

Thompsons Creek report

Introduction

This review is a background paper to Amendment C133, implementing the *Rural Hinterland Futures Strategy*, (2019). It completes the strategic work required at Clause 74.02 (Schedule to further strategic work) within the Operational Provisions of the Surf Coast Planning Scheme. The schedule identifies 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 provision was introduced into the Planning scheme in 2000, and has been in effect for 20 years. This is the first review that has been undertaken. It is a desktop review that explores the appropriateness of the provision by asking three key questions:

- Has the alternative subdivision lot size provision been used since its adoption into the planning scheme?
- Has it worked successfully? (Has it been implemented by the land owner and monitored effectively by the Responsible Authority (Council)? Has the desired outcome been achieved?)
- Are there other mechanisms available within the planning scheme that could achieve the same desired outcome but in a more efficient and effective way?

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 the lot sizes and methodology applied through the 1997 strategy to be still sound and relevant. The minimum subdivision lot sizes recommended by the 1997 strategy are shown in figure 1 below.

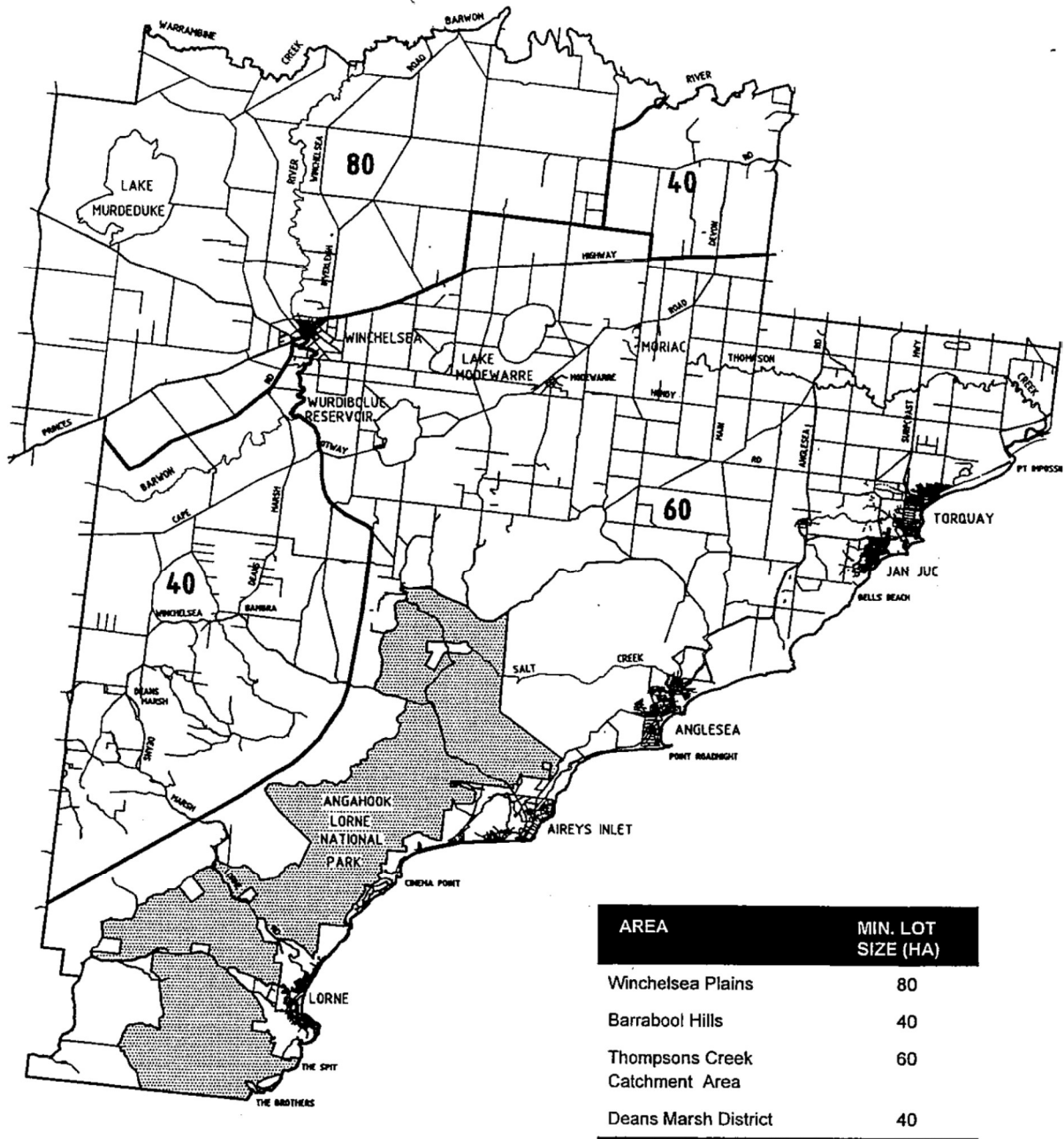


Figure 1: Recommended minimum lot sizes (Rural Land Use Strategy 1997)

Introduction of the variation to the Thompsons Creek Catchment area

As shown in figure 1, 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. 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 2 below.

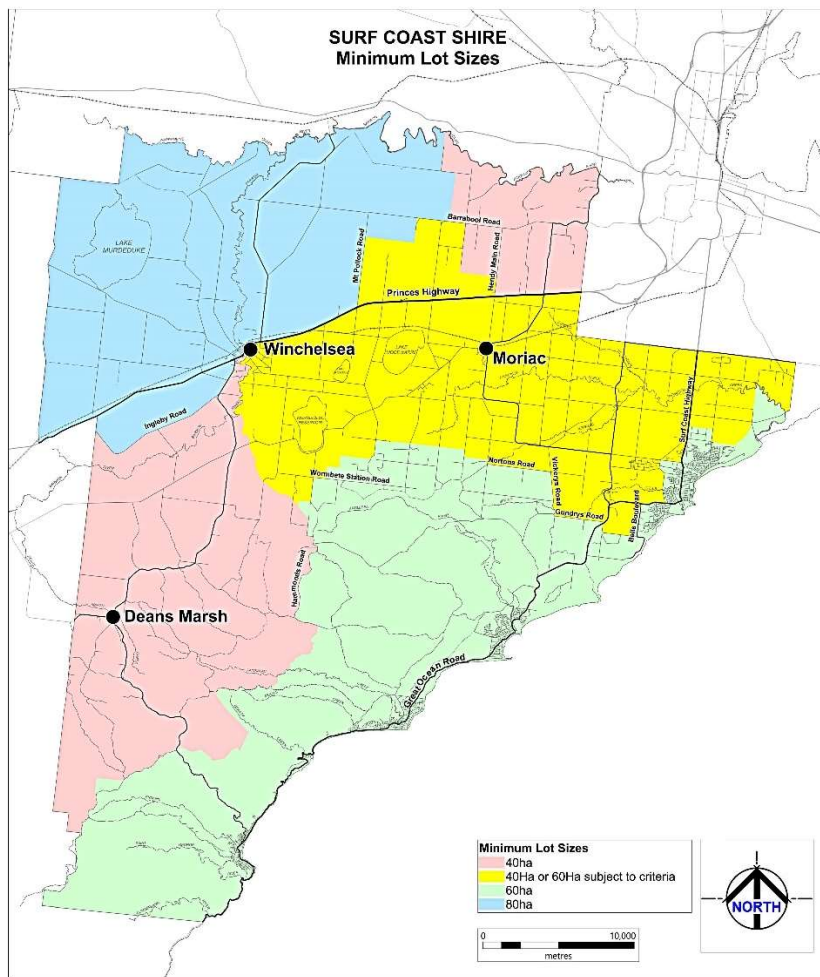


Figure 2: Minimum subdivision lot sizes in rural areas (Surf Coast Planning Scheme)

The land mapped in green and yellow in figure 2 is the area referred to as the 'Thompsons Creek Catchment Area' in figure 1. Both areas have a 60ha minimum lot size (recommended by the 1997 strategy). However the yellow area permits the consideration of a reduction to 40ha provided certain criteria can 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 positive environmental benefits could be achieved. The focus on this area as a priority for environmental enhancement was highlighted in the 1997 strategy, which identified it as salinity hot spot. The strategy warned that if rehabilitation were not undertaken in the short term that this land management issue could cause irreversible damage to farming productivity in the future.

