor Road 1.00ha area increased to an area of 2.612ha.
- 494 McGregor Road 31.32ha area decreased to an area of 29.70ha.

An application for review of Council's failure to determine within the prescribed timeframe was lodged with the Victorian Civil and Administrative Tribunal (VCAT). Council opposed the issuing of the permit on grounds of:

1. *The subdivision is inconsistent with the Planning Policy Framework at clause 14.01-1S, Protection of Agricultural Land, by removing land from a large rural holding and transferring to a small holding.*
2. *The subdivision is inconsistent with the Planning Policy Framework at clause 17.01, Economic Development, by reducing the viability of agricultural land within an area zoned for agricultural purposes.*
3. *The subdivision is inconsistent with Local Planning Policy at clause 22.05, Western Port Green Wedge policy, by reconfiguring lots in a manner which will reduce outcome in an area where agricultural and horticultural output is considered a priority.*
4. *The subdivision is inconsistent with the purpose of the Green Wedge Zone (GWZ1) which seeks to discourage fragmentation of land, to maximise agricultural and horticultural output and minimize the loss of high quality productive land to other land uses.*

In its order dated, 21 March 2024, VCAT affirmed Council's position and directed that no permit be issued, based on similar issues to those raised by the current application.

Relevance to Council Plan

{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.



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APPLICATION FOR CONSIDERATION
REFUSAL
OFFICER REPORT

Application Details:

Proposal	Two (2) Lot Subdivision (boundary realignment)	
Applicant	Frank Perry Town Planning	
Date Received:	24 June 2024	
Statutory Days:	142 days as of 13 November 2024	
Section 50/50A/57A Amendment	<input checked="" type="checkbox"/> None	
Application Number	T240285	
Planner	Sasha Savanovic	
Land/Address	L1 PS520617 and L1 PS531529 490 and 494 McGregor Road Pakenham VIC 3810 Property Numbers: 4559851730 and 4559851750	
Zoning	GWZ1 - Green Wedge Zone - Schedule 1	
Overlay/s	LSIO - Land Subject to Inundation Overlay	
Permit Trigger(s)	<p>Pursuant to Clause 35.04-3 of the Green Wedge Zone a planning permit is required to subdivide land.</p> <p>Pursuant to Clause 44.04-3 of the Land Subject to Inundation Overlay a planning permit is required to subdivide land.</p> <p>It is noted that the proposal does NOT satisfy exemptions relating to boundary realignments at clause 62.04 (Subdivisions not requiring a permit).</p> <p>It is further noted that despite both lots having areas less than the minimum specified in the GWZ1 (minimum 40ha, lot 1 will be 30.32ha, lot 2 will be 1.5ha) this is permitted under clause 35.04-3 (and similarly at Clause 51.02-3) which states:</p> <p><i>A permit maybe granted to create smaller lots if any of the following apply:</i></p> <ul style="list-style-type: none"> <i>The subdivision is the re-subdivision of existing lots, the number of lots is not increasing and the number of dwelling that the land could be used for does not increase.</i> <p>The submitted application proposes the re-subdivision of existing lots in which, the number of lots is not being increased or the number of dwellings permitted (without a permit).</p>	
Section 55 Referrals	Melbourne Water	

Registered restrictions on Title	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Yes: AD941568V on Lot 1 PS531529R (the larger lot). This agreement was entered into as required by planning permit T050506 (which allowed the subdivision of the land to create the larger lot) to provide for the matters set out within condition 5 of that permit. Condition 5 restricts further subdivision in a manner which would allow the creation of a lot for an additional dwelling. <p style="background-color: #fce4ec; padding: 5px;">5. The permit holder must enter into a Section 173 Agreement with the Responsible Authority preventing any further subdivision of the land that creates additional lots. The form and content of the agreement must be to the satisfaction of the Responsible Authority, and all costs relating to the preparation and registration of the agreement on title must be met by the permit holder. Prior to the issue of a Statement of Compliance, the permit holder must provide a dealing number to the Responsible Authority to demonstrate that the agreement has been lodge with the Land Titles Office.</p> The proposal does not breach the s173 agreement on the title.
Recommendation	<input checked="" type="checkbox"/> Refusal	
Documents relied on	<ul style="list-style-type: none"> ▪ Proposed Plan of Subdivision prepared by Absolute Surveying ▪ Town Planning Submission prepared by Perry Town Planning ▪ Title Documents (including 173 Agreement) 	

