

TOWN PLANNING SUBMISSION

340 The Centre Way French Island

This report has been prepared by Southern Planning Consultants to accompany a planning permit application to the Minister for Planning for the realignment of boundaries of the land known as No. 340 The Centre Way French Island.



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ATTACHMENTS:

Attachment 1 - Town planning drawings reference 16-0594
Attachment 2 - Application Form
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1. EXECUTIVE SUMMARY

SITE

Address	340 The Centre Way, French Island
Property Description	Lots 4 and 5 on PS 510590G
Title Restrictions	Section 173 Agreement
Area	Lot 4: 83.78 ha, Lot 5: 32.98 ha. Total: 116.76 ha.
Responsible Authority	Minister for Planning
Current Use	Dwelling and agriculture
Registered Owner	Phillip and Dianne Spark

PLANNING SCHEME

Planning Scheme	French Island and Sandstone Island
Zone	Farming Zone (FZ)
Overlay(s)	Bushfire Management Overlay (BMO) Environmental Significance Overlay – Schedule 2 (ESO2) Significant Landscape Overlay - Schedule 1 (SLO1) Heritage Overlay Schedule 10 (HO10)
Abuttal(s)	Public Conservation and Resource Zone (PCRZ) Rural Conservation Zone (RCZ)

APPLICATION

Client	Phillip and Dianne Spark
Proposal	Boundary realignment and deletion of easement
Our Reference	16-0594
Application Type	New Application
Referral Authorities	CFA – Determining Referral Authority
Notification	Pursuant to Section 52

2. INTRODUCTION

Southern Planning Consultants have been engaged by Phillip and Dianne Spark to prepare this report and application in accordance with the relevant provisions of the French Island and Sandstone Island Planning Scheme, including the applicable sections of the Municipal Strategic Statement and all relevant State and Local Policies.

The report provides:

- A description of the site and its surrounds;
- A description of the proposed subdivision;
- An outline of the applicable statutory planning framework; and
- An assessment of the proposal taking into account all relevant town planning considerations.

The project team includes:

Southern Planning Consultants
- Town Planners

Thomas Anderson Design
- Project Drafting

This submission forms part of a town planning application that is seeking approval to realign the boundaries of the two lots and remove/delete an easement at No. 340 The Centre Way, French Island. The application should be read in conjunction with the accompanying town planning drawings reference 16-0594 – Attachment 1.

The proposal will require consent from the Minister for Planning for:

- The subdivision of land pursuant to the Farming Zone, Bushfire Management Overlay (BMO), Heritage Overlay (HO), and the Environmental Significance Overlay (ESO).
- To delete or remove easement E1 (carriageway) pursuant to Clause 52.02 – Easements, Restrictions and Reserves

French Island is located between Stony Point and Coronet Bay and is an island that is serviced by a ferry. Being an island, the land has limited services available to it and has served in the past as a small rural settlement with some small scale agricultural uses and an emerging trend of accommodating small scale ecotourism activities. Being isolated and having limited services, coupled with a coastal environment has proven a challenge to establish viable farming enterprises on the Island. French Island can therefore be more broadly described and considered as a holiday or weekend destination and a relatively small rural settlement with intensive farming enterprises generally confined to the Southern coast of the Island

The subject site comprises two large rural allotments that are situated on the southern coast of French Island. The southern boundary of the land is bordered by the Coast whereas the northern boundary is bordered by dense bushland containing scrub vegetation. The subject site is therefore sensitive to the impact of bushfire and potential impacts of development upon the scenic landscape and environmental systems present (coast). Further and importantly, the land previously contained some historic buildings that are no longer present on the land thereby removing any heritage significance of the site. It is therefore imperative that any application has respect for the sensitive coastal and landscape values present whilst tempering the need for farming enterprises to be established as encouraged by the Zone. With this in mind, the application seeks to consolidate the existing farming

activities (cattle-raising) on the land into one parcel thereby contributing to the viability of the farming enterprise, as much as is practical, having regard to the limitations of the Island. The application has also been prepared to confine any future development potential away from the sensitive coastline on proposed Lot 1 whilst ensuring that the lot is large enough to accommodate a future agriculture or ecotourism use and have regard to the threat from bushfire. This avoids any adverse impacts upon the patch of vegetation to the north resulting now or in the future from occurring. Accordingly, it is clear that the proposed boundary realignment is consistent with the purpose of the Zone and the suite of overlays that affect the property.

More important to the information contained above, although realigning the boundaries of the land, the application does not seek to change what can occur, subject to a planning permit where required, on the application site at present and the outcome of the permit being granted is therefore of no material consequence to anything or person. It is therefore submitted that it is entirely appropriate for a planning permit to be issued as it will have no appreciable outcome other than changing boundary lines on a plan.

3. SITE ANALYSIS

3.1 Subject Site

The subject land comprises Lots 4 and 5 on PS 510590G that is known as 340 The Centre Way, French Island. The subject site is located on the western side of The Centre Way. The lots are irregularly shaped with frontages totaling 1,554.43 metres to The Centre Way, a northern side boundary of 806.56 metres, curved southern side boundaries to the foreshore reserve and western side boundaries totaling 1,217.49 metres.

