

# Thompsons Creek Catchment Review Report Version 2

## 1. Introduction

This review completes further strategic work identified under Clause 74.02 of the Surf Coast Planning Scheme. The Schedule to Clause 74.02 (further strategic work) is located within the Operational Provisions of the scheme. It recommends:

*Reviewing the appropriateness of allowing subdivision of land in the Thompsons Creek catchment area to 40 hectares subject to meeting conditions specified in the Schedule to the Farming Zone.*

This review investigates the appropriateness of a reduction in the minimum lot size in the Thompsons Creek catchment, the background to the introduction of the Thompsons Creek provision (the provision) within the Farming Zone schedule and its success since introduction. This review is a background report to Planning Scheme Amendment C133, which implements the *Rural Hinterland Futures Strategy* (2019).

### Thompsons Catchment Review Report - Versions

The original Thompsons Catchment Review Report was prepared in March/April 2021 and was exhibited as a background document to Planning Scheme Amendment C133 during the public exhibition period. Exhibition occurred in September and October 2021. In March 2022 a Panel hearing was conducted to resolve outstanding submissions to the amendment. The Panel considered the background paper and identified a number of shortfalls with the report, highlighting that if the following issues were addressed, the changes recommended in the report might have been supported. The recommendations and subsequent work included:

- Use of a larger proportion of case studies
- Use of a combination of historical and current aerial photography, and site visits where possible
- Comparison between on-ground works and those required by the approved Land Plan and relevant section 173 agreement obligations
- Provision of a greater level of certainty to those landholders losing the ability to construct a dwelling “as of right”

The review report was updated in July/August 2022 and the changes suggested by the panel included.

The other significant change to the background report relates to the translation of the Surf Coast Planning Scheme (the scheme). The scheme was translated into the new Planning Policy Framework (PPF) format in June 2021 through Planning Scheme Amendment C136surf. Section 3 of the background report reviews the provision against policy to understand whether there are other mechanisms within the planning scheme that can achieve the desired outcome sought by the provision. Section 3 has now been updated to have regard to the new PPF format and show where the referenced policy is now located.

### What the Provision Does

The provision was introduced into the Schedule to the Farming Zone of the Surf Coast Planning Scheme in 2000. That provision currently allows consideration of applications to reduce the minimum subdivision lot size from 60 hectares to 40 hectares in the Thompsons Creek Catchment area. The schedule also allows consideration of applications to reduce the minimum land area for which no permit is required to use and develop the land for a dwelling from 60 hectares to 40 hectares.

Extracts from the Farming Zone Schedule are shown below at Figures 1 and 2. Figure 1 relates to subdivision and Figure 2 relates to dwellings.

**Figure 1: Schedule to the Farming Zone (extract): Subdivision**

	<b>Land</b>	<b>Area/Dimensions/Distance</b>
Minimum subdivision area (hectares)	Thompsons Creek Catchment	<p>60 hectares</p> <p>This may be reduced to 40 hectares provided the following conditions are met:</p> <p>1. A land plan is submitted that shows:</p> <ul style="list-style-type: none"> <li>▪ that principles of biodiversity have been applied</li> <li>▪ fencing of areas of remnant vegetation and/or conservation areas to exclude stock</li> <li>▪ a minimum area of 10% established to trees (increasing to 15% where salting or other problems exist)</li> <li>▪ proposed management practices in the fenced off areas especially for the control of rabbits, foxes and noxious weeds</li> <li>▪ evidence that the recommendations of the Department of Natural Resources and Environment will be implemented in recognised hot spot salt areas in the Thompsons Creek Catchment Plan</li> </ul> <p>2. The owner enters into an agreement under Section 173 of the Act which commits any present or future owner to the implementation of the land plan and ongoing management of maintenance of the property so the land does not revert back to its former state.</p>

**Figure 2: Schedule to the Farming Zone (extract): Dwellings**

<b>Land</b>	<b>Area/Dimensions/Distance</b>
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Minimum area for which no permit is required to use land for a dwelling (hectares)	Thompsons Creek Catchment	<p>60 hectares</p> <p>This may be reduced to 40 hectares provided the following conditions are met:</p> <p>1. A land plan is submitted that shows:</p> <ul style="list-style-type: none"> <li>▪ that principles of biodiversity have been applied</li> <li>▪ fencing of areas of remnant vegetation and/or conservation areas to exclude stock</li> <li>▪ a minimum area of 10% established to trees (increasing to 15% where salting or other problems exist)</li> <li>▪ proposed management practices in the fenced off areas especially for the control of rabbits, foxes and noxious weeds</li> <li>▪ evidence that the recommendations of the Department of Natural Resources and Environment will be implemented in recognised hot spot salt areas in the Thompsons Creek Catchment Plan</li> </ul> <p>2. The owner enters into an agreement under Section 173 of the Act which commits any present or future owner to the implementation of the land plan and ongoing management of maintenance of the property so the land does not revert back to its former state.</p>
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The provision has been in effect for over 20 years and this is the first review that has been undertaken. The review explores the appropriateness of the provision by considering four key matters:

- The purpose of the Thompsons Creek provision in the schedule to the Farming Zone
- Whether there are other mechanisms within the planning scheme that would achieve the purpose of the Thompsons Creek provision and can do so effectively
- Whether the alternative subdivision lot size provision has been used since being implemented into the planning scheme
- Whether the Thompsons Creek provision has been effective in achieving its purpose, including consideration of the success of implementation.

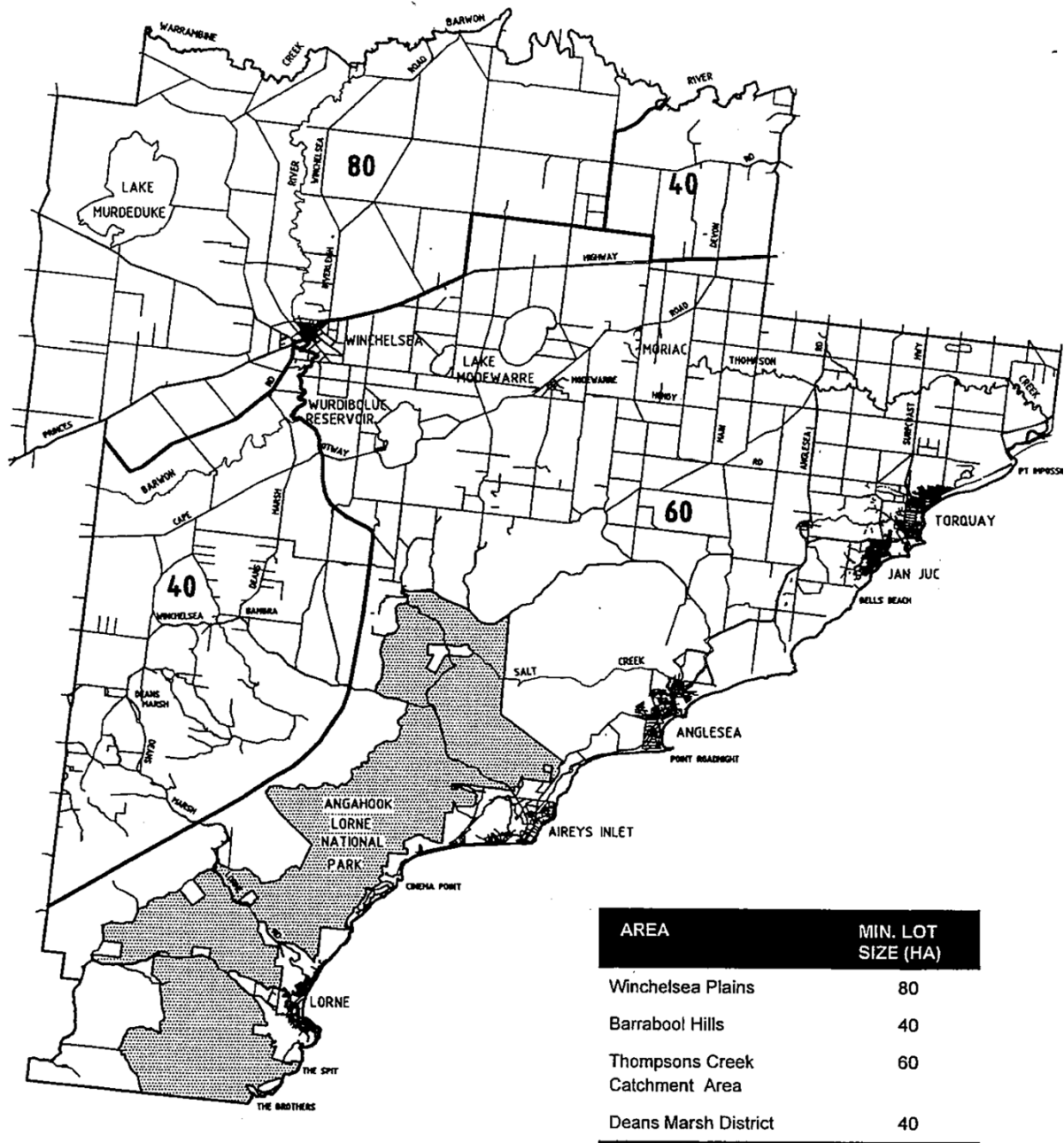
## 2. Background

### Introduction of the minimum lot size in rural areas

The *Rural Land Use Strategy*, (1997) is a key background document for the agricultural strategies and policies contained within the Local Planning Policy Framework of the Surf Coast Planning Scheme. An Agricultural Strategy was inserted into the Planning Scheme in 2000 along with a schedule to the Farming Zone which introduced the allocation of suitable lot sizes for subdivision in rural areas.

