

BRIAN & ANNETTE DILKS
170 RACECOURSE ROAD, BAIRNSDALE

Crowther & Sadler Pty. Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
182 MACLEOD STREET, BAIRNSDALE, VIC. 3676
P. (03) 5182 8011 E. contact@crowthersadler.com.au

FILENAME: N:\Jobs\17000-17999\17700-17799\17717 DILKS\17717 Prop V4.pro

NOTATIONS

AREAS ARE APPROXIMATE ONLY
DIMENSIONS ARE SUBJECT TO SURVEY

SCALE (SHEET SIZE A3)

1 : 2000

SURVEYORS REF.

17717

VERSION 4 - DRAWN 20/06/2018

PROPOSED SUBDIVISION

PARISH OF BAIRNSDALE
CROWN ALLOTMENT 184A (PART)

C/T VOL 9696 FOL 962
LOT 1 ON TP873509A



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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 1

VOLUME 09696 FOLIO 962

Security no : 124073891585N
Produced 12/09/2018 12:23 pm

LAND DESCRIPTION

Lot 1 on Title Plan 873509A (formerly known as part of Lot 2 on Plan of Subdivision 204730Q).
PARENT TITLE Volume 09638 Folio 745
Created by instrument LP204730Q 27/08/1986

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors
BRIAN ANDREW DILKS
ANNETTE MARIE DILKS both of 170 RACECOURSE ROAD BAIRNSDALE VIC 3875
AF063780A 14/05/2007

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AL742089Y 10/03/2015
COMMONWEALTH BANK OF AUSTRALIA

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE TP873509A FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 170 RACECOURSE ROAD BAIRNSDALE VIC 3875

ADMINISTRATIVE NOTICES

NIL

eCT Control 15940N CBA - COMMONWEALTH BANK OF AUSTRALIA
Effective from
23/10/2016

DOCUMENT END

TITLE PLAN		EDITION 1	TP 873509A			
LOCATION OF LAND Parish: BAIRNSDALE Township: - Section: - Crown Allotment: - Crown Portion: - Last Plan Reference: LP 204730Q Derived From: VOL. 9696 FOL. 962 Depth Limitation: -		Notations ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN				
Description of Land/Easement Information <u>ENCUMBRANCES</u> AS TO ANY PART OF THE LAND MARKED E-1 ON THE MAP THAT LIES WITHIN THE ABOVE-MENTIONED LOT THE EASEMENT EXISTING OVER THE SAME BY VIRTUE OF SECTION 103B OF THE STATE ELECTRICITY COMMISSION ACT		THIS PLAN HAS BEEN PREPARED BY LAND REGISTRY, LAND VICTORIA FOR TITLE DIAGRAM PURPOSES COMPILED: Date: 2 / 10 / 2006 VERIFIED: A. DALLAS <i>Assistant Registrar of Titles</i>				
<p style="text-align: center; font-weight: bold; font-size: 1.2em;">LOT 1</p>						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="padding: 2px 5px;">TABLE OF PARCEL IDENTIFIERS</th> </tr> <tr> <td style="padding: 2px 5px; font-size: 0.8em;">WARNING. Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962</td> </tr> <tr> <td style="padding: 2px 5px; font-size: 0.8em;">LOT 1 = LOT 2 (PT) ON LP 204730Q</td> </tr> </table>				TABLE OF PARCEL IDENTIFIERS	WARNING. Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962	LOT 1 = LOT 2 (PT) ON LP 204730Q
TABLE OF PARCEL IDENTIFIERS						
WARNING. Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962						
LOT 1 = LOT 2 (PT) ON LP 204730Q						
LENGTHS ARE IN METRES	Metres = 0.3048 Feet Metres = 0.201168 x Links	Sheet 1 of 1 sheets				

Planning Report

Proposed Two Lot Subdivision (Dwelling Excision)
170 Racecourse Road, Bairnsdale
Reference – 17717

13 September 2018



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Proposed Subdivision Plan (Version 4, dated 20/06/2018)