Proposal

The application proposes the subdivision of two (2) existing lots into two (2) differently configured lots (boundary realignment). The land is currently made up of 2 lots, essentially a small lot (1ha) in the north-western corner, plus a larger lot (31.32ha) making up the balance of the land. Each lot currently contains a dwelling and outbuildings.

The realignment is of the title boundaries to effectively absorb 0.5 hectares of land from the larger lot and incorporate it into the smaller lot. In detail:

- 490 McGregor Road currently has an area of 1.00 hectare and will increase to an area of 1.5 hectares.
- 494 McGregor Road currently has an area of 31.32 hectares and will decrease to an area of 30.82 hectares.

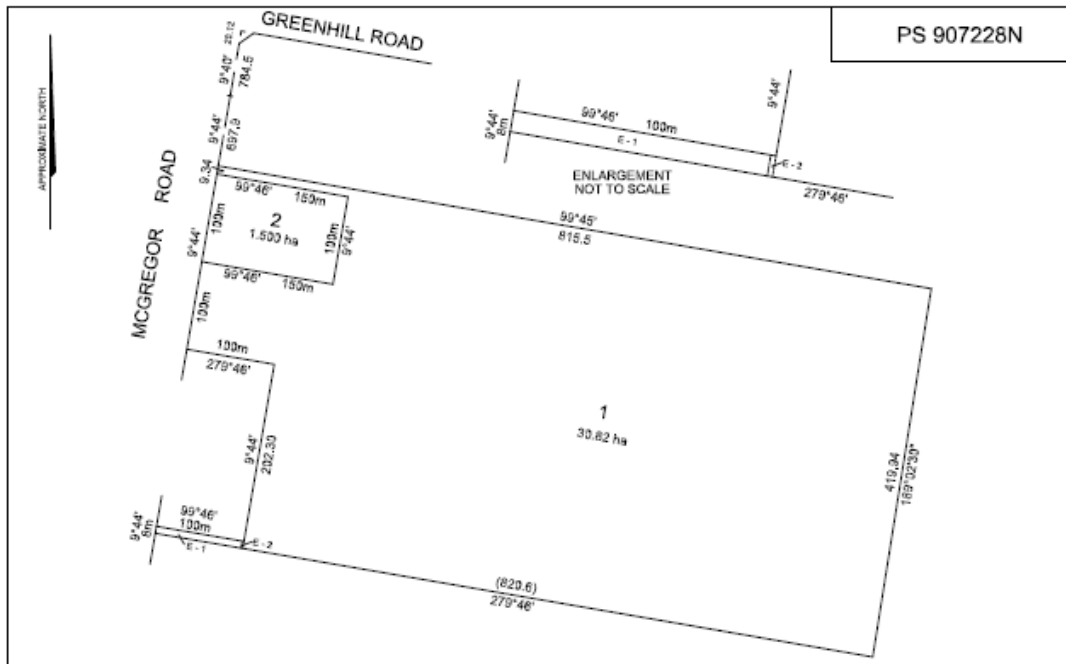


Image 1: Proposed Plan of Subdivision

Subject site & locality

A desktop inspection of the site and the surrounding area has been undertaken using Council’s electronic records and information provided to Council by the permit applicant.



Image 2 - Subject Site Aerial (CardiMap September 2024).

The site is made up of two lots: 490 McGregor Road (Lot 1 on PS520617) and 494 McGregor Road (Lot 1 on PS531529). Both lots are on the eastern side of McGregor Road and located approximately 4km south of the Pakenham Central Activity District, and 7.5km north-east of the township of Cardinia.