A *Rural Strategy Review Report* was undertaken in 2007, which found that the methodology applied through the 1997 strategy was sound and the resultant minimum lot sizes continued to be relevant. The minimum subdivision lot sizes recommended by the 1997 strategy are shown in figure 3 below.

Figure 3: Recommended minimum lot sizes (Rural Land Use Strategy 1997)

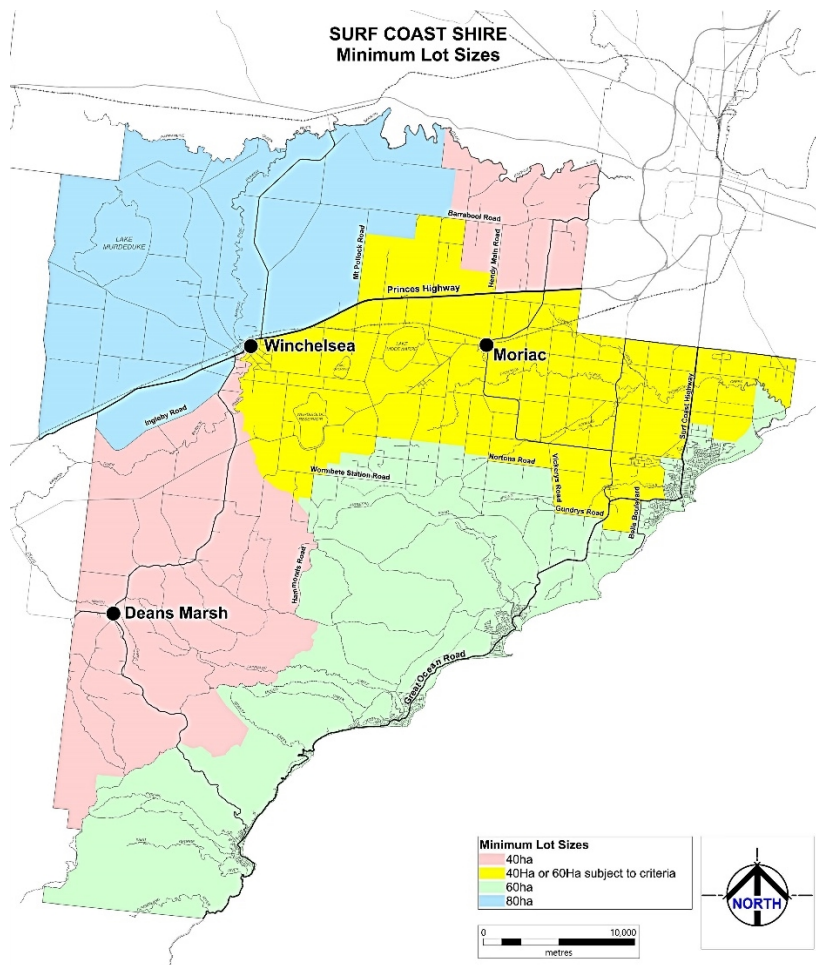


Introduction of the Variation to the Thompsons Creek Catchment area

As shown in figure 3, the Thompson Creek Catchment Area was “allocated” a minimum subdivision lot size of 60ha. However, during the exhibition of the amendment, Council (acting as the Planning Authority) received submissions requesting that a variation be included for land in the Thompsons Creek catchment area. Ultimately, Council supported the variation and the greater ‘Thompsons Creek catchment area’ was split into two areas.

The revised subdivision lot size map that was adopted into the Planning Scheme is shown at figure 4 below.

**Figure 4: Minimum subdivision lot sizes in rural areas (Surf Coast Planning Scheme)**



The land mapped in green and in yellow in figure 4 is the area referred to as the ‘Thompsons Creek Catchment Area’ in figure 3. Both areas have a 60ha minimum lot size (the minimum lot size recommended by the 1997 strategy). However, the yellow area now also permitted the consideration of a reduction to 40ha provided certain criteria could be met. The land mapped in yellow is the subject of this review.

Council considered that a reduction in lot size in this area would be warranted, provided it could be demonstrated that the land would be managed in a more environmentally sustainable way. The focus on this area as a priority for environmental enhancement was highlighted in the 1997 strategy, which identified it as an area where salinisation was a significant issue.

Ultimately, it was written into the schedule to the Farming Zone (the Rural Zone at the time) that if a land management plan was submitted and approved, a variation to the minimum lot size could be granted. The Rural Land Use Strategy 1997 described a Land Plan as being prepared “under the same guidelines as those used to enable tax deductions under S.75D of the Income Tax Assessment Act”, meaning it should consider land management issues like pest plants and animals, salinity and other matters leading to land degradation, fencing, levee banks, drainage and the like.

Planning Panels Victoria, upon consideration of the submissions, supported Council's intention but believed that the provision was fraught with risk, noting that the provision would need to be closely monitored and reviewed. The need for a review was included in the Agricultural Strategy in the planning scheme under 'future strategic work'. This is the first review of the provision to be undertaken.

#### Methodology for Application of Minimum Lot Sizes

The *Rural Land Use Strategy*, (1997) reviewed the Shire in terms of physiography, geology, soils, climate and water resources and used these factors as the foundation to determine the most suitable lot size for a parcel of land to be technically viable for agricultural productivity.

The 1997 strategy described the Thompsons Creek coastal plain as follows:

*The Thompsons Creek coastal plain extends adjacent to and between the Barrabool Hills and the Bellarine Peninsula. The soils of the area are largely comprised of sediments and some volcanic plains. Most of the area does not exceed 60m. The area is bordered by extensive dunes between Torquay and Breamlea.*

The strategy identified the Thompsons Creek area as being of average agricultural quality with a recommended minimum lot size of 60ha, being most suited to grazing. 60ha's was deemed capable of supporting a sustainable farm practice. The strategy noted that higher quality land could be more intensively farmed with a lesser land area capable of providing a financial return. As shown in figure 3 above, the minimum lot sizes varied across the Surf Coast Shire from 40ha to 80ha.

For the Thompsons Creek area, it recommended that:

*Land holdings are to be maintained in relatively large parcels though a diverse range of agricultural uses will be permitted.*

Although the area was identified as being most suited to grazing, it noted that it was also currently used for crops such as potatoes, turf and flowers.

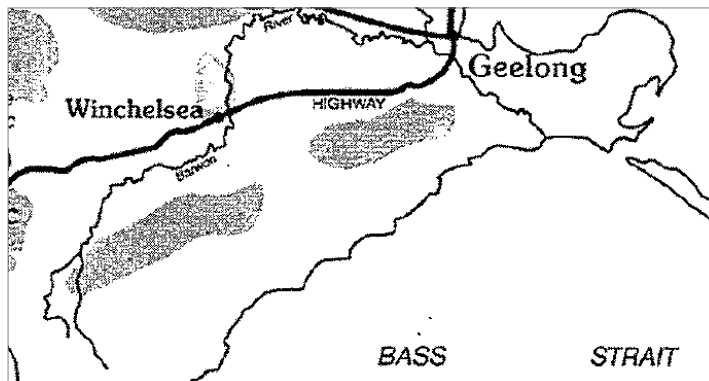
In addition to having regard to the technical viability of lots, the strategy took into consideration existing development and tenement patterns, protection of landscape and ecological values and existing and preferred rural land use. The strategy identified the importance of the Thompsons Creek valley as a significant landscape and green break between Geelong and Torquay. It urged against further fragmentation of this land.

#### Salinity issues in the Thompsons Creek Catchment

The *Rural Land Use Strategy*; 1997 (the strategy) identified salinity as a major issue for the Surf Coast Shire, with the rising water table and outbreaks of salting in the Thompsons Creek catchment attributed to historic tree removal. The strategy included mapping of salinity priority areas for control works, also highlighting the need for deep rooted vegetation to reverse the impacts.

Two priority areas are shown in the Surf Coast Shire, one of which is in the Thompsons Creek catchment area and shown in figure 5 below.

