



The City with Spirit

NOTICE OF MEETING

Notice is hereby given that a **Planning Authority Committee** meeting of the Devonport City Council will be held in the Aberdeen Room, Level 2, parnaple centre, 137 Rooke Street, Devonport on Monday 8 February 2021, commencing at 5:15 PM.

The meeting will be open to the public and live streamed from 5:15 PM.

QUALIFIED PERSONS

In accordance with Section 65 of the *Local Government Act 1993*, I confirm that the reports in this agenda contain advice, information and recommendations given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.

Matthew Atkins
GENERAL MANAGER

03 02 2021

**Agenda for a Planning Authority Committee meeting of the Devonport City Council
held on Monday 8 February 2021, in the Aberdeen Room, Level 2, paranaple centre,137
Rooke Street, Devonport at 5:15 PM**

Item	Page No.
1 APOLOGIES	3
2 DECLARATIONS OF INTEREST.....	3
3 DELEGATED APPROVALS	4
3.1 PLANNING APPLICATIONS APPROVED UNDER DELEGATED AUTHORITY.....	4
4 DEVELOPMENT REPORTS	5
4.1 PA2020.0210 - 94 WINSPEARS ROAD EAST DEVONPORT - SUBDIVISION - EXCISION OF EXISTING DWELLING	5
5 CLOSURE	22

ATTENDEES

		Apology
Chair	Cr A Rockliff (Mayor)	
	Cr J Alexiou	
	Cr P Hollister	
	Cr S Milbourne	
	Cr L Murphy	
	Cr L Perry	

ACKNOWLEDGEMENT OF COUNTRY

Council acknowledges and pays respect to the Tasmanian Aboriginal community as the traditional and original owners and continuing custodians of this land.

IN ATTENDANCE

All persons in attendance are advised that it is Council policy to record Council Meetings, in accordance with Council's Digital Recording Policy. The audio recording of this meeting will be made available to the public on Council's website for a minimum period of six months. The meeting is also being live streamed via YouTube.

1 APOLOGIES**2 DECLARATIONS OF INTEREST**

3 DELEGATED APPROVALS

3.1 PLANNING APPLICATIONS APPROVED UNDER DELEGATED AUTHORITY

Author: **Jennifer Broomhall, Planning Administration Officer**
Endorser: **Kylie Lunson, Development Services Manager**

That the list of delegated approvals be received.

Planning applications approved under delegated authority 23 November 2020 – 22 January 2021.

ATTACHMENTS

{attachment-list-do-not-remove}

4 DEVELOPMENT REPORTS

4.1 PA2020.0210 - 94 WINSPEARS ROAD EAST DEVONPORT - SUBDIVISION - EXCISION OF EXISTING DWELLING

Author: **Alex Mountney, Land-Use Planning Coordinator**

Endorser: **Kylie Lunson, Development Services Manager**

RECOMMENDATION

That the Planning Authority, pursuant to the provisions of the *Tasmanian Planning Scheme – Devonport 2020* and Section 57 of the *Land Use Planning and Approvals Act 1993*, approve application PA2020.0210 and grant a Permit to subdivide land identified as 94 Winspears Road, East Devonport for the following purposes:

- Subdivision - excision of existing dwelling

Subject to the following conditions:

1. The subdivision is to proceed generally in accordance with the submitted plan referenced as Plan of Subdivision - Excision of Omeo House, Winspears Road, Devonport – Job No. 44269-1, dated 11th June 2020 by PDA Surveyors, a copy of which is attached and endorsed as documents forming part of this Planning Permit.
2. At the time of sealing the Final Plan the subdivider is to submit a Part 5 Agreement as per Section 71 of the *Land Use Planning & Approvals Act 1993*. The agreement is to exist between Council and the lot owners. The scope of the Agreement is to:
 - Prohibit any form of residential use or development occurring on the balance lot (lot 2); and
 - Ensure a suitable vegetation buffer is provided and maintained on lot 1 as per the approved subdivision plan.

Note: The following is provided for information purposes.

