

## **2 TWO LOT SUBDIVISION, 515 DESSERT ROAD, CORA LYNN**

FILE REFERENCE INT1734673

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Mary Rush

### **RECOMMENDATION**

That a Refusal to Grant Planning Permit T160787 be issued for A Two Lot Subdivision (boundary re-alignment) at 515 Dessent Road, Cora Lynn VIC 3814 for reasons set out in this report.

### **Attachments**

- |   |                       |         |
|---|-----------------------|---------|
| 1 | Locality plan         | 1 Page  |
| 2 | Proposed layout plans | 2 Pages |

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T160787
APPLICANT:	Nobelius Land Surveyors P/L
LAND:	515 Dessent Road, Cora Lynn VIC 3814
PROPOSAL:	Two lot subdivision (boundary re-alignment)
PLANNING CONTROLS:	Special Use Zone-Schedule 1 Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	Advertising not undertaken
KEY PLANNING CONSIDERATIONS:	Protection of agricultural land uses
RECOMMENDATION:	Refusal

### **BACKGROUND:**

There is no relevant planning history subject to this site.

### **SUBJECT SITE**

The subject sites are located on the south western corner of Murray Road and Dessent Road, Cora Lynn.

A crossover is located midway along the frontage to Dessent Road with a 28 metre wide water supply easement running east west along the current boundary between the two subject lots.

The site currently contains a dwelling and several farm buildings, the topography is flat and the land is used for growing asparagus.

The main characteristics of the surrounding area are:

The area surrounding subject site is characterized as large rural allotments mainly used for agricultural and horticulture activities.

## **PROPOSAL**

The proposal is re-subdivide two (2) existing lots.

The existing lots consist of:

- Lot 1 - being 28.34 hectares, containing an existing house, with frontage to Dessent Road.
- Lot 2 - being 25.68 hectares, the land is vacant and is located on the south western corner of Dessent and Murray Road.

The current application seeks to re-subdivide the two lots by the way of a boundary re-alignment resulting in the below configuration:

- Proposed Lot 1: being 1 hectare. The lot is located mid-way along the frontage of the land to Dessent Road and will include the existing dwelling and garden.
- Proposed Lot 2: being 52.5 hectares, irregularly in shaped lot with frontages to both Dessent and Murray Roads.

This arrangement results in an increase in one of the allotment being a large rural lot and a smaller rural/residential scaled lot.

Under the zone the minimum lot size for subdivision is 25 hectares, as the proposed lot will result in being 52 hectares, the proposed Lot 2 could potentially be further subdivided in to two more lots.

In relation to dwellings, the minimum lot size allowable for a dwelling is 10 hectares, if proposed Lot 2 was further subdivided this could potentially allow two more dwellings in this farming area.

## **PLANNING SCHEME PROVISIONS**

### **State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:

- Clause 14.01-1 Protection of agricultural land

### **Local Planning Policy Framework (LPPF)**

The relevant clauses of the SPPF are:

- Clause 21.04-2 Agriculture

### **Zone**

The land is subject to the Special Use Zone Schedule 1.

### **Overlays**

The land is subject to the following overlays:

- Land Subject to Inundation Overlay

### **Clause 57- Metropolitan Green Wedge**

Clause 57.01-2 Subdivision states:

'The subdivision of land to create a lot that is smaller in area than the minimum area specified for the land in the zone is prohibited unless:

- The subdivision is the re-subdivision of existing lots, the number of lots is not increased, and the number of dwellings that the land could be used for does not increase.'

The proposal can be considered under this Clause as it complies with the application requirements i.e., as the proposal itself does not increase the number of lots or the number of dwellings that the land could be used for. The Clause does not refer to the 'potential' of the proposal to increase the number of lots or dwellings.

#### **Relevant Particular/ General Provisions and relevant incorporated or reference documents**

- Clause 65 – Decision Guidelines

#### **PLANNING PERMIT TRIGGERS**

The proposal for (*detail the description of the proposal*) requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause (*detail the description of the proposal*) a planning permit is required for (*detail reasoning for permit required*)
- Pursuant to Clause (*detail clause number and name*) a planning permit is required for (*detail reasoning for permit required*).

#### **PUBLIC NOTIFICATION**

The application was not required to be advertised.

#### **REFERRALS**

##### **Melbourne Water**

The application was referred to Melbourne Water as a Determining Referral. Melbourne Water has no objection to the proposal subject to conditions.