**Figure 5: Salinity works priority areas (Rural Strategy 1997)**



#### Recycled water in the Thompsons Creek catchment

The *Rural Strategy Review, 2007* highlighted that if recycled water became more readily available, it could influence rural land use in the Thompsons Creek catchment area, specifically along the Surf Coast Highway corridor. The strategy stated that:

*There is potential for an expansion of soil and shed based irrigated horticulture utilising recycled water from the Black Rock Wastewater Treatment Plant. This would be focused on the area between Torquay and Mount Duneed.*

The strategy went on to say that;

*Horticultural enterprises, including turf, tomato and flower production are based around recycled water supplied from Barwon Water's Black Rock Wastewater Treatment Plant. These industries have grown in significance since 1993 and Barwon Water has indicated that there will be increased scope for productive use of recycled water in the future. Currently, expansion of horticultural development is constrained by the cost of infrastructure to deliver recycled water to suitable areas.*

It is important to note that although the strategy review in 2007 identified the rural land use opportunity for this area, it did not recommend any changes to the minimum lot size nor did it specifically review the operation or success of the 40ha variation. The strategy did however highlight the importance of elevating the need to protect landscape values and cautioned in the Thompsons Creek valley that:

*Any shed based agriculture needs to be carefully sited to preserve landscape values.*

The strategy review did highlight that:

*Future access to recycled water for irrigation could result in a reclassification (upgrading) of agricultural quality class for land in the south-eastern end of the precinct.*

The implication of the above is that, if recycled water did become available between Torquay and Mount Duneed and that its use was found to be environmentally sustainable, the technical viability of the lot sizes might be affected. This review does not investigate the environmental effects or the alternative planning controls as a result of recycled water but notes that such an investigation may be warranted if that resource comes on line.

If such a review takes place, as highlighted by the 1997 and 2007 strategies, the implications of increased fragmentation and/or development would also need to be carefully considered due to the negative impacts it could have on the highly sensitive landscape and agricultural values. The land between Mount Duneed and Torquay forms part of the Surf Coast Shire Distinctive Area and Landscape, declared by the Victorian Government in 2019 and again in September 2021.

#### The Planning Process

As it relates to the Thompsons Creek area in the Farming Zone Schedule, approval must be sought from the Responsible Authority to vary the minimum lot size from 60ha to 40ha.

Subdivision applications under the provision require a planning permit and consideration can be given to the creation of lots of 40ha-60ha subject to the conditions in the schedule being met. Dwelling applications under the provision do not require a planning permit. An approval is required, however, which includes the submission of a satisfactory Land Plan. The considerations associated with reducing the minimum lot size in either scenario are the same and this is the process referred to below.

The process initially requires the approval of a Land Plan (the Plan) which is assessed by Council's delegate against the requirements within the schedule to the Farming Zone. The requirements written into the Schedule are limited.

The internal process includes referral to Council's Environment Department, who considers whether the proposed plan, once implemented, would result in an improved environmental outcome for the allotment.

Once all available information is considered, the plan is either approved or refused. If approved the land owner must enter into a legal agreement under section 173 of the Planning and Environment Act 1987 (S173 agreement), which once executed, should be registered on title to provide transparency for all future landowners. As the S173 agreement runs with the land, unless otherwise stated, future landowners would have ongoing obligations associated with the implementation and monitoring of the approved Plan.

#### Issues with the Thompson Creek Provision in the Farming Zone Schedule

For a subdivision application, the schedule allows the minimum land area to be reduced to 40ha if a land plan is provided and approved as part of a planning permit for the subdivision. The land plan must also be bound by a S173 Agreement.

It is noteworthy that the Thompsons Creek provision is not linked to a particular objective and there is no associated provision within the scheme that calls up consideration of whether the subject land is suitable for a reduced lot size. Compounding this absence is the lack of any provision that enables consideration of whether the land plan itself is appropriate, including adequacy of the criteria against which the appropriateness of a land plan can be measured. The deficiencies within the criteria are discussed in more detail below.

For a dwelling application, the schedule allows the minimum land area for which no planning permit is required to use and develop the land (for a dwelling) to be reduced to 40ha if a land plan is approved and bound by a S173 Agreement.

The same deficiencies exist as for subdivision; however, this is further compounded by the fact that the (dwelling use right) approval is not a planning permit and is not associated with a planning permit. Put simply, it is a provision that seeks to avoid a planning permit being triggered. That is:



- The approval is not a planning permit and there are no notice requirements or review rights
- It is an approval that sits outside of the planning scheme and unlike a planning permit, it does not require a lapse date or sunset clause to be built into the approval
- As it is a provision that seeks to avoid a planning permit being triggered, the purpose and decision guidelines of the zone are not considered.

#### Issues with the Process

Based on a review of S173 Agreements held by Council, the Thompsons Creek provision has resulted in only a handful of approvals over the past 20 years. In addition, Council does not have a formal monitoring and compliance process associated with the implementation of the Land Plans and to date, there has been little follow up on the Land Plans' implementation.

The deficiencies in the provision that were identified in the previous section also adversely influence the approval process. That is: an application under the Thompsons Creek provision only calls up consideration of the variation requirements in the schedule; an approval is not able to have regard to the purpose or decision guidelines of the Farming Zone. This means that consideration cannot be given to how a reduction in lot size and house entitlement could impact agriculture on the land or nearby land, and where no planning permit is required, no notice or third party appeal rights exist.

This makes the provision inconsistent with the adopted *Rural Hinterland Futures Strategy 2019* and Planning Scheme Amendment C133 which seeks to ensure agriculture remains the primary land use in the Farming Zone in the hinterland.

Council's Environment Department has also expressed difficulties with the assessment process, particularly where there are no existing environmental assets on site. In these instances the provision includes no information about what should be assessed and what environmental benefits are to be achieved. For example, it is not a prerequisite of the provision that the site contain significant vegetation and where none exists, the requirement of 'protecting' and 'enhancing' remnant vegetation then lacks meaning.

As shown in the case studies below, the sites are often devoid of native vegetation. In such circumstances the only environmental benefit is the introduction of native vegetation plantings (irrespective of whether this might positively impact the water table), and management of pest plants and animals. It's worth noting that the Thompsons Creek provision also specifies the need to plant deep rooted vegetation; however, this requirement is confined to sites within an identified salinity hot spot. Only two of the six sites reviewed were subject to the Salinity Management Overlay, which was introduced in 2010 through planning scheme amendment C38.

#### Advice from Planning Panels Victoria Prior to the Introduction of the Provision

A panel hearing considered the submissions to the planning scheme amendment to implement the New Format Planning Scheme (NFPS) at the time of the provision's introduction in 2000. The Responsible Authority (Council) submitted to the Panel that the conditional variation was at the request of submitters to the planning scheme amendment.

The Responsible Authority sought the advice of the land use consultant (R.G. Ashby & Co. Pty. Ltd), who agreed that there was merit in achieving land improvements. The Panel summarised the proposed variation as follows:

*The conditions that would allow a 40ha minimum involved the preparation of a "land plan", commitment to improved land management practices, and a S173 Agreement to commit the present and future landowners to continuing the implementation of the land plan and maintenance of the land in an improved state. In essence, the Council believes that the conditions imposed if a 40ha minimum was to apply would lead to a better overall outcome.*

The Panel commended Council for this performance-based approach and agreed that the incentive to be able to obtain a 40ha minimum could encourage better land management. The Panel did, however, express concern regarding the ongoing implementation of the land plans and enforcement of the S173 agreements. It cautioned that:

*Once the land has been subdivided and sold, the new owner may not have the same level of commitment provided by the person seeking the subdivision. It could be very difficult for Council to enforce the intent of the S173 agreement. It would be unfortunate if the variation to the Schedule as proposed by Council became an escape clause which did not achieve the hoped-for performance outcomes.*

To safeguard against the above, the Panel recommended that the provision be subject to monitoring and review three years after its introduction to ascertain the success of the provision. Because of the low number of early approvals, the review was not undertaken within the suggested three year time frame.

The first review was undertaken in 2020 and this review appears to support the NFPS Panel's concern that the ongoing enforcement of the S173 agreements is problematic.

### **3. Other Mechanisms in the Planning Scheme that can Achieve the Desired Outcome**

The question then becomes, are there other mechanisms within the planning scheme to achieve a positive environmental outcome within the Thompsons Creek catchment area without the need to vary the minimum lot size?

A decision to allow the use and development of land for a dwelling or to vary the minimum lot size below an area that has previously been deemed to be technically viable, is a significant one. This is particularly so given the potential for long term agricultural impacts, including the exacerbation of land fragmentation and its associated consequences. The benefits of such a "trade off" should be clear and consistent with the purpose of the Farming Zone.

While a dwelling or a subdivision drawing on the provision may provide a short term financial gain to the land owner, ensuring a commensurate investment in the land to improve environmental sustainability has proven to be challenging and largely unsuccessful.

The following section reviews the controls within the Planning Scheme relevant to the Thompsons Creek catchment area. This includes:

- Clause VPP 35.07 (Farming Zone),
- Schedule to Clause 35.07 (Schedule to the FZ),
- Clause 21.03 (Environmental Management),
- Clause 21.05 (Agriculture),
- Clause 21.06 (Rural Landscapes),
- Clause 22.01 (Rural Tenement policy)
- Clause LPP 44.02 (Schedule to the Salinity Management Overlay).

In June 2021, the Surf Coast Planning Scheme was translated into the new Planning Policy Framework format (Amendment C136surf). As a result, the clauses referenced above have now been relocated. This is further explained under each referenced clause below.

