



Delegate Report

File Number: DA8072
Planning Application No. P068/23
Responsible Officer: Claire Wilkinson – Senior Statutory Planner
Attachments: N/A

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

(if YES, please complete a Conflict of Interest and Declaration Making Declaration form)

No

<i>Application Details</i>	
APPLICANT	North East Survey Design Pty Ltd (for Diane Quick)
PROPOSAL	Subdivision of land into two (2) lots
APPLICATION LODGED	15 May 2023
STATUTORY DAYS	Application amended 1 September 2023 under Section 57A of the Planning and Environment Act (after advertising) Elapsed statutory days: 35
NOTICE AND SUBMISSIONS	Notices sent to nine (9) Owners/Occupiers of surrounding properties. Notice on site - Yes No objections received. (3 August 2023 – 24 August 2023)
<i>Property Details</i>	
PROPERTY ADDRESS	600 Aldous Road, Mansfield
LAND DESCRIPTION	Crown Allotment 47A and 47B Parish of Maindample

RESTRICTIVE COVENANTS	Nil
LAND AREA	Approximately 64.59ha
EXISTING USE	Dwelling and agricultural activities
<i>Planning Provisions</i>	
ZONE	Clause 35.07 Farming Zone
OVERLAYS	Nil
MUNICIPAL PLANNING STRATEGY	Clause 02.03-1 – Settlement Clause 02.03-4 – Natural resource management Clause 02.03-6 – Housing Clause 02.03-7 – Economic development
PLANNING POLICY FRAMEWORK	Clause 11.01-1S – Settlement Clause 13.02-1S – Bushfire planning Clause 14.01-1S – Protection of agricultural land Clause 14.01-1L – Dwellings and subdivisions in rural areas Clause 14.01-2S – Sustainable agricultural land use Clause 14.02-1S – Catchment planning and management Clause 14.02-2S – Water quality Clause 16.01-3S – Rural residential development
PARTICULAR PROVISIONS	Nil
<i>Permit Triggers</i>	
FARMING ZONE	Clause 35.07-3 – A permit is required to subdivide land.
<i>Other</i>	
CULTURAL SENSITIVITY	The subject land is not located in an area of aboriginal cultural heritage sensitivity
SITE INSPECTION	Yes- Friday 23 June 2023

Background

Proposal

The permit applicant, North East Survey Design, seeks approval for the subdivision of the subject land at 600 Aldous Road, Mansfield (Crown Allotments 47A and 47B Parish of Maindample) into two (2) lots. The subject site comprises 2 lots, contained in certificate of title Volume 8008 Folio 109, with the proposal seeking to re-subdivide these lots to create a house lot excision for the existing dwelling on the land, as detailed below:

Existing Lots

- CA47A (house lot) – 32.29ha
- CA47B (vacant lot) – 32.29ha

Proposed Lots

- Lot 1 (house lot) – 6.835ha
- Lot 2 (vacant lot) – 57.75ha

A copy of the proposed subdivision plan is provided below:

