



Cardinia

MINUTES OF TOWN PLANNING COMMITTEE

MONDAY, 6 MAY 2019

MINUTES OF TOWN PLANNING COMMITTEE

held in the Council Chambers, 20 Siding Avenue, Officer
on Monday, 6 May 2019

The meeting commenced at 7:00 pm

PRESENT: Mayor, Graeme Moore, Chairman

Councillors Michael Schilling, Carol Ryan, Jodie Owen, Collin Ross, Ray Brown, Jeff Springfield, Leticia Wilmot, Brett Owen

Messrs Carol Jeffs (CEO), Andrew Barr (AGMIE), Tracey Parker (GMLC), Jack Coogan (GO)

APOLOGIES:

DECLARATION OF PECUNIARY AND OTHER INTERESTS

Nil.

TABLE OF CONTENTS

1.	DEVELOPMENT OF FOUR DWELLINGS AT 10 STELLA STREET, BEACONSFIELD	3
2.	VARIATION OF RESTRICTIVE COVENANT AT 33 HIGHLAND DRIVE, PAKENHAM	36
3.	USE AND DEVELOPMENT OF THE LAND (IN STAGES) FOR A PLACE OF WORSHIP AND FOOD & DRINK PREMISES (RESTAURANT), BUILDINGS AND WORKS WITHIN THE LAND SUBJECT TO INUNDATION OVERLAY, BUSINESS IDENTIFICATION SIGNAGE AND A REDUCTION IN CAR PARKING AT L4 LP57429, 30 TIVENDALE ROAD, OFFICER VIC 3809.....	51
4.	PLANNING ENFORCEMENT MATTERS.....	87
5.	PLANNING SCHEME AMENDMENT ACTIVITY REPORT	91
6.	PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATION AUTHORITY	98
7.	PLANNING MATTERS CURRENTLY THE SUBJECT OF APPEAL AT THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL & THEIR OUTCOMES	103

1 DEVELOPMENT OF FOUR DWELLINGS AT 10 STELLA STREET, BEACONSFIELD

FILE REFERENCE INT1929177

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Emma Brennan

RECOMMENDATION

That a Notice of Decision to Grant Planning Permit **T190008** be issued for the **Development of four (4) dwellings and associated works** at **10 Stella Street, Beaconsfield VIC 3807** subject to the conditions attached to this report.

Attachments

- | | | |
|---|--|----------|
| 1 | Locality Map | 1 Page |
| 2 | Development Plans | 8 Pages |
| 3 | Copy of Objections, circulated to Councillors only | 11 Pages |

EXECUTIVE SUMMARY:

APPLICATION NO.:	T190008
APPLICANT:	Mr PEYMAN DAMANGIR
LAND:	10 Stella Street, Beaconsfield VIC 3807
PROPOSAL:	Development of four (4) dwellings and associated works
PLANNING CONTROLS:	General Residential Zone (Schedule 1) No overlays.
NOTIFICATION & OBJECTIONS:	Notice of the application was given by way of sending notices to adjoining and near-by land owners/occupiers and by placing a sign on the road frontage Seven (7) objections have been received to date.
KEY PLANNING CONSIDERATIONS:	Residential intensification, traffic impacts, amenity impacts, neighbourhood character
RECOMMENDATION:	Approval

BACKGROUND:

There is no relevant planning history to the site.

SUBJECT SITE

The subject site is a corner block located on the corner of Stella Street and Sylvia Road in Beaconsfield.

- The subject site has an area of approximately 756 square meters with a street frontage of approximately 23.6 m facing Sylvia Road and a street frontage of approximately 9.8 metres facing Stella Street.
- The site currently contains a single storey brick dwelling with associated outbuildings
- The site scattered shrubs and no significant canopy vegetation.
- The land is generally flat.
- The existing vehicle entry point to the site is located off Sylvia Road, along the eastern title boundary.

The surrounding area sees a mix of single and double storey detached dwellings, constructed predominately with brick veneer and tiled roofs. Front setbacks in the surrounding area vary significantly, between 4 – 9.5 metres. Frontages are generally open with some canopy vegetation within the frontages. Some examples of multi-dwelling developments exists in the wider context.

The site is a corner block, central to the Beaconsfield activity centre, public transport and open space areas. The Beaconsfield Primary School is located approximately 500 metres south east of the site and several secondary colleges within a 1km radius.

PROPOSAL

The application proposes the development of four double storey dwellings to replace the existing single storey dwelling on site. A 7.51 metre front setback is proposed for Dwelling 1 from Stella Street and 3 metre side street setback for Dwellings 2, 3 and 4 from Sylvia Road. Existing boundary fences will be retained. No front fence is proposed along Stella Street or Sylvia Road. The only side fence proposed delineates the secluded private open space area of Dwelling 1.

Each dwelling will comprise an open plan dining/kitchen area, laundry, three bedrooms (except Dwelling 1 which will comprise four bedrooms), two bathrooms, deck and private open space areas connected to living rooms, as well as garage facilities (double garage for Dwelling 1, single garage + tandem space for the remainder).

The dwellings will be constructed from a combination of face brickwork to the external ground floor walls, rendered lightweight material to the first floor walls, as well as rendered brick piers, aluminium windows and tiled roofing. A maximum building height of 7.45 metres is proposed. The existing crossover will be removed and two new crossovers are proposed on Sylvia Road for use of Dwellings 2, 3, and 4 and a crossover on Stella Street for use of Dwelling 1.

PLANNING SCHEME PROVISIONS:

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Economic Development
- Clause 21.05 Infrastructure

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.06 Car Parking
- Clause 55 ResCode (see assessment at Appendix 1)
- Clause 65 Decision Guidelines

Cardinia Shire's Liveability Plan 2017-2029

Cardinia Shire's Liveability Plan has been developed to provide a clear framework for public health planning within the Shire, and it has a number of goals and actions relating to policy domains that include active travel, education, employment and housing. The application is considered consistent with this Plan as it supports an increase of housing and alternative housing types in close proximity to employment, transport, education and services.

Zone

The land is subject to the General Residential Zone (Schedule 1).

Overlays

The land is not subject to any overlays.

PLANNING PERMIT TRIGGERS

The proposal for the development of four dwellings requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.08-6 a planning permit is required for the construction of two dwellings or more on a lot.

PUBLIC NOTIFICATION

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing two signs on site

Council has received seven (7) objections to date.

The key issues that were raised in the objections are:

- Increased traffic and resulting pedestrian safety
- No visitor parking provided and less on-street parking available.
- Units with a double storey built form is out of character with the surrounding streetscape.
- Overdevelopment
- Neighbourhood Character
- Unreasonable pressure on existing infrastructure (sewerage and Old Princes Highway)

REFERRALS

No external referrals were required to be undertaken.

The following internal referrals were undertaken:

Traffic	Supported.
Engineering	Supported.

DISCUSSION

The proposal for the development of four dwellings **and associated works** is considered consistent with the aims and objectives of the Cardinia Planning Scheme. The proposal delivers on relevant policies that seek to achieve attractive and liveable neighbourhoods and support housing in appropriate locations.

Planning Policy Framework

A number of policies are relevant to this application, including Clause 11 Settlement, Clause 15 Built Environment and Heritage and Clause 16 Housing, which aim to encourage housing diversity, promote a high standard of design and achieve attractive, diverse, sustainable and liveable neighbourhoods.

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Economic Development
- Clause 21.05 Infrastructure

At a local level, Clause 21.03 Settlement and Housing is also relevant to this application. This includes objectives and strategies to help deliver a range of housing types and increased densities, while being consistent with the existing and/or preferred neighbourhood character for the township.

Clauses 21.04 Economic Development seeks to integrate housing in a location which is close to jobs and services, as well as to roads, public transport and by foot. The proposed development responds to these clauses as it will support the increase of housing within an established area of Beaconsfield, with the commercial centre and train station located within close proximity to the site.

The proposal also contributes towards a diversity of housing types and sizes, with the proposed two-storey dwellings to provide a form of housing type that is currently not provided in the area. The immediate area generally consists of single-storey detached dwellings on lot sizes in excess of 600 square metres. A balance between dwelling diversity whilst respecting the character of the existing area is achieved, through the use of features and materials that are consistent with what is found in the wider area, such as brick cladding, concrete tiled hip roofing, eaves and open areas for landscaping.

The proposal is also considered consistent with the sustainability and energy efficiency objectives of the Planning Scheme, with the plans maximising the northern orientation of the proposed dwellings and associated private open spaces, and including large areas for landscaping and permeability.

General Residential Zone (Schedule 1)

The General Residential Zone seeks to encourage development that respects the neighbourhood character of the area and to provide a diversity of housing types and housing growth in locations offering good access to services and transport.

While the use of the land for four dwellings does not require a planning permit under the zone, a permit is required to construct two or more dwellings on a lot under clause 32.08-6.

The decision guidelines of this overlay cover a number of matters, including:

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies;*

- *The purpose of this zone; and*
- *The objectives, standards and decision guidelines of Clause 55.*

The proposal reinforces the residential nature of the area and supports housing growth in an area that is well served by infrastructure and located close to the commercial centre of Beaconsfield.

An assessment against the requirements of Clause 55 has been undertaken with the proposal generally complying with all standards and objectives, with some minor variations allowed and a minor change required via permit condition.

Accordingly, the development is considered responsive to the existing and emerging character of the area, while achieving the zone's objective for housing diversity and growth in appropriate locations.

Garden Area

Clause 32.08-4 requires a minimum percentage of a lot to be aside as garden area when constructing or extending a dwelling or residential building on a lot. For a lot exceeding 650 square metres (such as the subject site), 35 per cent of the land must be set aside as garden area. The proposal meets this requirement, with 36.7% being achieved.

Clause 52.06 Car Parking

The purpose of Clause 52.06 includes the need to ensure the provision of an appropriate number of car parking spaces having regard to the activities on the land and to ensure that car parking does not adversely affect the amenity of the locality.

The proposal consists of three 3 bedroom dwellings and one 4 bedroom dwelling. Pursuant to Clause 52.06-5, dwellings with three bedrooms are required to provide a minimum of two car parking spaces. This has been achieved on site.

Accessways and internal dimensions of car spaces also comply with the design standards of this Clause.

Clause 65 Decision Guidelines

The proposal is consistent with the Planning Policy Framework, the purpose of the zone and is consistent with the orderly planning of the area and not expected to have any unreasonable impact on the amenity of the surrounding area.

OFFICER RESPONSE TO GROUNDS OF OBJECTION

A total of seven (7) objections were received during the notification period of this application. The key issues and themes that were raised in the objections and a response to each is provided below:

Ground of Objection	Officer Response
<p>Traffic</p> <p><i>Pedestrian safety at risk due to increased traffic</i></p>	<p>Appropriate sight lines are provided to each crossover, allowing drivers to see pedestrians easily. The proposed access arrangements are considered typical and no pedestrian/vehicular conflicts are apparent.</p> <p>The plan has also been assessed by Council's Traffic Engineers, who are supportive of the proposal. It was noted that the proposed side fence for Dwelling 1 may require a building permit, given its proximity to the street corner. A note on any permit issued will require this to be obtained.</p>

<i>Traffic flow will be worse than it already is</i>	The additional traffic movements this residential proposal will generate is inconsequential and it is considered Stella Street and the surrounding road network is capable of accommodating this minor increase in traffic movements.
<u>Parking</u>	
<i>No visitor parking</i>	Clause 52.06 of the Cardinia Planning Scheme does not require visitor parking to be provided for a four dwelling development.
<i>Being on a corner block, there will be reduced parking availability and therefore parking will occur outside other dwellings.</i>	On-street parking is not allocated to any specific properties - it is shared by all residents and their visitors.
<i>No provision for home owners with more than two cars</i>	Clause 52.06 of the Scheme requires 2 car spaces to be provide for each 3 bedroom dwelling, which has been satisfied.
<i>Limited parking opportunities in the street due to medical facilities and child care centres.</i>	Whilst Stella Street and surrounding streets may have some additional parking demand from local commercial businesses, the proposal provides adequate onsite parking and there is still on-street parking available in this area of Beaconsfield.
<u>Streetscape</u>	
<i>There are currently no other two storey buildings within Stella or Sylvia Street</i>	Whilst there are no examples within the immediate area, there are no planning controls precluding double storey built form in this area. An assessment of the proposed built form against the relevant standards of ResCode (see Appendix 1) demonstrates that the proposal complies with this policy, as the upper levels are broken up with separation and good articulation.
<i>A majority of dwellings in the surrounding area are detached on large blocks.</i>	The planning scheme calls for housing diversity, with this proposal accommodating for households with 1-3 people. The proposed dwellings will contribute towards this diversity.
<i>Proposal does not 'fit in' with the character of the existing streetscape.</i>	The proposed design outcome differs from the existing detached dwellings. However, the design references local dwelling characteristics. Subject to appropriate landscaping, the dwellings are considered to be an appropriate response to the streetscape.
<u>Overdevelopment</u>	
<i>Each dwelling will only be 200sqm in floor area</i>	Minimum/maximum dwelling floor areas is not a consideration of Clause 55 (ResCode). The proposal complies with each of the applicable standards of this clause, thus not pointing towards an overdevelopment.
<i>The site is too small to accommodate four dwellings.</i>	There are no density requirements set out in the Scheme. Rather, medium density housing proposals are considered against Clause 55 (ResCode). The assessment against this clause demonstrated that the site can comfortably accommodate four dwellings.
<u>Neighbourhood Character</u>	
<i>The proposed materials are cheap</i>	The proposed materials are typical of new housing

	developments, being brickwork, rendered cladding, powder-coated aluminium windows and tiled roofing. This is supported.
<i>The design is unattractive</i>	Whilst design considerations are subjective, the proposed dwellings reflect the architectural qualities of the modest traditional housing stock within the surrounding area. A more contemporary design could be considered out of character.
<i>The area still retains a country feel</i>	This is true of parts of Beaconsfield. However, this is a more suburban area where the Scheme is seeking more housing and housing diversity. The Scheme encourages additional and diverse housing options within existing built up areas, resulting in less pressure to develop within areas where lower densities and a rural character are preferred. The proposed dwelling development is ideally located, being central to the Beaconsfield township, with a design which reflects the architectural qualities of the modest traditional housing stock within the surrounding area.
<i>Poor amenity outcome for the area</i>	The proposal does not appear to propose any unreasonable amenity impacts, with no excessive mechanical equipment or other noise sources proposed.
<i>There are too many units already within this area.</i>	Housing provision in this part of Beaconsfield is still dominated by detached dwellings on single allotments. The proposed multi-dwelling development will contribute towards much needed housing diversity within this established township.
Infrastructure	
<i>There is a sewerage easement where the proposed Dwelling 4 garage is located.</i>	It is generally acceptable to build garages over easements, as they are not habitable rooms. This would be subject to a 'Build Over Easement' consent, issued by Council's Engineering Department. Any changes required to this garage will likely result in an amendment to a carport, which could be considered as a future amendment to any permit issued.
<i>Old Princes Highway is not designed to take so much traffic flow.</i>	Although a VicRoads controlled road, Councils Traffic Engineers are not aware of any advice provided by this authority relating to Old Princes Highway being at full capacity.