In regard to condition 2:

- The Part 5 Agreement is required on the balance lot to satisfy the Agriculture Zone development standard - 21.5.1 P1(c)(ii) as prescribed by the *Tasmanian Planning Scheme*; and
- The vegetation species chosen for the vegetation buffer is to be endorsed by an accredited bushfire assessor. This information is to be provided to Council's Development Services Manager in writing prior to any vegetation planting.

Enquiries regarding this permit can be directed to Council's Development Services Department - Ph 6424 0511.

RELEVANCE TO COUNCIL'S PLANS & POLICIES

Council's Strategic Plan 2009-2030:

- Strategy 2.1.1 Apply and review the Planning Scheme as required, to ensure it delivers local community character and appropriate land use
- Strategy 2.1.2 Provide consistent and responsive development assessment and compliance processes

SUMMARY

The purpose of this report is to enable Council's Planning Authority Committee acting as a Planning Authority to make a decision regarding planning application PA2020.0210.

BACKGROUND

Planning Instrument:	<i>Tasmanian Planning Scheme – Devonport 2020</i>
Address:	94 Winspears Road, East Devonport
Applicant:	PDA Surveyors
Owner:	Mrs HM Radcliff & Mr MJ Radcliff
Proposal:	Subdivision - excision of existing dwelling
Existing Use:	Resource Development & Residential
Zoning:	Agriculture
Decision Due:	9/2/2021 - extension of time granted by the applicant

SITE DESCRIPTION

Omeo Farm is identified by certificate of title 170489/1 with the property address of 94 Winspears Road, East Devonport. The site has an area of 78.60ha and is principally utilised for agricultural purposes, including cropping and grazing land for livestock.

Located on the property is a dwelling which is situated within the northern section of the farm and is accessed from Winspears Road. A recently developed telecommunications tower is located on the western portion of the site adjacent to a neighbouring TasWater reservoir. Numerous farm implement sheds are located over the property.

The property has a number of road frontages including Winspears Road to the north, Loanes Lane to the east, Bel-Air Crescent and Skyline Drive to the west and Park Drive to the south.

The property is surrounded by residential development, agricultural land and undeveloped land.

Figure 1 reproduced below is an aerial image of the site and Figure 2 is an image of the dwelling looking north from Winspears Road.



Figure 1 - Aerial image of the site and surrounding locality (DCC, 2020)



Figure 2 - Image of dwelling looking north from Winspears Road (DCC, 2020)

APPLICATION DETAILS

The applicant is seeking approval to excise the dwelling from the existing title.

Lot 1 is proposed to accommodate the existing dwelling and will have an area of 3.59ha.

Lot 2 is the balance lot and the established farming activities will continue.

A copy of the subdivision plan submitted by the applicant is reproduced as Figure 3. A full copy of the development application, including supporting planning compliance statements are appended as **Attachment 4.1.1**.

*The supporting planning statements have addressed the provisions of Council's previous planning scheme - the *Devonport Interim Planning Scheme 2013* (the DIPS). The land-use zoning and development standards have changed under the recently declared *Tasmanian Planning Scheme – Devonport* (TPS-D). In this case, the land-use zoning and development standards are measurable and further information is not necessary to assess the merits of the application.

