



Cardinia

MINUTES OF TOWN PLANNING COMMITTEE

MONDAY, 4 JULY 2016

MINUTES OF TOWN PLANNING COMMITTEE

held in the Council Chambers, 20 Siding Avenue, Officer
on Monday, 4 July 2016

The meeting commenced at 7.11pm

PRESENT:

Mayor, Jodie Owen, Chairman

Councillors Tania Baxter, Kate Lempriere, Graeme Moore, David Young,
Collin Ross, Leticia Wilmot, George Blenkhorn, Brett Owen

Messrs Garry McQuillan (CEO), Mike Ellis (GMAS), Derek Madden
(GMCS), Phil Walton (GMPD), Jenny Scicluna (GMCWB), Waudi Tahche
(GMPC), Doug Evans (MG)

APOLOGIES:

Nil

DECLARATION OF PECUNIARY AND OTHER INTERESTS

Nil.

TABLE OF CONTENTS

1.	DWELLING AND AN OUTBUILDING TO BE USED AS A HORSE TRAINING FACILITY AT BOTTOMLEY DRIVE EMERALD	3
2.	RESTAURANT AND TAKE AWAY FOOD PREMISES AT 329 BELGRAVE-GEMBROOK ROAD, EMERALD	11
3.	HAND CAR WASH AT 50-54 JOHN STREET PAKENHAM.....	23
4.	PLANNING SCHEME AMENDMENT ACTIVITY REPORT	31
5.	PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATION AUTHORITY	34
6.	PLANNING MATTERS CURRENTLY THE SUBJECT OF APPEAL AT THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL & THEIR OUTCOMES	40
7.	PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)	43

1 DWELLING AND AN OUTBUILDING TO BE USED AS A HORSE TRAINING FACILITY AT BOTTOMLEY DRIVE EMERALD

FILE REFERENCE INT1644483

RESPONSIBLE GENERAL MANAGER Phil Walton

AUTHOR Vageesha Wellalage

RECOMMENDATION

That a Refusal to Grant Planning Permit T160048 be issued for the Use and development of the land for a dwelling and horse training facility at Bottomley Drive, Emerald Victoria.

Attachments

- | | | |
|---|--|----------|
| 1 | Locality plan | 1 Page |
| 2 | Development plans | 10 Pages |
| 3 | Letters of objections circulated to councillors only | 62 Pages |

EXECUTIVE SUMMARY:

APPLICATION NO.:	T160048
APPLICANT:	Chris Krishna-Pillay
LAND:	Bottomley Drive, Emerald Victoria 3782
PROPOSAL:	Use and Development of the land for a dwelling and horse training facility
PLANNING CONTROLS:	Green Wedge A Zone Schedule 1 Environmental Significance Overlay Schedule 1 Bushfire Management Overlay
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> by sending notices to adjoining land owners and occupiers and placing a sign on site. To date there have been 12 objections received.
KEY PLANNING CONSIDERATIONS:	Proximity of the dwelling to neighbouring broiler farms. The negative visual impact of the dwelling
RECOMMENDATION:	Refusal

BACKGROUND:

There is no relevant planning permit history for the site.

SUBJECT SITE

The site is located on the southern side of Bottomley Drive Emerald.

A crossover is located on the northern alignment of the site and the site is not affected by any easements.

The site currently contains is vacant.

The topography of the land is undulating.

The main characteristics of the surrounding area are:

North	Access Road (Bottomley Drive)
South	Rural Residential/Agricultural
East	Rural Residential/Agricultural
West	Rural Residential/Agricultural

PROPOSAL

Approval is sought for the use and development of the land for a dwelling and an outbuilding to be used as a private horse training facility. Details of the proposed dwelling and outbuilding are as follows:

Dwelling

The dwelling will be located approximately 205 metres from the existing broiler farm. The dwelling will contain two bedrooms, two bathrooms, study, kitchen, laundry and an open plan meals and dining area. The dwelling will be dispersed on to the slope and will be covered by earth. It will have a total height of 3 meters above the ground level. The dwelling will be constructed of concrete panels.

Outbuilding

The outbuilding is proposed to be used as a private horse training facility. It will be located on the highest point of the land with a setback of 85 metres of the proposed dwelling. The outbuilding will have a building footprint of 1200 square metres (30m x 40m) and total height 6.4 metres above the ground level. It will be constructed of steel and Colorbond for the roof with cottage green in colour.

Earthworks

Earthworks will be associated with the construction of the dwelling and the outbuilding. Maximum depth of earthworks is shown as 3 metres for the dwelling and 1 metre for the outbuilding.

PLANNING SCHEME PROVISIONS

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11.05-3 Rural Productivity
- Clause 13.04-2 Air Quality
- Clause 14.01-1 Protection of Agricultural Land

- Clause 16.02-1 Rural Residential Development

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.03-3 Rural townships

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 65 – The Decision Guidelines

Zone

The land is subject to the **Green Wedge A Zone Schedule 1**

Overlays

The land is subject to the following overlays:

- Environmental Significance Overlay Schedule 1
- Bushfire Management Overlay

PLANNING PERMIT TRIGGERS

The proposal for use and development of the land for a dwelling and an outbuilding to be used as a horse training facility requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.05-1 of Green Wedge A Zone, a planning permit is required to use the land for a dwelling.
- Pursuant to Clause 35.05-1 of Green Wedge A Zone, a planning permit is required for buildings and works associated with a Section 2 Use (dwelling and outbuilding) and earthworks.
- Pursuant to Clause 3.0 of Environmental Significance Overlay Schedule 1, a permit is required for an outbuilding exceeding 4 metres in height where all outbuildings on site exceed 120 square metres in size and earthworks exceeding 1 metre in depth.
- Pursuant to Clause 44.06-1 of Bushfire Management Overlay, a permit is required for buildings and works associated with 'accommodation'.

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(s) on site*

- *Placing a notice in the (detail newspaper name)*
 - *Sending notices to the owners and occupiers of adjoining land.*
 - *Placing a signs on site*

The notification has been carried out correctly, and Council has received 12 objections to date.

The key issues that were raised in the objections are:

- Bushfire Risk created by the proposal
- Potential for the horse arena to become a commercial enterprise providing lessons.
- Increase in traffic on Bottomely Drive
- Poor status of Alexandra Road and the hazardous nature of the Belgrave Gembrook Road, Alexandra Road and Bottomley Drive may contribute to increase in traffic accidents.
- Impact of the existing broiler farm on the proposed sensitive use (dwelling and outbuilding) due to separation distance provided, potential odour complaints from the new residents and impact on the continuation of the broiler farm.

REFERRALS

Country Fire Authority (CFA)

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

Environmental Protection Authority (EPA)

The application was referred to EPA for comment. EPA is not a determining referral authority, therefore could not refuse the proposal, however they did recognise concerns with the proposal, as mentioned further in this report.

DISCUSSION

The proposal has been assessed against all relevant Clauses of Cardinia Planning Scheme and determined to be inappropriate for the site.

According to the current planning scheme, Intensive Animal Husbandry is a prohibited use Green Wedge A Zone. There is a broiler farm located at 19 Bottomley Drive across the road from the subject site that has been established some time ago. Therefore, the broiler farm has existing use rights under Clause 63 of the planning scheme thus can lawfully continue to operate as a broiler farm. However, according to the requirements of the Victorian Boiler Code 2009, the broiler farm would not be able to expand due to the inability of meeting the buffer distances. Therefore, Council Officers have not considered this as an issue to allow a sensitive use on the subject site. The refusal of the sensitive use, in this case the dwelling and the outbuilding, leans more towards the impact of the broiler farm such as odour, noise, traffic movement and so forth on the proposed sensitive use.

The Victorian Code for Broiler Farms 2009 advises that Responsible Authorities should consider the impacts of existing broiler farm emissions when deciding on applications for proposed sensitive land use developments, and ensure the separation distance is as large as reasonably possible. The

proposed dwelling at Bottomley Drive should according to the Victorian Code for Broiler Farms have a separation distance of 246.36 metres from the 60,000 bird broiler farm at 19 Bottomley Drive. The separation distances for the proposed dwelling in this instance are approximately 205 metres from the broiler farm which is not considered to be as large as reasonably possible.