CONCLUSION

Having regard to the above, it is considered that the proposal is consistent with the Cardinia Planning Scheme. It is recommended that a Notice of Decision to Grant Planning Permit **T190008** be issued for the development of four (4) **dwellings and associated works** at **10 Stella Street, Beaconsfield VIC 3807** subject to the following conditions:

CONDITIONS

Plans Required

1. Prior to the commencement of the development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn

to scale and fully dimensioned. The plans must be generally in accordance with the plans submitted with the application but modified to show:

- a. Garage 1 setback one (1) metre from the south west boundary, as to comply with Clause 55 ResCode, Standard B20 North-Facing Windows. This increased setback must not result in a reduction in the front or side setbacks. Any necessary internal modifications may be undertaken as required.
2. Prior to the commencement of the development, a landscape plan prepared by a person suitably qualified and experienced in landscape design. The plan must be drawn to scale with dimensions and show the following:
- a. Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary.
 - b. Details of surface finishes of pathways and driveways.
 - c. A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
 - d. Landscaping and planting within all open areas of the subject land.
- All species selected must be to the satisfaction of the Responsible Authority.
3. Prior to the development commencing, drainage plans must be submitted to and approved by the Responsible Authority. The plans must show the provision of a stormwater detention system. The stormwater detention system will become the responsibility of the property owner or body corporate to maintain to the satisfaction of the Responsible Authority.

Actions Prior to Occupation

4. The development must not be occupied until the following works have been completed to the satisfaction of the Responsible Authority:
- a. The premises are connected to a reticulated water supply, sewerage, drainage and underground electricity to the requirements of the relevant servicing authority.
 - b. Power and telephone lines to all new dwellings must be placed underground from the main point of service supplied by the relevant authority outside the boundaries of the subject land.
 - c. A bin storage area must be provided for each dwelling and must be located so as not to be detrimental to the visual amenity of the neighbourhood.
 - d. A mail box must be provided to the satisfaction of the Responsible Authority and Australia Post.
 - e. A clothesline must be provided for each dwelling and must be located so as not to be detrimental to the visual amenity of the neighbourhood.
 - f. Lighting must be provided near the front entrance of each dwelling.
 - g. The landscaping works shown on the endorsed plans must be carried out and completed.
 - h. Concrete vehicle crossing as shown on the approved plans must be constructed to the approval and satisfaction of the Responsible Authority.
 - i. Any redundant existing vehicle crossing must be removed and the nature strip and kerb and channel reinstated at the cost of the owner and to the satisfaction of the Responsible Authority.

- j. All proposed areas set aside on the approved plan/s for access, circulation and car parking must be constructed with concrete, asphalt or other approved hard surfacing material, drained and the parking areas delineated to the satisfaction of the Responsible Authority. Once constructed, these areas must be maintained to the satisfaction of the Responsible Authority.

General

5. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
6. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
7. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority and used for no other purpose. Any dead, diseased or damaged plants are to be replaced.

Amenity Impacts

8. The exterior colour and cladding of the development must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the building, including the roof, must be of a non-reflective nature.
9. The development must not detrimentally affect the amenity of the area, including works associated with construction, through the:
 - a. Transport of materials, goods or commodities to or from the land.
 - b. Appearance of any building, works or materials.
 - c. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - d. Presence of vermin.
 - e. Hours of construction activity.

Engineering Conditions

10. Stormwater works must be provided on the subject land so as to prevent overflows onto adjacent properties.
11. Sediment control measures must be undertaken during construction to the satisfaction of the Responsible Authority to ensure that the development subject land is adequately managed in such a way that no mud, dirt, sand, soil, clay or stones are washed into or allowed to enter the stormwater drainage system.
12. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.

Permit Expiry

This permit for development will expire if:

- a) The development is not started within **two (2) years** of the date of this permit.
- b) The development is not completed within **four (4) years** of the date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Notes:

- (i) As the development has an impervious ratio greater than 35%, the developer shall engage the services of a suitably experienced Engineer to design a stormwater detention system that will reduce the intensity of the storm water discharge entering Council's drainage system, i.e.: a detention system. The storm water detention system shall provide for the same five (5) year ARI peak discharge as that for a standard house lot with no storm water detention. A standard house lot is assumed to have a fraction impervious area of 35%. Calculations and a plan shall be submitted to Council for approval prior to construction. The storm water detention system must be constructed prior to the occupation of the proposed development.
- (ii) A 'Vehicle Crossing Permit' must be obtained from Council prior to the commencement of any works associated with the proposed vehicle crossing.
- (iii) A Building Permit is required for any structure proposed over an easement or fence within close proximity to a street corner.
- (iv) Consent may be required from the relevant authority prior to constructing any buildings or undertaking any works on or within 1 metre of the easement.

1 DEVELOPMENT OF FOUR DWELLINGS AT 10 STELLA STREET, BEACONSFIELD

Moved Cr B Owen Seconded Cr C Ross

That a Notice of Decision to Grant Planning Permit **T190008** be issued for the **Development of four (4) dwellings and associated works** at **10 Stella Street, Beaconsfield VIC 3807** subject to the following conditions:

1. Prior to the commencement of the development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale and fully dimensioned. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - a. Garage 1 setback one (1) metre from the south west boundary, as to comply with Clause 55 ResCode, Standard B20 North-Facing Windows. This increased setback must not result in a reduction in the front or side setbacks. Any necessary internal modifications may be undertaken as required.
2. Prior to the commencement of the development, a landscape plan prepared by a person suitably qualified and experienced in landscape design. The plan must be drawn to scale with dimensions and show the following:
 - a. Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary.
 - b. Details of surface finishes of pathways and driveways.
 - c. A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
 - d. Landscaping and planting within all open areas of the subject land.

All species selected must be to the satisfaction of the Responsible Authority.
3. Prior to the development commencing, drainage plans must be submitted to and approved by the Responsible Authority. The plans must show the provision of a stormwater detention system. The stormwater detention system will become the responsibility of the property owner or body corporate to maintain to the satisfaction of the Responsible Authority.

Actions Prior to Occupation

4. The development must not be occupied until the following works have been completed to the satisfaction of the Responsible Authority:
 - a. The premises are connected to a reticulated water supply, sewerage, drainage and underground electricity to the requirements of the relevant servicing authority.
 - b. Power and telephone lines to all new dwellings must be placed underground from the main point of service supplied by the relevant authority outside the boundaries of the subject land.
 - c. A bin storage area must be provided for each dwelling and must be located so as not to be detrimental to the visual amenity of the neighbourhood.
 - d. A mail box must be provided to the satisfaction of the Responsible Authority and Australia Post.
 - e. A clothesline must be provided for each dwelling and must be located so as not to be detrimental to the visual amenity of the neighbourhood.

- f. Lighting must be provided near the front entrance of each dwelling.
- g. The landscaping works shown on the endorsed plans must be carried out and completed.
- h. Concrete vehicle crossing as shown on the approved plans must be constructed to the approval and satisfaction of the Responsible Authority.
- i. Any redundant existing vehicle crossing must be removed and the nature strip and kerb and channel reinstated at the cost of the owner and to the satisfaction of the Responsible Authority.
- j. All proposed areas set aside on the approved plan/s for access, circulation and car parking must be constructed with concrete, asphalt or other approved hard surfacing material, drained and the parking areas delineated to the satisfaction of the Responsible Authority. Once constructed, these areas must be maintained to the satisfaction of the Responsible Authority.

General

- 5. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 6. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
- 7. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority and used for no other purpose. Any dead, diseased or damaged plants are to be replaced.

Amenity Impacts

- 8. The exterior colour and cladding of the development must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the building, including the roof, must be of a non-reflective nature.
- 9. The development must not detrimentally affect the amenity of the area, including works associated with construction, through the:
 - a. Transport of materials, goods or commodities to or from the land.
 - b. Appearance of any building, works or materials.
 - c. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - d. Presence of vermin.
 - e. Hours of construction activity.

Engineering Conditions

- 10. Stormwater works must be provided on the subject land so as to prevent overflows onto adjacent properties.
- 11. Sediment control measures must be undertaken during construction to the satisfaction of the Responsible Authority to ensure that the development subject land is adequately managed in such a way that no mud, dirt, sand, soil, clay or stones are washed into or allowed to enter the stormwater drainage system.
- 12. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.

Permit Expiry

This permit for development will expire if:

- a) The development is not started within **two (2) years** of the date of this permit.
- b) The development is not completed within **four (4) years** of the date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Notes:

- (i) As the development has an impervious ratio greater than 35%, the developer shall engage the services of a suitably experienced Engineer to design a stormwater detention system that will reduce the intensity of the storm water discharge entering Council's drainage system, i.e.: a detention system. The storm water detention system shall provide for the same five (5) year ARI peak discharge as that for a standard house lot with no storm water detention. A standard house lot is assumed to have a fraction impervious area of 35%. Calculations and a plan shall be submitted to Council for approval prior to construction. The storm water detention system must be constructed prior to the occupation of the proposed development.
- (ii) A 'Vehicle Crossing Permit' must be obtained from Council prior to the commencement of any works associated with the proposed vehicle crossing.
- (iii) A Building Permit is required for any structure proposed over an easement or fence within close proximity to a street corner.
- (iv) Consent may be required from the relevant authority prior to constructing any buildings or undertaking any works on or within 1 metre of the easement.

Cd.

2 VARIATION OF RESTRICTIVE COVENANT AT 33 HIGHLAND DRIVE, PAKENHAM

FILE REFERENCE INT1929191

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Tara Hooper

RECOMMENDATION

That a Refusal to Grant Planning Permit **T190026** be issued for **the variation of restrictive covenant at 33 Highland Drive, Pakenham VIC 3810** for reasons set out in this report.

Attachments

1	Locality Map	1 Page
2	Copy of Objections, circulated to Councillors only	5 Pages
3	Proposed Variation	1 Page

EXECUTIVE SUMMARY:

APPLICATION NO.:	T190026
APPLICANT:	Chandima Rathnayake
LAND:	33 Highland Drive, Pakenham VIC 3810
PROPOSAL:	Variation of restrictive covenant
PLANNING CONTROLS:	General Residential Zone Development Contributions Plan Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	Notice of the application was given by way of sending notices to adjoining and near-by land owners/occupiers, by placing a sign on the road frontage, and by publishing a notice in a newspaper generally circulating in the area in which the subject land is situated.
	Council has received 3 objections to date.
KEY PLANNING CONSIDERATIONS:	Variation of restrictive covenant, material detriment, interests of affected persons
RECOMMENDATION:	Refusal

BACKGROUND:

The subject site has no planning history.

SUBJECT SITE

The site is located on the western side of Highland Drive.



The site is currently vacant. The parcel has a slope of approximately 21 percent (10 metre fall from front to rear).

It is within the Pakenham Heights estate, which is characterised by single dwellings on lots measuring approximately 800 to 1400 square metres. To the southeast near the intersection of Highland Drive and Aberdeen Heights, several parcels measure between 650 and 750 square metres.

It is noted that Council has not approved any variation or removal of restrictive covenants on any other lot within this estate.

PROPOSAL

An application has been submitted to Council to vary the restrictive covenant in instrument S917443H (created on 3 March 1994) set out below by the addition of the words in bold:

AND THE SAID Transferee with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on Plan of Subdivision No.31 8023R other than the Lot hereby transferred and that the burden of this Covenant shall be annexed to and run at law and in equity with the said Lot hereby transferred does hereby for himself his heirs executors administrators and transferees and as separate covenants covenant with the said EDDIE BARRON CONSTRUCTIONS PTY LTD and the registered proprietor or proprietors for the time being of every lot on the said Plan of Subdivision and every part or parts thereof other than the Lot hereby transferred or any part thereof SHALL NOT:

- a) Erect or cause to be erected not than one private dwelling house (together with the usual outbuildings)
- b) Erect or cause to be erected any dwelling with a floor area of less than 120 square metres excluding garage carports and Verandahs.

- c) Erect or cause to be erected any dwelling and attached garage other than a dwelling and attached garage with external walls constructed substantially of brick veneer or stone.
- d) Erect or cause to be erected any detached outbuilding other than a detached outbuilding with external walls of brick, stone, timber or metal.

AND it is intended that the above Covenant shall appear as an encumbrance on the aforesaid Certificate of Title.

PROVIDED HOWEVER that this covenant shall expire and no longer affect the land hereby transferred upon the Responsible Authority granting a permit to subdivide the land under the relevant Planning Scheme.

The practical effect of this proposal is to allow the issuance of a subdivision permit to render the covenant null and void.