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. Planning Panels Victoria, upon consideration of the submissions, supported Council's intention but believed that the provision was fraught with risk. They highlighted that it 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 to be undertaken of the provision.

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 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 1 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 also 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 strategy identified salinity as a major issue for the Surf Coast Shire and the increase in the water table and outbreaks of salting in the Thompsons Creek catchment a likely result of historic tree removal. The strategy included mapping of salinity priority areas for control works and highlighted 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 3 below.

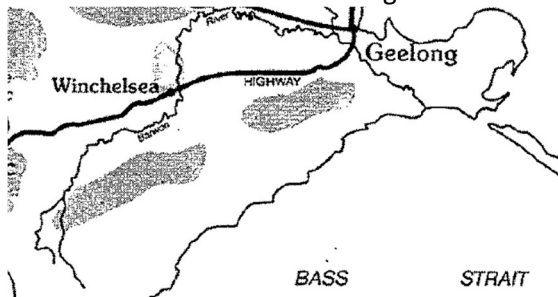


Figure 3: Salinity works priority areas (Rural Strategy 1997)

Recycled water in the Thompsons Creek catchment

The *Rural Strategy Review, 2007* highlighted that if recycled water became more readily available, it would dramatically 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 potential 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, that the technical viability of the lot sizes might be affected. This review does not investigate 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 need to be carefully considered due to negative impacts it could have on the highly sensitive landscape values. The land between Mount Duneed and Torquay forms part of the Surf Coast Shire declared Distinctive Area and Landscape by the Victorian Government.

Has the alternative subdivision lot size provision been used?

The desktop review found 28 examples of the provision being used either for subdivision or a dwelling within the Thompsons Creek catchment since its introduction in 2000. Twenty seven of the applications have been determined and one is currently being processed. A 173 agreement has been recorded for each property requiring the implementation of an approved Land Management Plan. The following table presents the site location and 173 agreement requirements.

ADDRESS

173 AGREEMENT REQUIREMENTS

805 Blackgate Road, Mt Duneed	Permit No. 01/0608 Land must be managed in accordance with the endorsed Property Management Plan. A minimum area of 10% (15% where salting exists) of the land must be planted with indigenous vegetation.
60 Marshmans Outlet, Modewarre	Permit No 99/8142 Requiring owners to undertake the approved farm management plan.
630 Brushfields Rd & 240 Gundrys Rd, Bellbrae	Provides for the implementation of a land management plan and ongoing management and maintenance of the property so that the land does not revert back to its former state. (PP 04/0673)
495 Charlemont Road, Connewarre (Lot 1)	To give effect to the requirements of condition 7 of the planning permit 05/0795
1800 Hendy Main Road, Moriac	To give effect to the requirements of condition 3 of planning permit 07/-536 - land management plan (PP 07/0536)
1320 Cape Otway Road, Modewarre	Limit further Subdivision and Enviromental Management Plan enforced (PP 05/0653)
1025 Dickins Road, Freshwater Creek	The land to be managed with the approved environmental management plan for Thompsons Creek
1025 Dickins Road, Freshwater Creek	Use of the Land for a dwelling, meeting Thompson Creek Guide Lines for Environmental Management Plan
1380 Princes Highway, Mount Moriac	Section 173 requires the land to be managed in accordance with the endorsed environmental management plan (PP 11/0151).
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
30 Nortons Road, Bellbrae	The lot to be managed in accordance with the offsite land management plan to the satisfaction of Council
245 Wainewrights Lane, Buckley	The Section 173 Agreement relates to no further dwellings being able to be constructed on either allotment noted as 245 Wainewrights Lane. (PP 13/0292)
155 Crafters Road, Wurdiboluc	The Section 173 Agreement relates to the endorsed land management plan and the on-going maintenance of the land to ensure the land does not revert to its previous state (PP 13/0373)
740 Hendy Main Road, Moriac	The section 173 agreement relates to the land being managed in accordance with the management plan attached to the Section 173 Agreement (PP 14/0291)
330 Gundrys Road, Bellbrae	The Section 173 Agreement relates to the land being managed in accordance with the endorsed land management plan, no environmental weeds to planted on the site and no livestock are allowed on the site (PP 13/0140)
35 Mount Duneed Rd, Mt Duneed	To give effect to the requirements of condition 1, 2 & 3 of planning permit 08/0301 - Land Management Plan
575 Ghazeepore Road, Mount Duneed	The Section 173 Agreement stipulates that the land must not be further subdivided
2120 Hendy Main Road, Bellbrae	The Section 173 Agreement stipulates that the land must not be further subdivided