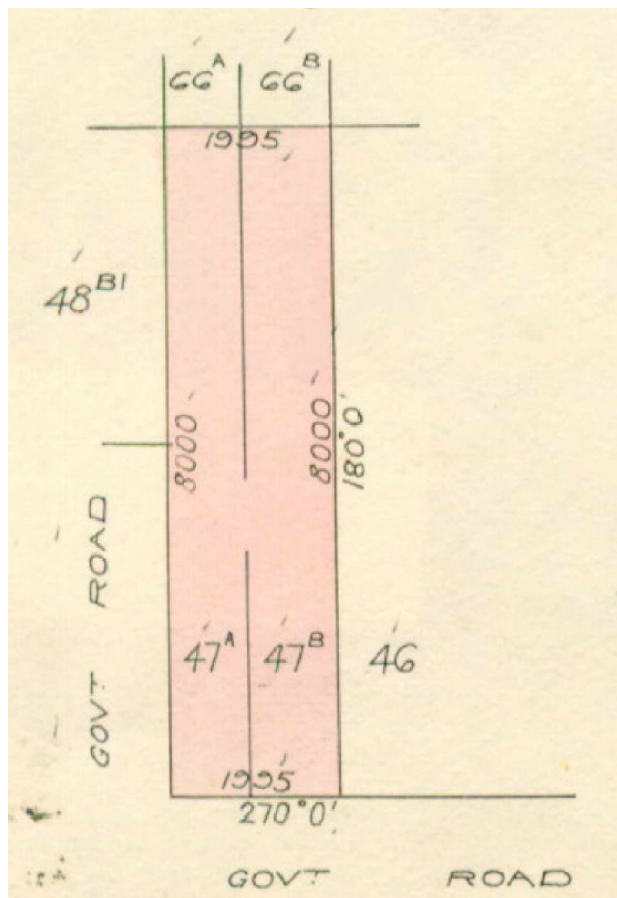


Image 1: Existing lot alignment.

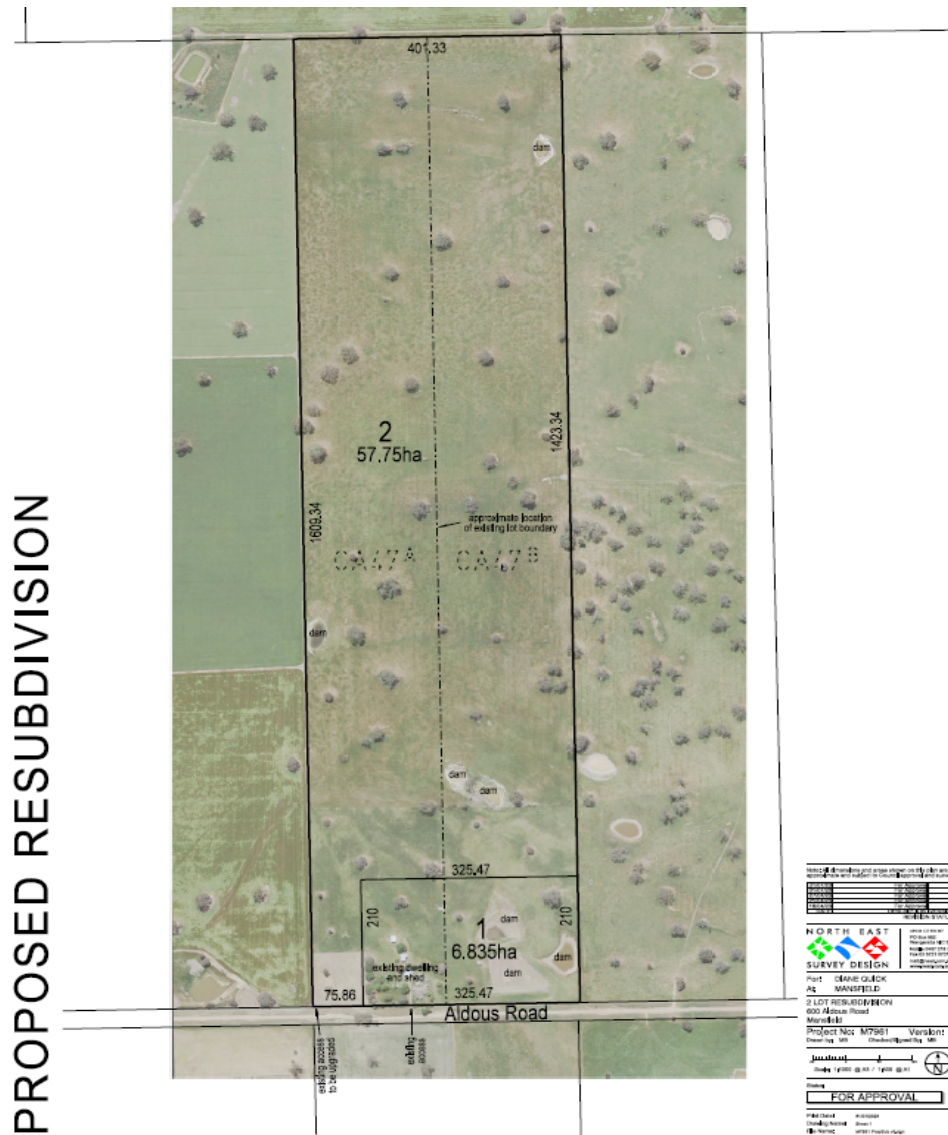


Image 2: Proposed plan of subdivision.

