

Lifestyle



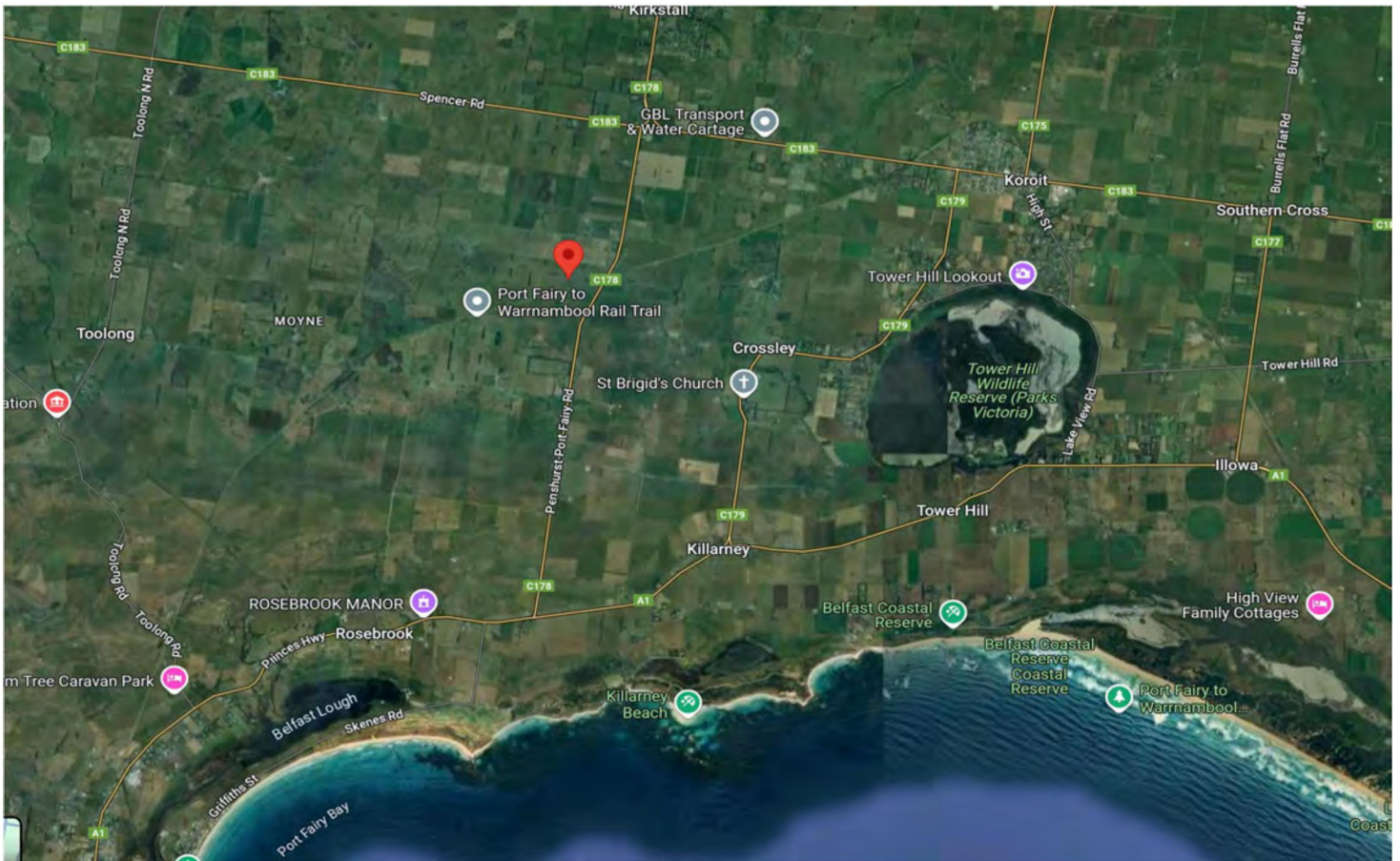
Town Planning & Services

Planning Report

Subdivision of land (dwelling excision) into 2 lots and variation of restriction.

Lot 1 PS 814823Q - 489
Penshurst Port Fairy Road
Kirkstall, Vic. 3283.

26/06/25



ACKNOWLEDGEMENTS

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1. Background

The property was originally purchased by the current landowners' family and has been used for potato growing, dairy and beef production for over 40 years. The land is on one title in two parts bisected by the Port Fairy Warrnambool Rail trail.

The current owners have owned and lived in the dwelling on the property for 21 years having been involved in farming the land and working as a farm fencing contractor for their working life. Now wishing to semi retire, they hope to excise the dwelling currently set in 53 ha into 2 lots to maintain an interest and derive a smaller retirement income from farming and to continue to live in the dwelling, and to sell the larger agricultural parcel.

In recent years a permit was issued to construct a second dwelling on the site under permit PL11/275. A further permit was issued to excise the second dwelling under permit PL17/192. A Section 173 Agreement was required to be entered into to restrict further subdivision of the site. Agreement AJ536866U was subsequently entered into which is currently registered on title.

This application has been lodged with a concurrent application under Section 178A (2) of the Planning and Environment Act 1987 to vary/end Agreement AJ536866U to enable the application for subdivision to be considered.