494 McGregor Road is the larger lot (measuring 31.32 hectares) and is affected by two carriageway easements (E-1 & E-2) across the narrow section to the south. This does not impact the proposal at hand.

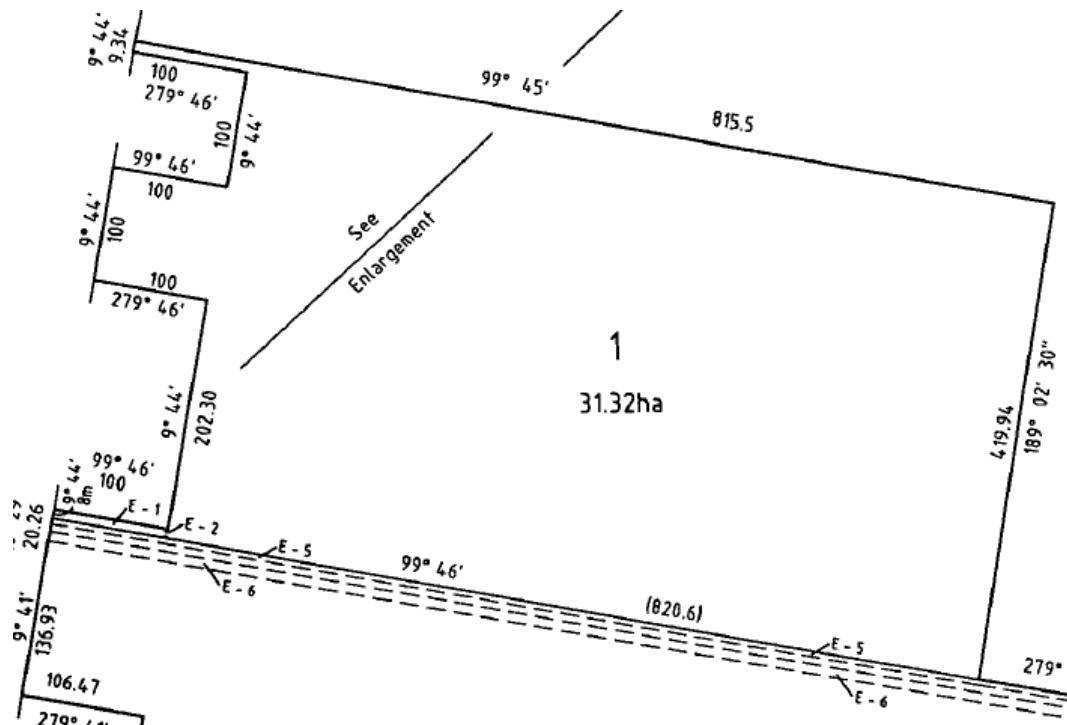


Image 3 – L1 PS531529 Existing Plan of Subdivision and Easements

490 McGregor Road is the smaller lot (measuring 1 hectare) and is not impacted by any easements.

There is an existing dwelling on each lot, as shown in the aerial photographs.

The topography of the land is relatively flat, with less than 2m change of levels across the allotments (900m length).

The main characteristics of the surrounding area are:

- To the north is land zoned Green Wedge Zone, which being used for agricultural purposes. Further north is land zoned Urban Growth Zone, partly being used for agriculture and partly being developed for industrial purposes, and land zoned Industrial 1 Zone.
- To the east is land zoned Green Wedge Zone used for agricultural purposes and further east is land zoned Special Use Zone and used for an abattoir.
- To the west is land zoned Green Wedge Zone used for agricultural purposes.
- To the south is land zoned Green Wedge Zone used for various agricultural purposes.



Image 4 – Frontage of the Subject Sites (NearMaps)



Image 5 – Zoning Plan (VicPlan)

Permit/Site History

The relevant history of the site includes:

- Planning Permit T050506 was issued on 16 August 2005 and allowed a two (2) lot boundary realignment generally in accordance with the approved plans.
- Planning Permit Application T220809 for a two (2) lot subdivision (boundary realignment) was lodged with Council on 8 December 2022 and an application for review of Council's failure to make a decision was subsequently lodged with the Victorian Civil and Administrative Tribunal (VCAT). In its order dated, 21 March 2024, VCAT directed that no permit be issued.