Subject site, neighbourhood and environs

The subject site is located on the northern side of Aldous Road, and is formally identified as Crown Allotments 47A and 47B Parish of Maindample. The site is generally rectangular in shape and is generally flat, with a high point towards the rear of the site at the 340m AHD contour. Both Crown Allotments comprise an area of approximately 32.29ha, with the westernmost parcel (CA47A) containing an existing dwelling and agricultural land, and CA47B comprising agricultural land.

The site has a frontage of approximately 401.33 metres to Aldous Road, with access to the site from same. The subdivision would retain a 75m wide strip on the western side of the land for access to the farm lot via Aldous Road. Lots in the surrounding area in all directions generally comprise farming zoned lots, with areas between 12ha to 130ha. The majority of lots in the immediate area are held as tenements, and generally used for grazing or cropping activities, made viable by the land area afforded across multiple lots. There are few dwellings scattered

through the landscape, and almost all of them are located on sites undertaking productive agricultural activities. A large number of ‘paddock trees’ are present throughout the landscape, with agricultural activities occurring around these – the trees form part of the character and biodiversity value of the immediate environs.

The site appears to be connected to reticulated power and telecommunications, but not water and sewer.



Image 2: Aerial image of subject site and immediate surrounds (includes abutting lot to east, distinguished by change in colour of grass).

Site History

A review of Council’s records indicates that no Planning Permits have been applied for or granted on the site.

Consultation

Referral Responses

<i>Referral Agency</i>	<i>Clause</i>	<i>Response</i>
GOULBURN MURRAY WATER (GMW)	Clause 66.02-5 – Determining	No referral as application is recommended for refusal

Advertising

Advertising was carried out in accordance with the requirements of the Planning and Environment Act 1987, by way of:

- Letters to adjoining and nearby owners and occupiers; and
- Sign on site

As a result of public notification, no objections to the application have been received.

Consultation

Council officers advised the permit applicant prior to advertising that the application was unlikely to be supported, as it was contrary to planning policy in the Mansfield Planning Scheme relating to excisions and subdivision of rural land. The permit applicant made amendments to the proposal (resulting in the proposal now being assessed), however officers continued to advise the applicant that the proposal was inconsistent with relevant policy. The permit applicant has sought for the application to be processed and determined as applied for.

Date	Action
6 June 2023	Planning Officers sent Letter of Advice advising the Applicant to consider the requirements of Clause 14.01-1L
22 June 2023	Owner of the land provided a Letter History of the land and their proposal
25 July 2023	Owner of the land emailed Councillors directly
27 July 2023	General Manager Infrastructure and Planning responded to the email dated 25 July
1 August 2023	Owner of the land provided an occupancy history of the dwelling from March to June 2023
	Applicant provided an amended Plan of Subdivision reducing the excised lot from 8.98 hectares to 6.835 hectares
	Planning Officers emailed Applicant confirming that the amended plan had not resolved the initial concerns
	Email from Applicant in response to Planning Officers concerns.
3 August 2023	Application was advertised through the Public Notice Process

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)

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.*

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 large

to reasonably be maintained as a rural residential property, and too small to be used for agriculture, and includes a number of pieces of rural infrastructure and land that could be reasonably retained with the farming property. Further, the form of the subdivision is such that it creates an additional dwelling 'entitlement' (i.e. a lot over 40 hectares in the Farming Zone with no dwelling present), resulting in the prospect of dwelling proliferation in a context where such an outcome is explicitly sought to be prevented.

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; and creating an additional dwelling opportunity on the balance land where one does not currently exist. Council's strategic direction for housing directs such growth to townships and designated rural living areas, rather than locations such as the subject site which are within the core of productive, active farming zone areas of Mansfield Shire.