The Victorian Code for Broiler Farms 2009 details that “Although the separation distance requirements found in the “Classification of broiler farms” section of this code apply only to the development or expansion of broiler farms, they can be used as a guide to identify locations of a future sensitive use that may be adversely affected by broiler farm emissions”. The Code goes on further to say that “The separation distance provided by the new dwelling should be as large as reasonably possible taking into account the likely additional risk of exposure to odour”.

The primary issues in the consideration of this application are the proximity of this sensitive land use (dwelling and outbuilding) to an existing broiler farm, and whether the applicant has made sufficient effort to locate the dwelling as far as possible away from the farm.

While it is acknowledged that a large portion of the subject site is within the buffer distance of the neighbouring broiler farm, there was the potential to locate a dwelling in the north-eastern corner and south-eastern corners of the lot, which would result in it being outside of the buffer distance of the broiler farm and a considerable distance from the broiler farm. In discussions with the applicant during the planning permit process, the applicant has mentioned that those locations will not be suitable to accommodate the dwelling as doing so will then make it challenging to meet the relevant bushfire regulations. The following picture illustrates the possible locations that the dwelling could be placed while meeting the buffer distances.



The EPA in its consideration of the application stated the following:

“EPA must take a conservative view of an appropriate separation distance between the proposed dwelling and the existing Broiler Farm, as there is insufficient evidence to provide certainty that the dwelling will not be adversely impacted, particularly by odour.

The EPA is not convinced the proposed separation distance of 205m between the proposed dwelling and the existing Broiler Farm will result in no adverse odour affecting the amenity of the proposed dwelling.”

In the case Holder vs Cardinia Shire Council in relation to the application for a dwelling at 9 Bottomley Drive the member stated the following:

“The important principle involved is keeping potentially incompatible uses apart. The Code provides guidance on how far apart they should be kept..... It is immaterial, having regard to the purpose of the separation, and for that matter of the Code, whether new broiler farms are kept away from existing houses, or new houses kept away from existing broiler farms. The purpose is defeated by establishing new houses in close proximity to broiler farms, just as it would be defeated by establishing new broiler farms in close proximity to existing houses.”

It is considered that the ‘buffer distance’ is a vital element to assess when allowing a sensitive use near a broiler farm. The reason behind this consideration is that a sensitive use, particularly a dwelling near a broiler farm could raise issues in relation to odour, traffic movements (transporting birds in and out of the site), and appearance. On the other hand, it would also put a burden on the broiler farm to operate in a manner to minimise impacts on the neighbouring dwellings. A fundamental element of good planning is to avoid incompatible land uses in close proximity to each other. The development of a dwelling at the proposed location is considered not acceptable as it is within the buffer zone of the broiler farm. In the case Holder vs Cardinia Shire Council, the member stated the following:

“The first thing to be said about this proposition is that it is, after all, an argument for bad planning. Good planning keeps incompatible uses separate. It is not a reason for bad planning that the incomer is a volunteer. It is good planning to protect foolish volunteers from themselves.”

Having considered the aforementioned factors allowing a dwelling in the proposed location would not result in a good planning outcome.

Objector’s concerns

Overall, the main concern of the objectors is the potential for the proposed horse training facility to become a commercial enterprise. The proposal section of the application form mentions that the facility will be for private use therefore Council is obligated to assess the application based on the information provided for assessment. As such, Council is not in the position to refuse the application based on an assumption that there is a potential for the proposed horse training facility to become a commercial enterprise.

The other main concern raised by the objectors is the condition of Bottomley Drive and the hazardous intersection at Belgrave Gembrook Road, potentially increase traffic accidents as a result of horse training facility. As explained above, if the proposed horse facility is for private use, it is not expected that the number of horse floats will be increased by the proposed use. Therefore, this is not considered relevant to the proposal.

The owners of the broiler farm have also put in an objection mentioning the adverse impact of the broiler farm on the proposed dwelling. This is due to the odour generated by the broiler farm. Council has taken the separation distance provided for the proposed dwelling and considered not sufficient to minimise the impacts generated by the broiler farm. The applicant has not provided a response to the potential noise and odour impact of the broiler farm on the proposed residential use.

CONCLUSION

It is considered that the proposed dwelling and outbuilding with a close proximity to the existing broiler farm is not appropriate for the site. It is therefore recommended that the use and development of a dwelling and horse training facility at Bottomley Drive, Emerald Victoria be refused on the following grounds:

Conditions

1. The proposal is inconsistent with the requirements of Victorian Broiler Code and may create future land use conflicts between potentially conflicting land uses and developments.
2. The proposal is contrary to the State Planning Policy Framework



1 DWELLING AND AN OUTBUILDING TO BE USED AS A HORSE TRAINING FACILITY AT BOTTOMLEY DRIVE EMERALD

Moved Cr B Owen Seconded Cr L Wilmot

That a Refusal to Grant Planning Permit T160048 be issued for the Use and development of the land for a dwelling and horse training facility at Bottomley Drive, Emerald Victoria on the following grounds

1. The proposal is inconsistent with the requirements of Victorian Broiler Code and may create future land use conflicts between potentially conflicting land uses and developments, and
2. The proposal is contrary to the State Planning Policy Framework

Cd.

2 RESTAURANT AND TAKE AWAY FOOD PREMISES AT 329 BELGRAVE-GEMBROOK ROAD, EMERALD

FILE REFERENCE INT1644478

RESPONSIBLE GENERAL MANAGER Phil Walton

AUTHOR Isla English

RECOMMENDATION

That a Notice of Decision to Grant Planning Permit T160008 be issued for the use of the land for a restaurant and take away food premises, sale and consumption of liquor and a reduction in the car parking requirements of Clause 52.06 of the Cardinia Planning Scheme at 329 Belgrave-Gembrook Road, Emerald subject to the conditions attached to this report.

Attachments

- | | | |
|---|---|---------|
| 1 | Locality map | 1 Page |
| 2 | Development plans | 5 Pages |
| 3 | Letters of objection circulated to councillors only | 1 Page |

EXECUTIVE SUMMARY:

APPLICATION NO:	T160008
APPLICANT:	Paul Douglas
LAND:	329 Belgrave-Gembrook Road, Emerald Victoria 3782
PROPOSAL:	Use of the land for a restaurant and take away food premises, sale and consumption of liquor and a reduction in the car parking requirements of Clause 52.06 of the Cardinia Planning Scheme
PLANNING CONTROLS:	Mixed Use Zone Bushfire Management Overlay, Design and Development Overlay Schedule 4, Vegetation Protection Overlay Schedule 3
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by sending notices to adjoining land owners and occupiers and placing a sign on site. One (1) objection has been received.
KEY PLANNING CONSIDERATIONS:	Appropriateness of Use, Impact of Car Parking Reduction
RECOMMENDATION:	Notice of Decision to Grant a Planning Permit

BACKGROUND:

The subject site has been subject to a number of planning permits including T020602 issued on 21 September 2004 for an office building which has expired. Additionally, Planning Permit T050578 was issued on 13 January 2006 for a three lot subdivision.

A more recent approval was T130195 was issued on 23 May 2014 and was amended on 17 August 2015 for the development of the land for five (5) shops, two (2) offices, alteration of access to a RDZ1, reduction of required of Clause 52.07 (loading and unloading of vehicles), earthworks, creation of easement and removal of vegetation. This approval included a three storey building with undercroft parking and external parking at the rear of the building with access from the rear laneway with shops located at ground floor level and first floor office space.

SUBJECT SITE

The site is located on the north-west side of Belgrave-Gembrook Road approximately 100 metres north east of Kilvington Drive in Emerald. The site consists of two allotments, lot 1 currently contains a split level brick dwelling and gravel car parking area at the rear with lot 2 is currently vacant. The land slopes to the north-west and is steep towards the front section of the site.