Schedule to Clause 35.07 (Farming Zone)

The schedule allows for land located within the Thomson Creek Catchment to apply for a reduction to the minimum subdivision lot size from 60ha to 40ha. To do so a Land Management Plan must be submitted to and approved by Council and a S173 Agreement entered into to ensure the land management plan is implemented in perpetuity.

The schedule sets out the criteria that enables a variation to be considered.

**Figure 6: Subdivision requirements in the schedule to the Farming Zone (extract): Subdivisions**

Subdivision and other requirements		
	Land	Area/Dimensions/Distance
Minimum subdivision area (hectares)	Thompsons Creek Catchment	<p>60 hectares</p> <p>This may be reduced to 40 hectares provided the following conditions are met:</p> <p>1. A land plan is submitted that shows:</p> <ul style="list-style-type: none"> <li>▪ that principles of biodiversity have been applied</li> <li>▪ fencing of areas of remnant vegetation and/or conservation areas to exclude stock</li> <li>▪ a minimum area of 10% established to trees (increasing to 15% where salting or other problems exist)</li> <li>▪ proposed management practices in the fenced off areas especially for the control of rabbits, foxes and noxious weeds</li> <li>▪ evidence that the recommendations of the Department of Natural Resources and Environment will be implemented in recognised hot spot salt areas in the Thompsons Creek Catchment Plan</li> </ul> <p>2. The owner enters into an agreement under Section 173 of the Act which commits any present or future owner to the implementation of the land plan and ongoing management of maintenance of the property so the land does not revert back to its former state.</p>

For a dwelling to be an as-of-right use (section 1 - not requiring a planning permit) on a lot of 40ha, the above conditions must also be met. That is; the conditions required to be met in order to justify a reduction in the subdivisional lot size are the same as those required to be met in order to justify a reduction in the minimum lot size for a dwelling (ie. so the dwelling would be as-of-right).

Clause VPP 35.07 – Farming Zone

Most private land within the Thompsons Creek Catchment area is zoned Farming Zone. The Rural Conservation Zone (RCZ) applies to some pockets of land within the area but the RCZ does not form part of this review. That zone does not include the variation to reduce the subdivisional lot size and in the RCZ, use and development of the land for a dwelling is not an as-of-right (section 1) use irrespective of lot size.

The primary purpose of the Farming zone is to protect agricultural land and promote farming as the dominant land use. More fully, the purpose of the zone 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 [emphasis added]*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

Under the Farming Zone at clause 35.07-3, a permit is required to subdivide land and:

*Each lot must be at least the area specified for the land in a schedule to this zone. If no area is specified, each lot must be at least 40 hectares.*

A permit may be granted to create smaller lots if any of the following applies:

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

A permit is required to use and develop the land for a dwelling where the lot is below the minimum lot size specified in the schedule to the zone.

Before deciding on an application, the Responsible Authority must consider the matters set out in the decision guidelines to the zone.

Given the breadth of considerations, the full list of decision guidelines has not been set out here. However, a snapshot of the considerations is provided below and those that overlap the variation requirements have been underlined for emphasis:

- Any Regional Catchment Strategy and associated plan applying to the land.
- 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.
- 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.
- 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 full list is comprehensive, enabling the Responsible Authority to consider a wide range of pertinent matters in rural areas, including (but not limited to);

- Access to recycled water
- Agricultural land quality
- The need for a land management plan
- Any potential impacts on agricultural production and adjoining land uses.

Importantly, the specific environmental considerations relating to the protection of biodiversity and the need for revegetation, including in saline discharge and recharge areas, are addressed.

The parent provision enables a decision to be made based on all matters relevant to the zone. This integrated approach provides a level of rigor that is lacking in the current Thompsons Creek variation, where the singular focus is on biodiversity and salinity management. The limited criteria required to permit a variation under the Thompsons Creek provision is so targeted that the broader and increasingly important farming issues, are either subordinated or ignored.

It is considered more appropriate for a planning permit to be triggered that enables a holistic assessment against the comprehensive matters set out in the Farming Zone. Doing so, applies a transparent and a consistent planning process to all land within the zone and is consistent with the vision of the Rural Hinterland Futures planning scheme amendment which seeks to strengthen the primacy of farming in the hinterland.

#### Clause 21.03 (Environmental Management)

In June 2021, the Surf Coast Planning Scheme was translated into the new Planning Policy Framework format (Amendment C136surf). As a result, the referenced strategies under clause 21.03 were moved to clause 13.04-3L: *Salinity*).

The Environmental Management Strategy identified salinity as a major environmental risk in the Surf Coast Shire. It stressed the importance of protecting saline assets (such as wetlands) and avoiding saline risks to the natural and manmade environment. The strategy focused on avoiding use and development in saline areas and avoiding activities that could exacerbate the problem. The strategy encouraged taking;

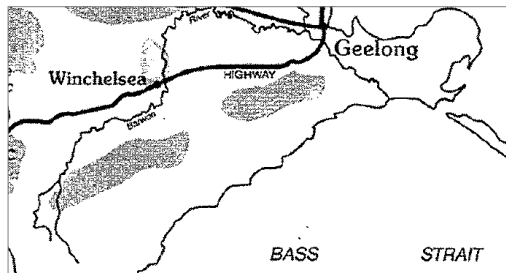
*Appropriate measures to mitigate the risks (associated with salinity)* (Content now reframed and moved to clause 13.04-3L).

The Strategy required that all land shown in Map 1 to the Clause (shown below) submit a salinity impact report. It stated that the strategies (within Clause 21.03) will be implemented by (inter alia):

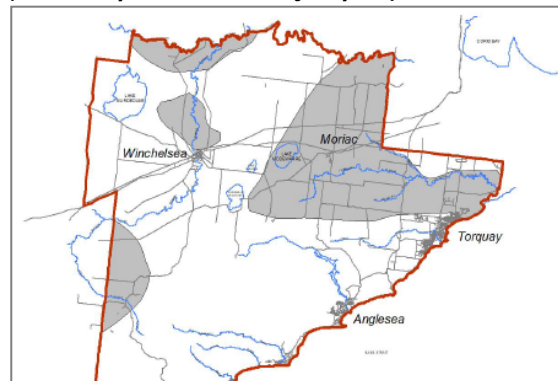
*Requiring the submission of a salinity impact report for any land uses and developments that can significantly change surface water and groundwater hydrological flow patterns within those areas shown on Map 1 to this Clause – ‘Areas of Potential Salinity Impacts’, with measures to mitigate the expansion of existing areas effected by salinity or the generation of new areas effected by salinity* (Content reframed and moved in part to clause 13.04-3L. Remainder of strategy deleted as a requirement cannot be built into a policy and the requirement duplicates that of the Salinity Management Overlay).



**Figure 7: Salinity works priority areas  
(Rural Strategy 1997)**



**Figure 8: Map 1 to Clause 21.03  
(Areas of potential salinity impact)**



A comparison of figure 7 and figure 8 above shows that the extent of the identified potential saline affected areas covers a much greater area than was understood in 1997. The improvements to mapping technology has enabled the creation of more detailed and accurate mapping.

It is important to note that the original priority area was confined to a small area within the Thompsons Creek Catchment; now the area extends further eastward and northward. The land to the north falls within a different subdivision lot size area meaning that the transparency of the current variation control is questionable.

The Salinity Management Overlay (SMO) was introduced into the Surf Coast Planning Scheme through amendment C38 in 2010 and is discussed in more detail below. The overlay mapping is more targeted and applies to 'hot spots' within the greater 'potential salinity impact' areas.

#### Clause 21.05 – Agriculture

In June 2021, the Surf Coast Planning Scheme was translated into the new Planning Policy Framework format (Amendment C136surf). As a result, the referenced strategies under clause 21.05 were distributed between Municipal Planning Strategy clause 2.03-4 and clause 14.01-2L: *Sustainable agricultural use*.

The Agriculture Strategy sought to protect farming land for future generations and encourage sustainable farming practices. The strategies that align closely with the outcomes sought through the variation are as follows:

*Promote agricultural activities and farm management practices that are ecologically sustainable and maintain or increase the productive capacity of the land (Content now at clause 14.01-2L: Sustainable agricultural use).*

The following strategies discourage the current variation to 40ha:

*Discourage the subdivision of rural land so as to maintain technically viable farming land parcels, preserve long term farming and farming related opportunities and maintain valued rural landscapes (Content deleted: duplicated content that is already implicit in clause 14.01-1S: Protection of agricultural land).*

*Apply minimum lot sizes in the rural zones to ensure that rural lot sizes remain technically viable (Content deleted: completed Further Strategic Work).*

*Strongly discourage fragmentation and non-productive use of agricultural land. Discourage the proliferation of housing on small lots and additional houses unrelated*

*to the rural use of the land* (Content deleted: duplicated content that is already implicit in clause 14.01-1S: *Protection of agricultural land*).