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.

Council's strategic directions for economic development are to:

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

Officer response:

The proposed subdivision provides no agricultural benefit, nor supports the growth of the agricultural sector in Mansfield. The proposal leads to 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.

Planning Policy Framework (PPF)**Clause 11.01-1S – Settlement****Objective**

- *To facilitate the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements.*

Relevant strategies

- *Create and reinforce settlement boundaries.*
- *Limit urban sprawl and direct growth into existing settlements.*

Officer response:

The proposed subdivision is contrary to relevant Settlement policy, which seeks to guide growth and development to areas specifically identified as suitable for such purposes. The proposal removes a dwelling from a 32ha parcel (farmed as a tenement), where an on-site manager could reasonably be required, and creates a large rural lifestyle block and opportunities for dwelling proliferation, contrary to orderly settlement planning.

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 subject land is situated within a Bushfire Prone Area. In the event that a permit were granted, any future dwelling on the balance land would be required to be constructed to a minimum BAL12.5 level, as imposed by the relevant building surveyor at the time. The subdivision does not pose an unacceptable risk from bushfire.

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:*

While the proposed subdivision does not explicitly claim to remove land from primary production, ultimately the creation of a 6.835ha house lot (and additional dwelling opportunity on the balance lot) will have this effect. The subject land is 62.59ha in area, with no evidence to suggest that it is not productive agricultural land – it is clear that land in the area is used for productive agricultural purposes. There is no support for the removal of the subject land from primary production.

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

A proliferation of non-agricultural land uses in this area would be incompatible with the existing agricultural land uses surrounding the subject land and surrounding properties, and would limit the expansion of those same agricultural uses.

- *Assessment of the land capability:*

No assessment of land capability was provided. However, it is evident that the land and surrounding area is productive agricultural land and used for such purposes. The protection of agricultural land, particularly larger holdings in productive areas with competing land use/price concerns is seen as a major objective in State and Local Planning Policy. Therefore, the removal of land from productive agricultural use is contrary to the objectives and strategies of this clause. In the absence of compelling information, it is reasonable to conclude that the proposed subdivision will remove almost 7ha from direct agricultural production, and inflate the value of the balance land (due to the new 'as of right' dwelling opportunity) such that it is unlikely to contribute to the agglomeration of any nearby agricultural enterprise.

Based on the above, the application is 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 excision 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 why the dwelling to be removed from the land is no longer reasonably required to support the agricultural activities of the land, and importantly the form of application is such that it creates a further dwelling opportunity on the balance lot, where one does not currently exist. There is also no information before Council that suggests that even if the house is surplus, why it cannot be leased to a caretaker or other user, rather than being fully removed from the holding without potential for reintegration should it be required.

Beyond this justification aspect, the proposal seeks to create a house lot well in excess of what is reasonably required to create a suitably sized house lot. There are no specific encumbrances or land constraints on this land or the surrounding area, that necessitate a 6.835ha house lot. Indeed, the house lot would include with it, dam infrastructure that would ordinarily support agricultural use, and cleared land suitable for cropping and grazing. At its furthest point, the subdivision includes land several hundred metres from the dwelling itself, which could quite readily remain as part of the agricultural holding. This is contrary to policy in this clause that seeks specifically to limit house lots to no more than 2ha.

Finally, this is an area where there are no excised dwellings on a lot equivalent to that proposed here. The surrounding context is one of an active, working farming zone area, with larger holdings (usually in tenements) supported by the dwellings sited on the properties. The introduction of a new, rural living property in this context, has a real potential to reduce the ongoing viability of rural production in the area, both by way of potential land use conflicts to the house lot, as well as dwelling proliferation on both the balance lot, and other lots in the area to which a house right applies. Planning policy is clear that the underlying intent of this area is to protect the area for agricultural production, which is not achieved in this application.