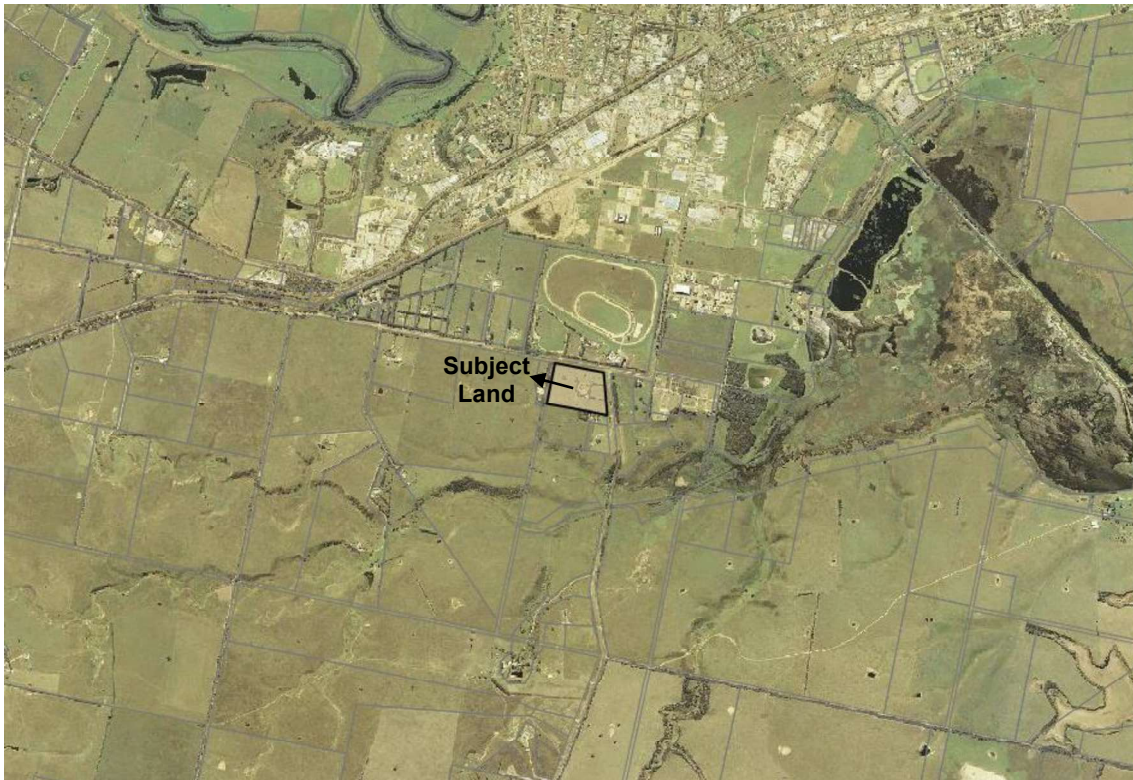
Copy of Title (Lot 1 on TP873509A)

Land Capability Assessment Report – Land Capability Assessments – Gippsland

Note: Applicable Planning Application fee is \$1,286.10

1. Introduction

This planning report is prepared in support of proposed Two Lot Subdivision (Dwelling Excision) at 170 Racecourse Road, Bairnsdale. The report addresses the provisions of the Farming Zone as contained within the *East Gippsland Planning Scheme*.



Aerial view of subject land and surrounding precinct – Source: LASSI SPEAR (DELWP)

2. Subject Land & Surrounding Context

The site is formally described as Lot 1 on TP873509A and is approximately 7.36ha in area.



View towards subject land from Racecourse Road – Source: Google Earth (2008)

The site has frontage to Racecourse Road (bitumen) to the north, Forge Creek Road (bitumen) to the east and Government Road (unmade) to the west. Access to the site is currently facilitated from Racecourse Road via a sealed vehicle crossing.

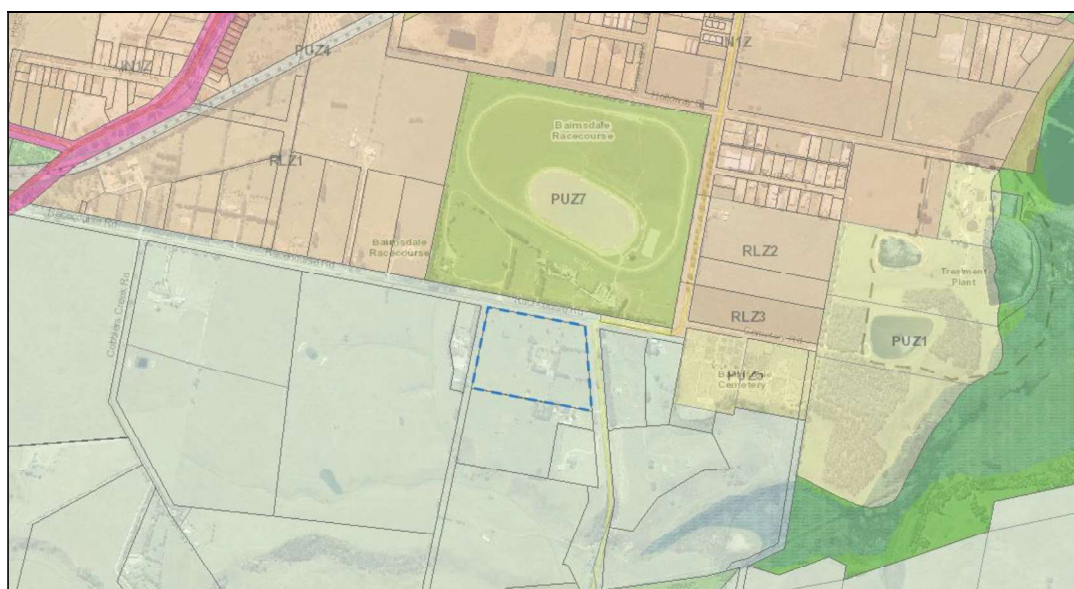


View east along Racecourse Road and View south along Forge Creek Road – Source: Google Earth (2008)

An existing dwelling and associated outbuildings are located centrally to the site which are obscured from the nearby road network by established ornamental planting.

