

Assessment against Mansfield Planning Scheme



File Number: DA23
Planning Application No. P011/24

Conflict of Interest

After reading the definitions of a general or material conflict of interest as defined by the *Local Government Act 2020*, do you have a conflict of interest?

Yes No

Mansfield Planning Scheme and Context Assessment

Mansfield Planning Scheme seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

Municipal Planning Strategy (MPS)

The Municipal Planning Strategy and Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the *Planning and Environment Act 1987*) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

Clause 02.03-1 – Settlement

Merrijig

Merrijig is a small town with excellent proximity to mountain and rural views located in the Upper Delatite Valley. It is appealing to people who desire a small-town lifestyle with the additional services afforded by proximity to Mansfield. Its growth potential is supported by reticulated sewerage; however, its reticulated water and sewerage infrastructure will need to be significantly upgraded prior to any large-scale residential development. The topography and environmental value of the land will also mean that creative urban design and strict development and density controls will need to be applied to any development.

Clause 02.03-2 – Environmental and landscape values

Landscapes

The scenic value of the mountains, foothills, valleys and cleared grazing country is characteristic of the municipality and of intrinsic importance to its landscape. Rural areas are acknowledged as one of the Shire's and the region's greatest assets. Significant for rural production as well as from a natural landscape perspective promoting tourism and attracting visitors to the Shire, many of the rural valleys are recognised as having significant landscape qualities unique to the State and worthy of protection.

Significant landscape and natural features include Mounts Buller, Stirling, Terrible and the Great Dividing Range, and parts of the Eildon and Alpine National Parks. Mount Buller and Mount Stirling are in the Alpine National Park. Development along ridgelines or highly visible slopes can impact the landscape character of the area. Approaches to the mountains also need to be protected for their significance and high visual amenity, particularly the state significant Mount Buller and Mount Stirling alpine vista.

Council's strategic directions for environmental and landscapes values are to:

- Protect areas of remnant vegetation for their environmental, habitat and scenic values, including roadside vegetation, riparian environments, scattered trees and native grasslands.*
- Protect the landscape character of the Shire and significant landscape features including large old trees, visually significant ridges and view corridors.*
- Protect the environmental, landscape and visual significance of rural areas, mountain and environmental features and alpine approach areas.*

Clause 02.03-3 – Environmental risks and amenity

Due to climate change and climate variability, natural disasters and environmental hazards such as heatwaves, bushfires, floods and storms are likely to be more frequent and severe. This will present many challenges and some opportunities.

Due to the location and topography of the Shire buildings on ridgelines or prominent exposed areas are particularly vulnerable to natural hazards such as bushfire, flood and land slip.

Clause 02.03-4 – Natural Resource Management

Agriculture

Rural land is under increasing pressure for residential use and development not associated with the rural use of the land. Productive agricultural land must be maintained to remain agriculturally viable and ensure the ongoing ability to farm is protected. To do so, it is important that only marginal rural land in areas with a minimal visual impact be developed for small scale rural or rural living style development.

Maintaining large rural allotments in the rural zones plays a vital role in maintaining agriculture and rural amenity. A legacy from past decisions is the large number of 'undersized' lots created

in rural areas for the purpose of rural residential living without the appropriate zoning changes to reflect that purpose. As a result, landowners have an expectation that those lots can be developed for dwellings. A balance needs to be struck between this and the need to protect agricultural land for agricultural use.

Council's strategic directions for the management of agricultural land are to:

- Protect productive agricultural land from land fragmentation and incompatible use and development.*
- Protecting the on-going viability of agricultural land for agricultural purposes particularly from amenity conflicts arising from dwellings.*
- Support diversifying the agricultural base to include the development of viticulture, horticulture, and more intensified agricultural pursuits.*

Water and Declared Special Water Supply Catchments

Council's strategic directions for catchment planning and management are to:

- Protect the environmental significance and visual amenity of local water sources and Special Water Supply Catchments.*
- Avoid development in catchments that is detrimental to water quality.*
- Minimise the cumulative impact of onsite wastewater treatment systems on the water quality of Declared Special Water Supply Catchments.*

Officer response:

The strategic direction of the Mansfield Planning Scheme clearly sets out the challenges faced in relation to rural land use and development, particularly the competing pressures of rural-lifestyle developments and subdivisions in areas of productive agricultural land.