Planning Scheme Provisions

Zone

The land is subject to the following zones:

- GWZ1 - Green Wedge Zone - Schedule 1

Overlays

The land is subject to the following overlays:

- LSIO - Land Subject to Inundation Overlay

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- 11.01-1S Settlement – Metropolitan Melbourne
- 11.01-1R Green wedges – Metropolitan Melbourne
- 13.07 Land Use Compatibility
- 14.01-1S Protection of Agricultural Land
- 14.01-1R Protection of Agricultural Land - Metropolitan Melbourne
- 17 Economic Development

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- 21.01-3 Strategic vision - Key Issues
- 21.04-2 Agriculture
- 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 53.01 Public Open Space Contribution and Subdivision
- Clause 65 Decision Guidelines
- Clause 66 Referral and Notice Provisions
- Clause 71.02-3 Integrated Decision Making
- Western Port Green Wedge Management Plan, background document

Planning Permit Triggers

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

- Pursuant to Clause 35.04-3 of the Green Wedge Zone, a planning permit is required to subdivide land.
- Pursuant to Clause 44.04-3 of the Land Subject to Inundation Overlay, 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 one (1) sign on site.

No objections were received.

Referrals

External Referrals/Notices:

A two-lot subdivision is exempt from referral requirements at clause 66.01, rather, standard conditions as stipulated at clause 66.01-1 are required to be included on any permit which may issue.

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55	Melbourne Water - Determining	The application was referred to Melbourne Water, pursuant to Section 55 of the <i>Planning and Environment Act 1987</i> , as the relevant floodplain manager. Melbourne Water does not object to the proposal.

Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
None	As the realignment does not require any new drainage, waste treatment or access it was considered unnecessary to refer the proposal.

Assessment

Planning Policy Framework

Of relevance to this application, in summary, State and Regional Policy seeks to protect agricultural land from inappropriate development and/or subdivision which prejudices its capacity to operate effectively in the future. It also discourages subdivisions which create smaller lots, or increases the number of lots where this would facilitate the introduction of new dwellings, creating tension between different, and incompatible, land uses in close proximity.

Clause 11.01-1S sets out a strategy to maintain a permanent urban growth boundary around Melbourne to create a more consolidated, sustainable city and protect the values of non-urban land. Council does not consider the proposed re-subdivision evident of protecting the values on non-urban land.

Clause 11.01-1R seeks to protect the green wedges of Metropolitan Melbourne from inappropriate development. It is considered that the current proposal will degrade the purpose and objectives of the zone due to Lot 2 being a residential allotment and the reduction of primary agricultural land that is currently being utilized for farming. Strategies in which the application does not comply with also include:

Supporting the development in green wedge that provides for environmental, economic and social benefits.

Consolidate new residential development in existing settlements and in locations where planned services are available and green wedge values are protected.

Support existing and potential agribusiness activities, forestry, food production and tourism.

Clause 13.07-1S, Land use compatibility, sets out the objective 'To protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts.' The clause sets out four strategies, including:

- Ensure that use or development of land is compatible with adjoining and nearby land uses.
- Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.

- *Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.*
- *Protect 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.*

Whilst the application before Council does not directly propose, or permit, use and/or development, subdivisions, lot boundary realignments, lot sizes and orientations all play their part in establishing a use and development environment. Lot sizes create an environment where land uses are affected by virtue of the likely economics at play resulting from such considerations as viability. As will be further explored, where large lots zoned for agricultural use are subdivided, and their contiguous size reduces, the likelihood of the land being used for the core purpose (agriculture) also reduces. As a result of a reduced economy of scale, lower profit and reduced viability demonstrates the proposal fundamentally erodes of the primary use/function of the zone.

Such outcomes can create ad-hoc outcomes which are not in line with planning policy.