Currently the land is used for beef production for around 120 head of cattle which are reared on site and sold to established butcher clients throughout Victoria on long standing supply arrangements due to the high quality of meat produced.

Access from Penshurst Port Fairy Road showing both dwellings



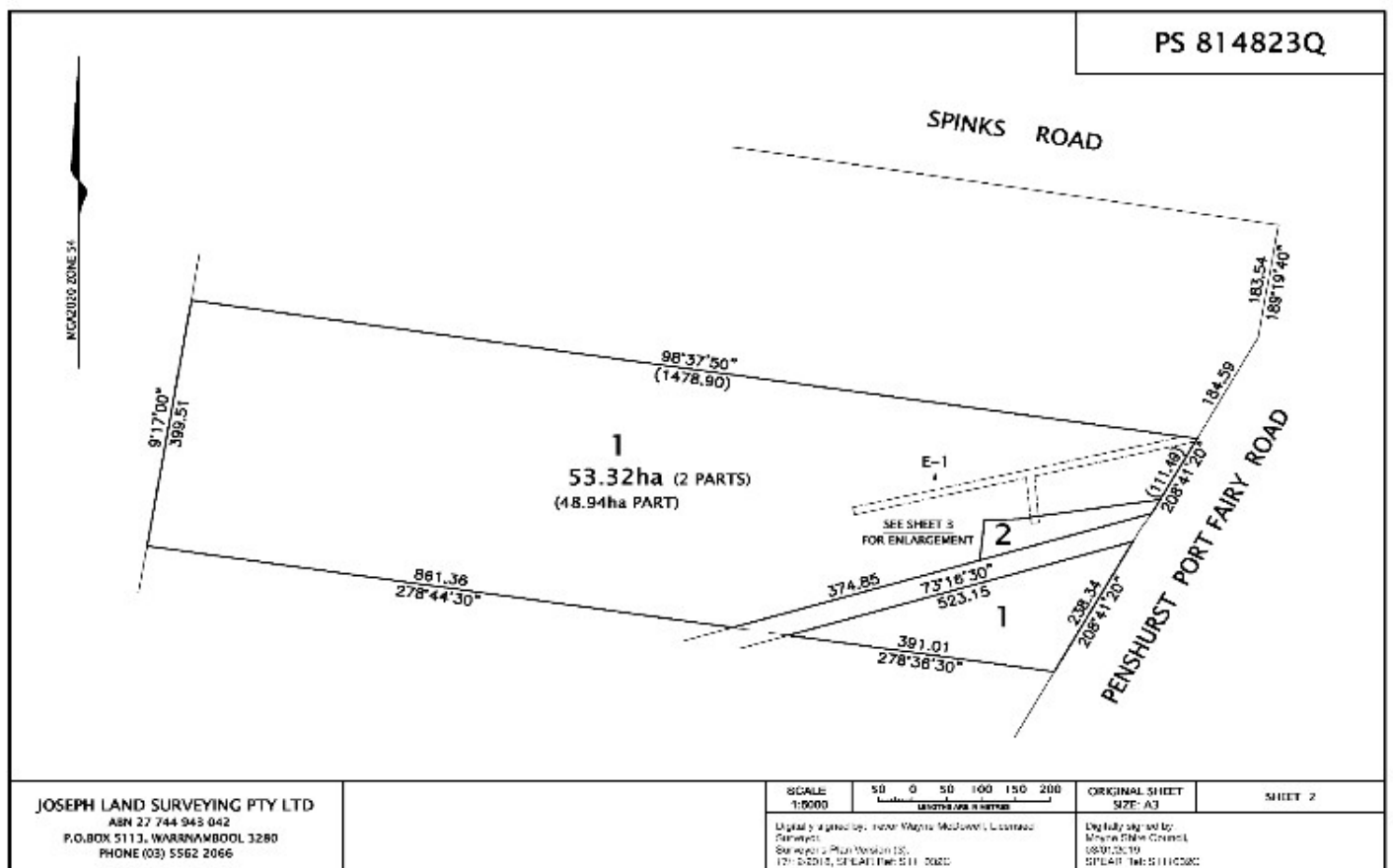
2. Proposal

As discussed, the proposal is intended vary/end the section 173 agreement and to excise the existing dwelling from the the main landholding, which will be no longer needed to run the farm. The excision if approved will enable the current owners to sell the balance lot and to semi retire from farming whilst continuing to live in the dwelling.

The subdivision has been designed with a sufficient land holding around the dwelling to allow the owners to maintain a smaller scale agricultural operation alongside the balance lot which is able to be farmed unhindered.

The proposed excised dwelling site includes the gardens, existing outbuildings required for operating smaller scale farming activity, together with the septic tank and infrastructure currently associated with the dwelling. The land proposed to be included with the dwelling site also provides "amenity land" around the dwelling and to provide a buffer for the dwelling from agricultural practices and to reduce potential for land use conflicts. The subdivision follows existing fence lines without the need for vegetation removal for refencing.