PLANNING SCHEME PROVISIONS

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 15.01-5S Neighbourhood character

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- 21.06-1 Design and built form

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.02 Easements restrictions and reserves
- Clause 65 Decision guidelines – approval of an application or plan
- *Planning and Environment Act 1987* section 60(2)

Zone

The land is subject to the **General Residential Zone**

Overlays

The land is subject to the **Development Contributions Plan Overlay Schedule 1.**

PLANNING PERMIT TRIGGERS

The proposal for variation of restrictive covenant requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 52.02 of the Cardinia Planning Scheme, a planning permit is required before a person proceeds under Section 23 of the Subdivision Act 1988 to vary a restriction.

PUBLIC NOTIFICATION

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site
- Placing a notice in the Pakenham Gazette newspaper

Council has received three (3) objections to date.

The key issues that were raised in the objections are:

- Change to single-dwelling neighbourhood character
- Decrease in property values
- Creating an 'easy and precedented path . . . for owners of other vacant and non-vacant properties in the street to change their . . . restrictions'

REFERRALS

The application was not referred to any external authorities.

DISCUSSION

Restrictive covenants occupy a unique position in both common law and planning legislation. The benefit of a covenant has the status of a proprietary interest, which gives the beneficiary an interest over land. As such, the *Planning and Environment Act 1987* (the 'Act') requires the responsible authority to consider the matters under Section 60(2) of the Act in an application to vary or remove a restriction created after 1991. These are threshold issues considered before an assessment of the prescribed matters under the planning scheme. Importantly, as a recognition of the proprietary interest afforded to beneficiaries of a covenant, this section provides broader protection to beneficiaries than the planning scheme itself.

Under section 60(2) of the Act:

The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction . . . will be unlikely to suffer—

- (a) *financial loss; or*
- (b) *loss of amenity; or*
- (c) *loss arising from change to the character of the neighbourhood; or*
- (d) *any other material detriment—*

as a consequence of the removal or variation of the restriction.

The Tribunal has provided guidance in interpreting section 60(2) when considering the removal or variation of a covenant. In *Waterfront Place Pty Ltd v Port Phillip CC* (Red Dot) [2014] VCAT 1558 ('*Waterfront Place*'), Senior Member H. McM Wright QC and Member Benz summarised several principles relating to how the tests in section 60(2) should be applied. These were further cited by Member Blackburn in *Singh & Kaur v Brimbank CC* [2017] VCAT 1730 (23 October 2017). Whilst not an exhaustive list, they provide guidance in decision making:

- *the provision is designed to protect proprietary interests and therefore should be interpreted as beneficial legislation and given as wide a meaning as the words of the sub-section reasonably allow.*
- *the Tribunal must be persuaded to a 'comfortable level of satisfaction' that the threshold requirements are met, rather than 'only just satisfied'.*

- *the loss referred to in section 60(2) must be 'material' but in this context the term does not have as wide a meaning as it does in section 52 of the P&E Act. In past cases, the Tribunal has explained 'material' in this context as meaning:*
 - *'important detriment, detriment of such consequence viewed on an objective basis. It does not include trivial or inconsequential detriment'; or*
 - *'real and not fanciful detriment'.*
- *it is essential to look at the purpose and effect of the restriction as one of the factors relevant in determining the likelihood of any loss or detriment in the event of removal or variation.*
- *in applying the tests set out in section 60(2), it is not a question of balancing the loss suffered by a benefiting owner in each of the categories set out in paragraphs (a) to (d) against the planning benefits of removal or variation of the covenant. The tests must be applied in absolute terms. Consideration of the planning merits can occur only if the tests are satisfied and the discretion to grant a permit thereby enlivened.*
- *the Tribunal must take into account the circumstances of all owners who enjoy the benefit of the covenant, not just those benefitting owners who have objected to the application.*

The restriction at issue, created in 1994, is in essence a 'single dwelling covenant', i.e. a restriction that does not allow more than one dwelling per lot. Whilst the language of the covenant does not explicitly exclude subdivisions, the purpose and effect of the restrictions are clear: to maintain the single dwelling character of the neighbourhood. Indeed, as a result of the restrictions in the covenant, a genuine neighbourhood character has been established.

The variation proposes to unwind the covenant upon the issuance of a permit to subdivide the land. For the reasons below, the proposed variation does not meet the threshold requirements of section 60(2) of the Act.

The Applicant cannot establish that the variation is unlikely to result in the beneficiaries suffering financial loss, loss of amenity, loss arising from change of character of the neighbourhood, or any other material detriment.

The proposed variation fails to satisfy the test of section 60(2) of the Act. It cannot be said that as a result of the variation, any beneficiary will be unlikely to suffer financial loss, loss of amenity, loss arising from change to the character of the neighbourhood, or any other material detriment.

The variation proposes to unwind the covenant upon the issuance of a permit to subdivide the land. Subdivision *per se* would not be a breach of the covenant; however the existence of the restriction renders any attempt to subdivide the land inconsistent with orderly planning as it would create a vacant lot incapable of development.

The variation removes that substantial impediment to subdivision, which, if successful,¹ would enable two (or more) dwellings on the subject site. This eventual result would be inconsistent with the single dwelling character of the neighbourhood and potentially create amenity impacts to the other beneficiaries of the covenant.

As the proposal does not include an accompanying subdivision and development application, the nature of the tests under section 60(2) are more difficult to satisfy. As Member Blackburn stated in *Singh & Kaur v Brimbank CC*, '[t]he nature of the tests set out in section 60(2) has. . . made it difficult for applications to vary or remove a restriction to succeed where they are not accompanied by an application for approval of a specific development. This is because in these circumstances the Tribunal often needs to consider a large number of possible development scenarios and be satisfied that all of those scenarios do not cause material detriment to benefited land owners.'

¹ It is emphasised that no indication is given as to whether a planning permit for subdivision would be approved in this instance.

Like the situation in *Singh & Kaur*, a large range of scenarios would need to be contemplated here. We do not know how many lots the owner wishes to create via subdivision, nor how many dwellings would be constructed on those lots. In one hypothetical scenario, because the land measures 1237 square metres, a subdivision of four equally sized lots would result in lots measuring 309.25 square metres each. Under the General Residential Zone Schedule 1, no planning permit is required to construct a single dwelling on a lot measuring over 300 square metres. So that subdivision would allow for the construction of four dwellings whilst concurrently extinguishing all of the protections of the restrictive covenant in one fell swoop. There would be no planning consideration of those dwellings (other than the mandatory garden area) if constructed after subdivision.

Concerns raised by the objectors addressed disapproval with the variation's effect on a change of character to the area, loss of amenity, and material detriment.

Two objections primarily focussed on the single-dwelling character of the neighbourhood, and a desire to maintain that character. One objection specifically noted, *'At present there are no dual dwellings and we live here because that is the style of living we enjoy. Pakenham has plenty of areas which support dual dwellings and areas that are not in that category should stay that way.'*

One objection noted a particular concern with a decrease in property values.

As stated in *Waterfront Place*, the responsible authority must be persuaded to a 'comfortable level of satisfaction' that the threshold requirements in section 60(2) of the Act are met. Based on the objections submitted and the potential development scenarios, it cannot be determined that that the threshold of section 60(2) can be met.

The variation will result in material detriment to the beneficiaries of the covenant by removing the heightened considerations provided by 60(2) in removal of a covenant.

Nonetheless, it could be argued that the actual change in character, loss of amenity, and other detriment would not occur in this situation by the variation itself, but only upon the 'triggering event' of the issuance of a planning permit for subdivision. However, if this is considered to be the case, that argument fails to recognise that the proposed variation of the restrictive covenant will cause material detriment to beneficiaries by removing the heightened consideration that Section 60(2) of the Act affords proprietary interests.

It is unclear why the applicant did not apply for the outright removal of the covenant, or a variation by means of removing subsection (a) of the covenant—perhaps it was an attempt to allow the removal of the covenant to bypass the broad protections afforded by section 60(2) of the Act. In any event, it is clear that this proposal is a thinly-veiled attempt to unwind the existing restrictive covenant.

Restrictive covenants are private property controls by nature; they allow beneficiaries to enforce a restriction by granting standing to challenge a violation of the covenant. The existence of the covenant also provides the beneficiaries a degree of control and certainty over preferred neighbourhood character that extends beyond the planning scheme. They enjoy elevated protection under the Act in recognition of the unique rights in property they create in beneficiaries.

If the proposed variation is approved, a successful application for a subdivision permit would unwind the covenant. In the consideration of that subdivision application, Council could only consider the matters under the planning scheme relating to the potential subdivision. Matters in section 60(2) of the Act like 'financial loss', specific examples of 'loss of amenity' (other than the considerations required in Clauses 56 and 65 of the planning scheme), and a broad consideration of 'any other material detriment' would not be contemplated. Thus, allowing such a variation to occur would cause material detriment to beneficiaries of the covenant by removing the protection section 60(2) of the Act affords their proprietary interests.

The variation will detrimentally affect the interests of affected persons

For the reasons stated above, the proposed variation will detrimentally affect the interests of affected persons under Clause 52.02 of the planning scheme. The variation would enable an application to subdivide

the land, which would consequentially result in two or more dwellings. This would be inconsistent with the predominant single-dwelling neighbourhood character.

CONCLUSION

The Application has been assessed against the decision guidelines of all relevant clauses of the Cardinia Planning Scheme and the Planning and Environment Act 1987 and the proposed variation of restrictive covenant is determined to be inconsistent with these requirements. As such, it is recommended that a Refusal to Grant Planning Permit **T190026** be issued for **the variation of restrictive covenant at 33 Highland Drive, Pakenham VIC 3810** for the following reasons:

GROUNDINGS OF REFUSAL

1. Council cannot be satisfied that the variation of the covenant will be unlikely to cause any beneficiary of the covenant or any other person any detriment relating to:
 - a) Financial loss; or
 - b) Loss of amenity; or
 - c) Loss arising from change to the character of the neighbourhood; or
 - d) Any other material detriment.
2. The variation of the covenant will detrimentally affect the interests of surrounding landowners under Clause 52.02 of the Cardinia Planning Scheme.
3. The variation of the covenant is inconsistent with the orderly planning of the area.



2 VARIATION OF RESTRICTIVE COVENANT AT 33 HIGHLAND DRIVE, PAKENHAM

Moved Cr M Schilling Seconded Cr J Owen

That a Refusal to Grant Planning Permit **T190026** be issued for **the variation of restrictive covenant at 33 Highland Drive, Pakenham VIC 3810** for reasons set out below:

1. Council cannot be satisfied that the variation of the covenant will be unlikely to cause any beneficiary of the covenant or any other person any detriment relating to:
 - a) Financial loss; or
 - b) Loss of amenity; or
 - c) Loss arising from change to the character of the neighbourhood; or
 - d) Any other material detriment.
2. The variation of the covenant will detrimentally affect the interests of surrounding landowners under Clause 52.02 of the Cardinia Planning Scheme.
3. The variation of the covenant is inconsistent with the orderly planning of the area.

Cd.

3 USE AND DEVELOPMENT OF THE LAND (IN STAGES) FOR A PLACE OF WORSHIP AND FOOD & DRINK PREMISES (RESTAURANT), BUILDINGS AND WORKS WITHIN THE LAND SUBJECT TO INUNDATION OVERLAY, BUSINESS IDENTIFICATION SIGNAGE AND A REDUCTION IN CAR PARKING AT L4 LP57429, 30 TIVENDALE ROAD, OFFICER VIC 3809

FILE REFERENCE INT1929107

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Emily Cook

RECOMMENDATION

That Planning Permit **T180460** be issued for the **use and development of the land (in stages) for a place of worship and food & drink premises (restaurant), buildings and works within the Land Subject to Inundation Overlay, business identification signage and a reduction in car parking at L4 LP57429, 30 Tivendale Road, Officer VIC 3809** subject to the conditions attached to this report.

Attachments

- 1 Locality Map 1 Page
- 2 Development Plans 18 Pages

EXECUTIVE SUMMARY:

APPLICATION NO.: T180460.

APPLICANT: Land Use Town Planning Service - Peter Tesdorpf.

LAND: L4 LP57429, 30 Tivendale Road, Officer VIC 3809.

PROPOSAL: Use and development of the land (in stages) for a place of worship and food & drink premises (restaurant), buildings and works within the Land Subject to Inundation Overlay, business identification signage and a reduction in car parking.

PLANNING CONTROLS: Urban Growth Zone – Schedule 3.
General Residential Zone.
Development Contribution Plan Overlay – Schedule 4.
Land Subject to Inundation Overlay.

NOTIFICATION & OBJECTIONS: N/A – The application is exempt from notice and review in accordance with Clause 37.07-13 of the Urban Growth Zone.

KEY PLANNING CONSIDERATIONS: Officer Precinct Structure Plan & Development Contribution Plan (September 2011), Clause 52.05 Signs, Clause 52.06 Car Parking and Clause 13.02-1S Bushfire Planning.

RECOMMENDATION: Grant Planning Permit T180460 subject to conditions.

BACKGROUND:

The applicant first approached Council in relation to developing the site for a Church in 2016. Council Officers provided pre-application advice and undertook a number of meetings with the applicant. During 2016 and 2017 Council Officers provided general advice relating to the zoning, overlays and Officer Precinct Structure Plan (September 2011) requirements. This included information relating to land required for encumbered and unencumbered open space land, the construction of a shared path and obligations in relation to the Officer Development Contribution Plan (September 2011). In 2017, Council provided further advice in relation to planning permit application requirements.

SUBJECT SITE

The site is located on the east side of Tivendale Road approximately 275m north of the Princes Highway in Officer. The lot is generally rectangular with an approximate width of 49m and length of 207m. The site has a total area of 10,143sqm.

The site slopes from the north-west to south-east and is burdened by a drainage easement along the eastern (rear) boundary.

The site contains an existing dwelling and outbuilding in the western portion of the site with two crossovers and a circular driveway providing access to Tivendale Road. The site includes some scattered vegetation in the western (front) setback and surrounding the dwelling.

