

## APPLICATION FOR PLANNING PERMIT

### House lot excision

### 1363 Whittlesea-Yea Road, Kinglake West



Figure 1 – Aerial photograph of the Subject Land and surrounds.

### Introduction

A planning permit is sought for a house lot excision (two lot subdivision) at 1363 Whittlesea-Yea Road, Kinglake West (**Subject Land**). The Subject Land is located in the Murrindindi Shire and is governed by the Murrindindi Planning Scheme (**Scheme**).

### Site description

The Subject Land is located on the western side of Whittlesea-Yea Road, approximately 650 metres north of the intersection of Whittlesea-Yea Road and Whittlesea-Kinglake Road. The Subject Land is described as Crown allotment 4B, Parish of Kinglake, and is contained in certificate of title volume 7221 folio 088.

Please refer to the attached certificate of title.

The Subject Land has an area of approximately 44.3 hectares, is rectangular in shape and has frontage to Whittlesea-Yea Road along its eastern boundary. The long axis of the Subject Land lies west-east. The Subject Land contains a dwelling, storage shed and workshop towards the Whittlesea Yea Road end of the lot with the balance of the land used for a well established horticultural operation and grazing. The access to the Subject Land is gained directly from Whittlesea-Yea Road at the northern end of the Subject Land.

The driveway from Whittlesea-Yea Road leads to the existing dwelling on the land, and another access for the farming operations is located close to the northern boundary. There are extensive tracks throughout the property to support the farming operation.

The Subject Land is a highly productive horticultural and agricultural operation, producing organic blueberries and blackberries for the major supermarkets. A waterway flowing northwards is located approximately midway down the lot. The area of the Subject Land on the eastern side of the waterway is used for horticulture – blackberry, blueberry and kiwifruit – with the bulk of this area being netted. The area of land on the western side of the waterway is used for the grazing of cattle and production of hay. A large area on either side of the waterway is fenced off from the productive areas of the land. This area contains significant native vegetation, thereby protecting the water quality and waterway health.

The property immediately to the north is similarly used for the production of fruits and vegetables and stock grazing. Land further to the north, to the west and on the southern side of the Subject Land from the western boundary up to and including the waterway is Crown Land. Land between the Crown Land and the Whittlesea-Yea Road is a smaller lot subdivision in the Farming Zone, with only a couple of the lots being developed with a dwelling. Land on the eastern side of Whittlesea-Yea Road is in a rural living area with the lots generally smaller in area and containing dwellings and ancillary outbuildings.

The Subject Land is in the Farming Zone (**FZ**) and is subject to the Environmental Significance Overlay – Schedule 1 (**ESO1**) and the Bushfire Management Overlay (**BMO**). Land surrounding the Subject Land immediately to the north and south is also in the Farming Zone. Land to the east is in the Rural Living Zone (RLZ) with land in the Low Density Residential Zone further to the east (LDRZ). There are areas of land in the Public Conservation and Resource Zone to the north and west, and a large area of land in the Public Use – Service and Utility Zone to the southwest. The land surrounding the Subject Land is also subject to the BMO. The land immediately adjoining the Subject Land to the north and south is also subject to the ESO1. Refer to the zoning map at Figure 2 and the overlay maps in Figures 3 and 4 below.