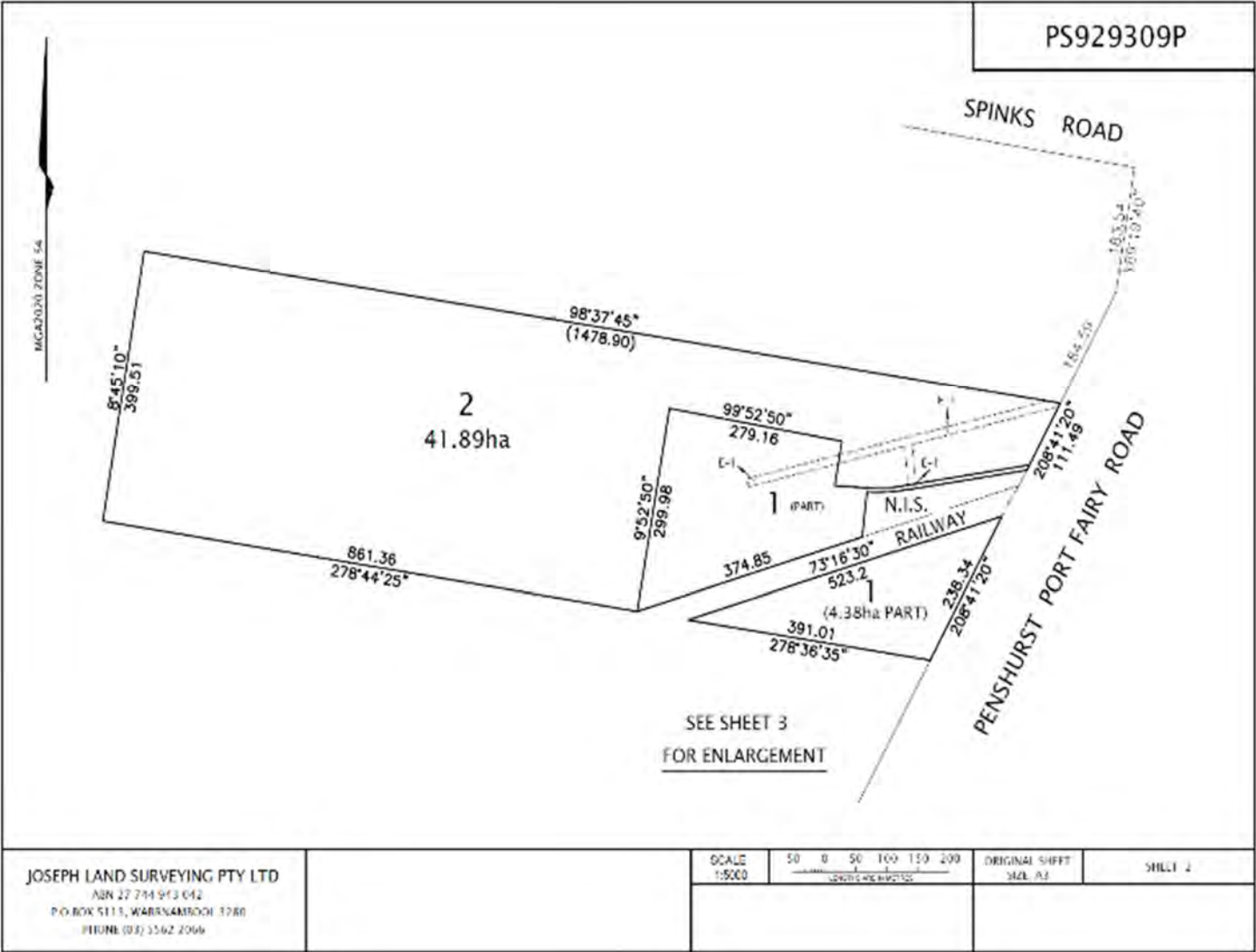
Existing plan of subdivision



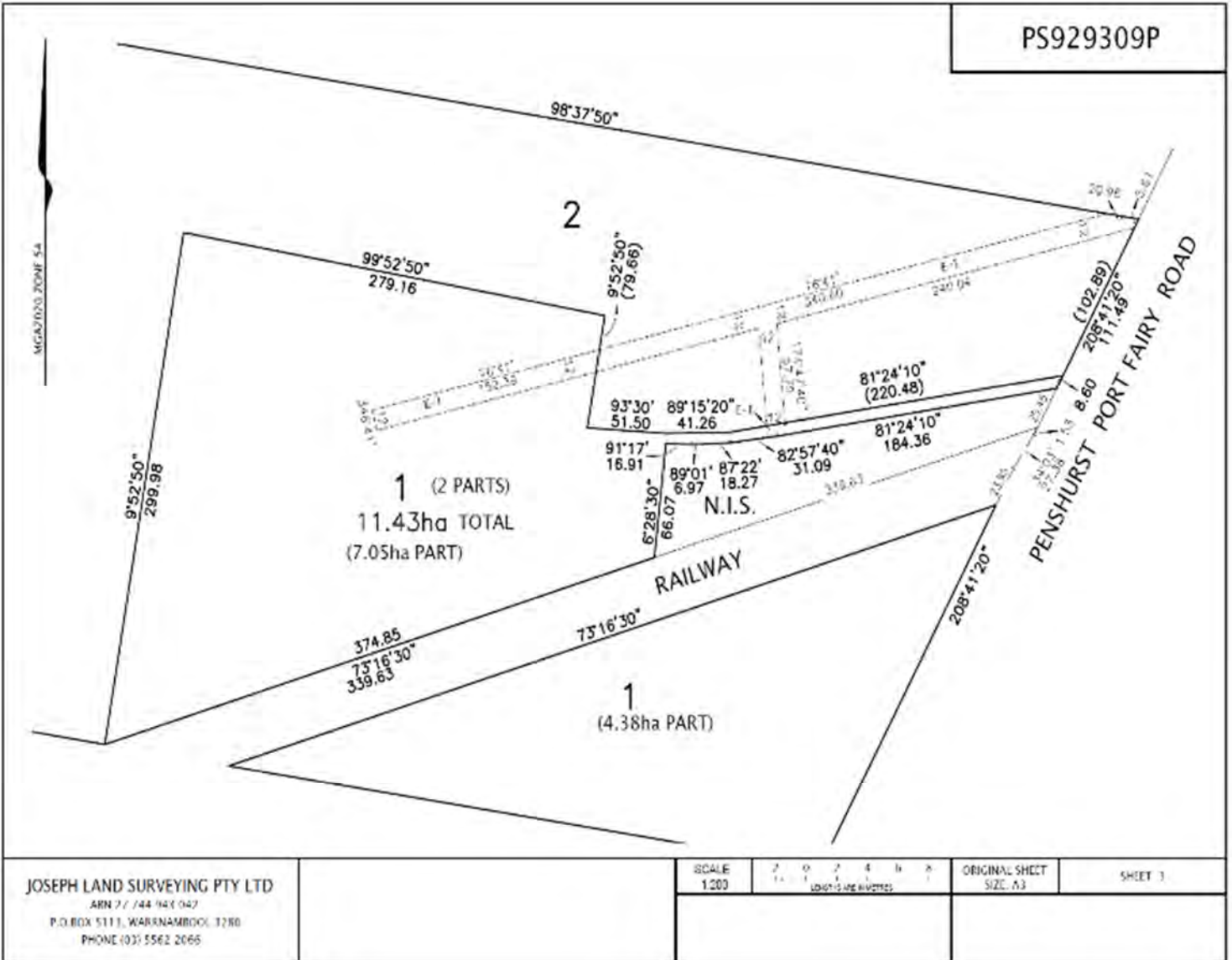
The proposal comprises **proposed lot 1 (existing dwelling site):** 11.43ha including dwelling and outbuildings and driveway access. The existing dwelling has an existing all-weather access leading from Penshurst Port Fairy Road, with proposed lot 2 having a wide frontage also to Penshurst Port Fairy suitable for the creation of a new access.

Proposed lot 2 (agricultural land) 41.89ha.