The site includes a current approval for a development of the land for five shops and two offices including a three storey building with undercroft parking and additional parking at the rear of the site. The construction of this development has not commenced.

The main characteristics of the surrounding area are:

- North West:** Madigan's Way (sealed road) defines the north west property boundary of the site. Further to the north single residences on large allotments are located.
- North East:** The property to the north east is a split level office and car parking area with parking located within the front setback and adjacent to the subject site.
- South East:** Belgrave-Gembrook Road defines the southern property boundary, this road reserve includes a small nature strip with footpath and above ground powerlines located adjacent to the subject site. The roadway includes parallel street parking and two way road reserve.
- South West:** A single storey childcare centre is located on the site directly west of the subject site.

PROPOSAL

The proposal is the use of two previously approved shops noted as shops 4 and 5 with floor areas of 100.43 square metres and 111.02 square metres located at the north eastern end of the approved development as a restaurant and take away food premises.

The restaurant is the relocation of an established business within the Emerald Township that requires floor space to combine both the café/restaurant (The General Food Store) and catering businesses (The Grub Club) within one premises.

The proposal includes 60 patrons during business hours and 75 patrons outside business hours with the total hours of operation 8.00am – 11.00pm seven days a week.

The application includes the sale and consumption of alcohol on the site with red line covering the internal floor area and a kerbside seating area adjacent to the site.

PLANNING SCHEME PROVISIONS

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11.01 Activity Centres
- Clause 17.01-1 Business
- Clause 17.03 Tourism
- Clause 18.02-5 Car Parking

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.04 Economic development
- Clause 21.04-1 Employment
- Clause 21.04-3 Activity Centres
- Clause 21.04-5 Tourism
- Clause 21.07-3 Local Areas - Emerald

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.06 Car parking
- Clause 52.27 Licence premises
- Clause 52.29 Land adjacent to a Road Zone Category 1
- Clause 52.47 Planning for bushfire
- Clause 65 Decision guidelines
- Emerald Township Strategy

Zone

The land is subject to the Mixed Use Zone

Overlays

The land is subject to the following overlays:

- Vegetation Protection Overlay – schedule 3.
- Design and Development overlay- schedule 4.
- Bushfire Management Overlay

PLANNING PERMIT TRIGGERS

The proposal for the use of the land for a restaurant and take away food premises, sale and consumption of liquor and a reduction in the car parking requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.04-1 of Mixed Use Zone a permit is required for the use of a food and drink premises (restaurant and takeaway food premises) greater than 150 square metres.
- Pursuant to Clause 52.06 of the car parking provisions a planning permit is required for a reduction in car parking.

- Pursuant to Clause 52.27 of the 'Licensed premises' a permit is required for the sale and consumption of liquor

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

The notification has been carried out correctly, and Council has received one (1) objection to date with a number of letters of support from surrounding businesses.

The key issues that were raised in the objections are:

- Impact on surrounding business given surrounding parking areas are at capacity during most times during the day
- Use will add to traffic congestion and is located at dangerous section of road
- No objection to the use as long as ample on-site parking is provided, this type of business should meet the requirements of Clause 52.06
- Impact on pedestrian safety

REFERRALS

Victoria Police

The application was referred to Victoria Police for comment no response has been received.

DISCUSSION

State and Local Planning Policy Framework

The proposal is for the relocation of a well-established business in the Emerald Township that provides economic development within the township that supports tourism which is encouraged by both the State and Local Planning Policy Frameworks. The Emerald township strategy (2009) highlights this area of Emerald as being ideal for restaurants and cafes as a way to attract visitors to Emerald.

Additionally, the strategy identifies this area covered in the design and development overlay as an area to promote active uses that promote evening and weekend activity. The Design and Development Overlay Schedule 4 (DDO4) was gazetted and approved on July 23 2015 and has been derived from elements of the Emerald township strategy.

The subject site is located within the Central mixed use precinct. As noted the proposed development has been previously approved on the site and the application is for the use which is strongly supported through the State and Local Planning Policy and particularly Emerald Township Strategy. The issues with regard to car parking for the proposed use has been appropriately managed through the control of patron numbers to ensure that on-site parking can adequately accommodate the use that is consistent with the strategic direction of the township.

Use

The proposal includes the use of two previously approved shops for a restaurant and takeaway food premises. The use requires a permit as the proposed floor area exceeds 150 square metres which is an 'as of right' no permit required use in this zone. The location of the site is appropriate for the restaurant use with a number of restaurants located within the central mixed use area and the township. The use has strong support from the Planning Policy Framework of the Planning Scheme as such it is considered that the use of restaurant and takeaway food premises is appropriate for the site.

Car parking

The provision of car parking for the development is assessed against the provisions of the Cardinia Planning Scheme in accordance with Clause 52.06-5 in the following table:

Land Use	Floor area	Car parking ratio	Total patrons	Requirement	Available onsite and shortfall
Restaurant (Business Hours)	211.45m ²	0.4 spaces per patron	60	24	8 for the premises previously approved shop plus 6 additional spaces (14 spaces)
Restaurant (Outside Business Hours)	211.45m ²	0.4 spaces per patron	75	30	8 for the premises previously approved shop plus 6 additional spaces (14 spaces)
TOTAL				37 (permit requirement)	43 spaces (endorsed plans) Shortfall: 10 spaces during business hours 16 spaces outside business hours

In considering a parking reduction, Council must consider the availability of alternative parking in the locality, availability of public transport, impact on adjoining uses, previous uses and impact on the local traffic management of the area.

The overall development that has been approved on the site under Clause 52.06 includes the requirement of thirty-seven (37) on site spaces with the endorsed plans noting forty-three (43) spaces as such an additional six (6) spaces will be provided on the site that can be allocated to the proposed use. Additionally, the approved use of shops the site has eight (8) allocated spaces for the proposed floor area that will be occupied by the restaurant has such it could be considered that the use will include fourteen (14) on site spaces.

The traffic report prepared by Ratio, highlights the State Governments Practice Note 22 (June 2015) specifies that the provisions for reducing the car parking requirement draw a distinction between the assessment of likely demand for parking spaces (the Car Parking Demand

Assessment), and whether it is appropriate to allow the supply of fewer spaces than assessed by the Car Parking Demand Assessment.

The Traffic Engineering Assessment included a survey on Friday 6 November 2015 with the area observed accommodating 233 car parking spaces with parking occupancy rates varied during business hours with 61% at 12:00noon and 2:00pm with outside business hours generally 34%. During the surveyed day of Saturday 21 November 2015 within the space car parking spaces the occupancy rates were 73% with a noted 64 spaces available during the survey period. The report noted that the demand is high during business hours and weekends with outside these times the parking demand declines. The survey demonstrates that car parking is typically subject to parking controls and relatively high on street car parking turnover.

The Traffic Engineering Assessment which, using evidence of the occupancy of other car parking in the area and availability of these spaces throughout the day/week as detailed above, determines that the car parking already existing in the vicinity of the site will be adequate to provide for the shortfall of ten (10) car spaces that will not be provided for onsite during business hours.

The application was referred to Council's Traffic Engineering Department, who expressed concerns in relation to the potential overflow of car parking from the future businesses. However, the traffic engineering assessment as detailed above, provides evidence that there are sufficient car parking spaces available during business hours to cover the shortfall of ten (10) spaces and can be accommodated on site during out of business hours through the use of the on-site parking spaces associated with 'office' use of the site.

Pursuant to Clause 52.06-6 which includes decision guidelines for the reduction in car parking, the following is highlighted in support of the reduction in car parking:

- A number of patrons of the currently established business within the township provide shared car trips reducing the car parking demand for the site.
- It is reasonable to assume that the out of office hours' office parking spaces associated with the overall development could be utilised by patrons. The office spaces include a total of eighteen (18) on site spaces which will cover the shortfall associated with the restaurant use.
- It is likely that patrons will be visiting the township for a number of purposes, either locals visiting the township for multiple purposes (i.e. shopping, banking etc.) or tourists generally visiting a number of businesses within the township. As such some of the car parking demand for the site will shared in the wider site context can be accommodated within the established township.
- The site is located within close proximity of public transport including the bus stop located to the south west of the site.
- It is expected that a large proportion of customers to the development will be generally short stay customers with length of stay not generally greater than 2 hours.
- Empirical evidence has been provided by the applicant to shows restaurant uses within a number of locations generally include parking demand of 0.28 spaces per seat during the day and 0.4 spaces in the evening noting that parking demand will generally be less than the requirement during daytime hours under Clause 52.06.