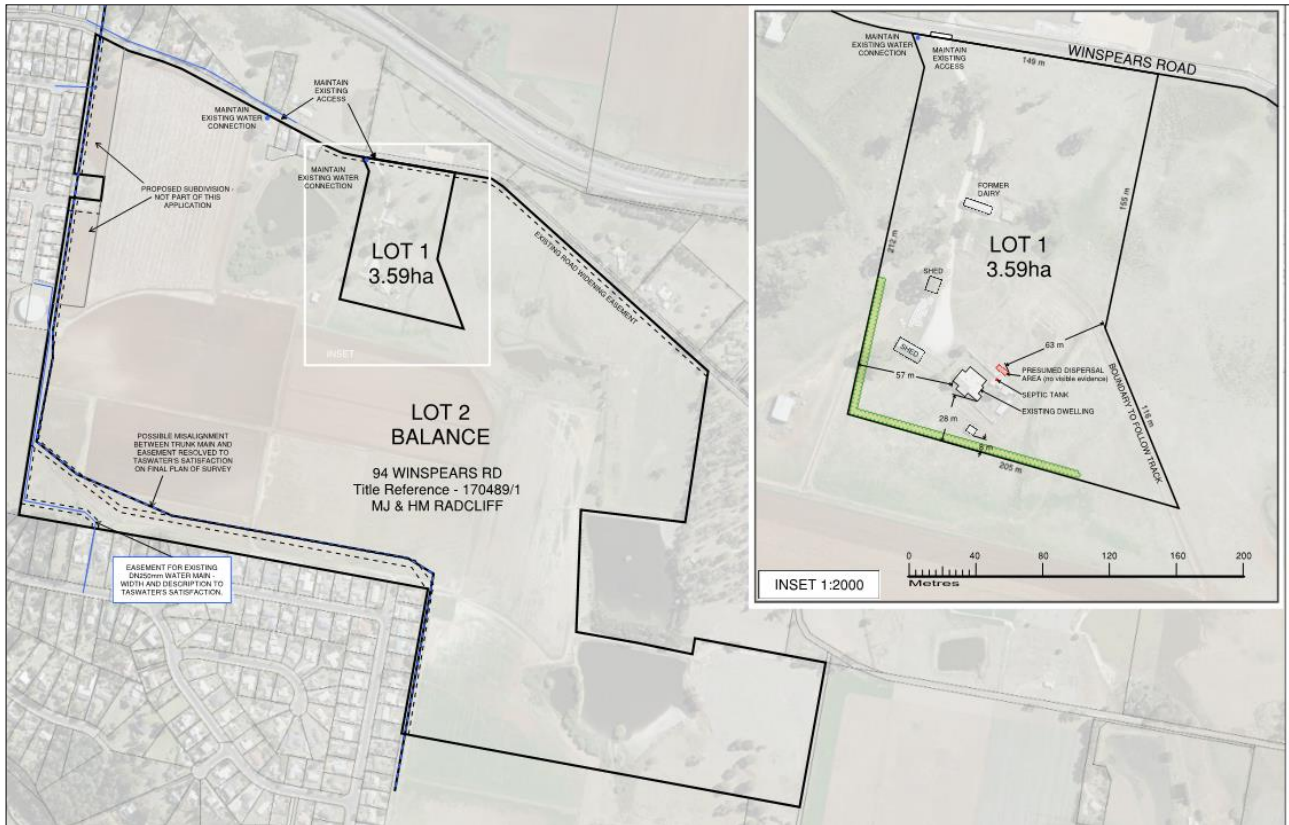


Figure 3 - Subdivision plan (PDA Surveyors, 2020)

PLANNING ISSUES

The land is zoned Agriculture under the TPS-D. A land-use zoning map of the site and surrounds is reproduced as Figure 4.

The purpose of the Agriculture zone is:

21.1.1 To provide for the use or development of land for agricultural use.

21.1.2 To protect land for the use or development of agricultural use by minimising:

- (a) conflict with or interference from non-agricultural uses;
- (b) non-agricultural use or development that precludes the return of the land to agricultural use; and
- (c) use of land for non-agricultural use in irrigation districts.

21.1.3 - To provide for use or development that supports the use of the land for agricultural use.