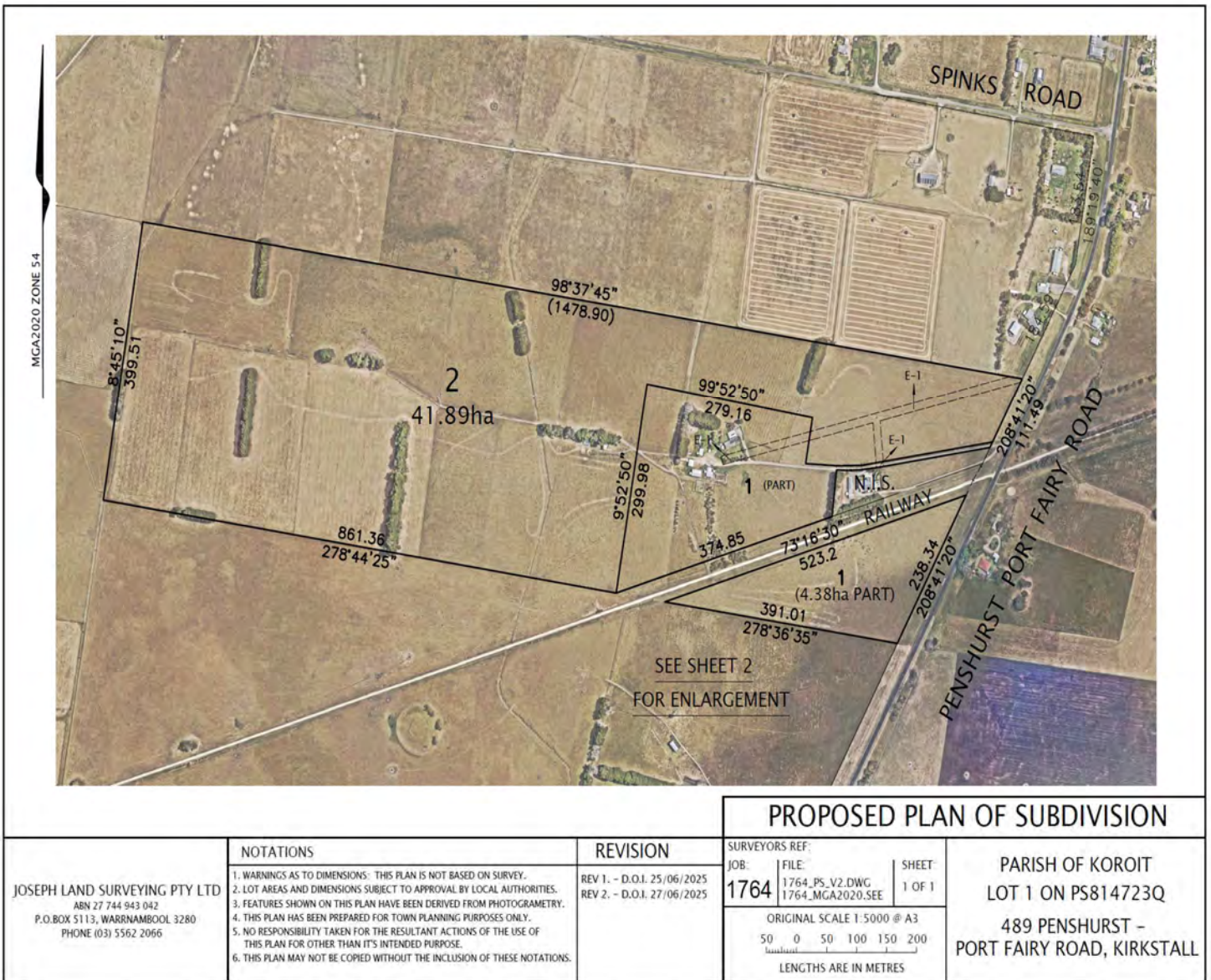
Proposed plan of subdivision



Proposed plan of subdivision



Proposed plan of subdivision satellite view



3. SITE ANALYSIS

The subject site is situated almost equidistant between Port Fairy and Warrnambool (approx. 25km's) on the Penshurst - Port Fairy Road in Kirkstall just north of the Princes Highway.

The land is held on a single title in 2 parts which are bisected by the Port Fairy Warrnambool Rail Trail. Part 1 contains an existing 4 bedroom dwelling constructed in 1975 with a pair of machinery sheds, former dairy, garage and fenced paddocks used for grazing. Part 2 is triangular shaped with an area of 4.3ha also used for grazing. Overall the combined parcels extend to a total of 53.32 ha.

Access to the site is via an all weather road leading from Penshurst Port Fairy Road, subject dwelling shown on the right of the picture and the later dwelling in the foreground.



There is 90,000l of rainwater tank capacity for drinking and firefighting purposes with a septic tank for effluent and mains electricity connected. The land associated with the farm is used for rearing beef and calves for beef markets around Victoria.

The site is generally flat and is generally cleared pasture for grazing with cypress shelter belts. There are a number of easements registered on title as shown on the title plans provided with the application.

Subject dwelling





Rear garden and outbuildings



Machinery sheds and disused dairy



Grazing paddocks



Rail trail bisecting the site



Access from Penshurst Port Fairy Road



4. RESTRICTIONS ON TITLE

Section 173 agreement AJ536866U registered on title 08/03/12 – Refer to the following excerpt.

4. Pursuant to Planning Permit No PL11/275 the Council has allowed the owner to build a second dwelling on the land.
5. A condition of the Planning Permit is that the owner will not further subdivide the land so as to increase the number of lots.
6. The owner has agreed not to further subdivide the land.



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7. A condition of the Planning Permit is that the Owner acknowledges and accepts the possibility of nuisance from adjoining agricultural operations, to which the Owner has agreed to.
8. Condition 1 of the Planning Permit requires the Owner of the land to enter into an Agreement with Council pursuant to Section 173 of the Act and for this Agreement to be registered at the Titles Office pursuant to Section 181 of the Act.

ASSESSMENT

The proposed subdivision is in breach of the agreement. A concurrent application to vary/end the agreement has been lodged which is intended to apply the same conditions to the altered land title configuration if the application for subdivision is approved.

5. PLANNING CONTROLS

Zone

Farming Zone (FZ).



Overlays

None.

Other

The site is situated within a Designated Bushfire Prone Area.

Permit requirements

A permit is required under the Farming Zone at Clause **35.07-3** to subdivide land.

A permit is required at **Clause 52.02** to vary a restriction.

Clause 35.07 -3

Subdivision

A permit is required to subdivide land.

Each lot must be at least the area specified for the land in a schedule to this zone. If no area is specified, each lot must be at least 40 hectares.

A permit may be granted to create smaller lots if any of the following apply:

- *The subdivision is to create a lot for an existing dwelling. The subdivision must be a two lot subdivision.*

6. PLANNING ASSESSMENT

Clause 35.07 Farming Zone

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To provide for the use of land for agriculture.

To encourage the retention of productive agricultural land.

To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

To encourage the retention of employment and population to support rural communities. To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

Clause 35.07-6

Decision guidelines

Before deciding on an application to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

General issues

The Municipal Planning Strategy and the Planning Policy Framework.

Any Regional Catchment Strategy and associated plan applying to the land.

The capability of the land to accommodate the proposed use or development, including the disposal of effluent.

How the use or development relates to sustainable land management.

Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.

How the use and development makes use of existing infrastructure and services.

Agricultural issues and the impacts from non-agricultural uses.

Whether the use or development will support and enhance agricultural production.

Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.

The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.

The capacity of the site to sustain the agricultural use.

The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.

Any integrated land management plan prepared for the site.

Whether Rural worker accommodation is necessary having regard to:

The nature and scale of the agricultural use.