- The development of the overall site will result in the removal of crossovers on the Belgrave-Gembrook Road frontage given the location of the parking at the rear of the site as such will increase on street parking adjacent to the site.
- The reduction in car parking will not impact on the economic viability of the established activity centre, rather the use will accommodate a well-established business within the Emerald Township.

Whilst the development has a shortfall in car parking, the proposed development will provide for economic growth in relation to business development and job opportunities within Emerald and supports a currently established business in Emerald. As such, a balanced approach to ensuring business, business growth, business retention and job opportunities are created, against the potential impact of the car parking reduction must occur. For the above reasons, it is officer's view that this proposal achieves this balance.

Licensed premises

As discussed previously, it is considered the location of the business proposed meets the purpose of the zone and the Emerald Township Strategy. Council officers support the development of a licenced premise on this site although the proposed redline plan, which indicates the location of the sale and consumption of liquor, will require some adjustment to remove the takeaway area and be restricted to the liquor storage areas and serving areas. This can be achieved through permit conditions.

Objectors concerns

The objector is from the operator of another restaurant located to the north on Belgrave Gembrook Road. The objection relates to the reduction in car parking requirements, impacts on the traffic congestion, traffic safety and pedestrian safety. The following is a response to each of the objectors concerns:

Reduction in car parking

As detailed above the reduction in car parking can be managed on the site and provides an appropriate balance between nurturing local businesses that contribute to the economy and tourism in the area with the potential impacts of overflow parking as detailed above. The applicant has reduced the patron numbers during business hours reducing the potential impact with the on-site parking proposed that will not generally be utilised by other shop and office uses outside business hours can be used for additional parking for the restaurant use.

Further it is reasonable to expect that the location of the property within the Emerald Township will result in a number of patrons will have multiple use trips (i.e. trips to other businesses within the township) which provides some justification for the reduction in car parking. It is noted that the objector's business of a restaurant has had previous planning approval for the reduction in car parking similar to the proposed use.

Impacts on traffic congestion and safety

The objector noted concerns with regard to the use increasing traffic congestion which will impact on traffic safety due to the location of the site. The proposed development layout will improve the existing traffic safety through the removal of crossovers and creation of a car parking area at the rear of the site improving traffic safety in this area. As detailed above the proposed use is a

relocated established business within the Emerald township and it is not envisaged that it will significantly increase traffic congestion for the township.

Impact on pedestrian safety

The objector expressed concerns with the pedestrian safety. This is noted and the submitted plans indicate the location of external seating area adjacent to the site. The current approved development includes a covered verandah over the existing footpath with an extension to the sealed areas adjacent to the subject site which will extend from the site frontage to the roadway. It is acknowledged that this area is narrow and the applicant must clearly show that the external dining areas allow for appropriate disabled access, this can be achieved through amended plan conditions.

CONCLUSION

There is in principle support for the use of a restaurant is consistent Emerald Township Strategy and will allow business investment and employment in Emerald and on balance the parking reduction will not result in detrimental impacts to surrounding properties as the use will be tailored to have reduced patron numbers during business hours and high peak parking demand can be accommodated on-site. As such the application should be supported.

CONDITIONS

1. The development must not be commenced until three (3) copies of amended plans have been submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned in metric. The plans must be generally in accordance with the submitted plans but modified to show:
 - a) Red line plan must only include the serving and restaurant area.
 - b) Kerbside seating in accordance with disability access requirements to the satisfaction of the Responsible Authority.
2. The use including the licenced premises as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. The premises will operate only between the following days/times with the maximum patron numbers:
 - Monday to Friday 8.00am – 5.00pm with a maximum of 60 patrons
 - Monday to Friday 5.00pm – 11.00pm with a maximum of 75 patrons
 - Saturday & Sunday 8.00am – 11.00pm with a maximum of 75 patrons

Unless otherwise approved by the Responsible Authority

4. Before the use starts, patron management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be consistent with the endorsed plan(s) and include:
 - a. Staffing and other measures which are designed to ensure the orderly arrival and departure of patrons.
 - b. Signage to be used to encourage responsible off-site patron behaviour.

- c. The training of staff in the management of patron behaviour.
 - d. Staff communication arrangements.
 - e. Measures to control noise emissions from the premises.
5. At all times during the operation of the use, there must be present on the premises a person over the age of 18 years who is responsible for ensuring that the activities on the premises and the conduct of persons attending the premises do not have a detrimental impact on the amenity of the area (referred to in this permit as "the manager").
 6. The manager must be authorised by the operator under this permit to make statements at any time on his/her behalf to any officer of the Responsible Authority and of the Victoria Police and/or of Liquor Licensing Victoria authorised under Section 129 of the Liquor Control Reform Act 1998; and/or to take action on his/her behalf in accordance with a direction by such officer.
 7. Without further consent of the Responsible Authority, the sale and consumption of liquor shall occur only within the confines of the premises and the designated external licensed area, as specified on the endorsed plan.
 8. Appropriate measure should be taken to ensure adequate lighting and security to the satisfaction of the Responsible Authority while the premise's is in operation.
 9. The predominant activity carried out on the premises, must be the preparation and serving of meals for consumption on the premises. Tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of the patrons attending the premises at one time.
 10. All amplified music offered must be kept to background levels only. No external speakers used in the alfresco dining areas.
 11. Noise levels emanating from the premises must not exceed those permissible levels determined under:
 - (a) State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1.
 - (b) State Environment Protection Policy (Control of Music Noise from Public Premises), No. N-2.

Permit Expiry

12. In accordance with Section 68 of the Planning and Environment Act 1987, this permit will expire if one of the following circumstances applies:
 - a) The use is not started within two years of the date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, the Responsible Authority may extend the periods referred to if a request is made before the expiry date or within three months afterwards.

Notes:

Permission given under planning legislation cannot be construed as permission relating to any other legislation under Council jurisdiction, such as Public Health & Wellbeing, Food or Tobacco Acts.

2 RESTAURANT AND TAKE AWAY FOOD PREMISES AT 329 BELGRAVE-GEMBROOK ROAD, EMERALD

Moved Cr B Owen Seconded Cr T Baxter

That a Notice of Decision to Grant Planning Permit T160008 be issued for the use of the land for a restaurant and take away food premises, sale and consumption of liquor and a reduction in the car parking requirements of Clause 52.06 of the Cardinia Planning Scheme at 329 Belgrave-Gembrook Road, Emerald subject to the following conditions.

1. The development must not be commenced until three (3) copies of amended plans have been submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned in metric. The plans must be generally in accordance with the submitted plans but modified to show:
 - a) Red line plan must only include the serving and restaurant area.
 - b) Kerbside seating in accordance with disability access requirements to the satisfaction of the Responsible Authority.
2. The use including the licenced premises as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. The premises will operate only between the following days/times with the maximum patron numbers:
 - Monday to Friday 8.00am – 5.00pm with a maximum of 60 patrons
 - Monday to Friday 5.00pm – 11.00pm with a maximum of 75 patrons
 - Saturday & Sunday 8.00am – 11.00pm with a maximum of 75 patrons

Unless otherwise approved by the Responsible Authority

4. Before the use starts, patron management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be consistent with the endorsed plan(s) and include:
 - a. Staffing and other measures which are designed to ensure the orderly arrival and departure of patrons.
 - b. Signage to be used to encourage responsible off-site patron behaviour.
 - c. The training of staff in the management of patron behaviour.
 - d. Staff communication arrangements.
 - e. Measures to control noise emissions from the premises.
5. At all times during the operation of the use, there must be present on the premises a p

to in this permit as "the manager").