Policy is clear in seeking to protect productive agricultural land from fragmentation, ensuring ongoing viability of agricultural land for agricultural purposes, and preventing land use conflict. This proposal is contrary to this strategic direction – specifically, it creates a smaller house lot, which is too small to be used for agriculture and a smaller lot for two dwellings which have an existing tourism use.

This parcel of land in its current form is unique in the sense that it is surrounded by three existing roads and does not directly adjoin any other properties. It is also recognised as a 'legacy undersized lot in the Farming Zone', which does not warrant further development and subdivision to create even smaller lots in the Farming Zone.

The proposal further restricts any potential agriculture use of the land, acknowledging it is currently unlikely to be used for agriculture into the future however that potential would be further limited by a two lot subdivision which approximately halves the land associated with the existing infrastructure. The proposal clearly denotes rural living and lifestyle opportunities and does not allude to any niche or small-scale agricultural opportunities.

Clause 02.03-6 – Housing

...Subdivision of rural land for rural living opportunities has been a major element of development in the Shire.

Areas zoned Rural Living seek to recognise existing developed areas able to support a mix of small-scale commercial farming operations and rural living situations. These areas generally avoid land of high quality agricultural value or environmental hazard. The areas may be capable of being used for a wide variety of small-scale intensive agricultural and horticultural uses.

The Rural Living Strategic Study 2003 found there was an oversupply of rural living land. The focus is therefore on reducing its extent rather than rezoning more land.

Council's strategic directions for housing are to:

- Provide for housing needs to be met within townships and designated rural living areas.*
- Maintain housing affordability and increase the diversity of housing choices, including opportunities for rural living.*

Officer response:

While the proposed subdivision is not explicitly creating further dwellings, it has the practical effect of creating a further rural living lot (within the Farming Zone), where there is already an oversupply of such blocks. Council's strategic direction for housing directs such growth to townships and designated rural living areas, rather than locations such as the subject site.

Clause 02.03-7 – Economic development

Agriculture remains a significant contributor to the local economy with the major agricultural pursuits being timber processing, pasture seed production, wool production, prime lamb and beef production. Most agricultural land has a moderate agricultural land capability rating that is best suited to grazing and crop production.

With the significant visual, cultural and environmental value of many areas in the Shire, tourism is a key local economic driver, particularly around nature-based, food and wine, (on- and off-road) bicycle tourism. Popular tourist destinations in and around Mansfield include:

- Mount Buller, one of Victoria's most popular ski resorts.*
- Mount Stirling, a very popular cross country skiing and bushwalking area.*
- Lake Eildon, Lake Nillahcootie and local rivers, for water-based activities such as house boating, fishing and water skiing.*

The increasing number of visitors and added pressure to provide entertainment and recreation facilities that help reinforce Mansfield's competitive advantage in the tourism sector can negatively impact the built and natural environment and landscape character of the area.

Council's relevant strategic directions for economic development are to:

- Support the continued growth of the agricultural sector.*
- Support traditional and emerging forms of agriculture.*

- *Attract high quality tourism development that is compatible with the environmental attributes and character of the area.*
- *Support Mount Buller as Victoria's premier snow skiing destination.*
- *Minimise the negative impact that tourism can have on the built and natural environment.*

Officer response:

The proposed subdivision provides no agricultural benefit, nor supports the growth of the agricultural sector in Mansfield. The proposal enhances the prospect of dwelling proliferation, with the subsequent effect of artificially inflating land prices in the immediate area above their underlying agricultural value, contrary to policy and contrary to orderly economic development of the area. The supporting Farm Management Plan did not include any proposal for agriculture and only acknowledged the existing domestic-style land management and stock grazing, the application does not propose any possible emerging forms of agriculture.

The proposal for the change of use to permanent dwellings would also remove an existing tourist accommodation asset from the highly sought after Merrijig location. This property has direct access to Merrijig Township via School Lane and is approximately 30 minutes' drive from Mt Buller. The Blue Gum Ridge Cottages accommodation website currently states that they are no longer accepting bookings, however, boasts about the activities in the area, including hiking and walking, down-hill and cross-country skiing, mountain and trail bike riding, fishing, water sports, and horse riding.

Mansfield Shire is in a popular tourist region and the proposal to remove two established short-term holiday accommodation options does not align with the strategic directions of the Planning Scheme.

Planning Policy Framework (PPF)

Clause 13.02-1S – Bushfire planning

Objective

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

Officer response:

The emphasis of relevant bushfire policy at the State and local level is on the preservation of significant landscapes and character of towns like Merrijig and as the highest priority the preservation of human life in bushfire affected areas.