The lot areas are as follows:

- Lot 4: 83.78 ha,
- Lot 5: 32.98 ha;
- Total 116.76 ha

The land is generally divided up into paddocks some of which contain small dams. The paddocks are lined with rural fencing and perimeter planting. Otherwise the land contains grassland vegetation. Within the south east corner of the land, it contains Peck's House and chickory Kiln recognised by the heritage overlay as being individually significant (no longer present) as well as contains an outbuilding and a dwelling that accommodates the Spark's.

The land falls to the coast to the south.

The subject site is illustrated in Figure 1 below.



FIGURE 1 - AERIAL PHOTOGRAPH (NEARMAP, 2010)

3.2 Surrounds

- North:** Immediately to the north side of the subject site is a patch of coastal vegetation that is zoned Rural Conservation. The patch of vegetation is not connected to any larger patches being generally surrounded by rural allotments.
- East:** The eastern interface to the site is 'The Centre Way' providing access to the site. Opposite The Centre Way to the subject site is rural land zoned FZ with lots containing dwellings and agricultural pursuits, generally including livestock/horses.
- South:** Directly to the south of the subject site is a foreshore reserve, zoned PCRZ, with Western Port Bay beyond.

West: Immediately to the west (rear) of the subject site is rural land zoned FZ – Lot 3. This lot contains a dwelling.



FIGURE 2 – MELWAY MAP

4. PROPOSAL

The application seeks approval to:

“Realignment of boundaries between two (2) lots and removal of a carriageway easement in accordance with the submitted plans”

Key parameters of the proposal are summarised as follows:

The current lot configuration is as follows:

- Lot 4: 83.78 ha
- Lot 5: 32.98 ha
- Total 116.76 ha

The proposal seeks to realign the boundaries between lots 4 and 5 and renumbering them as Lots 1 and 2 with areas as follows:

- Lot 1: 4.047 ha
- Lot 2: 112.71 ha
- Total: 116.76 ha

The easement E1 proposed to be deleted serves as a carriageway easement servicing and in favour of Lot 4.

5. PLANNING SCHEME PROVISIONS

5.1 Zone

Clause 35.07 Farming Zone

The subject site is included in a Farming Zone pursuant to the provisions of the French Island and Sandstone Island Planning Scheme.

The purpose of the FZ is identified as having the following objectives:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture.
- To encourage use and subdivision of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To protect and enhance natural resources and the biodiversity of the area.

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

In this instance the subdivision is the re-subdivision of existing lots and the number of lots is not increased therefore the resulting Lot 2, being less than 40 hectares can be considered.

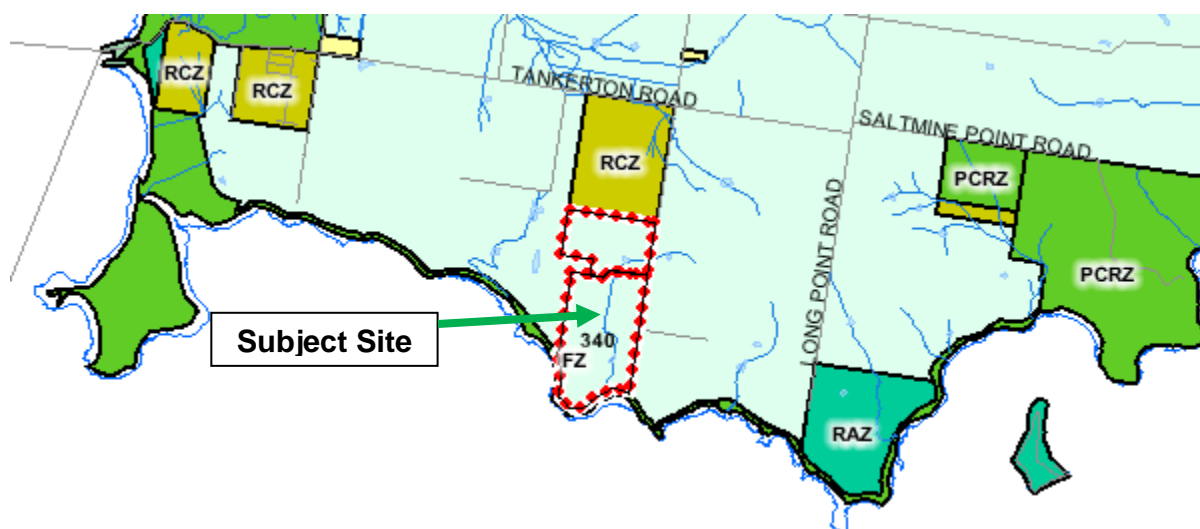


FIGURE 3 - ZONING MAP

5.2 Overlays

Clause 42.01 Environmental Significance Overlay – Schedule 2 (ESO2) - Coastal Areas

The subject site is affected by Environmental Significance Overlay (Schedule 2) within the French Island and Sandstone Island Planning Scheme.

Relevant to the application at hand, pursuant to the requirements of Clause 42.01 a planning permit is required to subdivide land.

Clause 42.03 Significant Landscape Overlay (Schedule 1) French Island

The entirety of the subject site is affected by Significant Landscape Overlay (Schedule 1).

Notably, the Significant Landscape Overlay does not require a planning permit to subdivide land. The application that does not seek to construct or carry out any works or remove vegetation does not therefore require a planning permit under this overlay. For the purposes of this application this overlay is not relevant to its consideration.

Clause 44.06 Bushfire Management Overlay (BMO)

The entirety of the subject site is included within the Bushfire Management Overlay.

