



# Cardinia

**MINUTES OF TOWN PLANNING COMMITTEE**

**MONDAY, 5 AUGUST 2019**

## MINUTES OF TOWN PLANNING COMMITTEE

held in the Council Chambers, 20 Siding Avenue, Officer  
on Monday, 5 August 2019

The meeting commenced at 7:00pm

**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), Tracey Parker (GMLC), Jack Coogan (GO)

**APOLOGIES:**

**DECLARATION OF PECUNIARY AND OTHER INTERESTS**

Nil.

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# **1 SUBDIVISION OF LAND INTO NINE (9) LOTS AND CREATION OF ACCESS TO A ROAD ZONE CATEGORY 1 AT 400 ROSSITER ROAD, KOO WEE RUP**

FILE REFERENCE INT1955955

RESPONSIBLE GENERAL MANAGER Peter Benazic

AUTHOR Tara Hooper

## **RECOMMENDATION**

That a Notice of Decision to Grant Planning Permit T180293 be issued for the Subdivision of land into nine (9) lots and creation of access to a Road Zone Category 1 at 400 Rossiter Road, Koo Wee Rup VIC 3981 subject to the conditions attached to this report.

## **Attachments**

1	Plan of Subdivision	1 Page
2	Locality Map	1 Page
3	Copies of Objections, circulated to Councillors only	13 Pages

## **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T180293
APPLICANT:	Joey Whitehead
LAND:	400 Rossiter Road, Koo Wee Rup VIC 3981
PROPOSAL:	Subdivision of land into nine (9) lots and creation of access to a Road Zone Category 1
PLANNING CONTROLS:	Neighbourhood Residential Zone Schedule 1 Land Subject to Inundation Overlay Land adjacent to a Road Zone, Category 1 Clause 56 Residential Subdivision
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  Six (6) objections were received
KEY PLANNING CONSIDERATIONS:	Neighbourhood and township character, impact on surrounding properties
RECOMMENDATION:	Notice of Decision to Grant a Permit

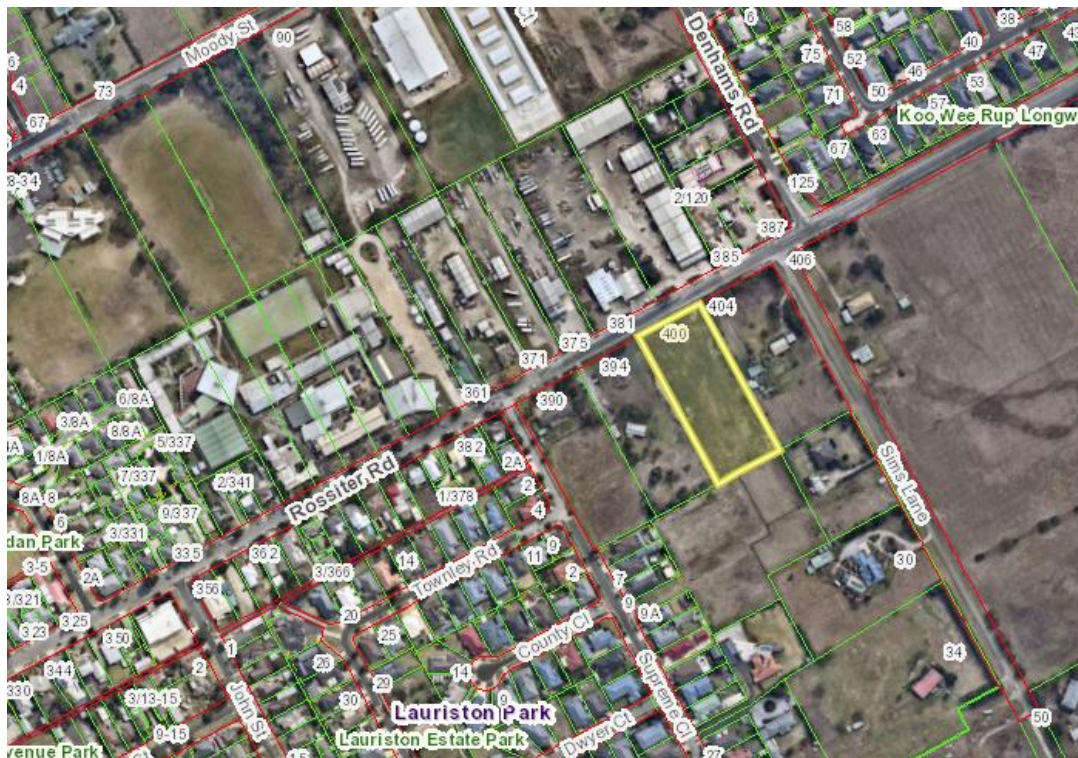
## **BACKGROUND:**

Planning Permit T030273 authorised the subdivision of the land into nine (9) lots. The plan approved by this permit had largely the same configuration as the current proposal.

The original plan submitted with the current application included the subdivision of the land into 10 lots, with a central court-bowl access designed as common property. After negotiations with Council's Planning Department, the applicant submitted revised plans. These revised plans are currently under consideration.

#### SUBJECT SITE:

The 8564 square metre rectangular site is located on the south eastern side of Rossiter Road.



A 3 metre wide drainage easement spans the eastern property boundary.

The site is currently vacant.

The topography of the land is generally flat.

The subject site is located towards the north eastern entrance of the Koo Wee Rup Township along Rossiter Road. The intersection of Rossiter Road and Station Street, at the centre of Koo Wee Rup's commercial district, is approximately 675 metres from the site. A shopping centre containing a supermarket is approximately 250 metres west of that intersection.

The site is well-placed with regards to access to town services, and is less than 200 metres from Koo Wee Rup Secondary School, approximately 500 metres from Koo Wee Rup Primary School. A bus stop serviced by V-Line is approximately 850 metres from the site. Cochrane Park is approximately 1 kilometre southeast, and Koo Wee Rup Regional Health Centre is approximately 1.3 kilometres southeast.

#### PROPOSAL

The application proposes the subdivision of the land into nine (9) lots. The lots will measure between 700 and 768 square metres,<sup>1</sup> and will be serviced by a single road at the eastern property boundary onto Rossiter Road.

<sup>1</sup> The size of lots 1 and 2 will be reduced in accordance with a condition to provide an internal service road that will eventually eliminate access from Rossiter Road (discussion below).



## PLANNING SCHEME PROVISIONS

### Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 15.01-1S Urban design
- Clause 15.01-3S Subdivision design
- Clause 15.01-4S Healthy neighbourhoods
- Clause 15.01-5S Neighbourhood character
- Clause 16.01-1S Integrated housing
- Clause 16.01-2S Location of residential development
- Clause 16.01-3S Housing diversity
- Clause 18.02-1S Sustainable personal transport

### Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.03 Settlement and housing
- Clause 21.03-1 Housing
- Clause 21.03-3 Rural townships
- Clause 21.05-5 Pedestrian and bicycle network
- Clause 21.06-1 Design and built form
- Clause 21.07-7 Local Areas - Koo Wee Rup

### Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.01 Public open space contribution and subdivision
- Clause 56 Residential subdivision
- Clause 65 Decision guidelines
- Clause 66 Referral and notice provisions
- Clause 71.02 Integrated decision making
- Koo Wee Rup Township Strategy 2015

## Zone

The land is subject to the **Neighbourhood Residential Zone Schedule 1 and a Road Zone, Category 1.**

## Overlays

The land is subject to the following overlays:

- Land Subject to Inundation Overlay
- Development Plan Overlay 24 (amendment currently under preparation)

## PLANNING PERMIT TRIGGERS

The proposal for **Subdivision of land into nine (9) lots and creation of access to a Road Zone Category 1** requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.09-3 (Neighbourhood Residential Zone), a planning permit is required for subdivision.
- Pursuant to Clause 52.29-2 (Land Adjacent to a Road Zone, Category 1), a permit is required to create or alter access to a road in a Road Zone, Category 1 and subdivide land adjacent to a road in a Road Zone, Category 1.

## 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.

Council has received six (6) objections to date.

It is noted that the six objections were submitted prior to a substantial revision of the proposal under Section 57A of the *Planning and Environment Act 1987*. After the revision, the application was readvertised by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.

Only one (1) objector submitted a further objection after notice of the amended application. However, under Section 57A(7)(b), Council is required to consider all objections made in relation to the original application to be an objection of the amended application.

The key issues that were raised in the objections were:

- Noncompliance with the Koo Wee Rup Township Strategy, including lot yield mentioned in Section 4.12/Table 6, guideline for 80% of lots to measure over 700 square metres, provision of larger allotments near Urban Growth Boundary, and footpath access.
- Noncompliance with public access provisions of Clause 56.04-5, 56.06-5 and 56.07-4.

- A lack of respect for neighbourhood character, specifically with regard to the 'country feel' of Koo Wee Rup and the contrast with nearby Lauriston Park Estate, which has predominantly 3 and 4 bedroom residences on 900 square metre allotments.
- No provision of footpath to Townley Road, and the only footpath into town located across Rossiter Road.
- Addition of new intersection to cause traffic issues, especially with nearby industrial land and secondary school.
- Provision of sewerage.
- Issues with common property.

## REFERRALS

### *APA Group*

The application was referred to APA Group as a statutory referral. APA Group had no objection to the proposal and required no conditions.

### *AusNet Services*

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

### *Country Fire Authority*

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

### *Melbourne Water*

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

### *South East Water*

The application was referred to South East Water as a statutory referral. South East Water no objection to the proposal subject to conditions.

### *VicRoads*

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

## DISCUSSION

The proposed nine lot subdivision has been assessed against all relevant provisions of the Cardinia Planning Scheme and represents an acceptable planning outcome. As such, the application should be supported by Council.

### **State and Local Planning Policy Framework**

The proposal is consistent with State and Local Planning Policy Frameworks. In particular, the application meets State policies that encourage residential development within the designated urban growth boundary, within a close proximity to commercial centres and along public transport routes. The subdivision will increase the supply of residential land within a small township and therefore increase housing diversity and improving housing affordability whilst providing a subdivision layout that can integrate well with the surrounding neighbourhood and township character.

### **Koo Wee Rup Township Strategy**

The proposed subdivision is generally in accordance with the Koo Wee Rup Township Strategy (the 'Township Strategy').

The Township Strategy is an incorporated document in the Planning Scheme. In addition, Clause 21.07-7 Koo Wee Rup seeks to:

- *Ensure that any proposed use or development within or around the Koo Wee Rup Township is generally consistent with the Koo Wee Rup Township Strategy (October 2015), including the Koo Wee Rup Framework Plan (Figure 18).*

Of relevance to this application is Section 4, which specifies guidelines for residential development. Section 4.4 specifies that the Subject Site is located within Precinct 2 (new residential estates). Also relevant to this proposal is section 4.12, which identifies the subject site as suitable for infill development.

Precinct 2 and Development Guidelines

The proposed subdivision is generally consistent with the preferred character statement identified for the area. The preferred character statement for Precinct 2 provides that:

*The open and semi-rural atmosphere of Koo Wee Rup’s new residential estates will be retained particularly with provision of larger allotments. Existing asphalt roads with pathways on either side will continue into new developments and maintain existing styles and features including brick paved thresholds and street lighting. Other features which improve the overall appearance and functionality of the existing developments, such as underground power and grassed road verges will be combined with street tree planting, wide footpaths and generous street widths with an overall focus on continuity and quality within all new developments.*

An excerpt of the Township Strategy providing the location of Precinct 2 is shown below:



Development guidelines are provided for this precinct, with relevant guidelines including:

- *Maintain 80% of the lots with sizes over 700 square metres;*



- *Orientate dwellings to maximize retention of existing vegetation and allow only one access driveway to the site;*
- *Maintain spaciousness in new estates with:*
  - *Providing a minimum front setback of 7 metres or no less than the average setback of the adjoining two dwellings;*
  - *Side setbacks of 2.5 metres minimum;*
  - *Respect for the predominant building height of the neighbourhood;*
  - *No fences or if fenced, only low fences; and*
  - *Minimum lot width of 18 metres.*
- *Encourage larger allotments of over 1000 square metres towards the edge of the Urban Growth Boundary;*
- *Discourage small allotments of less than 600 square metres in the new residential estates;*
- *In the case of subdivisions, clearly outline how the new development relates to the existing and intended use and development of adjoining land;*
- *Discourage cul-de-sacs and, if used, they should be connected through to another street by a wide reserve and path for safe pedestrian and bicycle access.*

The subdivision is generally in accordance with the Koo Wee Rup Township Strategy with most lots measuring over 700 square metres, the ability of the subdivided lots to maintain a sense of spaciousness, and the absence of a cul-de-sac (with future connectivity to be provided through the realisation of the future DPO24).

This consistency with the Township Strategy is determined despite some minor deviations required to realise the aims of Council's proposed Development Plan Overlay in this area.<sup>2</sup> Whilst the plans submitted show all lots measuring over 700 square metres, it is noted that a 16 metre wide (approximately) service road will be required via condition to run parallel to Rossiter Road to align with the future Development Plan Overlay 24 and minimise permanent road access points to Rossiter Road (see discussion below). This condition will reduce the lot sizes of lots 1 and 2 (which both currently measure 720 square metres) by approximately 384 square metres each. Considering the amendment that will be required by this condition, approximately 78 percent of lots will measure over 700 square metres. This will also result in lots 1 and 2 measuring less than 600 square metres. Finally, it is noted that the lot width of lots 3 – 8 will measure less than 18 metres, they will still maintain a sense of spaciousness at approximately 16 metres in width.

In this instance, it is important to consider Clause 71.02-3 (Integrated decision making), which notes that responsible authorities should integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit. Although 80% of lots will not measure over 700 square metres, (siting at 78%) the lot width of lots 3 - 8 are slightly less than the guideline, and two lots will measure less than 600 square metres, the subdivision achieves an appropriate balance between the need to provide a range of housing options to meet the needs of the community, recognising the existing rural township character of the area, and providing for the future orderly planning of the area to the west of Sims Lane. The proposed subdivision results in lot areas and a layout that is not uncharacteristic of the surrounds and provides appropriate lot widths combined with building envelopes that will ensure development on the site can ensure the township character is maintained, including appropriate front and side setbacks.

<sup>2</sup> A detailed discussion and diagram of the proposed Development Plan Overlay is provided later in this report.

With respect to the guideline to ‘*encourage larger allotments of over 1000 square metres towards the edge of the Urban Growth Boundary*’, it is noted that this is an inherently relative measure and the Township Strategy is unclear as to how close to the boundary this guideline should be applied. As shown in the diagram of residential precincts above, Precinct 2 lies exclusively in the outer reaches of the Koo Wee Rup township. Additionally, the subject parcel does not abut the Urban Growth Boundary (shown by a dotted line in the diagram above). Whilst this guideline is open to a certain amount of interpretation, it is reasonable to construe that it is not relevant to the subject parcel as the site does not abut the Urban Growth Boundary.

It is important to note that the Tribunal has decided on several occasions that the Township Strategy’s guidelines should not be applied in a prescriptive fashion. The recent decision of *Fox Corp Australia Pty Ltd v Cardinia SC*,<sup>3</sup> which concerned the subdivision of 19 lots at 65 Moody Street, set aside Council’s refusal. In that proposal, only 57 percent of lots measured over 700 square metres. Additionally, the allotment is located at the northern edge of the Urban Growth Boundary. The Tribunal noted that ‘*We acknowledge the development guidelines for precinct 2 in the Strategy specify that 80% of lots are to be over 700 square metres and this will not be achieved. However, we are not persuaded that this figure needs to be applied in a prescriptive way, noting that the MSS seeks development to be generally consistent with the Strategy. . . . The above inconsistency demonstrates to us that the Development Guidelines are just that: guidelines and a rigorous application of them to permit applications is not the correct approach to be taken.*’<sup>4</sup>

In the only other Tribunal decision issued since the Township Strategy became an incorporated document, Council’s refusal of a two lot subdivision on a 1013 square metre site at 7 Henry Street was set aside. There, the member noted that 70 percent guideline in Precinct 1 was a ‘difficult measure to implement’ as ‘*it is unclear what geographic area this applies to, at what point in time it is to be measured and whether it is then intended that no multi unit should be allowed on lots of this size.*’<sup>5</sup>

#### Potential for infill development – Section 4.12

Under Section 4.12 of the Township Strategy, the Subject Site is identified as having potential for infill development because of its proximity to the town centre.

*[O]pportunities [for infill development] exist for subdividing the large blocks to the west of Sims Lane and south of Rossiter Road, where existing lots range in size from 8,139 square metres to 9,868 square metres. The preparation of a Development Plan Overlay needs to be considered, to address the issues of access, traffic movement, permeability, infrastructure provision and flood mitigation. Again, any subdivision should be of a medium to larger allotment size, to provide a range of housing options which cater for the needs of a diverse range of ages and households.*

With respect to the future development of these lots, Section 4.12 of the Township Strategy notes:

*In general, infill development will display a sense of spaciousness, with a front set back of 7 metres minimum, driveway orientated along one side of the property. It will provide new trees and garden space, no front fence which enables garden and nature strip to merge and site coverage of 50%.*

It is possible to achieve these objectives through restrictions on title where practicable, which will be implemented via permit conditions.