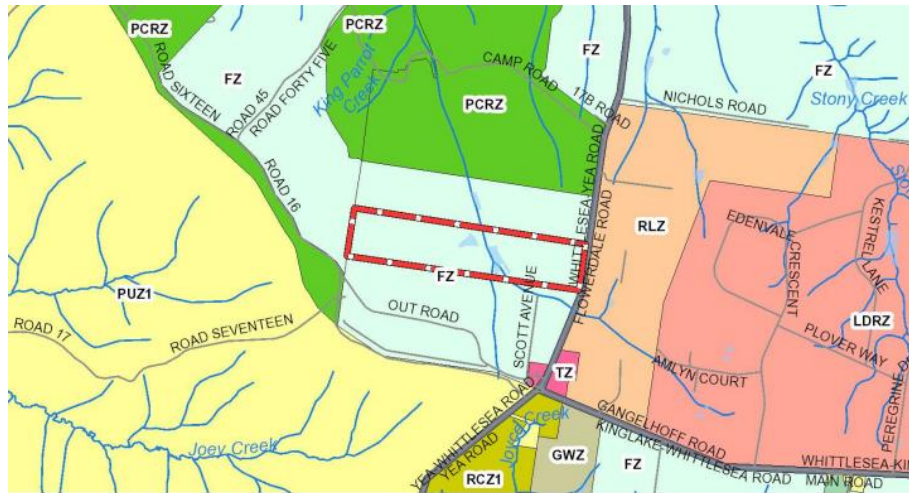


Figure 2 – Zoning of Subject Land and surrounding area.

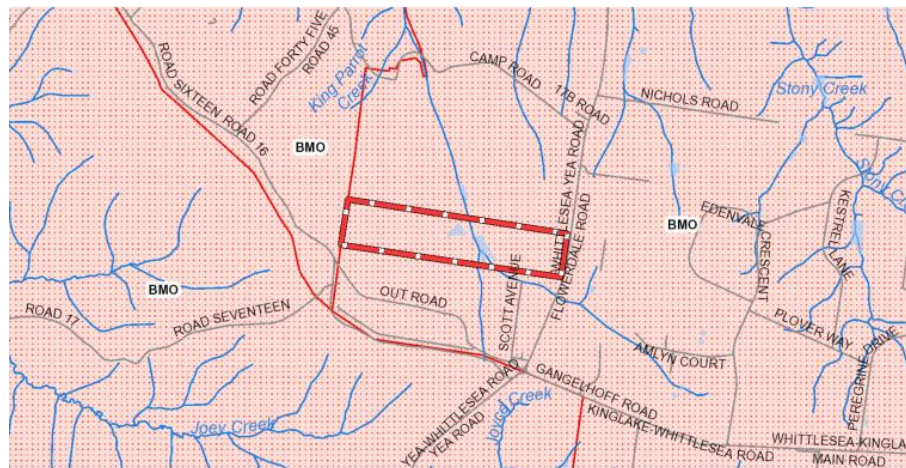


Figure 3 – Bushfire Management Overlay.

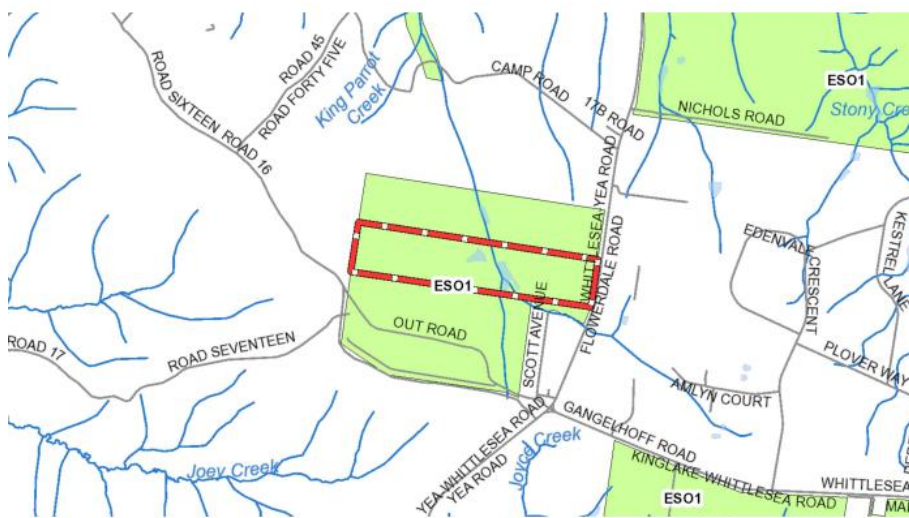


Figure 4 – Environmental Significance Overlay

## Proposal

The proposal is for the excision of the existing dwelling from the balance of the land. The house is to be excised on an area of approximately 2.03 hectares, which includes the storage shed and workshop. The balance of the Subject Land has an area of 42.27 hectares and contains the horticultural and grazing land.

The Subject land is a highly productive horticultural and agricultural operation, which the landowners have worked hard to create. The owners are keen for this successful horticultural enterprise to continue but now wish to retire and remain in the house and allow the balance of the land to continue to be farmed by a new owner.