Pursuant to the requirements of Clause 44.06 a planning permit is required to subdivide land.

Clause 43.01 Heritage Overlay Schedule 10 (HO10)

The southeast corner of the subject site is affected by Heritage Overlay (Schedule 10).

Pursuant to the requirements of Clause 43.01 a planning permit is required to subdivide land.

5.3 State Planning Policy Framework

The following clauses from the State Planning Policy Framework (SPPF) are relevant to the proposal:

- Clause 11 – Settlement
 - 11.05-3: Rural Productivity
- Clause 12 – Environmental and Landscape Values
 - 12.04-2: Landscapes
- Clause 13 – Environmental Risks
 - 13.05-1: Wildfire Risks
- Clause 14 – Natural Resource Management
 - 14.01-1: Protection of Agricultural Land
- Clause 15 – Built Environment and Heritage
 - 15.03-2: Aboriginal cultural heritage
- Clause 18 - Transport
- Clause 19 – Infrastructure

5.4 Local Planning Policy Framework

Municipal Strategic Statement (MSS)

Clause 21 of the French Island and Sandstone Island Planning Scheme contains the Municipal Strategic Statement (MSS). The MSS provides the strategic directions for land use and subdivision objectives for French Island and Sandstone Island. Other than the MSS, no local policies are contained within the French Island and Sandstone Island Planning Scheme.

To this end, the following policies are of note:

- Clause 21.01 Strategic Statement
- Clause 21.02 French Island, Sandstone Island and Elizabeth Island profile
- Clause 21.03 Strategic vision and key issues
- Clause 21.05 The environment
- Clause 21.07 Heritage and built environment
- Clause 21.08 Resource management
- Clause 21.09 Transport
- Clause 21.10 Infrastructure

In summary, the MSS sets out the unique preferred outcomes of the unincorporated French Island in the context of its isolation, limited infrastructure and low visitor numbers.

5.5 Particular and General Provisions

The following Clauses within the Particular and General Provisions sections of the French Island and Sandstone Island Planning Scheme are relevant to the application:

- Clause 52.02 Easements, Restrictions and Reserves
- Decision Guidelines (Clause 65)

6. PLANNING ASSESSMENT

Having regard to the nature of the proposal and the applicable provisions as set out in the French Island and Sandstone Island Planning Scheme, this report addresses:

- 6.1 Consistency with the SPPF and MSS
- 6.2 Whether the layout of the proposed reconfigured lots in the FZ is appropriate
- 6.3 The effect of the subdivision on the landscape and environmental values of the site
- 6.4 Any other matter

6.1 Policy Consideration

State Planning Policy Framework

Clause 11 – Settlement (Green Wedges & Rural Productivity)

Objectives:

- *To manage land use change and subdivision in rural areas to promote agriculture and rural production.*

Although, the subject site is located within an area regulated by the Farming Zone it is more relevantly located within reasonable proximity to a sensitive coastal environment whereby the surrounding environment is sensitive to particular land use and development. The potential land use, development and subdivision of the land is therefore critical to protecting the sensitive coastal environment whilst encouraging some limited agricultural pursuits. Presumably, the limitations of the Island and the scenic landscape and environmental values present has led to the growth of ecotourism ventures as an emerging theme scattered across the island

The application that seeks to consolidate an existing agricultural use on one parcel whilst providing a parcel of land that is large enough to accommodate future development and rural uses and is large enough to avoid adverse impacts upon the northern patch of vegetation that is significantly separated from the sensitive coast environment will ensure that the application clearly facilitates the existing and future agricultural production on the application site whilst also protecting the landscape and environmental values present. These sentiments are echoed throughout the French and Sandstone Island Planning Scheme and demonstrate an appropriate design response.

Further to the above and importantly, any future development will be provided with services that meet best practice environmental standards to ensure that no significant or unreasonable outcomes will be experienced from the proposal and the introduction of any development will assist in ensuring the ongoing management of the land. The proposed use and subdivision will not therefore reduce the availability of productive agricultural land and is therefore consistent with the broad based environmental objectives within Clause 11 of the Scheme.

Clause 12 – Environmental and Landscape Values (Sensitive Areas and Landscapes)

Objectives:

- *To protect and conserve environmentally sensitive areas.*
- *To protect landscapes and significant open spaces that contribute to character, identity and sustainable environments.*

Being one of the more relevant State Planning Policies, consideration must be given to protection of habitat, environmental and landscape values.

A review of the plans will reveal that the subdivision has been set out to avoid vegetation removal and having regard to the implications of the Bushfire Management Overlay by maintaining a generously dimensioned vacant lot (Future/Proposed Lot 1) that can accommodate future development that is typically found in a rural setting. These features of the subdivision, that enjoys the benefit of a vegetated backdrop that will filter views of any future building when viewed from the surrounding areas, demonstrates the subdivision is sympathetic to the rural environs of the site, it will complement the existing character of the area and maintain the scenic landscape and environmental values present.

The only potential for the subdivision to impact upon the natural environment is through the waste water of any future development, a dwelling for example. In this regard the land is large enough to contain and treat any waste water on site through a septic tank that meets best practice standards ensuring that nutrient laden water will not enter the water catchment in proximity to the subject site and refuse is disposed and collected in the same manner as other lots on the Island.

Further and more important to the commentary provided above, the application does not create a lot that increases the lands development potential and as such has no net outcome in terms of what can occur on the land to date, subject to any planning permits.