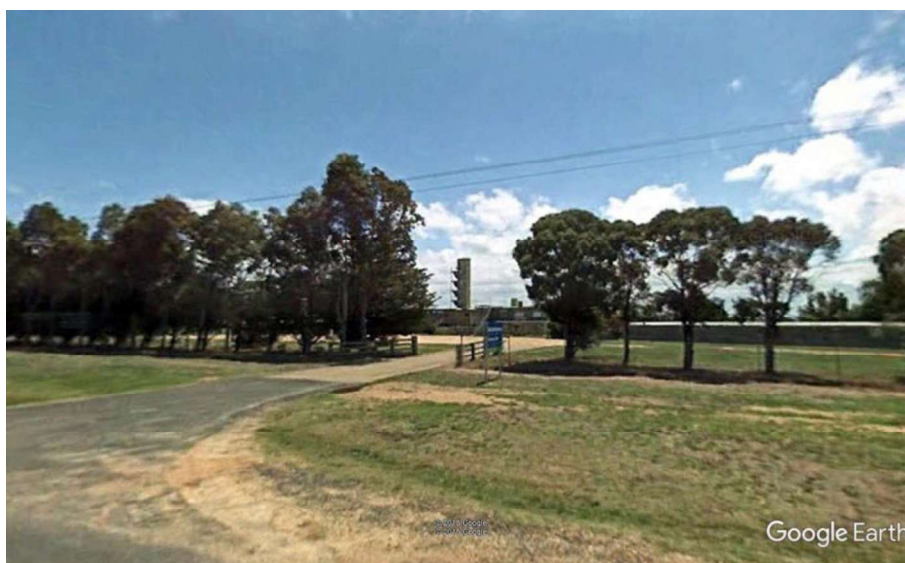
The whole of the subject land is mapped as being affected by the provisions of the Farming Zone – Schedule 1 and the south eastern portion of the site is affected by the provisions of the Vegetation Protection Overlay – Schedule 1 of the *East Gippsland Planning Scheme*.

Land adjoining the site to the south, east and west is also mapped as being within the Farming Zone – Schedule 1 albeit a number of the allotments are smaller rural residential style lots which are less than 40ha in area.



Subject land and surrounding precinct – Source: VicPlan (DELWP)

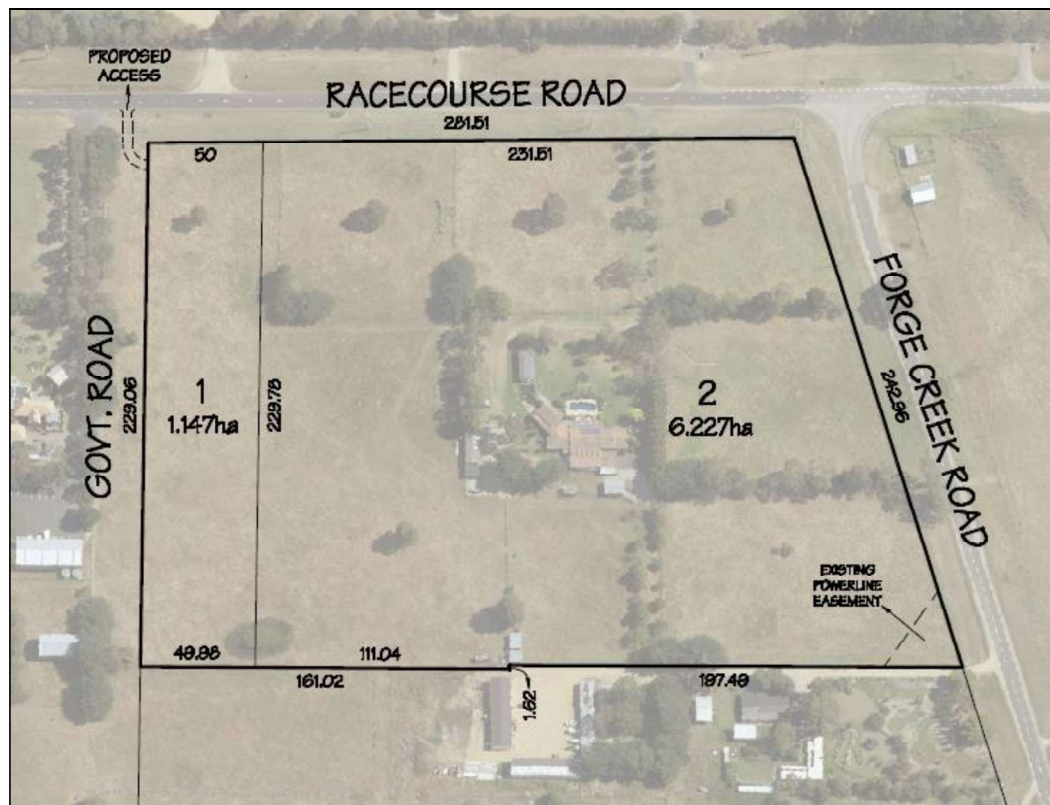
Land directly opposite the subject land on the northern side of Racecourse Road contains the Bairnsdale Racing Club and is zoned Public Use Zone – Schedule 7 however there are a number of smaller allotments provided on the northern side of the road which are zoned Rural Living Zone – Schedule 1.



View north from Racecourse Road towards the Bairnsdale Racing Club – Source: Google Earth (2008)

3. The Application & Proposal

The Application seeks approval for a Two Lot Subdivision which will excise an existing dwelling to create vacant Lot 1 of approximately 1.147ha in area and Lot 2 of approximately 6.227ha in area which will contain the existing dwelling.



Proposed Subdivision Layout – Source: Crowther & Sadler Pty Ltd

The existing access provisions from Racecourse Road will be retained with the existing dwelling by servicing proposed Lot 2 however a new point of access will be established as part of the subdivision to facilitate access to proposed Lot 1.