As discussed earlier in this report, the 1997 strategy found that the technically viable lot size for the Thompsons Creek Catchment area was 60ha. A provision that encourages a smaller lot size in order to achieve a biodiversity gain is at odds with the above strategies and the equivalent State policy.

The policy under 'key issues and influences' recognises that:

*While comparatively modest, the economic value of agriculture continues to grow and there is potential for further development of agricultural production, including irrigated agriculture based on the use of recycled water from the Black Rock Wastewater Treatment Plant* (Content now at clause 2.03-4).

As mentioned earlier, if it's found to be environmentally sustainable, access to recycled water may change the technically viable lot sizes for this area but currently, only a limited number of farms have access to recycled water.

The strategy under 'undertaking further strategic work' sets out the need for:

*Reviewing the appropriateness of allowing subdivision of land in the Thompsons Creek catchment area to 40 hectares subject to meeting conditions specified in the Schedule to the Farming Zone.*

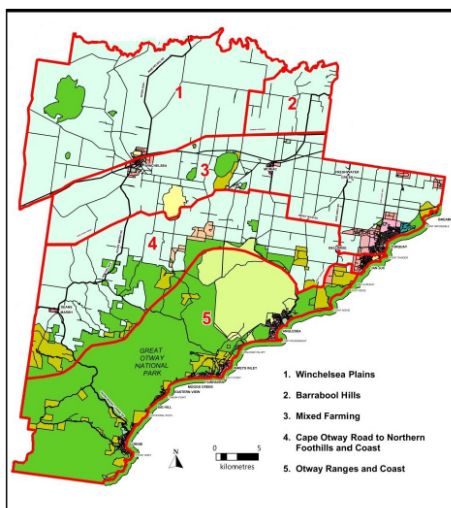
This is the work being undertaken here.

#### Clause 21.06 – Rural Landscapes

In June 2021, the Surf Coast Planning Scheme was translated into the new Planning Policy Framework format (Amendment C136surf). As a result, the referenced strategies under clause 21.06 were distributed between Municipal Planning Strategy clauses 2.03-2 and 2.03-4 and clause 11.01-1L-01: *Settlement in Surf Coast*.

The Rural Landscape policy divided the rural areas of the Shire into five landscape precincts based on landscape features, and also took into account land use, agricultural quality, tenement/allotment patterns and environmental values. Both the 1997 and 2007 rural strategies and reviews highlighted the importance of landscape setting. Map 1 to Clause 21.06 shows the five precincts.

**Figure 9: Map 1 to Clause 21.06 – Landscape Precincts**





The Thompsons Creek Valley is within precincts 3 and 4, supporting 'mixed farming' and being part of the 'Cape Otway Road to Northern Foothills and Coast' precinct described as:

*Mixed Farming – takes in a band of predominantly undulating, cleared pastoral land bisected by the Barwon River in the west and Thompsons Creek in the east, ending in low, environmentally significant, open swamp behind coastal dunes at Breamlea. (Content now at clause 2.03-2). The eastern saltmarsh area has a strong sense of isolation and openness, In the west the allotment and tenement sizes are conducive to agriculture, particularly broadacre farming. In the east the potential exists for sustaining an irrigated agricultural industry should recycled water become available. (Content now at clause 2.03-4).*

Of importance to this review is the policy direction to:

*Maintain clear, non-urban breaks between Geelong and Torquay and between the coastal settlements (Content now at clause 11.01-1L-01: Settlement in Surf Coast).*

The provision is also contrary to the above policy direction by enabling further fragmentation of the critical green break between Geelong and Torquay.

#### Clause 22.01 (Rural Tenement policy)

In June 2021, the Surf Coast Planning Scheme was translated into the new Planning Policy Framework format (Amendment C136surf). As a result, the referenced strategies under clause 22.01 were distributed between clauses 14.01-1L-02: *Dwellings in the Farming and Rural Conservation Zones* and 14.01-1L-03: *Subdivision in the Farming Zone and Rural Conservation Zone*).

The Rural Tenement policy at clause 22.01 (now at clauses 14.01-1L-02 and 14.01-1L-03 (the policy)) protects agricultural land through strict guidelines around permitting dwellings in rural areas; it also set out the requirements for subdivision. The policy covers the tenement and other conditions under which a variation can be considered and is thorough in its specification. The Rural Tenement policy required all rural subdivisions to:

- *Require a written report which addresses the decision guidelines of the Rural Conservation Zone or Farming Zone, as applicable (strategy deleted: see below).*
- *Require a land management plan which demonstrates how the proposal achieves good land management practices. A land management plan should be prepared along the lines of a 'whole farm plan' as described in 'Whole Farm Planning, Principles and Options', edited by BK Garrett, Department of Conservation and Natural Resources and the Department of Agriculture, 1993 (strategy deleted: see below).*
- *Where relevant, requiring the implementation of a land management plan within a specified time as a condition of permit (strategy deleted: see below).*
- *Disregard subjective considerations, such as the perceived non-viability of a lot for farming purposes, personal hardship, or family circumstances, which do not form part of the statutory decision guidelines (strategy deleted: see below).*
- *Require a subdivision layout that takes into consideration the ongoing protection and enhancement of any environmental assets within the property, ensuring adequate buffers (50m from a wetland/waterway, 30m from a minor waterway, 10m clearance of significant trees and 30m clearance of significant understorey) are provided around the asset to ensure protection from current or future land use or development (Note: strategy reworded and moved to clause 14.01-1L-03: *Subdivision in the Farming Zone and Rural Conservation Zone*).*

- Require an owner to enter into a section 173 agreement to protect any environmental values identified by the responsible authority (Note: strategy moved to clauses 14.01-1L-02: *Dwellings in the Farming and Rural Conservation Zones* and 14.01-1L-03: *Subdivision in the Farming Zone and Rural Conservation Zone*).

When the Surf Coast Planning Scheme was translated to the new Planning Policy Framework, the above content was either redistributed to clauses 14.01-1L-02 and 14.01-1L-03 or, where the content repeated clause 35.07 or other State provisions, deleted.

The Rural Tenement Policy (now clause 14.01-1L-02: *Dwellings in the Farming and Rural Conservation Zones* and clause 14.01-1L-03: *Subdivision in the Farming Zone and Rural Conservation Zone*) continues to be an important decision making tool for limiting the proliferation of dwellings in rural areas. However, the translation of the planning scheme into the Planning Policy Framework format recognised that planning has moved on since clause 22.01 became part of the Surf Coast Planning Scheme in 2010. In light of this, the first four strategies listed above, which are now entrenched in the State standard provisions (including the Farming Zone and State policy), have been deleted from the local policy section of the Surf Coast Planning Scheme. The considerations contained within the first four strategies continue to be important; however, they are now standard considerations under the State provisions. The missing benefit is the requirement to revegetate the site with native trees to reverse the impacts of salinity, however this is addressed in the next section.

#### Clause 44.02 (Salinity Management Overlay)

As mentioned above, the reason behind the introduction of the Thompsons Creek variation was to improve the environmental quality of the land, largely by mitigating salinity impacts in the identified priority area within the Thompsons Creek catchment.

With the introduction of the Salinity Management Overlay into the Planning scheme and map 1 at Clause 21.03 (now at clause 13.04-3L), it is now understood that the extent of the problem is much greater than previously thought. The area originally identified was confined to a patch of land to the south of the Princes Highway; whereas it actually extends into both the 40ha area (north of the highway and west of Geelong) and to cover most of the 60ha Thompsons Creek Catchment area.

When the Thompsons Creek variation was introduced, there were no other mechanism with which to address salinity issues in the Shire. However, with the introduction of the Salinity Management Overlay (SMO) there is access to more accurate mapping, policy to address salinity issues and a Schedule to the SMO, which requires a planning permit for buildings and works, vegetation removal and subdivision in saline effected areas.

The overlay includes the purpose:

*To encourage revegetation of areas which contribute to salinity.*

For any proposal triggering a planning permit under the Salinity Management Overlay, the following information must be submitted with the application:

- *The source of water supply.*
- *Water use requirements and effluent or water disposal provision.*
- *Any existing vegetation proposed to be removed.*
- *Details of the species, location and density of any proposed landscaping.*
- *The water balance under the current land use and any proposed land use.*
- *Title and ownership details.*

- *Topographic information including natural contours of the land, highlighting significant ridges, hill tops and crests, slopes in excess of 25 percent (1:4), low lying areas, drainage lines, waterways, springs, dams, lakes, wetlands and other environmental features on or in close proximity to the subject area.*
- *Geology types.*
- *Location and area of outcropping bedrock.*
- *Soil types.*
- *Size and location of high recharge areas and discharge areas from the site inspection, soil types, soil depth, and soil percolation rates/infiltration.*
- *Size and location of discharge areas and areas of high salinity risk from the site inspection, including the identification of shallow water table within 3 metres of the surface (depth to water table), and soil salinity from soil tests or vegetative indicators.*
- *Area of land and the proportion of the development site identified as high recharge or discharge areas.*
- *Location, species and condition of existing vegetation (both native and exotic species).*
- *Existing degraded areas and recommendations for land management practices and remedial works required to overcome any existing or potential land degradation.*
- *Any other application requirements specified in a schedule to this overlay.*

The level of detail required clearly shows the complexity of the issue and the need for a more integrated approach. Revegetation and management of existing vegetation on the site can be appropriately managed and enhanced without the need for a subdivision variation.