6. The manager must be authorised by the operator under this permit to make statement action on his/her behalf in accordance with a direction by such officer.
7. Without further consent of the Responsible Authority, the sale and consumption of liquor shall occur only within the confines of the premises and the designated external licensed area, as specified on the endorsed plan.
8. Appropriate measure should be taken to ensure adequate lighting and security to the satisfaction of the Responsible Authority while the premise's is in operation.
9. The predominant activity carried out on the premises, must be the preparation and serving of meals for consumption on the premises. Tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of the patrons attending the premises at one time.
10. All amplified music offered must be kept to background levels only. No external speakers used in the alfresco dining areas.
11. Noise levels emanating from the premises must not exceed those permissible levels determined under:
 - (a) State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1.
 - (b) State Environment Protection Policy (Control of Music Noise from Public Premises), No. N-2.
12. Prior to the use commencing a sign must be conveniently located at the at the front of the building advising that car parking for the restaurant is located at the rear of the premises to the satisfaction of the responsible authority.

Permit Expiry

13. In accordance with Section 68 of the Planning and Environment Act 1987, this permit will expire if one of the following circumstances applies:
 - a) The use is not started within two years of the date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, the Responsible Authority may extend the periods referred to if a request is made before the expiry date or within three months afterwards.

Notes:

Permission given under planning legislation cannot be construed as permission relating to any other legislation under Council jurisdiction, such as Public Health & Wellbeing, Food or Tobacco Acts.

Cd.

3 HAND CAR WASH AT 50-54 JOHN STREET PAKENHAM

FILE REFERENCE INT1644440

RESPONSIBLE GENERAL MANAGER Phil Walton

AUTHOR Isla English

RECOMMENDATION

That Planning Permit T150531 be issued for the use of the land for a car wash and a reduction in car parking requirements of Clause 52.06 for the existing Marketplace development at 50-54 John Street, Pakenham subject to the conditions attached to this report.

Attachments

- 1 Locality plan 1 Page
- 2 Development plans 24 Pages

EXECUTIVE SUMMARY:

APPLICATION NO.:	T150531
APPLICANT:	Magic Hand Car Wash
LAND:	50-54 John Street, Pakenham Victoria 3810
PROPOSAL:	Use of the land for a car wash and a reduction in car parking requirements of Clause 52.06 for the existing Marketplace development
PLANNING CONTROLS:	Commercial 1 Zone Development Contributions Plan Overlay Schedule 1, Development Plan Overlay Schedule 2 & Land Subject to Inundation Overlay.
NOTIFICATION & OBJECTIONS:	Pursuant to Clause 43.04-2 of the Development Plan Overlay the application is exempt from notice under Section 52 (1) (a) (b) and (d) of the Planning and Environment Act 1987
KEY PLANNING CONSIDERATIONS:	Impact of use and car parking reduction
RECOMMENDATION:	Grant a Planning Permit

BACKGROUND:

The site has been subject to previous planning permit approval (T090530) for construction of buildings and works associated with the development of the land to accommodate shops, food and drink premises, office, medical centre and associated car parking. A permit was issued for the use and development to part of the land including in the Public Acquisition Overlay in accordance with the approved plans and a reduction in car parking in accordance with Clause 52.06 of the Cardinia Planning Scheme and erection and display of advertising signage. This permit was amended to alter a condition relating to advertising signage and to convert the use of the medical centre to a gym.

The title of the land is subject to two Section 173 Agreements relating to the overall development of the site this proposal does not breach either of these agreements.

SUBJECT SITE

The site is located on the south east side of John Street and is located at the basement level of the existing shopping complex known as Marketplace.

The site is developed with a shopping centre and associated parking with a number of uses including a number of retail outlets, food and drink premises, offices and gym. The centre abuts external Council parking areas to the south west and the rear of commercial properties fronting Main Street. The overall complex is bounded by roads to the north west (John Street – commercial precinct), north east (Henry Street – mixed use precinct) and south west (Cook Drive- commercial precinct).

The proposed use will be located in the north west corner of the established basement parking area and will be contained within 31 parking spaces abutting the south west wall of the basement parking space.

PROPOSAL

The proposal is for the use of a hand car wash within the existing parking area of the Marketplace shopping centre, which have become common in a number of shopping centres. The car wash will be established within thirty one (31) parking spaces located in the north west corner of the basement parking area.

The use involves the provision of small building including a waiting and pay booth and storage area, two detail bays, two wash bays, two vacuum bays and four finishing bays, in addition 15 customer parking bays will be used for cars waiting to be washed or cars that have completed their wash and will be located along the south west wall of the basement parking area.

The use generally operates between 7am – 8pm, 7 days a week and staff numbers include 1 store management and between 6 -10 car washers.

The process of the use is generally that customers will drive in and park within one of the designated queuing bays with the cars left with the attendant. The services include internal and external hand washing and cleaning including vacuum cleaning, steam cleaning and use of a polisher machine.

The use will include appropriate signage although internal and with external signage is less than 8 square metres as such does not require a planning permit.

PLANNING SCHEME PROVISIONS

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11.01 Activity Centres
- Clause 17.01-1 Business
- Clause 18.02-5 Car Parking

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.04 Economic development
- Clause 21.04-1 Employment
- Clause 21.04-3 Activity Centres

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.06 Car parking
- Clause 52.13 Car Wash
- Clause 65 Decision guidelines

Zone

The land is subject to the Commercial 1 Zone

Overlays

The land is subject to the following overlays:

- Development Contributions Plan Overlay (DCPO1)
- Development Plan Overlay (DPO2)
- Land Subject to Inundation Overlay (LSIO) in part

PLANNING PERMIT TRIGGERS

The proposal for a car wash and a reduction in car parking requirements of Clause 52.06 for the existing Marketplace development requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 34.01-1 of the Commercial 1 Zone a planning permit is required for the use of a car wash.
- Pursuant to Clause 52.06 of the car parking provisions a planning permit is required for a reduction in car parking.

PUBLIC NOTIFICATION

Pursuant to Clause 43.04-2 of the Development Plan Overlay 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.

REFERRALS

The application has no statutory planning referrals and given the exemption for notice under the DPO this prevented comments from the EPA and Melbourne Water although appropriate conditions have been provided to ensure no run off from the proposed car wash will impact on the surrounds.

DISCUSSION

Use and Clause 52.13 Carwash Requirements

Clause 52.13 of the Cardinia Planning Scheme specifically relates to car wash facilities. The two purposes of this Clause are to ensure that:

- *Amenity, site layout and design are considered when land is to be used for a car wash, especially if the site adjoins a residential zone; and*
- *Use of land for a car wash does not impair traffic flow or road safety.*

The proposed car wash is a low scale manual car wash that will cater for shoppers of the established shopping complex where it is located. The use is suitably located within the basement car parking area within close proximity of the entrance of the parking area although suitably offset to ensure that the location will not impact on the traffic circulation throughout the car parking area. Further the location at basement level will ensure minimal off site amenity impacts in terms of noise or nuisance to other surrounding uses.

In terms of discharge from the site the applicant has noted:

Drainage of the site will be via the public sewer and will be designed to comply with all Environmental Protection Authority (EPA) requirements and that of the local water authority. The developer has prepared a stormwater drainage and sewer plan for approval by the required

Authorities. There will be a bunded area around the wash bays area so that all the wastes water can be contained and pass through an oil separator before it is discharged into sewer.

Council's engineers and Council's Health department have no objections to the proposal. Although the application was not referred for comment to Melbourne Water or EPA (exempt under DPO), it is considered that appropriate conditions can be incorporated within the approval to ensure that discharge from the site is in accordance with the authorities requirements.

Car parking

In considering a parking reduction, Council must consider the availability of alternative parking in the locality, availability of public transport, impact on adjoining uses, previous uses and impact on the local traffic management of the area.