The new access point to Lot 1 will be established from Racecourse Road through the unmade Government Road as shown on the accompanying Proposed Subdivision Plan.



View of proposed point of access to Lot 1 from Racecourse Road – Source: Google Earth (2008)

The subject Application triggers approval at **Clause 35.07-3** for subdivision of land in accordance with Farming Zone provisions of the *East Gippsland Planning Scheme*.

Whilst the south eastern portion of the site is mapped as being affected by the Vegetation Protection Overlay, it does not trigger any planning approvals herein as there is no vegetation removal being proposed.



Vegetation Protection Overlay Mapping – Source: Planning Maps Online (DELWP)

Preliminary discussions have been held with both Council's Senior Planner and Manager Amenity to gauge Council's likely level of support, given both allotments will be less than 40ha in area. Although Applications of this nature are not typically encouraged, it is understood that Council officers are willing to entertain the proposal having regard for the specific site circumstances.

4. Cultural Heritage

The proposal does not trigger any mandatory requirement to provide a Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006*.

Pursuant to Regulation 7 of the *Aboriginal Heritage Regulations 2018*, a CHMP is required for an activity if:

- (a) *all or part of the activity area for the activity is in an area of cultural heritage sensitivity; and*
- (b) *all or part of the activity is a high impact activity.*



Cultural Heritage Sensitivity Mapping – Source: Planning Maps Online (DELWP)

The subject land is not mapped as being within an area of cultural heritage sensitivity and the proposed Two Lot subdivision is not classified as being a high impact activity under the *Aboriginal Heritage Regulations 2018*. There is therefore no mandatory requirement to provide a CHMP in support of the Application.

5. Planning Policy

State and Local Planning Policy is addressed below in support of the proposed development.

5.1 State Planning Policy

The objective to Clause 12.01-1S relating to *Protection of Biodiversity* seeks to assist the protection and conservation of Victoria's Biodiversity. Strategies to this objective relate to identifying important areas of biodiversity, conservation of biodiversity and ensure that decision making takes into account the land use and development on Victoria's biodiversity.

The proposal is considered to respond positively as there will be no vegetation losses incurred as a result of the subdivision. Proposed Lot 1 will be predominately vacant and capable of accommodating a future dwelling which is well setback from watercourses.

Consideration has been given to Clause 14.01-1S relating to *Protection of Agricultural Land* given the site's inclusion within the Farming Zone. The objective of this Clause is to protect the State's agricultural base by preserving farmland. The site is already considered to be lost to agricultural production given its small size and the surrounding residential context.

The proposal is also considered to adhere to the objectives of Clause 15.01-6S relating to *Design for Rural Areas* as Lot 1 contains sufficient area to provide potential for future development without triggering any vegetation removal and that is also well setback from Racecourse Road.

Clause 16.01-3S relating to *Housing Diversity* refers to the need to provide for a range of housing types to meet increasingly diverse needs. The proposed subdivision will create a unique housing opportunity within an area which enjoys a rural outlook whilst being within close proximity to the main township area of Bairnsdale.

5.2 Local Planning Policy

The proposal adheres to Clause 21.06 of the Municipal Strategic Statement which relates to *Natural Resource Management* and includes strategies to support agriculture, forestry and timber, water and minerals.

The first objective at Clause 21.06-1 relating to *Protection of Agricultural Land* seeks to ensure that rural land is used and developed in a way that will support efficient agricultural production with strategies aiming to avoid subdivision to create smaller allotments unless it will aid rural production.

The proposal will result in the creation of allotments which are both lesser in area than the Scheduled Lot size of 40ha, however this will not have any detrimental impacts on agricultural activities on the land or the surrounding precinct.

The subject land is already a small lot containing an existing dwelling and is not mapped as being high quality or prime agricultural land. It therefore has very limited opportunity to sustain any viable agricultural activity. There is also negligible opportunity to aggregate to benefit any adjoining farm land having regard for the current allotment structure and presence of existing residential development on adjoining land.

The second objective at Clause 21.06-1 seeks to protect and increase the sustainable productivity of soils in East Gippsland through protection of high quality agricultural land. The site is not mapped as being high quality agricultural land at Map 4.

The town boundary as shown on Plan 3: Revitalisation & Growth Strategy at Clause 21.12 identifies the town boundary as coinciding with the alignment of Racecourse Road. The subject land is therefore located just outside of the town boundary and has not been specifically identified for residential purposes whilst the opposite of the road has been.

6. Planning Elements

The planning zone and overlays as affecting the subject land are addressed below.

6.1 Farming Zone

The purpose of the Farming Zone seeks to provide for the use of land for agriculture, encourage retention of productive agricultural land, ensure non-agricultural uses do not adversely affect the use of land for agriculture, encourage retention of employment and population to support rural communities. It also encourages use and development of land based on comprehensive and sustainable land management practices and infrastructure provision and seeks to provide for the use and development of land for the specific purposes identified in a Schedule to the Zone.



Zone Mapping – Source: Planning Maps Online (DELWP)

The proposal adheres to the purpose of the Farming Zone as it will not adversely impact on the viability of the site or surrounds for agricultural purposes. The site is already considered to be lost to viable agricultural production having regard to its limited size, limited viability and surrounding land uses.