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
105 Forest Road, Moriac	Requires implementation of a Land Management Plan endorsed under condition 1(c) of Permit No.04/0316, ongoing management and maintenance of the property and submission of annual reports to the responsible authority detailing progress and status of each years tasks.
740 Dickins Rd, Freshwater Creek	To prevent further subdivision of the land as per Condition 2 of 05/0808.
1170 Surfcoast Highway, Torquay	To give effect to the requirements of condition 2 of planning permit 06/0304 - Land Management Plan
2155 Hendy Main Road, Freshwater Creek	The section 173 requires the land be managed in accordance with the endorsed salinity management plan
55 Woodland Road, Freshwater Creek	The Section 173 prohibits the further subdivision of one of the allotments and that the other allotment may not be developed with a dwelling
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
900 Mt Duneed Road, Freshwater Creek	The section 173 agreement relates to the land being managed in accordance with the management plan attached to the Section 173 Agreement
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
330 Pollocksford Road, Gnarwarre	Undetermined.

Table 1: Examples of sites that applied for a variation to the lot size under the Schedule to the Farming Zone

Has the provision worked successfully?

The review looked at each of the 28 sites listed in table 1. The review concludes that the provision has not worked successfully for two key reasons:

- No bond or monetary commitment was required from the land owner to ensure implementation of the land management plan;
- A clear process to ensure compliance was not put in place therefore follow up was not undertaken.

Case studies

Two (2) properties were selected as case studies. One recent (900 Mt Duneed Road) and one historic (230 Buckley School Road). The following information was reviewed:

- The endorsed planning permit and delegates report,
- The approved land management plan,
- The executed 173 agreement,
- What changes have occurred on site since the approval of the plan (using aerial photography).

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.

Land management plan

The land management 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 4:

- 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 4: Revegetation works required on the Land Management 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 from the execution of the 173 agreement on 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.

173 Agreement

The 173 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.

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.

Approval was given 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.

Land Management Plan

The Land management plan was approved on 26/5/15. The plan found no remnant vegetation on 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. The plan included a work program template which set out the works to be completed, the required timeframe and a blank box for the land owner to fill in the completion date. Revegetation of the site was required to occur every year for the first 5 years.

The 173 Agreement

The 173 agreement was executed on the 20 August 2015 which triggers the commencement date. The agreement outlines the purpose of the agreement 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:

- a. the preparation of a land management plan; and
- b. 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 shows the land at 230 Buckley School Road, Buckley in 2014 (prior to the approval of the management plan) and in 2019 (aerial photography for 2020 is not available). The property is rectangular in shape with a wind break of exotic species planted along the boundaries.

The extent of vegetation is unchanged between 2014 and 2019 and it would appear that no revegetation works have occurred since the execution of the 173 agreement.