Clause 14.01 Agriculture continues this theme by identifying the need to protect and preserve productive farmland as the main objective of Clause 14.01-1S Protection of Agricultural Land, with associated strategies seeking to avoid permanent removal of productive land via planned or unplanned loss due to changes in land use, and an intent to prevent “*urban activities*” within rural areas.

In fact, one specific strategy seeks to discourage “*development of isolated small lots in the rural zones from use for dwellings or other incompatible uses*” and decision makers are recommended to consider impacts on not just the site itself, but the impacts on existing, continued and future production on adjacent land. As this proposal seeks to increase the allotment size for a residential purpose it’s considered that the proposed subdivision would further strengthen the loss of primary agricultural land creating a larger isolated parcel in a rural zone.

Clause 14.01-1S/R, Protection of agricultural land, provides specific focus on the pressure which exists for subdivisions of agricultural land, which can be relatively cheap compared with land zoned for residential purposes. The policy objective is ‘*To protect the state’s agricultural base by preserving productive farmland.*’ (emphasis added). Relevant strategies include:

- *Identify areas of productive agricultural land, including land for primary production and intensive agriculture.*
- *Consider state, regional and local, issues and characteristics when assessing agricultural quality and productivity.*
- *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 changes in land use.*
- *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:*
 - *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.*

No evidence has been provided to Council that there are site constraints which would render the lot/s as ‘unproductive’.

The subject land is located within the Green Wedge Zone (Schedule 1) which purposes include 'To provide for the use of land for agriculture.' There is no policy which encourages, or sets out a framework, for the ad-hoc reduction in the size of viable agricultural lots.

The proposal seeks to reduce the size of the large lot, which is currently 31.32 hectares and likely could be used as a viable agricultural concern, to transfer 0.5 hectares of land to a lot which is primarily a rural residential lot. Whilst one could argue the merits of the decision which permitted the creation of the 1 hectare lot (which currently contains a large dwelling, swimming pool and shedding) back in 2005, the policy in the planning scheme today is clear that further land should not be excised for non-agricultural purposes.

Whilst the applicant argues that the 0.5-hectare piece of land being transferred between the large lot and the small lot is to be used for some low-intensity agricultural purposes:

- There is no way that Council can be certain that this will occur;
- If it were to occur it would likely be of lower intensity/output than if it remained within the existing large contiguous block; and
- The loss of land from the larger contiguous block could decrease its viability, reducing output and placing added pressure on further subdivision or introduction of uses not generally consistent with the purpose to the zone.

Various policy exists within **Clause 17**, Economic Development, setting out the need for planning to ensure that land is used and developed to support economic growth, employment, provision of raw materials (food stuffs) for industry, etc. Given the zoning of the land, and the purpose to the zone, the removal of 0.5 hectares of land from a lot which has the area to remain a viable agricultural enterprise and allocating that to what is currently a large residential lot, is not supported. Whilst the applicant suggests that they are 'selling' this land to fund their retirement, and that if this does not occur, they will likely not be able to continue on the land, planning considerations are agnostic of ownership or individual financial considerations (as opposed to considerations of macro / regional needs). The large lot could readily change ownership, at any time, and be used in accordance with the planning scheme. Or it could lay dormant. Either way, by remaining as a large, contiguous block, zoned for, and capable of contributing to, agricultural output, it is most likely to meet the purpose set out in the planning scheme.

The realignment is considered to be inconsistent with State and Regional Policy as it does not contribute to the on-going viability of the agricultural business operating on the land, and is likely to result in land being taken out of commercial production without any evidence presented that the change would represent best-use of the land.

Local Planning Policy Framework

Local policy at **Clause 21.01-3**, Strategic vision, acknowledges the challenges associated with protection of agricultural land, discouraging ad-hoc residential outcomes, managing interactions between incompatible land uses to ensure that productive agriculture occurs on land suited, and zoned, for that purpose.

Similarly, **Clause 21.04-2**, identifies the key issues in maintaining and protecting the high value of agricultural land within a municipality, including from inappropriate subdivision. As outlined within this report the proposed subdivision to increase the size of the rural residential allotment is apathetic to the purposes of the applicable zoning which highly encourages and supports agricultural land uses.