The whole of the subject land is mapped as being affected by the provisions of the Farming Zone – Schedule 1 which triggers planning approval for subdivision at Clause 35.07-3.

Whilst the minimum Lot size stipulated under Schedule 1 to the Farming Zone is 40ha in area, there is the ability to create smaller allotments in this instance as the subdivision will excise an existing dwelling.

A Land Capability Assessment Report as prepared by *Land Capability Assessments – Gippsland* has been provided in support of the Application to confirm capacity to accommodate onsite wastewater disposal in the absence of reticulated sewer.

Response to Decision Guidelines

The subject land is limited in area being approximately 7.374ha in area and is not considered to be sufficient in size to accommodate viable rural activities. The presence of the existing dwelling within the middle section of the site also further limits agricultural activities from taking place.

The site does not comprise characteristics of high quality or prime agricultural land, which is acknowledged through omission of the site in the mapped area at Map 4 to Clause 21.06-1 pertaining to high quality or prime agricultural land.

Working farms located within the surrounding precinct are generally used for grazing of livestock which requires significantly larger land holdings in order to be viable.

It is unrealistic to expect that the subject land would be utilised in conjunction with adjoining properties to form part of a larger farm having regard for the surrounding land use and title structure. The site is bordered by residential development to the west and to the south and also by Racecourse Road to the north and Forge Creek Road to the east.

The site is more representative of a rural residential allotment having regard for the limited capacity to accommodate any meaningful agricultural production and for the surrounding land uses.

The rural residential nature of the precinct and the general size of the allotments is not representative of a productive farming area. This coupled with the lower viability of the land leads us to believe that the precinct is functioning as a rural residential area and not broad acre farming.

Whilst the subdivision will result in the creation of a vacant allotment and therefore an expectation of future rural residential development, it would not otherwise impact on existing rural enterprises given the presence of existing dwellings to the west and to the south. Future use and development on Lot 1 would however trigger further consideration under the provisions of the Farming Zone.

The proposed subdivision is able to be incorporated into the surrounding allotment pattern as the subject land in its current form is a relatively large allotment for the area. The size and shape of the proposed vacant allotment (Lot 1) is very similar to the adjoining allotment immediately to the west.

7. Conclusion

The proposed Two Lot Subdivision (Dwelling Excision) at 170 Racecourse Road, Bairnsdale is considered to accord with all relevant provisions of the Farming Zone of the *East Gippsland Planning Scheme*. The proposal is consistent with State and Local Policy and has been designed to complement the adjoining properties.

For these reasons we respectfully request that Council consider the merits of the Application favourably and resolve to issue a Planning Permit.



MICHAEL SADLER
Managing Director

15 August 2018

Mr & Ms Dilks
C/O Crowther & Sadler Pty Ltd
PO Box 722
BAIRNSDALE VIC 3875

ATTN: Amie Ingwersen

Dear Ms Ingwersen,

Re: Fee Proposal - Land Capability Assessment & Report
Site Address – 170, Racecourse Road, Bairnsdale

Further to your email I am pleased to provide a quotation to undertake a Land Capability Assessment and prepare a detailed report for the above-mentioned site.

The report will assess the capability of the site to sustainably utilise and manage wastewater within the proposed lot boundaries. This assessment will be undertaken in accordance with current legislation; the *Code of Practice – Onsite Wastewater Management EPA Publication Number 891.4 July 2016* and *AS/NZ 1547:2012 for Onsite Domestic Wastewater Management* and will include:

- Risk Assessment of Site Characteristics
- Field Soil Assessment
- Soil Analysis including pH, Electrical Conductivity (EC), Emerson Aggregate, Soil Texture Analysis
- Water Balance & Storage Calculations
- Recommendations for the appropriate wastewater disposal system including calculation of the area required for treatment
- Preparation of Site Plan and detailed Land Capability Assessment Report

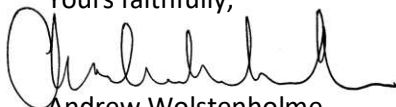
Please find below confirmation of the pricing and terms of engagement for this service.

Professional Fees:	\$1,250 (No GST will be charged)
Completion Time:	Within 3 weeks from receipt of the signed quotation acceptance.
Payment Terms:	14 Days from date of invoice

Thank you for the opportunity to provide a quotation for the preparation of a Land Capability Assessment Report. Should you wish to proceed, please sign and return the attached Quotation Acceptance form.

If you have any questions in relation to the above please do not hesitate to contact me.

Yours faithfully,



Andrew Wolstenholme
B Sc (Land Management & Soils), B Sc (Forestry)

QUOTATION ACCEPTANCE

I/we accept the quoted price and payment terms for the preparation of a Land Capability Assessment Report for our property located at: **170 Racecourse Road, Bairnsdale**

Quoted Amount: \$1250.00 (No GST will be charged)

Payment Terms: 14 Days from date of invoice

I/we authorise Land Capability Assessments Gippsland to proceed with the field soil and site assessment as well as the preparation of a detailed Land Capability Assessment Report.