As the proposed use will be occupying 31 of the existing spaces, a planning permit is required for a reduction in the car parking requirement for the existing Marketplace development. In considering a reduction to car parking, the amendments to the initial planning permit for the Marketplace development need to be considered. The initial permit included a Medical centre (requiring 20 spaces) which has now been replaced with a gym with significantly less parking demand, it is considered that only an additional 11 space reduction is required to enable the proposed carwash to occupy 31 spaces.

The car parking reduction is justified given that people who use the car wash will be shopping while they wait providing multi-purpose trip with the parking areas occupied will be used for the customers of the shopping centre reducing any potential overflow of parking to adjoining properties. In addition, the underground car park is often under-utilised, as such a reduction in car parking is considered appropriate in this circumstance.

Whilst the development has a shortfall in car parking, the proposed development will provide for economic growth in relation to business development and job opportunities within Pakenham. As such, a balanced approach to ensuring business, business growth, business retention and job opportunities are created, against the potential impact of the car parking reduction. For the above reasons, it is officer's view that this proposal achieves this balance.

CONCLUSION

That planning permit T150531 be issued for the Use of the land for a car wash and a reduction in car parking requirements of Clause 52.06 subject to conditions. It is considered that the proposed use for a manual car wash within the basement parking area of the established shopping complex will provide a complementary use to the overall site and the reduction in car parking will not result in detrimental impacts to surrounding properties as such should be supported.

CONDITIONS

1. The layout of the site and the size of the proposed buildings and works, as shown on the approved plans, must not be altered or modified without the consent in writing of the Responsible Authority.
2. Water contaminated with waste oil, grease, chemicals or sediments must not be discharged beyond the boundary of the premises and be collected and disposed of off-site by an EPA approved contractor or sent to sewer under a Trade Waste Agreement.
3. All wastewater must be discharged into the reticulated sewerage system to the satisfaction of the Responsible Authority. A secondary containment system must be provided for liquids which if spilt are likely to cause pollution or pose an environmental hazard, in accordance with the EPA Publication 347.1 'Bunding Guideline2015' or as amended.
4. Vehicles under the control of the operator of the building, including staff vehicles, must not be parked in any nearby road.
5. The amenity of the area must not be detrimentally affected by the use or development 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, wastewater, waste products, grit or oil; or
 - d. Presence of vermin.
6. Noise levels emanating from the premises must not exceed those permissible levels determined under:
 - (a) State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1.
 - (b) State Environment Protection Policy (Control of Music Noise from Public Premises), No. N-2.
7. The operator (including all occupiers of businesses operating at the premises) must ensure that litter is not deposited beyond the boundary of the premises.
8. The site must be so ordered and maintained as not to prejudicially affect the amenity of the

locality by reason of appearance.

9. No external sound amplification equipment or loudspeakers are to be used for the purpose of announcements, broadcasts, playing of music or similar purposes.
10. Without further written consent of the Responsible Authority any use established within the building must not be used for the purpose shown with a Note 1 or Note 2 in table to Clause 52.10 of the Cardinia Planning Scheme.

Expiry of permit:

In accordance with Section 68 of the Planning and Environment Act 1987, this permit will expire if one of the following circumstances applies:

- a) The use is not started within two years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing in accordance with Section 69 of the *Planning and Environment Act 1987*.

3 HAND CAR WASH AT 50-54 JOHN STREET PAKENHAM

Moved Cr G Moore Seconded Cr K Lempriere

That Planning Permit T150531 be issued for the use of the land for a car wash and a reduction in car parking requirements of Clause 52.06 for the existing Marketplace development at 50-54 John Street, Pakenham subject to the following conditions:

1. The layout of the site and the size of the proposed buildings and works, as shown on the approved plans, must not be altered or modified without the consent in writing of the Responsible Authority.
2. Water contaminated with waste oil, grease, chemicals or sediments must not be discharged beyond the boundary of the premises and be collected and disposed of off-site by an EPA approved contractor or sent to sewer under a Trade Waste Agreement.
3. All wastewater must be discharged into the reticulated sewerage system to the satisfaction of the Responsible Authority. A secondary containment system must be provided for liquids which if spilt are likely to cause pollution or pose an environmental hazard, in accordance with the EPA Publication 347.1 'Bunding Guideline2015' or as amended.
4. Vehicles under the control of the operator of the building, including staff vehicles, must not be parked in any nearby road.
5. The amenity of the area must not be detrimentally affected by the use or development 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, wastewater, waste products, grit or oil; or
 - d. Presence of vermin.
6. Noise levels emanating from the premises must not exceed those permissible levels determined under:
 - (a) State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1.
 - (b) State Environment Protection Policy (Control of Music Noise from Public Premises), No. N-2.
7. The operator (including all occupiers of businesses operating at the premises) must ensure that litter is not deposited beyond the boundary of the premises.
8. The site must be so ordered and maintained as not to prejudicially affect the amenity of the locality by reason of appearance.
9. No external sound amplification equipment or loudspeakers are to be used for the purpose of announcements, broadcasts, playing of music or similar purposes.
10. Without further written consent of the Responsible Authority any use established within the building must not be used for the purpose shown with a Note 1 or Note 2 in table to Clause

52.10 of the Cardinia Planning Scheme.

Expiry of permit:

In accordance with Section 68 of the Planning and Environment Act 1987, this permit will expire if one of the following circumstances applies:

- a) The use is not started within two years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing in accordance with Section 69 of the *Planning and Environment Act 1987*.

Cd.

4 PLANNING SCHEME AMENDMENT ACTIVITY REPORT

FILE REFERENCE INT1644431

RESPONSIBLE GENERAL MANAGER Phil Walton

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		Status
				Start	End	
C188	Cardinia Shire Council	Cardinia Shire	The amendment proposes to introduce Schedules 2 and 3 to the Low Density Residential Zone and numbers the existing unnumbered schedule to the Low Density Residential Zone to Schedule 1. It also rezones all of the land within the Urban Growth Boundary of Gembrook and Upper Beaconsfield that is currently zoned Rural Living Zone to the Low Density Residential Zone and apply a number of overlays to the land.	14/05/2015	15/06/2015	Adopted by Council on 15/02/2016. Awaiting Minister's approval.
C206	Cardinia Shire Council	16 Beaconsfield-Emerald Road Emerald	Rezone 16 Beaconsfield-Emerald Road Emerald from Rural Conservation Zone 2 to Public Park and Recreation Zone.	07/01/2016	08/02/2016	Panel hearing held on 02/05/2016.

C209	Cardinia Shire Council	Pakenham Golf Course	Rezone of part of the golf course from Public Park and Recreation Zone to Low Density Residential Zone and apply a schedule to allow a minimum lot size of 2000m ² .	22/10/2015	23/11/2015	Report went to Council on 21/09/2015 recommending that Council seek authorisation from the Minister for Planning under Section 9(2) of the Planning and Environment Act 1987 to prepare Amendment C209.
C211	Cardinia Shire Council	Pakenham Structure Plan area	Amends the Municipal Strategic Statement to incorporate the Pakenham Structure Plan into the Local Planning Policy Framework. Adds the Pakenham Structure Plan as an incorporated document in the Planning Scheme.	12/05/2016	14/06/2016	On exhibition.
C212	Cardinia Shire Council	Various sites	Correction of minor zoning and overlay anomalies, and correction of errors in the description of heritage places in the Schedule to Clause 43.01.	12/05/2016	14/06/2016	On exhibition.

4 PLANNING SCHEME AMENDMENT ACTIVITY REPORT

Moved Cr B Owen Seconded Cr D Young

That the report be noted.

Cd.