It is also noted that Table 6 in Section 4.12 identifies potential infill land supply on the assumption that yield will approximate 9 lots per hectare and lots will have a development area of 70 percent of the total lot area. At 0.87 hectares, the Subject Site is predicted in this table to have a yield of 5 lots. Whilst the application proposes 9 lots, it is suggested that prescriptive approach to this table should not be followed, particularly in light of the assumptions required to reach its conclusions and the previous decisions of the Tribunal. Again,

<sup>3</sup> [2017] VCAT 1837.

<sup>4</sup> *Ibid.* at [24-25].

<sup>5</sup> *Ibid.* at [34].

the proposal is generally in accordance with the Township Strategy as it achieves a balance between maintaining township character and providing for increased infill development close to the town centre.

In sum, the proposal is generally consistent with the Township Strategy. It achieves a sense of spaciousness with 78% of lots measuring over 700 square metres, and with adequate restrictions on title it can be assured that setbacks and garden areas will require future development to respect the preferred township character. Whilst the proposal does not strictly comply with the development guidelines within the Township Strategy relating to lot sizes and lot width, it achieves its overall purpose. Importantly, as noted by the Tribunal, Clause 21.07-7 of the Planning Scheme only requires a proposal to be *generally consistent* with the Township Strategy—it does not prescribe strict compliance.

### **Neighbourhood Residential Zone/Clause 56 Residential Subdivision**

The proposal is suitable with regard to the Neighbourhood Residential Zone and the objectives of Clause 56 of the Planning Scheme. A subdivision within the Neighbourhood Residential Zone is to be consistent with the purpose of the zone and the relevant objectives and standards of Clause 56- Subdivision of the Cardinia Planning Scheme for subdivisions between 3 and 15 lots (All subsections of Clause 56 except Clauses 56.02-1, 56.03-1 to 56.03-4, 56.05-2, 56.06-1, 56.06-3 and 56.06-6).

The proposed subdivision is consistent with the purposes of this zone as it provides for limited increased residential development that is respectful of the surrounding neighbourhood character. Further the application has been assessed against the relevant clauses of Clause 56 and it is considered that the subdivision generally complies.

- Clause 56.03 (Liveable and Sustainable Communities): the proposal complies with the relevant standards and objectives under this clause as the subdivision achieves a preferred neighbourhood character consistent with the relevant neighbourhood character statement set out in the Koo Wee Rup Township Strategy.
- Clause 56.04 (Lot Design): the proposal complies with the relevant standards and objectives under this clause as it provides a range of lot sizes. Lots can provide a suitable area to contain a dwelling and building envelopes will be required as a condition to the permit and will ensure adequate solar access and street orientation.
- Clause 56.05 (Urban Landscape): a landscape plan will be required to be implemented prior to the issuance of a statement of compliance in order to ensure compliance with the relevant objective in this clause.
- Clause 56.06 (Access and Mobility Management): footpaths will be required within the internal road network and to the south of Rossiter Road to ensure the relevant objectives of this clause are satisfied. Roads will be designed to provide safe and efficient movement for all vehicles, and the submission of a functional layout plan to be approved by Council's Engineering Department will form a condition of a permit to ensure the relevant standards of this clause are adequately addressed. As discussed below, a condition will be required to slightly modify the splay on lots 8 and 9 to provide for the safe and efficient access of a waste vehicle.
- Clause 56.07 (Integrated Water Management): the lots within the subdivision will be required to be connected to services, as conditions are required by servicing authorities. Conditions related to stormwater management will be required to be completed to the satisfaction of Council prior to issuance of a statement of compliance. With these measures in place, it is determined that the proposal satisfies the objections of Clause 56.07.
- Clause 56.08 (Site Management): Conditions will be placed on the permit to ensure compliance with this clause is met, including protection of drainage infrastructure, as well as the prevention of environmental degradation and nuisance during construction.
- Clause 56.09 (Utilities): Conditions will be placed on the permit to ensure compliance with objectives relating to electricity, telecommunications, gas, and fire hydrants. It is therefore determined that the proposal is compliant with the objectives of this clause.

### **Land Subject to Inundation Overlay**

The proposal is consistent with the purposes and decision guidelines of the Land Subject to Inundation Overlay. This overlay identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority, and seeks to that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

A permit is required to subdivide land affected by the LSIO, and the relevant decision guidelines include:

- Any comments from the relevant floodplain management authority;
- The existing use and development of the land;
- Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this overlay; and
- The susceptibility of the development to flooding and flood damage.

The application was referred to Melbourne Water, who did not object to the proposal and did not provide any conditions.

### **Clause 52.29 Land Adjacent to a Road Zone Category 1**

The proposal is consistent with the purposes and decision guidelines of Clause 52.29. This Clause applies to land adjacent to a Road Zone Category 1 and aims to ensure appropriate access to identified roads and appropriate subdivision of land adjacent to identified roads. A permit is required to subdivide land adjacent to a road in a Road Zone Category 1 as well as to create access to a road in a Road Zone, Category 1.

The relevant decision guidelines include the PPF and LPPF, the views of the relevant road authority and the effect of the proposal on the operation of the road and on public safety.

The application has been referred to VicRoads, who had no objection subject to conditions. Further, the proposal is considered acceptable under this clause with a condition requiring a service road to eventually connect to an internal road network and allow for the closure of the access point to Rossiter Road in accordance with the future Development Plan Overlay 24 (see discussion below). Based on these factors, the proposal is considered consistent with this Clause.

### **Clause 52.01 Public Open Space Contribution and Subdivision**

Under Clause 52.01, a person who proposes to subdivide land for urban residential purposes must make a contribution to council for public open space of an amount specified in the schedule to this clause. The Schedule specifies an amount of eight per cent and this will be placed as a condition of the planning permit.

### **Clause 65.01 Approval of an Application or Plan/Clause 65.02 Approval of an Application to Subdivide Land**

The proposal is considered consistent with clauses 65.01 and 65.02 and will deliver an orderly planning outcome with minimal impact on the amenity of the area. The land is suitable for subdivision and has been identified in the Township Strategy as having potential for infill development. This subdivision will help realise that objective, and create additional housing close to the town centre.

Clauses 65.01 and 65.02 require the consideration of a range of matters, including the Planning Policy Framework and the Local Planning Policy Framework and the purpose and decision guidelines of the relevant zone, overlay or other provisions. Other relevant guidelines of Clause 65 include the orderly planning of the area, the effect on the amenity of the area, and the matters set out in Section 60 of the Act.

### Stormwater and drainage

With respect to Clause 65.02's requirement to consider the *'effect of development on the use or development of other land which has a common means of drainage'*, and Clause 65.01's requirement to consider *'whether the proposed development is designed to maintain or improve the quality of stormwater*

*within and exiting the site*, specific conditions related to drainage and stormwater will be placed on the permit to ensure impacts to surrounding properties are minimised.

#### Movement of pedestrians and vehicles

Concerning *'the movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots'*, it is noted that Council's Waste and Traffic departments have expressed a concern with the feasibility of an 8.8 metre waste vehicle to turnaround at the end of the current road leading to lot 9. Therefore, prior to the endorsement of plans, the Applicant will be required to submit swept paths demonstrating that an 8.8 metre waste vehicle can turnaround at the end of the proposed road, and modify the configuration of lots 8 and 9 to enable this to occur, if necessary. It is anticipated this condition will have a small effect on the splay traversing lots 8 and 9 and only require a small reduction in lot size. The benefit of this condition will allow waste vehicles to reach all lots in the subdivision.

#### Existing vegetation

With respect to Clause 65.02's requirement to consider *'the subdivision pattern having regard to the physical characteristics of the land including existing vegetation'*, it is noted that the adjacent parcel at 404 Rossiter Road contains vegetation within 3 metres of the boundary shared with the subject site. The apparent pattern of this vegetation suggests the vegetation is planted. The structural root zones of these trees measure between 1.50 and 2.67 metres. Additionally, a 3 metre wide drainage easement spans the eastern boundary of the subject site, providing an additional buffer from the root zones of this vegetation. To ensure impacts are not caused to this vegetation, submission of a Tree Management Plan and Construction Environmental Management Plan addressing vegetation impacts will be required via condition. It is noted that Council approved a substantially similar subdivision under Planning Permit T030273.

#### ***Condition relating to the provision of a service road parallel to Rossiter Road***

A condition has been provided in this recommendation from VicRoads requiring the submission of revised plans to show:

*Before certification of the plan of subdivision hereby approved, amended plans that show land being set aside for a one-way, temporary service lane along the northern boundary of the site must be prepared to the satisfaction of the Roads Corporation and the Responsible Authority. The temporary service road carriageway (excluding the temporary Rossiter Road connections) must be constructed to sufficient width to allow it to ultimately function as a two-way Access Street 1 as per the Engineering Design and Construction Manual (EDCM).*

There are several justifications for this condition, including:

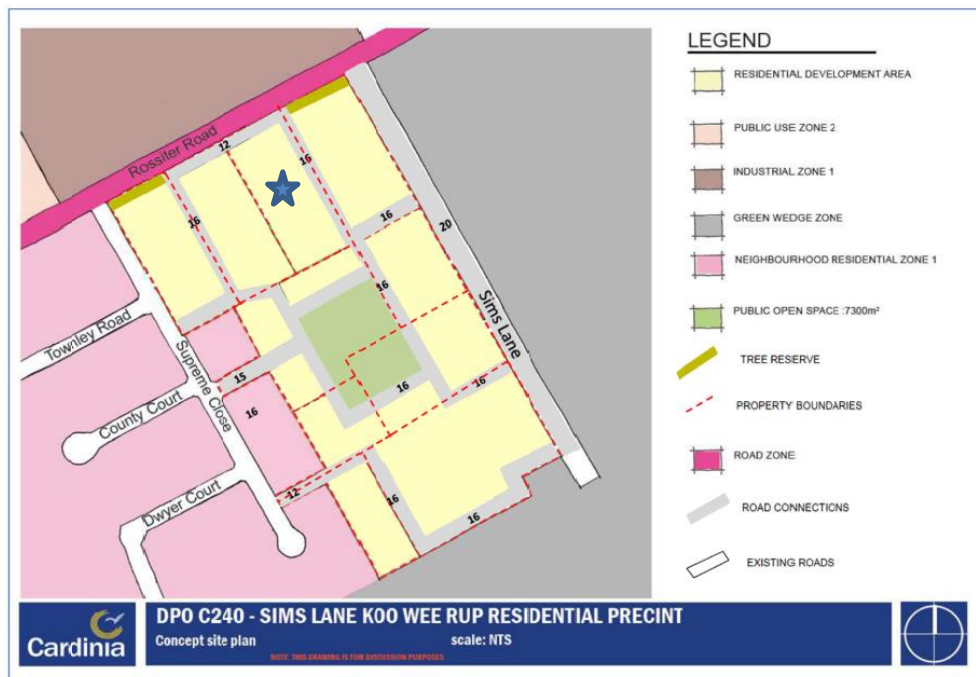
- The existing use and possible future development of the land and nearby land;
- The layout of the roads and relationship to existing roads; and
- Consideration of Amendment C240 and the Development Plan Overlay 24.

#### The existing use and possible future development of the land and nearby land/The layout of roads having regard to their function and relationship to existing roads

Clause 65.02 requires Council to consider *'the existing use and possible future development of the land and nearby land'* and *'the layout of roads having regard to their function and relationship to existing roads.'* These are relevant factors with respect to the importance of the service road to provide internal connectivity to adjacent land and eventually provide for the closure of access points to Rossiter Road. Approving the subdivision without a service road or allowing for a different configuration will likely cause a cascading effect on the subdivision of future lots in this area that would result in future subdivision applications requesting additional access points to Rossiter Road. This sort of piecemeal development will cause additional traffic impacts and ultimately result in a poor planning outcome for this area. Therefore, the application as submitted, with the inclusion of a condition requiring a service road parallel to Rossiter Road, should be approved.

Section 60 of the *Planning and Environment Act 1987*/Orderly planning and consideration of Amendment C240

Additionally, the provision of a 12 metre wide service road parallel to Rossiter Road is essential to the realisation of the Development Plan Overlay 24 (DPO24), which is included in Amendment C240. Council's Strategic Planning Department is currently undergoing work for Amendment C240, which includes a Development Plan Overlay (DPO24) for the land between Sims Lane and Supreme Close, including the Subject Site.



Whilst significant background work has been completed to prepare the amendment, it is noted that the DPO24 is in the early stages of development, with Council currently awaiting the Minister's authorisation. However, permit conditions to enable the Amendment to proceed can still be considered when the absence of the works required by the condition would otherwise defeat the purposes of the Amendment. Therefore, it is noted that the DPO24 can be considered under Section 60(j) of the Act, as it is a 'relevant matter' and Clause 65.01 of the Planning Scheme as the proposal (when including proposed conditions) is consistent with the orderly planning of the area.<sup>6</sup>

As evidenced by the diagram above, the placement of the service road parallel to Rossiter Road is critical to provide the safe and efficient flow of vehicles from Sims Lane to Supreme Close and is a key element of the DPO24. The placement of the service lane will allow for the eventual closure of all access points to Rossiter Road once the development contemplated by the DPO is realised.

Because the plans submitted with the application do not include the provision of this service road, a condition will be placed on the permit to submit amended plans including the service road prior to certification. This condition will allow for the orderly planning of the area and compliance with Section 60(j) of Act by enabling the ultimate plan for the DPO24 to proceed. To allow the subdivision to occur without such a condition would substantially obstruct efforts to realise the DPO24 by creating a cascading effect on the subdivision of future lots that would result in future subdivision applications for adjacent lots requesting additional access points to Rossiter Road. This will provide additional traffic impacts in the future, as well as destroy the potential for the internal connectivity contemplated by the DPO24.

***Condition relating to the provision of a footpath to Townley Road***

<sup>6</sup> This interpretation is supported by the Supreme Court decision of *Burns Bridge Services Pty Ltd v Greater Bendigo City Council* [2005] VSC 422.

Council's Engineering Department has requested inclusion of the following condition:

*Construction of a minimum 1.5 metre wide concrete footpath along the south side of Rossiter Road extending from the proposed development access to Townley Road.*

This condition would require the construction of over 120 metres of concrete footpath beyond the boundaries of the subject site.

However, with regard to the common law and statutory tests governing the validity of permit conditions, it is recommended to limit the construction of the footpath to the site boundaries. Therefore, included in the recommended conditions is the following revised condition:

*Construction of a minimum 1.5 metre wide concrete footpath along the south side of Rossiter Road extending across the length of the proposed development.*

The common law test for the validity of permit conditions is contained in the High Court case of *Allen Commercial Constructions Pty Ltd v North Sydney Municipal Council*,<sup>7</sup> where it was held that for a condition to be valid it must be reasonably capable of being related to the implementation of planning policy and the scope of that policy must be ascertained from the relevant planning statute and planning instrument. Further, under the statutory test of Section 62(5)(c)(i) of the *Planning and Environment Act 1987*, the Responsible Authority may 'include a condition that specified works, services or facilities that the responsible authority considers *necessary* (emphasis added) to be provided on or to the land or other land as a result of the grant of the permit be provided by the applicant.'

There are several planning policies that regard footpath linkages, including the following:

- Within the Koo Wee Rup Township Strategy:
  - Section 7.8 contains an objective to 'encourage pedestrian and bicycle usage to reduce car dependency for short trips within the township' and 'to provide a safe and well-maintained network of footpaths'.
  - Section 7.9 contains policy to 'provide a well-connected network of paths to encourage walking and cycling'.
  - Additionally, Section 9.8 identifies that 'There is a need for well-maintained footpaths and bike paths to link recreation facilities, the town centre and all sections of the township. . .'
- Clause 21.05 (Infrastructure provision) contains a strategy to 'Encourage the development of both pedestrian and bicycle links throughout the municipality'.
- Clause 21.05-5 (Pedestrian and bicycle network) has an objective to 'develop well-located, safe and interconnected pedestrian and bicycle networks within the municipality.' Strategies within this policy include 'Provide for safe and efficient pedestrian and bicycle movements to connect railway stations, bus stops, activity centres and major community facilities . . . in rural townships' and to 'Ensure connectivity between new and existing development including pedestrian and bicycle paths.'
- Clause 56.06-2 (Walking and cycling network objectives) contains standards to ensure the walking and cycling network should be designed to 'link to any existing pedestrian and cycling networks' and 'provide an interconnected and continuous network of safe, efficient and convenient footpaths . . .'.
- Clause 56.06-5 (Walking and cycling network detail objectives) contains a standard to ensure footpaths should be designed to 'be part of a comprehensive design of the road or street reservation'.
- Clause 15.01-4S (Healthy neighbourhoods) contains a strategy to provide 'connected, safe, pleasant and attractive walking and cycling networks that enable and promote walking and cycling as a part of daily life'.
- Clause 18.02-1S (Sustainable personal transport) contains a strategy to 'develop high quality pedestrian environments' and 'provide direct and connected pedestrian and bicycle

<sup>7</sup> [1970] HCA 42.