Figure 5: 230 Buckley School Road, Buckley 2014

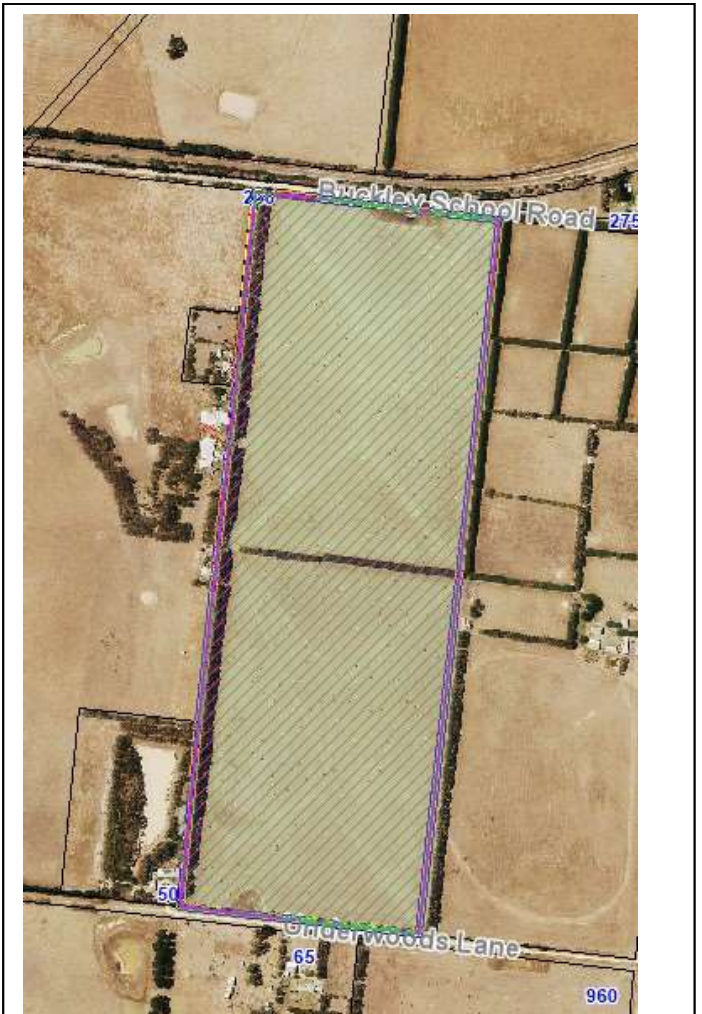


Figure 6: 230 Buckley School Road, Buckley 2019

Summary of key findings

Both applications were processed in a similar way. Both required approval to vary the land area for a dwelling without the need for a planning permit. Both applications approved a land management plan and all parties entered into a 173 agreement to bind all land owners to the ongoing implementation of the plan.

As the approval at 900 Mt Duneed Road is very recent it is too soon to ascertain if vegetation works have commenced through an interrogation of aerial photography. The approval of 230 Buckley School Road is 5 years old and evidence of revegetation should be visible on site. The land management plan required an increase in tree planting across the site of up to 15%. This does not appear to have occurred.

It is not possible from aerial photographs to conclusively say if any remnant vegetation has been fenced off or if pest plants or animal activities have occurred.

There was no evidence found on any of the files investigated to show that reporting has been undertaken and submitted to the Responsible Authority, as required by all of the approved land management plans.

The Planning Process

Approval must be sought from the Responsible authority to vary the minimum lot size from 60ha to 40ha. The process requires the approval of a land management plan which is assessed by Councils delegate against the requirements within the schedule to the Farming Zone. The plan is then referred internally to Council's Environment Department, who considers if the proposed plan will result in an improved environmental outcome for the allotment. The plan is then either approved or refused. If approved the applicant must enter into a section 173 agreement which is lodged on the land title binding all landowners to the implementation of the approved plan.

Issues with the Process

The implementation of the land management plan, although formally bound by a 173 agreement is based on trust that the land owner will do the right thing. In urban areas a landscaping bond is required where additional planting is stipulated by a planning permit condition. The land owner only receives a refund once the planting is complete and an inspection has been undertaken by a Council officer who deems the landscaping to be satisfactory. The requirement of a bond creates an incentive for the landowner to complete the works and to make contact with Council. This tool has worked quite effectively in urban areas to achieve revegetation.