The main characteristics of the surrounding area are:

- North: Existing residential lots and dwellings, undeveloped land currently used for farming/grazing, Minaret College and Berwick Grammar School. It is noted that Council has recently approved planning permits for residential subdivision adjoining the site to the north at 60 and 46 Tivendale Road, Officer.
- East: Officer Creek, undeveloped land currently used for farming/grazing and Starling Road.
- West: Tivendale Road, existing residential lots and Officer Primary School.
- South: Existing residential lots, Officer Town Hall, Officer Church, the Coles Service Station Development, the SJB Building and the Princes Highway.

PROPOSAL

The proposal is for the use and development of the land (in stages) for a place of worship and food & drink premises (restaurant), buildings and works within the Land Subject to Inundation Overlay, business identification signage and a reduction in car parking.

Uses

Place of Worship

- The place of worship is proposed to cater for 522 patrons/seats.

—Hours of operation:

- Monday to Friday 8.00am – 10.30pm
- Saturday 9.00am – 10.30pm
- Sunday 9.00am – 10.00pm

Restaurant (food & drink premises)

- Cater for 85 patrons/seats.
- Operate from Monday to Saturday 8.30am - 4.30pm

Built Form

The proposal includes the construction of a single building in two stages.

Stage 1 includes an auditorium, kitchen, bathrooms, food and drink area, foyer, multi-purpose room and crèche/play space. It is noted that while an area is nominated crèche/play space area the application is not for a child care centre. The space is ancillary to the use as a place of worship (ie used by patrons attending the venue) and is not therefore a child care centre business.

Stage 2 includes staff rooms, meeting rooms, multi-purpose spaces and is located east of Stage 1.

The building presents as single storey to Tivendale Road increasing to a maximum height of 12.5m above the auditorium.

Reserve

The proposal includes the provision of approximately 1,458sqm of encumbered open space (Melbourne Water Drainage Reserve) and 486sqm of unencumbered open space (Council Linear Reserve). This is land required in accordance with the Officer Precinct Structure Plan (September 2011). A 2.5m shared path is to be constructed within the Council Linear Reserve. A 1.5m high open-style (pool) fence is proposed to be erected between the proposed car park and the Council Linear Reserve.

Access/Car Parking

The proposal includes a 5.5m access way constructed along the northern boundary of the site. A total of 157 car parking spaces are provided to the rear (east) of the proposed building, representing a reduction of 33 spaces (17%).

The car park includes alternative line marking (basketball court) to be utilised in off peak times.

All car parking and access ways form part of Stage 1.

Vegetation Removal

The proposal does not include the removal of any vegetation which requires planning approval and does not include the removal of any vegetation within Tivendale Road.

Signage

The proposal includes the erection of two (2) business identification signs along the western property boundary (fronting Tivendale Road).

Sign 1: Proposed Street Signage (Stage 1)

- Is a steel sign mounted to the building frontage. The sign is a circle with a maximum diameter of 2m. Sign will be located 0.8m above ground level and identify the place of worship. Sign to be externally illuminated from garden bed up-light.

Sign 2: Proposed Steel Cross (Stage 1)

- Is a steel cross (galvanised finish) with a maximum height of 9m and a maximum width of 4.6m located 1.5m from the front (western property boundary).

PLANNING SCHEME PROVISIONS

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11.02-2S Structure Planning
- Clause 11.02-3S Sequencing of development

- Clause 11.03-2S Growth Areas
- Clause 13.02-1S Bushfire Planning
- Clause 13.03-1S Floodplain Management
- Clause 13.07-1S Land Use compatibility
- Clause 14.02-1S Catchment planning and management
- Clause 15.01-1S Urban Design
- Clause 15.01-2S Building Design
- Clause 19.02-3R Cultural Facilities Metropolitan Melbourne

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.03-2 Urban Growth Area
- Clause 21.06-1 Design and Built Form

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.05 Signs
- Clause 52.06 Car Parking
- Clause 65 Decision Guidelines
- Clause 66.02 Use and Development Referrals
- Officer Precinct Structure Plan (September 2011)
- Officer Development Contributions Plan (September 2011)
- Officer Native Vegetation Precinct Plan (September 2011)

Cardinia Shire's Liveability Plan 2017-2029

This proposal has regard to Cardinia Shire's Liveability Plan 2017-2029, in particular:

- Improved Social Cohesion
- Improved Safety
- Reduce Obesity

Zone

The land is subject to the Urban Growth Zone – Schedule 3 with the Applied Zone being the General Residential Zone.

Overlays

The land is subject to the following overlays:

- Development Contribution Plan Overlay – Schedule 4
- Land Subject to Inundation Overlay

PLANNING PERMIT TRIGGERS

The proposal for the **use and development of the land (in stages) for a place of worship and food & drinks premises (restaurant), buildings and works within the Land Subject to Inundation Overlay, business**

identification signage and a reduction in car parking requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.08-3 of the General Residential Zone a planning permit is required to use the land as a place of worship (given the gross floor area exceeds 250sqm and the site does not adjoining a road in a Road Zone).
- Pursuant to Clause 32.08-3 of the General Residential Zone a planning permit is required to use the land for a Restaurant.
- Pursuant to Clause 32.08-8 of the General Residential Zone a planning permit is required for buildings and works for a Section 2 Use (place of worship and food & drink premises (restaurant)).
- Pursuant to Clause 44.04-1 of the Land Subject to Inundation Overlay a planning permit is required to carry out works.
- In accordance with Clause 32.08-13 of the General Residential Zone the signage provisions of Clause 52.05-13 (Category 3 – High Amenity Areas) apply to the subject site. Clause 73.02 of Sign Terms defines ‘business identification signage’ as:

A sign that provides business identification information about a business or industry on the land where it is displayed. The information may include the name of the business or building, the street number of the business premises, the nature of the business, a business logo or other business identification information.

The proposal therefore provides for the definition of business identification signage and in accordance with to Clause 52.05 of Signs, a planning permit is required for business identification signage.

- Pursuant to Clause 52.06 Car Parking, a planning permit is required to reduce the specified car parking rate.

PUBLIC NOTIFICATION

Pursuant to Clause 37.07-13 of the Cardinia Planning Scheme the proposal is exempt from the notice requirements of Section 52(1)(a), (b) and (d) of the *Planning and Environment Act 1987*.

Clause 37.07-13 states that:

“An application under clause any provision of this scheme which is generally in accordance with the precinct structure plan applying to the land is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act., unless the schedule to this zone specifies otherwise”.

The application is considered to be generally in accordance with the Officer Precinct Structure Plan (PSP) which applies to the subject site (discussed below). Schedule 3 to this zone (which applies to the subject site) does not include any clauses which prevent this exemption. The proposal is therefore considered to meet the exemption of Clause 37.07-13 and is not required to be advertised.

REFERRALS

Melbourne Water

The application was referred to Melbourne Water as a statutory referral who had no objection to the proposal subject to conditions.

Transport for Victoria

The application was referred to the Head of Transport for Victoria as a statutory referral who had no objection to the proposal and did not require any conditions to be included on the permit.

DISCUSSION

The applicant submitted various background reports in support of the application including: a Site Contamination Assessment, Hydrological Impact Assessment, Geotechnical Investigation Report, Cultural Heritage Advice and Arboriculture Assessment & Report. All reports confirmed the site is suitable for the proposed use.

The applicant has provided a Landscape Plan to the satisfaction of Council's Landscaping Department and a draft Waste Management Plan (a revised Waste Management Plan is recommended as a condition on a permit).

General Residential Zone

The proposed use for a **place of worship and food & drinks premises (restaurant)**, is considered to be compatible with surrounding existing residential use and future increased residential use. The site is located on a Connector level street (Tivendale Road) and as such is capable of accommodating the increased traffic generation. The applicant provided a Traffic Engineering Assessment in support of the application. This report found that the car parking demand generated by the proposal will be met by the 157 car parking spaces provided and, that the impact of the development on the operation of the Tivendale Road/Princes Highway intersection is acceptable as it does not detract from the safety of the intersection.

The proposal will service local community needs by providing a place of worship (and associated restaurant). The proposal is considered to be of a scale and intensity that is appropriate for the area. The design and height of the proposed building provides for visual interest. A minimal setback from Tivendale Road maximises activation and passive surveillance to this street.

The submitted landscape plan provides for the re-vegetation of the site and retention of all existing street trees within Tivendale Road. Adequate car parking and access have been provided and, a revised waste management plan (required as a permit condition) will ensure appropriate loading and refuse collection. The additional traffic is not expected to detract from the safe and efficient operation of the area as discussed above.

Officer Precinct Structure Plan (September 2011)

The proposal satisfies a number of objectives of the Officer PSP relating to urban design, employment and community facilities through:

- The minimal setback (1.9m) of the building from Tivendale Road, which provides activation of this street frontage.
- The proposed articulation, varied building heights and materials which will contribute to visual amenity of the streetscape.
- Employment opportunities for the precinct.
- Provision of a community facility for residents within the Officer and surrounding community.

The PSP includes land for public open space within the subject site. The proposal provides for both the Melbourne Water Drainage Reserve (encumbered) and Council Linear Reserve (unencumbered) as shown in the Officer PSP. This land is required (via permit conditions) to be transferred to Council. It is noted that all land will be transferred to Council who will then seek a maintenance agreement with Melbourne Water for the drainage reserve area.

The subject site does not contain any vegetation identified in the Officer NVPP as significant. All vegetation can therefore be removed without a planning permit.

Development Contribution Plan Overlay – Schedule 4 & Officer Development Contributions Plan (September 2011)

Development Contribution Levy

Part 3B of the Planning and Environment Act 1987 outlines the statutory provisions relating to development contributions. This allows for the creation and implementation of Development Contribution Plans (DCPs) for purpose of levying contributions to provide works, services and facilities. The Officer Development Contribution Plan has been prepared and applies to the subject site.

The Officer DCP has been created to fund a range of physical and social infrastructure for the Precinct. Each development within the precinct is required to pay the applicable levy (based on the amount of land which is being developed). This money is then used to deliver the relevant infrastructure items. However, not all

infrastructure is funded through the DCP and other localised items are required to be provided by relevant land holders.

Pursuant to Clause 45.06-2 of the Cardinia Shire Planning Scheme the permit will require payment of the Development Contribution Levy. Council does not have discretionary powers in relation to this requirement.

Land Items

In accordance with the Officer Precinct Structure Plan and Development Contributions Plan (September 2011) the site contains land forming part of both a Melbourne Water Drainage Reserve (encumbered open space) and a Council Linear Reserve/Trail Network (unencumbered open space).

30m of land (measured from the eastern/rear property) is required as part of the Melbourne Water Drainage Reserve and 10m of land (measured from the Melbourne Water Drainage Reserve) is required as part of the Council Linear Reserve/Trail Network.

The proposal therefore includes the provision of this land. It is noted that the land will be vested in Council who will then enter into an applicable maintenance agreement with Melbourne Water.

Development Construction Items

The proposal triggers the delivery of a footpath along the eastern side of Tivendale Road (adjoining the subject site only). It is noted that this is an Officer Development Contribution Plan item and therefore the cost of delivery is credited against the applicable Development Contribution Levy owing as a result of the development.

The proposal also triggers the construction of a 2.5m shared path within the Council Linear Reserve/Trail Network. It is noted that this is a localised infrastructure requirement (not a Development Contribution Plan item) and therefore is not creditable against the applicable Development Contribution Plan Levy.

Land Subject to Inundation Overlay

The Land Subject to Inundation Overlay applies to part of the subject site. The application includes the provision of the land required as encumbered open space (drainage reserve) and was referred to Melbourne Water who have consented to the proposal (subject to conditions).

Clause 13.02 Bushfire

The applicant submitted a Bushfire Risk Assessment (Practical Ecology, ecological restoration & consulting, Bushfire Risk Assessment: Follow Baptist Church 30 Tivendale Road, Officer, October 2018) in support of the application. This assessment found:

The bushfire hazard landscape assessment determined that the immediate surroundings posed very little threat to the site as the majority of it is residential or urban and/or pasture.

When assessing these conditions against the requirements of Clause 52.03; we determined that no changes were required to the proposed layout or design to respond to bushfire threat apart from a BAL-19 Construction Standard as per AS3959-2009.

The surrounding landscape is also Urban Growth Zone with several residential subdivisions observed so we can expect the bushfire risk to be reduced as development continues (this may allow for BAL-12.5 construction but this decision will be left to the CFA and/or the relevant governing authority).

The report specifically specifies that the appropriate BAL rating should be determined by the 'relevant governing authority'. Building surveyors are required to determine appropriate BAL ratings when issuing building permits. It is therefore considered that the appropriate mechanism/authority is the building surveyor and no planning permit conditions are required. This was confirmed by Council's Building Department.

Clause 52.05 Signs

The proposed signage is not expected to detract from the residential character of the area and is compatible with the proposed use. The proposed signage is integrated into the built form and is reasonably required for business identification. Signage will not be visible from the adjoining open space (drainage reserve). The size of the proposed signage and steel cross reflects the proposed use of the site. Given the location of the signage within the centre of the site the proposed illumination is not expected to detract from the amenity of the area or adjoining land.

Clause 52.06 Car Parking

Pursuant to Clause 52.06-5, 190 car parking spaces are required for the proposed uses (place of worship and restaurant). A total of 157 spaces are proposed and therefore a reduction of 33 spaces (17%) is sought.

The submitted Traffic Impact Assessment found that the restaurant will predominately operate as an ancillary use to the church and will not generate additional parking demands. During the restaurants regular operating times, it will generate in the order of 10 car spaces. During these times, parking demands associated with church planning, pastoral work and various prayer group sessions will generate significantly lower parking demands.

The application has been referred to Council's Traffic Department who consented to the application including the reduction of car parking.

CONCLUSION

The proposed **use and development of the land (in stages) for a place of worship and restaurant, buildings and works within the Land Subject to Inundation Overlay, business identification signage and a reduction in car parking** is consistent with the purpose and objectives of the Officer Precinct Structure Plan and Development Contributions Plan (September 2011), Clause 53.01 Public Open Space Contribution and Subdivision, the Land Subject to Inundation Overlay, Clause 13.02 Bushfire, Clause 52.05 Signs and Clause 52.06 Car Parking which apply to the subject property. The proposal is considered acceptable and as such should be accepted.