The lot containing the house is located along almost the full frontage of the land to Whittlesea-Yea Road, with a depth of 68 metres. An access road of 6 metres in width, running parallel to the northern boundary, will provide access to the balance lot. Both lots will utilise the existing vehicle crossings from Whittlesea-Yea Road.

A **Farm Management Plan** has been prepared in support of the excision of the house from the productive agricultural land.

Please refer to the attached:

- proposed plans of subdivision; and
- Farm Management Plan prepared by EnProve Ag & Environment.

## Permit Triggers

The following planning permit triggers apply to this application:

- Clause 35.07-3 Farming Zone – 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. 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.

The proposal falls under the first dot point above.

- Clause 42.01-2 Environmental Significance Overlay – a permit is required to subdivide land.
- Clause 44.06 Bushfire Management Overlay – a permit is required to subdivide land.

## Zoning

### Clause 35.07 Farming Zone

The purpose of the Farming Zone (**FZ**) is:

- *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 identifies in a schedule to this zone.*

The Subject Land supports a dwelling, shedding and a well-established, highly productive horticultural operation. The proposed subdivision layout separates the house, storage shed and workshop from the balance of the land. A small area of the netted berry crop is included in the proposed house lot, with the remainder of the netted crop and the grazing land included in the balance lot. The proposed excision of the house from the balance of the land will not interrupt the ongoing operation of the horticultural and agricultural activities on the Subject Land. The Farm Management Plan has shown how the property has significant scope to increase the productive output of the farm, that will be realised with the balance lot being under new ownership. The proposed subdivision will ensure the continued employment of a number of farm workers and the retention of the productive farmland.

Ordinarily small lots in the Farming Zone are not encouraged, however, the proposed house lot excision provides for the owner of the land, who has established this highly productive horticultural enterprise, to remain on the land and provide valuable support to the new owners of the balance lot. The proposal is consistent with the purpose of the Farming Zone. It retains productive horticultural and agricultural land and ensures that the land can continue to be used for farming purposes. The proposal will not have an impact on any existing agricultural uses on adjoining land or in the surrounding area.

### Decision guidelines

Clause 35.07-6 Decision guidelines - a response to the relevant guidelines is provided as follows:

Guideline	Response
<b>General issues</b>	
The capability of the land to accommodate the proposed use or development, including the disposal of effluent.	The Subject Land is capable of supporting the two proposed lots.
Whether the site is suitable for the use or development and whether the proposal is	The Subject Land is well suited to the proposed house lot excision. The proposal is compatible with surrounding land, where there are a

compatible with adjoining and nearby land uses.	number of smaller lots both to the south and the east of the Subject Land.
How the use and development make use of existing infrastructure and services.	The proposed configuration of the new lots utilises the existing formed vehicle crossing to the proposed house lot and the existing vehicle crossing to the proposed balance lot from Whittlesea-Yea Road.
<b><i>Agricultural issues and the impacts from non-agricultural uses</i></b>	
Whether the use or development will support and enhance agricultural uses.	The proposed house lot excision will support and enhance the horticultural and agricultural use of the land by providing an opportunity for a new owner of the balance lot to further enhance the existing farming operations. This will also ensure the continued employment of a number of farm workers.
Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.	The proposed house lot excision will not have an impact on soil quality and ensures that no land is removed from the farming production.
The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.	The proposal will not impact adjoining or nearby agricultural uses.
The capacity of the site to sustain the agricultural use.	The Subject Land has the capacity to sustain the existing horticultural and agricultural activity on the land.
The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.	The Subject Land has supported this highly productive horticultural operation on the land for a number of years. The farm has well-established farm tracks, access to water, and existing access to the Whittlesea-Yea Road. The agricultural qualities of the land are further articulated in the attached Farm Management Plan.

## Overlays

### Clause 42.01 Environmental Significance Overlay

The purpose of the ESO is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To identify areas where the development of land may be affected by environmental constraints.*
- *To ensure that development is compatible with identified environmental values.*

The Subject Land is included in Schedule 1 of the ESO which signifies high quality agricultural land.