The subject land is not within a Bushfire Management Overlay, however, is a declared BPA under the *Building Act 1993*. The site comprises minimal remnant and planted vegetation.

As the existing cottages on site are used for short term tourism proposal and, therefore, there would be no foreseeable increase to the existing bushfire hazard. The proposal therefore adequately addresses these policy considerations.

Clause 14.01-1S – Protection of agricultural land

Objective

- *To protect the state's agricultural base by preserving productive farmland.*

Relevant strategies

- *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.*
- *Identify areas of productive agricultural land by consulting with the Department of Energy, Environment and Climate Action and using available information.*
- *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.*
 - *The potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.*
 - *Land capability.*
- *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.

- *Balance the potential off-site effects of a use or development proposal (such as degradation of soil or water quality and land salinisation) against the benefits of the proposal.*

Officer response:

Agricultural production is considered to be one of the most significant industries in Mansfield Shire, and as such productive agricultural land should be protected. In considering a proposal to use or develop agricultural land, the following factors listed above must be considered:

- *The desirability and impacts of removing the land from primary production, given its agricultural productivity:*

It is considered that this land is not ideal for agricultural productivity due to its existing limited lot size, however the current size could still enable some emerging or niche agricultural practices at a small scale.

- *The compatibility between the proposed or likely development and the existing uses of the surrounding land:*

There is an existing character of relatively small lots in the surrounding area which are developed with existing dwellings. It is important to note that most of the nearby dwellings have been long established and are considered 'legacy' approvals. These previous approvals for dwelling should not determine a continued development pattern of increasing density in this area as there is significant productive farmland surrounding and nearby. It is acknowledged that due to the subject land being surrounded by roads on all sides there is a low risk of land use conflict.

- *Assessment of the land capability:*

The application has been supported by a Plumbers Report determining that the proposed subdivision is capable of treating and maintaining the wastewater from the existing infrastructure within the proposed lots.

Based on the above, the application is generally at odds with the objective and strategies of this clause.

Clause 14.01-1L – Dwellings and subdivisions in rural areas

Objective

- *To protect productive agricultural land from competing and inappropriate land uses, including residential use not associated with agriculture.*
- *To prevent dwelling excisions and the development of existing small rural allotments from prejudicing any existing surrounding agricultural activities.*

Relevant strategies

- *Discourage dwellings and subdivision (including house lot excisions) unless:*
 - *It is required to support the agricultural use of the land.*
 - *Off-site impacts and land use conflicts can be minimised and it will not result in reduced agricultural capability of the land or long-term viability of rural production in the area.*
 - *It will result in no net loss of vegetation.*
 - *Any development is sited, designed and constructed to mitigate bushfire risks.*
 - *The provision of necessary infrastructure for the dwelling or lot created (such as access to potable water supply, effluent disposal and stormwater drainage systems) is consistent with the capability of the land.*
- *Plan for the lot created for an existing dwelling to be the smallest practicable lot based on the characteristics of the site including necessary setbacks from the road frontage, dams, topography and vegetation.*
- *Site and design development to not adversely impact existing rural activities conducted on site and on adjoining land.*
- *Avoid development (including subdivision) that is likely to lead to a concentration of small lots or dwellings and change the use and development of an area or result in a loss of its rural character, unless the clustering of dwellings will not limit the productive use and development of adjacent agricultural land.*

Policy guidelines

Consider as relevant:

- *Limiting the size of a lot created for an existing dwelling as part of a dwelling excision to a maximum of 2 hectares, provided:*
 - *the dwelling for which a lot is to be created existed on the date of gazettal of the new format Mansfield Planning Scheme (3 May 2003);*
 - *the dwelling has been occupied for a continuous period of two years immediately prior to the subdivision, and*
 - *the dwelling is in a habitable condition.*
- *Using an agreement under Section 173 of the Act to:*
 - *Ensure the dwelling is used to support the agricultural use of the land.*
 - *Minimise land use conflict by affirming the understanding that the amenity of the dwelling may be subject to off-site impacts of adjoining or nearby agricultural activities, such as noise, dust and odour.*
 - *Prevent future subdivision and dwelling excision.*

Officer response:

This local policy builds upon overarching State Planning Policy for agricultural land, with particular emphasis in the Mansfield Shire in preventing house lot excisions (or other forms of subdivision that result in such outcomes) from impacting agricultural activities. There is a fine balance to be struck in subdivision applications; whereby it must be shown that:

- The dwelling to be removed is not reasonably required to support the agricultural use of the land;
- There is sufficient land area to be afforded a buffer to agricultural activities and cater for wastewater and services; and
- Maintain as small an area as possible, to ensure that minimal productive land is lost from agricultural production.