#### **4. Summary of Findings**

Minimum lot sizes were introduced into the planning scheme more than 20 years ago and following public exhibition, a conditional variation to the 60 ha lot size in the Thompsons Creek Catchment area was included in response to submissions. Council supported the variation, anticipating that the control might assist in reversing some of the impacts associated with dryland salinity through sound land management practices. The provision that enables a variation to the 60ha minimum lot size acts as an incentive to encourage good land management practices.

Planning Panels Victoria cautioned against the variation and recommended that Council closely monitor and review the operation of the control and this review has found that the provision has not delivered the anticipated benefits.

It is evident that there has been limited uptake of the provision (six properties in total). Additionally, interrogation of “before and after” aerial photography showing the relevant case study sites (see Appendix 1) where approvals have been granted, shows little to no change on half of the properties.

The variation has resulted in further fragmentation of farming land in an area of high landscape significance and where a 60ha minimum lot size was deemed to be a technically viable land size for farming productivity.

Compounding the failure to realise the anticipated benefits, is the weakness in the provision itself. There is a disconnect between any objective or provision that calls up consideration of whether the subject land is suitable for a reduced lot size in the first instance and a subsequent lack of criteria against which the adequacy of a land plan can be measured.

As it relates to a dwelling, the Thompsons Creek provision seeks to avoid a planning permit being triggered and as such, in addition to the above issues:

- An approval under the provision is not a planning permit and there are no notice requirements or review rights
- Any approval sits outside of the planning scheme and unlike a planning permit, it does not require a lapse date or sunset clause to be built into the approval
- As it is a provision that seeks to avoid a planning permit being triggered, the purpose and decision guidelines of the zone are not considered

Overall, the review highlights that planning has progressed since the introduction of the Thompsons Creek provision in 2000. There is now sufficient flexibility and guidance within the provisions of the Farming Zone, Schedule to the Farming Zone and other strategies and policies within the planning scheme to achieve the environmental outcomes sought by the Thompsons Creek provision.

The variation was introduced at a time when there was limited information in the planning scheme to guide sound land management practices and in particular, to mitigate and address salinity impacts. Since that time, policies have been updated, the rural zones reviewed and a Salinity Management overlay and direct policy relating to salinity control included into the Planning Scheme.

The processing of approval for a dwelling seeking a variation to the minimum lot size is difficult for the Responsible Authority due to the manner of the approval and results in important decision guidelines not being considered. This creates an inconsistent approach to planning for rural areas.

The introduction of the Salinity Management Overlay has shown that the previously mapped salinity priority area was inaccurate and the foundation for the variation, no longer sound. There are sufficient mechanisms, requirements and decision guidelines within the Planning Scheme to achieve the desired outcome in a far more transparent and efficient manner. It is therefore recommended that the variation to the minimum lot size in the Thompsons Creek Catchment in the schedule to the Farming Zone be removed.

#### Providing a Greater Level of Certainty to Landholders

The Panel requested that a greater level of certainty be given to the landholders who would lose the ability to construct a dwelling 'as of right' if the provision is removed. Two out of the six properties that have applied for a variation under the provision have not constructed a dwelling. If the provision is removed those two landowners will lose their ability to construct a dwelling 'as of right.'

Inclusion of transitional provisions within the Schedule to the Farming Zone is not an option as an approval under the Thompsons Creek provision (as it relates to dwellings) is not a planning permit; instead, it is an approval that sits outside of the planning scheme.

As an alternative solution, Planning Scheme Amendment C133 proposes to include a new strategy under Clause 14.01-1L-02 (Dwellings in the Farming and Rural Conservation Zones) to enable a previous approval granted under the provision to be considered when a planning permit application is made to use and develop a dwelling on a lot that is below the minimum lot size. The current strategy discourages the use or development of land for a dwelling on land below the minimum lot size except where the land is a separate tenement.

It is proposed that an additional circumstance be included to provide an opportunity for the additional criteria to be considered. The revised wording is as follows:

*Limit the number of dwellings built in rural areas.*

*Avoid the use or development of dwellings on lots below the minimum lot size where:*

- *The land is not identified as a tenement in this policy, or*
- *The lot is part of a tenement, identified in this policy, and the maximum number of dwellings across the tenement would be exceeded, or*
- *The land is not subject to an approved land management plan identified in this policy.*

A policy guideline is then proposed that refers more specifically to the deleted provision;

Consider as relevant:

- Limiting the maximum number of dwellings to one (including any existing or proposed dwellings) on:
  - A lot in the Thompsons Creek Catchment area (shown on Map 1 to the Schedule to Clause 35.07), that is between 40ha-60ha in area, where a section 173 agreement requiring land to be managed and maintained in accordance with an approved Land Management Plan has been entered into and registered on title prior to (insert gazettal day / month) 2022.

The above strategy will provide policy direction for decision makers when assessing future applications for a dwelling on the two remaining properties that have not yet acted on their approval. This is believed to provide the most certainty available within the current planning system.

Five years has lapsed since both approvals were granted. Under normal circumstances where a planning permit is granted, the permit would have expired after four years (or after two years if the use or development had not commenced). It is considered reasonable to expect that a new approval would be required after that length of time.

All landowners within the Thompsons Creek Catchment area were sent a targeted letter as part of public exhibition of the amendment, alerting them of the intended removal of the provision and what the implications of this could be. Only one property owner put in a submission to the amendment and they were heard by Panel. The submitter's dwelling is now under construction and the removal of the provision should no longer personally affect them.

Following gazettal of the amendment a second targeted letter will be sent to the two landowners who have not enacted their 'as of right' entitlement for a dwelling informing them of their ability to apply for a planning permit.

## **Appendix 1**

### **1. Has the alternative subdivision lot size provision been used?**

The initial desktop review found 28 examples where a Section 173 (S173) agreement associated with the subdivision of land or the use of the land for a dwelling was entered into within the Thompsons Creek catchment, since the provision's introduction in 2000. Following the Panel Hearing for amendment C133, a more comprehensive review was undertaken for each of the 28 properties. This revealed that only six of the examples drew on the Thompsons Creek provision, (i.e. sought a variation to the minimum lot size of 60ha). The six examples are listed in Table 1 below.

A S173 agreement requiring the implementation of an approved Land Plan has been recorded for each property. The following table presents the site location and S173 agreement requirements.

**Table 1: Sites that applied for a variation to the lot size under the Schedule to the Farming Zone**

<b>ADDRESS</b>	<b>173 AGREEMENT REQUIREMENTS</b>	<b>APPROVAL INFO</b>	<b>CURRENT STATUS</b>
900 Mt Duneed Rd, Freshwater Creek	The section 173 agreement relates to the land being managed in accordance with the management plan attached to the Section 173 Agreement.	Dwelling.  PG20-0014 – March 2020	Construction of dwelling commenced February 2022
230 Buckley School Road, Buckley	The section 173 agreement relates to the land being managed in accordance with the management plan attached to the Section 173 Agreement.	Dwelling.  OA2546 – March 2015	Dwelling not commenced
270 Buckley Road North, Buckley	Section 173 Agreement requires land cannot be further subdivided, land must be managed in accordance with land management plan, ongoing maintenance of the land and annual reporting.	Two lot subdivision.  11/0366: 2011	Subdivision complete
515 Ghazeepore Road, Mt Duneed	The section 173 agreement relates to the land being managed in accordance with the management plan attached to the Section 173 Agreement.	Dwelling.  OA2586 – March 2018	Dwelling constructed
1025 Dickins Road, Freshwater Creek (335 Hunts Rd)	The land to be managed with the approved environmental management plan for Thompsons Creek.	Dwelling.  S173: January 2009	Dwelling constructed
380 Pettavel Road, Freshwater Creek	The Section 173 Agreement relates to the land to be managed in accordance with the land management plan endorsed which allows a dwelling to be constructed without a planning permit.	Dwelling  OA2539 – January 2015	Dwelling not commenced

## **2. Has the provision worked successfully?**

The review looked at each of the sites listed in table 1 and the conclusions are set out at the end of the appendix to the review.

### **CASE STUDIES**

The following information was reviewed for each case study:

- The approval (planning permit or approval of “other matter” subject to whether subdivision or dwelling),
- The delegate report,
- The approved Land Plan,
- The executed S173 agreement,
- Aerial photography as evidence of on-ground changes since approval,
- Site visit to observe (from roadside) fencing and replanting works undertaken.

#### **Case Study 1: 900 Mt Duneed Road, Freshwater Creek**

##### *What the planning permit approved*

An application was submitted seeking approval to reduce the minimum lot size required to use the land for a dwelling, from 60ha to 40ha, under the schedule to the Farming Zone.