#### **DISCUSSION**

The applicant is seeking to re-subdivide land in an area of significant soil quality, and as such the following clauses contained within the SPPF, LPPF, Schedule 1 of the Special Use Zone, and Clause 57- Metropolitan Green Wedge must be considered:

- Clause 14.01-1 Protection of agricultural land
- Clause 21.04-2 Agriculture
- Clause 37.01-3 Schedule 1 of the Special Use Zone
- Clause 44.04-3 of the Land Subject to Inundation Overlay
- Clause 57- Metropolitan Green Wedge Land

##### **State Planning Policy Framework (SPPF)**

The objective of Clause 14.01-1 – 'Protection of agricultural land' of the State Planning Policy Framework is to protect productive farmland which has strategic significance in the local and regional context. In considering a proposal for subdivision, the following must points must be considered:

- *The desirability and impacts of removing the land from primary production, given its agricultural productivity.*
- *The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to the viability of infrastructure for such production.*
- *The compatibility between the proposed or likely development and the existing uses of the surrounding land.*
- *Assessment of the land capability.*

The proposed re-subdivision effectively removes around 0.9 hectare from agricultural production (the dwelling, and garden area would occupy around 1000m<sup>2</sup>). The creation of a primarily rural/residential lot will impact on the continuation of primary production and the viability of certain uses, such as intensive animal husbandry, which would have the potential to impact on a residential use. The creation of a rural/residential lot is not compatible with farming activities in relation to noise, agricultural sprays, and odour associated with farming. Allowing a small residential lot may have potential to have a significant impact on farming activities and the productivity in the future. The viability of the farm due to modification of their activities because of an abutting residential use can be reduced (see discussion under the Special Use Zone for further detail).

### **Local Planning Policy Framework (LPPF)**

The objective Clause 21.04-2 'Agriculture' of the Local Planning Policy Framework reiterates the key points listed above and identifies issues in regards to proposals for subdivision. The key issues identified, among others, are as follows:

- *Maintaining and protecting high value of agricultural land within the municipality.*
- *Protecting productive agricultural land from incompatible uses and inappropriate development and subdivision, including non-soil based farming on lands with high soil quality.*

As discussed above, the proposed subdivision is inappropriate as it creates a small rural residential lot in a farming area and adds the potential to increase the number of dwellings in the future. The proposal is not supported by the LPPF.

### **Special Use Zone – Schedule 1**

Subdivision of land within the Special Use Zone can be considered under Clause 37.01-3 which states:

#### **3.0 Subdivision**

Each lot must be at least 25 hectares.

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.

The current proposal would allow the potential for the number of lots to increase as the proposed Lot 2 is 52.5 hectares in area, and would therefore be capable being subdivided into two lots, given that the minimum lot size in the zone is 25 hectares. This does not meet the test of the second dot point which does not support a boundary realignment which would create the potential for an additional lot.

The applicant has proposed that they would enter into a Section 173 Agreement which would prohibit the further subdivision of the land. However, it is not considered that the agreement will ensure that the site would not be subdivided in the future if this landowner or a new purchaser successfully applied for a planning permit to remove the agreement from the title.

The proposal does not meet the requirement of the third dot point as the potential for the creation of an additional lot would also increase the potential for an additional dwelling. If the Agreement was removed from the title, then it would be difficult for Council to prevent an additional dwelling. The proposal does not meet the test of the fourth dot point as it will compromise the purposes of the zone.

The purposes of schedule 1 of the Special Use Zone are as follows:

- *To preserve land of high agricultural quality for horticulture and farming activities.*
- *To discourage non-agricultural and non-soil based uses establishing on soil of high agricultural value.*
- *To protect the area from the encroachment of urban and rural residential type development.*
- *To minimise the potential for conflict between residents and normal farming practices that are related to the conduct of agricultural activities.*
- *To encourage sustainable farming activities based on whole farm and catchment planning principles on an individual and community basis.*

The current proposal is not consistent with the third dot point as the proposal does not protect the area from the encroachment of urban and rural residential type development.

The proposed 1 hectare lot with the existing dwelling, will result in the site being used for a rural/residential style use given that 1 hectares is not large enough to be used for an agricultural activity. The site is most likely to be used for hobbies such as the keeping of horses.

The creation of a 1 hectare lot around the existing dwelling is not consistent with the fourth dot point as it will not minimise the potential for conflict between residents and normal farming practices that are related to the conduct of agricultural activities.

The use of the 1 Hectare lot for a primarily rural/residential use means that there is significant potential for there to be conflict between residents and normal farming activities.