The wording in the schedule to the Farming Zone triggers the need for an approval rather than a planning permit which means that once the requirements are met the process is then complete. Without planning permit conditions a required bond or follow up process cannot be included. The process ends with the formalising of the 173 agreement. It then relies on a commitment from the landowner to implement the requirements of the approved land management plan. If the land changes hands this commitment can become greatly watered down, which was highlighted as a high risk by Panels Victoria prior to its introduction.

Without the need for a planning permit, there are also no third party appeal rights and because the approval process only considers the variation requirements, no consideration can be given to how the reduction in lot size and house entitlement could impact on a legitimate farming activity on a neighbouring property. This makes the provision inconsistent with the adopted *Rural Hinterland Futures Strategy 2019* and Planning Scheme Amendment C133 which seeks to ensure farming remains the primary land use in the Farming Zone in the hinterland.

Councils Ecologist has also expressed difficulties with the assessment process especially where there are no existing environmental assets on site; as it is unclear what should be assessed or what environmental benefits are to be achieved. It is not a prerequisite of the provision that the site must contain significant vegetation, therefore, the requirement of 'protecting' and 'enhancing' remnant vegetation becomes meaningless. As shown in the case studies above the sites are often devoid of native vegetation. In such circumstances the only environmental benefit is the introduction of new native vegetation and management of pest plants and animals.

The provision also specifies the need to plant deep rooted vegetation but only if the site is within an identified salinity hot spot area. None of the sites reviewed were subject to the Salinity Management Overlay.

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

A panel hearing considered the submissions to the amendment to the planning scheme at the time of its 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 RA 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 40 ha minimum involved the preparation of a "land plan", commitment to improved land management practices, and a S 173 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 40 ha 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 40 ha minimum could encourage better land management. The Panel did however express concern regarding the ongoing implementation of the land plan and enforcement of the S 173 agreement. 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 S 173 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 safe guard 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 control. The review was not undertaken within the suggested three year time frame.

Upon completion of the review now in 2020 there appears to be sufficient evidence to support the Panel's concerns that the ongoing enforcement of the 173 agreements is problematic. That it is beyond the resourcing capabilities of Council and the onsite environmental benefits are inconclusive.

There are no mechanisms in place to clearly show (other than the use of aerial photography) that the variation has resulted in improved land management practices, higher farming productivity or reduction to salinity. The process provides no guarantees for success.

Are There 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? Approving a variation to what was deemed to be a technically viable farming lot size could have serious long term agricultural impacts, adding to the problems associated with land fragmentation and with very little or in some cases no clear benefit as a result. The subsequent subdivision may provide short term financial gain to the land owner but there is no guarantee that this money will be reinvested into the land for onsite land improvements.

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).

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 173 agreement entered into to ensure the land management plan is implemented in perpetuity.

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

Subdivision requirements

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"> ▪ that principles of biodiversity have been applied ▪ fencing of areas of remnant vegetation and/or conservation areas to exclude stock ▪ a minimum area of 10% established to trees (increasing to 15% where salting or other problems exist) ▪ proposed management practices in the fenced off areas especially for the control of rabbits, foxes and noxious weeds ▪ 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 <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 (not requiring a planning permit) on a lot of 40ha the above conditions must also be met.

Clause VPP 35.07 – Farming Zone

Most private land within the Thompsons Creek Catchment area is zoned Farming Zone. The Rural Conservation Zone applies to some pockets of land within the area but does not form part of this review as it does not include the variation to subdivision lot size.

The primary purpose of the Farming zone is to protect agricultural land and promote farming as the dominant land use. The zone also includes the following purpose relating to land management practices which is consistent with the conditions within the variation:

To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

A permit is required to subdivide the 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.

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

Before deciding on an application the Responsible Authority must consider a list of issues set out under the decision guidelines within the zone. The matters that align directly with the variation requirements have been underlined. Of relevance are:

- 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 list is comprehensive and enables the Responsible Authority to consider a wide range of pertinent matters for rural areas. The issues include all relevant agricultural issues such as access to recycled water, agricultural land quality, the need for a land management plan and any potential impacts on adjoining land uses.