Subject to the discussion above, the landscape qualities, open space linkages and environmental performance of Farming Zone land will be maintained by the proposal and it is on this basis the conclusion is drawn the subdivision achieves a high degree of compliance with the objectives and decision guidelines of Clause 12 of the Scheme.

Clause 13 – Environmental Risks (Bushfire)

Objective: *To assist to strengthen community resilience to bushfire.*

A best practice environmental management and risk management approach has been undertaken for the subdivision that avoids and minimises environmental degradation and hazards. The site is located in a bushfire prone area and affected by a Bushfire Management Overlay.

Given the land is not zoned for residential or rural residential purposes the Bushfire Management Overlay prescribes that a land must be designed to accommodate or address the requirements of Table 2 to Clause 52.47-2.1 and Clause 52.47-2.3. The Bushfire Management Statement to be prepared will confirm that the land being 105.2m wide by 384.7m deep is large enough to contain building envelopes to meet the defendable space requirements that are solely contained within the boundaries of Future / Proposed Lot 1, with no new buildings and works proposed likely to occur or proposed within Lot 2. Accordingly, it is clear that the lots have been designed appropriately to mitigate the risk of damage to property and loss of life in the event of a bushfire. The application is therefore submitted to be consistent with the intent of this policy.

Clause 14 – Natural Resource Management (Agriculture)

Objectives:

- *To protect productive farmland which is of strategic significance in the local or regional context.*
- *To encourage sustainable agricultural land use.*

Detailed earlier in this submission, French Island is challenged in accommodating intensive or sustainable farming activities thereby providing a challenge in being able to achieve the objectives of this State Policy that was not prepared with French Island specifically in mind. Whilst this may be the case, the application seeks approval to consolidate an existing farming enterprise onto one large lot (Proposed Lot 2) and create a smaller Lot (proposed Lot 1) that is capable of accommodating some form of future rural use. Accordingly, the larger of the proposed lots that has been designed to consolidate and support an existing rural use whilst providing a new lot that has the potential to be used for a future rural enterprise does not therefore reduce agricultural land. Therefore, the proposed boundary realignment is clearly consistent with the objectives of this policy.

Having said this, this policy does require consideration be given to the impact of the introduction of a sensitive use or future sensitive use on land zoned Farming to surrounding rural enterprises. In regard to this, the application does not seek to introduce the potential for development than what otherwise could occur (subject to a permit) and if this did result in a dwelling being constructed the land is surrounded by rural residential lots with some rural uses that are not sensitive to the encroachment of residential uses or potentially impacted upon by a new residential use. Accordingly, it is again concluded the proposed subdivision is clearly consistent with the intent of this policy.

Clause 15 – Built Environment and Heritage

Objective: *To ensure the protection and conservation of places of Aboriginal cultural heritage significance.*

This clause contains general guidelines for subdivision requiring consideration to be given to the potential for and protection of sites of Aboriginal Heritage Significance. It is necessary to decide whether a Cultural Heritage Management Plan (CHMP) is required if:

- All or part of the activity is in an "area of cultural heritage sensitivity", and
- All or part of the activity is a "high impact activity".

Although part of the land is classified as potentially having cultural heritage sensitivity, being within 200 metres of the coast, the realignment of the boundaries between two lots is not classified as a high-impact activity therefore a Cultural Heritage Management Plan is not required to be provided. In addition, it is unlikely that the proposed subdivision contains any culturally significant material. Accordingly, any potential impacts from the proposed subdivision on any unlikely cultural significant material are within the tolerable limits set within the Aboriginal Heritage Act.

Objective: To ensure the conservation of places of heritage significance.

The subject site is regulated within its South East portion by the Heritage Overlay. The Overlay recognises the site contains buildings of individual heritage significance (no longer present) as opposed to the shape or pattern of the subdivision being significant. In this regard, the subdivision does not impact upon any element of the site that is of heritage significance and in fact it confines development as far as is practical from any heritage building on the site thereby ensuring that the application facilitates the protection of the heritage values present thereby being consistent with the outcomes sought by this policy.

Clause 18 - Transport

Objective: *Planning should ensure an integrated and sustainable transport system that provides access to social and economic opportunities, facilitates economic prosperity, contributes to environmental sustainability, coordinates reliable movements of people and goods, and is safe.*

The proposed subdivision is submitted to achieve a high degree of compliance with the objectives of this policy given the unsealed road network, within close proximity to the site, is formed providing links to the township of Tankerton to the west of the island and to the vehicular ferry port to the east. In addition, the application does not seek to create new lots but rather re-define the existing lots in a slightly different arrangement thereby having no consequential outcome.

Clause 19 – Infrastructure

Objective: *To plan for the provision of water supply, sewerage and drainage services that efficiently and effectively meet State and community needs and protect the environment.*

French Island has a very limited number of services available to it. The proposed subdivision that does not increase the development potential of the land and provides large lots that are capable of providing their own infrastructure for the existing and any future development, as well as, relying on existing infrastructure is therefore submitted to achieve a high degree of compliance with the objective of this policy. This is elaborated upon within the local policy response to Clause 21.10 - Infrastructure detailed later in this report.

Municipal Strategic Statement

Clause 21.01 – Strategic Statement

This policy identifies The Minister for Planning as the responsible and planning authority for the unincorporated territories of French Island, Sandstone Island and Elizabeth Island, as the islands do not fall within any municipal boundary.