Of specific relevance to this locality is the local policy at **Clause 22.05**, Western Port Green Wedge Policy, which inter alia sets out the following context:

The Western Port Green Wedge is home to important assets that have value in their own right and have a significant role to play in making Melbourne a great city. A large proportion of Cardinia's Western Port Green Wedge has some of the best agricultural soil in Melbourne, providing much of Victoria's asparagus, celery, leeks, herbs, silver beet and beef production. Important natural resources exist within the green wedge, with existing sand extraction industry in operation around Lang Lang with potential future extractive industry to occur in the north.

Although these areas are set aside as non-urban land through the Cardinia Planning Scheme, green wedges are continually subject to intense pressures for urban development and change.

There are often competing pressures from urban development, hobby farms, tourism, intensive agriculture and infrastructure because they are on the edge of the city which has a population of approximately four million people.

(emphasis added)

The policy sets out a vision for the Green Wedge. The Cardinia Western Port Green Wedge policy states that ‘Agriculture, horticulture and soil based food production for the long-term food security of Victoria is at the heart of this vision. The Cardinia Western Port Green Wedge will be the permanent edge to Melbourne’s southeast.’

It is policy that:

- The green wedge soils and their versatility are recognised as a finite resource and are protected accordingly.
- Highly productive agricultural land will be protected from incompatible uses.

Map 1 to the policy identifies the site as being within Precinct 1: Agriculture, horticulture, area.



Image 6: Western Port Green Wedge Zone (Map 1)

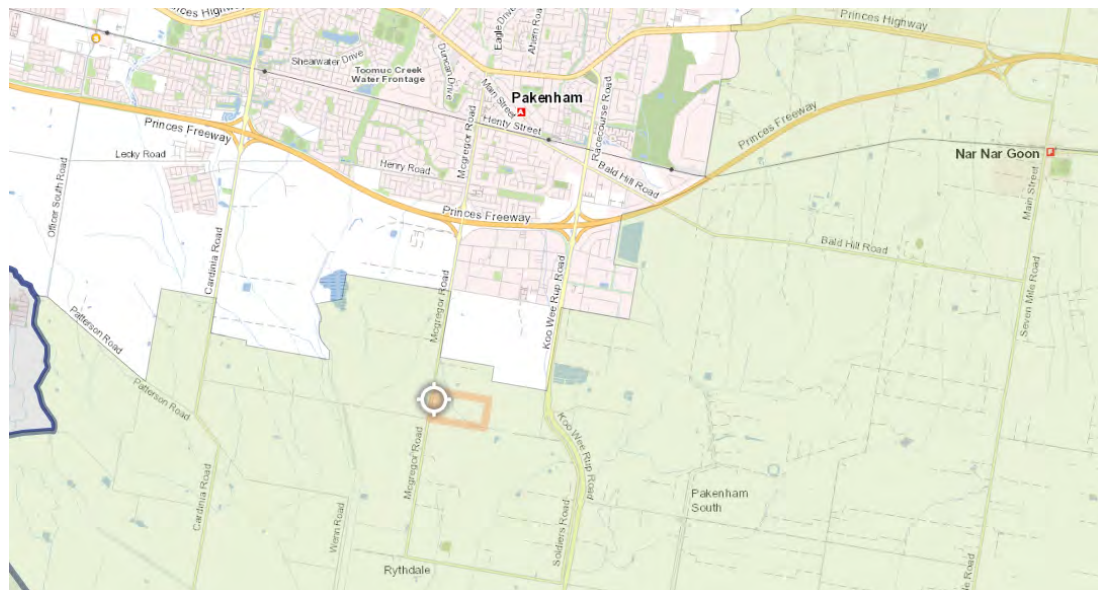


Image 7: Location of subject site within Western Port Green Wedge Zone (Cardi Maps)

Table 1 of the policy adds further weight to the expected / supported / encouraged uses for this location. None of the policy suggests that small-scale operations should be supported, that lots should be reduced in size or that hobby type ventures are supported.