The Mansfield Shire as a whole, has a wide array of rural living areas, and house lots in the Farming Zone, such that there is no shortage of supply of dwellings in these areas. Agricultural land is under constant pressure from such activities. Indeed, this array of lot and housing options means that further dwellings and subdivisions in the farming zone are rarely required to support agricultural activities. In this case, there is no convincing evidence put forward, as to how the future land use of the subdivided land would be beneficial to the agriculture industry or could compliment the surrounding area.

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.*

Officer response:

As discussed above, the proposal does not facilitate agricultural use, productivity or investment in the subject site or surrounding area. The proposal is not put forward to support sustainable agricultural use, or to diversify agricultural activities; rather the proposal is simply to separate the existing dwelling from the Cottages. The proposal finds no support from policy in this clause.

Clause 14.02-1S – Catchment Planning and Management

Objective

- *To assist the protection and restoration of catchments, water bodies, groundwater, and the marine environment.*

Strategies to address this objective include to:

- *Ensure the continued availability of clean, high-quality drinking water by protecting water catchments and water supply facilities.*
- *Undertake measures to minimise the quantity and retard the flow of stormwater from developed areas.*
- *Ensure planning is coordinated with the activities of catchment management authorities.*
- *Ensure that water quality infrastructure is designed to minimise risk of harm to surface waters and groundwater.*

Clause 14.02-1L – Catchment Planning and Management

Relevant strategies are:

- *Minimise adverse impacts from wastewater management systems (both individually and cumulatively) on catchment health and water quality.*
- *Discourage land uses that would contribute to the degradation of downstream water quality.*
- *Discourage further development, particularly new rural residential estates on the lakes' shores.*
- *Support new development only where connection to reticulated sewerage infrastructure can be provided or it will not have a cumulative impact on nutrient and pathogen loads.*
- *Ensure any drainage scheme is consistent with the capability of the land.*

Clause 14.02-2S – Water Quality

Objective

- *To protect water quality.*

Relevant strategies are:

- *Ensure that land use activities potentially discharging contaminated runoff or wastes to waterways are sited and managed to minimise such discharges and to protect the quality of surface water and groundwater resources, rivers, streams, wetlands, estuaries and marine environments.*
- *Discourage incompatible land use activities in areas subject to flooding, severe soil degradation, groundwater salinity or geotechnical hazards where the land cannot be sustainably managed to ensure minimum impact on downstream water quality or flow volumes.*