CONDITIONS

1. *The use and development of land must be generally in accordance with the plans endorsed under this permit and subject to the conditions set out in this permit.*
 2. *The layout of the use, development and access as shown on the endorsed plan/s must not be altered without the written consent of the Responsible Authority.*
 3. *The development of the land must proceed in the order of stages shown on the endorsed plans except with the prior written consent of the Responsible Authority.*
 4. *Once the development of each stage starts, it must be continued and completed to the satisfaction of the Responsible Authority.*
 5. *Except with the written consent of the Responsible Authority, the use of the land for a place of worship may only operate Monday to Sunday (including public holidays) between 8.00am - 10.30pm.*
 6. *Except with the written consent of the Responsible Authority, the use of the land for a food & drink premises (restaurant) may only operate Monday to Saturday (including public holidays) between 8.30am - 4.30pm.*
 7. *Except with the written consent of the Responsible Authority, a maximum of 522 patrons associated with the use of the land for a place of worship and a maximum of 85 patrons associated with the use of the land for a food & drink premises (restaurant) are permitted on the land at any time.*
 8. *Before the development starts, as defined by the issue of a building permit under The Building Act, 1993 unless some other time has been agreed with the Collecting Agency, a Development Infrastructure Levy must be paid to the Collecting Agency, being Cardinia Shire Council, in accordance with the approved Officer Development Contributions Plan.*
 9. *Before the commencement of any buildings and works, land shown as encumbered and unencumbered open space in the Officer Precinct Structure Plan and Development Contribution Plan must be vested in the Responsible Authority. Encumbered open space must include an easement in favour of Melbourne Water.*
- Within four (4) weeks of the registration of the plans at the Land Titles Office, a Certificate of Title for all land vested in the Responsible Authority must be sent to the Responsible Authority.*
10. *Before the commencement of any buildings and works, a Public Infrastructure Plan (PIP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the PIP must be implemented to the satisfaction of the Responsible Authority.*

The PIP must show the proposed location, type, staging and timing of delivery of all infrastructure on the land which is identified in the Officer Precinct Structure Plan and Development Contributions Plan, or

which is otherwise reasonably required on or to the land or on any other land as a result of the development of the land. Without limiting the extent of what must be shown on and in the PIP it must include the following to the satisfaction of the Responsible Authority:

- a. Upgrade of Tivendale Road (eastern footpath only).
- b. Provision of land for encumbered and unencumbered open space.
- c. Construction of 2.5m wide shared path within unencumbered open space.
- d. The staging sequence
- e. The land which is required to be set aside for infrastructure identified in the DCP or the PSP including land required for public open space and community facilities and any proposed reconciliation payment in respect of the land having regard to its value set out in the DCP.
- f. Subject to the consent of the Collecting Agency, any infrastructure works set out in the DCP which can be provided 'in lieu' of development contributions in accordance with the DCP.
- g. The effects of the provision of infrastructure on the land or any other land.
- h. Any other item considered relevant by the Responsible Authority unless otherwise agreed in writing by the Responsible Authority.

The PIP may be amended with the written consent of the Responsible Authority.

11. Before the commencement of any buildings and works, or any other time agreed to in writing by the Responsible Authority, the owner must enter into an agreement or agreements under section 173 of the *Planning and Environment Act 1987* which provides for:

- a. The implementation of the Public Infrastructure Plan approved under this permit.
- b. The timing of any payments to be made to the owner in respect of any infrastructure project having regard to the availability of funds in the DCP.

The owner must pay for all reasonable costs (including legal costs) associated with preparing, reviewing, executing and registering the agreement on the certificate of title to the land (including those incurred by the Responsible Authority).

12. Before the commencement of any buildings and works, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Waste Management Plan must:

- a. Be prepared by a suitably qualified expert.
- b. Provide detail of the proposed arrangements for collection of waste from the land. Private waste collection is required.

13. All waste generated by the use of the land must be managed in accordance with the Waste Management Plan for the land approved by the Responsible Authority.

14. Before the commencement of any buildings and works, drainage plans must be submitted to and approved by the Responsible Authority. The plans must show the provision of a stormwater detention system. The stormwater detention system will become the responsibility of the property owner or body corporate to maintain to the satisfaction of the Responsible Authority.

Note: As the development has an impervious ratio greater than 35%, the developer shall engage the services of a suitably experienced Engineer to design a stormwater detention system that will reduce the intensity of the storm water discharge entering Council's drainage system, i.e.: a detention system. The storm water detention system shall provide for the same five (5) year ARI peak discharge as that for a standard house lot with no storm water detention. A standard house lot is assumed to have a fraction impervious area of 35%. Calculations and a plan shall be submitted to Council for approval prior to construction. The storm water detention system must be constructed prior to the occupation of the proposed development.

15. Before the commencement of any buildings and works:

- a. Tree Protection Fencings (TPF) must be installed for all trees shown on plans endorsed under this permit as being retained, in accordance with specifications contained within the

Arboriculture Assessment & Report (Glenn Waters, Follow Baptist Church, 30 Tivendale Road, Officer, 31 October 2017), to the satisfaction of the Responsible Authority and,

- b. Within 100m of the edge of any waterbody to be retained, a highly visible fence is to be installed 20m from the edge of the waterbody.

16. Before the installation of any zebra crossing, a Memorandum of Authorisation must be obtained from VicRoads.

17. Before the use commences the following must be constructed in accordance with approved detailed design (engineering plans) and the Officer Development Contribution Plan to the satisfaction of the Responsible Authority:

- a. A footpath within Tivendale Road (eastern side) from the northern to the southern property boundary.
- b. A 2.5m shared path within the unencumbered open space from northern to the southern property boundary.

18. Before the use commences:

- a. All existing structures (including but not limited to dwellings, outbuildings and septic systems) must be removed from the land. All existing septic tank and septic tank systems (including fittings and fixtures) must be removed, the tank contents must be pumped out and the existing waste water treatment system must be decommissioned by a plumber to the satisfaction of the Responsible Authority.
- b. The premises are connected to reticulated water supply, sewerage, drainage and underground electricity to the requirements of the relevant servicing authority.
- c. All proposed areas set aside on the approved plan/s for access, circulation and car parking must be constructed with concrete, asphalt or other approved hard surfacing material, drained and the parking areas delineated to the satisfaction of the Responsible Authority. Once constructed, these areas must be maintained to the satisfaction of the Responsible Authority.
- d. Line marking for car parking and basketball/sporting must be clear differentiated to the satisfaction of the Responsible Authority.
- e. No standing signs are to be installed within Tivendale Road adjacent to the subject site as directed by the Responsible Authority.
- f. Any redundant existing vehicle crossing must be removed and the nature strip and kerb and channel reinstated at the cost of the owner and to the satisfaction of the Responsible Authority.
- g. All fencing along a common boundary with land which is or intended to become public open space must be provided in a manner which is consistent with the Officer Precinct Structure Plan and the plans endorsed as part of this planning permit, to the satisfaction of the Responsible Authority. Fencing must be visually transparent.
- h. The landscape works shown on the approved detailed landscape plan must be carried out and completed to the satisfaction of the Responsible Authority.
- i. A bin storage area must be provided and must be located so as not to be detrimental to the visual amenity of the neighbourhood to the satisfaction of the Responsible Authority.

19. The use and development must be managed so that the amenity of the area is not detrimentally affected through the:

- a. Transport of materials, goods or commodities to or from the land.
- b. Appearance of any building, works or materials.
- c. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
- d. Presence of vermin.

To the satisfaction of the Responsible Authority.

20. The exterior colour and cladding of the development must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the building, including the roof, must be of a non-reflective nature.
21. All pipes, fixtures, fittings and vents servicing any building on the subject land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
22. All external plant and equipment must be acoustically treated or placed in sound proof housing to reduce noise to a level satisfactory to the Responsible Authority.
23. The loading and unloading of goods from vehicles must only be carried out on the land within the designated loading bay/s on the endorsed plans and must not disrupt the circulation and parking of vehicles on the land.
24. All rooftop plant and equipment (including air conditioning units, heating units and hot water systems) must be concealed or screened from general view to the satisfaction of the Responsible Authority.
25. The landscaping shown on the endorsed landscape plan must be maintained to the satisfaction of the Responsible Authority and used for no other purpose. Any dead, diseased or damaged plants are to be replaced.
26. Sediment control measures must be undertaken during construction to the satisfaction of the Responsible Authority to ensure that the development subject land is adequately managed in such a way that no mud, dirt, sand, soil, clay or stones are washed into or allowed to enter the stormwater drainage system.
27. Stormwater works must be provided on the subject land so as to prevent overflows onto adjacent properties.
28. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.
29. All design and construction must be in accordance with the Geotechnical Investigation Report (GeoAust, Job No: 5767-2-R, 16 March 2018).
30. All design and construction must be in accordance with the Hydrological Assessment (Valenza Engineering Pty Ltd, 30 Tivendale Road, Officer, 28 February 2018) and the Hydrogeological Assessment Addendum Letter (Valenza Engineering Pty Ltd, Follow Baptist Church, 30 Tivendale Road - Officer - completed 5 October 2018).

Signage Conditions

31. No signs other than those allowed by this permit or the planning scheme may be displayed on the subject land without the written consent of the Responsible Authority.
32. The location and details of the signs, including those on the supporting structure, as shown on the endorsed plans, must not be altered without the written consent of the Responsible Authority.
33. Sign/s must not be illuminated by external or internal light except as approved by this permit or with the written consent of the Responsible Authority
34. The illumination of the sign/s must not detrimentally affect the amenity of the area through the emission of unreasonable levels of light beyond the boundary of the subject land.
35. The sign/s must not contain any flashing light.
36. The sign/s must be displayed and maintained to the satisfaction of the Responsible Authority.

Melbourne Water Conditions:

37. Prior to vesting the encumbered and unencumbered open space on this property, as stated in the Officer Precinct Structure Plan, to Council, the Owner shall enter into and comply with an agreement with Melbourne Water Corporation for the acceptance of surface and storm water from the subject land directly or indirectly into Melbourne Water's drainage systems and waterways, the provision of drainage works and other matters in accordance with the statutory powers of Melbourne Water Corporation.
38. Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water's drains or watercourses.

39. Prior to vesting the encumbered and unencumbered open space on this property, as stated in the Officer Precinct Structure Plan, to Council, a stormwater management strategy including associated modelling must be submitted and approved by Melbourne Water and Council.
40. Stormwater runoff from the subdivision must achieve State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater as set out in the 'Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) 1999'.
41. All new building pads are to be filled to a minimum of 300mm above the 1 in 100 year flood levels associated with any existing or proposed Melbourne Water pipeline and/or all new lots are to be filled to a minimum of 600mm above the 1 in 100 year flood level associated with any existing or proposed Melbourne Water wetland, retarding basin or waterway.
42. Prior to the issue of Certificate of Occupancy, a certified survey plan prepared by or under the supervision of a licensed land surveyor, showing finished lot levels reduced to the Australian Height Datum, must be submitted to Melbourne Water for our records.
43. Easements or reserves shall be created over existing and proposed Melbourne Water assets on the Plan of Subdivision to the satisfaction of Melbourne Water.
44. The developer is to negotiate with any downstream landowners to obtain a free draining outfall through their property. Approval is to be forwarded to Melbourne Water for our records prior to construction commencing.
45. Any temporary outfall is to be arranged to the satisfaction of Melbourne Water, Council and the affected downstream property owner(s).

Expiry:

A permit for the development and use of land expires if—

- a) the first stage development does not start within two (2) years after the issue of the permit; or
- b) the final stage development is not completed within ten (10) years after the issue of the permit; or
- c) the use does not start within two (2) years after the completion of the development; or
- d) the use is discontinued for a period of two (2) years.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Notes:

A 'Vehicle Crossing Permit' must be obtained from Council prior to the commencement of any works associated with the proposed vehicle crossing.

3 USE AND DEVELOPMENT OF THE LAND (IN STAGES) FOR A PLACE OF WORSHIP AND FOOD & DRINK PREMISES (RESTAURANT), BUILDINGS AND WORKS WITHIN THE LAND SUBJECT TO INUNDATION OVERLAY, BUSINESS IDENTIFICATION SIGNAGE AND A REDUCTION IN CAR PARKING AT L4 LP57429, 30 TIVENDALE ROAD, OFFICER VIC 3809

Moved Cr B Owen Seconded Cr C Ross

That Planning Permit **T180460** be issued for the **use and development of the land (in stages) for a place of worship and food & drink-premises (restaurant), buildings and works within the Land Subject to Inundation Overlay, business identification signage and a reduction in car parking at L4 LP57429, 30 Tivendale Road, Officer VIC 3809** subject to the following conditions:

1. *The use and development of land must be generally in accordance with the plans endorsed under this permit and subject to the conditions set out in this permit.*
2. *The layout of the use, development and access as shown on the endorsed plan/s must not be altered without the written consent of the Responsible Authority.*
3. *The development of the land must proceed in the order of stages shown on the endorsed plans except with the prior written consent of the Responsible Authority.*
4. *Once the development of each stage starts, it must be continued and completed to the satisfaction of the Responsible Authority.*
5. *Except with the written consent of the Responsible Authority, the use of the land for a place of worship may only operate Monday to Sunday (including public holidays) between 8.00am - 10.30pm.*
6. *Except with the written consent of the Responsible Authority, the use of the land for a food & drink premises (restaurant) may only operate Monday to Saturday (including public holidays) between 8.30am - 4.30pm.*
7. *Except with the written consent of the Responsible Authority, a maximum of 522 patrons associated with the use of the land for a place of worship and a maximum of 85 patrons associated with the use of the land for a food & drink premises (restaurant) are permitted on the land at any time.*
8. *Before the development starts, as defined by the issue of a building permit under The Building Act, 1993 unless some other time has been agreed with the Collecting Agency, a Development Infrastructure Levy must be paid to the Collecting Agency, being Cardinia Shire Council, in accordance with the approved Officer Development Contributions Plan.*
9. *Before the commencement of any buildings and works, land shown as encumbered and unencumbered open space in the Officer Precinct Structure Plan and Development Contribution Plan must be vested in the Responsible Authority. Encumbered open space must include an easement in favour of Melbourne Water.*

Within four (4) weeks of the registration of the plans at the Land Titles Office, a Certificate of Title for all land vested in the Responsible Authority must be sent to the Responsible Authority.