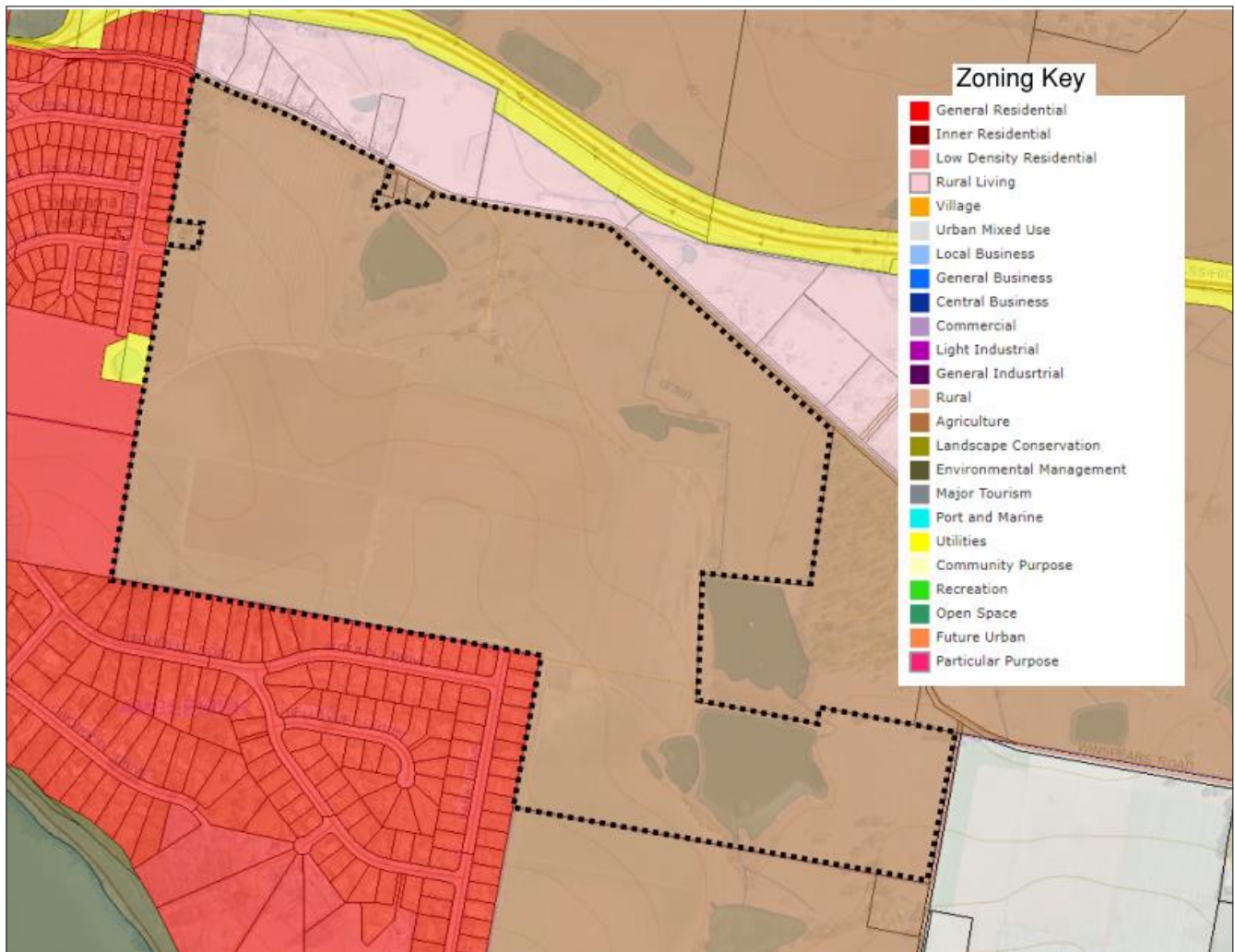


Figure 4 – Land-use zoning map, TPS-D (The List, 2020)

The house excision is required to be assessed under standard 21.5 of the TPS-D which sets out the requirements for subdivision in the Agriculture Zone.

A copy of this standard is reproduced from the next page along with comment.