The accessibility to residential areas and existing accommodation, and the remoteness of the location. The duration of the use of the land for Rural worker accommodation.

Accommodation issues

Whether the dwelling will result in the loss or fragmentation of productive agricultural land.

Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.

Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.

The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

The potential for accommodation to be adversely affected by noise and shadow flicker impacts if it is located within one kilometre from the nearest title boundary of land subject to:

A permit for a wind energy facility; or

An application for a permit for a wind energy facility; or

An incorporated document approving a wind energy facility; or

A proposed wind energy facility for which an action has been taken under section 8(1), 8(2), 8(3) or 8(4) of the Environment Effects Act 1978.

The potential for accommodation to be adversely affected by vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title boundary of land on which a work authority

has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.

Environmental issues

The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.

The impact of the use or development on the flora and fauna on the site and its surrounds.

The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.

The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.

Design and siting issues

The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.

The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.

The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.

The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.

Whether the use and development will require traffic management measures.

The need to locate and design buildings used for accommodation to avoid or reduce noise and shadow flicker impacts from the operation of a wind energy facility if it is located within one kilometre from the nearest title boundary of land subject to:

A permit for a wind energy facility; or

An application for a permit for a wind energy facility; or

An incorporated document approving a wind energy facility; or

A proposed wind energy facility for which an action has been taken under section 8(1), 8(2), 8(3) or 8(4) of the Environment Effects Act 1978.

The need to locate and design buildings used for accommodation to avoid or reduce the impact from vehicular traffic, noise, blasting, dust and vibration from an existing or proposed extractive industry operation if it is located within 500 metres from the nearest title

boundary of land on which a work authority has been applied for or granted under the Mineral Resources (Sustainable Development) Act 1990.

ASSESSMENT

The excision of the dwelling site does not increase fragmentation or loss of productive agricultural land as there are no new dwellings proposed as the excised dwelling is existing and predates the planning scheme. The balance lot has potential for an “as of right” use of land for a dwelling however that right currently exists with the existing configuration and is unchanged by the proposal.

The extent of land associated with proposed Lot 1 has been designed to include the existing infrastructure such as effluent disposal system, outbuildings and access driveway to remain in the curtilage of proposed Lot 1 together with existing shedding, and to maintain an attractive rural outlook for the dwelling and to buffer existing agricultural uses.

The balance lot can continue to be farmed as it is now or for arable farming as has been done in the past for growing potatoes for example.

Proposed lot 1 is able to be independently farmed albeit on a smaller scale and this is exactly what is intended. The agricultural land around the dwelling is well distanced and has capacity to for smaller scale beef farming to generate a modest semi-retirement income. The 4.38 ha parcel is also adequate for a wide range of alternative agricultural uses and niche farmgate style enterprises.

There are no anticipated land use conflicts, as the subject site has been farmed continuously for many years harmoniously alongside the dwelling with the dwelling being constructed in 1975. The dwelling site has capacity to be operated independently of the remainder of the farm and can readily be detached from the overall holding without compromising either land parcel.

There are no wind energy facilities in the vicinity and given the undulating terrain, the existing dwelling is established and in keeping with the semi-rural nature of the area.

There is no native vegetation removal required to fence the proposed new boundaries or facilitate the subdivision.

The proposal is therefore considered consistent with the clause as it provides a good buffer around the dwelling whilst enabling each parcel to remain productive to agriculture.

Clause 52.02

EASEMENTS, RESTRICTIONS AND RESERVES

Purpose

To enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered.

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

ASSESSMENT

It is not anticipated that the variation of restriction will adversely affect affected people or agriculture as it is expected that the restriction will be applied to the altered title configuration if the subdivision is approved.

MPS ASSESSMENT

Clause 02.03-4

Natural resource management

Agriculture

Rural land in the municipality forms part of the highly productive Western District. A mild climate, high and well distributed rainfall, a diverse range of soil types and access to markets have combined to make the Shire a significant agricultural area.

Intensive dairying and crop production are significant land uses in the coastal hinterland, while extensive cropping and grazing enterprises are major activities in the northern part of the Shire.

Agricultural areas along the coast, between settlements or on the edge of townships are under pressure from other forms of development, particularly housing.

The Belfast Rural area (also known as the Killarney Area) between Rosebrook and the Tower Hill State Game Reserve comprises high quality fertile volcanic soils that have traditionally been the focus for potato farming. The area is characterised by a large number of small land holdings that are predominantly managed as conglomerations.

Sustainable timber production and the development of timber industries to process product are supported where they are undertaken with minimal adverse impacts.

ASSESSMENT

The proposed subdivision allows agricultural activity to continue unchanged on the land parcels. Each proposed lot has farming capacity.

Clause 02.03-7

Economic development

The economy of the Shire is based on agriculture, manufacturing, tourism and commerce.

Agriculture

Agriculture is the most important sector of the local and regional economy and a major source of local employment. The Shire is within Australia's largest dairy production region that contributes around a quarter of the nation's milk production.

The Western Victoria Livestock Exchange at Mortlake has a key role in supporting the regional agricultural sector.

There are opportunities for economic diversification through the development of aquaculture, horticulture and intensive agricultural enterprises, and agriculturally linked value adding industries. Value adding onsite or closer to the source of the product provide opportunities to expand the local economy.