Client Name/s: _____
Address: _____
Postal Address (if Different): _____
Telephone: (Home) _____ (Mobile) _____
Email: _____ Fax: _____
The best way to contact me is by: _____
Signed & Accepted by Client: _____ Date: _____

Completed form to be returned to Land Capability Assessments Gippsland via:

Email: lcagippsland@outlook.com

Post: Land Capability Assessments Gippsland
21 The Grange
LUCKNOW VIC 3875

ATTACHMENT 2

Detailed Assessment of the Proposal Against the East Gippsland Planning Scheme

PLANNING POLICY FRAMEWORK

Clause 11.01-1S Settlement

In general terms, overarching policy includes a series of strategies that support the establishment and reinforcement of settlement boundaries. By virtue of the deployment of the zone as well the Bairnsdale Growth Strategy, the subject land is outside the settlement of Bairnsdale.

Overarching policy also states that urban sprawl (even in the form of ad hoc and incremental subdivision) is to be limited, and growth directed to existing settlements.

The proposal before Council is an ad-hoc subdivision that is in conflict with this clause.

Broadly speaking, if Council elected to undertake strategic work that related to the southern boundary of Bairnsdale, subdivisions such as the one before Council would only add to the complexity and difficulty of any projects or outcomes undertaken at a higher level. Therefore, by compromising future strategic work, the subdivision should be refused in order to 'hold' the land as is.

Clause 14.01 Agriculture

Policy states that planning outcomes should protect agricultural land from developments and subdivision that could compromise the ongoing productivity of the land, and adjoining land.

The land in this proposal partly contains an equine use and ability and is in close proximity to the Racecourse. Not only is the subdivision a threat to the agricultural use of this land, it represents a threat to the adjoining farming operations. The proposal seeks to utilise a provision in the scheme that is intended for other purposes, and should be used sparingly not on a 'come on, come all' basis.

By virtue of its inherent nature, the proposed subdivision is inconsistent with policy as it seeks to create two small lots in a farming area, which in stark contrast with the objectives of clause 14.01. Policy encourages the consolidation of small lots in rural areas, and discourages their creation.

Given the lot size as it stands, the lot is already smaller than what planning policy seeks. The lot was created in the 1986 prior to modern planning policies that would have prevented the creation of this lot in the first place.

The creation of small lots can be detrimental to the efficient operation of farming if the lot to be created does not relate to farming activity. In this case, no link has been demonstrated. The small lot to be created would effectively be removed from the stock of available agricultural land – an outcome which can not be supported under this clause.

There is also the potential for amenity conflicts to arise between productive farming operations on the adjoining land. Given that the site is in close proximity to the Racecourse, there is the real possibility that the site could be used for a more intense equine outcome (which is an agricultural pursuit).

The subdivision is in conflict with this clause.

Clause 15.02 Sustainable Development

The application involves land that is outside the settlement boundary. Although the land is on the periphery of town, it is zoned for farming purposes, and is outside the settlement boundary. Therefore, it is inferred that rural policy rather than urban policy be given priority to a decision affecting the land. Creating residential opportunities or expectation in areas marked for rural development do not enjoy the support of the scheme as (on an incremental basis) they create unsustainable settlements.

MUNICIPAL STRATEGIC STATEMENT

Clause 21.06 Natural Resource Management

21.06-1 Protection of Agricultural Land

Objective 1

To ensure that rural land is used and developed in a way that will support efficient agricultural production.

Strategy 1.1

Avoid subdivision outside areas defined as being suitable for rural residential development to the lot sizes shown in the Schedule to the Farming Zone.

Strategy 1.2

Discourage subdivision for smaller lots in agricultural areas except where the subdivision will facilitate more effective use of the land for agricultural or related purposes. Conditions may be applied to subdivisions prohibiting or limiting development of dwellings.

Under local planning policy – small lot subdivisions are discouraged where the subdivision has no relationship to efficient agricultural production. No link has been demonstrated in this application.

Local Policy states that agricultural and farming areas are key to the economic and social success of East Gippsland. Their protection is given the upmost priority under Local Policy. The fragmentation of land and the potential proliferation of dwellings is an outcome which is not supported at clause 22.06, and this proposal fails to meet policy objectives.

Local Policy seeks to protect agricultural land from inappropriate subdivision – the application before us seeks to create an additional small lot which would only further entrench the loss of this land from equine opportunities and broaden the threat to adjoining operations.

As such, the proposal is inconsistent with this clause of the local policy framework.