*infrastructure to and between key destinations including . . . public transport interchanges, [and] employment areas. . . .'*

These planning policies all support the requirement to construct a footpath along the south side of Rossiter Road for use by the residents of the proposed subdivision with the expectation that future development will provide linkages to the existing footpath network.

Despite the existence of these policies to encourage footpath connectivity and networks, there is a genuine question of necessity of the extended footpath beyond the length of the site to span neighbouring parcels. It is uncertain whether such an extension would achieve the aims of the policies with relation to the proposal, and the reasonableness of such a condition is questionable. Therefore, it is suggested to include the revised condition as provided in this report. It is unfortunate that limiting the footpath construction to the development of the current site will result in ad hoc development with regard to footpath linkages; however having regard to reasonableness and necessity, the revised condition is considered appropriate in this instance.

### **Objectors' Concerns**

Six (6) objections were submitted in relation to the proposal. These objections were submitted prior to a substantial revision of the proposal under Section 57A of the *Planning and Environment Act 1987*. The amended application reduced the lot yield from 10 to 9, increased most lot sizes, and replaced the central common property accessway with a road to be vested to Council on the eastern portion of the parcel.

Whilst only one (1) further objection was received by an original objector after the amendment, under Section 57A(7)(b), Council is required to consider all objections made in relation to the original application to be an objection of the amended application.

A response is provided to the following concerns lodged by objectors:

- *Noncompliance with the Koo Wee Rup Township Strategy, including lot yield mentioned in Section 4.12/Table 6, guideline for 80% of lots to measure over 700 square metres, provision of larger allotments near Urban Growth Boundary, and footpath access.*
  - As mentioned in the section of this report dedicated to the Township Strategy, the proposal is generally in accordance with this document. Reference is made to the above section, which responds to each of these concerns.
- *Noncompliance with public access provisions of Clause 56.04-5, 56.06-5 and 56.07-4.*
  - 56.04-5 concerns common areas. The amendment to the application replaced all common property with a road. Therefore, this section is not relevant to the current proposal.
  - 56.06-5 concerns walking and cycling networks. A footpath will be required on site via condition. Functional layout plans required via condition will also ensure adequate detail is provided to enable safe travel for pedestrians, vehicles and cyclists.
  - 56.07-4 concerns stormwater management. This objective is specifically addressed by standard engineering conditions.
- *A lack of respect for neighbourhood character, specifically with regard to the 'country feel' of Koo Wee Rup and the contrast with nearby Lauriston Park Estate, which has predominantly 3 and 4 bedroom residences on 900 square metre allotments.*
  - Building envelopes and fencing controls will be required via a restriction on title to ensure any subsequent development respects the preferred neighbourhood character. Allotments within Lauriston Park Estate to the west measure between 500 and 1 hectare, with the smaller allotments abutting Townley Road and Supreme Close (closest to the subject site). The lots proposed by the application are comparable and do not unreasonably deviate from the pattern of subdivision in the area.
- *No provision of footpath to Townley Road, and the only footpath into town located across Rossiter Road.*
  - Reference to the section of this report regarding a condition requiring a footpath to Townley Road is made, which responds to these concerns.



- *Addition of new intersection to cause traffic issues, especially with nearby industrial land and secondary school.*
  - The new intersection has been considered by VicRoads, who have provided conditional consent. It is noted that the provision of a service road along the northern property boundary will allow for the future closure of access to Rossiter Road when the Development Plan Overlay 24 is realised. The DPO24 provides for an internal loop road with access from Sims Land and Supreme Close.
- *Provision of sewerage.*
  - A condition on the permit required by determining referral authority South East Water will require the owner of the subject land to enter into an agreement with for the provision of sewerage and fulfil all requirements to its satisfaction.
- *Issues with common property.*
  - The Applicant submitted an amendment to the proposal removing the common property and replacing it with a road.

## CONCLUSION

The proposed application is consistent with State and Local Planning Policy, and the zone and overlay provisions that apply to the Subject Site. The application has been assessed against the relevant policy and it has been determined that the application satisfactorily complies with the vision for the area and should be supported.

It is recommended that Council issues a Notice of Decision to grant Planning Permit Application **T180293** for the **subdivision of land into nine (9) lots and creation of access to a Road Zone, Category 1 at 400 Rossiter Road, Koo Wee Rup** subject to the following conditions:

## CONDITIONS

### Amended Plans Required

1. Before the plan of subdivision is certified under the *Subdivision Act 1988*, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:
  - a. An adequate road width to accommodate the turning movements of an 8.8 metre long service vehicle at the head of the court adjacent to lots 8 and 9. Adequate road width must be demonstrated with swept paths to the satisfaction of the Responsible Authority.
  - b. A title plan showing building envelopes with a front setback of at least 7 metres and side setbacks of at least 2.5 metres for lots 3 – 9, and the following restrictions to the satisfaction of the Responsible Authority:
    - i. Burdening lots 3 – 9:
      1. Building site coverage must not exceed 50 percent.
      2. No building or part of a building may be constructed outside of a building envelope.
    - ii. Burdening all lots:
      1. Front fences must not exceed 1.5 metres in height and must not have less than 30 percent transparency.
  - c. The location of tree protection fencing that will protect vegetation on neighbouring lots from construction impacts.
  - d. The retention of all trees on the adjoining property that are listed in the arborist report submitted with the application, with their tree protection zones free from any buildings, roads, footpaths, earthworks, trenching or any other works and/or the implementation of adequate measures

supported by an arborist's report to ensure the retention of these trees to the satisfaction of the Responsible Authority.

- e. Any changes to the site plans required by the endorsed Tree Management Plan required by Condition 24.

### **Roads Corporation (VicRoads) Conditions**

2. Before certification of the plan of subdivision hereby approved, amended plans that show land being set aside for a one-way, temporary service lane along the northern boundary of the site must be prepared to the satisfaction of the Roads Corporation and the Responsible Authority. The temporary service road carriageway (excluding the temporary Rossiter Road connections) must be constructed to sufficient width to allow it to ultimately function as a two-way Access Street 1 as per the Engineering Design and Construction Manual (EDCM).
3. Unless otherwise agreed in writing by VicRoads, prior to the commencement of any works, a Functional Layout Plan (FLP) must be submitted to and approved by the Roads Corporation (VicRoads). The plans must be drawn to scale with dimensions and must show details of the two new temporary vehicle crossovers onto Rossiter Road that includes but is not limited to:
  - a. Details of the shape and sealing of the crossovers to be generally in accordance with SD SD6024, but modified for entry-only and exit-only.
  - b. Details of the culverts, with their size being based on drainage analysis provided by the permit holder.
4. Prior to Statement of Compliance, the temporary service lane and associated works must be provided and available for use to the satisfaction of the Responsible Authority and at no cost to VicRoads.

### **Agreement Required**

5. Before a Statement of Compliance is issued, an agreement must be made with the Responsible Authority under Section 173 of the *Planning & Environment Act 1987* that is recorded on the Certificate of Title to the land. The agreement must state to the satisfaction of the Responsible Authority:
  - a. The owner of each lot acknowledges that direct access to and from Rossiter Road is temporary and will be closed at the discretion of Council after suitable alternative access to the local road network is available.

### **Engineering Conditions**

6. Before a Statement of Compliance is issued, the following works must be completed in accordance with plans and specifications approved by and to the satisfaction of the Responsible Authority:
  - a. Construction of an access from Rossiter Road to a standard nominated and approved by VicRoads and the Cardinia Shire Council.
  - b. Construction of kerb & channel and associated underground drainage across the Rossiter Road frontage of the subject land.
  - c. Construction of a minimum 1.5 metre wide concrete footpath along the south side of Rossiter Road extending across the length of the subject site.
  - d. Construction of the internal roads in accordance with Council standards that includes a sealed full depth road pavement, kerb & channel, underground drainage, concrete footpath on one side only and concrete vehicle crossings.
7. Before the submission and approval of detailed design construction plans (engineering plans) and the certification of the relevant plan of subdivision for each stage, a *functional layout plan* for the subdivision or stage of subdivision, generally in accordance with the standards nominated in the Cardinia Shire Council "Guidelines for the Development & Subdivision of Land", "Development Construction

Specification” and the Water Sensitive Urban Design (WSUD) Guidelines, to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority.

When approved, the *functional layout plan* will be endorsed and will then form part of the permit. Three copies of the *functional layout plan* must be drawn to a scale of 1:500 to acceptable drafting standards and an electronic copy (pdf) must be provided.

The functional layout plan must show:

- a. A fully dimensioned subdivision layout, including proposed street names, approximate lot areas, lot numbers and widths of street reservations,
  - b. Topography and existing features, including contours for the subject land and any affected adjacent land,
  - c. Identification by survey of all trees (or group of trees) existing on the subject land, including dead trees and those that overhang the subject land from adjoining land,
  - d. Details of tree protection zones (TPZs) for all trees to be retained on the subject land,
  - e. All trees proposed for removal from the subject land clearly designated,
  - f. Typical cross-sections for each street type, dimensioning individual elements, services offsets and any other spatial requirements identified in the Development Plan,
  - g. Location and alignment of kerbs, indented parking spaces, footpaths, shared paths, bus stops and traffic controls,
  - h. The proposed minor drainage network and any spatial features requiring access,
  - i. The major drainage system, including any watercourse, lake, wetland, sediment pond rain gardens, bio-infiltration system and/or piped elements showing preliminary sizing,
  - j. Overland flow paths (100 year ARI) to indicate how excess runoff will safely be conveyed to its destination,
  - k. Drainage outfall system (both interim and ultimate), indicating legal point of discharge and any access requirements for the construction and maintenance,
  - l. A table of offsets for all utility services and street trees,
  - m. Preliminary location of reserves for electrical kiosks, and
  - n. Traffic management plan showing sufficient notional (unmarked) on-street car parking spaces, at the rate of one space per lot, traffic control devices and large vehicle turning overlays.
8. Before the Statement of Compliance is issued, all road and drainage infrastructure must be designed and constructed in accordance with plans and specifications approved by the Responsible Authority. The works must comply with the standards nominated in the Cardinia Shire Council “Guidelines for the Development & Subdivision of Land”, “Development Construction Specification” and the “Water Sensitive Urban Design (WSUD) Guidelines”.
9. Before the Statement of Compliance is issued, outfall drainage for the subdivision must be designed and constructed to a satisfactory point of discharge in accordance with plans and specifications approved by the Responsible Authority.
10. At least 14 days before any works start, a site specific Construction Environmental Management Plan (CEMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the CEMP will be endorsed and will then form part of the permit. All works must be undertaken in accordance with the approved CEMP.

The CEMP must address all environmental risks and include:

Engineering requirements

- a. Temporary stormwater management including sedimentation control.
- b. Provision of pollution and contamination controls including noise and dust.
- c. Location of stockpiles and stockpile management.
- d. Location of site office and facilities.
- e. Equipment, materials and goods management.

Environment requirements

- f. Tree protection zones, trees to be retained and trees to be removed.
- g. Native vegetation protection measures including tree protection fencing in accordance with the Tree Management Plan required by Condition 24.

11. All roads used for the purpose of haulage of imported or exported materials for construction must be:
- a. Approved in writing by the Responsible Authority for the submitted haulage strategy, at least seven days prior to the commencement of use,
  - b. Maintained in accordance with the Responsible Authority's maintenance intervention levels, or as requested by the Responsible Authority if the road deteriorates during the haulage period, and
  - c. Reinstated to the satisfaction of the Responsible Authority.
12. Before a certificate of practical completion is issued, CCTV results for the full length of all stormwater drainage pipes where Council is the responsibility authority, must be submitted for assessment. The submitted information is to be to the satisfaction of the Responsible Authority.
13. Before a Statement of Compliance is issued under the *Subdivision Act 1988* the permit holder must provide survey enhanced "as constructed" GIS data for the drainage, road and footpath information components of the subdivision, in accordance with the current version of D-SPEC and R-SPEC. Council's preferred format for the submission of the graphical data is in "MapInfo Native Format". A secondary format is "MapInfo MID/MIF". Grid Co-ordinates must be MGA zone 55 (GDA 94). Please refer to the A-SPEC website for further information: [www.a-specstandards.com.au](http://www.a-specstandards.com.au).
14. Before a certificate of practical completion is issued, "as constructed" digital road and drainage information in AutoCAD format with all Xrefs binded into the drawings and showing any amendments during construction, must be submitted for all civil works where Council is the Responsibility Authority.
15. Lighting of streets and pedestrian/cycle paths must be designed and provided (prior to the issue of a Statement of Compliance for the relevant stage) in accordance with Australian Standard 1158.1 to the satisfaction of the Responsible Authority.

**Parks and Gardens Conditions**

16. Before a Statement of Compliance is issued, a Detailed Landscape Works Plan must be submitted to and approved by the Responsible Authority. The Detailed Landscape Works Plan must be prepared by a person suitably qualified or experienced in landscape design to the satisfaction of the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The landscape works plan must be drawn to scale with dimensions and one (1) copy must be provided in an approved electronic format (PDF and CAD). The Detailed Landscape Works Plan must be consistent with the endorsed landscape master plan and must show and include to the satisfaction of the Responsible Authority:
- a. How the proposed design responds to the requirements of the Cardinia Shire Council developer landscape guidelines, including checklist 2 (as amended from time to time).
  - b. New plantings, including their layout to be provided in any road reserves and municipal reserves.
  - c. A detailed planting schedule of all proposed trees, shrubs and groundcovers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant. The plant schedule must be consistent with adjoining sites where roads are continued through.
  - d. The proposed road reservation widths and the treatment of interfaces with surrounding road reserves, including areas within the road reserves set aside for the retention of existing vegetation.
  - e. The removal of existing disused structures, foundations, pipelines or stockpiles and the eradication of weeds.
  - f. The implementation of any landscape principles and guidelines contained in the Koo Wee Rup Township Strategy.

All species selected must be to the satisfaction of the Responsible Authority and should be drought tolerant and proven hardy cultivars suitable to the local conditions. Plantings must not impact sight lines for vehicles or pedestrians.

17. Before a Statement of Compliance is issued, the landscape works shown on the approved Detailed Landscape Works Plan must be carried out and completed to the satisfaction of the Responsible Authority or bond landscaping works incomplete at the completion of civil works by agreement with the Responsible Authority. Payment must be made in the form of a cash bond or bank guarantee.
18. Prior to the grant of Practical Completion for landscape works by the Responsible Authority ('Practical Completion'), 'as constructed' plans must be provided to the satisfaction of the Responsible Authority. The 'as constructed' plans must be provided in AutoCAD as well as digital landscape information in accordance with the current version of A-SPEC. All graphical information must be provided in the datum of GDA94 and projection of MGA Zone 55.
19. Before a Statement of Compliance is issued, bonding must be provided to the Responsible Authority to cover all landscaping works for a twenty four (24) month maintenance period. Payment must be made in the form of a cash bond or bank guarantee.
20. Before the installation of trees to be planted within the streetscape, an inspection of the plant stock must be undertaken by Council's Landscape Development Department. Any trees deemed unsuitable must not be planted within the streetscape.
21. The permit holder must notify Council's Landscape Development Department a minimum of seven (7) days before commencing street tree planting and landscaping so that surveillance of the works can be undertaken.
22. The landscaping shown on Detailed Landscape Works Plan must be maintained to the satisfaction of the Responsible Authority for a minimum of 24 months from the date of Practical Completion of the landscaping. All maintenance activities are to be undertaken until a Certificate of Final Completion is issued by the Responsible Authority. During this period:
  - a. any dead, diseased or damaged plants or landscaped areas must be repaired or replaced except for within the final 12 months of the maintenance period whereby trees must not be replaced. In accordance with the Cardinia Shire Council developer landscape guidelines funds will be retained from the landscape maintenance bond for the works to be undertaken by Council following issuing of final completion; and
  - b. the Responsible Authority may direct maintenance activities to be undertaken.

The direction to undertake maintenance activities must be completed within 14 days of the written notification being received from the Responsible Authority.

### **Environment Conditions**

23. Before the commencement of works, a fence must be erected around any tree shown for retention on the endorsed plan including neighbour's trees. This fence will protect the trees by demarcating the tree protection zone and must be erected at a radius of  $12 \times$  the diameter at a height of 1.3 metres to a maximum of 15 metres but no less than 2 metres from the base of the trunk of the trees, excepting the approved area of encroachment as shown on site plans to the satisfaction of the Responsible Authority. The protection fence must be constructed of chain mesh or similar to the satisfaction of the Responsible Authority. The protection fence must remain in place until all works are completed to the satisfaction of the Responsible Authority.