10. *Before the commencement of any buildings and works, a Public Infrastructure Plan (PIP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the PIP must be implemented to the satisfaction of the Responsible Authority.*

The PIP must show the proposed location, type, staging and timing of delivery of all infrastructure on the land which is identified in the Officer Precinct Structure Plan and Development Contributions Plan, or which is otherwise reasonably required on or to the land or on any other land as a result of the development of the land. Without limiting the extent of what must be shown on and in the PIP it must include the following to the satisfaction of the Responsible Authority:

- a. *Upgrade of Tivendale Road (eastern footpath only).*
- b. *Provision of land for encumbered and unencumbered open space.*

- c. Construction of 2.5m wide shared path within unencumbered open space.
- d. The staging sequence
- e. The land which is required to be set aside for infrastructure identified in the DCP or the PSP including land required for public open space and community facilities and any proposed reconciliation payment in respect of the land having regard to its value set out in the DCP.
- f. Subject to the consent of the Collecting Agency, any infrastructure works set out in the DCP which can be provided 'in lieu' of development contributions in accordance with the DCP.
- g. The effects of the provision of infrastructure on the land or any other land.
- h. Any other item considered relevant by the Responsible Authority unless otherwise agreed in writing by the Responsible Authority.

The PIP may be amended with the written consent of the Responsible Authority.

11. Before the commencement of any buildings and works, or any other time agreed to in writing by the Responsible Authority, the owner must enter into an agreement or agreements under section 173 of the *Planning and Environment Act 1987* which provides for:

- a. The implementation of the Public Infrastructure Plan approved under this permit.
- b. The timing of any payments to be made to the owner in respect of any infrastructure project having regard to the availability of funds in the DCP.

The owner must pay for all reasonable costs (including legal costs) associated with preparing, reviewing, executing and registering the agreement on the certificate of title to the land (including those incurred by the Responsible Authority).

12. Before the commencement of any buildings and works, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Waste Management Plan must:

- a. Be prepared by a suitably qualified expert.
- b. Provide detail of the proposed arrangements for collection of waste from the land. Private waste collection is required.

13. All waste generated by the use of the land must be managed in accordance with the Waste Management Plan for the land approved by the Responsible Authority.

14. Before the commencement of any buildings and works, drainage plans must be submitted to and approved by the Responsible Authority. The plans must show the provision of a stormwater detention system. The stormwater detention system will become the responsibility of the property owner or body corporate to maintain to the satisfaction of the Responsible Authority.

Note: As the development has an impervious ratio greater than 35%, the developer shall engage the services of a suitably experienced Engineer to design a stormwater detention system that will reduce the intensity of the storm water discharge entering Council's drainage system, i.e.: a detention system. The storm water detention system shall provide for the same five (5) year ARI peak discharge as that for a standard house lot with no storm water detention. A standard house lot is assumed to have a fraction impervious area of 35%. Calculations and a plan shall be submitted to Council for approval prior to construction. The storm water detention system must be constructed prior to the occupation of the proposed development.

15. Before the commencement of any buildings and works:

- a. Tree Protection Fencings (TPF) must be installed for all trees shown on plans endorsed under this permit as being retained, in accordance with specifications contained within the Arboriculture Assessment & Report (Glenn Waters, Follow Baptist Church, 30 Tivendale Road, Officer, 31 October 2017), to the satisfaction of the Responsible Authority and,
- b. Within 100m of the edge of any waterbody to be retained, a highly visible fence is to be installed 20m from the edge of the waterbody.

16. Before the installation of any zebra crossing, a Memorandum of Authorisation must be obtained from VicRoads.

17. Before the use commences the following must be constructed in accordance with approved detailed design (engineering plans) and the Officer Development Contribution Plan to the satisfaction of the Responsible Authority:
- a. A footpath within Tivendale Road (eastern side) from the northern to the southern property boundary.
 - b. A 2.5m shared path within the unencumbered open space from northern to the southern property boundary.
18. Before the use commences:
- a. All existing structures (including but not limited to dwellings, outbuildings and septic systems) must be removed from the land. All existing septic tank and septic tank systems (including fittings and fixtures) must be removed, the tank contents must be pumped out and the existing waste water treatment system must be decommissioned by a plumber to the satisfaction of the Responsible Authority.
 - b. The premises are connected to reticulated water supply, sewerage, drainage and underground electricity to the requirements of the relevant servicing authority.
 - c. All proposed areas set aside on the approved plan/s for access, circulation and car parking must be constructed with concrete, asphalt or other approved hard surfacing material, drained and the parking areas delineated to the satisfaction of the Responsible Authority. Once constructed, these areas must be maintained to the satisfaction of the Responsible Authority.
 - d. Line marking for car parking and basketball/sporting must be clear differentiated to the satisfaction of the Responsible Authority.
 - e. No standing signs are to be installed within Tivendale Road adjacent to the subject site as directed by the Responsible Authority.
 - f. Any redundant existing vehicle crossing must be removed and the nature strip and kerb and channel reinstated at the cost of the owner and to the satisfaction of the Responsible Authority.
 - g. All fencing along a common boundary with land which is or intended to become public open space must be provided in a manner which is consistent with the Officer Precinct Structure Plan and the plans endorsed as part of this planning permit, to the satisfaction of the Responsible Authority. Fencing must be visually transparent.
 - h. The landscape works shown on the approved detailed landscape plan must be carried out and completed to the satisfaction of the Responsible Authority.
 - i. A bin storage area must be provided and must be located so as not to be detrimental to the visual amenity of the neighbourhood to the satisfaction of the Responsible Authority.
19. The use and development must be managed so that the amenity of the area is not detrimentally affected through the:
- a. Transport of materials, goods or commodities to or from the land.
 - b. Appearance of any building, works or materials.
 - c. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - d. Presence of vermin.
- To the satisfaction of the Responsible Authority.
20. The exterior colour and cladding of the development must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the building, including the roof, must be of a non-reflective nature.
21. All pipes, fixtures, fittings and vents servicing any building on the subject land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
22. All external plant and equipment must be acoustically treated or placed in sound proof housing to reduce noise to a level satisfactory to the Responsible Authority.
23. The loading and unloading of goods from vehicles must only be carried out on the land within the

designated loading bay/s on the endorsed plans and must not disrupt the circulation and parking of vehicles on the land.

24. All rooftop plant and equipment (including air conditioning units, heating units and hot water systems) must be concealed or screened from general view to the satisfaction of the Responsible Authority.
25. The landscaping shown on the endorsed landscape plan must be maintained to the satisfaction of the Responsible Authority and used for no other purpose. Any dead, diseased or damaged plants are to be replaced.
26. Sediment control measures must be undertaken during construction to the satisfaction of the Responsible Authority to ensure that the development subject land is adequately managed in such a way that no mud, dirt, sand, soil, clay or stones are washed into or allowed to enter the stormwater drainage system.
27. Stormwater works must be provided on the subject land so as to prevent overflows onto adjacent properties.
28. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.
29. All design and construction must be in accordance with the Geotechnical Investigation Report (GeoAust, Job No: 5767-2-R, 16 March 2018).
30. All design and construction must be in accordance with the Hydrological Assessment (Valenza Engineering Pty Ltd, 30 Tivendale Road, Officer, 28 February 2018) and the Hydrogeological Assessment Addendum Letter (Valenza Engineering Pty Ltd, Follow Baptist Church, 30 Tivendale Road - Officer - completed 5 October 2018).

Signage Conditions

31. No signs other than those allowed by this permit or the planning scheme may be displayed on the subject land without the written consent of the Responsible Authority.
32. The location and details of the signs, including those on the supporting structure, as shown on the endorsed plans, must not be altered without the written consent of the Responsible Authority.
33. Sign/s must not be illuminated by external or internal light except as approved by this permit or with the written consent of the Responsible Authority
34. The illumination of the sign/s must not detrimentally affect the amenity of the area through the emission of unreasonable levels of light beyond the boundary of the subject land.
35. The sign/s must not contain any flashing light.
36. The sign/s must be displayed and maintained to the satisfaction of the Responsible Authority.

Melbourne Water Conditions:

37. Prior to vesting the encumbered and unencumbered open space on this property, as stated in the Officer Precinct Structure Plan, to Council, the Owner shall enter into and comply with an agreement with Melbourne Water Corporation for the acceptance of surface and storm water from the subject land directly or indirectly into Melbourne Water's drainage systems and waterways, the provision of drainage works and other matters in accordance with the statutory powers of Melbourne Water Corporation.
38. Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water's drains or watercourses.
39. Prior to vesting the encumbered and unencumbered open space on this property, as stated in the Officer Precinct Structure Plan, to Council, a stormwater management strategy including associated modelling must be submitted and approved by Melbourne Water and Council.
40. Stormwater runoff from the subdivision must achieve State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater as set out in the 'Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) 1999'.
41. All new building pads are to be filled to a minimum of 300mm above the 1 in 100 year flood levels associated with any existing or proposed Melbourne Water pipeline and/or all new lots are to be filled to a minimum of 600mm above the 1 in 100 year flood level associated with any existing or proposed

Melbourne Water wetland, retarding basin or waterway.

42. Prior to the issue of Certificate of Occupancy, a certified survey plan prepared by or under the supervision of a licensed land surveyor, showing finished lot levels reduced to the Australian Height Datum, must be submitted to Melbourne Water for our records.
43. Easements or reserves shall be created over existing and proposed Melbourne Water assets on the Plan of Subdivision to the satisfaction of Melbourne Water.
44. The developer is to negotiate with any downstream landowners to obtain a free draining outfall through their property. Approval is to be forwarded to Melbourne Water for our records prior to construction commencing.
45. Any temporary outfall is to be arranged to the satisfaction of Melbourne Water, Council and the affected downstream property owner(s).

Expiry:

A permit for the development and use of land expires if—

- a) the first stage development does not start within two (2) years after the issue of the permit; or
- b) the final stage development is not completed within ten (10) years after the issue of the permit; or
- c) the use does not start within two (2) years after the completion of the development; or
- d) the use is discontinued for a period of two (2) years.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Notes:

A 'Vehicle Crossing Permit' must be obtained from Council prior to the commencement of any works associated with the proposed vehicle crossing.

Cd.

4 PLANNING ENFORCEMENT MATTERS

FILE REFERENCE INT1929196

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Owen Hardidge

RECOMMENDATION

That the list of enforcement matters currently before VCAT & the Magistrates' Court (and the County Court) be noted.

Attachments

Nil.

EXECUTIVE SUMMARY

The following list of enforcement matters currently before VCAT & the Magistrates' Court is submitted for Councillors information.

BACKGROUND

Where breaches of the Planning Scheme are detected, the breaches may give rise to criminal liability, which may result in infringements being issued, or charges being filed in the Magistrates Court of Victoria.

If Council cannot obtain appropriate remediation by consent, Council undertakes enforcement action at the Victorian Civil and Administrative Tribunal (VCAT).

VCAT enforcement actions will usually be delayed until Magistrates' Court proceedings are completed.

These matters can take several forms and the following are the usual steps in the enforcement process.

Current Enforcement cases

The following list indicates such enforcement activities that are currently before VCAT or the Magistrates' Court.

Property Address	Nature of Contravention	Status
1 Walker Street, Koo Wee Rup (OH:SM:18409)	Land that was developed without a permit, in contravention of planning scheme - Heritage Overlay (43.01)	Magistrates' Court proceeding, the accused did not attend the contested hearing date (21/2/19). The accused has now been bailed to attend the Dandenong Magistrates Court on 19 July 2019 .
765 Gembrook Rd, Pakenham Upper	Native vegetation removal, and earthworks creating driveway and	Magistrates' Court proceeding, alleging that the owner has conducted earthworks that require a permit, and cleared native vegetation, both without a permit.

(OH:LK:16299)	hardstand, in breach of Rural Conservation Zone – Schedule 2, Environmental Significance Overlay Schedule 1, and Clause 52.17	The case is listed for next mention on 8 May 2019 , having been previously adjourned to allow for the High Court application to be determined (see below)
715 Gembrook Rd, Pakenham Upper (OH:AB:14130)	Construction of retaining wall without building permit.	FOR INFORMATION ONLY – ongoing <i>planning enforcement</i> matters relating to property CASE relating to unpermitted building work (retaining wall) – On 21 December 2017 , the Magistrates Court found the charges proven. The owner appealed the decision to the County Court. In April 2018 , the owner filed an application in the High Court of Australia in respect of the County Court case. On 12 September 2018 , the High Court dismissed this application as being without proper basis. On 11 April 2019 , the County Court found the charges proven, dismissing the appeal. The owner was fined \$1,500 without conviction, and ordered to pay in excess of \$17,000 costs.
555 Back Creek Rd, Gembrook OH:JALF:18416 (cf EH:LK:16272)	Land developed contrary to Rural Conservation Zone, Environmental Significance Overlay and Native Vegetation particular provisions, by the creation of a dam, destruction of native vegetation and the construction of a building, without a permit	VCAT enforcement order application, listed for contested hearing on 18 April 2019 .
Officer South Rd, Officer OH:JALF:18419	Land used for materials recycling, being a prohibited use, contrary to the Urban Growth Zone.	VCAT enforcement order application, listed for contested hearing on 11 June 2019 .

Conclusion

The list of current enforcement activities is presented for information.

Glossary of terms

Practice day hearing

This is the first stage of the VCAT process, and is held shortly after the application is lodged. It is used to assess the future path of the case, and determine if the case can be settled, or will need to proceed to a full hearing.