The preservation of agricultural land in large holdings is necessary to maintain the economy of the Shire, including the service and processing industries that support agriculture.

ASSESSMENT

The intent of the Clause to sustain an agricultural use and to manage urban growth. The proposal does not compromise this intent as the dwelling site has been formulated to enable the land on proposed Lot 2 to be viable for small scale agriculture in its own right and to adequately service the excised dwelling and associated infrastructure.

It is noted that Council undertook a Rural Housing and Settlement Strategy as part of amendment C70 which provides a framework and direction for Council to manage rural living land use pressures. In the context of this proposal, the Strategy considered new and existing dwellings on small lots within the FZ. As the dwelling is existing and there is no fragmentation of agricultural land or resultant loss of agricultural land, therefore proposal is not in conflict with the Strategy.

PPF ASSESSMENT

Clause 13.02

BUSHFIRE

13.02-1S

Bushfire planning

This policy must be applied to all planning and decision making under the Planning and Environment Act 1987 relating to land that is:

- *Within a designated bushfire prone area;*
- *Subject to a Bushfire Management Overlay; or*
- *Proposed to be used or developed in a way that may create a bushfire hazard.*

Objective

To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

ASSESSMENT

There is no Bushfire Management Overlay on the subject land however the site is within an area designated as “Bushfire Prone” which is considered a lesser risk. The proposed subdivision does not increase the bushfire risk as the dwelling is existing and has road frontage, good visibility and accessibility and adequate water for firefighting. The proposal is merely moving lines on a map and does not increase the fire risk.

Clause 14.01-1L

Agricultural production

Objective

To ensure that subdivision, including the creation of small lots for existing dwellings, and the use and development of dwellings minimises the loss or fragmentation of productive agricultural land and does not prejudice activities associated with agricultural production.

Strategies

Establish buffers around uses that may conflict with agricultural land use to limit land use conflicts.

Avoid non-agricultural land use and development in rural areas that prejudices the productive use of agricultural land.

Discourage the construction of dwellings on productive agricultural land, unless it can be demonstrated that the dwelling is required to support the productive agricultural use of the land.

Locate and site dwellings so that they do not compromise surrounding farming activities.

Discourage dwellings on lots where wastewater cannot be retained and treated within the lot.

Discourage the construction of more than one dwelling on a lot unless:

- It is demonstrated to be necessary to support a viable agricultural enterprise.*
- The agricultural use it is associated with has commenced.*
- It is located to avoid restricting agricultural use of the land.*

Discourage small lot subdivisions (including dwelling excisions and boundary re-alignments) unless:

- The subdivision supports the consolidation of productive agricultural land.*
- The proposed land uses (including dwellings) do not negatively impact on the ability to farm and avoid the loss of productive agricultural land.*
- Impacts on significant environmental and landscape features such as remnant vegetation and waterways are avoided or minimised.*
- The subdivision seeks to make minor adjustments to take account of topographical or public infrastructure features.*
- Adequate distance is provided around an existing dwelling to lot boundaries to limit any impacts of adjacent agricultural activity.*
- The subdivision does not result in a concentration of dwellings or small lots that could change the general use and character of the rural area.*

Avoid further subdivision to excise additional dwellings where a dwelling has already been excised from the parent lot.

Discourage boundary realignments and re-subdivisions between existing lots where the lots proposed to be created:

- Are less than the minimum lot size specified in the schedule to the Farming Zone;*
- Create an opportunity for a dwelling where none previously existed; or*
- Rely on land which was previously a road reserve, utility lot or Crown land, or was of insufficient size to support a dwelling.*

ASSESSMENT

The proposal is consistent with the objectives and strategies of the Clause in the following ways:

- There are no consolidation opportunities as the land is on one title.
- There are no additional dwellings proposed.
- Farming can continue unhindered on each proposed lot.
- There is no loss of vegetation required as boundaries are already fenced.
- There are no adverse environmental impacts.
- The character and general use of the area is unchanged.
- The excised dwelling is well buffered from surrounding agricultural uses.
- The balance lot meets the minimum lot size of 40ha.
- There are no increased “as of right” entitlements for additional dwellings over and above what already exists.

Clause 14.01-1L

Agricultural production

Policy application

This policy applies to land in the Farming Zone and Rural Living Zone.

Strategies

Establish buffers around uses that may conflict with agricultural land use to limit land use conflicts.

Limit the construction of dwellings on productive agricultural land.

Policy guidelines

Consider as relevant:

- *Ensuring lots subdivided to excise an existing dwelling have a maximum size of 2 hectares.*
- *Discouraging the construction of dwellings on lots greater than 2 hectares and less than the minimum lot size specified in the schedule to the Farming Zone.*
- *Assessing the suitability of existing lots of less than 2 hectares in area for a single dwelling.*
- *Ensuring dwellings are constructed close to a road frontage or property boundary.*
- *Ensuring dwellings excised under the provisions of Clause 35.07-3 are in a habitable condition and comply with the Building Code of Australia.*
- *Creating the smaller lot in a manner that potential or existing dwellings will not restrict surrounding agricultural activities.*
- *Discouraging the excision of dwellings that did not exist at the date of approval of this scheme (6 January 2000).*

ASSESSMENT

The lot size for the retained dwelling does exceed 2ha. In formulating the proposed lot size of 11.43 ha for proposed lot 1, careful consideration has been given to this clause. Whilst it is possible to propose a lot size of 2ha for lot 1, this is not an optimal outcome in this situation in macro planning terms.