The application was assessed as a general planning matter and not as a planning permit. A planning permit was not triggered by the planning scheme. The schedule to the Farming Zone stipulates the need for an approval to reduce the minimum lot size.

The planning matter was assessed against the variation requirements within the schedule to the farming zone and was approved on the basis that the land management plan suitably fulfilled the criteria. It was believed that the implementation of the plan would result in an improved environmental outcome for the allotment.

Construction of a dwelling commenced on the site in February 2022.

##### *Land Plan*

The Land Plan (the plan) was endorsed under planning approval no PG20/0014 on 4/4/2020. The plan observed that there was no remnant vegetation on the site and that it was degraded due to past land use practices. It also noted that it was not in a recognised hot spot salinity area.

The plan recommended revegetation within the site as follows, shown below in figure 10:

- 8.1ha (14%) of the property revegetation to approximate EVC standards, including;
  - Supplementary understorey plantings of areas A-F (7.1ha),
  - Plantings of both understorey and canopy species in areas G-H (1.0ha);

**Figure 10: Revegetation required on Land Plan**



The plan included a pest, plants and animal management and eradication plan and appropriate planting schedule and species.

The commencement date for the works was the date that the S173 agreement was executed; being 18 August 2020.

Milestone	Deliverables	Reporting
Commencement	Section 173 Agreement executed by both parties	Date of Commencement 18/8/2020

The plan set out land management tasks to be undertaken within the first 2 years, annual tasks and tasks to be undertaken between years 1 and 3 and 3 and 5.

The site visit undertaken in July 2022 confirmed commencement of the dwelling construction and showed evidence of replanting and newly erected fencing. Indigenous vegetation has been planted as required along the southern boundary – abutting Mt Duneed Road.

**Figure 11: House under construction. (Photo taken looking north from Mt Duneed Rd)**





**Figure 12: Replanting. (Photo taken looking east along property boundary - abutting Mt Duneed Rd)**



### Section 173 Agreement

The S173 agreement came into effect on 18 August 2020 and set out that:

- *The Owner applied to the Responsible Authority to reduce the minimum subdivision area for the Land on the basis that the Owner enter into an agreement under section 173 of the Act committing the Owner and any future Owner to the implementation of a land plan.*
- *The Owner has agreed to enter into this Agreement to record the Owner's obligation to ensure that the Land is managed and maintained in accordance with Land Management Plan to the satisfaction of the Responsible Authority.*

The requirements of the agreement are that:

The Owner agrees with the Responsible Authority that unless the prior written consent of the Responsible Authority is obtained, the Owner must:

- *Implement the Land Management Plan;*
- *Manage the Land in accordance with the Land Management Plan; and*
- *Maintain the Land in accordance with the Land Management Plan, on an ongoing basis and to the satisfaction of the Responsible Authority.*

### Salinity

The Salinity Management Overlay does not apply to this property.

### **Case study 2: 230 Buckley School Road, Buckley**

#### *What the planning permit approved*

An application was submitted seeking approval to reduce the minimum lot size required to use the land for a dwelling from 60ha to 40ha under the schedule to the Farming Zone. The application was assessed as a general planning matter against the schedule to the Farming Zone.

The planning matter was assessed against the variation requirements within the schedule to the farming zone and was approved on the basis that the land management plan suitably fulfilled the criteria. It was believed that the implementation of the plan would result in an improved environmental outcome for the allotment.

Conditional approval was granted on 26 June 2015 to use the land for a dwelling without needing a permit through the reduction of the minimum lot size to 40ha. No dwelling has been constructed on this property.

### Land Plan

The Land Plan (the plan) was approved on 26 May 2015. The plan found no remnant vegetation on the site, stating that it had been previously cleared for agriculture. The plan identified a number of weeds on the site and set out strategies for pest plant and animal management. The plan identified that the site was not in a salinity hot spot area.

The plan also recommended that 4.7 ha of the site be planted out with native trees and included a list of suitable species; a work program template, which set out the works to be completed; required timeframes; a blank box for the land owner to fill in the completion date. Notably, revegetation of the site was required to occur every year for the first 5 years.

The S173 agreement was executed on the 20 August 2015, triggering the commencement date. The purpose of the agreement is described as follows:

*The Land is within the Farming Zone. The Schedule to the Farming Zone provides that the minimum area of which no permit is required to use land for a dwelling may be reduced to 40ha provided that certain conditions are met. Those conditions relevantly require:*

- *The preparation of a land management plan; and*
- *The owner to enter into an agreement under Section 173 of the Act which commits any present or future owner to the implementation of the land plan and ongoing management of maintenance of the property so the land does not revert back to its former state.*

*The Land management Plan has been prepared and approved by the Responsible Authority.*

### What changes have occurred on the site since the approval of the land management plan?

The following aerial photos show the land at 230 Buckley School Road, Buckley in 2014 (prior to land plan approval) and in 2022.

The property is rectangular in shape with a wind break of exotic tree species planted along the boundaries. The extent of vegetation is unchanged between 2014 and 2022 and it would appear that no revegetation works have occurred since the execution of the S173 agreement.

**Figure 13: 230 Buckley School Rd: 2014**



**Figure 14: 230 Buckley School Rd: 2022**



**Figure 15: View south. Photo taken from Buckley School Rd: 2022**



A site inspection of the property was completed in July 2022. The site was viewed from Buckley School Road, looking southward. This view of the site confirmed the conditions visible in the aerial photographs; that no revegetation works have been undertaken on this property and no dwelling has been constructed.

**Salinity**

The Salinity Management Overlay does not apply to this property.

**Case study 3: 270 Buckley Road North, Buckley**

This example differs from the other case studies in that it relates to a variation to the minimum subdivisional lot size. A planning permit was granted and the subdivision is complete. The smaller (40ha) lot contains a dwelling and the balance lot exceeds 60ha; no planning permit is required to construct a dwelling on a lot over 60ha in this area. A site visit was not undertaken for this property but aerial photographs indicate that no revegetation has been undertaken.

ADDRESS	LAND PLAN OBLIGATIONS (summarised)	Evidence of being met
270 Buckley Road North, Buckley (11/0366: 2011)	Fencing of existing vegetation: Year 1 Revegetation in designated areas <ul style="list-style-type: none"> <li>• Area 1: Year 1</li> <li>• Areas 2-5: Years 2-4</li> </ul> Increase size of existing dam on lot 1: Years 2-4 Pasture management: annually Pest plant and animal management: annually Grading of internal road: annually <b>Two lot subdivision: subdivision completed</b>	Unknown  None apparent None apparent No Unknown Unknown Assumed

Figure 16: 270 Buckley Rd North: 2011



Figure 17: 270 Buckley Rd North: 2022



**Salinity**

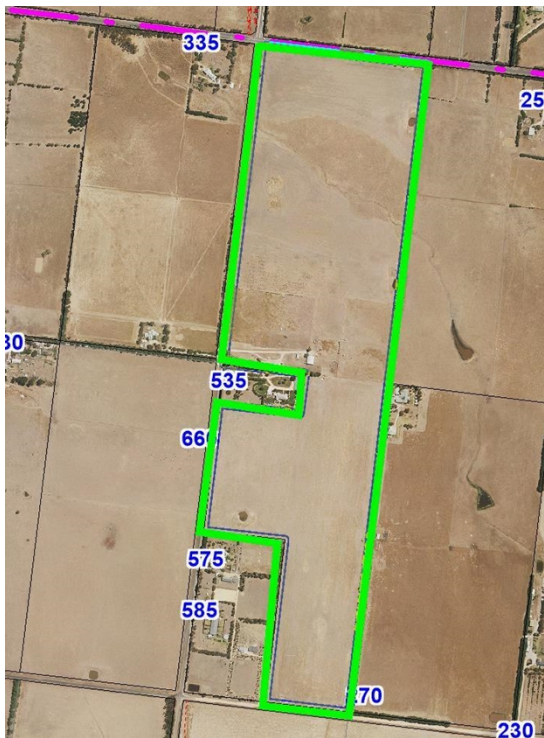
The Salinity Management Overlay does not apply to this property.

**Case Study 4: 515 Ghazeeport Road, Mt Duneed**

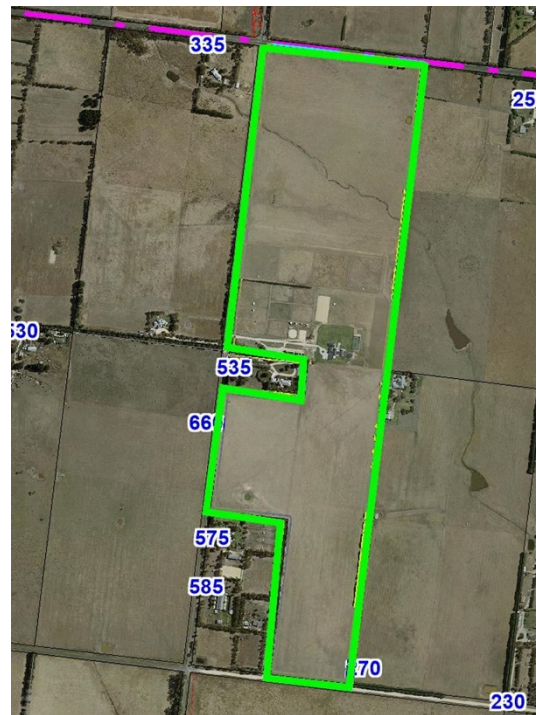
ADDRESS	LAND PLAN OBLIGATIONS (summarised)	MET YES/NO
515 Ghazeeport Road, Mt Duneed (OA2586: 2018)	Annual work plan Revegetation % fencing of same: Year 1 Fencing to exclude stock (riparian): Year 1 Crash grazing of stock exclusion areas: ongoing Permanent creek crossing: Year 1 Pest plant and animal control: ongoing Other <b>Dwelling: dwelling constructed</b>	Unknown None apparent None apparent N/A None apparent Unknown Unknown

The aerial photographs show the site in 2017 (prior to approval) and 2022. The photos show little to no change across the property in five years.