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

This approach is a much more integrated approach than the current variation process that has a singular focus on biodiversity and salinity management. The criteria required for a variation are so targeted that some of the broader increasingly important farming issues are over looked.

It is considered more appropriate for a planning permit to be triggered for a dwelling or a subdivision enabling the comprehensive matters within the Farming zone to be adequately considered and addressed where relevant. This is also a much more transparent approach. It applies a consistent process to all land within the Farming 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.

Sound land management practices is clearly set out within the decision guidelines of the Farming Zone enabling the Responsible Authority to require best practice for rural areas.

Clause 21.03 (Environmental Management)

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

Appropriate measures to mitigate the risks (associated with salinity).

The Strategy requires that all land shown in Map 1 to the Clause (shown below) must submit a salinity impact report as follows, it states that:

The strategies (within Clause 21.03) will be implemented by:

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.

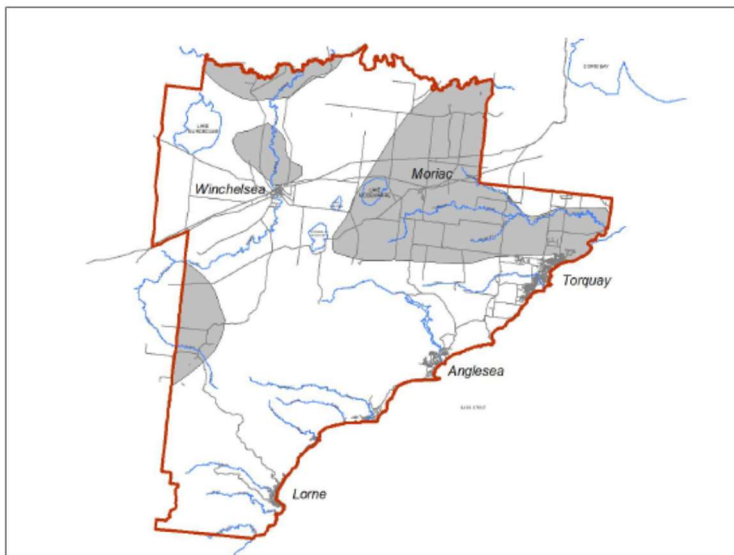


Figure 7: Map 1 to Clause 21.03 - Areas of potential salinity impact.

A comparison between figure 7 and figure 3 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 whereas now the area extends much further eastward and northward. The land to the north is within a different subdivision lot size area meaning that the transparency of the current variation control is now highly 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 greatly reduced areas or 'hot spots' within the greater 'potential salinity impact' areas.

Clause 21.05 – Agriculture

The Agriculture Strategy seeks to protect farming land for future generations and encourage sustainable farming practices. The strategy that align closely to 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

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.

Apply minimum lot sizes in the rural zones to ensure that rural lot sizes remain technically viable.

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.

As discussed earlier in this report the 1997 strategy found that the technically viable lot size for the Thompsons Creek Catchment area was 60ha. Permitting a smaller lot size of 40ha is at odds with the above strategies.

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.

As mentioned earlier, access to recycled water may change the technically viable lot sizes for this area but currently only a limited number of farms currently have access to recycled water from the plant.

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.'

Clause 21.06 – Rural Landscapes

The Rural Landscape policy divides the rural areas of the Shire into five landscape precincts based on landscape features, but also takes 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.