French Island is located approximately 65 kilometres south-east of Melbourne in Western Port Bay and has a land area of around 17,000 hectares. French Island sits approximately 5 kilometres east of Stony Point, 10 kilometres south of Tooradin and 5 kilometres north of Phillip Island.

Day-to-day access to and from the Island is by the passenger ferry from Stony Point and Cowes to Tankerton or the vehicular ferry from Corinella to Saltmine Point. The subject site is therefore a gateway location at the interface of French Island with the Victorian mainland and therefore enjoys maintained and appropriately constructed roads.

Clause 21.02 – French Island, Sandstone Island and Elizabeth Island profile

Planning and structure

The day-to-day administration of the planning scheme and assessment of planning permit applications made to the responsible authority are undertaken by the (former) Department of Planning and Community Development, now known as the Department of Environment, Land, Water and Planning (DELWP).

Parks Victoria is the land manager of the French Island National Park and their views or comments may be sought by the (former) Department of Sustainability and Environment in responding to referrals from the (former) Department of Planning and Community Development on planning applications, particularly use, development and subdivision proposals abutting the National Park.

Population and settlement

French Island has an estimated permanent population of 90 people and an additional part time population of 90 people. While the Island's permanent population has fluctuated over the years, it has changed little since 1975 when the McLeod Prison Farm closed. The Island is likely to continue to attract mainlander interest as a location for 'weekender' or hobby farm activities. This level of interest should maintain the Island's part-time population.

The settlement pattern on French Island is scattered due to the nature of the holdings, but dwellings are predominantly located on the western and southern sides of the Island. The Island contains approximately 60 dwellings. French Island has no reticulated services or facilities, which restricts residential subdivision opportunities.

French Island has one general store and post office, a primary school (which is exempt from the State's minimum pupil regulations due to its unusual circumstances), the Parks Victoria office, a public hall, jetty, sports ground and a cemetery. The Environment Protection Authority monitors the Island's small community tip. The Island, like other Victorian country areas, has a voluntary Country Fire Authority service. Most of the Island's extensive areas of native vegetation are highly flammable and there is a high risk of wildfire.

This clause provides additional detail about the barge service to the island, as follows:

A barge service, which operates on an as-needs basis, offering an irregular service between Corinella on the main land and the barge landing, The Centre Way, on French Island. The barge can be used for the transportation of vehicles, fuel, cattle and other goods.

The impacts of climate change on French Island are broadly discussed.

Clause 21.03 – Strategic vision and key issues

The clause briefly introduces the following clauses relating to:

- Clause 21.05 The environment
- Clause 21.07 Heritage and built environment
- Clause 21.08 Resource management
- Clause 21.09 Transport
- Clause 21.10 Infrastructure

Clause 21.05 – The environment

The French Island Marine National Park encompasses approximately 2800 hectares along the northern shoreline of French Island and includes extensive areas of saltmarsh and mangrove communities and seagrass beds which act as a nursery for fish, especially King George Whiting, Bream and Mullet. The area is also a significant feeding habitat for migratory waders found in Western Port Bay.

French Island, due to its extensive natural environment and minimal subdivision, has unique landscape values. The National Trust has given the landscape on French Island a 'high' rating, assigned to parts of the physical environment considered to be essential to the heritage of Australia. The National Trust refers to the Island as a prominent feature in Western Port Bay.

Key issues

- Protecting and managing the Island's coastal areas that are recognised by the Ramsar Convention.
- Recognising the importance of the French Island Marine National Park to the environmentally sensitive waters of Western Port Bay.
- Protecting the botanical and zoological significance of the coastal environs.
- Conserving and protecting the Island's landscape qualities that have been recognised by the National Trust of Australia.
- Managing the interface between the National Park and Marine National Park, and private land holdings.
- Protecting areas of environmental, landscape, agricultural, cultural and recreational significance for the benefit of the local and wider community.

- Recognising the impacts of climate change on subdivision opportunities on the Island and the waters of Western Port Bay.

Objective 1 To minimise negative impacts on the coastal environment.

- Strategy 1.1 Support use and development in coastal locations where they are compatible with the sensitive nature of their surrounding environment and the capacity of the land.
- Strategy 1.2 Ensure that there is no net loss of coastal vegetation through the use or development of land.
- Strategy 1.3 Require proposals to demonstrate that they will not adversely affect the habitat and breeding values for migratory birds, waterfowl and other fauna species.
- Strategy 1.4 Protect coastal and wetland areas from inappropriate land use and development.
- Strategy 1.5 Ensure that use and development does not have an adverse impact on the waters, and the environmental values of, Western Port Bay and the French Island Marine National Park.
- Strategy 1.6 Ensure that development is set back an appropriate distance to minimise impacts on the stability of the coastline.

Objective 2 To protect and enhance the landscape values of the Island.

- Strategy 2.1 Respect the National Trust landscape classification by minimising visual impacts of development through appropriate siting and design, particularly along the coastline and from elevated viewing points.
- Strategy 2.2 Ensure that development is designed and setback an appropriate distance from the coastline to minimise visual impacts and retain coastal landscape values.
- Strategy 2.3 Require buildings to be set back an appropriate distance from a road or road reserve and be designed to reduce their impact on the Island's landscape values.

Objective 3 To minimise the impacts of climate change on the Island.