The statement of environmental significance in the schedule is:

*Murrindindi Shire has extensive high quality agricultural areas located along the Great Dividing Range at Toolangi and Kinglake and along the Goulburn River floodplain. The attributes of these areas consist of a combination of well-drained red soils, high rainfall and access to water.*

The Subject Land is located within the Great Dividing Range at Kinglake. The high quality agricultural properties of the Subject Land have been realised in the successful production of the land where the Kinglake climate has shown to be ideal for the growing of various berries. The proposed house lot excision ensures that there will be no loss of productive agricultural land and that the existing farming operations can continue.

#### Clause 44.06 Bushfire Management Overlay

The purpose of the BMO includes:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.*
- *To ensure the development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

In accordance with the application requirements of Clause 44.06-3, a **Bushfire Hazard Site Assessment** has been prepared in accordance with AS3959:2018 *Construction of buildings in bushfire prone areas (Standards Australia)*, a **Bushfire Hazard Landscape Assessment** has been prepared for the general locality, a **Bushfire Management Statement** has been prepared in response to the requirements of Clause 53.02 of the Scheme, and a **Bushfire Management Plan** has been prepared for the proposed subdivision.

Please refer to the attached Bushfire Management Statement, and Bushfire Management Plan for the subdivision prepared by Yarra Valley BAL Assessments, dated August 2022.

The proposed subdivision satisfies the requirements of the BMO and Clause 53.02.

## Municipal Planning Strategy

The relevant sections of the Municipal Planning Strategy are addressed as follows:

### Clause 02.03 Strategic directions

#### **Environmental and landscape values**

*The natural environment, rich biodiversity, significant public land areas and high quality landscape, form an essential part of the municipality's character, liveability and economy.*

*Remaining native vegetation on private land is highly fragmented and usually occurs in small or narrow linear remnants, increasing the importance of roadside and riparian vegetation.*

There is little native vegetation located in the areas of the Subject Land used for productive horticulture and agriculture, however, there is significant native vegetation located on either side of the waterway that traverses the land, and in the road reserve along the frontage of the land. The vegetated area along the waterway will continue to be protected and will not be impacted by the proposed subdivision. As no new vehicle crossings are required from the Whittlesea-Yea Road, no native vegetation is required to be removed from the road reserve.

#### **Environmental risks and amenity**

*Natural environmental hazards present risks and constraints for land use and settlement in the municipality. Murrindindi Shire is subject to significant bushfire hazard, particularly in the southern section. This hazard is due to the nature and extent of vegetation, topography, potential for extreme fire behaviour arising from drought and climate change, the dispersed and ad-hoc nature of development and lack of infrastructure and access in some locations.*

The Kinglake West area was significantly impacted in the 2009 Black Saturday bushfires. The Subject Land is recognised as being of high fire risk with the application of the Bushfire Management Overlay. The Subject Land is generally cleared land with the dwelling located close to the public road. The bushfire risk to the land is acknowledged but will not be exacerbated by the proposed house lot excision.

#### **Natural resource management**

*Murrindindi Shire's agricultural sector is diverse, economically significant and has potential to expand. Agricultural activities include beef and sheep grazing, horticulture, cropping, vegetable growing, aquaculture, forestry and niche products.*

*Council aims to protect the viability of agricultural land and waterways by protecting high quality agricultural land for ongoing agricultural use and supporting existing agricultural production activities including beef grazing.*

The proposal ensures that this horticultural and agricultural land is protected for ongoing farming production. The proposal will support and enhance the horticultural potential of the land. The proposed subdivision layout ensures adequate separation of the house from the balance lot and will



provide an opportunity for the owners of the land to remain in the dwelling whilst enabling a new owner to increase the productive capacity of the farm.

## Planning Policy Framework

The relevant sections of the Planning Policy Framework are addressed as follows:

### Clause 14.01-1S Protection of agricultural land

The objective of this clause is to protect the state's agricultural base by preserving productive farmland. This clause includes the following strategies:

- *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.*
- *Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.*

The proposal to excise the owner's dwelling from the balance of the land ensures that the existing highly productive horticultural activities on the balance of the land can continue without there being any loss of productive farming land.