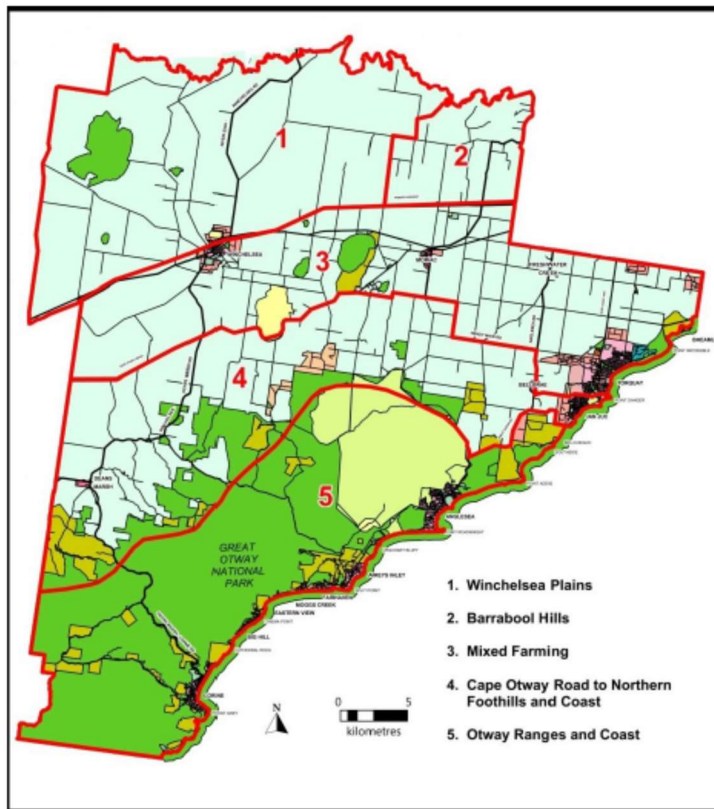


Figure 8: Map 1 to Clause 21.06 – Landscape Precincts

The Thomsons 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 Thomsons Creek in the east, ending in low, environmentally significant, open swamp behind coastal dunes at Breamlea. 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.’

Of importance to this review is the policy direction to:

‘Maintain clear, non urban breaks between Geelong and Torquay and between the coastal settlements.’

The removal of the 40ha variation will retain land in technically viable lot sizes for farming and will also avoid further fragmentation of the critical green break between Geelong and Torquay.

Clause 22.01 (Rural Tenement policy)

The Rural Tenement policy protects agricultural land through containing strict guidelines around permitting dwellings in rural areas. The policy also sets out the requirements for subdivision. The

policy covers all of the conditions that permit a variation but is more thorough in its specification. The Rural Tenement policy requires all rural subdivisions to:

- Require a written report which addresses the decision guidelines of the Rural Conservation Zone or Farming Zone, as applicable.
- 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.
- Where relevant, requiring the implementation of a land management plan within a specified time as a condition of permit.
- 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,
- 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.
- Require an owner to enter into a section 173 agreement to protect any environmental values identified by the responsible authority.

This policy provides the opportunity for the outcomes sought through the variation to be achieved without the risks associated with land fragmentation. The outcome will then be more aligned with the agricultural strategy as discussed above. 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 variation was to improve the quality of the land by managing the impacts of salinity 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 we now understand that the extent of the problem is much greater than previously thought. The original area was confined to a patch of land to the south of the Princess Highway whereas now it is understood to extend into both the 40ha lot size area (north of the highway and west of Geelong) and to cover most of the 60ha Thompsons Creek Catchment area.

At the time of introduction of the variation there were no other mechanism to address salinity issues in the Shire. However with the introduction of the Salinity Management Overlay there is access to more accurate mapping, policy to address salinity issues and a Schedule to the overlay 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 requiring a planning permit on land affected by 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 watertable within 3 metres of the surface (depth to watertable), 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.

Summary of Findings

Minimum lot sizes were introduced into the planning scheme 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 in the hope that the control might reverse some of the impacts associated with dryland salinity through sound land management practices. The control acts as an incentive to encourage good land management through a relaxing of the controls.

Planning Panels Victoria cautioned against the variation and recommended that Council closely monitor and review the operation of the control. The review of the variation has found that the process has not been successful. Although only a desktop review, interrogation of aerial photography before and after the approval of the land management plans has shown little or no changes or improvements to the land.

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

The review has found that there is 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 provision.

The variation was introduced at a time when there was limited information in the planning scheme in regards to salinity management. 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 a fragmented approach to planning for rural areas.

The introduction of the Salinity Management Overlay has shown that the previously mapped salinity priority area is 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.