5 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATION AUTHORITY

FILE REFERENCE INT1644432

RESPONSIBLE GENERAL MANAGER Phil Walton

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 – Decisions 20/05/16 to 16/06/16				
Date	Permit No	Location	The Proposal	The Decision
20/05/2016	T150429 - PC1	146 Princes Highway, Pakenham Victoria 3810	Development of the land for six (6) dwellings, removal of road reservation status, removal of easement and reduction in visitor car parking	Issued
20/05/2016	T150756 - PC1	2 Kirra Court, Pakenham Victoria 3810	Construction of two (2) dwellings on a lot	Issued
23/05/2016	T160205	National Avenue, Pakenham VIC 3810	Development of the land for a warehouse	Issued
23/05/2016	T160231	21 Commercial Drive, Pakenham VIC 3810	Creation of an easement	Issued
23/05/2016	T150081 - PC1	131 Bathe Road, Pakenham Victoria 3810	Use and development of the land for a dwelling and vegetation removal	Issued
23/05/2016	T160236	10 Southeast Boulevard, Pakenham VIC 3810	Creation of an easement	Issued
24/05/2016	T150365 - PC2	5 Anderson Street, Pakenham Victoria 3810	Development of the land for two dwellings (dwelling extension and second dwelling)	Issued
25/05/2016	T160202	18 Auto Way, Pakenham VIC 3810	Use off the land for a restricted recreation facility (Gym) and business identification signage	Issued
25/05/2016	T160242	21 Davidson Street, Pakenham VIC 3810	Buildings and works (dwelling) within the Significant Landscape Overlay - Schedule 6	Issued
25/05/2016	T150392 - 1	24 Bormar Drive, Pakenham Victoria 3810	Amended Permit - Subdivision of the land into thirty two (32) lots and common property	Lapsed
26/05/2016	T160305	Corporate Terrace, Pakenham VIC 3810	The development of the land for an industrial building with an ancillary office and a reduction in car parking.	Issued

30/05/2016	T150570 - PC1	26 King Street, Pakenham Victoria 3810	Development of the land for three (3) dwellings on a lot (two (2) additional)	Issued
1/06/2016	T150548 - PC1	2 Robin Court, Pakenham Victoria 3810	Subdivision of the land into two (2) lots	Issued
2/06/2016	T160156	Southeast Business Park, Commercial Drive, Pakenham VIC 3810	Development of the land for a store (self storage facility), ancillary offices and advertising signage.	Issued
3/06/2016	T150270 - PC2	15 Pinehill Drive, Pakenham Victoria 3810	Subdivision of the land into two (2) lots	Issued
3/06/2016	T150100 - PC2	705 Princes Highway, Pakenham Victoria 3810	Development of the land for twenty four (24) dwellings	Issued
3/06/2016	T160053	11 Jamieson Court, Pakenham Victoria 3810	Development of the land for three (3) dwellings	Issued
6/06/2016	T130505 - 1	Pakenham Road, Pakenham Victoria 3810	The staged subdivision of land, removal of native vegetation, removal of an easement, creation of an easement, removal of restriction on title (building and waste envelope) and associated earthworks, generally in accordance with the approved plans.	Issued
8/06/2016	T160265	18 Drovers Place, Pakenham VIC 3810	Advertising Signage	Refused
10/06/2016	T150687	15 Chandra Close, Pakenham Victoria 3810	Variation to covenant under Clause 52.02	Refused
10/06/2016	T150815	61 Barrington Drive, Pakenham Victoria 3810	Variation of restrictive covenant	Withdrawn
10/06/2016	T160201	335 McGregor Road, Pakenham VIC 3810	Subdivision of the land into three (3) lots and approval of the staged development plan	NOD
10/06/2016	T160107	62 Peet Street, Pakenham VIC 3810	The development of two (2) warehouses and a car parking variation	Issued
15/06/2016	T160305 - PC1	Corporate Terrace, Pakenham VIC 3810	The development of the land for an industrial building with an ancillary office and a reduction in car parking.	Issued
15/06/2016	T150782 - PC1	50 Lakeside Boulevard, Pakenham Victoria 3810	Use of existing building as a place of worship and business identification signage	Issued
15/06/2016	T150807	177-183 Ahern Road, Pakenham Victoria 3810	Subdivision of the land into thirty six (36) lots , the creation of a reserve and vegetation removal	NOD
Port Ward - Decisions 20/05/16 to 16/06/16				
Date	Permit No	Location	The Proposal	The Decision
30/05/2016	T160035	250 Evans Road, Longwarry Victoria 3816	Development of the land for a rural store and earthworks	Issued

			associated with the construction of a dam	
30/05/2016	T140315 - PC1	1135 Westernport Road, Yannathan Victoria 3981	Development of the land for an outbuilding	Issued
1/06/2016	T160011	43 Marrakilla Road, Maryknoll Victoria 3812	Development of the land for an outbuilding with a reduced setback	Issued
2/06/2016	T150485 - PC1	18 Knights Court, Tynong Victoria 3813	Development of the land for buildings and works associated with agriculture (horse training facility)	Withdrawn
3/06/2016	T150501 - PC1	110 Taplins Road, Catani VIC 3981	Development of the land for an outbuilding (shed)	Issued
6/06/2016	T160176	464 Bayles-Cora Lynn Road, Cora Lynn VIC 3814	Use of the land for place of assembly, food and drink premises, buildings and works in a heritage overlay, business identification signage and liquor license.	Lapsed
7/06/2016	T160198	4860 South Gippsland Highway, Lang Lang VIC 3984	Development of the land for a dwelling	Lapsed
10/06/2016	T150734	7 Henry Street, Koo Wee Rup Victoria 3981	Subdivision of land into two (2) lots and creation of an easement	Refused
14/06/2016	T160320	245 Bunyip-Modella Road, Bunyip VIC 3815	Alteration and extension to an existing dwelling	Withdrawn
15/06/2016	T150485 - 1	18 Knights Court, Tynong Victoria 3813	Development of the land for buildings and works associated with agriculture (horse training facility)	Issued
Ranges Ward - Decisions 20/05/16 to 16/06/16				
Date	Permit No	Location	The Proposal	The Decision
20/05/2016	T140259 - 1	5 Doery Street, Emerald Victoria 3782	The use and development of the land for a dwelling (with a reduced setback, exceeding seven metres in height), the removal of native vegetation and associated earthworks	Withdrawn
20/05/2016	T150767	230 Telegraph Road, Beaconsfield Upper Victoria 3808	Development of the land for an outbuilding (shed) and associated earthworks.	Lapsed
20/05/2016	T150528 - 1	18 Florence Avenue, Emerald Victoria 3782	Buildings and works for a replacement dwelling	Withdrawn
20/05/2016	T150610 - PC1	175 Rix Road, Officer VIC 3809	Multi-lot residential subdivision, subdivision adjacent to a public acquisition overlay, the removal of easements and associated works.	Issued
20/05/2016	T160151	Gembrook-Tonimbuk Road, Gembrook VIC 3783	Development of the land for a dwelling and outbuilding	Lapsed

22/05/2016	T150791	Bridge Road, Officer Victoria 3809	Advertising Signage	Withdrawn
25/05/2016	T150290 - PC4	Bridge, Officer Victoria 3809	Subdivision in stages and associated works	Withdrawn
25/05/2016	T140521 - PC3	15 Bayview Road, Officer Victoria 3809	Subdivision of the land adjacent to a road in a Road Zone Category 1 Zone	Withdrawn
25/05/2016	T160060	85-99 Ure Road, Gembrook Victoria 3783	Development of the land for earthworks associated with a dam	Issued
25/05/2016	T160147	41 Brennan Avenue, Beaconsfield Upper VIC 3808	Development of the land for a dwelling extension	Issued
26/05/2016	T150376 - PC1	36 Hickson Road, Officer Victoria 3809	Subdivision of the land, construction of a road within the land subject to inundation overlay and removal of existing easements	Issued
27/05/2016	T160032	Denman Street, Officer Victoria 3809	Multi lot subdivision of land	Issued
30/05/2016	T130679 - 3	325 Princes Highway, Officer Victoria 3809	Multi lot subdivision and associated road network	Issued
30/05/2016	T130764 - PC2	226 Rix Road, Beaconsfield Victoria 3807	Multi lot subdivision of the land	Issued
30/05/2016	T140722 - PC2	66-68 Beaconsfield-Emerald Road, Beaconsfield Upper Victoria 3808	Use and development of the land for a dwelling	Issued
30/05/2016	T150334 - PC2	Onyx Crescent, Officer Victoria 3809	Development of the land for forty-four (44) dwellings	Issued
30/05/2016	T140675 - PC2	325 Princes Highway, Officer Victoria 3809	Subdivision of the land (Stage 11) and removal of native vegetation	Issued
1/06/2016	T150290 - PC3	Bridge, Officer Victoria 3809	Subdivision in stages and associated works	Issued
1/06/2016	T150269 - PC1	Brunt Road, Officer Victoria 3809	Subdivision of the land, remove an easement (electricity), create a reserve and removal of native vegetation	Issued
1/06/2016	T150334 - PC3	Onyx Crescent, Officer Victoria 3809	Development of the land for forty-four (44) dwellings	Issued
2/06/2016	T140588 - PC2	7 Desmond Court, Beaconsfield Victoria 3807	The erection of business identification signage	Issued
2/06/2016	T150317	11 Fraser Avenue, Beaconsfield Upper Victoria 3808	Buildings and works for an extension to an existing dwelling	Issued
2/06/2016	T160230	14 Myrtle Grove, Guys Hill VIC 3807	Removal of vegetation	Issued
2/06/2016	T160252	407 Princes Highway, Officer VIC 3809	Use of the land for a restricted recreation facility (swimming pool) and the erection of business identification signage	Withdrawn
2/06/2016	T160274	570 O`Neil Road, Beaconsfield VIC 3807	Development of the land for an outbuilding	Issued
3/06/2016	T150405 - PC2	31 Mountain Road, Cockatoo VIC 3781	Development of the land for a dwelling and carport	Issued
3/06/2016	T160051	4 Dunstan Road, Avonsleigh Victoria 3782	Development of the land for a dwelling extension	Issued