### Clause 14.01-1L Dwelling excisions in rural areas

The objective of this clause is to limit the excision of existing dwellings in rural areas.

#### Strategies

- *Discourage subdivision that is likely to lead to a concentration of lots that would change the general use and character and limit the productive capacity of the land.*

The proposed house lot excision will not lead to a concentration of lots that will change the general use and character of the area, nor impact or limit the productive capacity of the land. The Subject Land can continue its farming operation on the balance lot and with the house lot being located at the frontage of the Subject Land. The proposed subdivision ensures the productive capacity of the existing farm can continue well into the future.

- *Maintain an adequate distance around a dwelling to limit impacts of agricultural activity having regard to the nature of the activity, its potential for impact and opportunity for mitigation measures.*

The proposed boundaries for each lot provides adequate separation distance of the dwelling from the balance of the land. A separate driveway access to the balance lot is located at the northern end of the land, away from the existing dwelling, thereby minimising any potential impact on the existing dwelling.

- *Discourage subdivision within proclaimed water supply catchment areas to protect water quantity and quality.*

The proposed subdivision is not within a proclaimed water supply catchment area.

- *Demonstrate sustainable use of the land, consideration of environmental constraints and protection and enhancement of the natural environment.*

The Subject Land has been farmed for a significant number of years and the well-established horticultural activity on the land has demonstrated the sustainable use of the land. The Subject Land supports a native vegetation corridor along the waterway that traverses the land which is protected from the farming areas of the land.

- *Support small lot subdivisions or any excision of an existing dwelling that either:*
  - *Protects and maintains the productive agricultural capacity of land.*
  - *Supports farm consolidation.*
  - *Supports the conservation of an identified heritage place to which the Heritage Overlay applies.*

The proposed subdivision will protect and maintain the productive capacity of the land by ensuring that a new owner of the balance lot can continue the horticultural and agricultural operations, with the support of the current owner residing in the dwelling on the house lot. The proposed subdivision will ensure that the Subject Land can continue to be farmed whilst having no impact on the surrounding farming properties.

### **Policy guidelines**

The relevant considerations are addressed as follows:

The proposed house lot excision is compatible with the surrounding area where there are a variety of lot sizes located to the south of the Subject Land and in the rural living area to the east of the Subject Land. The subdivision will not have an adverse impact on the ability of the balance lot to continue the horticultural operations, nor for the neighbouring land to the north to be farmed, as adequate buffer distances exist around the dwelling, and the distance from the dwelling to the neighbouring property to the north is unchanged. The land to the south of the Subject Land supports only low level agriculture and land to the east are rural-lifestyle lots with no farming. The proposal retains the productive area of the farm and will support the continuation and enhancement of the horticultural and agricultural activities on the Subject Land.

The proposed house lot excision provides:

- an area of 2.03 hectares for the lot with the existing dwelling, storage shed and workshop. The boundaries for the house lot have been determined to maximise the distance between the house lot and the balance of the farming land, and to provide for access to the balance lot.
- an area of 42.27 hectares for the balance of the land. This area meets the policy guidelines of this clause, as well as meeting the minimum subdivision size in the schedule to the Farming Zone; and

- a minimum setback of 30 metres is provided from the existing dwelling to the new boundary between the proposed lots.

### Clause 14.01-2S Sustainable agricultural land use

The objective of this clause is to encourage sustainable agricultural land use. The strategies include:

- *Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.*
- *Assist genuine farming enterprises to embrace opportunities and adjust flexibly to market changes.*
- *Facilitate ongoing productivity and investment in high value agriculture.*

The proposed house lot excision will ensure that the effective management of the successful and highly productive farming operation on the balance lot can continue without leading to any loss of productive farmland.