- Strategy 3.1 Ensure that any use or development proposal has regard to relevant impacts of climate change.

Given the application does not involve buildings and works and only seeks to realign the boundaries between lots thereby avoiding creating any new development potential this policy has limited relevance. Having said this, proposed Lot 1 is located away from the sensitive coastline as much as is practical, the application does not necessitate the removal of vegetation and the lots are large enough to accommodate all of the required infrastructure and defensible space areas for future development within their boundaries. Accordingly, in so far as this policy is relevant, the application is consistent with its policies objectives.

Clause 21.07 – Heritage and built environment

This policy provides an overview of French Island. It states *“French Island’s lack of services requires new developments to be environmentally sustainably designed. Development must take into account the natural and cultural context of its location and dwellings must provide facilities for waste disposal, energy generation and water storage.”*

Importantly, this policy although seeking to reinforce the protection of heritage and the environment has little relevance to the proposal. That is because no development is proposed. The only relevant strategy contained within this policy includes:

“Strategy 2.5 Ensure that the subdivision of land does not facilitate development and land use which degrades the Island’s landscape values or detracts from its rural character”.

Although subdividing the land, the application does not seek to introduce additional lots on French Island and does not increase the development potential of the site. Rather, what it does do is allow for the consolidation of a rural use and confines any future development to the northern portion of the site where it will have least impact upon the heritage values by virtue of being at least 1km from any heritage buildings (no longer present) and the least impact upon the landscape that is ensured by taking advantage of a backdrop of vegetation on the adjoining reserve. Accordingly, the proposed realignment of boundaries as proposed does not facilitate future development that has the potential to degrade the Island's landscape values or detract from its rural character. The proposed subdivision is therefore consistent with the outcomes intended by this policy.

Clause 21.08 – Resource management

Clause 21.08, *inter alia*, seeks to protect the agricultural use of rural land, encourage the diversification of agricultural and rural land use and ensure that activities are consistent with the capabilities of the land. To this end, the proposed subdivision that seeks to consolidate an existing farming enterprise into one large parcel and ensure that the future vacant lot is capable of accommodating an future agricultural or alternate land use is clearly consistent with the objectives and strategies of this policy. Furthermore, the subdivision seeks to confine any future development as far as practical from the PPRZ to the South and heritage buildings thereby ensuring that the proposal will not impact upon the sensitive coastal environment or the heritage values present. The application is therefore submitted to be consistent with the outcomes sought by this policy.

Clause 21.09 – Transport

This clause requires subdivision proposals to demonstrate safe access year round, including times of flood. The existing access arrangements to proposed Lot 2 remain unchanged and future access to Centre Way on the highest part of the land ensure that access to the constructed Centre Way is safe and convenient all year round.

Clause 21.10 – Infrastructure

French Island has limited community services and facilities, including a general store and post office, a primary school, the Parks Victoria office, a public hall, sports ground, cemetery, a jetty, a radio link to the mainland for telecommunication and a small community tip.

Other than roads, the Island's infrastructure is limited to a radio link to the mainland for telephone services. There is no reticulated service for electricity, gas, water or sewage. Electricity is provided by generators (diesel, solar or wind) and domestic water is provided from rainfall or bores.

Key issues/challenges for French Island include:

- Managing the limited infrastructure in an environmentally sustainable manner.
- Recognising that the limited infrastructure restricts the subdivision opportunities on the Island.

In order to ensure that subdivision is designed in accordance with the Island's infrastructure capabilities, the following strategies have been developed:

- Strategy 1.1 Support developments in accordance with the capabilities of the land.
- Strategy 1.2 Require a waste management plan to be submitted with any development.
- Strategy 1.3 Require development to be self-sufficient in the provision of a sustainable water and electricity supply and on-site waste water treatment.

The newly created lots will contain the existing infrastructure to the existing dwelling and proposed Lot 1 is large enough to accommodate any services required for any future development with any future services likely to include sustainable rainwater (in the form of large water tanks) and generated electricity supplies (in the form of a diesel generator) and on-site waste water treatment system. In addition, waste will be collected by a contractor in a similar arrangement to other properties on the Island. The application is therefore consistent with the objectives of this policy in so far as they are relevant.

Subject to the discussion contained above, on balance, the proposed subdivision is submitted to be consistent with relevant policies contained within the State and Local Planning Policy framework.

6.2 Farming Zone Considerations

Clause 35.07 provides guidance as to whether the subdivision of land is appropriate. This is discussed as follows:

The subject site is included in a Farming Zone pursuant to the provisions of Clause 35.07 a permit is required to subdivide land.

Each lot must be at least the area specified for the land in a schedule to this zone. 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 apply:

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

In this instance the subdivision is the re-subdivision of existing lots and the number of lots is not increased therefore the resulting Lot 1, being less than 40 hectares can be considered.

The purpose of the FZ is identified as having the following objectives:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture.
- To encourage use and subdivision of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To protect and enhance natural resources and the biodiversity of the area.

Stated throughout this submission, the subject site is identified as accommodating an agricultural land use (cattle raising) across the two lots. The sale of one or both of these lots will result in the rural land use either reducing in scale and in all likelihood affecting its sustainability or ceasing. The application that avoids this from occurring through the provision of a very large rural lot (proposed Lot 2) that encourages the continuation of the existing or introduction of a new rural land use, clearly seeks to

protect and ensure the continued agriculture use of the rural land. This is therefore entirely appropriate with the stated purpose/s of the zone.