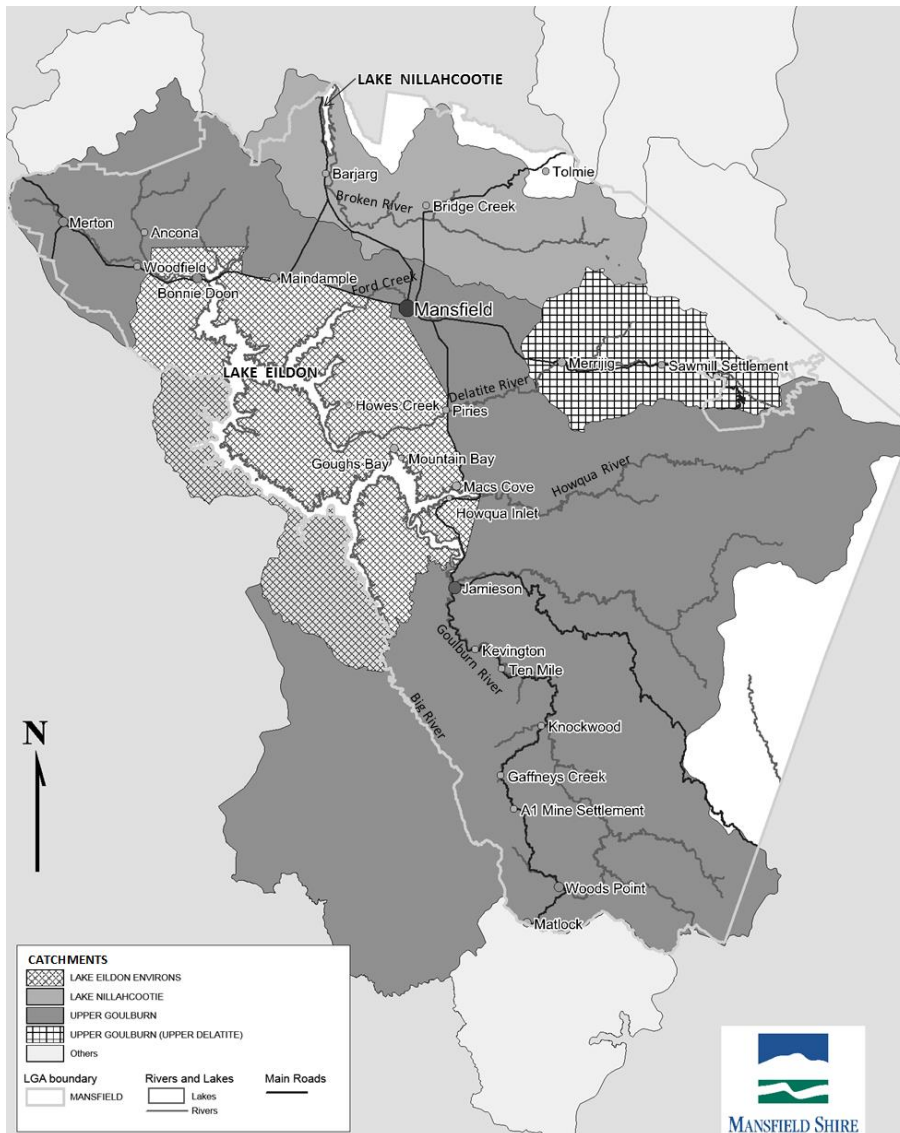


Figure 5: Map of catchments within Mansfield Shire

Officer response:

The subject land is within the Upper Goulburn (Upper Delatite) water supply catchment area. A permit is triggered under the ESO, and the proposed development is not considered to impose any (additional) adverse impact on the water supply catchment area.

Clause 15.03-2S – Aboriginal Cultural Heritage

It is policy to:

- *To ensure the protection and conservation of places of Aboriginal cultural heritage significance.*

Officer response:

The site is partly located within an area of identified aboriginal cultural heritage sensitivity under the *Aboriginal Heritage Act 2006*. The proposed subdivision and change of use are not listed as high impact activities under Division 5 Regulation 49 of the *Aboriginal Heritage Regulations 2018*. As such, a Cultural Heritage Management Plan (CHMP) is not required for this proposal.

Clause 16.01-3S – Rural residential development**Objective**

- *To identify land suitable for rural residential development.*

Relevant strategies

- *Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.*
- *Encourage the consolidation of new housing in existing settlements where investment in physical and community infrastructure and services has already been made.*
- *Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.*
- *Ensure planning for rural residential development avoids or significantly reduces adverse economic, social and environmental impacts by:*
- *Maintaining the long-term sustainable use and management of existing natural resource attributes in activities including agricultural production, water, mineral and energy resources.*
- *Protecting existing landscape values and environmental qualities such as water quality, native vegetation, biodiversity and habitat.*
- *Minimising or avoiding property servicing costs carried by local and state governments.*
- *Maintaining an adequate buffer distance between rural residential development and animal production.*
- *Ensure land is not zoned for rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural*

resources.

- *Discourage development of small lots in rural zones for residential use or other incompatible uses.*
- *Encourage consolidation of existing isolated small lots in rural zones.*

Officer response:

While this policy is primarily targeted at new residential development in rural areas, it is applicable to this subdivision, particularly where the subdivision creates two lots both with existing residential development. Specifically, this proposal does not comply with the strategy that discourages development for small lots for residential uses.

Zoning

Clause 35.07 – Farming Zone (FZ1)

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.*

Decision Guidelines

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 make use of existing infrastructure and services.*

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.*

Officer response:

The application triggers a permit for subdivision under the Farming Zone, the minimum lot area for which is 40 ha as per the scheme, the clauses also provide exemptions for smaller subdivisions as given below –

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.***
- *The subdivision is the re-subdivision of existing lots and the number of lots is not increased.*
- *The subdivision is by a public authority or utility service provider to create a lot for a utility installation.*

A permit cannot be granted which would allow a separate lot to be created for land containing a Small Second Dwelling.