The proposed subdivision is not consistent with the local policy pertaining to the subject site and context.

Zone

Green Wedge Zone (Schedule 1)

A permit is required to subdivide land under the zone pursuant to Clause 35.04-3.

Inter alia, the purpose to the zone is to recognise, protect and conserve green wedge land for its agricultural and environmental values. It is also policy to provide opportunities for a variety of productive agricultural uses.

The majority of decision guidelines at Clause 35.04-6 relate to buildings and works, or uses, however, the underlying consideration is that decisions must take into account the ongoing viability of the land, and its capacity to provide for uses which are encouraged by the zone.

The decision guidelines for the zone leverage heavily the State, Regional and Local policy, which sets out the expectations for the land. As the previous assessment within this report has clearly set out, the proposal to take land (0.5 hectares) from what is a large, contiguous, viable land unit, and transfer to what is likely to be used as a rural living lot (with potentially some hobby production), is inconsistent with the purpose to the zone.

The proposal does not satisfy the purpose of the Green Wedge zone and therefore a permit should not be issued.

Overlay

Land Subject to Inundation Overlay

A permit is required under the LSIO to subdivide land pursuant to Clause 44.04-3.

The purpose of the LSIO, inter alia, is to identify flood prone land and ensure that use and development can occur in a reasonably safe manner.

The subdivision of the land is not considered likely to create unreasonable risk, and as no building and/or works are being proposed, will not impact overland flows or the capacity of the sites to retain and allow for the passage of overland flows.

The application was referred to Melbourne Water (as the relevant statutory authority for the floodplain) who did not object to the proposal.

The requirements of the LSIO have been satisfied.

Public Open Space

Under Clause 53.01, a person who proposes to subdivide land for urban residential purposes must make a contribution to Council for public open space of an amount specified in the schedule to this clause (or where an amount is not specified, in accordance with Section 18 of the *Subdivision Act 1988*). The subdivision is not for urban purposes, and is a two lot subdivision.

The proposal is exempt from requiring payment of any open space contribution.

Decision Guidelines

Clause 65 Decision Guidelines includes several matters requiring consideration:

- The matters set out in section 60 of the Act.
- Any significant effects the environment, including the contamination of land, may have on the use or development.
- 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.

- The effect on the environment, human health and amenity of the area.

These matters are generally explored throughout this report and are not repeated here. However, as explored throughout this report, the application does not appropriately respond to the main decision guidelines and considerations for an application and site of this nature

Conclusion

The proposed two (2) lot subdivision (boundary realignment) is not consistent with State, Regional and Local policy, nor the purpose to the zone. The loss of land from the larger allotment would diminish agricultural capacity and would be unlikely to lead to the creation of agricultural output for the smaller allotment, contrary to relevant policy and the purpose and decision guidelines of the zone. As such, the subdivision is not supported.

Recommendation

Refusal to Grant a Planning Permit

- A. That Council having caused notice of Planning Application No. T240285 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 Issue a Notice of Decision to Refuse to Grant a Permit in respect of the land known and described as L1 PS520617 and L1 PS531529, 490 and 494 McGregor Road Pakenham VIC 3810, for a Two (2) Lot Subdivision (boundary realignment) on the following grounds:
1. The proposal is inconsistent with the Municipal Planning Strategy and Planning Policy Framework and Local Planning Policy Framework, specifically:
 - a. Clauses 11.01-1R Green wedges – Metropolitan Melbourne;
 - b. Clause 14.01-1 Agriculture;
 - c. Clause 14.01-1S Protection of Agricultural Land;
 - d. Clause 17.01, Economic Development;
 - e. Clause 16.01-3S Rural Residential Development;
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as the proposal does not protect valuable agricultural land, permanently removes land from primary production and is an incompatible land use.
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- B. That Council authorise the Manager Planning and Design/Coordinator Statutory Planning to instruct Council's Statutory Planners and/or Council's advocates on any future application for review at the Victorian Civil and Administrative Tribunal.