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 proposed subdivision removes infrastructure, such as farm dams and grazing land, that could reasonably be retained as part of the agricultural lot. The permit application refers to these dams providing potable water for the dwelling, however it would be unusual for a potable water supply to be provided from a dam, rather than rainwater tanks connected to the dwelling. The proposal is not put forward to support sustainable agricultural use, or to diversify agricultural activities; rather the proposal is simply to remove the dwelling for the personal circumstances of the owners (as detailed in the submission submitted with the application). 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.*

Relevant strategies

- *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.*

Officer response:

The subject land and broader surrounds is located within the Upper Goulburn Special Water Supply Catchment area. No information was provided regarding the suitability of the existing wastewater management system, however, due to the significant size of the proposed house lot and setbacks to nearby water features and boundaries, it is considered that altering/upgrading existing system (if required) will be satisfactorily achievable. While the proposal would create an additional dwelling opportunity on the balance lot, the surrounding area is sparse in dwellings and would continue to meet the density requirements set out in *Planning Permit Applications in Open, Potable Water Supply Catchment Areas (November 2012)*.

Clause 14.02-2S – Water quality

Objective

- *To protect water quality.*

Strategies

- *Protect reservoirs, water mains and local storage facilities from potential contamination.*
- *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.*
- *Prevent the establishment of incompatible land uses in aquifer recharge or saline discharge areas and in potable water catchments.*
- *Encourage the siting, design, operation and rehabilitation of landfills to reduce impact on groundwater and surface water.*
- *Use the mapped information available from the Department of Energy, Environment and Climate Action to identify the beneficial uses of groundwater resources and have regard to potential impacts on these resources from proposed land use or development.*

Officer response:

The proposed house lot retains sufficient area to treat and retain wastewater within its lot boundaries. Should a permit be issued, a condition would be required to ensure that the existing effluent treatment plant is assessed to ensure its ability to safely function within the excised lot, and if required upgraded or replaced as necessary.

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 an additional dwelling opportunity that currently does not exist. As discussed above, the proposal does not provide for a positive agricultural outcome; rather it fragments the site into a large house lot that is not viable for agricultural production in its own right, and creates an additional dwelling opportunity on the balance lot. The application states that creating a larger farming lot is beneficial for agriculture; however this is not of itself sufficient justification for the proposal (indeed, if the sole point of the exercise were to make a large farm lot/provide an improved agricultural outcome, the existing

titles could be consolidated into 1 lot, or a smaller house lot could be proposed to maximise agricultural land, and/or the permit applicant could propose a restriction on the balance lot to prevent a further dwelling being erected). The proposal is contrary to the objectives and strategies of this clause.

Zoning

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.*

Permit requirements

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.***
- ***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.***

Officer response:

The proposal is for a two (2) lot re-subdivision, to provide for a house lot excision. While the subject land is held in one certificate of title in the land register (Volume 8008 Folio 109), the certificate contains 2 Crown Allotment parcels, divisible pursuant to Section 32 of the *Transfer of*

Land Act 1958. As such, the proposed subdivision is aptly described as a re-subdivision of existing lots.

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.*

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.*

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.*

Officer response:

General issues

The relevant clauses of the Planning Policy Framework and Municipal Planning Strategy have been addressed above. In localised terms, the house lot is capable of wastewater treatment and utilises existing infrastructure and services. However, the proposal is not considered to be representative of sustainable land management or an appropriate subdivision of productive agricultural land. The proposal creates an additional dwelling opportunity that currently does not exist, in close proximity to the Mansfield Township where there are large demands for 'rural lifestyle' properties that conflict with the purpose of the Farming Zone to provide for productive agricultural activity in the Farming Zone.

A similar situation was considered by the Victorian Civil and Administrative Tribunal (VCAT) in *Estate of J E Waler v Wangaratta RCC [2021] VCAT 1257 (26 October 2021)*, where Senior Member Martin stated in relation to a 3 lot subdivision of Farming Zoned land near Wangaratta:

- 46 *Second, with the subject land being merely a nine minute or so drive away from Wangaratta, I do see a major prospect that if the three lot subdivision went ahead, the new lots would be attractive to use as lifestyle properties. This would run directly counter to the*

thrust of the strategic planning framework which I have set out above. Again I rely on the credible evidence of Ms McGuinness in this regard.