Clause 21.12 Strategies for sub-regions, towns & localities

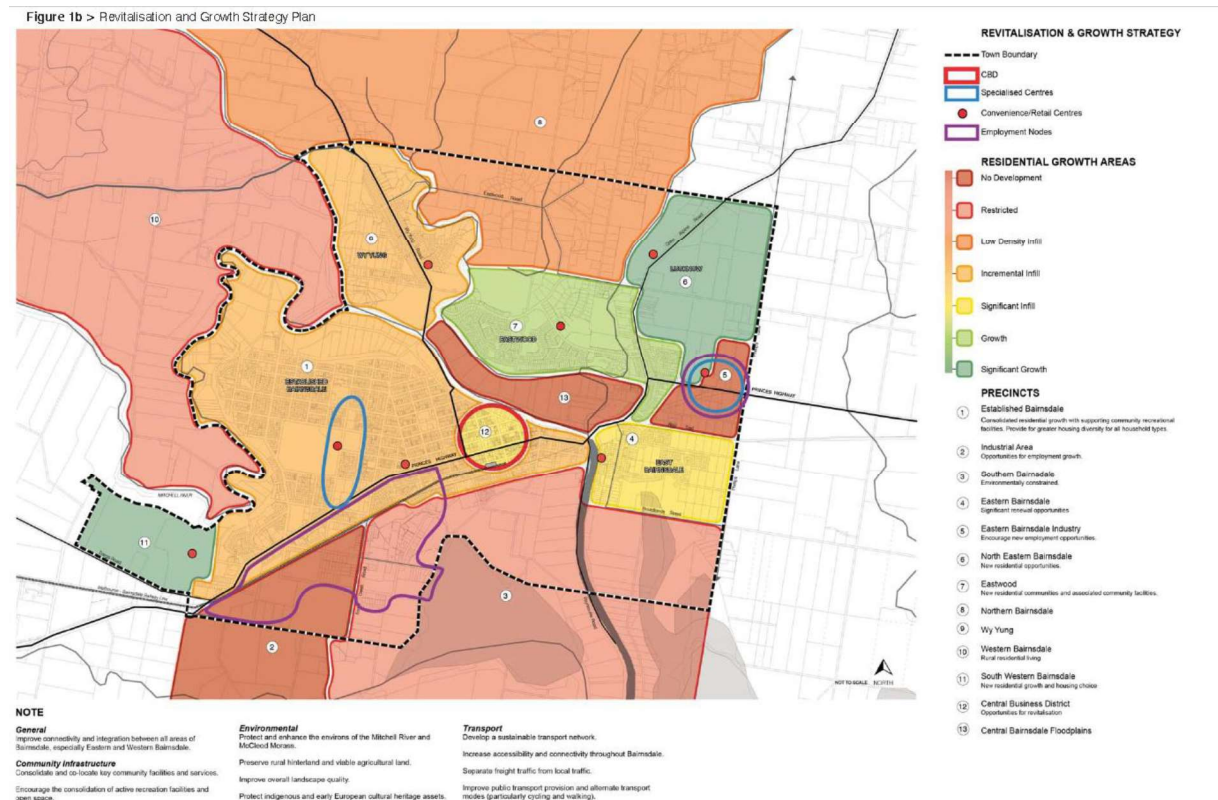
21.12-2 Lakes & Coastal

The locality of Bairnsdale falls under the Lakes & Coastal sub-region.

The bulk of clause 21.12 (in terms of Bairnsdale) speaks to the consolidation and support afforded to growing the town and its economic core functions. Rural residential subdivisions outside of current or proposed zonings (GRZ/LDRZ/RLZ) are mentioned as a constraint.

The Bairnsdale Growth Strategy is given weight as a reference document. The Growth Strategy does not support the creation of additional rural residential opportunities in the location of the application currently before us. It directs that growth be directed to within the settlement boundary and to existing residentially zoned land.

A copy of the Growth Strategy is shown below for reference. The subject land is in an area of 'no development' in a residential context.



ZONE

Clause 35.07 Farming Zone

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 State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *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.*

Dwelling 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.*

The Farming Zone gives primacy to using the land for agricultural purposes. Small rural residential lots can compromise the wider strategic ability for rural land to be used to its best and highest purpose. The proposed subdivision would remove land from the stock of productive land available. The proposal includes no compelling reason why it relates to the agricultural use of the land.

Given the lot is currently 7 hectares in size, there is a temptation to declare that the land is 'lost from agriculture' due to the claim that a person would highly unlikely to be able to make a living from farming the land. Such claims have not been supported as sufficient grounds for approval by the Tribunal in similar decisions. Despite current economic trends in the agricultural sector, it stands to reason that the land itself still has potential from an equine aspect, and therefore should be protected regardless of the lot size.

The subdivision will restrict the ability to use the land for farming activities and could impact the ability of neighbouring farms to carry out agricultural production activities or to expand. This is due to the different amenity expectations upon rural residential properties compared to farming properties.

It is recognised that some activities in rural areas can improve productive farming outcomes, such as the consolidation of farm property or the divestment of farming assets from one enterprise to another. However, the subdivision of land to remove an existing dwelling from the property (a house lot excision) can pose a risk to the 'right to farm' by introducing another small rural residential lot into a farming area. The proposal before Council fits into the latter of these two situations.

Subdivision is not supported where it has the ability to impact on the 'right to farm' existing rural properties or removes land from agricultural production.

OVERLAYS

Clause 42.02 – Vegetation Protection Overlay

No vegetation is proposed to be removed. Subdivision does not require a permit under this clause.

CONCLUSION

The conclusion is that the proposal represents an unacceptable agricultural and planning outcome. Specifically, the negative impact that the proposal will have on the agricultural use of the land and adjoining land can not be supported. The Bairnsdale Growth Strategy equally does not support the subdivision. On the balance of the controls, the application is inconsistent with the East Gippsland Planning Scheme and should be refused.