Except with the written consent of the Responsible Authority, within the tree protection zone, the following are prohibited:

- a. vehicular access.
  - b. trenching or soil excavation.
  - c. storage or dumping of any soils, materials, equipment, vehicles, machinery or waste products.
  - d. entry and exit pits for underground services.
  - e. any other actions or activities that may result in adverse impacts to retained native vegetation.
24. Prior to the endorsement of plans, a Tree Management Plan prepared by a suitably qualified arborist must be submitted to and approved by the Responsible Authority. The Tree Management Plan must detail the following to the satisfaction of the Responsible Authority:
- a. The location of tree protection zones for any retained tree including neighbouring trees.
  - b. All construction and earthworks must not result in the destruction of any retained trees. This may require specific construction methods and/or a grassed/mulched nature strip along the boundary.
  - c. The location of any utilities. Underground services must not encroach into a Structural Root Zone of any tree retained including neighbouring trees. Services must not be installed by open trenching, but employ boring/tunnelling if they pass through a tree protection zone, and be at  $\geq 1000\text{mm}$  depth.
  - d. Landscaping works (e.g. paving, new turf) must not reduce the natural soil level  $>50\text{mm}$  within retained tree protection zones including neighbouring trees. Any landscaping works within the tree protection zones must be done by hand, and large roots ( $>50\text{mm}$  diameter) if encountered must be left intact.
  - e. Any other recommendations deemed appropriate by the qualified arborist.
25. Before a Statement of Compliance is issued under the *Subdivision Act 1988* all works directed under the Tree Management Plan must be completed to the satisfaction of the Responsible Authority.

### General Subdivision Conditions

26. The owner of the land must enter into an agreement with:
- a. a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
  - b. a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
27. Before the issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
- a. a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
  - b. a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

### Public open space contribution

28. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, a sum equivalent to 8 per cent of the site value of all the subject land in the subdivision must be paid to the Responsible Authority.

### South East Water Conditions

#### Potable water

29. The owner of the subject land must enter into an agreement with South East Water for the provision of drinking water supply and fulfil all requirements to its satisfaction.

#### Sewer

30. The owner of the subject land must enter into an agreement with South East Water for the provision of sewerage and fulfil all requirements to its satisfaction.

#### General conditions

31. The Plan of Subdivision must be accompanied by an Owners Corporation Schedule. All lots shown on the Plan of Subdivision must be included in the Owners Corporation Schedule.

Or

The owner of the subject land can enter into an agreement with South East Water for the provision of separate services to each individual lot.

32. Prior to certification, the Plan of Subdivision must be referred to South East Water, in accordance with Section 8 of the *Subdivision Act 1988*.

### Country Fire Authority Conditions

#### Hydrants

33. Prior to the issue of a Statement of Compliance under the *Subdivision Act 1988* the following requirements must be met to the satisfaction of the CFA:
- a. Above or below ground operable hydrants must be provided. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of building envelopes, the rear of the lots) must be 120 metres and the hydrants must be no more than 200 metres apart. These distances must be measured around lot boundaries.
  - b. The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the Country Fire Authority.

#### Roads

34. Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.
- a. The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 meters. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
  - b. Curves must have a minimum inner radius of 10 metres.
  - c. Have a minimum trafficable width of 3.5 metres and be clear of encroachments for at least 0.5 metres on each side and 4 metres above the access way.
  - d. Roads more than 60m in length from the nearest intersection must have a turning circle with a minimum radius of 8m (including roll-over kerbs if they are provided) T or Y heads of dimensions specified by the CFA may be used as alternatives.

### AusNet Services Conditions

## 35. The applicant must:

- a. Enter in an agreement with AUSNET ELECTRICITY SERVICES PTY LTD for supply of electricity to each lot on the endorsed plan.
- b. Enter into an agreement with AUSNET ELECTRICITY SERVICES PTY LTD for the rearrangement of the existing electricity supply system.
- c. Enter into an agreement with AUSNET ELECTRICITY SERVICES PTY LTD for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by AUSNET ELECTRICITY SERVICES PTY LTD.
- d. Provide easements satisfactory to AUSNET ELECTRICITY SERVICES PTY LTD for the purpose of "Power Line" in the favour of "AUSNET ELECTRICITY SERVICES PTY LTD" pursuant to Section 88 of the Electricity Industry Act 2000, where easements have not been otherwise provided, for all existing AUSNET ELECTRICITY SERVICES PTY LTD electric power lines and for any new power lines required to service the lots on the endorsed plan and/or abutting land.
- e. Obtain for the use of AUSNET ELECTRICITY SERVICES PTY LTD any other easement required to service the lots.
- f. Adjust the position of any existing AUSNET ELECTRICITY SERVICES PTY LTD easement to accord with the position of the electricity line(s) as determined by survey.
- g. Set aside on the plan of subdivision Reserves for the use of AUSNET ELECTRICITY SERVICES PTY LTD for electric substations.
- h. Provide survey plans for any electric substations required by AUSNET ELECTRICITY SERVICES PTY LTD and for associated power lines and cables and executes leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. AUSNET ELECTRICITY SERVICES PTY LTD requires that such leases are to be noted on the title by way of a caveat or a notification under Section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.
- i. Provide to AUSNET ELECTRICITY SERVICES PTY LTD a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.
- j. Agree to provide alternative electricity supply to lot owners and/or each lot until such time as permanent supply is available to the development by AUSNET ELECTRICITY SERVICES PTY LTD. Individual generators must be provided at each supply point. The generator for temporary supply must be installed in such a manner as to comply with the Electricity Safety Act 1998.
- k. Ensure that all necessary auditing is completed to the satisfaction of AUSNET ELECTRICITY SERVICES PTY LTD to allow the new network assets to be safely connected to the distribution network.

**Expiry**

This permit for subdivision will expire if--

- a) the subdivision is not commenced within **two (2) years** of the date of this permit; or
- b) the subdivision is not completed within **five (5) years** of the date of commencement.

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.

(Note: The starting of the subdivision is regarded by Section 68(3A) of the *Planning and Environment Act 1987* as the certification of a plan, and completion is regarded as the registration of the plan.)

**Notes**

- No work shall be commenced in, on, under or over the road reserve without having first obtaining all necessary approvals under the Road Management Act 2004, the Road Safety Act 1986, and any other relevant acts or regulations created under those Acts.



- A “Vehicle Crossing Permit” must be obtained from Council prior to the commencement of any works associated with the proposed vehicle crossing.
- Cardinia Shire Council developer landscape guidelines are available at [https://www.cardinia.vic.gov.au/landscaping\\_guidelines](https://www.cardinia.vic.gov.au/landscaping_guidelines). The guidelines are amended from time to time.
- At Practical Completion of landscape works the outstanding landscape works bond will be released and only a landscape maintenance bond will be retained. Please contact Council’s Landscape Development Department in relation to the of the cash bond or bank guarantee amount.
- The bond will be released upon satisfactory completion of works. Refer to the Cardinia Shire Council developer landscape guidelines (as amended from time to time) for bond calculation details.
- With respect to the bonding required by Condition 19:
  - Refer to the Cardinia Shire Council developer landscape guidelines (as amended from time to time) for bond calculation details.
  - A Certificate of Final Completion will be issued by the Responsible Authority and the bond released, less any moneys retained for imperfect works, following the satisfactory completion and satisfactory maintenance of the landscaping for a minimum of 24 months.
  - A Certificate of Final Completion will not be granted between 1 November and 31 March.
  - Please contact Council’s Open Space Department in relation to the costs of the cash bond or bank guarantee.
- Refer to A-SPEC website [www.a-specstandards.com.au/o-spec](http://www.a-specstandards.com.au/o-spec) for minimum Council requirements with regard to ‘as constructed’ plans in accordance with Condition 18.
- CFA’s requirements for identification of hydrants are specified in ‘Identification of Street Hydrants for Firefighting Purposes’ publication available on the CFA web site ([www.cfa.vic.gov.au](http://www.cfa.vic.gov.au)).



**1 SUBDIVISION OF LAND INTO NINE (9) LOTS AND CREATION OF ACCESS TO A ROAD ZONE CATEGORY 1 AT 400 ROSSITER ROAD, KOO WEE RUP**

Moved Cr R Brown Seconded Cr C Ross

That the application be deferred for a period of 1 month to allow further information to be provided regarding the access arrangements from Rossiter Road to the property.

Cd.

## **2 RE-SUBDIVISION AT 5 BIRCH AVENUE AND 63 WESTLANDS ROAD, EMERALD**

FILE REFERENCE INT1955881

RESPONSIBLE GENERAL MANAGER Peter Benazic

AUTHOR Matthew Schreuder

### **RECOMMENDATION**

That a Refusal to Grant Planning Permit **T180501** be issued for **Resubdivision at 5 Birch Avenue & 63 Westlands Road Emerald, Emerald** for reasons set out in this report.

### **Attachments**

- |          |                      |        |
|----------|----------------------|--------|
| <b>1</b> | Proposed Subdivision | 1 Page |
| <b>2</b> | Zoning Map           | 1 Page |
| <b>3</b> | Aerial Photograph    | 1 Page |

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	<b>T180501</b>
APPLICANT:	<b>XWB Consulting on behalf of Landowners</b>
LAND:	<b>5 Birch Avenue &amp; 63 Westlands Road Emerald, Emerald VIC 3782</b>
PROPOSAL:	<b>Resubdivision</b>
PLANNING CONTROLS:	<b>Low Density Residential Zone, Rural Conservation Zone Schedule 2 Design and Development Overlay Schedule 1, Vegetation Protection Overlay Schedule 1, Environmental Significance Overlay Schedule 1, Bushfire Management Overlay</b>
NOTIFICATION & OBJECTIONS:	Letters to owners and occupiers of adjoining and adjacent land as per the Planning and Environment Act. No objections received
KEY PLANNING CONSIDERATIONS:	Consistency with the purpose and objectives of the relevant zones and overlays, potential environmental impacts.
RECOMMENDATION:	Refusal

### **BACKGROUND:**

This application for re-subdivision was received by Council on 8 August 2018. A request for further information was made on 3 September 2018. The further information request consisted of details of the fencing that would be used along the new boundaries, an arborist report for any vegetation that would be impacted by the proposal and an assessment against Clause 52.17 Native Vegetation, of the Cardinia Planning Scheme for any vegetation which may be removed, destroyed or lopped either directly or indirectly as a result of the proposal.

A number of requests for extension were made by the applicant while the information was sought. As there were questions around whether the application could actually be made under the Cardinia Planning Scheme,

legal advice was sort by both the applicant and the Planning Department. It was determined that the application was able to be made and could be considered on its merits.

Further questions were raised by the applicant about the further information that was requested, in particular an assessment against the Native Vegetation provisions, Clause 52.17. While council maintained that the information was required, the application was allowed to proceed to advertising rather than the application being lapsed on the basis of the information not being provided within the required timeframe. No objections were received. The application is before Council due to an officer's recommendation for refusal. The application has been assessed against all the relevant provisions of the Cardinia Planning Scheme and is considered to not be a good planning outcome in the context of the subject site and surrounding area. The potential environmental impacts, the fragmentation of the very high quality natural environment and the creation of a lot in two zones, which is not considered to result in orderly planning, are all factors which make the application one which does not warrant support. Each of these factors are elaborated on within this report.

## SUBJECT SITE

The subject site consists of two separate parcels of land in different ownership. The lots are described as follows:

### 5 Birch Avenue, Emerald

- Described as Land on Plan of Consolidation 169547K, is an irregular shaped lot located at the end of Birch Avenue. The lot has a frontage to Birch Avenue of approximately 18 metres, a western boundary of approximately 135 metres, a northern boundary of approximately 135 metres, an eastern boundary of approximately 67 metres and a southern boundary of approximately 108 metres. The overall area of the lot is 1 hectare.
- The lot is located within the Low Density Residential Zone and currently contains a single dwelling located in the northern corner of the site within close proximity of the Birch Avenue frontage.
- A gully runs through the middle of the lot with the land steeply dropping from Birch Avenue and then rising again towards Steel Road.
- The lot has a significant amount of remnant native vegetation, mostly consisting of large eucalyptus trees.
- The lot is not encumbered by any restrictive covenants or agreements, nor are there any easements shown on the title plan.

### 63 Westlands Road, Emerald

- Described as Lot 1 on Plan of Subdivision 547975C, is an irregular shaped lot located to the east of Westlands Road, Emerald. The lot has a frontage (to the west) to Westlands Road of approximately 672 metres, a southern boundary of approximately 775 metres, an eastern boundary of approximately 600 metres and a northern boundary of approximately 396 metres. The overall area of the site is approximately 14.7 hectares.
- The lot is located within the Rural Conservation Zone. The northern side of the lot wraps around the adjoining Low Density Residential Land.
- The lot contains a single dwelling located in a cleared domestic area on the western side of the site in an otherwise heavily vegetated bush block. The dense remnant vegetation provides a continuous coverage with more rural conservation land to the south which continues all the way to the closed catchment of the Cardinia Reservoir (town water supply)
- The lot is not encumbered by any restrictive covenants or agreements. A 16 metre wide Power line easement is located towards the south western portion of the site.

The main characteristics of the surrounding area are:

- To the east of the subject site, the land is developed with low density resident development with single detached dwellings on lots with areas of between 0.4 -1.2 Ha. These lots have retained a reasonable tree cover with a mixture of mature remnant native and established exotic vegetation.

- To the south and west of the subject site is larger vegetated lots within the Rural Conservation zone. Most are developed with dwellings and have varying areas of cleared land for domestic or agricultural land uses.
- Further to the south is the Cardinia Reservoir reserve which is a densely vegetated closed water supply catchment.
- The Emerald Township is located within approximately 1 km to the north east.



Figure 1- subject sites highlighted in yellow

## PROPOSAL

his application proposes a re-subdivision of the two existing lots to form two new lots. The re-subdivision will transfer land from the larger Rural Conservation zoned lot to the smaller Low Density zoned lot. The Low Density lot is currently 1.001 ha in area and the Rural Conservation lot is approximately 14.73 ha in area. The new areas will be 1.638 ha and 14.09 ha respectively.

The re-subdivision transfers the wedge of land of 63 Westlands Road, between Westlands Road and 5 Birch Avenue. The wedge of land is over 50 metres wide at the southernmost abuttal between the two lots and narrows to a point approximately 263 metres to the north. The portion of land to be transferred is heavily vegetated with environmentally significant remnant native vegetation.

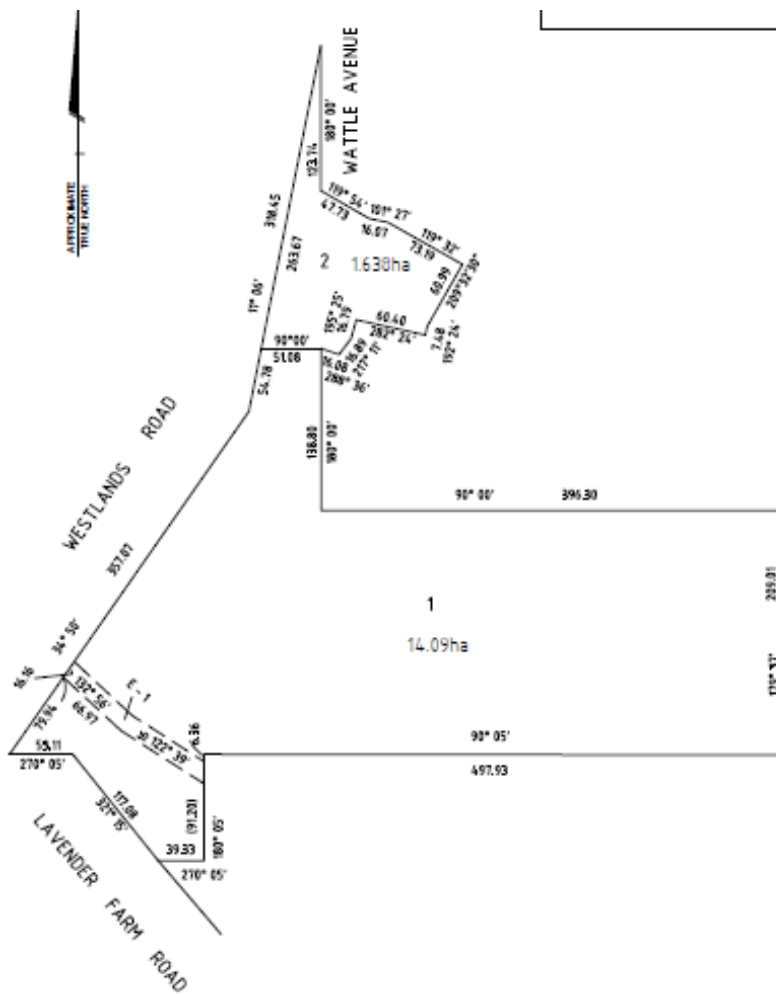


Figure 2 - proposed re-subdivision

The application states that there are no works required to facilitate this re-subdivision. It is also suggested that no vegetation will be required to be removed.