This being said, the purpose of the Farming Zone also requires consideration be given to the impact/s of development or non agricultural land uses (particularly dwellings) can have. Whilst the application does not seek to conduct any works nor introduce a non agricultural use such as a dwelling, I have turned my mind to this possibility - as required by the Bushfire Management Overlay by nominating a building envelope. In the first instance, any future buildings on the site is likely to only occur on proposed Lot 1 (confined to the building envelope) because proposed Lot 2 already contains a series of outbuildings and a dwelling. The lot (proposed Lot 1) is large enough to accommodate all infrastructure associated with any future land use and development whilst avoiding vegetation removal, noting that all of the general requirements contained within Clause 35.07-4 can be complied with on proposed Lot 1. In addition, future Lot 1 is large enough to accommodate some form of future agricultural or other rural land use (such as ecotourism) and the newly created lots do not seek to change the outcomes that could be achieved on the site than what can presently occur other than confining future development away from the coastline in a discrete location. On this basis, it is submitted that each lot is capable of accommodating all future rural land use activities and development will not have any adverse or unanticipated outcomes. In fact, the proposal seeks to ensure that any future development will have superior outcomes than what can occur and will eliminate the potential to fragment or discourage rural land uses, which is expressly encouraged by the Zone.

On this basis, it is clear that the proposed subdivision has improved outcomes on the site both with existing and future land uses/development and it therefore enjoys a large amount of support within the objectives and decision guidelines of the Farming Zone.

Having said all of this, it is noted that any future use or development is likely to require a planning permit thereby adding a layer of protection to ensure that appropriate outcomes sought by the Planning Scheme will be achieved.

6.3 Landscape and Environmental Considerations

Clause 42.01 Environmental Significance Overlay – Schedule 2 (ESO2)

The subject site is affected by Environmental Significance Overlay (Schedule 2) within the French Island and Sandstone Island Planning Scheme.

Within the ESO2 the following applies:

- A planning permit is required to subdivide land.

Clause 42.01 provides guidance as to the effect of subdivision on the landscape and environmental values of the site. It recognises *“The coastal areas of French Island have been identified for their geological and geomorphological significance representing a specific characteristic of the region or have been identified as having outstanding or rare environmental values.*

The shores and mudflats of the Island provide important feeding grounds for a host of migratory and resident wading birds and support rare and endangered species in its wetlands (note JAMBA, CAMBA and Ramsar Convention).

The coastline landscape character (natural and man-made) is considered, by the National Trust, to be essential to the heritage of Australia and worthy of preservation.

The environmental objectives to be achieved include the following:

- To promote the conservation and enhancement of French Island's coastal landscapes.
- To ensure that land use and subdivision are compatible with any areas which may be identified for their geological, geomorphological or archaeological significance.
- To protect and enhance wetlands and areas which provide habitat for fauna and, in particular, waterfowl.
- To protect areas which may be identified as having significant vegetation or which are vulnerable to erosion.
- To ensure that development, including subdivision, and land uses are compatible with the environmental values of the coastal areas.

Before deciding on an application, the responsible authority must consider, as appropriate:

- Whether substantial change or detriment will be caused to the coastal flora and fauna or landscape values.
- Whether any additional human activity will cause detriment to the coastal environment, including habitat values.
- The need to maintain and improve the stability of the coastline.
- The need to prevent stock access to coastal areas."

Although a permit is required to subdivide the land, this overlay only affects/regulates a narrow strip of future lot 2 along the coast. Given the re-subdivision of the land does not change the conditions of land and likely will only result in additional buildings and works being confined to an area that is as far as is practical from the coast it is submitted that the proposed subdivision is consistent with the objectives and decision guidelines of this overlay.

Clause 43.01 Heritage Overlay Schedule 10 (HO10)

The southeast corner of the subject site is affected by Heritage Overlay (Schedule 10).

Pursuant to the requirements of Clause 43.01 a planning permit is required to subdivide land.

The purpose of the overlay is to:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The significant buildings on the land are outlined in the schedule entry to the overlay as follows:

"Chesapeake (Peck's) House (1862) and Chicory Kiln (1920-25)

This control applies to the nominated buildings and land surrounding those buildings for a distance of 20m from external walls".

Importantly, the Chesapeake House and Chicory Kiln on the land recognised by the Heritage Overlay were either burnt down or destroyed in a storm. This has removed any heritage significance the land once held. Further to this, any likely future buildings and works that will occur within the building envelope proposed within Lot 1 are some 1km from the Heritage Overlay area. This combined with the fact that the subdivision pattern or lot layout/s have no recognised heritage significance demonstrates that the application does not have the potential to impact upon the significant heritage values present and is therefore clearly consistent with the objectives of the heritage overlay.

Clause 44.06 Bushfire Management Overlay (BMO)

The subject site is affected by a Bushfire Management Overlay (BMO). A planning permit is required for the subdivision of land pursuant to the BMO.

The purpose of the BMO is as follows:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To ensure that the subdivision of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.*
- *To ensure subdivision is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

As required by the Bushfire Management Overlay, the application is required to anticipate the future development of the land. Adopting the probability and potential for a dwelling to be constructed, Lot 1 on the proposed subdivision has a building envelope nominated. The building envelope has been formulated based upon scrub vegetation and grassland being present in proximity to the site and a sloping topography. Any development constructed on Lot 1, can be confined to within the building envelope, any development including a future dwelling can achieve a BAL 12.5 and a water supply can be maintained. Accordingly, it is submitted that the subdivision of the land is consistent with the objectives of the Bushfire Management Overlay and Clause 52.47 of the Planning Scheme.