21.5 Development Standards for Subdivision

21.5.1 Lot design

Objective:	To provide for subdivision that: (a) relates to public use, irrigation infrastructure or Utilities; and (b) protects the long term productive capacity of agricultural land.	
Acceptable Solutions		Performance Criteria
A1 Each lot, or a lot proposed in a plan of subdivision, must: <ul style="list-style-type: none"> (a) be required for public use by the Crown, a council or a State authority; (b) be required for the provision of Utilities or irrigation infrastructure; or (c) be for the consolidation of a lot with another lot provided both lots are within the same zone. 		P1 Each lot, or a lot proposed in a plan of subdivision, must: <ul style="list-style-type: none"> (a) provide for the operation of an agricultural use, having regard to: <ul style="list-style-type: none"> (i) not materially diminishing the agricultural productivity of the land; (ii) the capacity of the new lots for productive agricultural use; (iii) any topographical constraints to agricultural use; and (iv) current irrigation practices and the potential for irrigation; (b) be for the reorganisation of lot boundaries that satisfies all of the following: <ul style="list-style-type: none"> (i) provides for the operation of an agricultural use, having regard to: <ul style="list-style-type: none"> a. not materially diminishing the agricultural productivity of the land; b. the capacity of the new lots for productive agricultural use; c. any topographical constraints to agricultural use; and d. current irrigation practices and the potential for irrigation; (ii) all new lots must be not less than 1ha in area; (iii) existing buildings are consistent with the setback required by clause 21.4.2 A1 and A2; (iv) all new lots must be provided with a frontage or legal connection to a road by a right of carriageway, that is sufficient for the intended use; and (v) it does not create any additional lots; or

	<p>(c) be for the excision of a use or development existing at the effective date that satisfies all of the following:</p> <ul style="list-style-type: none"> (i) the balance lot provides for the operation of an agricultural use, having regard to: <ul style="list-style-type: none"> a. not materially diminishing the agricultural productivity of the land; b. the capacity of the balance lot for productive agricultural use; c. any topographical constraints to agricultural use; and d. current irrigation practices and the potential for irrigation; (ii) an agreement under section 71 of the Act is entered into and registered on the title preventing future Residential use if there is no dwelling on the balance lot; (iii) any existing buildings for a sensitive use must meet the setbacks required by clause 21.4.2 A2 or P2 in relation to setbacks to new boundaries; and (iv) all new lots must be provided with a frontage or legal connection to a road by a right of carriageway, that is sufficient for the intended use.
<p>A2</p> <p>Each lot, or a lot proposed in a plan of subdivision, must be provided with a vehicular access from the boundary of the lot to a road in accordance with the requirements of the road authority.</p>	<p>P2</p> <p>Each lot, or a lot proposed in a plan of subdivision, is capable of being provided with reasonable vehicular access to a boundary of a lot or building area on the lot, if any, having regard to:</p> <ul style="list-style-type: none"> (a) the topography of the site; (b) the distance between the lot or building area and the carriageway; (c) the nature of the road and the traffic, including pedestrians; and (d) the pattern of development existing on established properties in the area.

The application fails to satisfy A1 of the above development standard as the subdivision is not in accordance with (a), (b) or (c) of the Acceptable Solutions.

The corresponding Performance Criteria is required to be assessed to determine if a permit pathway can be achieved. In this regard, P1(c) is most appropriate as the subdivision is for a house excision.

In regard to P1(c)(i), in this instance the balance lot is proposed to operate as an agricultural use by continuation of the existing farm operation on the site.

The applicant has provided a comprehensive agricultural land use assessment titled *Omeo Farm Improvements Plan - Excision of Omeo House* by Ben Leditschke obo of ProAdvice Pty Ltd. This assessment is included within the application documentation appended as **Attachment 4.1.1**. As discussed earlier, the accompanying report has addressed Council's previous planning scheme - the DIPS, however the rationale provided is relevant and can be considered to determine if compliance can be achieved with P1(c)(i).

The report by Mr Leditschke has been examined and it has been sufficiently demonstrated that P1 (c)(i) a-d is satisfied. It is noted that one of the report recommendations is for a vegetation buffer to be established between the residential lot and the balance lot to mitigate constraint for the agricultural use and the potential for conflict between the land-uses. The implementation of a vegetation buffer will be included as a permit condition.

To satisfy P1 (c)(ii) a condition will be included on the permit requiring the subdivider to enter into a legal agreement as per s.71 of the *Land Use Planning and Approvals Act 1993* (LUPAA). The agreement will prohibit any future residential development on the balance lot i.e single dwelling.

To consider the merits of P(c)(iii), development standard 21.4.2 A2 & P2 - *Setbacks* is reproduced below along with comment.