## PLANNING SCHEME PROVISIONS

### State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11.01-1R Green Wedges – Metropolitan Melbourne
- Clause 12.01 Biodiversity
- Clause 12.01-1S Protection of Biodiversity
- Clause 12.01-2S Native Vegetation Management
- Clause 12.05-2S Landscapes
- Clause 13.02-1S Bushfire Planning
- Clause 15.01-3S Subdivision Design

### Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 Cardinia Shire Key Issues and strategic Vision
- Clause 21.02 Environment
- Clause 21.02-3 Biodiversity
- Clause 21.02-4 Wildfire Management
- Clause 21.03-3 Rural Townships
- Clause 21.03-4 Rural Residential and Rural Living Development
- Clause 21.07-3 Emerald, Avonsleigh and Clematis

#### **Relevant Particular/ General Provisions and relevant incorporated or reference documents**

The relevant provisions/ documents are:

- Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions
- Clause 52.12 Bushfire Protection: Exemptions
- Clause 52.17 Native Vegetation
- Clause 53.02 Bushfire Planning
- Clause 65.02 Approval of an application to Subdivide Land
- Guidelines for the removal, destruction or lopping of native vegetation
- Assessors Handbook – applications to remove, destroy or lop native vegetation
- Applicants Guide – applications to remove, destroy or lop native vegetation

#### **Cardinia Shire's Liveability Plan 2017-2029**

This proposal has no relevance to Cardinia Shire's Liveability Plan 2017-2029.

#### **Zone**

The land is subject to the **Low Density Residential Zone, Rural Conservation Zone Schedule 2**

#### **Overlays**

The land is subject to the following overlays:

- Design and Development Overlay – Schedule 1
- Vegetation Protection Overlay – Schedule 1
- Bushfire Management Overlay
- Environmental Significance Overlay

#### **PLANNING PERMIT TRIGGERS**

The proposal for re-subdivision requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.03-3, Low Density Residential Zone a planning permit is required to subdivide land.
- Pursuant to Clause 35.06 Rural Conservation Zone a planning permit is required to subdivide land.

- Pursuant to Clause 43.02 Design and Development Overlay a planning permit is required to subdivide land.
- Pursuant to Clause 42.02-2 Vegetation Protection Overlay a planning permit is required to remove, destroy or lop any vegetation.
- Pursuant to Clause 44.06 Bushfire Management Overlay a planning permit is required to subdivide land.
- Pursuant to Clause 42.01-2 Environmental Significance Overlay a planning permit is required for subdivide land
- Pursuant to Clause 52.17 Native Vegetation, a planning permit is required to remove, destroy or lop native vegetation.

While the application does not propose the removal of vegetation, the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) requires the following:

*Where the responsible authority considers that a proposed use and/or development is likely to involve, or lead to, the consequential removal of native vegetation into the future as a result of issuing a permit or approving a plan, the responsible authority should consider whether there is a need for a permit application to be lodged in accordance with Clause 52.17.*

*This ensures consideration and integration of all issues as part of its decision making. This can include, but is not limited to, the consideration of an application for a permit to subdivide land that will enable native vegetation to be removed in the future without requiring a permit under Clause 52.16 or Clause 52.17*

As the proposed subdivision will result in a permit exemption for the removal of vegetation along the new fence lines under Clause 52.17, it is considered that the application should have included the removal of native vegetation as a permit trigger. This was outlined in the further information request to the applicant however no assessment against these provision has been received. These matters are discussed further later in this report.

## **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.

Council has received no objections to date.

## **REFERRALS**

Country Fire Authority

The application was referred to CFA as a statutory referral. CFA has not provided a response at the time of writing this report. As no response has been received within the statutory timeframe, the CFA's interest in the application does not need to be taken into account.

## **DISCUSSION**



The assessment of this application largely relates to the recognised environmental values of the area and the potential impacts that could occur as a result of the re-subdivision. There are many policies in the Cardinia Planning Scheme related to environmental protection, and the sites that are subject to this assessment are covered by a higher than usual number of overlays. The objectives of these controls are clear and they require that a high level of scrutiny be applied to the assessment of any proposal that may impact on these values.

A significant level of contention exists in this proposal in terms of what the environmental impacts will be and what the appropriate application of the relevant polices should be. It has been suggested from the very start of the assessment of this application that the environmental impacts, whether direct or indirect, must be considered and are the key considerations of the outcome of the proposal. It has been suggested by the applicant that there will be no vegetation removal as a consequence of the proposal. It is clear in the scheme and associated incorporated documents that even indirect vegetation impacts, such as vegetation removal that may be able to be undertaken as a result of a permit exemption (construction of a fence), created by the approval of a permit, and must be considered at the time of the application.

While this is a significant consideration of the application, there a number of other factors which when assessed on balance with the perceived benefit of the proposal, suggest that the application does not represent a good planning outcome and should not be supported. All of these matters are addressed and discussed below.

### **Planning Policy Framework**

There are numerous State Planning Policies which are directed towards providing strong controls and emphasis in protecting biodiversity and the other environmental values of the increasingly at risk natural landscapes. Clause 11.01-1 'Green wedges', aims to protect the green wedges of Melbourne from inappropriate development (includes subdivision). Local Governments are able to be effective in achieving this objective through adopting a strategy of this policy which require the protection of areas of environmental, landscape and scenic value such as biodiversity assets. It is considered to approve the proposed re-subdivision on the subject site, in particular the reduction in the size of the rural conservation lot would be inconsistent with this policy due to the potential impacts on the high quality natural environment which exists at the subject site.

This position is also supported by the objectives of Clause 12.01-1 S, 'Protection of Biodiversity'. This policy contains a range of strategies which are to be utilised in assessing any application which could be considered to have an impact on the protection and conservation of Victoria's biodiversity. The policy guides applicants and decision makers to use biodiversity information to identify important areas of biodiversity, including key habitat for rare or threatened species and communities, and strategically valuable biodiverse site. Council has recognised that the areas covered by this proposal have these important characteristics and have applied appropriate controls in the form of environmental overlays to manage, and control development in these areas in a manner which does not impact on the environment. The policy requires decision makers to take into account the impacts of land use and development on Victoria's biodiversity, including consideration of:

- Cumulative impacts;
- Fragmentation of habitat; and
- The spread of pest plants, animals and pathogens into natural ecosystems.

It is considered that the proposal fails to recognise and quantify these impacts. Through not providing an assessment of the 'Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017)', as recommended in this policy, a full assessment of those impacts has not been able to be made. However what is obvious in the Guidelines is that there is impacted vegetation which must be considered. It is also obvious that where a proposal, such as this one has the ability to result in cumulative impacts, fragmentation of habitat and the spread of pest plants, animals and pathogens into natural ecosystems, it should not be supported in an area which recognised biodiversity values. Through bringing an area of Rural Conservation zoned land into a property which is zoned Low Density Residential, it is beyond doubt that these impacts will occur. Initially the expectations of the reasonable utilisation of residential land is very different from that which is zoned rural conservation. A re-subdivision creates a line on a plan and where that new boundary does not delineate different ownership but

rather brings it into new ownership, it is highly likely that those domestic activities will spill into the areas that are high in environmental value.

The fragmentation of habitat is an inevitable consequence of this erosion of clear and defined boundaries between different landscapes and land use controls and expectations. Any change to a continuous natural landscape, whether that be through physical changes, i.e., fences, clearing, increased human activity, pets, etc., or through changes to the management of the land through matters such as, more parties being involved with different levels of understanding, interest or resources, all these have the effect of fragmenting and diminishing the value of that environment. This is certainly likely in this situation and as already been recognised on-site at 5 Birch Avenue where various domestic materials have been seen to be being stockpiled under vulnerable native vegetation, a real threat to the long term viability of that vegetation. It has even been suggested by the applicant that a purpose of the application is to increase the short frontage of the site at the end of Birch Avenue to allow better utilisation of the site. This in itself suggests an intensification of the use of the site and the portion which is covered by the Rural Conservation Zone.

All of the activities outlined above have the potential to increase the likelihood of the spread of pest plants, animals and pathogens into natural ecosystem, which in the current situation is less likely. Where the environment has been found to be of a very high quality by experienced Council Environmental Officers, this is to be avoided as a priority.

The need to have full consideration of all aspects of a proposal, whether identified by the applicant or recognised and raised in the assessment of the proposal, are strongly emphasised in clause 12.01-2S Native vegetation management. The objective of this policy is to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. The strategy directs proposals to apply the three-step approach in accordance with the Guidelines. Importantly the strategy states that policy relates to applications that involve, or will lead to, the removal, destruction or lopping of native vegetation. This means that even if the removal of vegetation is not proposed as part of an application, the potential loss must be considered. The policy refers to both the Guidelines as well as the 'Assessor's handbook - applications to remove, destroy or lop native vegetation (Department of Environment, Land, Water and Planning, 2017)'. Each of these documents provide clear direction on when and how to consider native vegetation impacts in making an application. As has been stated earlier the applicant was required to consider and make an assessment of these policy documents as part of the further information requested soon after the lodgement of their application.

Clause 12.05-2S 'Landscapes' is another State Policy that is relevant to the assessment of this application. The objective of the policy is to protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments. Strategies to achieve this objective include:

- Ensure development does not detract from the natural qualities of significant landscape areas.
- Improve the landscape qualities, open space linkages and environmental performance in significant landscapes and open spaces, including green wedges, conservation areas and non-urban areas.
- Recognise the natural landscape for its aesthetic value and as a fully functioning system.
- Ensure important natural features are protected and enhanced.

It is considered that any impact on the quality, continuity and management of the natural environment of the subject lots, in particular the Rural Conservation zoned land results in an unacceptable outcome for this proposal. It is well understood that for ecosystems to function in a manner that enables the various native fauna to exist and thrive, impacts such as vegetation loss causing breaks in the canopies, mid storey vegetation and right down to the understory, must be avoided. Most of Australia's small native mammals, reptiles and birds are significantly more at risk from predation when there are gaps in the habitat and some simply will not cross these voids. This can have very significant impacts on local populations of various species. A classic example being the threatened Southern Brown Bandicoot, found in the southern parts of the Shire.

While the section of land proposed to be transferred to the Low Density land is narrow in parts, the land also adjoins a heavily vegetated road reserve which is effective in protecting the habitat. Any loss in vegetation in this strip of land, or any change in land use, would be likely to significantly impact on the value and ability of this land to continue as a fully functioning natural system.

While the objective of Clause 13.02-1S Bushfire Planning requires that planning should strengthen the resilience of settlements and communities to bushfire through risk based planning that prioritises the protection of human life, the policy also has specific strategies for areas of biodiversity conservation value. The strategy directs planning to ensure settlement growth and development approvals can implement bushfire protection measures without unacceptable biodiversity impacts by discouraging settlement growth and development in bushfire affected areas that are important areas of biodiversity. While each of the lots is already developed with a dwelling that have been at the sites for considerable time, the approval of the realignment of the boundaries of each lot could be likely to open up the potential for additional vegetation removal under exemptions listed at Clause 52.12 Bushfire Protection Exemptions. While fire protection is to be a first priority, clearing along a fence-line, and up to 120 metres from a dwelling, such as could be possible under these exemptions, would be likely to have more biodiversity impact than bushfire mitigation value. This is the sort of situation that the strategy of this policy seeks to avoid. It could be said that the exemption already exists, and while that is true, it reasonable to say that it would be far more unlikely that the occupant of the dwelling in the Rural Conservation land would remove vegetation on their boundary that is currently up to 500 metres away from their dwelling.

Overall, despite the serious nature of bushfire planning, it is considered that this proposal presents more biodiversity impact than bushfire protection, and it has not been stated as an objective of this application to achieve an improvement in the bushfire threat to either of the properties involved. In fact one of the only stated benefits, to one of the properties, is the widening of the frontage to Birch Avenue. A benefit that in itself cannot be achieved without the removal of vegetation within the rural conservation land.

Finally, State Planning Policy, Clause 15.01-3S Subdivision Design has the objective to ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods. This proposal is not consistent with one of the strategies which states that subdivision should be designed to create liveable and sustainable communities by protecting and enhancing native habitat. The current pattern of subdivision in the area does successfully achieve this through the appropriate application of the two different zones, well orientated along the historic subdivision pattern which also reflects the landscape qualities. The proposed subdivision will not do this.

### **Local Planning Policy Framework**

There are numerous references to the protection of the environment and biodiversity with the Cardinia Shire Municipal Strategic Statement and local planning policies. The assessment of these policies gives local context to the broad policy objectives considered above in the state planning policies. Some of the key influences in relation to the Municipality listed at Clause 21.01-2 urban growth including pressures on the rural hinterland and management of the green wedge areas, environmentally significant areas and areas of significant landscape value. These themes follow on to the key issues facing Cardinia Shire that are grouped into five strategy areas. The first is Environment which contains strategies that are relevant to this application such as:

- The protection of environmentally areas including the northern hills and the Western Port Coast;
- The protection and management of biodiversity; and
- The maintenance and enhancement of existing significant landscapes

The strategic vision for the Municipality states:

*Cardinia will be developed in a planned manner to enable future generations to enjoy and experience the diverse and distinctive characteristics of our shire.*

Cardinia Shire is certainly diverse with landscapes ranging from Coastal environments and national significant agricultural land in the south to an urban growth corridor with ever increasing housing and economic development, right up to the northern hills with a wonderful mix of rural residential development and protected natural environments. It is a municipality which celebrates this diversity and has a planning scheme which effectively supports and protects the opportunities of each of these landscapes. The strategic vision seeks to balance the competing needs of the environment, economic development and the community thorough, among other things, recognising and protecting the diverse and significant environmental and cultural heritage values of the Municipality.

Clause 21.02-3 'Biodiversity' points out that the decline and fragmentation of habitats resulting in the loss of biodiversity is a key issue. Over 75% of the native vegetation in Cardinia Shire has been cleared leaving those areas of remnant vegetation of particular significance and value in terms of maintaining biodiversity within the Municipality. Cardinia Shire forms part of the UNESCO Mornington Peninsula and Westernport Biosphere Reserve, protection of this biosphere relies on good environmental management of the catchment of which Cardinia Shire is a key part. The policy list as a key issue, recognising that native vegetation provides habitat for key fauna species and provides for diverse flora species throughout the municipality.

As the application was not accompanied with an assessment of the vegetation as required by Clause 52.17, it has not been possible to determine just how important the vegetation and broader environmental value of the site is. This makes it impossible to be able to make a full assessment of the application. When this is the case, the precautionary principal must apply.

Clause 21.03-3 Rural Townships aims to retain and enhance the existing rural township character through setting clear limits for development. This has been effectively done in Emerald through the application of appropriate zones. A subdivision that creates a lot in two zones is a clear divergence from this objective and is not orderly planning. The proposal is at odds with the strategies of objective two which is to maintain and enhance the distinct character and environmental qualities of each of the townships. The subdivision does not protect the natural environment and character of the area, particularly areas of remnant vegetation in the hills townships and is therefore inconsistent with this Local policy.

The Emerald District Framework Plan, Clause 21.07-3 Emerald, Avonsleigh and Clematis clearly identifies the different landscape uses and shows the two different sites within two distinct areas, 5 Birch Avenue in traditional residential and 63 Westlands in Rural. What is clear in this plan is that the zoning on the land has been applied very precisely in relation to the zoning and landscape characteristics of the area. Any change to these boundaries can only have a weakening of the relevant controls which apply to each.

### Low Density Residential Zone

The purpose of the Low Density Residential Zone is to implement the Municipal Planning Strategy and the planning Policy Framework and to provide for low density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

Pursuant to Clause 32.03-3 Subdivision, a permit is required to subdivide land. Before deciding on an application, in addition to the decision guidelines of clause 65, the responsible Authority must consider, as appropriate:

- The Municipal Planning Strategy and the planning policy framework.

#### Subdivision

- The protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.
- The availability and provision of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.
- In the absence of reticulated sewerage:
  - The capability of the lot to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.
  - The benefits of restricting the size of lots to the minimum required to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria).
  - The benefits of restricting the size of lots to generally no more than 2 hectares to enable lots to be efficiently maintained without the need for agricultural techniques and equipment.
- The relevant standards of Clauses 56.07-1 to 56.07-4.

It is considered that the proposed subdivision in contrary to the objectives of the LDRZ particularly as it relates to the relevant matters set out in the Municipal Planning Strategy and the Planning Policy Framework. These have been discussed in the previous section of the report.

In terms of the decision guidelines that are specific to subdivision it is considered that the proposal does not support the protection and enhancement of the natural environment and character of the area. Considerations of the environment have been specifically included under subdivision as it is well known that the subdivision of land is more than merely a procedural matter, creating new boundaries on plans of subdivisions, and the possible construction of a post and wire fence. Rather subdivisions have significant potential to impact the environment in a number of ways. These can include the following:

The creation of permit exemptions to remove, destroy or lop native vegetation.

This particular situation applies to this application where under the State Particular Provision, clause 52.17 Native vegetation a permit is not required for the removal of native vegetation where the native vegetation that is to be removed, destroyed, or lopped to the minimum extent necessary to enable:

- Fences the operation or maintenance of an existing fence; or
- the construction of a boundary fence between properties in different ownership

The clearing along both sides of the fence when combined must not exceed 4 metres in width, except where land has already been cleared 4 metres or more along one side of the fence, then up to 1 metre can be cleared along the other side of the fence. This essentially means that in certain circumstances up to 5 metres of vegetation could be removed along a new boundary. Over the entire length of a boundary this has the potential be a significant amount of vegetation and where the particular wedge shape of this lot is at its narrowest this could result in significant clearance.