Mention hearing

A mention hearing is a brief hearing, where the Court or VCAT lists the matter for brief hearing. If the case can be dealt with swiftly, it will be dealt with at a Mention hearing. For more lengthy matters (such as contested hearings) the case will be further adjourned. In the Magistrates' Court, the Court may hear a "guilty plea" during a mention hearing.

Administrative Mention

Administrative Mention is a hearing held without the parties in attendance and requires written correspondence from both parties to update the Member on the process of the matter.

Adjournment

A court or Tribunal will adjourn a case when the matter is deferred until another date. This can occur for a number of reasons, and is at the discretion of the Magistrate or VCAT member.

Land Management Plan

These plans are used to describe actions that will remediate the land, and commonly describe rehabilitation following unlawful vegetation removal. This plan will then become mandatory, by being incorporated into an Enforcement Order or a Section 173 agreement. The contents of the Plan will be decided by Council's Environment Team, or Vegetation Management officer.

Contested hearing / Full hearing

A contested (or "full" hearing) means the matter is disputed by the accused/respondent, and Council and the respondent will fully present and test each other's evidence and/or submissions. A contested (of "full") hearing is effectively a "trial".

Consent Orders

Consent Orders are an agreement between Council and the Respondents to, in most cases, create an Enforcement Order with conditions that are agreed to by both Parties. This is done where a Respondent has accepted there has been a breach of the Act and wants to comply with Council's proposed Enforcement Order. This saves on time and money by avoiding a hearing or lengthy VCAT processes.

4 PLANNING ENFORCEMENT MATTERS

Moved Cr J Owen Seconded Cr C Ryan

That the list of enforcement matters currently before VCAT & the Magistrates' Court (and the County Court) be noted.

Cd.

5 PLANNING SCHEME AMENDMENT ACTIVITY REPORT

FILE REFERENCE INT1929207

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Tracey Parker

RECOMMENDATION

That the report be noted.

EXECUTIVE SUMMARY

The report provides an update on the status of active planning scheme amendments and planning scheme amendment requests received.

Status of active amendments

The following table provides details relating to planning scheme amendments that are currently being processed.

Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
C205	EDM Group	80 McDonalds Track Lang Lang	Rezone part of the land at 80 McDonalds Track, Lang Lang (Lot 3 on PS542732), and Lots 1 and 2 (PS542732) Westernport Road, Lang Lang, from Farming Zone to Industrial 1 Zone, apply Schedule 20 to the Development Plan Overlay to this land and concurrently consider, under Section 96A of the Planning and Environment Act 1987, a planning permit application to subdivide the land at 80 McDonalds Track, Lang Lang into two (2) lots.	Thu 02/11/2017	Mon 18/12/2017	On 22/02/2019 Council received advice from DELWP advising that prior to the Minister considering the amendment, a Bushfire Assessment must be completed and approved by the CFA. The assessment has been prepared and forwarded to the CFA for approval.
C220	Cardinia Shire Council	Beaconsfield Precinct.	Implement the key objectives of the Beaconsfield Structure Plan December 2013 (expires March 2019) by applying the Design and	Thu 09/11/2017	Mon 11/12/2017	Council adopted the amendment on 21/05/2018. Awaiting approval from the Minister for Planning.

Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			Development Overlay (DDO) to the Princes Highway Gateway Precinct (Proposed DD05), Beaconsfield Point Precinct (Proposed DD06) and Woodland Grove Precinct (Proposed DD07).			
C222	Nilson Noel & Holmes Surveyors P/L on behalf of landowner	55 & 85 McNamara Road, Bunyip	<ul style="list-style-type: none"> Rezone land from Farming Zone Schedule 1 (FZ1) to Low Density Residential Zone Schedule 3 (LDRZ3) (55 & 85 McNamara Road) Apply a Development Plan Overlay Schedule 21 (DPO 21) (85 McNamara Road) Apply a Design and Development Overlay Schedule 1 (DDO1) Delete the Environmental Significance Overlay Schedule 1 (ES01). 			On 10/12/2018 Council adopted to seek authorisation from the Minister for Planning to prepare an amendment.
C226	Cardinia Shire Council	Lot 5 PS32119 5 67 Whiteside Rd Officer, Lot 2 PS32784 5 130 Whiteside Rd Officer and Lot PP PS74606 4 325 Princes Hwy Officer	Repair inconsistent policy in the Urban Growth Zone Schedule 3 (UGZ3) and the applied Schedule of the Rural Conservation Zone (RCZ) that prevents development in the 3 lots identified from occurring in line with the Officer Precinct Structure Plan (PSP) that was adopted by Council in 2011. The amendment proposes to add a Schedule to the RCZ removing the minimum subdivision requirements for the 3 sites identified, that would otherwise exist in the provision. This ensures there is	Thu 22/06/2017	Mon 24/07/2017	On 11/05/2018 Council received advice from DELWP stating that, based on new environmental risk regulations approved via Amendment VC140 on 12/12/2017, further work is required prior to the Minister considering the amendment.

Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			a match between the policy intention of the PSP and the provisions in the UGZ3 and the applied zone (RCZ).			
C228	Cardinia Shire Council	Pakenham Activity Centre	Apply the Activity Centre Zone (ACZ) to the Pakenham Activity Centre.			On 19/11/2018 Council adopted to seek authorisation from the Minister for Planning to prepare an amendment and to adopt the updated draft Pakenham Structure Plan 2018 and the draft Pakenham Activity Centre Urban Design Framework 2018.
C229	Cardinia Shire Council	Tynong, Garfield and Bunyip	Apply the Environmental Significance Overlay (ESO) to Tynong, Bunyip and Garfield to facilitate the provision of habitat corridors for the Southern Brown Bandicoot.	Thu 04/10/2018	Wed 07/11/2018	Exhibition closed. Submissions are under assessment.
C232	Victorian Planning Authority	Officer Precinct	Implement the revised Officer Precinct Structure Plan (Amended February 2018) by making changes to the zone, overlay and ordinance provisions of the Cardinia Planning Scheme.	Thu 22/03/2018	Fri 27/04/2018	A Panel Hearing was held for 6 days between 4 to 12 December 2018. The Panel Report was finalised on 08/02/2019. The VPA will consider the panel report at its Board meeting in 15 May 2019.
C234	Victorian Planning Authority and Cardinia Shire Council	Pakenham East Precinct	Incorporate the Pakenham East Precinct Structure Plan (PSP) and rezone the majority of land to Urban Growth Zone Schedule 5 (UGZ5) to facilitate the development of the land generally in accordance with the PSP, and make a number of other consequential	Thu 18/01/2018	Fri 23/02/2018	VPA adopted the amendment on 10/10/2018. Awaiting approval from the Minister for Planning.

Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			changes to the Cardinia Planning Scheme to support the implementation of the PSP.			
C235	Planning Central	145 Rossiter Road, Koo Wee Rup	Rezone and subdivide the land as per the Koo Wee Rup Township Strategy.			On 10/12/2018 Council adopted to seek authorisation from the Minister for Planning to prepare an amendment.
C237	Cardinia Shire Council	Multiple addresses	Amend various provisions of the Cardinia Planning Scheme to correct mapping anomalies, delete redundant controls and correct ordinance errors.	Thu 07/06/2018	Thu 19/07/2018	On 17/09/2018 Council resolved that the amendment be submitted to the Minister for Planning for approval under Section 31 of the Planning and Environment Act 1987.
C238	Cardinia Shire Council	Beaconsfield Precinct - Glismann Road and Old Princes Highway.	Rezone to General Residential Zone (Schedule 2) and introduce a Development Plan Overlay (DPO), a site specific Environmental Audit Overlay (EAO) and remove the Environment Significance Overlay 1 (ESO1). An ICP will be implemented at a later stage.			On 15/10/2018 Council adopted to seek authorisation from the Minister for Planning to prepare an amendment. DEWLP have requested additional information from Council.
C242	Cardinia Shire Council	Pakenham Activity Centre	<p>Introduce a permanent Heritage Overlay for the following places identified in the 'Pakenham Structure Plan Heritage Review (February 2018)'. <ul style="list-style-type: none"> • H0279 18A Henry Street, Pakenham • H0281 49 James Street, Pakenham • H0283 39 Main Street, Pakenham • H0284 62 Main Street, Pakenham • H0285 84 Main Street, Pakenham </p>	Thu 09/08/2018	Fri 07/09/2018	A Panel Hearing was held on 27 and 28 March 2019. Awaiting panel report.

Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			<ul style="list-style-type: none"> • H0286 90-92 Main Street, Pakenham • H0288 1-7 Station Street, Pakenham • H0290 23 Rogers Street, Pakenham • H0287 11, 14, 17 & 5-19 Rogers Street, Pakenham • H0291 1-23 Dame Pattie Avenue, Pakenham • H0291 2-18 Dame Pattie Avenue, Pakenham • H0292 3-10 Henty Street, Pakenham • H0227 6 Henty Street, Pakenham • H0293 5-21 James Street, Pakenham • H0293 6-32 James Street, Pakenham • H0293 1 Snodgrass Street, Pakenham • H0228 21 James Street, Pakenham 			
C244	Cardinia Shire Council	Pakenham Activity Centre Parking Precinct	Implement the key objectives of the Pakenham Parking Precinct Plan (May 2018) by applying the Parking Overlay to the Pakenham Activity Centre.	Thu 04/10/2018	Tue 06/11/2018	On 18/02/2019 Council resolved to refer the amendment to an independent planning panel. No submissions were received to be heard by the Panel, therefore no formal hearing will be held. Council is therefore awaiting a decision of the planning panel.
C245	Mesh Urban Planning & Design	Cardinia Road Employment Precinct	Under Part 20(4) change Urban Growth Zone (UGZ) Schedule and make APA a recommending referral authority to allow residential village development.			On 19/03/2018 Council adopted to seek authorisation from the Minister for Planning to prepare an amendment under Section 20(4) of the Planning and Environment Act

Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
						1987.
C250	Cardinia Shire Council	Cardinia Shire	Implementation of Cardinia Planning Scheme Review 2018.			On 10/12/2018 Council resolved to endorse the Cardinia Planning Scheme Review and seek the authorisation of the Minister for Planning to prepare Amendment C250.

5 PLANNING SCHEME AMENDMENT ACTIVITY REPORT

Moved Cr J Owen Seconded Cr C Ryan

That the report be noted.

Cd.

6 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATION AUTHORITY

FILE REFERENCE INT1929241

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Debbie Tyson

RECOMMENDATION

That the report be noted.

EXECUTIVE SUMMARY

The following matters have been dealt with under delegated powers since the last report to Council.

Central Ward

Date	Permit No	Location	The Proposal	The Decision	Lodged Date
15/03/2019	T160577 - 3	Ascot Park Drive, Pakenham VIC 3810	The use and development of the land for service station, convenience restaurant, convenience shops, shops, restricted recreational facility, access to a Road Zone, Category 1, reduction in the car parking requirement and advertising signage in accordance with the endorsed plans.	Failure	13 August 2018
19/03/2019	T180727	153 Main Street, Pakenham VIC 3810	Removal of vegetation in the Heritage Overlay	Lapsed	02 November 2018
21/03/2019	T140770 - 3	24 Bormar Drive, Pakenham Victoria 3810	Amendment to the plans endorsed under T140770-2 to allow for one (1) mezzanine to warehouses 8, 9, 11, 22, 23 & 24.	Issued	11 December 2018
22/03/2019	T190113	75 Princes Highway, Pakenham VIC 3810	Conversion of residential single storey dwelling to a medical centre	Withdrawn	28 February 2019
26/03/2019	T190021	Cumberland Drive, Pakenham VIC 3810	To proceed under Section 24A of the Subdivision Act 1988 (removal of reserve status from Reserve No. 3 on PS638885W)	Issued	18 January 2019
27/03/2019	T190043	9 Airedale Way, Pakenham VIC 3810	Buildings and works (dwelling) within the Significant Landscape Overlay – Schedule 6	Issued	30 January 2019
29/03/2019	T180598	Princes Highway, PAKENHAM VIC 3810	Use of the land for a retail premise and education facility (cooking classes)	Issued	10 September 2018
5/04/2019	T170798 - PC6	125 Mulcahy Road, Pakenham VIC 3810	PC6 - (Con. 16 SMP)	Issued	25 March 2019
5/04/2019	T180428 - PC1	Aspen Street, Pakenham VIC 3810	Development of land for nineteen (19) dwellings and subdivision of land	Issued	31 January 2019
5/04/2019	T180814	27 Avondale Street, Officer VIC 3809	brick veneer dwelling house	Issued	11 December 2018
9/04/2019	T180096 - PC1	49 Howey Road, Pakenham VIC 3810	Construction of four (4) dwellings on a lot	Issued	05 March 2019
9/04/2019	T180850	Brown Road, Pakenham VIC 3810	Buildings and works (pedestrian bridge) and native vegetation removal	Issued	21 December 2018
10/04/2019	T140742 - 1	2-4 Village Way, Pakenham Victoria 3810	Use and development of the land for sixty (60) dwellings and a reduction of the visitor rate of Clause 52.06 and use and development for a shop and offices and reduction in loading and unloading of vehicles (shop) of Clause 52.07	Issued	11 February 2019
10/04/2019	T160070 - 1	2 Village Way, Pakenham VIC 3810	Amendment to Permit T160070, to facilitate staging of the subdivision Amend plans Amend Conditions Amend preamble Please see Cover letter for details.	Issued	21 December 2018
11/04/2019	T160792 - PC6	Michael Street, Pakenham VIC 3810	Con. 46 TMP (tree management plan)	Issued	28 March 2019
15/04/2019	T170798 - PC7	125 Mulcahy Road, Pakenham VIC 3810	PC7 - (Con. 16 TMP)	Issued	25 March 2019

17/04/2019 T190085 2/106 Henry Road, Use land for the sale and consumption of liquor Issued 13 March
Pakenham VIC 3810 2019