ATTACHMENT 3

Recent and relevant VCAT decisions that support the refusal of this proposal:

Review name	Council decision	VCAT decision
I & C Chalmers v South Gippsland SC [2017] VCAT 704	Refused	Refused
<p>This decision related to the re-subdivision of existing lots, two of which were under 2 hectares. The proposal was refused due to:</p> <ul style="list-style-type: none"> • The subdivision failed to link to the agricultural use of the land; • The proposal did not meet the purpose of the zone; and • The proposal would likely to have led to a proliferation of dwellings. 		
Alford v Corangamite SC [2018] VCAT 853	Approved	Refused
<p>This case is of importance as the proposal sought to excise an existing dwelling and to create a balance lot over 280 hectares despite the minimum lot size being 40 hectares. Council had formed the view that the proposal was suitable for support, but ultimately VCAT found otherwise. The reasons for refusal included:</p> <ul style="list-style-type: none"> • The 'house lot' was viewed as being detrimental to the efficient operation of the farming of the land; • The subdivision was likely to restrict the ability of the adjoining farming operation; • The proposal was likely to create an amenity conflict; and • The subdivision was likely to adversely affect the 'right to farm' by introducing a small lot into the landscape. 		
King v Murrindindi SC [2017] VCAT 298	Refused	Refused
<p>This proposal sought to subdivide two existing dwellings so that each would be on its own lot. The proposal was refused due to:</p> <ul style="list-style-type: none"> • The potential for rural subdivision and housing to lead to incremental loss of productive agricultural land in that Shire; • The proposal sought to subdivide land for primarily residential purposes; • The subdivision did not contribute to agricultural production; and • The presence of 'urban romantics' would lead to amenity conflicts. 		
Lancaster v East Gippsland SC [2012] VCAT 925	Refused	Refused

Similar to the application above, this subdivision sought to place two existing dwellings on their own lot. The proposal was refused for the same reasons as above.

Specifically:

- A fragmented land use does not justify a fragmented title;
- Farm succession within the owning family did not persuade VCAT to issue an approval;
- The dwelling excision clause should be used sparingly and only where balance lots meet all planning policies and are larger than 40 hectares; and
- A number of lots in the area were already available for the land use proposed.

Smith v Baw Baw SC [2016]
VCAT 611

Refused

Refused

This case centred upon the proposal to amend an existing permit. The applicant sought to have a condition requiring a S173 agreement prohibiting a dwelling on the balance lot of a 2 lot subdivision.

The condition arose as a way to ensure that the balance lot would not be lost from agricultural production. The Tribunal found that the condition was reasonable and refused to amend the permit.

In effect, the subdivision was approved on the basis that the balance lot would be traded and used in an agricultural manner. By prohibiting a dwelling, it guaranteed that the land would not be lost to rural residential outcomes.

Stewart v Alpine SC [2009]
VCAT 1559

Refused

Refused

This subdivision sought to subdivide 200 hectares into 7 lots, ranging from 1 hectare to 73 hectares in size. The proposal was refused due to:

- The fragmentation of a productive broadacre farm;
- The rural residential use of the land was a direct threat to the continued agricultural use of the land;
- The proposal represented a threat to the adjoining agricultural operations in the Kiewa Valley.

It was also stated that existing small lots (including those with dwellings) in the immediate area of the subject land are not a justification to create more small lots.

Pincott & Ors v Baw Baw SC
[2012] VCAT 1137

Approved

Refused

In this proposal, there were two lots in the Farming Zone that were below 40 hectares. The proposal sought to realign the boundary whereby one small lot at 6000sqm would be created and a larger balance lot at 48 hectares.

The refusal set aside a Council approval because:

- It would create two opportunities for rural residential outcomes;
- Did not provide for the increased production on the land;
- The small 'independent' lot was not connected to agriculture and was not required for the use of the balance lot for agricultural purposes; and
- The justification for the realignment centred on personal reasons, which VCAT held were not relevant in this case.

Roy Costa and Associates v Mildura RCC [2007] VCAT 1244

Refused

Refused

As one of the first Farming Zone matters that was dealt with by VCAT, this refusal was for the realignment of existing lots in a rural setting.

It was refused for a variety of reasons but primarily because the small lots to be created, lacked any agricultural purpose.

The subject land was in an irrigated horticultural area which was given high protection. In conjunction with this the proposal was refused on broader agricultural grounds similar to those above.

Nelson v Greater Geelong CC [2014] VCAT 843

Refused

Refused

The proposal in this case sought to subdivide two dwellings onto their own titles. A wholesale flower enterprise was running on the site and was put forward as justification for the subdivision.

VCAT stated that:

- 'Hobby farming' plays a very limited role in agricultural production;
- The incompatibility between the proposal and adjoining agricultural use was key to the refusal;
- Creating residential outcomes at the interface with agricultural areas is not to be supported.

In rare instances such as Zandstra v Greater Shepparton CC [2016] VCAT 1900 or Douglas v Campaspe SC [2014] VCAT 421, VCAT has overturned a Council led refusal and directed that a permit be issued. In these cases, the basis for issuing a planning permit was based upon planning

policy, or there being a direct link between the proposed subdivision and the agricultural use of the land. Neither characteristic is evident in the planning application currently before Council.

It is also very important to note that both of these Councils have adopted a Rural Land Use Strategy and have incorporated them into their Planning Scheme.

Common themes:

It is often heard from applicants that an application for subdivision should be approved given that the amount of land to be subdivided is relatively minor. This a simplified approach, the planning scheme's intent is to ensure fair and reasonable development that guarantees a healthy and safe environment for now and for future generations.

Since the Farming Zone was introduced in 2007, there have been some planning permit applications that were approved. It is very important to note, that each planning application is different, and every application is assessed independently on merit against the planning scheme. In cases where an approval was issued, there were either compelling reasons for approval, or there was a demonstrated link to the agricultural use of the land.