The potential for noise issues associated with farm machinery being operated before 7am means that the use of farm machinery before this time, which may be optimal for harvesting, spraying or other activities, could be restricted, thereby reducing the efficiency and productivity of the agricultural activity.

Under the Agricultural and Veterinary Chemical (Control of use) Act 1992, there is no requirement of a farmer to notify adjoining landowners of spraying activities. A resident of the smaller lot may attempt to modify the farmers spraying activities by lodging a complaint against the property owner. It is very difficult to control and minimise spray drift and attempts to minimise drift may impact on the optimal timing of spraying for disease and insect control. This would have a direct impact on the quality and quantity of crop produced and therefore the productivity of the land.

Over time, the occupants of the dwelling on proposed lot 1 will experience incidental exposure to agricultural spray drift which can lead to ill health effects. Even if spraying is done when there is no wind, the spray drift can take a long time to dissipate and could increase the risk of exposure. If the proposed lot were of a larger scale that supported agricultural activity, then the occupants of the

dwelling would be aware of their own spraying activities and take appropriate action to minimise health risks.

The applicant has volunteered to enter into a Section 173 Agreement which would highlight that the 1 hectare site is located within an area used for farming and acknowledging that noise, smell, and agricultural spraying would be carried out on the larger adjoining lot. This would not remove the potential for conflict altogether and could still result in difficulties associated with these issues which could impact on the productivity of the land.

#### **Clause 44.04-3-Land Subject to Inundation Overlay**

In approving the proposed subdivision, Melbourne Water have determined that the proposal will not redirect or obstruct floodwater, stormwater or drainage water and will not have any significant impact on flood storage or increase flood levels or the flow velocities. The proposed boundary realignment will not have an impact on river health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality and sites of scientific significance as it does not involve any physical change to the property.

#### **CONCLUSION**

As detailed above, the relevant provisions of the Planning Scheme seek to preserve the agricultural values of this site, particularly given the high quality soils which are required for horticultural activities. It is likely that the 1 hectare lot would primarily be used for residential purposes, potentially as a hobby farm. This is not the purpose of this Special Use Zone, the zone and policies seek to prevent these type of uses.

The resultant subdivision proposal would further fragment the horticultural land, assuring two lots of high quality soil land are limited in their capacity to be effectively farmed, potentially resulting in a loss of productivity and employment. This is contrary to the strategic direction of the area.

Council recognised the value of this area within the municipality in relation to the agricultural quality for horticulture and it is considered that this application is against the intention of the Cardinia Planning Scheme.

It is recommended that a Refusal to Grant Planning Permit T160787 be issued for a Two Lot Subdivision (boundary re-alignment) at 515 Dessent Road, Cora Lynn on the following grounds:

1. The proposal is inconsistent with Clause 14.01-1 "Protection of agricultural land" of the State Planning Policy Framework (SPPF),
2. The proposal is inconsistent with Clause 21.06-2 "Agriculture" of the Municipal Strategic Statement (LPPF),
3. The proposal is inconsistent with the purposes of Clause 37.01 of the Special Use Zone - Schedule 1, which aim to protect agricultural land from the intrusion of urban uses, inappropriate development and fragmentation.



PLAN OF SUBDIVISION		EDITION 1	PS 803669 K	
<b>LOCATION OF LAND</b> PARISH: TOWNSHIP: --- SECTION: N CROWN ALLOTMENT: 26 & 27 CROWN PORTION: --- TITLE REFERENCE:  LAST PLAN REFERENCE: POSTAL ADDRESS: 515 Dessent Road, Cora Lynn 3814 (at time of subdivision)  MGA CO-ORDINATES: E: 381 400                      ZONE: 55 (of approx centre of land                      N: 5 776 200                      GDA 94 in plan)		Council Name: Cardinia Shire Council  <u>EXPLANATORY NOTE:</u> <b>WARNING:</b> 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	This is a Spear Plan		
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)				
Easements and rights implied by Section 12(2) of the Subdivision Act 1988 apply to all of the land in this plan.				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	---	---	---	---
<b>NOBELIUS LAND SURVEYORS</b>  P.O. BOX 461 PAKENHAM 3810 Ph 03 5941 4112 mail@nobelius.com.au		SURVEYORS FILE REF: 14,993  LICENSED SURVEYOR: R. P. NOBELIUS VERSION		ORIGINAL SHEET SIZE: A3  SHEET 1 OF 2