- 47 *Third, if in theory the three lot subdivision went ahead and some or all of the new lots were used for lifestyle purposes/as hobby farms, I do not share Mr Heydon's view that this would still advance the main strategic planning aims for the subject land as set out above. The point is that this strategic planning framework is not just promoting any form of farming, but is encouraging 'productive' farming. As alluded to above, I see the decision by the Planning Scheme draftsperson to include the word 'productive' as pointing to a desire that the farming activity not be token, but be meaningful/genuine. Or to put this another way, the word 'productive' in the relevant text in the Planning Scheme must be given work to do, not just 'wished away' or inappropriately 'read down'.*
- 48 *I endorse Council's submission at the hearing that the situation of a lifestyle property running a few sheep or goats or the like does not constitute meaningful farming, so as to come within the scope of the word 'productive', where the Planning Scheme is promoting 'productive farming'. Rather, I see running a few sheep/goats/chooks or the like as being in the nature of keeping such animals essentially to fulfill the role of family pets.*
- 49 *Fourth, I see weight in Council's submission that the proposal runs 'against the grain' of the common practical farming trend, where the one farmer can potentially carry out farming activities over multiple lots that are not contiguous. I accept that the proposal undermines this potential situation of a farmer generating a more sustainable farm income over a wider group of lots, by creating the situation where (if the proposal went ahead) each of the new lots may have a different owner, who may well want to independently utilise that lot him or herself. This would then remove that lot from the broader pool of lots which can be farmed on a 'group basis' in this general location. This in turn would have a negative impact on the Planning Scheme aim of land zoned Farming Zone being used for productive farming purposes.*

The proposed subdivision is primarily put forward solely on the basis of personal circumstances of the owner, and does not advance policy in the Mansfield Planning Scheme to provide for agricultural use of land, ultimately creating the prospect of this land being permanently removed from the agricultural base, and/or inflated in value to such an extent that it would prohibit future genuine agricultural activity being undertaken.

Agricultural issues

It is considered that the application has the potential to lead to a concentration or proliferation of dwellings in the surrounding area. There are a number of lots below the minimum lot size (40ha) in the surrounding agricultural landscape, which are held and farmed as tenements rather than stand-alone holdings. This is the situation of the existing land on the subject site, and reflected in the fact that a single dwelling is located on a holding comprising multiple lots, where that dwelling

provides support to a broader agricultural tenement. Planning Policy and the Farming Zone seek to avoid situations where every lot within the zone could be developed with dwellings; and by extension ensuring that dwellings are genuinely related to agricultural production and are not proposed to achieve rural lifestyle or other non-agricultural outcomes.

It is a well-accepted fact in rural land use planning that the value of land per acre increases when a dwelling can be or has been built on the land. The practical effect of this application would be to create a new lot with a dwelling opportunity, and the artificial inflation of value that this creates; while at the same time removing almost 7ha of land from potential agricultural use, or supporting an agricultural use. Further, the creation of a house lot disconnected from agriculture, creates the prospect of land use conflict with existing agricultural operations in the surrounding area; particularly in an area where agricultural production is the dominant activity in the landscape. This is an area where land fragmentation is minimal and reflecting an area that agricultural policy is seeking to protect.

Accommodation issues

The proposed subdivision is not specifically for a dwelling; however the decision guidelines under accommodation require consideration of whether a dwelling would lead to loss or fragmentation of productive agricultural land, lead to a concentration or proliferation of dwellings in the area, and whether a dwelling would affect (or be affected by) agriculture on nearby land. As discussed above, the proposed subdivision creates a house lot devoid of agriculture, creates further dwelling opportunities and could lead to land use conflict between nearby agricultural operations; reflecting an outcome sought to be avoided within the Farming Zone.

Environmental issues

The proposed subdivision would not lead to environmental issues. The area of land proposed for the house lot is well in excess of what is required for appropriate treatment and retention of wastewater, and new boundary lines are appropriately offset from native vegetation to displace any prospective exemption that may be enlivened for its removal. The proposal does not directly propose to protect and enhance biodiversity; however this is not in isolation a reason for the proposal to be refused.