Port Ward

Date	Permit No	Location	The Proposal	The Decision	Lodged Date
14/03/2019	T180257	26 Pinehill Drive, Pakenham VIC 3810	Subdivision of land into two (2) lots and removal of vegetation removal	Issued	07 May 2018
15/03/2019	T180558	Hill Street, Pakenham VIC 3810	The development of thirty-three (33) warehouses, variation to the car parking requirements of Clause 52.06 and associated works	Issued	27 August 2018
15/03/2019	T180689	3 Hope Street, Bunyip VIC 3815	Use and Development of a Service Station, Car Wash, Display of Signs (Internally-Illuminated Pylon Sign and Business Identification Signage) and Car Parking	NOD	02 November 2018
15/03/2019	T180805	15 Henry Road, Bunyip VIC 3815	Development of the land for an outbuilding (outside the building envelope) and earthworks exceeding 1 metre.	Issued	05 December 2018
18/03/2019	T180559	465 Kettles Road, Lang Lang VIC 3984	Use of the land for Animal Husbandry (animal rescue)	Issued	28 August 2018
20/03/2019	T190045	Lot TT PS728893 (Proposed Lots 23-27 PS823245) Southeast Boulevard, Pakenham VIC 3810	Development of the land for eight (8) warehouses and associated works	Issued	30 January 2019
22/03/2019	T180635	530 Five Mile Road, Nar Nar Goon VIC 3812	Buildings and works associated with agriculture (equestrian arena)	Issued	25 September 2018
22/03/2019	T180788	15 Baranbali Road, Maryknoll VIC 3812	Alterations and additions to an existing dwelling	Issued	28 November 2018
25/03/2019	T041069 - 2	Nylander Road, Bunyip Victoria 3815	Subdivision (163 lots) in 10 stages	Issued	11 February 2019
25/03/2019	T180777	980 McDonalds Drain Road, Pakenham VIC 3810	Buildings and works associated with an outbuilding	Issued	22 November 2018
25/03/2019	T180831	50 Nar Nar Goon-Longwarry Road, Bunyip VIC 3815	Use of the land (Warehouse 2) for a Restricted Recreation Facility (Gym and Personal Training Studio)	NOD	13 December 2018
27/03/2019	T150142 - PC4	34 A Beckett Road, Bunyip VIC 3815	Condition 1B, 1C, 1D & 1E.	Issued	26 February 2018
27/03/2019	T170526 - PC1	68 Gainsborough Avenue, Lang Lang VIC 3984	The development of the land for three outbuildings	Issued	20 February 2019
27/03/2019	T180604	Southeast Boulevard (proposed Lot 7 49 Commercial Drive), Pakenham VIC 3810	Use and development of the land for a Retail Premises (boat sales)	Issued	11 September 2018
27/03/2019	T180735	200 Stanlakes Road, Lang Lang VIC 3984	Development of dwelling additions and alterations and construction of an outbuilding (shed)	Issued	07 November 2018
27/03/2019	T180845	40 Tarmac Way, Pakenham VIC 3810	Subdivision of land after development into two (2) lots.	Issued	20 December 2018
29/03/2019	T180603 - PC1	135 Temby Road, Iona VIC 3815	Use and development of the land for a single dwelling and earthworks associated with a dam	Issued	06 March 2019
29/03/2019	T180410	10 Cameron Way, Pakenham VIC 3810	Development Of Land For A Second Dwelling	Issued	04 July 2018
29/03/2019	T180632	10 No 5 Drain Road, Koo Wee Rup VIC 3981	Re-subdivision of the land (two (2) lot boundary realignment)	Issued	25 September 2018
1/04/2019	T190064	284 Rossiter Road, Koo Wee Rup VIC 3981	Boundary realignment	Withdrawn	05 February 2019
1/04/2019	T190179	355 Pooles Road, Lang Lang East VIC 3984	see T190178 Proposed house extension	Withdrawn	29 March 2019
3/04/2019	T180763	31 Home Road, Nar Nar Goon VIC 3812	Development of the land for a second dwelling	Issued	15 November 2018
3/04/2019	T190104	49 Garfield Road, Garfield	Multi lot subdivision. removal of easements and vegetation	Withdrawn	20 February

Date	Permit No	Location	The Proposal	The Decision	Lodged Date
5/04/2019	T180555	VIC 3814 15 Henry Street, Koo Wee Rup VIC 3981	& amendment to planning scheme Development of the land for a second dwelling	Issued	2019 24 August 2018
8/04/2019	T190097	135 Ellett Road, Pakenham South VIC 3810	Development of the land for an outbuilding	Issued	14 February 2019
10/04/2019	T170716 - PC1	51 Mirrabooka Road, Maryknoll VIC 3812	Use and development of the land for a second dwelling	Issued	12 March 2019
11/04/2019	T190096	Shop 2/311-317 Rossiter Road, Koo Wee Rup VIC 3981	We would like to extend our business hours; Monday to Sunday from 11am to 11pm	Withdrawn	18 February 2019
12/04/2019	T170760	770 Five Mile Road, Nar Nar Goon VIC 3812	Use of the land and earthworks associated with the disposal of clean fill	NOD	21 November 2017
12/04/2019	T180713	Thwaites Road, Heath Hill VIC 3981	Use and development of the land for a dwelling	Issued	26 October 2018
15/04/2019	T180481	5 Tarmac Way, Pakenham VIC 3810	Development of two (2) warehouses and a reduction in car parking requirements	Issued	01 August 2018
15/04/2019	T180776 - PC2	77-79 Bald Hill Road, Pakenham VIC 3810	The development of 20 warehouses and associated works in accordance with the submitted plans.	Issued	18 March 2019
16/04/2019	T180800	210 Snell Road, Nar Nar Goon North VIC 3812	Buildings and works associated with a dwelling extension	Issued	03 December 2018
16/04/2019	T190156	36-40 Racecourse Road, PAKENHAM VIC 3810	Building and works associated with a retirement village (barbeque shelter)	Issued	19 March 2019
16/04/2019	T190181	18 Doran Road, Bunyip VIC 3815	Development of the land for an outbuilding (garage) over 120 square metres and the removal of 1 tree	Issued	31 March 2019
16/04/2019	T190188	375 Railway Avenue, Garfield VIC 3814	The development of the land for an outbuilding measuring 240 square metres	Issued	03 April 2019
17/04/2019	T180801	15 McDonalds Road, Caldermeade VIC 3984	Development of the land for an outbuilding	Issued	04 December 2018

Ranges Ward

Date	Permit No	Location	The Proposal	The Decision	Lodged Date
15/03/2019	T180542	12 Westlands Road, Emerald VIC 3782	Two lot subdivision, development of two dwellings and vegetation removal	Issued	22 August 2018
15/03/2019	T180716	1 Damon Street, Officer VIC 3809	Development of the land for a convenience restaurant, food and drink premises, office and the display of business identification signage.	Issued	30 October 2018
18/03/2019	T170671 - PC6	Rix Road, Officer VIC 3809	Landscape Masterplan - Subdivision of the land in stages, associated works (including road-works within land affected by the Land Subject to Inundation Overlay) and creation of restrictions	Issued	30 January 2019
19/03/2019	T160686 - PC2	90 Rix Road, Officer VIC 3809	Condition 15 (BDG's) - Subdivision of land in stages in accordance with the submitted plans.	Issued	17 September 2018
20/03/2019	T170671 - PC4	Rix Road, Officer VIC 3809	(MCP Stage 19) - Subdivision of the land in stages, associated works (including road-works within land affected by the Land Subject to Inundation Overlay) and creation of restrictions	Issued	18 January 2019
20/03/2019	T180398	24 St Georges Road, Beaconsfield Upper VIC 3808	Subdivision of land into two (2) lots	NOD	04 July 2018
25/03/2019	T160613 - 1	544 Brown Road, Officer VIC 3809	Use of the land for Primary Produce Sales and ancillary Food and Drink Premises (café) associated with the existing orchard (agriculture), associated buildings and works, display of business identification signage and use of the land for sale and consumption of liquor	Issued	30 October 2018
25/03/2019	T180463	28 Leadbetter Road, Beaconsfield Upper VIC 3808	Alterations and additions to an existing dwelling and associated earthworks	Issued	23 July 2018
25/03/2019	T180483 - PC1	5 Tarrana Street, Cockatoo VIC 3781	Development of the land for a dwelling and earthworks. PC-1 requires a Tree removal Plan to be submitted indicating the trees required to be removed and those to be retained in compliance with the Bushfire Management Plans.	Issued	24 January 2019

25/03/2019	T180753	5 Glen Road, Cockatoo VIC 3781	Subdivision of the land into two (2) lots	Issued	14 November 2018
25/03/2019	T180775	3 Innes Road, Gembrook VIC 3783	Development of a dwelling within ten (10) metres of a road and within five (5) metres of a boundary	Issued	21 November 2018
25/03/2019	T190032	275 Red Hill Road, Beaconsfield Upper VIC 3808	Development of the land for an outbuilding (workshop/carport)	Issued	22 January 2019
25/03/2019	T190048	7-11 Marcanna Place, Beaconsfield VIC 3807	Development of the land for a garage and carport	Issued	29 January 2019
25/03/2019	T190125	59 Officer South Road, Officer VIC 3809	Use of the land for a shop (beauty salon)	Issued	07 March 2019
26/03/2019	T190056	8 Horner Street, Beaconsfield VIC 3807	Subdivision of land into two (2) lots	Issued	04 February 2019
27/03/2019	T170019 - 1	21 Auhl Road, Emerald VIC 3782	Development of the land for a dwelling, earthworks and vegetation removal	Issued	15 October 2018
28/03/2019	T180634	230 Princes Highway, Beaconsfield VIC 3807	The development of ten (10) dwellings and associated subdivision of ten (10) lots and creation of access to a Road Zone Category 1 generally in accordance with the submitted plans	Issued	25 September 2018
29/03/2019	T180582	40 Warrawee Avenue, Beaconsfield VIC 3807	Development of the land for alterations and additions to an existing dwelling	Issued	04 September 2018
1/04/2019	T170588 - 1	335 Evans Road, Cockatoo VIC 3781	Alterations and extensions to the existing dwelling and associated earthworks	Issued	15 September 2018
1/04/2019	T180700	63 Armytage Road, Officer VIC 3809	Development of the land for a carport	Issued	23 October 2018
1/04/2019	T180824	595 Ure Road, Cockatoo VIC 3781	Use and Development of the land for a dwelling and associated earthworks	Issued	13 December 2018
2/04/2019	T180779	402A Belgrave-Gembrook Road, Emerald VIC 3782	Development of a Sports Pavilion, Demolition of an Existing Sports Pavilion and Removal of Vegetation	Issued	22 November 2018
2/04/2019	T190169	84 Beatrix Circuit, Officer VIC 3809	Single storey dwelling with double garage	Withdrawn	26 March 2019
3/04/2019	T170816 - PC1	11 Church Street, Emerald VIC 3782	Condition 1 Plans	Issued	21 January 2019
3/04/2019	T190145	20 Brunt Road, Beaconsfield VIC 3807	Buildings and works associated with an existing residential village	Issued	18 March 2019
4/04/2019	T190061	10 Kentwell Road, Officer VIC 3809	Buildings and works associated with accommodation (dwelling) within the Bushfire Management Overlay	Issued	04 February 2019
5/04/2019	T180170 - PC5	26A Whiteside Road, Officer VIC 3809	(Con. 14 LandMP)	Issued	01 April 2019
5/04/2019	T180312	23-25 McBride Street, Cockatoo VIC 3781	Buildings and works associated with an existing commercial building (food and drink premises)	Withdrawn	21 May 2018
11/04/2019	T180533 - PC1	24 Margaret Road, Avonsleigh VIC 3782	Condition 1	Issued	07 March 2019
15/04/2019	T190056 - PC1	8 Horner Street, Beaconsfield VIC 3807	2 lot subdivision Condition 1a of Planning Permit	Issued	27 March 2019
16/04/2019	T180702	Collie Road, Gembrook VIC 3783	Use and development of the land for a dwelling, outbuilding and associated earthworks	Issued	26 October 2018

**6 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATION
AUTHORITY**

RECOMMENDATION

That the report be noted.

7 PLANNING MATTERS CURRENTLY THE SUBJECT OF APPEAL AT THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL & THEIR OUTCOMES

FILE REFERENCE INT1929250

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Debbie Tyson

RECOMMENDATION

That the report be noted.

Attachments

Nil.

EXECUTIVE SUMMARY

The following list is presented to keep Council informed of applications that are currently the subject of appeals proceedings.

Hearing Date	App No.	Address	Proposal	Council Decision	Appealed By	Outcome
15/7/2019	T170722	245 McDonalds Track Lang Lang	Subdivision and removal of native vegetation	Approved	Applicant review of conditions	Waiting on hearing
9/7/2019	T180200	152 & 156 Army Road, Pakenham	Construction of 26 dwellings and native vegetation removal	Approved	Objector	Waiting on hearing
20/6/2019	T180143	37, 39, 41 & 43 Rogers Street Pakenham	Construct 62 Dwellings and native vegetation removal	Refusal	Applicant	Waiting on hearing
29/4/19	T180349	740 Seven Mile Road, Nar Nar Goon	Use and development of the land for a dwelling	Refusal	Applicant	Waiting on hearing
3/04/2019	T180415	77-81 Henry Street, Pakenham	Construction of an ALDI supermarket, sale of packaged liquor and associated car parking reduction	Failure to determine in time	Applicant	Negotiated out of VCAT – Permit issued
8/4/19	T170177	Timbertop Blvd, Officer	Subdivision of Land	Failure to determine in time	Applicant	Hearing cancelled – consent orders signed

5/9/19	T180303	61-63 Princes Highway, Pakenham	Use and development of a Medical Centre	Objector	Approved	Waiting on hearing
--------	---------	------------------------------------	--	----------	----------	-----------------------

7 PLANNING MATTERS CURRENTLY THE SUBJECT OF APPEAL AT THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL & THEIR OUTCOMES

Moved Cr J Owen Seconded Cr C Ryan

That the report be noted.

Cd.

Meeting closed at 7:25pm

Minutes Confirmed
Chairman