21.4.2 Setbacks

<p>A2</p> <p>Buildings for a sensitive use must have a setback from all boundaries of:</p> <ul style="list-style-type: none"> (a) not less than 200m; or (b) if the setback of an existing building for a sensitive use on the site is within 200m of that boundary, not less than the existing building. 	<p>P2</p> <p>Buildings for a sensitive use must be sited so as not to conflict or interfere with an agricultural use, having regard to:</p> <ul style="list-style-type: none"> (a) the size, shape and topography of the site; (b) the prevailing setbacks of any existing buildings for sensitive uses on adjoining properties; (c) the location of existing buildings on the site; (d) the existing and potential use of adjoining properties; (e) any proposed attenuation measures; and (f) any buffers created by natural or other features.
--	--

The acceptable solutions prescribed within A2 cannot be satisfied. Therefore, the performance criteria prescribed within P2 is required to be assessed.

The supporting information provided by Mr Leditschke and the implementation of a vegetation buffer has appropriately demonstrated the performance criteria can be satisfied.

Regarding P1(c)(iv), Council's Infrastructure and Works Department have assessed the subdivision and the frontage for both lots are determined sufficient for their intended purpose.

Council's Infrastructure and Works Department (road authority) are satisfied the existing accesses are appropriate for the proposed lots and A2 of the above development standard is satisfied.

The property is identified as being within a mapped bushfire prone area under code C13.0 -Bushfire-Prone Areas Code. The applicant has provided a bushfire report by an accredited person which satisfies the acceptable requirements. No further commentary regarding this aspect of the development application is required.

COMMUNITY ENGAGEMENT

On 25/11/2020, Council received an application for the above development. Under Section 57(3) of the *Land Use Planning and Approvals Act 1993*, the Planning Authority must give notice of an application for a permit. As prescribed at Section 9(1) of the *Land Use Planning and Approvals Regulations 2014*, the Planning Authority fulfilled this notification requirement by:

- (a) Advertising the application in *The Advocate* newspaper on 09/01/2021;
- (b) Making a copy of the proposal available in Council Offices from the 09/01/2021;
- (c) Notifying adjoining property owners by mail on 07/01/2021; and
- (d) Erecting a Site Notice for display from the 07/01/2021.

The period for representations to be received by Council closed on 25/01/2021.

REPRESENTATIONS

A total of five representations were received within the prescribed 14-day public scrutiny period required by the *Land Use Planning and Approvals Act 1993* (LUPAA).

Four of the representations raised concerns about the house excision and the impacts to the agricultural productivity of the balance land.

One representation was from the landowner and is in support of the house excision.

Each representation is reproduced separately below along with comment.

The General Manager
Devonport City Council
Rooke Street
Devonport Tas 7310

Dear Sir,

Re: PA 2020.0210 - 94 Winspears Road East Devonport Tasmania

I wish to object to the above application on the following grounds -

By subdividing the said acreage you are removing the Primary residence from that rural property and so leaving the remaining farmland open for further subdivision. This is subdivision by stealth.

The land is classed prime rural.

The applicant failed in a previous application to subdivide some of the land in an endeavour to lesson the boundaries he shared with neighbours and yet wants to add three properties thus adding more neighbours to deal with. This does not make sense.

We share our boundary with farmed land and have never had issues with the farmer.

Yours faithfully,

Jan Willing 0408582291 (171 Winspears Road East Devonport)

Figure 5 - Representation - Jan Willing

Comment - A permit pathway for house excision exists within the Agriculture Zone under the TPS-D. The application has been appropriately assessed as complying with the applicable performance criteria prescribed within the Zone's subdivision standard - 21.5.1 P1 (c)(i-iv). A condition will be included on the permit requiring a legal agreement to be registered on the balance lot which will prohibit future residential use or development.

The General Manager

Devonport City Council

P O Box 604

Devonport 7310

Dear Sir,

Reference Planning Application P A 2020/210

Following consideration of the Agricultural Zoning for Prime Agricultural Land (Tas.) we do not oppose the application on principle.

However, this is conditional upon assurance that the approval of the application does not diminish in anyway, either now or for the future, the integrity or prime agricultural use of the balance of the land as shown as Lot2 in the application plans .

Yours faithfully

Graham Kent

for G B and P Kent

165 Winspears Road, East Devonport.

Figure 6 - Representation - Graham Kent

Comment – Refer to comments regarding previous representation.