The above provision to exercise a dwelling from large farming lots, has been introduced to ensure the primary use of the land remains agricultural as it allows the minimum area required for a dwelling to be removed, while preserving as much land as possible for the agricultural use onsite.

In accordance with this, the subdivision policy under the zone further mentions that “*A permit cannot be granted which would allow a separate lot to be created for land containing a small second dwelling.*”.

While this only mentions a Small Second Dwelling, based on the purposes and guidelines of the zone, it is reasonable to assume that the intention is to limit the creation of two lots with residential use onsite, and runs antithetical to the current proposal that recommends the creation of two dwellings on a new lot, through a two-lot subdivision while limiting existing agricultural use.

Additionally, the proposal would create a new lot with two dwellings on site in an area of approx. 4.5 ha, replicating densities more in line with the Rural Living Zone, while being a significant distance away from the Township zone of the Merrijig Settlement. This is contrary to the guidelines of the Farming Zone which resists smaller subdivisions of the sites as it fragments existing use.

As per the provided Farm Management Plan, a small farming enterprise exists onsite, consisting of a small herd of cattle and horses. While not significant, the subdivision will limit this use. And the creation of an additional dam onsite for the new lot has also been mentioned, further reducing land available for the already limited agricultural use onsite.

The Farm Management Plan further mentions that the creation of a new driveway, and the use of the existing cottages would still allow the existing land to be used for agricultural purposes, but as this would depend on the person who inherits the property and is in no way mandated by the current proposal, it makes it equally likely to not be utilised for the use proposed by the applicant.

Furthermore, while the Planning Report provided by the applicant mentions that *the surrounding areas consist of multiple smaller lots with single dwellings in and around the area*, none of them

consist of two dwellings on a single small lot, for permanent resident dwellings. The majority of these were created before the zone was designated as Farming [pre 2000], with the recent subdivision applications in the area being mostly limited to boundary realignments, which have not sought to create additional lots with existing dwellings.

On this basis it is considered that the proposal is not consistent with the above purposes and the intent of the zoning.

Overlays

Clause 42.01 – Environmental Significance Overlay - Catchments at Medium Risk of Water Quality Impacts – ESO2

Purpose

- *To identify areas where the development of land may be affected by environmental constraints.*
- *To ensure that development is compatible with identified environmental values.*
- *In catchments identified as being at high risk of water quality impacts, the environmental objective to be achieved is to discourage development and works that potentially contribute to the degradation of water quality and quantity.*

Schedule 2 to Clause 42.01 relates to catchments at high risk of water quality impacts.

Permit requirement

- *A permit is required to subdivide land.*

Statement of Environmental Significance

The Upper Goulburn, Lake Eildon Environs and Upper Goulburn (Upper Delatite) catchments supply irrigation and potable water to nearby townships and downstream communities. Lake Eildon is used for recreational purposes.

The Mansfield Shire Domestic Wastewater Management Plan 2014 (as amended) risk analysis identifies areas of the municipality that are at high, medium and low risk of causing adverse impacts on potable water quality, public health and the environment.

Development in the areas where this schedule applies has a high risk of causing adverse impacts to potable water quality, public health and the environment through increased nutrients, pathogens and sediment in waterways and water storages.

It is important that development is carefully managed to ensure there is no detriment to the catchment and cumulative benefits can be gained over time through improved management of wastewater and stormwater. This can be achieved through careful design and siting of development and works, management of wastewater generated by development and adoption of

integrated water cycle management principles. As a result, there should be incremental and cumulative reductions in nutrient, pathogen and sediment loads in water storages and waterways.

Environmental Objective to be Achieved.

- *To discourage development and works that potentially contribute to the degradation of water quality and quantity.*