## General Provisions

### Clause 65 Decision Guidelines

#### Clause 65.01 Approval of an application or plan

Guideline	Assessment
The matters set out in s60 of the <i>Planning and Environment Act 1987</i> .	The proposed house lot excision is consistent with the objectives of the Scheme and satisfies the Scheme's requirements.
The Municipal Planning Strategy and the Planning Policy Framework.	The MPS and PPF have been addressed above.
The purpose of the zone, overlay or other provision.	The proposed house lot excision is consistent with the purposes of the FZ and addresses the requirements of the ESO and BMO.
Any matter required to be considered in the zone, overlay or other provisions.	All matters have been considered and the proposed subdivision satisfies the requirements of the zone and overlays.
The orderly planning of the area.	The proposed house lot excision will not impact on the surrounding land uses and development.
The effect on the amenity of the area.	The proposal will not have an adverse effect on the amenity of the area.
The proximity of the land to any public land.	Not applicable.
Factors likely to cause or contribute to land degradation, salinity or reduce water quality.	The proposed house lot excision will not cause or contribute to land degradation, salinity or the reduction in water quality.
Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.	The proposal will have no impact on stormwater.
The extent and character of native vegetation and the likelihood of its destruction.	Native vegetation exists along the waterway through the Subject Land and within the Whittlesea-Yea Road road reserve. No native

	remnant vegetation is required to be removed as part of the proposed house lot excision.
Whether native vegetation is to be or can be protected, planted or allowed to regenerate.	The native vegetation on the land is protected from the farming operations and will continue to be allowed to naturally 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 proposed house lot excision will not increase the potential fire hazard to the Subject Land.
The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.	All loading and unloading for the existing farming activities are provided for on the balance lot.

### Clause 65.02 Approval of an application to subdivide land

Guideline	Assessment
The suitability of the land for subdivision.	The Subject Land is well suited for the proposed house lot excision with the area at the frontage of the land containing the dwelling and being separated from the productive area of the farm.
The existing use and possible future development of the land and nearby land.	The existing use of the Subject Land and surrounding land is for farming purposes and can continue to be used for such purposes. There is no probable future development on the Crown Land that is to the east and south of the Subject Land.
The availability of subdivided land in the locality, and the need for the creation of further lots.	The proposed house lot excision is required for the owners of the land to continue to reside on the land whilst providing an opportunity for a new owner to manage the existing farming operations on the balance lot. .
The effect of development on the use or development of other land which has a common means of drainage.	The proposed house lot excision will not affect the drainage of the Subject Land.
The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.	The proposed house lot excision will not impact existing vegetation. The proposed house lot is in proximity to the smaller lots in the area, located to the south and east of the Subject Land.
The density of the proposed development.	Not applicable.
The area and dimensions of each lot in the subdivision.	The proposed house lot 1 is 2.03 hectares. The balance lot is 42.27 hectares, meeting both the Council's house lot excision policy guideline and the minimum size required in the Farming Zone. The subdivision layout responds to the characteristics of the Subject Land.
The layout of roads having regard to their function and relationship to existing roads.	No new roads are proposed.

The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.	Not applicable.
The provision and location of reserves for public open space and other community facilities.	Not applicable.
The staging of the subdivision.	Not applicable.
The design and siting of buildings having regard to safety and the risk of spread of fire.	Not applicable.
The provision of off-street parking.	Not applicable.
The provision and location of common property.	Not applicable.
The functions of any body corporate.	Not applicable.
The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.	Not applicable.
If the land is not seweraged and no provision has been made for the land to be seweraged, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.	The effluent disposal field for the existing dwelling is contained within the confines of the proposed house lot.
Whether, in relation to subdivision plans native vegetation can be protected through subdivision and siting of open space areas.	No remnant native vegetation will be or needs to be removed as part of the proposed subdivision.

## Conclusion

The proposed house lot excision is an opportunity to provide for an owner to stay in their home on the land, where they have established a successful highly productive horticultural operation, whilst providing for a new owner to take over the management of this operation on the balance of the land. The proposed house lot excision is consistent with the purpose and objectives of the Scheme, namely the Municipal Planning Strategy and Planning Policy Framework, the purpose and requirements of the FZ, and the requirements of the BMO and ESO. The proposal ensures the continual operation of farming activity on the land, thereby ensuring the long-term sustainable use and management of the land for agricultural purposes. We therefore respectfully request that a planning permit for a house lot excision (two lot subdivision) of the Subject Land is issued at your earliest convenience.

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**Angelina Bell**  
**Principal Solicitor**  
**Bell Legal & Planning**

24 February 2023