118 River Road,
East Devonport 7310.

24 January 2021.

The Manager,
Devonport City Council,
Rooke Street,
Devonport 7310.

Re: PA 2020.0210 94 Winspears Road.

I wish to object to the above Planning Application.

This proposal is short-sighted. The existing residence was built in this location for obvious reasons. Any future owner of the farm may wish to live on the property which will require more land of lot 2 to be used for residential and/or infrastructure. The fact that the current owner does not live on the property cannot be used as an excuse to sub-divide. This could set a dangerous precedent. 12.5 acres appears to be very large parcel of land to remove the dwelling.

The proponents own another 100 acres adjoining Lot 2 although on separate titles, each relying on the other to be sustainable.

Some years ago the proponent managed to sub-divide another house on this adjoining property which the previous owner had attempted to do but had been refused by the Resource Planning Authority.

Most agricultural land consists of a mixture of crop-able and grazing land and many farmers combine a mixture of cropping and grazing which utilises the poorer quality areas, as is the case on this farm. In recent years, some farmers have managed to convert seemingly unproductive areas into viable cropping land..

A previous application was aimed at reducing conflict with neighbours.

The proposed Lot 1 is centred midway along a Winspears Road boundary creating a real division of Lot 2 with three long boundaries which could lead to conflict which is currently managed by the property owner. Once sub-divided the owner has no control over Lot 1. The owner is not compelled to be a landlord..

There are some problematic weeds present on Lot 1, which if not managed well by the future landowner could spread to the surrounding farm. This could be an on-going bio-security risk if not managed well. Currently this risk is managed by the property owner; once sold he has no control.

Other landowners who have multiple dwellings appear to manage them rather than create the risk of potential conflict with neighbours.

Peter Stegmann. 0427 278 863.

Figure 7 - Representation - Peter Stegmann

Comment - The applicant has provided advice from a professional agricultural consultant which has demonstrated that the residential lot is of appropriate size and shape for the intended use. The recommendation by the consultant for a vegetation buffer around the residential boundary adjoining the agricultural land will be included as permit condition. This measure will likely mitigate the potential for land-use conflict between the two uses. The issue of problematic weeds on the residential lot is acknowledged, however this will be the responsibility of the lot owners to manage.

1.2 x Received Level 2 25/1/21 - 11:31am x.

APPLICATION NUMBER P.A.2020.2010

Date: 25.1.21
Page:

MY OBJECTION FOR THIS SUBDIVISION IS AS FOLLOWS
THE PROPONENT STATES THE DWELLING + OUT
BUILDINGS ALONG WITH THE VACANT LAND
IS MARGINAL GROUND + NOT CONDUCTIVE TO
FARMING ACTIVITY. I HAVE LIVED OPPOSITE
THIS FARM FOR 30 YEARS AND NONE OF THE
PROPOSED LAND HAS BEEN TURNED OVER AND
THE SAGS ERADICATED IN THAT TIME. IT IS FAIR
TO SAY THAT IF THE LAND WAS PLOUGHED AND
FERTILIZED IT WOULD PRODUCE CROPS BUT AT
PRESENT IS USED FOR GRAZING CATTLE + SHEEP.
THE ARGUMENT THAT THE DWELLING IS ON MARGINAL
LAND AND SHOULD BE ALLOWED TO BE SUBDIVIDED
OFF + SOLD MAKES LITTLE SENSE AS THAT WILL THEN
HAVE BROAD ACRE FARMING ACTIVITY ADJACENT
TO RESIDENTIAL DWELLING THAT THEN ENCOURAGES
COMPLAINTS FROM THE OWNER OF THE DWELLING
IN RELATION TO NOISE IRRIGATORS + SPRAYS.
ALSO THERE WOULD BE COUNTLESS FARMS THAT
HAVE THE DWELLING + OUT BUILDINGS ON MARGINAL
LAND THAT DOES NOT + SHOULD NOT ALLOW THE
DWELLING + ASSOCIATED LAND TO BE SUBDIVIDED
OFF THE REMAINING FARM. IF THIS WAS TO BE
GRANTED IT WOULD BE THE PRECEDENT TO
SUBDIVIDE THE REMAINING LOW Lying LAND
AS THE ARGUMENT WOULD BE PRESENTED OF
A PRECEDENCE HAS BEEN ESTABLISHED. THE AREA
IN QUESTION IS PART OF A VIABLE FARM AND IT
SHOULD BE PROTECTED FROM ANY SORT OF SUBDIVISION
BY THE PROTECTION OF AGRICULTURAL LAND POLICY.
THE PROPONENT WAS WELL AWARE OF THE DWELLING
OUT BUILDINGS + ROADS BEFORE RECENTLY PURCHASING