3/06/2016	T160153	7 Belgrave Avenue, Cockatoo VIC 3781	Earthworks in excess of one (1) metre for a pond	Issued
3/06/2016	T150705 - PC1	7 Walnut Avenue, Emerald Victoria 3782	Building and works for the construction of a dwelling and removal of vegetation	Issued
6/06/2016	T110251 - 2	Princes Hwy, Officer Victoria 3809	AMENDED PERMIT - Multi lot residential subdivision of land and removal of native vegetation	Issued
6/06/2016	T160005 - PC1	34 Ferres Road, Emerald Victoria 3782	Buildings and works associated with a dwelling extension	Issued
7/06/2016	T160031	9 Naylor's Road, Emerald Victoria 3782	Buildings and works for a dwelling extension	Issued
8/06/2016	T150610 - PC4	175 Rix Road, Officer VIC 3809	Multi-lot residential subdivision, subdivision adjacent to a public acquisition overlay, the removal of easements and associated works.	Issued
10/06/2016	T150473 - 1	19 Glenvista Avenue, Emerald Victoria 3782	Amended Permit - Use and development of the land for one (1) dwelling and the removal of three (3) native trees	Issued
15/06/2016	T160043 - PC1	15 Quamby Road, Guys Hill Victoria 3807	Buildings and works associated with a dwelling	Issued

5 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATION AUTHORITY

Moved Cr G Moore Seconded Cr K Lempriere

That the report be noted.

Cd.

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

FILE REFERENCE INT1644438

RESPONSIBLE GENERAL MANAGER Phil Walton

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	Status/VCAT Decision
21-Mar-16	T150373	270 Cardinia Road, Officer South	Development of the land for a multi-lot residential subdivision and the construction of a dwelling on each lot less than 350sqm	Failure to decide	Applicant	Determined
22/04/2016 Hearing 5/10/16 Compulsory Conference - 10/08/16	T080447-1	11-15 Vista Court Gembrook	The use and development of land for the purpose of twenty (20) dwellings, of which ten (10) are to be used as a retirement village (over 55's) and associated earthworks exceeding one (1) metre.	Refusal	Applicant	Awaiting hearing
06-Jul-16	T150725	20 Lecky Road, Officer	Development of the land for Major Promotional Signage	Refusal	Applicant	Awaiting hearing - Hearing on 6 th July 2016
18-Jul-16	T150194	Henry Road Pakenha	Development of the land for three (3) dwellings on the lot	Refusal	Applicant	Awaiting hearing - 18 July

		m				<i>2016-amended plans received</i>
17-May-16	T150371	20 Racecourse Road Pakenham	Signage	Refusal	Applicant	Awaiting hearing
29-Jul-16	T140723	1 Bridle Place Pakenham	Cancellation of permit due to permit being issued in breach of covenant	Approval	Council	29 July 2016

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

Moved Cr G Moore Seconded Cr K Lempriere

That the report be noted.

Cd.

7 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)

FILE REFERENCE INT1644436

RESPONSIBLE GENERAL MANAGER Phil Walton

AUTHOR Owen Hardidge

RECOMMENDATION

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

EXECUTIVE SUMMARY

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

BACKGROUND

Where breaches of the Planning Scheme are detected that cannot be satisfactorily resolved Council undertakes enforcement action at the Victorian Civil and Administrative Tribunal (VCAT).

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

Where breaches are sufficiently serious, criminal proceedings in the Magistrates' Court will be commenced, and if so, the successful criminal proceedings will usually be followed by VCAT proceedings (criminal proceedings taking precedence over "civil" proceedings)

- 1). Multi-purpose 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.
- 2). Admin 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.
- 3). Adjournment
An adjournment will be asked for where there has been some discussion between Council and the Respondent, and more time is to be allowed for the Respondent (or Council as the Applicant) for a variety of reasons.
- 4). Offset plan
An Offset Plan goes by a few different names, including a Property Management Plan or a Property Remediation Plan. These plans are used when a Respondent has removed vegetation or otherwise damaged vegetation on the Land and Council is seeking a remedy for this removal, normally requiring replanting to occur on the Land. This plan is what Council will seek in the shape of an Enforcement Order, and the contents of the Plan will be decided by Council's Environment Team.
- 5). Full hearing

A full hearing is a hearing which is to be contested by the Respondent.

6). 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.

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

Property Address	Nature of Contravention	Status
41 Burton Rd, Beaconsfield Upper (ref: OH:LK:14151)	Vegetation removal and use of land as contractor's depot without a permit	VCAT enforcement proceedings filed. Contested hearing listed 4 June 2016 . Council and the Respondents reached agreement regarding the outcome, with the Respondents agreeing to obtain and implement a Land Management Plan to remediate the land, and amend permit applications and to pay Council costs.
205 Obriens Rd, Bayles (ref: OH:AK:15260)	Ongoing materials recycling issue on Green Wedge Land. Continuing failure to comply with VCAT enforcement order.	Magistrates' Court prosecution for failure to comply with VCAT order commenced. Plea of guilty entered. Further adjourned at request of accused, as mortgagee is imminently re-taking possession, which may prompt (partial) remediation of the land. Listed for next mention 14 July 2016 .
715 Gembrook Rd, Pakenham Upper (ref: OH:AB:14130, OH:SMAY:15227)	Alleged land use (burning off) and building breaches, that relates to extensive and complex planning history of the site.	Magistrates' Court proceeding adjourned to 4th October 2016 , as accused has filed application in VCAT for declaration as to existing use rights. Magistrates' Court proceeding may be delayed pending determination of this issue. Council commenced Building and Local Law prosecution of the owner, arising from construction and commercial-scale burn offs on the site. The owner asserts that burning off activities are protected by the planning scheme, and the prosecution will have to litigate this issue in some form. The property has a 17 year history of litigated planning disputes between 1997 and 2015.
168 Brown Rd, Pakenham (ref: OH:LK:15225)	Native vegetation removal, contrary to Environmental Significance Overlay, Green Wedge Zone and cl 52.17.	Magistrates' Court prosecution for alleged vegetation removal contrary to the scheme, concluded with Diversion, on 19 May 2016 .

Property Address	Nature of Contravention	Status
		VCAT application for enforcement order filed, and owner will consent to the making of the order requiring land management plan to be implemented. Listed at VCAT 29 July 2016.

7 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)

Moved Cr G Moore Seconded Cr K Lempriere

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

Cd.

Meeting closed at 7.40pm

Minutes Confirmed
Chairman