The 2 ha dwelling site would not contain the adjacent land on the other side of the Rail Trail which means it is physically detached from the balance lot. The land is irregularly shaped (triangular) which enables the boundaries to be “squared off” around the retained dwelling.



Logically and for practical purposes it is better to collocate the retained dwelling with the triangular land so as to avoid an additional crossing across the rail trail to access the balance lot.

But it also creates a real opportunity for proposed lot 1 to have direct road frontage for future niche farmgate style uses such as egg production or fruit and produce growing which would definitely be commercially viable on 30 acres of land which lends itself perfectly in conjunction with a dwelling.

As the 2ha maximum lot size is a “should” rather than a “must”, Council has discretion to consider other factors. On balance, it is considered that the size of proposed lot 1, whilst exceeding 2ha is a better planning outcome for agriculture and environmental reasons and greater reduces the risk of land use conflicts by increasing the buffer land around the dwelling.

The proposal is consistent with the other objectives outlined under the Clause:

- On site impacts such as waterways, ridgelines are not affected.
- The proposed lot sizes can easily support each use independently
- Farming will continue on the balance lot (Lot 2).
- The dwelling is not required to operate the balance lot and is better retained with the 11ha acre parcel given it direct road frontage and existing rail trail crossing.
- The dwelling is in very good condition.
- The dwelling has road access and all-weather access leading from Penshurst Port Fairy Road.
- The configuration of the proposed subdivision enables viable agricultural production on the balance lot and does not create additional as of right dwelling parcels over and above what already exists.

Clause 14.01-2S

Sustainable agricultural land use

Objective

To encourage sustainable agricultural land use.

Strategies

Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.

Support the development of innovative and sustainable approaches to agricultural and associated rural land use practices.

Support adaptation of the agricultural sector to respond to the potential risks arising from climate change.

Encourage diversification and value-adding of agriculture through effective agricultural production and processing, rural industry and farm-related retailing.

Assist genuine farming enterprises to embrace opportunities and adjust flexibly to market changes.

Support agricultural investment through the protection and enhancement of appropriate infrastructure.

Facilitate ongoing productivity and investment in high value agriculture.

Facilitate the establishment and expansion of cattle feedlots, pig farms, poultry farms and other intensive animal industries in a manner consistent with orderly and proper planning and protection of the environment.

Ensure that the use and development of land for animal keeping or training is appropriately located and does not detrimentally impact the environment, the operation of surrounding land uses and the amenity of the surrounding area.

ASSESSMENT

In addition to the balance lot being able to be farmed as it is now, the excision creates an ideal opportunity for a smaller scale agricultural venture which is ideally sized and situated to suit a semi-retired farmer such as the case in this instance or potentially a “start-up” farming enterprise which would suit people with limited capital want to get a foothold into farming. The land size lends itself to poultry, egg production viticulture, market gardens and many more with excellent passing trade for farmgate sales.

The Clause is looking to encourage diversification and agricultural investment with the proposed land sizes being ideal candidates.

Clause 65.02

APPROVAL OF AN APPLICATION TO SUBDIVIDE LAND

Before deciding on an application to subdivide land, the responsible authority must also consider, as appropriate:

- *The suitability of the land for subdivision.*
- *The existing use and possible future development of the land and nearby land.*
- *The availability of subdivided land in the locality, and the need for the creation of further lots.*
- *The effect of development on the use or development of other land which has a common means of drainage.*
- *The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.*
- *The density of the proposed development.*
- *The area and dimensions of each lot in the subdivision.*
- *The layout of roads having regard to their function and relationship to existing roads.*
- *The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.*
- *The provision and location of reserves for public open space and other community facilities.*
- *The staging of the subdivision.*
- *The design and siting of buildings having regard to safety and the risk of spread of fire.*
- *The provision of off-street parking.*
- *The provision and location of common property.*
- *The functions of any body corporate.*
- *The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.*
- *If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.*
- *Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas.*
- *The impact the development will have on the current and future development and operation of the transport system.*

This clause does not apply to a VicSmart application.

ASSESSMENT

The application meets the decision guidelines of Clause 65 as the land is suitable for subdivision, does not affect surrounding land uses or the production of agriculture on the subject land or surrounding properties, has no detrimental environmental impacts and represents orderly planning.

7. CONCLUSION

In conclusion the proposed subdivision retains productive farmland, provides a buffer distance around the dwelling, and establishes two manageable but practical and viable agricultural parcels. The proposal also retains smaller scale farming on the retained lot and creates the opportunity for niche farming and farmgate retailing for diversified agricultural enterprises in conjunction with the existing dwelling. The varied Section 173 Agreement can

be applied to the new configuration of titles either by ending the agreement or variation to suit Council's requirements.

The proposal has been assessed against the provisions of the Farming Zone, MPS and PPF together with Clause 65 and found to meet the required objectives and Clauses, it is recommended to Council for support resulting in a positive socioeconomic and planning outcome.