2

Date: . . .
Page:

THE PROPERTY APPROX 4 YEARS AGO. THE PROPOONENT MENTIONS WEED CONTROL WELL THERE IS NO ONE BETTER THAN THE OWNER/FARMER TO CONTROL WEED GROWTH ON THEIR OWN PROPERTY RATHER THAN RELYING ON ANOTHER POSSIBLE OWNER TO FACILITATE THAT TASK. THE APPLICATION SHOULD BE REJECTED BY COUNCIL AND THE AREA CONCERNED REMAIN ATTACHED TO THE FARM AS IT HAS BEEN FOR THE PAST 100 YEARS.

YOURS FAITHFULLY
Grant Goodwin
OF 149-151 WINDPEARS ROAD
EAST DEVONPORT
PA 0417516237

Figure 8 – Representation – Grant Goodwin

Comment – Refer to previous commentary regarding previous representations.

RHEBANVALE

A.B.N. 97 122 908 229
EMAIL: rhebanvale@bigpond.com
Michael: 0418 140 513 Heidi: 0408 171 438
TEL: 03 64 284 253
702 Port Sorell Main Road
Wesley Vale
Tasmania 7307

20 January 2021

To: General Manager

Re: PA2020.0210 – Application for Planning Permit, 94 Winspears Road, East Devonport.

Dear Mr Atkins,

We are the owners of the above-mentioned property as well as owning a neighbouring property.

We wish to provide you and the council with a few extra details regarding the excision of this parcel of land.

We are farmers and therefore our core business is food production. Having a house on a property that is surplus to requirements (we have our own dwelling in Wesley Vale), means that we also have to be landlords which takes us away from our core business. We have had the property for several years and have realised that this interferes too much with our core business. We therefore hope that we are able to provide an historic house with a parcel of land for someone with a passion to possibly renovate this house to its former glory. Something which we are not in a position to do and we don't wish to see it deteriorate. The afore mentioned parcel of land is unfortunately not suitable for our type of broad scale farming due its classification and functionality, but would suit a small hobby or boutique farming operation, in the close proximity to Devonport and surrounds.

We have no desire for another dwelling to be permitted to be erected on any part of the main property as this would take away from what we are

trying to do which is to preserve good agricultural land for future generations.

Please do not hesitate to contact us if you require any further information.

Your sincerely

Heidi and Michael Radcliff
Rhebanvale

Figure 9 – Representation - Heidi and Michael Radcliff

Comment - The above representation outlining support for the application is noted.

DISCUSSION

The application has been assessed by Council's development staff and TasWater. Conditions and notes have been applied where appropriate. TasWater required no conditions to be included on the permit.

FINANCIAL IMPLICATIONS

No financial implications are predicted, unless an appeal is made against the Council's decision to the Resource Management and Planning Appeal Tribunal. In such instance, legal counsel will likely be required to represent Council. The opportunity for such an appeal exists as a result of the Council determining to either approve or refuse the permit application.

RISK IMPLICATIONS

In its capacity as a Planning Authority under the LUPAA, Council is required to make a determination on this application for a discretionary planning permit. Due diligence has been exercised in the preparation of this report and there are no predicted risks associated with a determination of this application.

CONCLUSION

The application is recommended for conditional approval.

ATTACHMENTS

1. Application - PA2020.0210 - 94 Winspears Road - Subdivision (excision of existing dwelling) [4.1.1 - 50 pages]

5 CLOSURE