While an exemption doesn't necessarily mean that someone will act upon the ability to clear the vegetation, there is no way of removing that possibility. The creation of an exemption under clause 52.17 also means that the ability to offset that vegetation is lost. This is clearly inconsistent with the objective of Clause 52.17.

The change in expectations around the management of the vegetation

Where vegetation on an adjoining lot becomes part of a new lot as a result of a subdivision, the expectations around the management and retention of the vegetation is likely to change. Where previously the vegetation was clearly protected remnant vegetation and its removal unlikely to be considered, the new boundary that brings the vegetation into what is predominately a residential lot creates an expectation that the vegetation is able to be managed to support the residential use of the site. This could be quite different to where the vegetation's protection was prioritised through appropriate zones and overlays being applied to the site. While these controls don't change, their value and strength is weakened. Activities which would not have been possible on the lot as a rural conservation lot now become more likely and this has already been identified at the subject site where the applicant has begun to store various domestic materials under and around the trees on the adjoining lot near the shared, unfenced, property boundary.

**Rural Conservation Zone**

The purposes of the Rural Conservation Zone that are relevant to this proposal include:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To conserve the values specified in a schedule to this zone.
- To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.
- To protect and enhance natural resources and the biodiversity of the area.
- To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.
- To conserve and enhance the cultural significance and character of open rural and scenic non-urban landscapes.

Pursuant to Clause 36.06-3 a permit is required to subdivide land. Each lot must be at least the area specified for the land in a schedule to this zone. The subject site is located within an area covered by Schedule 2. The schedule sets out the minimum lot area as 15 hectares. The schedule also provides a

statement of the conservation values which any development must take into consideration. The schedule provides the following statement:

Protection and conservation of the environmental values and landscape qualities of the land, including habitat of botanical and zoological significance, and the conservation of natural resources, including native vegetation, waterways and soils.

Before deciding on an application to subdivide land, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate the decision guidelines of Clause 35.06-6. The relevant considerations are discussed below.

It is considered that the proposed subdivision is inconsistent with a number of the purposes of the Rural Conservation Zone. As with the low density residential zone, the Municipal Planning Strategy and the Planning Policy Framework have each been discussed earlier in this report. It is considered that the proposal does not support the values specified in the schedule to this zone. The subject site is an area covered by areas of Zoological Significance. Land which contains a consistent cover of dense remnant indigenous vegetation is appropriately zoned as Rural Conservation land. This is the case for this site and it is considered that the subdivision will diminish the value of the controls that apply to the site. This zone is also supported by a wide range of environmental overlays that apply to the site. These will be discussed further later in the report. As the portion of the subject site which is located within the Rural Conservation Zone has Zoological Significance mapped on the site, particular scrutiny must be applied to the assessment of any application.

The decision guidelines for the zone are broken down into five categories, general issues, Rural Issues, Environmental issues, Dwelling issues and design and siting issues. The considerations of each that are relevant to this application are discussed below.

#### General issues

- How the use or development conserves the values identified for the land in a schedule.
- Whether use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.
- Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.

It is considered that the proposed subdivision does not conserve the conservation values of the lot. As previously discussed, any impact on the continuity, management or land use of the significant vegetation is likely to impact on its functionality as a natural system.

The schedule for the Rural Conservation Zone indicates that the minimum lot area is 15 Ha. While the subject site is already below this threshold, it is considered that a subdivision which further reduces the lot area is unacceptable. While it can be considered it is not a good planning outcome particularly where that land is to be transferred to a lot which does not provide the same emphasis on conservation and is more orientated towards residential land uses.

#### Environmental issues

- An assessment of the likely environmental impact on the biodiversity and in particular the flora and fauna of the area.
- The protection and enhancement of the natural environment of the area, including the retention of vegetation and faunal habitats and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge areas.
- How the use and development relates to sustainable land management and the need to prepare an integrated land management plan which addresses the protection and enhancement of native vegetation and waterways, stabilisation of soil and pest plant and animal control.

The application was not supported by any specific environmental assessment and no native vegetation assessment was provided either. While the applicant has suggested that the land owner will not remove any vegetation along the new title boundaries, an ability to do so without an assessment against the native vegetation provisions will exist.

Aside from the removal of native vegetation, a key objective in maintaining the significance of remnant vegetation is through avoiding the fragmentation of intact tracts of vegetation. In planning terms preservation of vegetation can be seen in the application of different zones along the boundaries of distinct landscape formations and uses. This is clearly identified at the subject site where the application of the low density residential zone and the rural conservation zones have been applied to match the residential subdivision pattern and the environmental values of the vegetated rural conservation land. It is not uncommon in zoning mapping for there to be significant discrepancies between land use patterns and environmental values and the application of appropriate zones and overlays to manage and protect the particular expectations of the land. In the context of these two lots and the surrounding land uses it is very obvious that there has been a very thoughtful and logical approach to the applications of the zones. The land that has been zoned low density residential clearly follows the historic subdivision pattern and the relatively smaller lots are adequate to support residential uses and in particular treat and retain wastewater on site. While generally speaking that land which is covered by the rural conservation zone is predominately larger lots with substantial vegetation cover and connectivity with vegetation on adjoining lots and nearby public reserve. In this case the vegetation on the larger lot contributes to an almost continuous vegetation cover all the way to the Cardinia Reservoir.

In a situation where this type of proposal was successful it would be essential to have a detailed property management plan prepared to ensure that the land transfer was appropriately managed and the environmental assets not impacted. This would include fencing areas of rural conservation land, tree protection zones and strict limitations on the use of the land. It would also be important to secure this protection through a Section 173 Agreement that would be registered on the title. Despite the intentions of the current land owners, these could change over time or possible future landowners could have very different expectations.

One matter that could not be protected against would be the vegetation removal exemptions created under Clause 52.17. With the opportunity lost to consider the value of this vegetation and potentially off set it, the proposal is again an unacceptable planning outcome.

### Overlays

The subject sites are subject to a range of Environmental Overlays all with similar objectives and all applied as a consequence of the recognised environmental significance of the site. Each of the overlays require planning approval for subdivision to ensure that the environment is not affected by a particular proposal. This recognises that a subdivision has the potential to have a negative impact despite this not always being immediately obvious, or one that occurs immediately upon the approval of the plan.

The Environmental Significance Overlay provides the following statement of significance for the area covered by the land in the rural conservation lot.

*The hills to the northern part of the municipality (generally to the north of the Princes Highway) is an area with significant landscape and environmental values. The area is characterised by a geology of Devonian Granitic and Sulrian Sediment origin, moderate to steep slopes, and areas of remnant vegetation. These characteristics contribute to environmental values including landscape quality, water quality, and habitat of botanical and zoological significance. These characteristics are also a significant factor in terms of environmental hazards including erosion and fire risk.*

*The vegetation supports the ecological processes and biodiversity of this area by forming core habitat areas within a complex network of biolink wildlife corridors. Sites containing threatened flora and fauna are defined as being of botanical and zoological significance. Development within and around these sites need to be appropriately managed to ensure the long term protection, enhancement and sustainability of these ecological processes and the maintenance of biodiversity.*

The statement clearly identifies the environmental value to not only the Shire but the states environment more broadly. The decision guidelines very much elaborate on the considerations that have been raised in state and local planning policy and discussed earlier.

While the Vegetation Protection Overlay does not specifically trigger a planning permit for subdivision, it does provide clear and strict controls on the removal of vegetation and it requires that any potential impact on vegetation as a result of any proposal. While the applicant has suggested that the overlay controls limit the ability for the removal of the vegetation along the property boundaries, with a permit being required prior to any vegetation being removed, the opportunity to determine whether the vegetation should be allowed to be removed has essentially been lost by that time as an exemption is created (under 52.17) at the time of approving the permit. Clause 52.17 is the appropriate policy for the most thorough assessment of the vegetation values and it is a State Policy that is required to be considered. It would also be inappropriate to first allow the creation of a new boundary and then not allow the fence line to be managed by the landowners in the future. Rather it is proper process to determine the acceptability or not of the full extent of a proposal at the time of the initial assessment and if it is considered the environmental impact, direct or indirect, is too great. At that time a decision should be made on the entire proposal. In this instance, in the absence of a Native Vegetation assessment it is not possible to make the full assessment. However the potential impacts to the environment are clear as are the intentions of the policy which relates to a proposal such as this. Therefore the permit should not be supported even in the absence of all the required information.

The Vegetation Protection Overlay also provides a statement of nature and significance of vegetation to be protected which outlines the following in relation to Low Density land:

*The low density residential areas within the Shire support substantial areas of remnant indigenous vegetation and mature exotic species. The maintenance and enhancement of the flora habitat is vital for the long term protection of these areas and the native fauna they support. Some of these areas contain small lots which are not protected under the native vegetation controls of Clause 52.17 resulting in areas of vegetation becoming increasingly fragmented.*

*The remnant vegetation is important for its contribution to habitat and environmental values and processes. This vegetation provides protection to waterways including in the reduction of siltation and contributes to habitat corridors as well as playing a role in supporting soil stability, reducing stormwater runoff, and limiting erosion and salinity.*

The Design and Development Overlay Schedule 1 which relates specifically to Low Density Residential land has a design objective specific to subdivision which is to ensure the subdivision of land has regard to the existing pattern of subdivision in the area. This proposal could not be further from that objective. The area have a very clear pattern of subdivision which has been purposeful in being aligned with the zoning and landscape characteristics. The Low Density Residential zone follows precisely the boundary of the smaller lots which have been created through a historic subdivision which created smaller residential lots for the purpose of rural residential living on the edge of the Emerald Township. Beyond these specific areas, the zoning becomes rural conservation, reflecting the larger lots and higher level of vegetation quality and coverage, as well as the connectivity with the Cardinia Reservoir catchment, which is protected for water quality.

Overall on balance it is considered that the application is inconsistent with the objectives of the various overlays which relate to the site.

### **Clause 52.17 Native Vegetation – Vegetation Impacts**

Possibly the most significant provision of the Planning Scheme to which this proposal is considered are the Native Vegetation provisions of Clause 52.17. Under these provisions a permit is required to remove, destroy or lop native vegetation, including dead native vegetation.

The purpose of Clause 52.17 is to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):

1. Avoid the removal, destruction or lopping of native vegetation.
2. Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.



3. Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation. To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

An application to remove, destroy or lop native vegetation must comply with the application requirements specified in the Guidelines.

While the applicant did not apply for the removal of vegetation as part of the proposal, the request for further information required that the application consider the provisions and provide an appropriate assessment. It is common place for an initial assessment of an application to recognise potential permit triggers or further consequences of an application than what has been presented by an applicant. The further information suggested that Clause 52.17 applies to this property, but has not been addressed in the planning application. Native vegetation in Victoria is protected under state legislation; removal of any native vegetation including trees, shrubs, herbs and grasses must be avoided or minimised as far as possible.

The further information request went on to state that if native vegetation is proposed to be removed, destroyed or lopped (which can include indirect impacts) as a result of the proposal, it will need to be assessed. This assessment should address the State Guidelines for the removal, destruction or lopping of native vegetation, the "Guidelines" (Department of Environment, Land, Water and Planning, 2017).

The applicant considered that as the application did not propose the removal of any vegetation, that the Native Vegetation provisions were not relevant to this application. It is submitted that the Guidelines for the removal, destruction or lopping native vegetation, reveals that this is not the case. What is required under these provision is not only consideration of direct vegetation impacts but also indirect impacts and more specifically 'Consequential Loss'

At Section 2.3.3 'Consequential removal of native vegetation the guidelines outlines the following:

*Clause 65 Decision guidelines provides a range of standardised decision guidelines that a responsible authority must consider as appropriate before deciding on a permit application or the approval of a plan. Contained within Clause 65.01 are the following native vegetation specific decision guidelines:*

- *The extent and character of native vegetation and the likelihood of its destruction; and*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*

*the responsible authority considers that a proposed use and/or development is likely to involve, or lead to, the consequential removal of native vegetation into the future as a result of issuing a permit or approving a plan, the responsible authority should consider whether there is a need for a permit application to be lodged in accordance with Clause 52.17. This ensures consideration and integration of all issues as part of its decision making.*

*This can include, but is not limited to, the consideration of an application for a permit to subdivide land that will enable native vegetation to be removed in the future without requiring a permit under Clause 52.16 or Clause 52.17.*

This situation specifically relates to this application and demonstrates that the information requested should have been included with the application and in its absence, a decision on the proposal cannot be made to support it.

There are numerous references to consequential loss throughout the Guidelines, the Applicants Guide and the Assessors Handbook all of which make it very clear what is required to be considered and at what stage the information is required. The most important reason for the need to assess consequential loss is that it provides the opportunity to determine whether the application has applied the three principals of avoid, minimise and offset. Regardless of whether permit is required at a later date for vegetation removal, where an exemption has been created under Clause 52.17, the ability to offset or even consider the strategic biodiversity value of the vegetation has been lost.

The application requirements listed in the Assessors hand book at section 3.1.3 requires that when calculating vegetation loss, that for Consequential Loss that applicants ensure that any consequential

removal of native vegetation due to exemptions that would apply following approval of a permit or plan (Appendix 2C) has been included. This includes for example, loss of native vegetation along proposed property boundaries for fence lines. Again the relevance of this policy could not be clearer. The policy demonstrates that the approval of a subdivision would allow the 'Fences' exemption to be relied on for future construction of boundary fences between properties in different ownerships. An area of four metres wide along the proposed property boundary must be included in the total native vegetation to be removed.

Overall without the provision of an appropriate assessment against Clause 52.17, the proposal cannot be supported and it is considered that the applicant is an incomplete proposal.

### **Clause 65.02 Decision Guidelines – Orderly Planning**

The final important consideration of this proposal relates to the decision guidelines listed at Clause 65. Clause 65 outlines a wide range of considerations which should be applied, as relevant to all permit applications. A key consideration in this instance is the 'Orderly planning of the area'. It is considered that this application fails on this most important point. The creation of a new lot which contains land in two zones is not considered orderly or good planning and this position has been supported in a number of cases at VCAT.

In the case of *Balderstone v Mornington Peninsula Shire Council*, while the Council supported the creation of a lot within two zones, they did so on the basis that the applicant would apply for a rezoning of the subject land. The Tribunal considered that such an outcome was unacceptable and stated its concern about the way in which the proposal would result in lots which are in two different zones and went on to state that:

- While the planning scheme did not actively prevent new lots being created which straddled different zones that was not something usually considered to be 'orderly planning'.
- Explain that planning scheme maps generally were designed so that zoning controls match lot boundaries. The purpose of such a design is to avoid overly complex planning situations which arise when a lot has what can be a conflicting set of planning controls applying to it.

It was clear in that case, like this proposal that the zoning provisions were applied so that they followed existing lot boundaries. The proposal would therefore disrupt the existing and 'more orderly planning' situation.

In *Marcus Kalman and Associates v Mornington Peninsula Shire Council* the Tribunal affirmed the Council's decision to refuse a permit for the re-subdivision of two adjoining lots, which would result in there being land in two zones. One of the Council's grounds of refusal was that the proposal would not avoid lot fragmentation as discouraged by policy.

The Tribunal cited the first Practice Notes that supported the Victoria Planning Provisions on which the Mornington Planning Scheme was based. The relevant practice note, titled 'Using Maps in Planning Schemes May 2000', stated:

*Zone boundaries should align with title boundaries or other defined features such as road centrelines or watercourses unless there is a deliberate reason not to. Avoid creating land in two zones.*

Although the Tribunal recognised that this specific practice note no longer formed part of the suite of Practice Notes, the Tribunal regarded the principle expressed in the cited extract to be relevant today as a matter of 'orderly planning'. The Tribunal further recognised that there may be deliberate reasons for not having zone and lot boundaries coinciding, such as the application of historical zoning. However, if not, there ought to be a strategic basis to that reason.

The following can be distilled from these decisions:

- The Tribunal has placed weight on the principle of 'orderly planning' in regards to the re-subdivision of land which results in lots in multiple zones.
- It is by design that zone controls and lot boundaries generally coincide to avoid an overly complex planning situation in which planning controls potentially conflict.
- There ought to be a compelling strategic basis for the creation of a lot within two zones, which would be contrary to the notion of 'orderly planning'.

Overall it is considered that the proposal if granted, would be contrary to the notion of orderly planning, which is a policy consideration, that Council must take into account under clause 65.01.

## CONCLUSION

This application for re-subdivision has been assessed against the relevant Planning Policy Framework and the Local Planning Policy Framework and the relevant provision of the Cardinia Planning Scheme, in particular the Low Density Residential and Rural Conservation Zones, the overlays which apply to the land, Clause 52.17 and the Decision Guidelines of Clause 65. Overall on balance it is considered that the proposal is inconsistent with the objectives and decision guidelines of the above controls.

It is considered that the proposal represents a poor planning outcome that has negative environmental impacts, which have not been fully considered by the applicant and does not represent orderly planning of the area.