6.4 Other Considerations

Clause 52.01 Easements, Restrictions and Reserves

Pursuant to the requirements of Clause 52.02, relevant to the proposal, this clause prescribes that a planning permit is required:

- Under Section 36 of the Subdivision Act 1988 to acquire or remove an easement or remove a right of way.

The application that seeks to remove the carriageway easement, Easement E-1, therefore requires a planning permit. Whereby, this policy seeks “to enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered”.

The easement E-1 providing access across the existing Lot 5 to the southern portion of Lot 4 clearly indicates:

- The burdened lot is Lot 5 on PS510590G; and
- The benefitting lot is Lot 4 on PS510590G.

Given the Spark's own both Lot 4 and Lot 5, as in they are retained in the same ownership, my client is both the burdened and benefitting party. Because my clients have specifically requested the deletion of the easement it can only be concluded that the benefitting party consents to the deletion of the easement and the deletion of the easement is entirely appropriate.

Decision Guidelines (Clause 65)

Pursuant to Clause 65, we submit that through the discussion contained within this report, the subdivision is reasonable for Council support given the following matters have been considered, as appropriate:

- ✓ The matters set out in Section 60 of the Act.
- ✓ The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- ✓ The purpose of the zone, overlay or other provision.
- ✓ Any matter required to be considered in the zone, overlay or other provision.
- ✓ The orderly planning of the area.
- ✓ The effect on the amenity of the area.
- ✓ The proximity of the land to any public land.
- ✓ Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- ✓ Whether the proposed subdivision is designed to maintain or improve the quality of stormwater within and exiting the site.
- ✓ The extent and character of native vegetation and the likelihood of its destruction.
- ✓ Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- ✓ The degree of flood, erosion or fire hazard associated with the location of the land and the use, subdivision or management of the land so as to minimise any such hazard.

7. PUBLIC NOTIFICATION

Pursuant to Section 52 of the Planning and Environment Act 1987, unless the Responsible Authority is satisfied that the granting of the permit would not cause material detriment to any person, the Responsible Authority must give notice.

8. REFERRALS

Pursuant to Section 55 of the Planning and Environment Act 1987, a mandatory referral to the Country Fire Authority (CFA) is required to be undertaken pursuant to Clause 44.06 (BMO).

Pursuant to the Schedule to Clause 42.01 (ESO2) an application must be referred in accordance with Section 55 of the Act to the referral authority specified in the Schedule to Clause 66.04 – being the Department of Sustainability and Environment which is now known as Department of Environment, Land, Water and Planning (DELWP).

The views of Parks Victoria are likely to be sought as per Clause 21.02 given their role as the land manager of the adjoining reserve(s).

9. TITLE RESTRICTIONS

The title to the land is burdened by 173 Agreement AC 544223F. Relevant to the application at hand it prescribes that the land will not be further subdivided so as to increase the number of lots.

Stated throughout this submission, the application does not seek to create additional lots and therefore does not contravene the conditions within the 173 Agreement

10. CONCLUSION

It is submitted that the proposed subdivision has been demonstrated throughout the discussion contained within this report to be appropriate and is suitable to be granted a permit on the following basis:

- ✓ The proposal satisfactorily meets the requirements of the Planning Scheme as outlined in this report including the State and Local Planning Policies and the requirements of the Farming Zone;
- ✓ The application seeks to consolidate and facilitate the continued agricultural use of the land whilst the vacant resulting lot is capable of accommodating any future land use and development.
- ✓ Other than changing a line on a plan of subdivision, the application does not change the existing conditions of the site other than confining future land use and development away from the sensitive coast line thereby having superior outcomes to the existing and future conditions of the land.
- ✓ The proposed subdivision does not necessitate the removal of any vegetation, native or otherwise.
- ✓ The proposal recognises the limited infrastructure of French Island and has been designed accordingly;
- ✓ The lot configuration is consistent with the subdivision pattern of rural lots located within French Island.
- ✓ The proposal will not compromise the operation of adjoining land or significantly impact on the agricultural potential of the site and adjoining allotments, and will promote rural conservation measures within the lots.
- ✓ The proposed subdivision will not impact upon the habitat or behavior of any rare, endangered or threatened fauna that is known to inhabit the Island.
- ✓ The proposed subdivision will not significantly or unreasonably impact upon the sites scenic or landscape values and will not result in a significant or unreasonable loss of amenity to any person.
- ✓ The future Lot 1 is the only vacant lot and is capable of accommodating any future use and or development consistent with the requirements of Clause 52.47 and is therefore consistent with its

stated purpose and that of the Bushfire Management Overlay. This will be assured through a future permit application for any development on either Lot.

- ✓ The proposed subdivision is consistent with the objectives and decision guidelines of Schedule 2 to the Environmental Significance Overlay.
- ✓ The proposed subdivision will not offend nor have the potential to impact upon any of the significant heritage buildings on the site and is therefore consistent with the objectives of the Heritage Overlay.
- ✓ The proposed subdivision will not result in a significant or unreasonable loss of amenity to any person.