Design and siting issues

The proposed subdivision has no bearing on any of these decision guidelines, as there are no works proposed as part of the application. To the extent that these decision guidelines speak to a clustering of infrastructure to minimise loss of agricultural land, these concerns are addressed elsewhere in this assessment.

Overlays

The subject site is not covered by any overlays.

Particular Provisions

There are no Particular Provisions relevant to the assessment of this application.

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 the Planning Policy Framework.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the environment, human health and amenity of the area.*
- *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

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.*

Officer response:

As discussed throughout this report, the proposal is considered to reflect a disorderly planning outcome, that does not advance relevant Planning Policy in the Mansfield Planning Scheme. The proposal conflicts with existing and future use of land in the area under the Farming Zone, with no net community benefit to offset the impacts of the proposal. While there are no physical impediments or natural hazards preventing subdivision, the proposal is contrary to the intent of the primary planning control applying to the land, and as such cannot be supported.

Conclusions

This application proposes the subdivision of land into two (2) lots at the site known as 600 Aldous Road, Mansfield; being Crown Allotments 47A and 47B Parish of Maindample. 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.

Officer Recommendation

NOTICE OF DECISION TO REFUSE TO GRANT A PLANNING PERMIT

That Council, having caused notice of the application to be given under Section 52 of the *Planning and Environment Act 1987*, and having considered all matters under Section 60 of the *Planning and Environment Act 1987*, resolves to issue a **Notice of Decision to Refuse to Grant a Permit** for Planning Application P068/23 for the Subdivision of land into two (2) lots on **Crown Allotment 47A and 47B Parish of Mandample**, commonly addressed as 600 Aldous Road, Mansfield, for the following reasons:

1. The proposal is inconsistent with the Planning Policy Framework in relation to agricultural land and rural subdivision/development, specifically Clauses 11.01-1S, 14.01-1S, 14.01-2S and 16.01-3S, which aim to manage subdivision and development in rural areas to protect and enhance agriculture and avoid fragmentation of productive agricultural land. The proposed subdivision introduces a rural-lifestyle land parcel into an active, working agricultural area, creates additional dwelling development opportunities on the balance lot that currently don't exist, and creates the potential for land use conflict to existing agricultural activities and affecting the operation or expansion of other agricultural activities.
2. The proposal is inconsistent with Planning Policy at Clause 14.01-1L of the Scheme, as it:
 - a) Does not support the agricultural use of the land;
 - b) Reduces the long term viability of rural production in the area by way of creating a rural-residential parcel in an active, working Farming Zone area with no equivalent lots in the immediate surrounds; and
 - c) Does not create the smallest practicable lot for a house lot based on the characteristics of the site (and well in excess of the 2ha envisaged in this clause);
3. The proposal is inconsistent with the Municipal Planning Strategy in relation to agricultural land, specifically Clause 02.03-4, which seeks to avoid fragmentation of productive agricultural land and ensure that land holdings remain a viable size for agricultural production without creating expectation of rural lifestyle land use in the Farming Zone. The proposal would:
 - a) Create an excessively large house lot that unreasonably removes agricultural land and infrastructure from the balance parcel;
 - b) Creates an opportunity for additional dwelling development on the balance lot 'as of right' that currently does not exist on the land as currently configured;

- c) Fails to protect productive agricultural land on the site and surrounding area from land fragmentation and incompatible use and development; and
 - d) Fails to protect the ongoing viability of agricultural land on the site and surrounding area.
4. The proposal is inconsistent with the purpose and decision guidelines of the Farming Zone, which seeks to encourage the retention of productive agricultural land and to ensure that non-agricultural uses do not adversely affect the use of land for agriculture. The proposed subdivision is likely to result in land use conflict to existing and future agricultural activities, could lead to the concentration and proliferation of dwellings in the area, with impacts on existing agricultural activities, and provides no agricultural benefit to the land and surrounding area, contrary to the decision guidelines of the zone.