It is recommended that a Refusal to Grant Planning Permit T180501 be issued for Re-subdivision at 5 Birch Avenue & 63 Westlands Road Emerald, Emerald subject to the following reasons:

1. The proposal is inconsistent with various objectives and strategies of the Planning Policy framework, in particular those which relate to the protection of the environment and biodiversity, such as Clause 12.01-1S Protection of Biodiversity, Clause 12.01-2 Native Vegetation Management and Clause 12.05-2S as the proposal presents and unacceptable impact on the environment.
2. The proposal is inconsistent with various objectives and strategies of the Municipal Strategic Statement and strategic Vision which identify and aim to preserve the valuable environmental values of the Shire.
3. The proposal is inconsistent with the following policies of the Local Planning Policy Framework Clause 21.02 Environment, Clause 21.02-3 Biodiversity, Clause 21.02-4 Wildfire Management, Clause 21.03-3 Rural Townships, Clause 21.03-4 Rural Residential and Rural Living Development and Clause 21.07-3 Emerald, Avonsleigh and Clematis as it will result in an impact which is contrary to the objectives and strategies contained in each.
4. The proposal is inconsistent with the objectives and decision guidelines of the Rural Conservation Zone as it will not protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values. Nor will it protect and enhance natural resources and the biodiversity of the area.
5. The proposal is inconsistent with the decision guidelines of the Low Density Residential Zone as it does not consider the protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat.
6. The proposal is inconsistent with the environmental overlays that apply to the two lots as the proposal will weaken the controls and impact on the local significant environment.
7. The application is inconsistent with the purpose of the Native Vegetation Provisions of Clause 52.17 as it has not correctly identified all the potential vegetation impacts as required in the incorporated documents such as the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017)
8. The application is an incomplete application as no assessment has been provided against Clause 52.17 'Native Vegetation', of the Cardinia Planning Scheme.
9. The proposal is inconsistent with the Decision Guidelines of Clause 65 as it does not represent orderly planning of the area through creating a lot in two zones and has not considered the extent and character of native vegetation and the likelihood of its destruction.

## **2 RE-SUBDIVISION AT 5 BIRCH AVENUE AND 63 WESTLANDS ROAD, EMERALD**

Moved Cr B Owen Seconded Cr J Springfield

That a Refusal to Grant Planning Permit **T180501** be issued for **Resubdivision at 5 Birch Avenue & 63 Westlands Road Emerald, Emerald** for the following reasons:

1. The proposal is inconsistent with various objectives and strategies of the Planning Policy framework, in particular those which relate to the protection of the environment and biodiversity, such as Clause 12.01-1S Protection of Biodiversity, Clause 12.01-2 Native Vegetation Management and Clause 12.05-2S as the proposal presents and unacceptable impact on the environment.
2. The proposal is inconsistent with various objectives and strategies of the Municipal Strategic Statement and strategic Vision which identify and aim to preserve the valuable environmental values of the Shire.
3. The proposal is inconsistent with the following policies of the Local Planning Policy Framework Clause 21.02 Environment, Clause 21.02-3 Biodiversity, Clause 21.02-4 Wildfire Management, Clause 21.03-3 Rural Townships, Clause 21.03-4 Rural Residential and Rural Living Development and Clause 21.07-3 Emerald, Avonsleigh and Clematis as it will result in an impact which is contrary to the objectives and strategies contained in each.
4. The proposal is inconsistent with the objectives and decision guidelines of the Rural Conservation Zone as it will not protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values. Nor will it protect and enhance natural resources and the biodiversity of the area.
5. The proposal is inconsistent with the decision guidelines of the Low Density Residential Zone as it does not consider the protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat.
6. The proposal is inconsistent with the environmental overlays that apply to the two lots as the proposal will weaken the controls and impact on the local significant environment.
7. The application is inconsistent with the purpose of the Native Vegetation Provisions of Clause 52.17 as it has not correctly identified all the potential vegetation impacts as required in the incorporated documents such as the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017)
8. The application is an incomplete application as no assessment has been provided against Clause 52.17 'Native Vegetation', of the Cardinia Planning Scheme.
9. The proposal is inconsistent with the Decision Guidelines of Clause 65 as it does not represent orderly planning of the area through creating a lot in two zones and has not considered the extent and character of native vegetation and the likelihood of its destruction.

Cd.

### **3 PLANNING SCHEME AMENDMENT ACTIVITY REPORT**

FILE REFERENCE INT1955894

RESPONSIBLE GENERAL MANAGER Tracey Parker

AUTHOR Luke Connell

#### **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.

<b>Cardinia Planning Scheme Amendment Activity Report</b>						
<b>A/No.</b>	<b>Proponent</b>	<b>Address</b>	<b>Purpose</b>	<b>Exhibition Start</b>	<b>Exhibition End</b>	<b>Status</b>
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	Adopted by Council on 16/07/2018. A bushfire assessment was completed with CFA approval and submitted to DELWP on 12/06/2019. Awaiting approval from the Minister for Planning.
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	Approved and gazetted on 18/07/2019.

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	85 McNamara Road, Bunyip	<ul style="list-style-type: none"> <li>Rezone land from Farming Zone Schedule 1 (FZ1) to Low Density Residential Zone Schedule 3 (LDRZ3) (85 McNamara Road)</li> <li>Apply a Development Plan Overlay Schedule 21 (DPO 21) (85 McNamara Road)</li> <li>Apply a Design and Development Overlay Schedule 1 (DDO1)</li> <li>Delete the Environmental Significance Overlay Schedule 1 (ES01).</li> </ul>	Thu 08/08/2019	Fri 06/09/2019	Authorisation to prepare an amendment was given by the Minister for Planning. Exhibition due to start on 08/08/2019.
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 a match between the	Thu 22/06/2017	Mon 24/07/2017	<p>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.</p> <p>A draft Bushfire Development Report (June 2019) was received from Terramatrix. Council Officers have provided a response to the draft.</p>

Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			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.			Request for authorisation to prepare an amendment and to re-adopt, with minor changes, the updated draft Pakenham Structure Plan 2018 and the draft Pakenham Activity Centre Urban Design Framework 2018 was adopted by Council on 20/05/2019. Awaiting response from the Minister for Planning.
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	Adopted by VPA on 15/05/2019. Awaiting approval from the Minister for Planning.
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	Thu 18/01/2018	Fri 23/02/2018	Adopted by VPA 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
			PSP, and make a number of other consequential changes to the Cardinia Planning Scheme to support the implementation of the PSP.			
C235	Planning Central	145 Rossiter Road, Koo Wee Rup	Rezone land from Farming Zone to Neighbourhood Residential Zone Schedule 1 (NRZ1). Apply a Development Plan Overlay Schedule 22 (DPO22), and corrects the mapping of the Heritage Overlay for the adjacent heritage property 'Shepton Mallet'.	Thu 27/06/2019	Fri 02/08/2019	On exhibition. Public consultation with Koo Wee Rup Township Committee occurred on Wednesday 03/07/2019.
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	Approved by the Minister for Planning. Awaiting gazettal.
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 14/03/2019 DELWP requested additional information. DELWP's request is being reviewed.
C240	Cardinia Shire Council	Koo Wee Rup Township	Implement the objectives of the Koo Wee Rup Township Strategy by applying Development Plan Overlays 23 & 24 and Design and Development Overlays 8 & 9 over			Request for authorisation to prepare an amendment was adopted by Council on 19/03/2019. Awaiting response from the Minister for Planning.



Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			various precincts within Koo Wee Rup.			
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)'.</p> <ul style="list-style-type: none"> <li>• H0279 18A Henry Street, Pakenham</li> <li>• H0281 49 James Street, Pakenham</li> <li>• H0283 39 Main Street, Pakenham</li> <li>• H0284 62 Main Street, Pakenham</li> <li>• H0285 84 Main Street, Pakenham</li> <li>• H0286 90-92 Main Street, Pakenham</li> <li>• H0288 1-7 Station Street, Pakenham</li> <li>• H0290 23 Rogers Street, Pakenham</li> <li>• H0287 11, 14, 17 &amp; 5-19 Rogers Street, Pakenham</li> <li>• H0291 1-23 Dame Pattie Avenue, Pakenham</li> <li>• H0291 2-18 Dame Pattie Avenue, Pakenham</li> <li>• H0292 3-10 Henty Street, Pakenham</li> <li>• H0227 6 Henty Street, Pakenham</li> <li>• H0293 5-21 James Street, Pakenham</li> <li>• H0293 6-32 James Street, Pakenham</li> <li>• H0293 1 Snodgrass Street, Pakenham</li> <li>• H0228 21 James Street, Pakenham</li> </ul>	Thu 09/08/2018	Fri 07/09/2018	Adopted by Council on 17/06/2019. Awaiting approval from the Minister for Planning.
C244	Cardinia	Pakenham	Implement the key	Thu	Tue	Adopted by Council

Cardinia Planning Scheme Amendment Activity Report						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
	Shire Council	Activity Centre Parking Precinct	objectives of the Pakenham Parking Precinct Plan (May 2018) by applying the Parking Overlay to the Pakenham Activity Centre.	04/10/2018	06/11/2018	on 17/06/2019. Awaiting approval from the Minister for Planning.
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.			Authorisation for a 20(4) amendment was refused on 13/05/2019.
C250	Cardinia Shire Council	Cardinia Shire	Implementation of Cardinia Planning Scheme Review 2018.			Request for authorisation to prepare an amendment and to endorse the Cardinia Planning Scheme Review was adopted by Council on 10/12/2018. Awaiting response from the Minister for Planning.

### **3 PLANNING SCHEME AMENDMENT ACTIVITY REPORT**

Moved Cr R Brown Seconded Cr J Owen

That the report be noted.

Cd.

## **4 PLANNING ENFORCEMENT MATTERS (INCLUDING MAGISTRATES' COURT PROSECUTIONS)**

FILE REFERENCE INT1955901

RESPONSIBLE GENERAL MANAGER Peter Benazic

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 & 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
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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)	On <b>19 July 2019</b> , the owner appeared in the Dandenong Magistrates Court. He pleaded not guilty, but was found guilty of 6 offences against the Planning and Environment Act.  Without conviction, he was fined \$1,000 and ordered to pay \$7,500 costs.
765 Gembrook Rd, Pakenham Upper  (OH:LK:16299)	Native vegetation removal, and earthworks creating driveway and hardstand, in breach of Rural Conservation Zone – Schedule 2, Environmental Significance Overlay Schedule 1, and Clause 52.17	Magistrates' Court proceeding, alleging that the owner has conducted earthworks that require a permit, and cleared native vegetation, both without a permit.  The case will proceed as a contested hearing on <b>30 July 2019</b>
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 is listed for further hearing on the 11 <sup>th</sup> August 2019.  The owner of the land undertook to the Tribunal to remove waste materials from the land within two months, and that this had already commenced.  Compliance Services will monitor the progress of the clean up, and return the matter to the Tribunal if the clean up does not proceed satisfactorily.
13-15 Carney St, Koo Wee Rup  OH:JALF:19446	Use of the land as a store, without a planning permit, contrary to the Commercial 1 Zone.	VCAT enforcement order application filed, and has been allocated a Practice Day Hearing on <b>5<sup>th</sup> July 2019</b> .
112 Murray Rd, Cora Lynn  JALF:JALF:19463	Use of the land for the purpose of a dwelling, without a planning permit, and alteration and use of a building (approved by planning permit T020163) contrary to the conditions of the permit.	VCAT enforcement order application is listed for Practice day hearing on 30 August 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 (INCLUDING MAGISTRATES' COURT PROSECUTIONS)**

Moved Cr R Brown Seconded Cr J Owen

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

Cd.

## **5 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATION AUTHORITY**

FILE REFERENCE INT1955911

RESPONSIBLE GENERAL MANAGER Peter Benazic

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
14/06/2019	T190175	56-60 Station Street, Pakenham VIC 3810	Wholesale timber yard.	Withdrawn	05 April 2019
19/06/2019	T190030	125 Mulcahy Road, PAKENHAM VIC 3810	Subdivision of land	Issued	23 January 2019
21/06/2019	T140742 - PC3	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	01 November 2018
21/06/2019	T190200	128-144 Princes Highway, Pakenham VIC 3810	Alterations and additions to existing church	Issued	10 April 2019
24/06/2019	T180718	80 Thewlis Road, Pakenham VIC 3810	Subdivision of land and removal of native vegetation	Issued	29 October 2018
24/06/2019	T180834	9 Maria Crescent, Pakenham VIC 3810	Development of the land for two (2) dwellings and subdivision of two (2) lots	Issued	18 December 2018
25/06/2019	T190282	15 Pakenham Road, Pakenham VIC 3810	Subdivision of land in to sixteen (16) allotments	Withdrawn	17 May 2019
26/06/2019	T080636 - 1	U 15/103 Army Road, Pakenham VIC 3810	Proposed Veranda to be built at the rear of the existing BV single storey dwelling	Withdrawn	28 May 2019
26/06/2019	T180361 - PC1	64 Murphy Road, Pakenham VIC 3810	Development Of Land For A Second Dwelling	Issued	21 February 2019
26/06/2019	T180759 - PC1	11 Rosalie Court, Pakenham VIC 3810	Development of the land for a second dwelling and subdivision of the land into two (2) lots	Issued	30 May 2019
27/06/2019	T160577 - PC1	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.	Issued	21 February 2019
1/07/2019	T180718 - PC1	80 Thewlis Road, Pakenham VIC 3810	PC1 - (Con. 07 PIP)	Issued	27 June 2019
1/07/2019	T180718 - PC2	80 Thewlis Road, Pakenham VIC 3810	PC2 - (Con. 08 BDG)	Issued	27 June 2019
1/07/2019	T190197	3 Park Orchard Drive, Pakenham VIC 3810	Subdivision of the land	Issued	09 April 2019
2/07/2019	T190219	41 Kenneth Road, Pakenham VIC 3810	Buildings and works (dwelling) within the Significant Landscape Overlay – Schedule 6	Issued	18 April 2019
3/07/2019	T170606 - PC2	36-40 Gallery Way, Pakenham VIC 3810	Construction of twelve (12) dwellings and associated works	Issued	08 May 2019
3/07/2019	T180540 - 1	7 Galway Rise, Pakenham VIC 3810	Amendment to Planning Permit T180540 by modifying the endorsed plans	Issued	08 April 2019



3/07/2019	T190027	125 Mulcahy Road, PAKENHAM VIC 3810	Development of forty one (41) warehouses and associated works	Issued	24 January 2019
3/07/2019	T190100	15 Avondale Street, Officer VIC 3809	Buildings and works (dwelling) within the Significant Landscape Overlay – Schedule 6	Issued	25 February 2019
4/07/2019	T190285	87 Grandvue Boulevard, Officer VIC 3809	Buildings and works (dwelling) within the Significant Landscape Overlay – Schedule 6	Issued	20 May 2019
5/07/2019	T170047 - 1	116 Toomuc Valley Road, Pakenham VIC 3810	Multi Lot Subdivision, in Two (2) Stages in accordance with the approved development plans.	Issued	28 May 2019
8/07/2019	T150104 - PC2	80 Racecourse Road, Pakenham Victoria 3810	Subdivision of the land into two (2) lots in the General Residential Zone and adjacent to Road Zone Category 1.	Issued	24 April 2019
8/07/2019	T190402	140 Main Street, Pakenham VIC 3810	Duplicate - Refurbishment of existing ANZ Bank including external signage/media screen	Withdrawn	08 July 2019
9/07/2019	T180850 - PC1	Brown Road, Pakenham VIC 3810	PC1 - (Con. 16 Offsets)	Issued	08 July 2019
15/07/2019	T190227	11 Thwaites Road, Pakenham VIC 3810	Two (2) Lot Subdivision	Issued	01 May 2019
16/07/2019	T190313	130 Duncan Drive, Pakenham VIC 3810	Subdivision of land in to two (2) lots (in accordance with development permit T170157)	Issued	29 May 2019