**Figure 18: 515 Ghazeeport Rd: 2017**



**Figure 19: 515 Ghazeeport Rd: 2022**



A site visit was undertaken for this property in July 2022 confirming that the dwelling has been constructed. The visit also confirmed the lack of planting that was apparent in the aerial photographs and that the creek that runs east to west across the property has not been fenced or revegetated as required by the land plan.

**Figure 20: Photo of dwelling. (Photo taken from Ghazeeopore Road - looking east)**



**Figure 21: Photo of drainage line (Photo taken from Ghazeeopore Road - looking east)**



**Salinity**

The Salinity Management Overlay does not apply to this property.

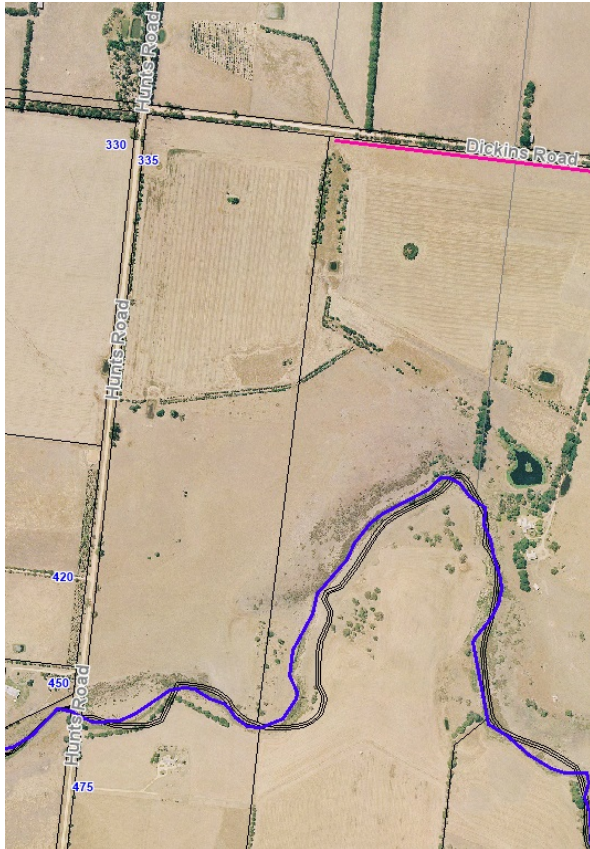
**Case Study 5: 1025 Dickins Road, Freshwater Creek (335 Hunts Road)**

1025 Dickins Road, Freshwater Creek (335 Hunts Rd)	The land to be managed with the approved environmental management plan for Thompsons Creek.	Dwelling. S173: January 2009	Dwelling constructed
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The aerial photographs show the site in 2007 (prior to approval) and in 2022. It is clear that planting has occurred in three locations.

**Figure 22: 335 Hunts Road Rd: 2007**

**Figure 23: 335 Hunts Road Rd: 2022**



The aerial photograph comparison and site inspection (undertaken in July 2022) confirm that revegetation works have occurred on this property.

The photographs at figures 25 and 26 show revegetation of the north western corner of the site and the area abutting the Thompsons Creek (that forms the southern boundary of the property). Revegetation is also apparent along the eastern boundary.

A dwelling and infrastructure for equestrian activities has also been constructed.

**Figure 24: Photo of dwelling. (Photo taken from Dickins Road - looking south)**



**Figure 25: Photo of revegetation in north western corner of property. (Photo taken from Hunts Road - looking east)**





**Figure 26: Photo of revegetation along Thompsons Creek. (Photo taken from Hunts Road - looking east)**



**Salinity**

The Salinity Management Overlay applies to the north eastern corner of this property (see Figure 27). No planting has been undertaken in this area.

**Figure 27: Salinity Management Overlay (Surf Coast Planning Scheme)**



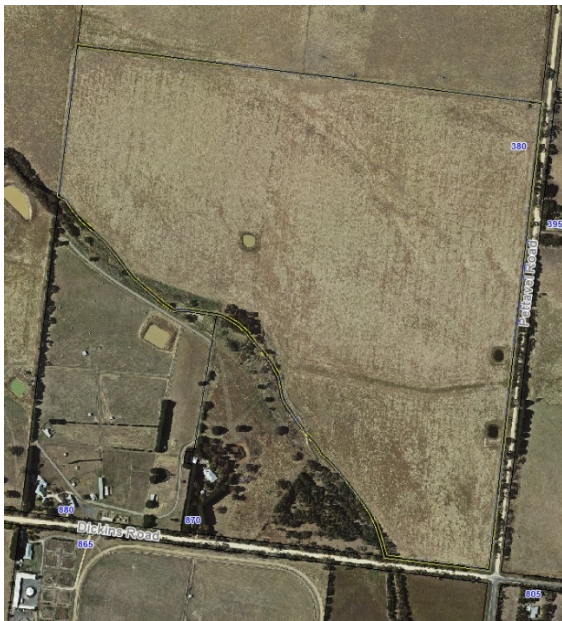
**Case Study 6: 380 Pettavel Road, Freshwater Creek**

380 Pettavel Road, Freshwater Creek	The Section 173 Agreement relates to the land to be managed in accordance with the land management plan endorsed which allows a dwelling to be constructed without a planning permit.	Dwelling  OA2539 – January 2015	No evidence of commencement
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The aerial photographs show the site in 2014 (prior to approval) and in 2022. However, the aerial comparison does not clearly indicate whether or not the site has been revegetated.

**Figure 28: 380 Pettavel Rd: 2014**

**Figure 29: 380 Pettavel Rd: 2022**



A site inspection (undertaken in July 2022) found evidence of recent revegetation works, both along the creek line and in the south eastern corner of the site.

**Figure 30: Photo of revegetation along the creek (Photo taken from Pettavel Road - looking west)**



**Figure 31: Photo of revegetation in the south western part of the site (Photo taken from Dickins Road - looking north)**



There was no dwelling on this property.

## Salinity

The Salinity Management Overlay applies to the south western corner of this property (see Figure 32).

**Figure 32: Salinity Management Overlay (Surf Coast Planning Scheme)**



### Case Studies: summary of key findings

Each dwelling application was processed in a similar way. Approval was required to vary the land area for a dwelling without the need for a planning permit. Each application resulted in an approved Land Plan and the relevant parties entered into a S173 Agreement binding current and future owners of the land to the actions and obligations set out in the Land Plan/s. The subdivision application (case study 3) followed the usual planning permit process excepting that a reduction in the minimum lot size was approved subject to an approved Land Plan and S173 Agreement. It is the dwelling approvals that are discussed further here.

Overall, three of the five applicants have acted upon their approval and constructed a dwelling on their property; two have not. All of the properties will continue to be bound by a 173 agreement to implement a land plan.

Revegetation has occurred on three of the properties (900 Mt Duneed Road, 335 Hunts Road and 380 Pettavel Road) and dwellings have been constructed (or are under construction) on two of the three properties. Two of the properties are also subject to the Salinity Management Overlay (SMO) and while planting has occurred on each of these properties, minimal planting occurred on the SMO affected land on one property and no planting in the SMO occurred on the other.

The revegetation of the remaining two properties (230 Buckley School Road and 515 Ghazeepore Road) does not appear to have been undertaken. The land management plans required an increase in tree planting across the site of up to 15% and evidence of this

revegetation should now be visible considering the time that has elapsed since approval (between 5 – 11 years). There is no visible evidence that planting has occurred.

There was no evidence found on many of the files investigated to show that reporting had been undertaken and submitted to the Responsible Authority in accordance with the relevant Land Plans. In the absence of this information, it is not possible to easily determine whether regular pest plants and animal management has occurred.

In conclusion, the provision was somewhat successful in achieving an increase in vegetation cover on half of the small number of properties that took advantage of the Thompsons Creek provision. With limited planting having been undertaken on the land identified as a salinity hotspot area, the provision appears to have been unsuccessful in reducing the impacts of salinity. The burden to Council of yearly monitoring and review is considered to be outweighed by the minimal benefit returned as evidenced over the 20 years since the provisions introduction.

**END**