Decision Guidelines

- *The Municipal Planning Strategy and Planning Policy Framework.*
- *The statement of environmental significance and the environmental objective contained in a schedule to this overlay.*
- *The need to remove, destroy or lop vegetation to create a defensible space to reduce the risk of bushfire to life and property.*
- *Any other matters specified in a schedule to this overlay.*
- *The comments of the relevant water authority.*
- *Whether the application meets the requirements of Clause 22.04 Managing Water Quality in Special Water Supply Catchments.*
- *Whether wastewater can be treated and contained within site boundaries in accordance with the standards of the Code of Practice-Onsite Wastewater Management, Environment Protection Authority Publication 891.4 July 2016 (as amended).*
- *If the setback requirements of the Northeast Planning Referral Committee Guidelines for the Protection of Water Quality 2016, (as amended), are met or if they are not met, whether the land capability assessment identifies mitigation measures to justify a reduced setback.*
- *If an incremental benefit is gained through the proposal by way of upgrades to existing onsite wastewater management systems.*
- *If the land capability assessment supports a variation of one or more standards of the Code of Practice-Onsite Wastewater Management, Environment Protection Authority Victoria Publication 891.4 July 2016 (as amended) where infill development, or extensions or alterations to existing dwellings is proposed.*
- *Whether measures have been included to prevent increased surface water run-off or concentration of surface water run-off leading to increased nutrient loads, erosion, siltation, pollution of waterways, drains and other features.*
- *Whether a section 173 Agreement is necessary to secure ongoing maintenance or management of a wastewater system or impose limitations on development such as number of habitable rooms in a dwelling or restricting further subdivision.*
- *The potential for the proposed development to reduce water yields within the catchment.*

Officer response:

The subject land is within the Upper Goulburn (upper Delatite) special designated special water supply catchment area. There are number of watercourses running through the subject land.

A referral to GMW was undertaken and it was determined by the authority that the application generally satisfies the relevant considerations, and no permit conditions would be required.

There is no removal, destruction or lopping of vegetation proposed.

The proposal is nominal in nature, with the existing wastewater system equipped to handle the wastewater production onsite and the lack of waterways crossing into the site, lead to a lower likelihood of reduced water yields within the catchment area.

Overall, the proposal general satisfies the considerations and purpose of this overlay.

Clause 42.03 – Significant Landscape Overlay – SLO1

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To identify significant landscapes.*
- *To conserve and enhance the character of significant landscapes.*
-

Statement of nature and key elements of landscape

The alpine approach is characterised by a strong valley bordered by the alpine areas to the north, south and east. The views from the Mansfield - Mt Buller Road to surrounding mountains and ranges are impressive especially in the winter when there is spectacular snowy backdrop. The valley has a relatively flat floor with undulating pasture, ribbons of vegetation along roads, fences, the upper Delatite River (a Proclaimed Water Supply Catchment Area), creek lines and in scattered patches. The Crown Land boundary is an abrupt interface with the dense woodland, which visually helps define the unit. All these elements create an area that is a major asset for the Shire.

Landscape character objectives to be achieved.

- *Identify and protect the visual values of the landscape of state significance on the approaches to mountains and ranges, including Mount Buller, Mount Stirling, Mount Timbertop and other significant mountains.*
- *Protect short and long-distance views of Mount Buller from the Mt Buller Road, other approach roads and public viewpoints.*
- *Avoid the visual impact of buildings and works in the landscape.*
- *Minimise the visual impact of buildings and works by requiring setbacks from prominent visual areas, ridgelines and adjoining and nearby private land.*

Permit requirement

A permit is not triggered under this Clause.

Particular & General Provisions

Clause 65.01 – Approval of an Application or Plan

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- *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 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.*
- *The proximity of the land to any public land.*
- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- *The extent and character of native vegetation and the likelihood of its destruction.*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*
- *The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*
- *The impact the use or development will have on the current and future development and operation of the transport system.*

Clause 65.02 – Approval of an Application to Subdivide Land

Further to the above, 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 movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.*

- *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.*

Officer response:

The matters set out at Section 60 of the Act have been considered.

The MPS and PPF have been addressed under separate headings in the body of the report.

The proposal seeks to create an additional small lot with two dwellings and is not considered consistent with the purpose of the FZ.

Having assessed the application against the relevant clauses of the Mansfield Planning Scheme, it is considered that the subdivision fails to find support in numerous state and local agricultural policies.

As the proposal represents an outcome that planning policy in the Mansfield Planning Scheme explicitly seeks to prevent, with the end effect being a fragmentation of agricultural land and increase in dwellings in an active, working farming area.

Conclusion

Having assessed the application against the relevant clauses of the Mansfield Planning Scheme, it is considered that the subdivision fails to find support in numerous state and local agricultural policies; as well as the Farming Zone's purposes and appropriate decision guidelines. The proposal represents an outcome that planning policy in the Mansfield Planning Scheme explicitly seeks to prevent, with the end effect being a fragmentation of agricultural land and increase in dwellings in an active, working farming area.

The application is therefore recommended for refusal.