### Port Ward

Date	Permit No	Location	The Proposal	The Decision	Lodged Date
12/06/2019	T190171	70 Ellett Road, Pakenham South VIC 3810	Development of the land for an outbuilding (shed) and associated earthworks	Issued	26 March 2019
12/06/2019	T190241	41 Shinnars Close, Bunyip VIC 3815	Earthworks exceeding 1 metre (cut and fill)	Issued	29 April 2019
13/06/2019	T180692	Hope Street, BUNYIP VIC 3815	Development of the land for six (6) dwellings and subdivision of the land into three (3) lots, creation of a easement and demolition of an outbuilding	Issued	25 October 2018
13/06/2019	T190316	190 Weatherhead Road, Tynong North VIC 3813	Development of the land for an Agricultural building (replacement machinery and hay shed)	Issued	04 June 2019
17/06/2019	T180393	5 Mary Street, Bunyip VIC 3815	Development of the land for a single storey dwelling, a carport and vegetation removal.	Issued	26 June 2018
18/06/2019	T180207 - PC1	37-39 Hope Street, Bunyip VIC 3815	Condition 1	Issued	30 January 2019
20/06/2019	T190060	100 Greenhills Road, Pakenham VIC 3810	Development of the land for sixteen (16) warehouses (six warehouses and 10 self storage units), a take away food premises and reduction in car parking	Issued	04 February 2019
21/06/2019	T180384	75 Manoora Road, Nar Nar Goon North VIC 3812	Development of the land for an outbuilding (garage/shed), vegetation removal, construction of a verandah, and earthworks	Issued	20 June 2018
21/06/2019	T180713 - PC1	Thwaites Road, Heath Hill VIC 3981	Use and development of the land for a dwelling	Issued	22 May 2019
21/06/2019	T190109	12 Sybella Avenue, Koo Wee Rup VIC 3981	Development of land for a dwelling	Issued	25 February 2019
21/06/2019	T190152 - PC1	68 Gainsborough Avenue, Lang Lang VIC 3984	Development of the land for an outbuilding (garage)	Issued	17 May 2019
21/06/2019	T190209	24 Industrial Drive, Pakenham VIC 3810	Development of the land for a warehouse (associated with motor repairs), ancillary office, display of business identification signage and reduction in car parking.	Issued	15 April 2019
21/06/2019	T190229	Hill Street, Pakenham VIC 3810	Development of 36 units and construction of four crossovers	Withdrawn	24 April 2019
21/06/2019	T190335	40 Izzard Lane, Tonimbuk VIC 3815	Development of the land for an outbuilding	Issued	12 June 2019
24/06/2019	T180611	23 Industrial Drive, Pakenham VIC 3810	Use of the land and buildings and works associated with industry (materials recycling facility), ancillary office, water tank and reduction of car parking requirements	Issued	12 September 2018
24/06/2019	T190069	Koo Wee Rup-Longwarry Road, Koo Wee Rup VIC 3981	Use and development of land in eight (8) stages for a Primary School, Secondary School, and Place of Worship; alteration of access to a road in Road Zone Category 1, works within a Road Zone, native vegetation removal and earthworks.	Withdrawn	07 February 2019
24/06/2019	T190238	25 Miles Road, Bunyip VIC 3815	Development of the land for a building associated with agriculture and associated earthworks	Issued	29 April 2019
24/06/2019	T120247 - 4	52 James Street, Lang Lang Victoria 3984	Deletion of condition 21(c) of the planning permit.	Issued	07 June 2019
26/06/2019	T190034 - PC1	210 Soldiers Road, Caldermeade VIC 3984	Development of the land for an agricultural building (hay shed) and associated works	Issued	06 May 2019

27/06/2019	T180444	Main Street (proposed 3 Mary Street) and 24 and 26 Main street, Bunyip VIC 3815	Use and development of the land for six (6) dwellings, demolition of two outbuildings, multi lot subdivision in stages and removal of a restriction	NOD	16 July 2018
27/06/2019	T180532 - PC1	6 Sette Circuit, Pakenham VIC 3810	Development of the land for one (1) warehouse	Issued	15 April 2019
27/06/2019	T180539 - 1	National Avenue, Pakenham VIC 3810	THE OWNER AS REQUESTED TO REDUCE THE FLOOR AREA OF THE FIRST FLOOR OFFICE AND INCREASE THE FLOOR AREA OF THE WAREHOUSE.	Withdrawn	27 June 2019
28/06/2019	T180708	65 Bridge Road, Modella VIC 3816	Development of the land for a dependent persons unit	Withdrawn	23 October 2018
1/07/2019	T180832 - PC1	31 Marrakilla Road, Maryknoll VIC 3812	Development of the land for a dwelling extension and garage	Issued	21 May 2019
1/07/2019	T190280	23 Wattletree Road, Bunyip VIC 3815	Development of the land for an outbuilding	Issued	16 May 2019
1/07/2019	T190288	230 Koo Wee Rup-Longwarry Road, Koo Wee Rup VIC 3981	Development of the land for a dwelling extension	Issued	20 May 2019
1/07/2019	T190300	Peet Street (proposed Lot 7 PS747005Y), Pakenham VIC 3810	The Development of the land for two (2) warehouses and ancillary offices	Issued	27 May 2019
1/07/2019	T190322	205 Seven Mile Road, Nar Nar Goon VIC 3812	Development of the land for an outbuilding	Issued	03 June 2019
2/07/2019	T190369	2345 Ballarto Road, Cardinia VIC 3978	Secure vehicle storage (caravans, boats, cars) both open and undercover in a 24m x 14m metal clad shed. Security provided by a chain wire mesh + barbed wire fence to the perimeter of the compound.	Withdrawn	25 June 2019
3/07/2019	T190240	235 Brew Road, Tynong North VIC 3813	Buildings and works associated with an agricultural building	Withdrawn	30 April 2019
3/07/2019	T190266	1815 Gembrook-Tonimbuk Road, Tonimbuk VIC 3815	Development of the land for one (1) outbuilding (Bushfire affected property)	Issued	11 May 2019
4/07/2019	T190258	5 Shelton Park Drive, Koo Wee Rup VIC 3981	Subdivision of the land into 8 lots	Issued	08 May 2019
4/07/2019	T190301	Peet Street (proposed Lot 6 PS747005Y), Pakenham VIC 3810	The Development of the land for two (2) warehouses and ancillary offices	Issued	27 May 2019
5/07/2019	T180774	21 Latta Road, Nar Nar Goon VIC 3812	Use of the land and works associated with the disposal of fill	Refused	21 November 2018
5/07/2019	T190036	4385 South Gippsland Highway, Caldermeade VIC 3984	Alterations and additions to an existing food and drink premises (restaurant), use and development of the land for rural industry (milk processing factory), ancillary office and associated works	Issued	30 January 2019
5/07/2019	T190068	350 McDonalds Track, Lang Lang VIC 3984	Use and Development of Extractive Industry (Small Sand Quarry)	NOD	06 February 2019
5/07/2019	T190185	46 Exchange Drive, Pakenham VIC 3810	Development of the land for one (1) warehouse and associated works	Issued	01 April 2019
5/07/2019	T190380	76 Leask Road, Tonimbuk VIC 3815	Development of the land for a building associated with agriculture	Issued	28 June 2019
8/07/2019	T180403	485 Kettles Road, Lang Lang VIC 3984	Two (2) lot subdivision and removal of vegetation	Issued	06 July 2018
8/07/2019	T190084	1 Carnarvon Street, Lang Lang VIC 3984	Subdivision of land into three (3) lots	Issued	13 February 2019
9/07/2019	T180618	Cardinia Road, Officer South VIC 3809	Subdivision of land for the purpose of creating a lot for a future drainage reserve and the creation of a carriageway easement generally in accordance with the submitted plans.	Issued	14 September 2018
10/07/2019	T190283	104 Wattletree Road, Bunyip VIC 3815 and the Wattletree Road Reserve, Bunyip VIC 3815	Removal of non-native vegetation (11 Elm trees)	Issued	17 May 2019
15/07/2019	T180703	540 Garfield North Road, Garfield North VIC 3814	Two (2) lot subdivision (boundary realignment)	Issued	26 October 2018
15/07/2019	T190079	10 Moore Road, Nar Nar Goon North VIC 3812	Development of the land for a replacement dwelling and associated vegetation removal	Issued	15 February 2019
15/07/2019	T190165	71 Bridal Road, Tonimbuk VIC 3815	use and development of the land for a dwelling	Issued	01 April 2019
15/07/2019	T190269	49 Tynong Road, Tynong VIC 3813	Development of the land for five (5) agricultural sheds and two (2) greenhouses associated with Section 1	Withdrawn	20 May 2019

			Agriculture (Crop raising)		
15/07/2019	T190333	100 Pettigrew Road, Garfield North VIC 3814	Development of the land for an outbuilding and machinery shed	Issued	11 June 2019
16/07/2019	T190221	15 Agnoletto Court, Bunyip VIC 3815	Development of a dwelling and associated works.	Issued	18 April 2019
16/07/2019	T190238 - PC1	25 Miles Road, Bunyip VIC 3815	Development of the land for a building associated with agriculture and associated earthworks	Issued	16 July 2019
16/07/2019	T190259	6 Shelton Park Drive, Koo Wee Rup VIC 3981	Subdivision of the land into five (5) lots	Issued	08 May 2019
16/07/2019	T190394	38A Tarmac Way, Pakenham VIC 3810	Reduction in car parking requirement	Issued	01 July 2019

## Ranges Ward

Date	Permit No	Location	The Proposal	The Decision	Lodged Date
12/06/2019	T160008 - 1	329 Belgrave-Gembrook Road, Emerald Victoria 3782	Sale and consumption of liquor and reduction in car parking requirements	Issued	19 December 2018
12/06/2019	T180664 - PC1	7 Old Gembrook Road, Emerald VIC 3782	Condition 1 & 2 regarding tree removal due to the bushfire management overlay. Condition 17 request for a Land Capability Assessment.	Issued	17 April 2019
12/06/2019	T190081 - PC1	180 Bayview Road, Officer VIC 3809	Development of the land for a Dependent Persons Unit and associated earthworks and the removal of one (1) tree	Issued	21 May 2019
13/06/2019	T180350 - 1	42 Annabel Crescent, Officer VIC 3809	Changes to the design of the house to reduce building costs, including: - Reduced footprint of house - Changed roof shape - Revised floor plan - Revised construction method over the garage	Issued	09 April 2019
13/06/2019	T190082	10 McMullen Road, Officer VIC 3809	Display a sign promoting the sale of homes.	Withdrawn	21 February 2019
13/06/2019	T190195	2 Pink Hill Boulevard, Beaconsfield VIC 3807	Use and development of a child care centre and business identification signage.	Issued	09 April 2019
14/06/2019	T180542 - 1	12 Westlands Road, Emerald VIC 3782	Two (2) lot subdivision, development of two (2) dwellings and vegetation removal	Issued	17 May 2019
14/06/2019	T190255	337 Belgrave-Gembrook Road, Emerald VIC 3782	Removal of one (1) native tree	Issued	07 May 2019
17/06/2019	T190228	13 Jeanne Street, Cockatoo VIC 3781	Development of the land for an outbuilding (garage)	Issued	25 April 2019
18/06/2019	T180732 - PC1	30 Joffre Parade, Cockatoo VIC 3781	Condition 1	Issued	13 May 2019
18/06/2019	T190271	229 Berglund Road, Beaconsfield Upper VIC 3808	Development of Land for a dwelling extension (Verandah),	Issued	13 May 2019
18/06/2019	T190345	Siding Avenue, Officer VIC 3809	Amendments to Planning Permit T170584 and endorsed plans. Please see attached cover letter by Human Habitats for further information.	Withdrawn	18 June 2019
19/06/2019	T190150	695 Woori Yallock Road, Nangana VIC 3781	Buildings and works associated with the construction of an outbuilding	Issued	19 March 2019
19/06/2019	T190180	3 Neville Street, Cockatoo VIC 3781	Development of the land for a replacement outbuilding (garage)	Issued	31 March 2019
19/06/2019	T190233	17 Meadowview Lane, Emerald VIC 3782	Development of the land for an outbuilding (shed) and removal of one (1) tree	Issued	24 April 2019
26/06/2019	T040522 - 2	19-21 Woods Street, Beaconsfield Victoria 3807	Amendment to condition 2 of Planning Permit T040522-1 that was issued for an on premises liquor licence in accordance with the approved plans	Issued	15 May 2019
26/06/2019	T170671 - PC7	Rix Road, Officer VIC 3809	MCP's Stage 29 - 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	10 April 2019
26/06/2019	T180648	25 Majestic Drive, Emerald VIC 3782	Development of the land for a dwelling and earthworks	Issued	01 October 2018
26/06/2019	T180730	460 Toomuc Valley Road, Pakenham VIC 3810	Development of alterations and additions to an existing dwelling and associated earthworks	Issued	07 November 2018
26/06/2019	T180824 - 1	595 Ure Road, Cockatoo VIC 3781	Proposed shed to be included in the planning permit.	Issued	03 June 2019
1/07/2019	T180542 - PC1	12 Westlands Road, Emerald VIC 3782	Two lot subdivision, development of two dwellings and vegetation removal	Issued	21 June 2019

1/07/2019	T190310	5 Church Street, Emerald VIC 3782	Development of the land for an outbuilding (shed)	Issued	28 May 2019
3/07/2019	T150670 - PC6	96 Brunt Road, Beaconsfield Victoria 3807	Development of the land for thirty-five (35) dwellings, subdivision of land and removal of an easement in accordance with the endorsed plans.	Withdrawn	20 June 2019
3/07/2019	T190127	221 Princes Highway, Beaconsfield VIC 3807	The creation of a carriage way easement in accordance with the approved plans	Issued	18 March 2019
3/07/2019	T190183	125 Bridge Road, Officer VIC 3809	Buildings and works associated with a non-residential use (open sports ground).	Issued	11 April 2019
4/07/2019	T190302	50 Old Soldier Road, Gembrook VIC 3783	Development of an Extensions to existing Dwelling.	Issued	30 May 2019
4/07/2019	T190350	20 Brunt Road, Beaconsfield VIC 3807	Buildings and works associated with an existing residential village	Issued	18 June 2019
5/07/2019	T190055	265 Gordon Road, Pakenham Upper VIC 3810	Development of the land for an outbuilding and associated earthworks	Issued	02 February 2019
5/07/2019	T190138	6 Davey Road, Emerald VIC 3782	Use and development of the land for a private tennis court, retaining wall, earthworks and associated vegetation removal	Issued	12 March 2019
8/07/2019	T160693 - PC3	46 Tivendale Road, Officer VIC 3809	PC3 - (Con. 14 LMP)	Issued	09 May 2019
8/07/2019	T180460 - PC2	30 Tivendale Road, Officer VIC 3809	PC2 - (Con. 12 WMP)	Issued	03 June 2019
8/07/2019	T180668	41 Borchardt Street, Guys Hill VIC 3807	Buildings and works associated with a dwelling extension	Withdrawn	11 October 2018
8/07/2019	T190379	Siding Avenue, Officer VIC 3809	Seeking to amend permit preamble and conditions of the permit	Withdrawn	28 June 2019
9/07/2019	T180844	17 Aura Vale Road, Menzies Creek VIC 3159	Use and Development of the land for a dwelling	Issued	20 December 2018
9/07/2019	T190133	11 Church Street, Emerald VIC 3782	Three (3) lot subdivision in accordance with development permit T170816	Issued	12 March 2019
9/07/2019	T190289	6 First Avenue, Cockatoo VIC 3781	Development of the land for a dwelling extension (Verandah)	Issued	20 May 2019
10/07/2019	T160658 - 1	18 Bayview Road, Officer VIC 3809	Amendments to permit - Development of the land for eight (8) dwellings	Issued	01 April 2019
11/07/2019	T180606 - PC1	32 McMullen Road, Officer VIC 3809	Condition 3	Withdrawn	10 July 2019
11/07/2019	T190210	26 St Georges Road, Beaconsfield Upper VIC 3808	Removal of 17 trees (Evergreen Alder)	Issued	12 April 2019
12/07/2019	T180499	26-28 Holm Park Road, BEACONSFIELD VIC 3807	Subdivision of the land into two (2) lots	Refused	07 August 2018
15/07/2019	T190002	51 Beaconsfield-Emerald Road, Beaconsfield Upper VIC 3808	Alterations and additions to an existing building (Shop & Medical Centre) and alteration to access in a Road Zone Category 1	Issued	03 January 2019
16/07/2019	T170777	9 Mahon Avenue, Beaconsfield VIC 3807	Construction of four (4) dwellings on a lot	NOD	29 November 2017
16/07/2019	T190329	10 Maisie Road, Emerald VIC 3782	Alterations and additions to an existing dwelling (dwelling extension & deck)	Withdrawn	06 June 2019

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

Moved Cr R Brown Seconded Cr J Owen

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 INT1955926

RESPONSIBLE GENERAL MANAGER Peter Benazic

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
18/12/2019	T170516	Merretts Road, Avonsleigh	Use and development of the land for a dwelling, outbuilding, removal of vegetation and associated earthworks	Approved	Applicant review of conditions	Waiting on hearing
18/11/2019	T180406	Tivendale Road, Officer	Subdivision of Land	Failure to determine	Applicant	Waiting on hearing
23/9/2019	T180793	48-50 James Street, Pakenham	Use and Development of Two Offices, Two Retail Premises, Thirty-Six Apartments and a Reduction in Car Parking	Failure to determine	Applicant	Waiting on hearing
15/7/2019	T170722	245 McDonalds Track Lang Lang	Subdivision and removal of native vegetation	Approved	Applicant review of conditions	Waiting on decision
9/7/2019	T180200	152 & 156 Army Road, Pakenham	Construction of 26 dwellings and native vegetation removal	Approved	Objector	Waiting on decision
20/6/2019	T180143	37, 39, 41 & 43 Rogers Street Pakenham	Construct 62 Dwellings and native vegetation removal	Refusal	Applicant	Waiting on hearing

5/9/2019	T180303	61-63 Princes Highway, Pakenham	Use and development of a Medical Centre	Objector	Approved	Waiting on hearing
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**6 PLANNING MATTERS CURRENTLY THE SUBJECT OF APPEAL AT THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL & THEIR OUTCOMES**

Moved Cr R Brown Seconded Cr J Owen

That the report be noted.

Cd.



Meeting closed at 7:19pm

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Minutes Confirmed  
Chairman